

# Legislative Analysis

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## EMERALD ASH BORER TAX CREDITS

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**House Bill 5709 (Substitute H-1)**  
**Sponsor: Rep. Fran Amos**

**House Bill 5710 as introduced**  
**Sponsor: Rep. Tom Meyer**

**House Bill 5711 (Substitute H-1)**  
**Sponsor: Rep. Philip LaJoy**

**Committee: Agriculture and Resource Management**  
**First Analysis (5-26-04)**

**BRIEF SUMMARY:** The bills would provide credits against the income tax and single business tax related to the removal and replacement of ash trees infected by an Emerald Ash Borer. The credits would be available for tax years beginning after December 31, 2003

**FISCAL IMPACT:** According to the Michigan Department of Agriculture, there are an estimated 700 million ash trees in Michigan. The fiscal impact of these bills depends on the extent of the ash trees infected with emerald ash borer and the degree to which these trees are removed and replaced. In addition, under HB 5709 and HB 5710, the fiscal impact depends on the degree to which taxpayers 1) remove infected ash trees and charge less than the actual cost and 2) sell replacement trees for less than market value to municipalities. These bills would reduce income tax and SBT revenue, all of which would be a General Fund/General Purpose (GF/GP) impact, by an indeterminate amount.

### **THE APPARENT PROBLEM:**

In June 2002, the Emerald Ash Borer was discovered in six Southeast Michigan counties (Livingston, Macomb, Monroe, Oakland, Washtenaw, and Wayne). The Emerald Ash Borer is a small dark green beetle that burrows into ash trees. It leaves a distinctive S-shaped larval feedings tunnel under the bark and a D-shaped exit hole on branches and trunks. Their appearance generally does not become evident until the tree shows signs of an infestation, including dying branches, declining canopies, and overall fragility.

The presence of the Emerald Ash Borer (EAB) has been devastating to municipalities, property owners, and nurseries as they must destroy their ash trees in order to stem the spread of the EAB to the state's 700 million ash trees. More than six million ash trees in communities throughout the state have been destroyed. The cost of removing and replacing an ash tree can be quite expensive. Moreover the costs incurred by nurseries can be upwards to \$1 million due to lost sales and destruction of nursery stock, leaving many nursery owners in precarious financial situations.

It has been suggested that given the high costs of tree removal and replacement required by the EAB, tax credits should be provided to property owners and businesses as means of providing some financial relief.

### ***THE CONTENT OF THE BILL:***

House Bill 5709 would amend the Single Business Tax Act (MCL 208.37g) to provide nursery dealers with a documented loss of at least \$5,000 with a \$5,000 credit against the single business tax. To claim the credit, the loss would have to be attributable to (1) any ash trees as nursery stock at the beginning of the tax year that cannot be sold because the nursery stock is in a quarantined area, or (2) ash trees that were nursery stock, but were destroyed during the course of the tax year because they were infested or suspected of being infested with EAB. *[Note: The bill actually states that the credit would be the amount of loss or \$5,000, whichever is less. However, since nursery dealers must have at least \$5,000 in losses, the credit can only be \$5,000.]*

The credit would be nonrefundable, although the amount of the credit that exceeds the taxpayer's tax liability could be carried forward to offset the tax liability in subsequent tax years, for up to 10 years or until the excess credit is exhausted, whichever occurs first.

House Bill 5710 would amend the Single Business Tax Act (MCL 208.37f) to provide a taxpayer with a credit against the single business tax if the taxpayer removes ash trees of another person infected by an EAB and charges that person an amount below the actual cost of removal. The credit would equal \$5,000 or the difference between the actual cost incurred by the taxpayer and the amount paid by the owner of the removed trees, whichever is less. The credit would be nonrefundable, although the amount of the credit that exceeds the taxpayer's tax liability could be carried forward to offset the tax liability in subsequent tax years, up to 10 years or until the excess credit is exhausted, whichever occurs first.

House Bill 5711 would amend the Income Tax Act (MCL 206.269) to provide a nonrefundable \$100 credit against the income tax to a taxpayer who removes and replaces (or pays another individual to remove and replace) ash trees that are in a quarantined area and are infected by an EAB. The taxpayer would have to attach a statement to his or her tax return attesting that all of the trees removed were ash trees infested with an EAB and were replaced with another tree.

### ***BACKGROUND INFORMATION:***

On May 21, 2004, Governor Granholm declared the week of May 24, 2004 as "Emerald Ash Borer Awareness Week" in Michigan, as a means of raising the public's awareness of EAB and preventive measures to curb the spread, and to "foster a cooperative spirit between citizens, communities, government, and industry to reduce the risk the insect poses to the 700 million ash trees blanketing the state" (Press Releases of the Office of the Governor, May 21, 2004). During the week there will be numerous outreach, education, and compliance activities planned to increase the public's awareness of EAB,

including firewood checkpoints at rest stops on Memorial Day weekend, the placement of billboards on the state's main thoroughfares, public service announcements on radio stations throughout the state, and the start of a tree survey in townships throughout the state to determine the presence of EAB.

Following detection of the EAB in the summer of 2002, the Department of Agriculture established a quarantine of six Metro Detroit Counties: Livingston, Macomb, Monroe, Oakland, Washtenaw, and Wayne. In August 2003, the quarantine was expanded to include the surrounding seven counties of Shiawassee, Jackson, Ingham, Lenawee, Genesee, Lapeer, and St. Clair as a buffer. This past March, the quarantine area was expanded to include the pockets in outlying areas where EAB has been detected. This area includes portions of the following counties: Berrien, Calhoun, Eaton, Kent, and Saginaw. The quarantine zone restricts the movement of firewood of any type and ash material greater than one inch chips. Additionally, there is a prohibition on the sale and movement of ash nursery stock within the Lower Peninsula. According to committee testimony, the Department of Agriculture is paying for the costs to remove ash trees in the outlying areas, as these costs are rather limited compared to the cost of removing ash trees in the 13-county quarantined area of Metro Detroit.

#### ***ARGUMENTS:***

##### ***For:***

The bill provides some necessary relief to property owners and nursery dealers in the state, particularly those in the quarantined area, who have lost ash trees infested by the Emerald Ash Borer. The cost of removing and replacing trees can be in the thousands of dollars. This can be an onerous amount for many taxpayers.

##### ***Against:***

The fiscal impact of the bills, while largely indeterminate, is expected to be too costly to allow the creation of more tax credits. During the course of committee testimony, the Department of Treasury estimated that House Bill 5711 (the income tax credit) could cost the state anywhere from \$19 million to \$190 million. This would likely require cuts in many state programs, including the state's efforts to eradicate EAB.

In addition, the Department of Treasury indicated that it would have no reasonable way to administer House Bill 5710, as it would have no way to determine a businesses actual cost to remove infested ash trees.

##### ***Against:***

The substitute for House Bill 5709 provides that the EAB-infested trees must be in a quarantined area. This excludes trees in areas of the state that aren't in a quarantined area, as determined by the Department of Agriculture, such as certain areas in Roscommon County. This hardly seems fair to nursery dealers – (and there probably are not many) - in those areas.

In addition, House Bill 5709 provides an SBT credit to nursery dealers with losses of at least \$5,000. This hardly seems fair to many smaller nursery dealers who have significant losses of less than \$5,000. In this instance, a nursery dealer with losses of \$4,900 would not receive the credit, while those with losses of \$5,000 would. This hardly seems fair. The bill would be improved if the already problematic language (see the content section) regarding the minimum amount of loss was deleted.

***POSITIONS:***

The Michigan Nursery and Landscape Association supports the bills. (5-25-04)

Snow's Nursery of Monroe supports House Bill 5709. (5-25-04)

The Michigan Farm Bureau supports House Bill 5709. (5-25-04)

The Department of Treasury opposes the bills. (5-25-04)

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