

HOUSE BILL NO. 854
AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on _____)

(Patron Prior to Substitute—Delegate Cousins)

A BILL to amend and reenact §§ 58.1-3603 and 58.1-3651 of the Code of Virginia, relating to real property tax; local classification or designation for portion of property.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3603 and 58.1-3651 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-3603. Exemptions not applicable when building is source of revenue.

A. Whenever any building or land, or part thereof, exempt from taxation pursuant to this chapter and not belonging to the Commonwealth is a source of revenue or profit, whether by lease or otherwise, all of such buildings and land shall be liable to taxation as other land and buildings in the same county, city or town. When a part but not all of any such building or land, however, is a source of revenue or profit, and the remainder of such building or land is used by any organization exempted from taxation pursuant to this chapter for its purposes, only such portion as is a source of profit or revenue shall be liable for taxation.

B. In assessing any building and the land it occupies pursuant to subsection A, the assessing officer shall only assess for taxation that portion of the property as is a source of profit or revenue and the tax shall be computed on the basis of the ratio of the space as is a source of profit or revenue to the entire property. When any such property is leased for portions of a year the tax shall be computed on the basis of the average use of such property for the preceding year.

C. In determining whether any building or land, or part thereof, is a source of revenue or profit, rent from the lease of the property applied to reduce indebtedness against the property by payment of the principal of an outstanding bond or note held by a political subdivision of the Commonwealth shall not constitute revenue or profit, provided that the property is leased to a lessee who is exempt from taxation pursuant to § 501(c)(3) of the Internal Revenue Code and is used by such lessee exclusively for charitable purposes.

D. Any rental income or other sources of income received from any portion of real property that is used for charitable or benevolent purposes in accordance with subsection A of § 58.1-3651 shall not be considered a source of revenue or profit for purposes of this section.

§ 58.1-3651. Property exempt from taxation by classification or designation by ordinance adopted

31 **by local governing body on or after January 1, 2003.**

32 A. Pursuant to subsection 6 (a)(6) of Article X of the Constitution of Virginia, on and after January 1,
33 2003, any county, city, or town may by designation or classification exempt from real or personal property
34 taxes, or both, by ordinance adopted by the local governing body; ~~the~~:

35 1. *The real or personal property, or both, owned by a nonprofit organization, including a single member*
36 *limited liability company whose sole member is a nonprofit organization, that uses such property for*
37 *religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes.*

38 2. *The real or personal property, or both, owned by an ownership entity of which a controlling interest of*
39 *the managing member or general partner of such ownership entity is held directly or indirectly by one or*
40 *more nonprofit organizations, notwithstanding any for-profit ownership interests, that is used for charitable*
41 *or benevolent purposes for the provision of affordable housing, as such term is defined in 15.2-2201.*

42 The ordinance shall state the specific use on which the exemption is based, and continuance of the
43 exemption shall be contingent on the continued use of the property in accordance with the purpose for which
44 the organization is classified or designated, *in whole or in part. Any suspension or termination of such*
45 *exemption shall be stipulated in the local ordinance.* No exemption shall be provided to any organization that
46 has any rule, regulation, policy, or practice that unlawfully discriminates on the basis of religious conviction,
47 race, color, sex, sexual orientation, gender identity, or national origin.

48 B. Any ordinance exempting property by designation pursuant to subsection A shall be adopted only after
49 holding a public hearing with respect thereto, at which citizens shall have an opportunity to be heard. The
50 local governing body shall publish notice of the hearing once in a newspaper of general circulation in the
51 county, city, or town where the real property is located. The notice shall include the assessed value of the real
52 and tangible personal property for which an exemption is requested as well as the property taxes assessed
53 against such property. The public hearing shall not be held until at least seven days after the notice is
54 published in the newspaper. The local governing body shall collect the cost of publication from the
55 organization requesting the property tax exemption. Before adopting any such ordinance the governing body
56 shall consider the following questions:

57 1. Whether the organization is exempt from taxation pursuant to § 501(c) of the Internal Revenue Code of
58 1954;

59 2. Whether a current annual alcoholic beverage license for serving alcoholic beverages has been issued by
60 the Board of Directors of the Virginia Alcoholic Beverage Control Authority to such organization, for use on

such property;

3. Whether any director, officer, or employee of the organization is paid compensation in excess of a reasonable allowance for salaries or other compensation for personal services which such director, officer, or employee actually renders;

4. Whether any part of the net earnings of such organization inures to the benefit of any individual, and whether any significant portion of the service provided by such organization is generated by funds received from donations, contributions, or local, state or federal grants. As used in this subsection, donations shall include the providing of personal services or the contribution of in-kind or other material services;

5. Whether the organization provides services for the common good of the public;

6. Whether a substantial part of the activities of the organization involves carrying on propaganda, or otherwise attempting to influence legislation and whether the organization participates in, or intervenes in, any political campaign on behalf of any candidate for public office;

7. The revenue impact to the locality and its taxpayers of exempting the property; and

8. Any other criteria, facts and circumstances that the governing body deems pertinent to the adoption of such ordinance.

C. Any ordinance exempting property by classification, *in whole or in part*, pursuant to subsection A shall be adopted only after holding a public hearing with respect thereto, at which citizens shall have an opportunity to be heard. The local governing body shall publish notice of the hearing once in a newspaper of general circulation in the county, city, or town. The public hearing shall not be held until at least five days after the notice is published in the newspaper.

D. Exemptions of property from taxation under this article shall be strictly construed in accordance with Article X, § 6 (f) of the Constitution of Virginia.

E. Nothing in this section or in any ordinance adopted pursuant to this section shall affect the validity of either a classification exemption or a designation exemption granted by the General Assembly prior to January 1, 2003, pursuant to Article 2 (§ 58.1-3606 et seq.), 3 (§ 58.1-3609 et seq.) or 4 (§ 58.1-3650 et seq.) of this chapter. An exemption granted pursuant to Article 4 (§ 58.1-3650 et seq.) of this chapter may be revoked in accordance with the provisions of § 58.1-3605.

2. That it is the purpose of this act to stimulate public purpose projects by clarifying that localities have the authority to extend tax exemptions for real and personal property used for charitable or benevolent purposes, notwithstanding for-profit ownership of such properties, including ownership by for-profit

91 investors and joint venture partners, so long as such ownership is integral to the purpose of facilitating
92 such charitable or benevolent purposes, such as the facilitation of providing affordable housing
93 through properties financed through § 42 of the Internal Revenue Code.

94 3. That the provisions of the first enactment of this act providing that any county, city, or town may
95 exempt from real or personal property taxes, or both, any real or personal property owned by an
96 ownership entity of which a controlling interest of the managing member or general partner of such
97 ownership entity is held directly or indirectly by one or more nonprofit organizations, notwithstanding
98 any for-profit ownership interests, that is used for charitable or benevolent purposes is declaratory of
99 existing law.