

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 1864 - SB 2334

February 17, 2014

SUMMARY OF BILL: Prohibits post-closing solvency covenants from being used as nonrecourse carveouts or as the basis for the claim or action against a borrower, guarantor, or other surety on a nonrecourse commercial real estate loan, and specifies that a provision in the loan document that does not comply would be invalid and unenforceable.

ESTIMATED FISCAL IMPACT:

NOT SIGNIFICANT

Assumption:

- According to the Department of Financial Institutions, this bill will not result in a significant fiscal impact to the Department. Any fiscal impact to the state or local government is estimated to be not significant.

IMPACT TO COMMERCE:

Other Impact – The proposed legislation could have a significant impact on state chartered banks' determinations to extend nonrecourse commercial mortgage backed credit, and on borrowers' and guarantors' actions regarding nonrecourse commercial real estate loans, and it will limit borrowers' and guarantors' exposure to any potential liability for deficiency judgments based solely on the borrower's insolvency. However, due to many unknown factors, any impact to commerce and Tennessee jobs resulting from this bill cannot be quantified with reasonable certainty.

Assumptions:

- The extent to which post-closing solvency covenants are negotiated and contained in nonrecourse commercial mortgage backed loan agreements entered into between state chartered banks and commercial borrowers, or the extent to which state chartered banks have attempted to enforce these covenants against commercial borrowers is unknown.

HB 1864 - SB 2334

Therefore, any impact on a state bank's determination to extend nonrecourse commercial mortgage backed credit cannot be quantified with reasonable certainty.

- Furthermore, this bill will have an impact on borrowers' and guarantors' actions, and will limit borrowers' and guarantors' exposure to any potential liability for deficiency judgments based solely on the borrower's insolvency. However, due to many unknown factors, any impacts on commerce and jobs in Tennessee cannot be quantified with reasonable certainty.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" and last name "Geise" clearly distinguishable.

Lucian D. Geise, Executive Director

/bos