

# DEPARTMENT OF TAXATION

## 2021 Fiscal Impact Statement

1. **Patron** Tony O. Wilt

2. **Bill Number** HB 1763

3. **Committee** Senate Finance and Appropriations

**House of Origin:**

           **Introduced**

           **Substitute**

           **Engrossed**

4. **Title** Agricultural Best Management Practices Tax  
Credit; Enhanced Tax Incentive

**Second House:**

  X   **In Committee**

           **Substitute**

           **Enrolled**

### 5. **Summary/Purpose:**

This bill would provide an enhanced Agricultural Best Management Practices Tax Credit for certain taxpayers with an approved resource management plan. The amount of the enhanced credit would be 50 percent of the first \$100,000 expended for agricultural best management practices.

Certain taxpayers with approved soil conservation plans would continue to be permitted to claim the existing credit. The maximum amount of such credit would be increased from 25 percent of the first \$70,000 expended for agricultural best management practices to 25 percent of the \$100,000 of such expenditures.

This bill would provide that the aggregate amount of the existing credit and the enhanced credit claimed would not be permitted to exceed \$75,000. Under current law, the maximum amount of the existing credit that may be claimed is \$17,500.

This bill would impose an annual credit cap of \$2 million per fiscal year applicable in aggregate both to the existing Agricultural Best Management Practices Tax Credit and to the enhanced Agricultural Best Management Practices Tax Credit established by this bill.

This bill would be effective for taxable years beginning on and after January 1, 2021.

### 6. **Budget amendment necessary:** Yes.

Item(s): 282, Department of Taxation

### 7. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

#### 7a. **Expenditure Impact:**

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Positions</b></i>	<i><b>Fund</b></i>
2021-22	\$72,797	1	GF
2022-23	\$70,097	1	GF
2023-24	\$70,097	1	GF
2024-25	\$70,097	1	GF
2025-26	\$70,097	1	GF
2026-27	\$70,097	1	GF

## **8. Fiscal implications:**

### Administrative Costs

This bill would result in administrative costs to the Department of Taxation (“the Department”) of \$72,797 in Fiscal Year 2022 and \$70,097 in each fiscal year thereafter. These costs include hiring one full-time employee to administer the annual credit cap that this bill would impose. Such costs assume that the Department would be responsible for administering the annual credit cap. If this is not the intent, the Department recommends a technical amendment clarifying which agency would be responsible for administering the cap (see Line 10).

The Department of Conservation and Recreation (“DCR”) does not anticipate a fiscal impact as a result of this bill. According to DCR, it is likely that there would be an increased workload for Soil and Water Conservation Districts (“SWCD”) as SWCD staff are the individuals preparing the soil conservation plans for producers in many instances. The SWCD Boards also approve the soil conservation plans, which is an existing requirement for this type of tax credit.

### Revenue Impact

This bill would result in an unknown negative General Fund revenue impact beginning in Fiscal Year 2022. Because this bill would impose an annual credit cap of \$2 million, the overall impact of the credit after the changes imposed by this bill would not exceed \$2 million.

This bill would make three changes that would impact revenues: (1) establish an enhanced credit equal to 50 percent of the first \$100,000 of qualified expenditures; (2) modify the existing credit to increase the expenditure limitation from \$70,000 to \$100,000; and (3) increase the maximum credit amount from \$17,500 per taxpayer to an aggregate of \$75,000 per taxpayer, which would apply to the total amount of both the existing and enhanced credits claimed by a taxpayer. It is unknown to what extent these changes would increase the number of eligible taxpayers and credit amount claimed. However, because of the annual credit cap, the overall impact of the credit would not exceed \$2 million.

The number of taxpayers claiming the Agricultural Best Management Practices Tax Credit, the aggregate amount that they claimed over the last ten years, and the average amount claimed by taxpayer is shown below:

<b>Agricultural Best Management Practices Tax Credit</b>			
Fiscal Year	Number of Taxpayers Claiming Credit	Amount Claimed by All Taxpayers	Average Claimed Per Taxpayer
2010	716	\$669,940	\$936
2011	617	\$585,469	\$949
2012	640	\$1,248,177	\$1,950
2013	419	\$858,504	\$2,049
2014	470	\$798,586	\$1,699
2015	471	\$1,144,933	\$2,431
2016	412	\$1,008,216	\$2,447
2017	306	\$687,381	\$2,246
2018	228	\$485,114	\$2,128
2019	364	\$1,101,781	\$3,027
2020	357	\$910,690	\$2,551

**9. Specific agency or political subdivisions affected:**

Department of Taxation  
Department of Conservation and Recreation

**10. Technical amendment necessary:** This bill would impose an annual credit cap of \$2 million. However, the bill does not specify the method by which the cap is to be allocated among qualifying taxpayers when more than \$2 million in tax credits are applied for in any given fiscal year. The Department generally allocates tax credit caps according to the proration method unless another method is specified in the legislative text. If the intent of the Patron is to have the cap allocated based upon some method other than proration, the Department recommends that this bill be amended to specify which method is to be used.

In addition, the Department's administrative costs (see Line 7a) are based on the assumption that the intent is for the Department of Taxation to administer the annual credit cap imposed by this bill. If the Patron intends for another state agency to administer the annual credit cap, the Department recommends a technical amendment specifying such agency.

**11. Other comments:**

Current Law

Virginia has two main agricultural best management practice programs, both of which are designed to improve or maintain water quality in the state's streams, lakes and bays:

- Agricultural Best Management Practices Cost-Share; and
- Agricultural Best Management Practices Tax Credit

Both programs are administered by DCR through local soil and water conservation districts ("SWCDs"). These programs offer financial and technical assistance as incentives to carry out construction or implementation of selected best management practices.

### *Agricultural Best Management Practices Cost-Share*

The cost-share program supports the use of various practices in conservation planning to treat cropland, pastureland, hay land and forested land. Some are paid for at a flat rate or straight per-acre rate. Others are cost-shared on a percentage basis up to 100 percent. In some cases, the United States Department of Agriculture also pays a percentage. The cost-share program's practices can often be funded by a combination of state and federal funds, reducing the landowner's expense to less than 30 percent of the total cost. Individuals, trusts, partnerships and other businesses seeking cost-share assistance must apply at their local SWCDs. An individual may receive a maximum of \$100,000 per year for cost-share.

### *Agricultural Best Management Practices Tax Credit*

The Agricultural Best Management Practices Tax Credit supports the voluntary installation of agricultural best management practices that meet Virginia's nonpoint source pollution water quality objectives. The program provides refundable individual and corporate income tax credits equal to 25 percent of the first \$70,000 expended for agricultural best management practices. The maximum credit allowed is \$17,500. "Agricultural best management practice" is defined as a practice approved by the Virginia Soil and Water Conservation Board ("VSWCB") which will provide a significant improvement to water quality in the state's streams and rivers and the Chesapeake Bay and is consistent with other state and federal programs that address agricultural, nonpoint-source-pollution management. Virginia law provides that a detailed list of the standards and criteria for practices eligible for credit are to be found in the most recently approved "Virginia Agricultural BMP Manual" published annually prior to July 1 by the Department of Conservation and Recreation. Virginia law also sets forth a non-exhaustive list of eligible practices. To be eligible for a tax credit as an individual, the taxpayer must:

- Either be engaged in agricultural production for market or have equines that create needs for agricultural best management practices to reduce nonpoint source pollutants, and
- Have in place a soil conservation plan approved by the local SWCD.

To be eligible for a credit as a corporation, the taxpayer must:

- Be engaged in agricultural production for market; and
- Have in place a soil conservation plan approved by the local SWCD.

Unlike individuals, corporations not engaged in agricultural production for market cannot qualify for the credit based upon having equines that create needs for agricultural best management practices to reduce nonpoint source pollutants.

### Proposed Legislation

This bill would provide an enhanced Agricultural Best Management Practices Tax Credit. The amount of the enhanced credit would be 50 percent of the first \$100,000 expended for agricultural best management practices. To be eligible for the enhanced credit as an individual or corporation under this bill, the taxpayer would be required to:

- Either be engaged in agricultural production for market, or have equines that create needs for agricultural best management practices to reduce nonpoint source pollutants; and

- Have in place a resource management plan approved by the local SWCD.

The enhanced credit would only be allowed for agricultural best management practices implemented on the acreage included in the resource management plan.

Certain taxpayers with approved soil conservation plans would continue to be permitted to claim the existing credit. The maximum amount of such credit would be increased from 25 percent of the first \$70,000 expended for agricultural best management practices to 25 percent of the \$100,000 of such expenditures.

This bill would provide that the aggregate amount of the existing credit and the enhanced credit claimed would not be permitted to exceed \$75,000. Under current law, the maximum amount of the existing credit that may be claimed is \$17,500.

A taxpayer would be prohibited from claiming credit for the same practice in the same management area under both the enhanced credit and the existing credit. The bill would provide that, to the extent that a taxpayer participates in the Virginia Agricultural Best Management Practices Cost-Share Program, the taxpayer may claim the existing credit for any remaining liability after such cost-share, but may not claim the enhanced credit created under this bill for any such remaining liability. The bill would define "liability after such cost-share" as the limitation of the tax credits to the total costs incurred by the taxpayer for agricultural best management practices reduced by any funding received by participation in the Virginia Agricultural Best Management Practices Cost-Share Program.

This bill would impose an annual credit cap of \$2 million per fiscal year applicable in aggregate both to the existing Agricultural Best Management Practices Tax Credit and to the enhanced Agricultural Best Management Practices Tax Credit established by this bill.

This bill would be effective only to taxable years beginning on and after January 1, 2021.

#### Similar Bills

**Senate Bill 1162** is substantially similar to this bill, except that it would impose a sunset date.

**Senate Bill 1163** would repeal the Conservation Tillage Equipment Tax Credit and the Fertilizer and Pesticide Application Equipment Tax Credit, and would provide a new credit for the purchase of conservation tillage and precision agriculture equipment.

cc : Secretary of Finance

Date: 2/15/2021 JJS  
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