



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE REGULATION
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
STANLEY "SKIP" PRUSS, DIRECTOR

KEN ROSS
COMMISSIONER

BILL ANALYSIS

BILL NUMBER: House Bills 4427 and 4471 (tie-barred), as introduced

TOPIC: Require Michigan Catastrophic Claims Association (MCCA) to Comply with Freedom of Information Act and Open Meetings Act and Submit to Annual Audit

SPONSOR: Representative Kate Segal

CO-SPONSORS: Representatives Shanelle Jackson, Alma Wheeler Smith, Jon Switalski, Joan Bauer, Fred Durhal, and Lesia Liss

COMMITTEE: House Committee on Insurance

Analysis Done: March 11, 2009

POSITION

The Office of Financial and Insurance Regulation (OFIR) supports this legislation.

PROBLEM/BACKGROUND

The Michigan Catastrophic Claims Association (MCCA) was established in 1978 and is a critical part of the no-fault automobile insurance system. Because there is no limit on the amount of coverage for personal injuries under a Michigan no-fault policy, the liability for this coverage would be too large for most individual insurers to bear. When a liability is larger than an insurer can afford to accept on its own, the insurer transfers part of the risk to other insurers through a mechanism known as reinsurance -- insurance for an insurer.

Since the private market was not able to provide reinsurance for unlimited exposures, the MCCA was created to act as the reinsurer to companies writing auto insurance in Michigan. All auto insurance companies licensed in Michigan are members of the MCCA. As of July 1, 2008, each insurance company will pay the first \$440,000 of any catastrophic claim and be reimbursed by the MCCA for the rest. This retention level will gradually be increased until it reaches \$500,000, requiring each insurance company to assume more of the risk. Any amounts over the threshold are paid by the MCCA and spread across all member companies in the form of the annual MCCA assessment.

Each year, the MCCA board of directors analyzes the amount needed to cover the lifetime claims of all people catastrophically injured in car accidents. This analysis includes an actuarial review of the MCCA's investment returns, surplus and liabilities, including medical cost inflation. This analysis yields an amount needed to pay those lifetime claims and may be adjusted to reflect excesses or deficiencies in earlier assessments. A per vehicle assessment is set for the year based on this amount and each insurance company writing auto insurance is then assessed by the MCCA for each vehicle it insures. In this way, the MCCA acts as an insurer whose policyholders are Michigan automobile insurance companies. Insurance companies may pass the assessment on through the premium charged to policyholders.

This MCCA assessment has varied considerably over the years. In 1995, when the MCCA determined that its surplus was such that it could and should be reduced, it began applying a credit to the annual assessment amount. From 1995-2001 the MCCA returned approximately \$267 per insured vehicle, in addition to a one-time lump sum payment of \$180 in 1998 (\$447 total per vehicle). Due to decreased investment returns and increasing medical costs, the MCCA's surplus is currently under funded. For the period from July 1, 2008 through June 30, 2009 the MCCA Board will assess \$104.58 per vehicle, which includes \$96.06 in pure premium (the actual costs for current year expenses) and an \$8.32 surplus/deficit adjustment (which reduces the shortfall in discounted reserves held for future obligations) and a \$.20 administration fee.

DESCRIPTION OF BILL

House Bills 4427 and 4471, which are tie-barred, would require the MCCA to comply with the Open Meetings Act (OMA) and the Freedom of Information Act (FOIA) and to be subject to an annual audit by an independent certified public accountant appointed by the Commissioner.

SUMMARY OF ARGUMENTS

Pro

Because the MCCA is a legislatively created entity fulfilling an important public purpose, the deliberations and decisions of its board are of interest to all Michigan citizens. The OMA and FOIA were designed to ensure a minimum level of public transparency concerning decision making that impacts the lives of Michigan citizens by making the mechanics of decision making open and available to the public. Requiring the MCCA to comply with the OMA and FOIA would increase the transparency of its deliberations, especially with regard to the setting of assessments, which are usually passed on to consumers by the MCCA's member insurers.

The OFIR Commissioner serves as an ex officio member of the MCCA board but cannot vote. Information the Commissioner receives in his capacity as an MCCA board member is subject to Board confidentiality requirements. Greater transparency and accountability would likely increase public confidence in the MCCA.

Con

Requiring the MCCA to be subject to FOIA and OMA may politicize the MCCA and its operations, contrary to its original purpose of operating as a non-public entity. The MCCA is already required to submit annual financial statements to OFIR, which include a detailed audit by a CPA firm, attesting to the MCCA's financial stability and internal control structure. The MCCA's enabling legislation also authorizes the OFIR Commissioner to examine its financial books and records and related business practices at any time. OFIR also requires the MCCA to annually provide an actuarial opinion on the adequacy of its loss reserves. The MCCA must already undergo an audit by a reputable CPA firm familiar with the unique and technical aspects of the association and submit this financial documentation to the OFIR (which is already subject to the Freedom of Information Act).

FISCAL/ECONOMIC IMPACT

OFIR has identified the following revenue or budgetary implications in the bill as follows:

(a) To the Office of Financial and Insurance Regulation:

Budgetary: OFIR may incur some additional expense to appoint and monitor an independent accountant to audit the MCCA.

Revenue:

Comments:

(b) To the Department of Labor & Economic Growth: None known.

Budgetary:

Revenue:

Comments:

(c) To the State of Michigan: None known.

Budgetary:

Revenue:

Comments:

(d) To Local Governments within this State: None known.

Comments:

OTHER STATE DEPARTMENTS

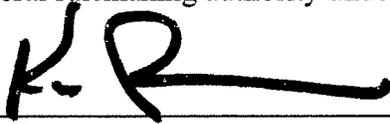
None known.

ANY OTHER PERTINENT INFORMATION

This proposed legislation is similar to legislation introduced in previous legislative sessions.

ADMINISTRATIVE RULES IMPACT

The proposed legislation would amend the Insurance Code and the Open Meetings Act. OFIR has general rulemaking authority under the Insurance Code, 1956 PA 218 but does not have general rulemaking authority under the Open Meetings Act, 1976 PA 267.



Ken Ross

Commissioner

3.18.09

Date