

# TACIR

The Tennessee Advisory Commission  
on Intergovernmental Relations



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## MEMORANDUM

**TO:** TACIR Commissioners

**FROM:** Harry A. Green  
Executive Director

**DATE:** December 15, 2004

**SUBJECT:** PC 1101 Referred Legislation

### I. Background

This report provides a brief summary of some of the major events within Tennessee's counties and municipalities in the implementation of Tennessee Public Chapter 1101 of 1998 (TCA § 6-58-101 *et seq.*) during Calendar Year 2004. Public Chapter 1101 (PC 1101) establishes the requirements for the development of countywide growth plans covering a twenty year planning horizon, requirements for municipal annexations and incorporations, as well as for the consolidation of local governments, and the establishment of countywide Joint Economic and Community Development Boards (JECDBs) intended to foster ongoing communication and cooperation between county and municipal governments. The Tennessee Advisory Commission on Intergovernmental Relations (TACIR) has been given the responsibility of monitoring the implementation of P.C. 1101 in the statute, and periodically reporting its findings to the General Assembly (TCA § 6-58-113). This report is one of the primary means by which the TACIR fulfills this responsibility.

This legislation was considered by many, both here in Tennessee and across the country, as a major accomplishment in modernizing the range of tools available to local governments for dealing with the demands of new growth and development. Tennessee's previously existing planning enabling legislation, codified under TCA Title 13, had not been significantly changed since the original adoption in the 1930s. While Title 13 did create a framework for local county and municipal governments to establish planning commissions and adopt land use regulations and controls, its provisions were largely voluntary and consequently unevenly utilized across the state. PC 1101 created the first set of mandatory requirements for local governments in Tennessee to deliberately plan for the future growth in their communities. Additionally, the local municipal and county governments in each county were required to come together and work

cooperatively in adopting a comprehensive growth plan for each county, rather than each community acting independently.

This landmark legislation required all counties across the state without metropolitan governments to develop comprehensive growth plans in conjunction with their municipalities whose purpose is to direct the coordinated, efficient and orderly development of each county. These growth plans were intended to address issues affecting annexation, the timing of development and the provision of public services, the stabilization of each county's education funding base, and provide a means of minimizing urban sprawl. After their approval, all land use decisions are required to be consistent with these plans.

It has been over six years since the passage of PC 1101, and over three years since the July 1, 2001 deadline for local governments to have their growth plans approved. This initial phase of implementation of the statute can be characterized as highly successful. With the approval of a growth plan for Fayette County in August 2003, every county required to have a growth plan in place has had a growth plan approved. During this time there have not been any substantive changes to the original statute, giving affected local governments an opportunity to familiarize themselves and work with the requirements of the Act in a stable and predictable statutory environment. Rather, the focus initially was on getting counties and their municipalities to develop their initial growth plans and establishing their JECDBs.

## **II. 2004 Milestones**

At the start of 2004, all of the 92 counties required by statute to develop growth plans had done so. This marks the successful completion of the primary objective of the legislation, for all of Tennessee's counties to have a comprehensive growth plan. From this point forward the issues facing local governments will hinge on the implementation of these adopted growth plans and/or consideration of possible amendments or changes to the existing plans.

- In 2004 Hamblin County became the first county to amend its growth plan. This has been the only growth plan to have been amended thus far, although there have been reports that other counties may also begin opening up their growth plans for possible amendment.
- The Blount County growth plan has been in litigation since shortly after its approval. At issue is the placement of the Metropolitan Knoxville Airport in the City of Alcoa's UGB. When LGPAC approved the Blount County plan it removed the airport property from the City of Alcoa's UGB and instead placed the airport in a PGA of Blount County. The case is still under appeal

## **III. Proposed Changes to the Statute**

During the 2004 session of the General Assembly, there were ten bills introduced that amended various sections of Public Chapter 1101, also known as the Tennessee Growth Planning, Annexation and Incorporation Act of 1998. All of these bills were referred to TACIR for study and a report to the next General Assembly session.

#### **IV. Study Plan**

In order to evaluate the potential impacts of each of the PC 1101 related bills referred for study several steps were taken. These included:

- Review of the current status of the growth plans and implementation activities and achievements to date;
- Review of previous TACIR discussions of issues and areas of concern and recommendations to the Commission;
- The overall effects that any or all of these pending bills might have on the goals and objectives of the existing legislation.

Some of the questions addressed include the impact of any or all of these proposed changes on the thrust of the statute, impact on local governments, and impact on the state government.

**Table 1**

**PC 1101 Pending Legislation Referred to TACIR for Study**

<b>Bill Numbers/ Legislative Sponsors</b>	<b>Proposed Change in Existing Statute</b>
<b>SB 2444 (Norris) HB 3143 (Bone)</b>	Expands and further defines the range of land use and infrastructure decisions made by the local legislative bodies and the municipalities or counties planning commission to be consistent with approved growth plans. Also requires that state actions be consistent with approved growth plans.
<b>SB 2445 (Norris) HB 3056 (Sargent)</b>	Specifies that certain notifications are to be forwarded to the county mayor when municipal actions are undertaken with regard to annexation of territory located within the unincorporated areas of the county.
<b>SB 2447 (Norris) HB 3060 (Sargent)</b>	Imposes sanctions upon a participating government that does not fully fund its required annual contribution to the Joint Economic and Community Development Board (JECDB).
<b>SB 2566 (Haynes) HB 3141 (Bone)</b>	Increases a municipality's authority to establish by ordinance planning zones (subdivision regulations) or zoning districts adjoining within its Urban Growth Boundaries (UGBs).
<b>SB 2567 (Haynes) HB 3059 (Sargent)</b>	Would allow municipalities to provide extraterritorial subdivision regulation in counties with or without county zoning under certain circumstances.
<b>SB 2569 (Haynes) HB 3142 (Bone)</b>	Revises and simplifies the procedures for amending an approved county growth plan in cases in which the proposed amendment would not alter the boundaries of any urban growth area, county planned growth area or county rural area.
<b>SB 2574 (Norris) HB 3058 (Sargent)</b>	Revises proceedings and authority of dispute resolution panels that mediate disputes regarding comprehensive growth plans.
<b>SB 2747 (Trail) HB 2855 (Hood)</b>	Permits the executive committee of a joint economic and community development board to meet only as needed rather than a minimum of eight times annually.
<b>SB 3001 (Graves) HB 3140 (Bone)</b>	Increases the burden of proof for parties who issue quo warranto actions against municipality annexations. Currently an annexation within a municipality's UGB may be challenged claiming that the government has acted unlawfully by proving <u>either</u> : (1) that an annexation ordinance is unreasonable for the overall well-being of the communities involved; <u>or</u> (2) the health, safety, and welfare of the citizens and property owners of the municipality and territory will not be materially retarded in the absence of the annexation. This bill would require that <u>both</u> (1) and (2) of the above be proven.
<b>SB 3002 (Graves) HB 3057 (Sargent)</b>	Grants municipalities the exclusive authority to annex territory within its UGBs, limiting the annexation powers of other municipalities.

## V. Public Involvement

Below is a listing of the people and organizations that have been interviewed and consulted regarding the PC 1101 related legislation referred for study by TACIR.

- Ross Loder  
Tennessee Municipal League
- Dan Hawk & Tim Roach  
Tennessee Local Planning Office
- Doug Goddard  
Tennessee County Commissioners Association
- Staff Planners  
Middle Tennessee Region, Local Planning Office
- Betsy Child  
Commissioner, Department of Environment and Conservation
- Alan Jones  
Environmental Policy Office, Tennessee Department of Transportation
- Bridgett Jones Kelley & Jo Winfrey  
Cumberland Region Tomorrow
- Jay West & Susan Ritter  
Homebuilders Association of Tennessee
- Karen Stakowski & Ryan Shilling  
Department of Environment and Conservation
- Julius Johnson & Redonna Rose  
Farm Bureau Federation of Tennessee
- Rick Emmett, Debbie Poplin & Tony Thompson  
City of Knoxville
- Executive Committee  
Tennessee Chapter, American Planning Assoc (TAPA)
- General Session  
Annual Conference, TAPA
- Development District Directors  
Annual Meeting, Tennessee Development District Association
- Joe Barker  
Assistant Commissioner of Planning, Department Economic and Community Development
- Jeanne Stevens  
Director of Planning, Tennessee Department of Transportation
- Ed Cole  
Chief of Environment and Planning, Tennessee Department of Transportation

One purpose of these meetings was to determine if a consensus on the any of the ten bills existed. The next part of this report will be a summary of the positions on the Chapter 1101 bills. Then, pertinent comments that were generated during the interviews summarized.

For purposes of this discussion the bills were grouped into subject areas related to nature of the proposed amendments to the statute.

## VI. Planning (SB 2444/HB 3143; SB 2569/HB 3142)

There are two bills that deal with the planning aspects of PC 1101: SB 2444/HB 3143 and SB 2569/HB 3142.

SB 2444 (Norris)/HB 3143 (Bone) which strengthens and expands the consistency requirements in Section 8. SB 2569/HB 3142 would permit a local government to amend its locally adopted comprehensive plan, if such plan was included in the PC 1101 required growth plan, without seeking approval of the county coordinating committee as long as the amendment did not alter the urban growth boundaries, planned growth area boundaries and rural area boundaries as shown on the county growth plan map of the county.

SB 2569 (Haynes)/HB 3142 (Bone) which would allow local governments to adopt a comprehensive plan under the statute without altering any of the boundaries in an adopted plan and without having to gain the approval of the other localities in the county.

A possibility of consensus may exist on two of these bills. At this point there does not appear to be great concern over SB 2444, and state agencies appear to be in agreement with the idea of coordination with local governments. All planning professionals support the bill, and other groups outside of government do not oppose it. However, if this bill or one similar were to pass, it would be incumbent upon many local governments to do a much better job of planning. For example, those growth plans that are only an agreed upon map do not have any content upon which to base a decision of consistency. Consensus on SB 2569 may also be possible. There have been some reservations expressed since the bill changes a part of the process amending a growth plan. However, this may be related to a lack of understanding of the comprehensive planning process.

**Recommendation:** While there is some visible support for this bill and no overt opposition, the Commission may wish to study this bill in greater detail because of the scope of the proposed changes in this proposed amendment to the statute. For example, staff anticipates that many local governments would require substantial technical assistance to fully comply with these changes. Both of these proposed sets of changes would strengthen the planning requirements of statute and should ultimately lead to more sophisticated and well thought out plans. The current bare bones requirements for the growth plans in general do not provide enough information about anticipated future land use and infrastructure investments communities are likely to put forth.

- Support SB 2444/HB 3143 enhancing the planning requirements for the development of the growth plans. Because there are still many local governments across the state that currently do not have either planning commissions or their own planning staffs, it is anticipated that many local governments are likely to need technical assistance to successfully implement the changes contained in this bill. The Commission may wish to further discuss some of these issues. The legislature may also wish to identify ways for these technical resources to be made available through financial incentives or grants.
- Support SB 2569/HB 3142 allowing comprehensive planning amendments to the growth plans that do not alter any of the existing plan boundaries. Any efforts by local governments to further engage in comprehensive planning and add additional detail to their existing plans should be encouraged.

## VII. Extra-Territorial Powers (SB 2566/HB 3141; SB2567/HB 3141)

There are two bills that deal with the extra-territorial powers that a municipality may be granted for affecting land use matters outside of its corporate limits but inside of its urban growth boundaries: SB 2566 (Haynes)/HB 3141 (Bone) which deals with extra-territorial planning authority and extra-territorial zoning authority, and SB 2567 (Haynes)/HB 3141 (Bone) which deals with only extra-territorial planning authority. These two bills overlap greatly and the discussion points and concerns for each are largely the same.

The territory within the urban growth boundary is established as an area that is likely to be annexed into a city at some point in the future. If the municipalities are to make their land use decisions consistent with their adopted growth plans, it follows that the city should have full authority to adopt a plan for the area and assure that development occurs in a way that it won't become a liability to the city and will be compatible with the city plans. Subdivision authority within the urban growth boundary in particular is essential to the future development potential and fiscal capacity of a city since it deals with both the development of land and the provision of public infrastructure that will likely have to be maintained by the municipality after annexation.

Neither of these two bills enjoys a consensus from the local government interests at this time. County forces do not support these concepts since they are viewed as an erosion of their own control over land use and development, while municipal forces are in favor of these changes since it gives them an additional array of tools to utilize. The cities are concerned about insuring that areas that will likely eventually come into their borders are developed in a manner that is consistent with their development regulations. Development standards are often higher than the county's, yet, in the urban growth boundary the county cannot require developers to adhere to city standards. Homebuilders in particular, are often eager to build to a city's development regulations rather to a county's since in many cases the city standards will allow higher densities. However, many counties will not allow the city to have regional zoning and planning authority.

SB 2566 (Haynes)/HB 3141 (Bone) would allow municipalities extra-territorial planning and zoning authority within their UGBs without securing permission from the county. It also would remove the preemption of county zoning that currently exists. SB 2566 increases a municipality's ability to adopt planning and subdivision regulations in its planning region and would broaden the power of a municipality to adopt zoning by ordinance within that region. Under the current statute, a county must give its approval for either extra-territorial planning or zoning authority. In addition, county zoning takes precedence whenever it is enacted. So in the event that a county currently does not have county zoning but later adopts county zoning, any extra-territorial zoning authority previously granted to the municipality would become pre-empted and lose its authority.

SB 2567(Haynes)/HB 3141 (Bone) would allow municipalities extra-territorial planning authority within their UGBs without securing permission from the county whether or not the county has zoning in place. Rather than obtaining county approval, the municipality would be required to give the county six months notice prior to implement zoning authority in its UGB. This bill would remove the requirement that a municipality obtain the approval of the county commission when there is no county zoning in place prior to adopting subdivision regulations within the planning region. When the county does have county zoning, LGPAC may currently approve extra-territorial planning authority to a municipality up the city's approved UGB. Some people have

contended that this qualifier – whether or not the county has zoning- was not in effect prior to PC 1101.

Recommendation: While these bills are important and directly impact the range of tools available for implementing the growth plans, they should be deferred at the present time due to the lack of consensus. It should be added, however, that the State Office of Local Planning is in support of the extension of extra-territorial planning authority to municipalities and views it as useful for insuring the quality of development in newly developing areas.

### **VIII. Annexation (SB 2445/HB 3056; SB 3001/HB 3140)**

There are three bills dealing with annexation issues. The two principal antagonists, of course, are TML and TCSA. All other interviewees did not really have any positions on the annexation bills with the exception of the City of Knoxville, which will be discussed separately.

SB 2445 (Norris)/HB 3056 (Sargent) imposes a notification requirement on municipalities after annexing territory. SB 2445 dealing with notification of the county mayor seems relatively innocuous but even here there is some hesitation on the part of TML due to a feeling that this information would already have been publicized. TCS and the Farm Bureau support the bill.

SB 3001 (Graves)/HB 3140 (Bone) would strengthen the quo warranto requirements for filing an appeal on a municipal annexation. However, SB 3001, which deals with changing the burden of proof in an annexation challenge is a different story. Basically, TML is strongly in favor of the bill, while TCSA is just as strongly against it. The Farm Bureau is also against it.

Knoxville has a special interest in SB 3001. Knoxville has a number of annexation ordinances that have been challenged, and most are still in the court system. Recently, the city lost a challenge at the trial level, and the decision against the city was based on the language in the act that gives a petitioner two options on which to base a challenge. In short, the city argued that PC1101 mistakenly changed an “and” that was in the previous language of the annexation statute to an “or”, and this resulted in a decision against the city. The case has been appealed. It can be argued that the burden of proof now required for a petitioner to challenge an annexation ordinance is so low and innocuous that it practically eliminates any possibility that any city can win an annexation lawsuit. Therefore, the final disposition of the Knoxville lawsuit will impact every city in Tennessee.

SB 3002 (Graves)/HB 3057 (Sargent) Grants municipalities the exclusive authority to annex territory within its UGBs, limiting the annexation powers of other municipalities SB 3002 relating to exclusive authority to annex within a city's urban growth boundary also appears to have general support, or at least not enough opposition to make it controversial.

#### Recommendation:

- Support SB 2445 (Norris)/HB 3056 (Sargent) requiring the notification of counties when annexations are complete. The requirements put forth by this bill would help to insure that interested parties would be kept abreast of city limit changes and should help to eliminate future confusion about the governmental status of a parcel of land.



- Support SB 3002 (Graves)/HB 3057 (Sargent) granting exclusive annexation powers to a municipality within its UGB. This bill is consistent with the intent of the original statute to make annexation more predictable and governed by the approved growth plans.
- Further action on SB 3001 (Graves)/HB 3140 (Bone) should be deferred due to lack of consensus on this item.

## **IX. Dispute Resolution**

SB 2574 (Norris)/HB 3058 (Sargent) would alter the dispute resolution process and would allow greater flexibility in the number of judges used in the mediation and arbitration process. This bill would allow more flexibility in the number of judges and the mediation process that is proscribed by the Act. It also helps to make clear that the mediation and arbitration processes are separate rather than one continuous discussion.

No one is opposed to this bill.

Recommendation: Support.

## **X. Joint Economic and Community Development Boards (JECDBs)**

Two bills deal with various aspects of the Joint Economic and Community Development Boards: SB 2447 (Norris)/HB 3060 (Sargent) and SB 2747 (Trail)/HB 2855 (Hood). These will be discussed in detail in a separate report.

## **APPENDIX**

### **Previous Recommendations**

As part of its mandated monitoring responsibilities under the statute, TACIR has previously reviewed and discussed a number of these concerns and issues at several of its Commission meetings. From these discussions TACIR staff compiled a list of some of these issues of concern, which TACIR and the General Assembly may wish to address in future legislative action. These recommendations were discussed by the Commission in December 2003 but no action was taken on any of these items. This list assumes that there would not be any substantive change in the policy goals and objectives currently embodied in the statute. Rather, the issues identified stem from some of the vagaries of language in the existing statute, issues and questions about the statute raised during the initial phases of implementation, and measures that would bolster the existing statute's tools and requirements in meeting the stated objectives of the existing legislation.

The list is reproduced here since many of the recommendations are included in some of the proposed bills referred to the Commission for study.

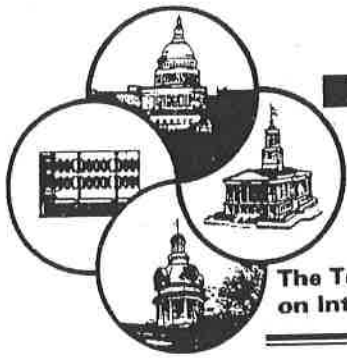
### **PC 1101 Staff Recommendations to TACIR – December 2003**

1. All counties that are currently required to develop growth plans may be required to periodically update and amend their growth plans at a minimum of every 10 years.
2. The General Assembly might consider creating a mechanism for county growth plans to be reviewed for possible conflicts with neighboring counties. In particular, a mechanism should be created for those counties in the development districts of the major urban metropolitan areas to have their plans reviewed to eliminate possible conflicts with neighboring counties.
3. In order to certify their compliance with the JECDB provision within the statute county and municipal governments might be required to submit copies of their interlocal agreements documenting that their proposed JECDB meets the minimum standards specified in the statute. These interlocal agreements could be reviewed and approved by LGPAC. In addition, the yearly activities of the JECDB should be documented and submitted on an annual basis to insure ongoing compliance with this provision.
4. The General Assembly may wish to consider creating a mechanism (membership regulations) for a county wishing to utilize a single, unified, county-wide industrial development board to utilize the JECDB for that county in order to minimize unnecessary layers of government(s).
5. Consideration might be given to having State agencies take the approved PC 1101 growth plans into consideration when making decisions concerning the funding or location of any new or expanded infrastructure facilities or services. In addition, each state agency specifically listed in the statute might consider developing a formal

policy as to how it will insure that any grant or loan programs it administers will be consistent with the provisions of the statute.

6. The minimum standards for an acceptable growth plan might be changed to require greater specificity and definitional clarity. This could include the following:
  - Requiring a land use element into growth plans where future land uses of various types and densities would be identified;
  - Requiring that major thoroughfare plans be incorporated into the growth plans;
  - Identify any planned public infrastructure facilities or services in the growth plans;
  - Provide greater specificity as what constitutes high, medium or low density development;
  - Include an action plan or implementation component into the growth plans for local governments to add greater specificity as to how they would implement their plans for the orderly growth and development of their communities.
7. The General Assembly may wish to consider a comprehensive review of the state's planning and zoning enabling legislation (TCA Title 13) in an effort to modernize the existing statute and more closely tie the growth planning requirements of PC 1101 with the important implementation tools in Title 13.
8. A system of financial incentives might also be considered to promote the implementation of local land use practices and policies that aim to promote compact and efficient development, the redevelopment of already urbanized areas, and the minimization of sprawl type development.
9. The installation of any new or expanded public utilities such as water and wastewater treatment whether provided by government operated utility providers, public utility districts, or private utility districts might be made consistent with approved local growth plans.





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February 2005

The Honorable John Wilder  
Speaker of the Senate and Lieutenant Governor

**COPI**

The Honorable Jimmy Naifeh  
Speaker of the House

Gentlemen:

Last year, a number of bills were referred to TACIR for study relating to Public Chapter 1101 and the veto authority of county mayors. TACIR's recommendations relating to these bills are outlined below.

## 1) PUBLIC CHAPTER 1101

The Senate State and Local Committee, the House Civil Practice Subcommittee and Representative Hood each referred bills amending Public Chapter 1101 to TACIR for study. The headings in bold identify the action recommended by TACIR.

### **Bills Recommended by TACIR**

*SB 2444(Norris)/HB 3143(Bone)*  
*SB 2445(Norris)/HB 3056(Sargent)*  
*SB 2569 (Haynes)/HB 3142(Bone)*  
*SB 2574(Norris)/HB 3058(Sargent)*  
*SB 3002(Graves)/HB 3057(Sargent)*

### **Action Should be Deferred on these Bills for Further Study**

*SB 2447(Norris)/HB 3060(Sargent)*  
*SB 2566(Haynes)/HB 3141(Bone)*  
*SB 2567(Haynes)/HB 3059(Sargent)*  
*SB 3001(Graves) /HB 3140(Bone)*

TACIR was also directed to study SB 2747(Trail)/HB 2855(Hood). TACIR did not approve this bill as it was written. Instead, TACIR approved an alternative set of recommendations that are outlined in Attachment A that is included with this letter.

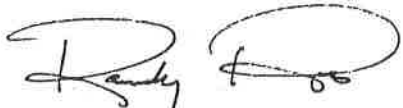
## 2) VETO AUTHORITY OF COUNTY MAYOR

The Senate State and Local Committee referred SB 2632(McLeary)/HB 2929(Rinks) to TACIR for study. This bill would amend Tennessee Code Annotated § 5-6-107, relative to the majority required for the county legislative body to override a veto of the county mayor. The measure, if passed, would require a 2/3 majority, rather than the current requirement of a simple majority, to override a county mayor veto.

After studying the issue, the TACIR staff determined that this is not an issue that is easily evaluated in terms of good government. Staff is unable to state conclusively that one method or the other results in either an abuse of power or an improvement in governance.

Transmitted herewith are two attachments examining TACIR's recommendations in greater depth.

Sincerely,



Representative Randy Rinks  
Chairman



Harry A. Green  
Executive Director

## Attachment A: Public Chapter 1101 (Title 6, Chapter 58) Bills Referred to TACIR for Study

### *Bills Recommended by TACIR*

- **SB 2444/HB 3143 (S: Norris; H: Bone)**

The bill would amend TCA § 6-58-107. It expands and further defines the range of land use and infrastructure decisions made by the local legislative bodies. It further defines the requirement that municipalities' and counties' planning commission and local legislative body decisions be consistent with approved growth plans. It also requires that state actions be consistent with approved growth plans.

**TACIR Recommendation** – The Commission recommended adoption of this bill. This bill will strengthen the planning requirements in the statutes and should ultimately lead to more sophisticated and well-thought out plans. Because there are still so many local governments across the state that currently do not have either planning commissions or their own planning staffs, it is anticipated that many local governments are likely to need technical assistance to successfully implement the changes contained in the bill. The legislature may also wish to identify ways for technical assistance to be made available through financial incentives or grants.

- **SB 2445/HB 3056 (S: Norris; H: Sargent)**

The bill would amend TCA § 6-51-102, TCA § 6-51-104 and TCA § 6-51-105. It specifies that certain notifications are to be forwarded to the county mayor when municipal actions are undertaken with regard to annexation of territory located within the unincorporated areas of the county.

**TACIR Recommendation** – The Commission recommended adoption of this bill. The requirements put forth by this bill would help to insure that interested parties would be kept abreast of city corporate limit changes and should help to eliminate future confusion about the governmental status of a parcel of land.

- **SB 2569/HB 3142 (S: Haynes; H: Bone)**

The bill would amend TCA § 6-58-104. It revises and simplifies the procedures for amending an approved county growth plan in cases

in which the proposed amendment would not alter the boundaries of any urban growth area, county planned growth area or county rural area.

**TACIR Recommendation** – The Commission recommended adoption of this bill. Any efforts by local governments to further engage in comprehensive planning and add additional details to their existing plans should be encouraged.

- **SB 2574/HB 3058 (S: Norris; H: Sargent)**

The bill would amend TCA § 6-58-104. It revises proceedings and authority of dispute resolution panels that mediate disputes regarding comprehensive growth plans.

**TACIR Recommendation** - The Commission recommended adoption of this bill. It would alter the dispute resolution process and would allow greater flexibility in the number of judges used in the mediation and arbitration process. This bill would allow more flexibility in the mediation process than is prescribed in the statute. It also helps to make clear that the mediation and arbitration processes are separate.

- **SB 3002/HB 3057(S: Graves; H: Sargent)**

The bill would amend TCA § 6-58-111. It grants municipalities the exclusive authority to annex territory within its UGBs, limiting the annexation powers of other municipalities.

**TACIR Recommendation** – The Commission recommended adoption of this bill. This bill is consistent with the intent of the original statute to make annexation more predictable and governed by the approved growth plans.

*Action Should be Deferred on these Bills For Additional Study*

- **SB 2447/HB 3060 (S: Norris; H: Sargent)**

The bill would amend TCA § 6-58-114. It imposes sanctions upon a participating government that does not fully fund its required annual contribution to the Joint Economic and Community Development Board (JECDB).

**TACIR Recommendation** –TACIR deferred action on the bill at this time because it warrants further study.



- **SB 2566/HB 3141 (S: Haynes; H: Bone)**

The bill would amend TCA § 6-58-106, TCA § 13-7-302, TCA § 13-7-303 and TCA § 13-3-306. It increases a municipality's authority to establish by ordinance planning zones (subdivision regulations) or zoning districts adjoining within its Urban Growth Boundaries (UGBs).

**TACIR Recommendation** –TACIR deferred action on the bill at this time because it warrants further study.

- **SB 2567/HB 3059 (S: Haynes; H: Sargent)**

The bill would amend TCA § 6-58-106. It would allow municipalities to provide extraterritorial subdivision regulation in counties with or without county zoning under certain circumstances

**TACIR Recommendation** –TACIR deferred action on the bill at this time because it warrants further study.

- **SB 3001/HB 3140 (S: Graves; H: Bone)**

The bill would amend TCA § 6-58-111. It would alter the burden of proof required in a quo warranto action filed to challenge the validity of an annexation ordinance. Under present law, the party filing the action must prove either

(1) that an annexation ordinance is unreasonable for the overall well-being of the communities involved; or

(2) the health, safety, and welfare of the citizens and property owners of the municipality and territory will not be materially retarded in the absence of the annexation.

SB 3001 (Graves)/HB 3140 (Bone) would require that both (1) and (2) be proven.

**TACIR Recommendation** – The Commission recommends that further action on this bill should be deferred for further study. This bill would increase the burden of proof required in quo warranto action filed to challenge an annexation ordinance. However, the Tennessee Municipal League favors the bill, and the Tennessee County Services Association and the Tennessee Farm Bureau are against it.

## *Alternative Recommendation For Bill*

- **SB2747/HB2855(S: Trail; H: Hood)**

The bill would amend TCA § 6-58-114. This bill would permit the Executive Committee of a Joint Economic and Community Development Board (JECDB) to meet only as needed rather than a minimum of eight times annually as now required by law.

**TACIR Recommendation** -The Commission adopted the following recommendations:

- The number of required JECDB Executive Committee meetings should be reduced from eight (8) meetings to four (4) meetings per year.
- The county mayor and city mayor or manager should be given the authority to appoint an alternate to serve on the JECDB or its Executive Committee in his/her stead. The alternate should have education or experience in the field of public administration, economic and community development or planning and be able to speak definitely for the entity.
- The law should require that a minimum of one of the JECDB Executive Committee meetings should be held each quarter.

## **Attachment B: Veto Authority of County Mayors**

During the last session of the General Assembly, SB 2632 (McLeary)/HB 2929(Rinks) was referred to TACIR for study. This bill would amend Tennessee Code Annotated, Section § 5-6-107, relative to the majority required for the county legislative body to override a veto of the county mayor. The measure, if passed, would require a 2/3 majority, rather than the current requirement of a simple majority, to override a county mayor veto. This bill is an initiative of the Association of County Mayors of Tennessee and is intended to strengthen the authority of that office. According to its Executive Director, Fred Congdon, a survey of the Association's members last year identified the issue as a priority. The Association has long supported such a provision, though previous attempts to enact one resulted only in a provision in the Budget Law of 1993 allowing counties to vote to require a 2/3 supermajority to override a budget veto. Blount County now has such a requirement.<sup>1</sup>

Ninety counties currently operate under a simple majority veto override of the county mayor (though one of them, Blount County, requires a 2/3 supermajority to override a budget veto).<sup>2</sup> In Knox and Shelby Counties, which adopted a charter form of government, a veto override may be accomplished by a majority plus one (though Shelby County requires a 2/3 supermajority where such a supermajority was required to pass the legislation initially, which is mostly on issues of contracting for services, purchasing procedures, and county official salaries.)<sup>3</sup> The three consolidated metropolitan governments (Nashville/Davidson, Lynchburg/Moore and Hartsville/Trousdale) require a two-thirds vote to override a mayoral veto. These five counties would be unaffected by the change resulting from passage of this bill.

One result of this bill could be that fewer county mayors may serve as the chairperson of their local legislative body. The legislative body may choose the county mayor as chairperson, and roughly half of county mayors serve in this position. They gain the ability to break ties in the legislative vote, and they increase their involvement in and influence over legislative activity, but they lose their veto power. With a stronger veto, some may choose to forgo the legislative chairperson position and keep the veto power.

### **Arguments For and Against**

Staff has interviewed the Executive Directors of both the Association of County Mayors of Tennessee and the Tennessee County Commissioners Association in order to develop a list of arguments for and against the initiative. The staff also

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<sup>1</sup> Humphrey, Tom. "Two Thirds Veto Up for Debate," Knoxville News-Sentinel, March 15, 2004, p. B1.

<sup>2</sup> Humphrey, Tom. "Two Thirds Veto Up for Debate," Knoxville News-Sentinel, March 15, 2004, p. B1.

<sup>3</sup> Shelby County Code of Ordinances

reviewed recent newspaper accounts regarding the positions of both of these associations.

### **For:**

Mr. Congdon laid out the case for the increase in the power of the county executive, including the following arguments:

- County mayors should have powers similar to metropolitan mayors;
- If county mayors would like to serve as chairs of their county commissions, the commission may be more inclined to elect them to that position if it means they give up a strong veto power;
- Commissioners could support this because it would give them the ability to hang necessary but unpopular decisions on the county mayor, allowing them to vote for something they know will be vetoed;
- While a gubernatorial veto can be overridden with a simple majority vote in Tennessee, the legislative process involves the committee system, with study and compromise along the way. County commissions can bring up something that is not even on the agenda and pass it immediately with little discussion, as did the Rhea County Commission when they passed a resolution outlawing gay people. In addition, if a governor vetoes a bill while the legislature is not in session, a special session must be called to override the veto, making it a bit more difficult and somewhat expensive. Mr. Congdon says that the initiative is "a move toward a balance of power." He goes on to say that, "Now there are county commissioners who feel they should be both the administrative and legislative branches of county government."<sup>4</sup>

### **Against:**

The Tennessee County Commissioners Association is opposed to the bill, and its Executive Director, Doug Goddard, explained the members' position, presenting arguments against the bill:

- In Tennessee, a gubernatorial veto can be overridden with a simple majority; there is no reason for a county mayor to be more powerful than the governor. While metropolitan mayors have a stronger veto, the option to form a metropolitan or charter government exists for every county; they can choose that route if that is what they want. County commissions are not strong, dealing primarily with budgets and having very little ordinance-passing ability, so the county mayor does not need such a strong veto. If

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<sup>4</sup> Humphrey, Tom. "County Mayor's Legislation Scuttled," *Knoxville News-Sentinel*, March 20, 2004, p. B10.

the county mayor compiled the budget and presented it to the commission as metropolitan mayors do, it might be different.

- There are many elected officials at the county level, and this veto would make the county mayor more powerful than them, while they are supposed to be more equal.
- There is much concern, especially among school boards, that the budget will be held hostage to local political squabbling.

Goddard says a two-thirds veto could translate into "rule by the minority... It would put a lot of power in the hands of one executive, and that's not a healthy situation."<sup>5</sup>

## **Other States**

The National Association of Counties reports the following information on counties and their governance structures.<sup>6</sup>

There are 3,066 counties in the United States, and forty-eight states have operational county governments (counties in Connecticut and Rhode Island do not have functioning county governments, as defined by the US Census Bureau). These counties have three basic kinds of government:

- Commission - in which an elected commission serves both legislative and executive functions - approximately 60% of counties;
- Commission/Administrator - in which an elected commission serves the legislative function and appoints an administrator, who serves at the commission's pleasure, to carry out executive functions - approximately 27% of counties;
- Council-Executive - in which an elected commission serves the legislative function and elected executive serves the executive function - approximately 13% of counties.

The Council-Executive form of government is the only form that includes an executive veto. Of the 397 counties with this form of government, 305 are in the four states that require this form of government: Alaska, Arkansas, Kentucky and Tennessee. The remaining 92 made a choice to have either a metropolitan (26) or charter (66) form of government and devise their own veto structures. Alaska, Arkansas, and Kentucky, then, are the only comparable states on this matter.

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<sup>5</sup> Humphrey, Tom. "County Mayor's Legislation Scuttled," *Knoxville News-Sentinel*, March 20, 2004, p. B10

<sup>6</sup> National Association of Counties. *A Brief Overview of County Government*. Revised August, 2003.

Alaska allows a mayor to veto an ordinance, resolution, motion or other action of the governing body within certain time limitations. A veto may be overridden by a two-thirds vote of the governing body.<sup>7</sup> Arkansas allows its county judges to veto county legislation, which the county legislature may override with a three-fifths vote.<sup>8</sup> Kentucky does not allow its county judge/executive to veto its county commission (also known as the "county fiscal court").<sup>9</sup>

### **Staff Finding**

This is not an issue that is easily evaluated in terms of good government. Staff is unable to state conclusively that one method or the other results in an abuse of power or an improvement in governance.

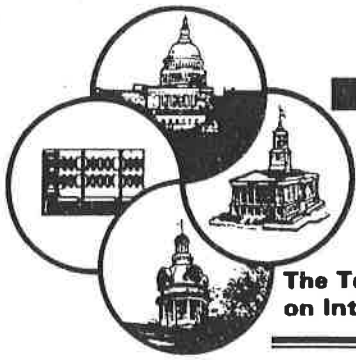
At the December 2004 TACIR meeting, TACIR Commissioner Mayor Brent Greer stated that the Tennessee County Mayors' Association was no longer pursuing passage of this bill, so further study was not required.

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<sup>7</sup> Alaska Stat. § 29.20.270(a)-(b)

<sup>8</sup> A.C.A. § 14-14-801(b)(9)

<sup>9</sup> Opinion of the Attorney General of Kentucky 80-542



# TACIR

The Tennessee Advisory Commission  
on Intergovernmental Relations



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March 2005

The Honorable John Wilder  
Speaker of the Senate and Lieutenant Governor

The Honorable Jimmy Naifeh  
Speaker of the House

Gentlemen:

Last year, a number of bills were referred to TACIR for study relating to Public Chapter 1101. TACIR recommended adoption of a number of the bills. This year these bills were reintroduced in the legislature. Below are a list of the bills (with the corresponding 2004 bill numbers in brackets.).

### *Bills Recommended by TACIR*

- **SB 1583/HB 403 (SB 2445/HB 3056)**

The bill would amend TCA § 6-51-102, TCA § 6-51-104 and TCA § 6-51-105. It specifies that certain notifications are to be forwarded to the county mayor when municipal actions are undertaken with regard to annexation of territory located within the unincorporated areas of the county.

**TACIR Recommendation** -- The Commission recommended adoption of this bill. The requirements put forth by this bill would help to insure that interested parties would be kept abreast of city corporate limit changes and should help to eliminate future confusion about the governmental status of a parcel of land.

- **SB 1585/HB 407 (SB 2574/HB 3058)**

The bill would amend TCA § 6-58-104. It revises proceedings and authority of dispute resolution panels that mediate disputes regarding comprehensive growth plans.

**TACIR Recommendation** - The Commission recommended adoption of this bill. It would alter the dispute resolution process and would allow greater flexibility in the number of judges used in the mediation and arbitration process. This bill would allow more flexibility in the mediation process than is prescribed in the statute. It also helps to make clear that the mediation and arbitration processes are separate.

- **SB 1586/HB 1798 (SB 2444/HB 3143)**

The bill would amend TCA § 6-58-107. It expands and further defines the range of land use and infrastructure decisions made by the local legislative bodies. It further defines the requirement that municipalities' and counties' planning commission and local legislative body decisions be consistent with approved growth plans. It also requires that state actions be consistent with approved growth plans.

**TACIR Recommendation** – The Commission recommended adoption of this bill. This bill will strengthen the planning requirements in the statutes and should ultimately lead to more sophisticated and well-thought out plans. Because there are still so many local governments across the state that currently do not have either planning commissions or their own planning staffs, it is anticipated that many local governments are likely to need technical assistance to successfully implement the changes contained in the bill. The legislature may also wish to identify ways for technical assistance to be made available through financial incentives or grants.

- **SB 1587/HB 408 (SB 3002/HB 3057)**

The bill would amend TCA § 6-58-111. It grants municipalities the exclusive authority to annex territory within its UGBs, limiting the annexation powers of other municipalities.

**TACIR Recommendation** – The Commission recommended adoption of this bill. This bill is consistent with the intent of the original statute to make annexation more predictable and governed by the approved growth plans.

- **SB 1588/HB 1799 (SB 2569/HB 3142)**

The bill would amend TCA § 6-58-104. It revises and simplifies the procedures for amending an approved county growth plan in cases in which the proposed amendment would not alter the boundaries of any urban growth area, county planned growth area or county rural area.



**TACIR Recommendation** – The Commission recommended adoption of this bill. Any efforts by local governments to further engage in comprehensive planning and add additional details to their existing plans should be encouraged.

### *Alternative Recommendation For Bill*

TACIR did not recommend adoption of one bill addressing Joint Economic and Community Development Boards. It instead approved a number of alternative recommendations.

- **SB 1584/HB 239 (SB2747/HB2855)**

TACIR was directed to study SB2747/HB2855. It would have amended TCA § 6-58-114. It would have permitted the Executive Committee of a Joint Economic and Community Development Board (JECDB) to meet only as needed rather than a minimum of eight times annually as now required by law.

**TACIR Recommendation** -The Commission did not recommend adoption of SB2747/HB2855 as it was written. TACIR instead adopted the following alternative recommendations:

- The number of required JECDB Executive Committee meetings should be reduced from eight (8) meetings to four (4) meetings per year.
- The county mayor and city mayor or manager should be given the authority to appoint an alternate to serve on the JECDB or its Executive Committee in his/her stead. The alternate should have education or experience in the field of public administration, economic and community development or planning and be able to speak definitely for the entity.
- The law should require that a minimum of one of the JECDB Executive Committee meetings should be held each quarter.

SB 1584/HB 239 reflects the alternate recommendations adopted by TACIR.

Sincerely,

  
Harry A. Green  
Executive Director