TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL MEMORANDUM

HB 1496 – SB 1996

March 22, 2016

SUMMARY OF ORIGINAL BILL: Authorizes local government entities to purchase insurance policies to protect against breach of fiduciary duty by public officials and employees and provides that such policies shall satisfy the requirements for filing individual surety bonds. Such policies will be deemed a blanket bond for each official or office identified in the policy. Requires a certificate of insurance evidencing the officials and offices covered, the amount of the coverage maintained, the type of coverage provided to be filed with the County Register. States local government entities electing to purchase insurance policies will not experience an increase in monetary limits pursuant to the Governmental Tort Liability Act.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (014275): Deletes all language after the enacting clause. Requires county governments to either obtain and maintain blanket surety bond coverage with a minimum coverage of $150,000 for all county employees not covered by individual bonds referenced elsewhere in state statute, or purchase an insurance policy that provides government crime coverage, employee dishonesty insurance coverage, or equivalent coverage that insures the lawful performance by officials and their employees of their fiduciary duties and responsibilities.

Each insurance policy shall be deemed a blanket official bond for each official office or office identified in the purchased insurance policy. Requires a certificate of insurance and certain relative documentation to be filed with the County Register. Declares that any insurance policy shall satisfy the requirement for filing the official bond by the named officials, and that local government entities electing to purchase insurance policies will not experience an increase in monetary limits pursuant to the Governmental Tort Liability Act.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- According to Tenn. Code Ann. § 4-4-108, no state offices require individual surety bonds; therefore, no fiscal impact to the state government.
- In January 2014, Tennessee Advisory Commission on Intergovernmental Relations (TACIR) released the Insurance as an Alternative to Surety Bonds for Public Officials report.
- According to the report, the price of an individual surety bond depends on the bond amount required, the obligations the bond covers, and the background of the individual being bonded.
- Tennessee statutes requiring individual surety bonds for public officials generally set minimum bond amounts. Bond amounts not set in statute may be determined based on revenue or population or as determined by a court, legislative body, or a judge.
- According to the report, surety bond claims are rare and unexpected because of the screening process required. Conversely, with insurance, losses are expected. Insurance rates are adjusted to cover losses and expenses as the law of averages fluctuates.
- According to the Comptroller of the Treasury, a surety bond holds the individual being bonded liable based on the required terms of a bond codified in Tenn. Code Ann.§8-19-111(b). The risk of loss stays with the official. With insurance, losses are usually not recoverable. When an insurance company pays a claim, the company typically does not expect to be repaid by the insured. The risk of loss is transferred to the insurance company.
- Although the price of insurance policies may be cheaper than surety bonds, insurance comes with coverage limits and deductibles. The net impact to local governments purchasing insurance policies in lieu of surety bonds is considered not significant.

CERTIFICATION:

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

Krista M. Lee

Krista M. Lee, Executive Director

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