

DEPARTMENT OF TAXATION

2020 Fiscal Impact Statement

1. **Patron** Tony O. Wilt

3. **Committee** House Finance

4. **Title** Agricultural Best Management Practices Tax
Credit; Increased Credits

2. **Bill Number** HB 1652

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would increase the amount of the existing Agricultural Best Management Practices Tax Credit from 25 percent of the first \$70,000 expended for agricultural best management practices to 25 percent of the first \$100,000 of such expenses.

This bill would provide an enhanced Agricultural Best Management Practices Tax Credit for expenses incurred for certain agricultural best management practices required as part of a certified resource management plan. The amount of the credit would be equal to 75 percent of the first \$100,000 of qualified expenses.

No taxpayer would be permitted to claim aggregate credits pursuant to this program in excess of \$75,000 per table year. A taxpayer would not be permitted to claim both portions of the credit with respect to the same practice.

The portion of this bill solely regarding the enhanced portion of the credit would be effective for taxable years beginning on and after January 1, 2020. If enacted during the 2020 Regular Session of the General Assembly, the remaining portions of this bill would become effective July 1, 2020.

6. **Budget amendment necessary:** No.

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

8. **Fiscal implications:**

Administrative Costs

The Department of Taxation ("the Department") and the Department of Conservation and Recreation ("DCR") consider implementation of this bill as routine, and do not require additional funding.

Revenue Impact

This bill would have an unknown negative General Fund revenue impact beginning in Fiscal Year 2021. It is unclear to what extent taxpayers would claim additional credits with respect to the existing portion of the credit, or the enhanced portion that this bill would provide. Because this credit would remain fully refundable, taxpayers would immediately be permitted to fully utilize increased amounts of credits that would be provided by this bill. For Fiscal Year 2010 through Fiscal Year 2019, taxpayers claimed Agricultural Best Management Practices Tax Credits as follows:

Fiscal Year	Number of Returns Claiming Credits	Amount
2010	716	\$669,940
2011	617	\$585,469
2012	640	\$1,248,177
2013	419	\$858,504
2014	470	\$798,586
2015	471	\$1,144,933
2016	412	\$1,008,216
2017	306	\$687,381
2018	228	\$485,114
2019	364	\$1,101,781
Average	464	\$858,810

9. Specific agency or political subdivisions affected:

Department of Conservation and Recreation
Department of Taxation
Soil and Water Conservation Board

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Virginia provides both an individual and corporate income tax credits to agricultural producers who use agricultural best management practices that help Virginia address its pollution water quality objectives. Agricultural best management practices are those practices approved by the Virginia Soil and Water Conservation Board which will provide a significant improvement to water quality in the state's streams and rivers and the Chesapeake Bay and are consistent with other state and federal programs that address agricultural, nonpoint-source-pollution management. Individuals and corporations are allowed to claim a credit against their income tax equal to 25 percent of the first \$70,000 expended for best management practices. The maximum credit allowed is \$17,500. To be eligible for a tax credit as an individual, the taxpayer must 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 Soil and Water Conservation District ("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.

As originally enacted in 1996, both the credit allowed to individuals and the credit allowed to corporations were nonrefundable. If the amount of the credit exceeded the taxpayer's liability for a taxable year, the 1996 legislation allowed the excess to be carried over for credit against income taxes for up to five taxable years. During the 2011 Session, the General Assembly modified the credit allowed to individuals by making it refundable. During the 2018 Session, the General Assembly enacted legislation making the corporate portion of the credit refundable.

Under current law, the soil conservation plan must include "agricultural best management practices" that are approved by the Virginia Soil and Water Conservation Board. Such practices include, but are not limited to: (i) livestock and poultry waste management; (ii) soil erosion control; (iii) nutrient and sediment filtration and detention; (iv) nutrient management; and (v) pest management and pesticide handling.

Sunset Dates for Income Tax Credits and Sales Tax Exemptions

Section 3-5.14 of the Appropriation Act provides that the General Assembly may not advance the sunset date for any existing income tax credit or sales tax exemption beyond June 30, 2022. Any new income tax credit or sales tax exemption enacted by the General Assembly prior to the 2021 Session must have a sunset date not later than June 30, 2022. This requirement does not apply to sales tax exemptions related to nonprofit entities or to income tax credits or sales tax exemptions with sunset dates after June 30, 2022 that were enacted or advanced during the 2016 Session.

Further, during the 2012 Session, the General Assembly enacted House Bill 246, which prohibits legislation from adding a new credit or renewing an existing credit unless the legislation contains a sunset date of not longer than five years from the effective date of the new or renewed credit.

Proposed Legislation

This bill would increase the amount of the existing Agricultural Best Management Practices Tax Credit from 25 percent of the first \$70,000 expended for agricultural best management practices to 25 percent of the first \$100,000 of such expenses. For purposes of the existing credit, this bill would eliminate nutrient management as one of the eligible practices that qualifies for purposes of the credit.

This bill would provide an enhanced Agricultural Best Management Practices Tax Credit for expenses incurred for certain expenses. The amount of the credit would be equal to 75 percent of the first \$100,000 of qualified expenses. For purposes of the enhanced portion of the credit, qualifying expenses would include amounts expended for certain agricultural best management practices by the taxpayer 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 credits would be required to be consistent with the cost-share rate offered for each individual best

management practice under the Virginia Agricultural Best Management Practices Cost-Share Program.

A taxpayer claiming the enhanced credit would neither be eligible nor permitted to seek funding for the same agricultural best management practices under the Virginia Best Management Practices Cost-Share Program. In no case would credits be permitted to exceed 75 percent of the total cost of certain agricultural best management practices expended by the taxpayer.

“Certain agricultural best management practice” would be defined as a practice eligible for the enhanced credit, approved by the Virginia Soil and Water Conservation Board, 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 practices eligible for the existing credit.

Such practice would include any of the following practices that are a required component of a resource management plan that is certified as having been implemented by the DCR or by the local Soil and Water Conservation District Board:

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

Each year prior to July 1, DCR would be required to publish a detailed list of the standards and criteria for practices eligible for the enhanced credit in the most recently approved Virginia Agricultural BMP Manual.

No taxpayer would be permitted to claim aggregate credits pursuant to this program in excess of \$75,000 per table year. A taxpayer would not be permitted to claim both portions of the credit with respect to the same practice.

The portion of this bill solely regarding the enhanced portion of the credit would be effective for taxable years beginning on and after January 1, 2020. If enacted during the 2020 Regular Session of the General Assembly, the remaining portions of this bill would become effective July 1, 2020.

cc : Secretary of Finance

Date: 2/1/2020 JLOF
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