

Legislative Analysis



APPROPRIATE \$1 BILLION FROM MCCA TO MICHIGAN TRANSPORTATION FUND

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<http://www.house.mi.gov/hfa>

House Bill 4560 as introduced
Sponsor: Rep. Peter J. Lucido
Committee: Insurance
Complete to 7-30-15

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4560 would amend the Insurance Code to do the following:

**** Stipulate in Section 3104 that "money received and held by the [Michigan Catastrophic Claims Association (MCCA)], "having been paid indirectly by the citizens of this state, is money of this state."**

Currently, Section 134 of the Insurance Code categorically stipulates that certain associations of insurance companies and other facilities created under the code, explicitly including the MCCA, are not state agencies and that money held by those associations is not state money. The bill would amend this section to say, "Except as provided in Section 3104, the money of an association or facility is not state money." (Emphasis added)

**** Appropriate, for the 2014-15 Fiscal Year only, \$1.0 billion from money held by the MCCA, to be deposited in the Michigan Transportation Fund (MTF) and used for transportation purposes as authorized under Section 10 of Public Act 51 of 1951 (Act 51).**

After various deductions for statutory or categorical programs, Section 10 of Act 51 currently provides for the distribution of MTF revenue as follows: 10% to the Comprehensive Transportation Fund for public transportation; and the remainder distributed for highway purposes, with 39.1% of the remainder to the State Trunkline Fund, 39.1% to county road commissions, and 28.1% to cities and villages.¹

****Require that the MCCA reimburse the money appropriated for the MTF "from interest or other income earned by money remaining in the association after the disbursement [. . .] and future assessments paid to the association."²**

MCL 500.314 & 500.3104

¹ Section 10 of 1951 PA 51, MCL 247.660, prohibits the deposit of money, regardless of appropriation, into the MTF except as provided for under 1951 PA 51. Act 51 does not explicitly provide for the deposit of the money expropriated from the MCCA and appropriated to the MTF under the bill and, accordingly, may need to be amended.

² However, in accordance with accounting practices prescribed by DIFS, interest and investment income are already recorded as assets held by the MCCA and reserved to indemnify, and thereby underwrite, the expected losses of member insurers. Likewise, estimates of future interest and investment income are currently factored into the assumptions utilized to develop the projections for prospective valuations of the assets held by the MCCA.

FISCAL IMPACT:

Transportation Funding

As provided in the bill, the one-time appropriation of \$1.0 billion from the MCCA to the MTF would increase FY 2014-15 revenue for state and local transportation programs. Under the current provisions of Section 10 of Act 51, after various specified deductions for statutory or categorical programs and purposes, the MTF is appropriated as follows: 10% to the Comprehensive Transportation Fund (CTF) for public transportation purposes, with the remaining balance distributed for highway purposes, specifically to the State Trunkline Fund (39.1%), to county road commissions (39.1%), and to cities and villages (28.1%). If the bill's \$1.0 billion appropriation to the MTF followed this statutory formula, the distribution would be as follows: \$100.00 million to the CTF, \$351.9 million to the STF, \$351.9 million to county road commissions, and \$196.2 million to cities and villages.

The MTF is the primary collection/distribution fund for state restricted transportation revenue generated from motor fuel taxes and vehicle registration taxes. Section 10 of Act 51 establishes the MTF and provides for formula distribution of the MTF among various programs/funds: to State Trunkline Fund (STF) for construction and maintenance of the state trunkline system and administration of the Michigan Department of Transportation, to 83 county road commissions for county road programs, to 533 incorporated cities and villages for city/village streets, and to the Comprehensive Transportation Fund (CTF) for public transportation programs.

The MTF does not carry a balance into the next fiscal year, as all MTF revenue is distributed each year through the Act 51 formula.

Other Fiscal Impact

Although not considered a state agency under current law, the MCCA would be directly impacted by the bill, with consequent ramifications for member insurers and their customers. The expropriation of money held by the MCCA authorized under the bill would be the first such occurrence since the creation of the MCCA, and it is unknown precisely if or how it would affect the MCCA's operations, indemnification of member insurers, and future premium assessments. According to the most recent independent auditor report, the MCCA began the fiscal year ending on June 30, 2014, with a \$1.87 billion deficit and after assessing \$1.28 billion in premiums, incurring \$1.53 billion in underwriting losses and expenses, and recording \$1.46 billion in realized and unrealized investment gains, closed the fiscal year with an accumulated deficit of \$410.53 million, consisting of \$17.63 billion in admitted assets and \$18.04 billion in total liabilities.³

Because, under current law, the MCCA is not a state agency and money held by the MCCA is not state money, the bill would not have a direct fiscal impact on other state departments. However, enactment of the bill would likely incite the MCCA and other interested parties to bring civil action against the state, filing complaints to challenge the legality of the amendments to the Insurance Code and the appropriation of money held by the MCCA. Potential court costs and the litigation expenses associated with legal challenges are

³ The independent auditor report by PricewaterhouseCoopers for the fiscal year ending June 30, 2015, can be accessed at http://www.michigancatastrophic.com/Portals/71/PWCreport_06302014.pdf.

indeterminate and would primarily impact the Attorney General, who is responsible for representing and defending the interests of the state in judicial proceedings.

BACKGROUND INFORMATION:

The Michigan Catastrophic Claims Association (MCCA) is an unincorporated, nonprofit association composed of all insurance companies writing automotive or motorcycle coverage in Michigan.⁴ It was created by Public Act 136 of 1978, which amended the Insurance Code by adding Section 3104. The MCCA provides reinsurance to member insurers to mitigate the financial risk of the potentially prohibitive costs sustained under the personal (injury) protection coverage mandated by the state's no-fault insurance laws.⁵

Each insurance company member of the MCCA is assessed an annual premium per insured motor vehicle determined by the MCCA to be sufficient to entirely offset the expected losses and associated expenses that the MCCA is likely to incur for individuals whose injury occurred during that year.⁶ The MCCA indemnifies member insurers against ultimate loss incurred for personal (injury) protection, or PIP, benefits, including unlimited lifetime medical expenses, in excess of a retention amount calculated in accordance with statute, adjusted biennially for inflation. Member insurers are reimbursed by the MCCA for all payments of PIP benefits in excess of the retention amount on claims exceeding the retention amount.⁷

The MCCA is governed by a five-member board of directors appointed from member insurers by the director of the Department of Insurance and Financial Services (DIFS), who serves as an ex officio member, under a plan of operation approved by the DIFS director and consistent with statutory objectives and provisions. The association is subject to regulation and examination by the DIFS director, including compliance with the reporting, loss reserve, and investment requirements applicable to member insurers.⁸

In 1986 two insurers that were statutorily required to be members of the MCCA filed lawsuits variously challenging the legality of the premiums assessed by the MCCA on member insurers. While several allegations by the insurers were deemed unpersuasive, the

⁴ Section 3104 of the Insurance Code is codified as MCL 500.3104 and can be accessed at [http://www.legislature.mi.gov/\(S\(3lnt3ybyknj3slxouw54wd\)\)/mileg.aspx?page=getObject&objectName=mcl-500-3104](http://www.legislature.mi.gov/(S(3lnt3ybyknj3slxouw54wd))/mileg.aspx?page=getObject&objectName=mcl-500-3104).

⁵ A DIFS overview of the MCCA and the MCCA website can be accessed at http://michigan.gov/documents/cis/MCCA_FAQ_2007_190996_7.pdf and <http://www.michigancatastrophic.com/>, respectively.

⁶ The MCCA may adjust subsequent assessments for excess or deficient premiums assessed in previous years. Historic and current per vehicle premium assessment data can be accessed at <http://www.michigancatastrophic.com/ConsumerInformation/AssessmentData/tabid/103/Default.aspx>.

⁷ Historic and current retention amount data can be accessed at <http://www.michigancatastrophic.com/ConsumerInformation/HistoricandFutureRetentions/tabid/104/Default.aspx>.

⁸ The current plan of operation became effective on 11/20/2013 and can be accessed at http://www.michigancatastrophic.com/Portals/71/PLANOPER_EFF_11_20_2013.pdf and the annual report to DIFS and annual financial statement for the fiscal year ending June 30, 2014, can be accessed at http://www.michigancatastrophic.com/Portals/71/Annual%20Report%20to%20the%20DIFS%20Director%2006302014_final.pdf and http://www.michigancatastrophic.com/Portals/71/Annual_Statement_June_30_2014.pdf, respectively.

Ingham Circuit Court found that the MCCA was a state agency as defined by and subject to the Administrative Procedures Act of 1969 and therefore had not complied with the rule promulgation provisions of the APA in adopting the plan of operation that established the procedures by which the MCCA determined and assessed the premiums; accordingly, the plan of operation and premium assessments were null and void.⁹ Upon appeal, the Michigan Court of Appeals affirmed the circuit court ruling in 1987 and, subsequently, the Michigan Supreme Court denied leave to appeal.¹⁰

In response to these court decisions, the Legislature passed Public Act 277 of 1988, amending the Administrative Procedures Act to explicitly exclude associations of insurers created under the Insurance Code from the definition of state agencies, and Public Act 349 of 1988, amending the Insurance Code to retroactively validate plans of operation adopted and premiums assessed by the MCCA. PA 349 explicitly states that the MCCA is not a state agency and that money held by the MCCA is not state money, and it exempt records of the MCCA from disclosure under the Freedom of Information Act. [A special enacting section said the act's intent was to rectify the misconstruction of the Administrative Procedures Act by the court of appeals.]

Following the passage of these acts, the Michigan Supreme Court felt it necessary to ascertain whether the MCCA had been a state agency prior to the passage of PA 349 of 1988. On July 16, 1990, the Michigan Supreme Court reversed the previous lower court rulings and held that the MCCA was not a state agency subject to the Administrative Procedures Act, and had been created as a private association to provide a primarily private purpose, namely, benefiting member insurers by protecting them from the potentially severe financial repercussions of the state's no-fault insurance laws. The court said that the premiums assessed by the MCCA are not taxes imposed for public benefit.¹¹

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

⁹ League General Insurance Company and Michigan Mutual Insurance Company v. Michigan Catastrophic Claims Association, [Circuit Court citation currently unknown].

¹⁰ League General Insurance Company and Michigan Mutual Insurance Company v. Michigan Catastrophic Claims Association, 418 N.W. 2d 708, 165 Mich.App 278; 429 N.W. 2d 804.

¹¹ League General Insurance Company v. Michigan Catastrophic Claims Association, 435 Mich. 338, 458 N.W.2d 632 (1990).