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BILL ANALYSIS

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Senate Fiscal Agency

Lansing, Michigan 48909

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JUL 06 1988

Senate Bill 851 (Substitute S-1 as reported)
 Senate Bill 852 (as reported without amendment)
 Sponsor: Senator Norman D. Shinkle (Senate Bill 851)
 Senator Dick Posthumus (Senate Bill 852)
 Committee: Government Operations

Mich. State Law Library

Date Completed: 5-31-88

RATIONALE

In December 1987, the Michigan Court of Appeals ruled that the Catastrophic Claims Association (CCA) is a State agency and, as such, is bound by the rule-making requirements of the Administrative Procedures Act (APA). Accordingly, the Court held that the CCA's plan of operation had to be repromulgated as a rule to be effective (League General Insurance Company v Catastrophic Claims Association, 165 Mich App 278). Some people believe that the Court was wrong in applying the APA to the Association and that that Act, as well as the Open Meetings Act, should be amended to reverse this decision and preclude a similar ruling in relation to other insurance associations.

CONTENT**Senate Bill 851 (S-1)**

The bill would amend the Administrative Procedures Act to exempt from the provisions of the Act an insurance association or facility created under the Insurance Code as a nonprofit organization of insurance members.

The bill states that its provisions are "intended to codify, approve, and validate practices taken by the associations and facilities mentioned [in the bill] retroactively to the time of their original creation". The statement further provides that it is the intent of the bill to "rectify the misconstruction of the applicability of the administrative procedures act of 1969 by the court of appeals in League General Insurance Company v Catastrophic Claims Association..., with respect to the imposition of rule promulgation requirements on the catastrophic claims association as a state agency, and to further assure that the associations and facilities mentioned [in the bill] and their respective boards of directors, shall not hereafter be treated as a state agency".

Senate Bill 852

The bill would amend the Open Meetings Act to provide that the Act's provisions would not apply to an insurance association or facility created under the Insurance Code as a nonprofit organization of insurance members.

(Organizations created in the Insurance Code that the bills would apply to include the Worker's Compensation Placement Facility, the Basic Property Insurance Association, the Catastrophic Claims Association, the Automobile Insurance Placement Facility, the Life and Health Insurance Guaranty Association, and the Property and Casualty Guaranty Association.)

MCL 24.203 (Senate Bill 851)
 15.263 (Senate Bill 852)

BACKGROUND

The Court of Appeals in League General affirmed the trial court's order holding that the Catastrophic Claims Association "was a State agency under the Administrative Procedures Act, that its plan of operation was null and void and of no effect because it was not properly promulgated under the APA, and that premium assessments charged member insurers under the plan of operation were unenforceable until [the CCA] adopted valid rules under the APA". The Court went on to say, "An examination of the CCA's character and relation to the state reveals that the association was created by statute, that the Commissioner of Insurance appoints the director and serves as ex officio member of the board of directors, and that the CCA levies mandatory assessments against its members and has the power to adopt rules and hear complaints... Finally, the CCA's function reveals characteristics of a state agency as well."

As the Court of Appeals described it, the CCA is an unincorporated nonprofit association created under the Insurance Code to indemnify insurance companies for catastrophic claims or the ultimate loss sustained under personal protection insurance coverages in excess of \$250,000. Each insurer writing automobile no-fault insurance in Michigan must belong to the CCA, which is authorized to cover the expected cost of catastrophic claims and the CCA's expenses. The insurers may charge each policyholder directly for the CCA assessment.

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

ARGUMENTS**Supporting Argument**

The League General litigation has created uncertainty regarding the status of the associations and facilities covered by the bills, and the Court of Appeal's reasoning in regard to the Catastrophic Claims Association could be applied to these other entities as well. Uncertainty about their status makes all of the associations and facilities vulnerable to members' refusing to participate if they become dissatisfied about some element of the operation. Unnecessary litigation, and being subjected to the APA's rule-making process, as well as to the Open Meetings Act, obviously would disrupt the functioning of these facilities. In order to ensure that they continue to provide the coverage and protection to the public for which they were created, their status as nongovernmental entities should be confirmed.

S.B. 851 & 852 (5-31-88)

Supporting Argument

The bills are part of a package that includes Senate Bill 707, which would amend the Insurance Code to validate retroactively any plan of operation adopted by an "association or facility" created under the Code as a nonprofit organization of insurer members; to validate any premium or assessment levied against an insurer member; and to specify that such an association or facility, or its board of directors, would not be a State agency, its money would not be State money, and its records would be exempt from the Freedom of Information Act. Senate Bill 707 passed the Senate and is pending before the House Insurance Committee.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.