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## HOUSE BILL NO. 1652

Offered January 17, 2020

A BILL to amend and reenact §§ 58.1-339.3 and 58.1-439.5 of the Code of Virginia, relating to tax credit; agricultural best management practices.

Patrons—Wilt and Bulova

Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 58.1-339.3 and 58.1-439.5 of the Code of Virginia are amended and reenacted as follows:**

**§ 58.1-339.3. Agricultural best management practices tax credits.**

A. 1. For all taxable years beginning on and after January 1, 1998, any individual who is engaged in agricultural production for market, or who has equines that create needs for agricultural best management practices to reduce nonpoint source pollutants, and has in place a soil conservation plan approved by the local Soil And Water Conservation District (SWCD), shall be allowed a credit against the tax imposed by § 58.1-320 ~~of~~ in an amount equaling 25 percent of the first \$70,000 \$100,000 expended for agricultural best management practices by the individual.

As used in this ~~section~~ subdivision, "agricultural best management practice" means a practice approved by the Virginia Soil and Water Conservation Board (VSWCB) ~~which~~ that 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. Eligible practices shall include, ~~but are not limited to,~~ the following:

1. a. Livestock-waste and poultry-waste management;
2. b. Soil erosion control;
3. c. Nutrient and sediment filtration and detention;
4. ~~Nutrient management~~; and
5. d. Pest management and pesticide handling.

A detailed list of the standards and criteria for practices eligible for credit shall be found in the most recently approved "Virginia Agricultural BMP Manual" published annually prior to July 1 by the Department of Conservation and Recreation.

2. For taxable years beginning on and after January 1, 2020, any individual who is engaged in agricultural production for market or who has equines that create needs for certain agricultural best management practices to reduce nonpoint source pollutants and has in place a soil conservation plan approved by the local Soil And Water Conservation District (SWCD) shall be allowed an enhanced credit against the tax imposed by § 58.1-320 in an amount equaling 75 percent of the first \$100,000 expended for certain agricultural best management practices by the individual required as part of a resource management plan that is certified as having been implemented by the Department of Conservation or by the local Soil and Water Conservation District Board. The amount of eligible enhanced credit for certain agricultural best management practices shall be consistent with the cost-share rate offered for each individual best management practice under the Virginia Agricultural Best Management Practices Cost-Share Program pursuant to § 10.1-2128; however, in no case shall the enhanced credit amount exceed 75 percent of the total cost of certain agricultural best management practices expended by the individual.

As used in this subdivision, "certain agricultural best management practice" means a practice eligible for the enhanced credit in this subdivision, approved by the Virginia Soil and Water Conservation Board (VSWCB), that will provide an enhanced improvement to water quality in the state's streams and rivers and the Chesapeake Bay; is consistent with other state and federal programs that address agricultural, nonpoint-source pollution management; and excludes eligible practices in subdivision 1. "Certain agricultural best management practice" includes any of the following that are a required component of a resource management plan that is certified as having been implemented by the Department of Conservation or by the local Soil and Water Conservation District Board:

- a. Development and implementation of a nutrient management plan developed and approved by a certified nutrient management planner pursuant to § 10.1-104.2;
- b. Installation of 35-foot forestry or vegetative buffers to perennial streams;
- c. Livestock stream exclusion;
- d. Livestock watering systems; and
- e. Hardened stream crossings.

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59 *A detailed list of the standards and criteria for practices eligible for the enhanced credit shall be*  
 60 *found and identified in the most recently approved Virginia Agricultural BMP Manual published*  
 61 *annually prior to July 1 by the Department of Conservation and Recreation.*

62 B. Any *eligible* practice approved by the local Soil and Water Conservation District Board shall be  
 63 completed within the taxable year in which the credit is claimed. After the practice installation has been  
 64 completed, the local SWCD Board shall certify the practice as approved and completed, and eligible for  
 65 credit. The applicant shall forward the certification to the Department of Taxation on forms provided by  
 66 the Department. The credit shall be allowed only for expenditures made by the taxpayer from funds of  
 67 his own sources.

68 C. 1. ~~The amount of such credit~~ *aggregate amount of credit claimed under subdivisions A 1 and 2*  
 69 *shall not exceed \$17,500 \$75,000 or the total amount of the tax imposed by this chapter, whichever is*  
 70 *less, in the year the project was completed, as certified by the Board. Any taxpayer claiming a tax credit*  
 71 *under this section shall not claim a credit under any similar Virginia law for costs related to the same*  
 72 *eligible practices. A taxpayer may not claim credit for the same practice under both subdivisions A 1*  
 73 *and 2. Any taxpayer claiming the enhanced tax credit in subdivision A 2 shall neither be eligible nor*  
 74 *seek funding for the same agricultural best management practices under the Virginia Agricultural Best*  
 75 *Management Practices Cost-Share Program pursuant to § 10.1-2128.*

76 2. If the amount of the credit exceeds the taxpayer's liability for such taxable year, the excess may be  
 77 refunded by the Tax Commissioner. Tax credits shall be refunded by the Tax Commissioner on behalf  
 78 of the Commonwealth for 100 percent of face value. Tax credits shall be refunded within 90 days after  
 79 the filing date of the income tax return on which the individual applies for the refund.

80 D. For purposes of this section, the amount of any credit attributable to agricultural best management  
 81 practices by a pass-through entity such as a partnership, limited liability company, or electing small  
 82 business corporation (S Corporation) shall be allocated to the individual partners, members, or  
 83 shareholders in proportion to their ownership or interest in such entity.

84 E. A pass-through tax entity, such as a partnership, limited liability company or electing small  
 85 business corporation (S corporation), may appoint a tax matters representative, who shall be a general  
 86 partner, member-manager or shareholder, and register that representative with the Tax Commissioner.  
 87 The Tax Commissioner shall be entitled to deal with the tax matters representative as representative of  
 88 the taxpayers to whom credits have been allocated by the entity under this article with respect to those  
 89 credits. In the event a pass-through tax entity allocates tax credits arising under this article to its  
 90 partners, members or shareholders and the allocated credits shall be disallowed, in whole or in part, such  
 91 that an assessment of additional tax against a taxpayer shall be made, the Tax Commissioner shall first  
 92 make written demand for payment of any additional tax, together with interest and penalties, from the  
 93 tax matters representative. In the event such payment demand is not satisfied, the Tax Commissioner  
 94 shall proceed to collection against the taxpayers in accordance with the provisions of Chapter 18 (§  
 95 58.1-1800 et seq.).

96 **§ 58.1-439.5. Agricultural best management practices tax credits.**

97 A. 1. For all taxable years beginning on and after January 1, 1998, any corporation engaged in  
 98 agricultural production for market who has in place a soil conservation plan approved by the local Soil  
 99 and Water Conservation District (SWCD) shall be allowed a credit against the tax imposed by  
 100 § 58.1-400 of an amount equaling ~~twenty-five~~ 25 percent of the first ~~\$70,000~~ \$100,000 expended for  
 101 agricultural best management practices by the corporation. As used in this ~~section~~ *subdivision*,  
 102 "agricultural best management practice" means a practice approved by the Virginia Soil and Water  
 103 Conservation Board (VSWCB) which will provide a significant improvement to water quality in the  
 104 state's streams and rivers and the Chesapeake Bay and is consistent with other state and federal  
 105 programs that address agricultural, nonpoint-source-pollution management. Eligible practices shall  
 106 include; ~~but are not limited to~~, the following:

- 107 ~~1.~~ a. Livestock-waste and poultry-waste management;
- 108 ~~2.~~ b. Soil erosion control;
- 109 ~~3.~~ c. Nutrient and sediment filtration and detention;
- 110 4. ~~Nutrient management~~; and
- 111 ~~5.~~ d. Pest management and pesticide handling.

112 A detailed list of the standards and criteria for practices eligible for credit shall be found in the most  
 113 recently approved "Virginia Agricultural BMP Implementation Manual" published by the Department of  
 114 Conservation and Recreation.

115 2. *For all taxable years beginning on and after January 1, 2020, any corporation engaged in*  
 116 *agricultural production for market that has in place a soil conservation plan approved by the local Soil*  
 117 *and Water Conservation District (SWCD) shall be allowed an enhanced credit against the tax imposed*  
 118 *by § 58.1-400 in an amount equaling 75 percent of the first \$100,000 expended for certain agricultural*  
 119 *best management practices by the corporation required as part of a resource management plan that is*  
 120 *certified as having been implemented by the Department of Conservation or by the local Soil and Water*

121 Conservation District Board. The amount of eligible enhanced credit for certain agricultural best  
122 management practices shall be consistent with the cost-share rate offered for each individual best  
123 management practice under the Virginia Agricultural Best Management Practices Cost-Share Program  
124 pursuant to § 10.1-2128; however, in no case shall the enhanced credit amount exceed 75 percent of the  
125 total cost of certain agricultural best management practices expended by the corporation.

126 As used in this subdivision, "certain agricultural best management practice" means a practice  
127 eligible for the enhanced credit in this subdivision, approved by the Virginia Soil and Water  
128 Conservation Board (VSWCB), that will provide an enhanced improvement to water quality in the state's  
129 streams and rivers and the Chesapeake Bay; is consistent with other state and federal programs that  
130 address agricultural, nonpoint-source-pollution management; and excludes eligible practices in  
131 subdivision A 1. "Certain agricultural best management practices" includes any of the following that are  
132 a required component of a resource management plan that is certified as having been implemented by  
133 the Department of Conservation or by the local Soil and Water Conservation District Board:

- 134 a. Development and implementation of a nutrient management plan developed and approved by a
- 135 certified nutrient management planner pursuant to § 10.1-104.2;
- 136 b. Installation of 35-foot forestry or vegetative buffers to perennial streams;
- 137 c. Livestock stream exclusion;
- 138 d. Livestock watering systems; and
- 139 e. Hardened stream crossings.

140 A detailed list of the standards and criteria for practices eligible for the enhanced credit shall be  
141 found and identified in the most recently approved Virginia Agricultural BMP Manual published  
142 annually prior to July 1 by the Department of Conservation and Recreation.

143 B. Any eligible practice approved by the local Soil and Water Conservation District Board shall be  
144 completed within the taxable year in which the credit is claimed. After the practice installation has been  
145 completed, the local SWCD Board shall certify the practice as approved and completed, and eligible for  
146 credit. The applicant shall forward the certification to the Department of Taxation on forms provided by  
147 the Department. The credit shall be allowed only for expenditures made by the taxpayer from funds of  
148 his own sources.

149 C. 1. The amount of such credit aggregate amount of credit claimed under subdivisions A 1 and 2  
150 shall not exceed ~~\$17,500~~ \$75,000 or the total amount of the tax imposed by this chapter, whichever is  
151 less, in the year the project was completed, as certified by the Board. Any taxpayer claiming a tax credit  
152 under this section shall not claim a credit under any similar Virginia law for costs related to the same  
153 eligible practices. A taxpayer may not claim credit for the same practice under both subdivisions A 1  
154 and 2. Any taxpayer claiming the enhanced tax credit in subdivision A 2 shall neither be eligible nor  
155 seek funding for the same agricultural best management practices under the Virginia Agricultural Best  
156 Management Practices Cost-Share Program pursuant to § 10.1-2128.

157 2. If the amount of the credit exceeds the taxpayer's liability for such taxable year, the excess shall  
158 be refunded by the Tax Commissioner. Tax credits shall be refunded by the Tax Commissioner on  
159 behalf of the Commonwealth for 100 percent of face value. Tax credits shall be refunded within 90 days  
160 after the filing date of the income tax return on which the taxpayer applies for the refund.

161 D. For purposes of this section, the amount of any credit attributable to agricultural best management  
162 practices by a partnership or electing small business corporation (S Corporation) shall be allocated to the  
163 individual partners or shareholders in proportion to their ownership or interest in the partnership or S  
164 Corporation.