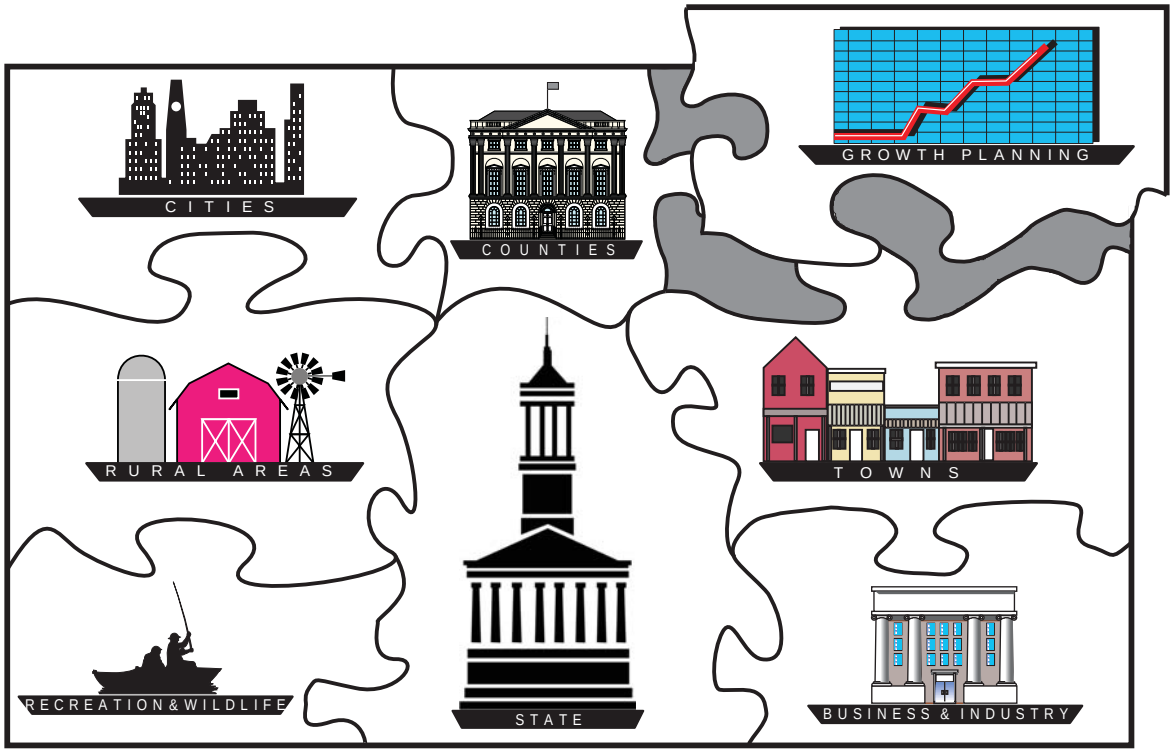
Growth Policy, Annexation, and Incorporation

Under Public Chapter 1101 of 1998:

A Guide for Community Leaders



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Staff Report to Members of the
Tennessee Advisory Commission on Intergovernmental Relations

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Acknowledgement

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September 1, 1998

Local Government and Community Leaders:

Public Chapter 1101 of 1998 represents a new vision and solution for growth policy in the State of Tennessee. The law seeks to meet the public service demands of commercial and residential growth, while maintaining the character of Tennessee's rural areas.

Tennessee's General Assembly has provided a framework for growth policy development within each county area without imposing one simple statewide solution. Local governments and community leaders are charged with the responsibility of cooperatively shaping growth policy within their county areas through the development of a 20-year countywide growth plan. As such, local governments and community leaders are positioned as the linchpins in successful implementation of this act.

For high growth counties, the importance of this act is self-evident. In counties that have not been experiencing substantial growth, the growth policy development process set forth in Public Chapter 1101 is of considerable importance, in large part through the act's attention to the preservation of undeveloped areas. Though the relative importance of each of the following will vary from county to county, Public Chapter 1101 has important ramifications for:

- Growth policy for development and redevelopment;
- Municipal boundary changes through annexation;
- Municipal incorporations;
- Provision of public services;
- Preservation of undeveloped areas; and
- Local government grant, loan, and tax revenues.

To facilitate consistent statewide application of this act, the state's local government technical advisory and training agencies have joined together to support local governments and community leaders as the growth policy development process begins. The first step toward the goal of consistency in technical support was the preparation of the enclosed single reference document for Public Chapter 1101. The document contains both brief and in-depth summaries, tables, a flow chart of growth plan development, and a copy of Public Chapter 1101 with T.C.A. references.

The staff of the state's local government technical advisory and training agencies look forward to working with you on the implementation of this act.

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Growth Policy, Annexation, and Incorporation Under Public Chapter 1101 of 1998: A Guide for Community Leaders

A joint publication of

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Contents

Introduction

Public Chapter 1101, developed by the Ad Hoc Study Committee on Annexation established by Lt. Governor Wilder and Speaker Naifeh, passed by the 100th Tennessee General Assembly, and signed into law by Governor Don Sundquist on May 19, 1998, provided the structures and processes for local governments to cooperatively determine their own future but did not impose a single statewide solution. The Act, codified in Tennessee law at Tennessee Code Annotated, Section 6-58-101 through Section 6-58-118, instead provides sufficient flexibility so local governments may tailor their growth plans to suit the unique characteristics of their areas. With flexibility and local prerogative, the Act positions local governments as the linchpins in the process of successful implementation. Given the complexity and importance of the task before them, local government leaders had to take action almost immediately after the law took effect. Prompt responses by city, county, and other local leaders helped ensure that solutions were made based upon careful planning, public input, and reasoned negotiation.

After passage of the Act, the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) published the 1999 report *Growth Policy, Annexation, and Incorporation Under Public Chapter 1101: A Guide for Community Leaders* in a cooperative effort with the University of Tennessee Institute for Public Service—including the Municipal Technical Advisory Service (MTAS), the County Technical Assistance Service (CTAS), and the Center for Government Training (CGT)—as well as the Division of Local Planning, development districts, and other agencies. Over the years, a number of changes have been made to the Act, making parts of that guidebook obsolete. Significant changes to the Act include a completely revised section on annexation, a revision for reconvening the coordinating committee when an amendment is proposed, a change in the number of administrative law judges needed for mediation, an amendment on annexation outside an urban growth boundary, a change in the number of required meetings of the joint economic and community development board, and the removal of penalties for not completing a growth plan.

In response to these changes, TACIR has updated the guide, which is organized as follows:

I. Countywide Planning – describes how the required countywide growth plan may be amended, as well as the criteria for setting the various boundaries required in the plan.

II. Annexation – describes how annexation is accomplished after passage of Public Chapter 707, Acts of 2014, that changed the previous annexation laws.

III. Plan of Services in Annexed Areas – describes extensive rules that govern the creation and enforcement of plan of services for newly-annexed areas, including the county's standing in disputes over plan of services.

IV. Incorporation – describes how incorporation is accomplished, including the plan of services requirements for newly-incorporated municipalities.

V. Tax Revenue Implications of Annexation – describes how situs-based taxes are distributed between the county and the municipalities in the county following annexations and incorporations.

VI. Miscellaneous Provisions – describes zoning implications of the Act, the required Joint Economic and Community Development Board, and other significant provisions.

Brief Summary

The following is a brief summary, organized according to subject areas, of the growth policy legislation that passed the Tennessee General Assembly in 1998, including updates and amendments through 2017. More detailed information is contained in the longer summary that appears in the next section of this report.

I. Countywide Planning

Public Chapter 1101 requires a comprehensive growth policy plan in each county that outlines anticipated development areas for a 20-year period. The initial draft of the growth plan is formulated by a coordinating committee composed of representatives of the county, cities, utilities, schools, chambers of commerce, the soil conservation districts, and others. The county and cities may propose boundaries for inclusion in the plan. After the growth plan is developed or amended, the committee conducts public hearings and submits the plan to each city and county for ratification. The committee may revise the plan upon objection from these local governments. If the governmental entities cannot agree on a plan, any one of them may petition the Tennessee Secretary of State to appoint a dispute resolution panel of administrative law judges to settle the conflict. The deadline for completing and approving all plans was July 1, 2001. Once adopted, a plan could not be amended for three years, except in unusual circumstances. That time period expired in most cases in 2004, and since then 30 counties have amended their growth plans, with some of them amending their plans multiple times. The amendment process is the same as that for initial adoption. The final step in the growth plan approval process is approval by the state Local Government Planning Advisory Committee (LGPAC). This committee is housed in the Department of Economic and Community Development and is charged with the responsibility of reviewing and approving the growth plans and amendments.

The plan should identify three distinct types of areas:

(1) "urban growth boundaries" (UGB), regions which contain the corporate limits of a municipality and the adjoining territory where growth is expected;
(2) "planned growth areas" (PGA), compact sections outside incorporated municipalities where growth is expected (if there are such areas in the county), and where new incorporations may occur; and
(3) "rural areas" (RA), territory not within one of the other two categories which is to be preserved for agriculture, recreation,

forest, wildlife, and uses other than high-density commercial or residential development.

II. Annexation

One of the major issues that the Act was designed to address was the annexation of new territory by municipalities. After the growth plan was approved by the Local Government Planning Advisory Committee (LGPAC), a municipality could use any statutory method to annex property within its UGB, including annexation by ordinance and referendum. However, in 2014 the General Assembly passed Public Chapter 707, which eliminated annexation by ordinance and provided that annexation within the UGB can only occur by referendum or with written consent of the property owner(s). Outside the UGB, a city may annex by referendum or amend its UGB to include the new territory, which may then be annexed by resolution with written consent of the property owner(s). A recent amendment also provided that a municipality may expand its urban growth boundaries to annex a tract of land without reconvening the coordinating committee or approval from the county or any other municipality if

(1) the tract is contiguous to a tract of land that has the same owner and has already been annexed by the municipality;
(2) the tract is being provided water and sewer services; and
(3) the owner of the tract, by notarized petition, consents to being included within the urban growth boundaries of the municipality.

An amendment of a growth plan, including any boundary it contains, requires the same steps described above for the initial adoption of the plan. Any challenges to annexation by ordinance, after the adoption or amendment of the growth plan, could be heard by the judge without a jury, and the burden of proof was on the petitioner to show that the annexation is unreasonable. However, Tennessee's annexation law makes no provision for court review of an annexation accomplished by referendum. It is said in *Vicars v. Kingsport*, 659 S.W.2d 367 (Tenn. Ct. App. 1983), that absent some claim of constitutional infirmities in the annexation, it is not subject to judicial review and that no equal protection or due process argument can be made when the statute is properly followed.

III. Plan of Services

For any area to be annexed, a municipality must formulate a plan of services which addresses police and fire protection; water, electrical, and sanitary sewer service; street construction and repair; recreation; street lighting; zoning; and city schools if maintained separately. If any of these services are provided to the area by another entity—except the county—the municipality may omit those from the plan. The plan must include a description of the level of each service and a reasonable schedule for implementing services in the annexed area that are comparable to those

delivered to other citizens of the community. Aggrieved property owners have standing to enforce the plan. A municipality in default on a plan of services may not annex additional territory until it complies with the previous plan. These provisions are retroactive and apply to any plan of services finalized after November 25, 1997.

Before adoption of a plan of services, a municipality must refer the plan to the planning commission (if there is one) for a report. Also, before the adoption of the plan of services, a municipality shall hold a public hearing. Notice of the time, place, and purpose of the public hearing shall be published in a newspaper of general circulation in the municipality not less than fifteen (15) days before the hearing. The notice shall include the locations of a minimum of three (3) copies of the plan of services, which the municipality shall provide for public inspection during all business hours from the date of notice until the public hearing. After the plan of services has been adopted by the municipality, a copy of the plan shall be forwarded to the county mayor, who then must notify all appropriate county departments.

IV. Incorporation

Before January 1, 1999, new cities could be incorporated if they met population and distance requirements contained in previously existing law, as well as the requirements listed below. After this date, a territory may be incorporated only inside a PGA (after the growth plan is adopted), and only with approval of its growth boundary and city limits by the county legislative body. All newly incorporated cities, both before and after January 1, 1999, are subject to the following requirements:

(1) a new city must enact a property tax that raises revenue at least equal to the annual amount the city receives from state-shared taxes;
(2) the amount of situs-based wholesale beer and local option sales tax revenues generated in the territory on the day of incorporation must continue to be distributed to the county for 15 years, just as if the territory were annexed (see discussion below under "Tax Revenue Implications"); and
(3) the city must develop a plan of services similar to that required for annexation.

V. Tax Revenue Implications of Annexation

When a city annexes territory, the county is "held harmless" for the loss of a portion of tax revenue which was distributed to cities under prior law. Revenue amounts generated in the annexed area by local option sales taxes and wholesale beer taxes that had been received by the county prior to the annexation continue to go to the county for fifteen years after the

date of the annexation. Any increases in these revenues generated in the annexed area are distributed to the annexing municipality. (Note that this does not affect the distribution of the first half of the local option sales tax, which continues to go to education funding.) If commercial activity in the annexed area decreases due to business closures or relocations, a city may petition the Department of Revenue to adjust the payments it makes to the county.

VI. Miscellaneous Provisions

There are several sections of PC 1101 that affect zoning regulations:

(1) Even if a municipality has received extra-territorial zoning authority under Title 13, it may not enact zoning or planning regulations beyond its UGB, and any planning region that extended beyond the UGB has to be retracted to the UGB. If it has not been granted this authority, it may nevertheless enact zoning provisions outside its city limits within the designated planning region (but inside its UGB) with the approval of the county legislative body.

(2) A city may not use its zoning power to interfere with land used for agricultural purposes.

(3) Counties have the authority to establish separate taxing districts for the provision of services, and to establish separate zoning regulations for territory in different types of areas.

The Act requires establishment of a joint economic and community development board to foster communications among all sectors of the community. The Act also allows the creation of a consolidation commission for a metropolitan type government upon petition of 10% of the county's voters. (Previous law required the county and principal city to call for a commission.) Moreover, the TACIR is charged with monitoring the implementation of Public Act 1101 and periodically reporting its findings and recommendations to the General Assembly.

I. Countywide Planning

A. Coordinating Committee[1]

In each county, a "Coordinating Committee" must be established to develop the required countywide growth plan. The membership of this committee includes:

Category	Number
County Mayor/Executive (or designee confirmed by county legislative body)	1
Mayor of each municipality in the county (or designee confirmed by governing body)	1 (minimum)
One member appointed by the governing board of the largest municipally-owned utility	1
One member appointed by the governing board of the largest non-municipally owned utility	1
One member appointed by the board of directors of the county's soil conservation district (representing agricultural interests)	1
One member appointed by the board of the local education agency having the largest student enrollment	1
One member appointed by the largest chamber of commerce (after consulting others)	1
Two members appointed by the county mayor/executive (representing environmental, construction, and homeowner interests)	2
Two members appointed by the county mayor/executive (representing environmental, construction, and homeowner interests)	2

This scheme produced a committee with a minimum of 11 members. The membership will be as high as 20 or 21 in some counties, depending on the number of municipalities. The committee became effective September 1, 1998.

[1] Tennessee Code Annotated, Section 6-58-104 (a)(1).

B. Alternatives to Coordinating Committee

(1) Alternative Coordinating Committees by Agreement of County and Cities[2]

The governing bodies of the county and each city within the county can all agree that another entity shall perform the duties of the coordinating committee.

(2) Special-Case Counties[3]

In any county where the largest city is at least 60% of the county population and no other city's population is larger than 1,000 according to the 1990 federal census, the coordinating committee is the planning commission of the largest city, combined with the planning commission of the county. In addition, the mayor of the largest city and the county mayor/executive could jointly appoint as many additional members as they determine are necessary. This alternative applies to Madison and Montgomery Counties. This excluded Medon (pop. 233) from representation in the Madison County process; Clarksville was and is the only city in Montgomery County.

(3) Counties with Metropolitan Governments[4]

Counties with metropolitan governments (Davidson, Moore and Trousdale) were not required to appoint a committee or develop a plan. Any city that was in a county with a metropolitan government and in another county must participate in the second county's planning process. This applied only to Goodlettsville, which is in both Davidson and Sumner Counties, and to Ridgetop, which is in both Davidson and Robertson Counties.

C. Amending the Countywide Growth Plan[5]

The coordinating committee was charged with developing a countywide growth plan based on a 20-year projection of growth and land use, using a variety of measures, which divides the county into three types of areas:

- Urban Growth Boundaries (UGB) - the municipality and contiguous territory where high-density residential, commercial, and industrial growth is expected, or where the municipality is better able than other municipalities to provide urban services.
- Planned Growth Areas (PGA) - territory outside municipalities where high or moderate density commercial, industrial, and residential growth is projected.

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[2] Tennessee Code Annotated, Section 6-58-104 (a)(9)(B).
[3] Tennessee Code Annotated, Section 6-58-104 (a)(9)(A).
[4] Tennessee Code Annotated, Section 6-58-103(a).
[5] Tennessee Code Annotated, Section 6-58-104(d)(1).

- Rural Areas (RA) - territory not in a UGB or a PGA and that is to be preserved as agricultural lands, forests, recreational areas, wildlife management areas, or for uses other than high-density commercial, industrial, or residential development.

Except in Shelby County, once the initial growth plan was formulated and approved by the LGPAC, the plan was to stay in effect for three years, "absent a showing of extraordinary circumstances." The three-year time period preventing amendments from being developed expired in most cases in 2004, and since that time, 30 counties have amended their growth plans; some of them have amended their plans multiple times. A city or county can propose amendments to the plan by filing notice with the county mayor/executive and the mayor of every city.[6] Upon receipt of the notice, the county mayor or county executive must take action to reconvene or reestablish the coordinating committee within 60 days of the receipt of the notice. The coordinating committee is then reestablished and uses the original process to amend the growth plan. The burden of proving the reasonableness or necessity of the amendment is upon the party proposing the change.

(1) Proposing Amendments to Urban Growth Boundaries (UGBs) – Municipalities[7]

(a) Criteria for Defining the UGB

The Urban Growth Boundary is to include territory

- reasonably compact but large enough to accommodate 20 years of growth;
- that is contiguous to the existing municipal boundaries;
- that is reasonably likely to experience growth over the next 20 years, based upon history, economic and population trends, and topographical characteristics;
- where the municipality is better able than other municipalities to efficiently and effectively provide urban services; and
- that reflects the municipality's duty to fully develop the area within the current boundaries, while controlling and managing growth outside those boundaries, taking into account the effect on agriculture, forests, recreation, and wildlife.

(b) Factors to be Considered in Developing the UGB

Before proposing an amendment to the UGB the city must

[6] Tennessee Code Annotated, Section 6-58-104(d).
[7] Tennessee Code Annotated, Section 6-58-106 (a)(1).

- develop and report population growth projections in conjunction with the University of Tennessee[8];
- determine and report the costs and projected costs of core infrastructure, urban services, and public facilities necessary to fully develop the resources within the city's current boundaries, as well as the cost of expanding these into the territory proposed for inclusion within the UGB;
- determine and report on the need for additional land suitable for high-density industrial, commercial, and residential development, after taking into account areas within current municipal boundaries that can be used, reused, or redeveloped to meet these needs; and
- examine and report on agricultural areas, forests, recreational areas, and wildlife management areas under consideration for inclusion in the UGB, and on the likely long-term effect of urban expansion in these areas.

(c) Public Hearing Requirements

Each municipality will hold two public hearings with at least 15 days advance notice in a newspaper of general circulation in the city before formally proposing its UGB amendment to the coordinating committee.

(2) Proposing Amendments to Planned Growth Areas (PGAs) - Counties[9]

(a) Criteria for Defining the PGA

The Planned Growth Area is to include territory

- that is reasonably compact yet sufficiently large to accommodate residential and nonresidential growth projected to occur during the next 20 years;
- that is not within the existing boundaries of any municipality or within an urban growth boundary;
- that is reasonably likely to experience growth over the next 20 years, based upon history, economic and population trends, and topographical characteristics; and
- that reflects the county's duty to manage natural resources and to manage and control urban growth, taking into account the effect on agriculture, forests, recreation, and wildlife.

[8] The University of Tennessee's Boyd Center for Business and Economic Research has been the agency responsible for these projections.
[9] Tennessee Code Annotated, Section 6-58-106 (b)(1).

(b) Factors to be Considered in Developing the PGA

Before proposing an amendment to the PGA, the county must take the following actions:

- develop and report population growth projections in conjunction with the University of Tennessee;
- determine and report projected costs of providing core infrastructure, urban services, and public facilities in the area, as well as the feasibility of funding them through taxes or fees within the area;
- determine and report on the need for additional land suitable for high-density development, after considering areas within current municipal boundaries that could be used, reused, or redeveloped to meet those needs;
- determine and report on the likelihood that the territory will eventually incorporate as a new municipality or be annexed; and
- examine and report on agricultural, forest, recreation, and wildlife management areas within the territory proposed for inclusion within the PGA, and the likely long-term effects of urban expansion on these areas.

(c) Public Hearing Requirements

Before proposing an amendment to the PGA to the coordinating committee, the county must hold two public hearings with at least 15 days advance notice of each in a newspaper of general circulation in the county.

(3) Proposing Rural Areas (RAs) - Counties[10]

(a) Criteria for Defining the RA

A Rural Area is to include territory

- that is not within an urban growth boundary or a planned growth area;
- that is to be preserved over the next 20 years as agricultural, forest, recreation, or wildlife management areas, or for uses other than high-density development; and
- that reflects the county's duty to manage growth and natural resources in a way that reasonably minimizes detrimental impact to agricultural, forest, recreation, and wildlife management areas.

[10] Tennessee Code Annotated, Section 6-58-106(c)(1).

(b) Public Hearing Requirements

Before proposing an amendment to the RA to the coordinating committee, the county must hold two public hearings with at least 15 days' advance notice of each in a newspaper of general circulation in the county.

The factors to be considered in producing a growth plan as described above were spelled out in the Act. This was to assure that the growth plans were based upon sound planning principles. However, the Act also included a requirement that the LGPAC had to automatically approve a plan if all governmental entities in the county agreed upon a map of growth boundaries.

(4) Coordinating Committee Process[11]

The Act requires that the coordinating committee hold two public hearings with at least 15 days' advance notice in a newspaper of general circulation in the county. After the hearings, the coordinating committee has to submit its recommended amended growth plan to the governing bodies of the county and each municipality in the county for their approval. (In the case of a municipality surrounded by one or more municipalities, the municipality's corporate limits are its UGB, and the city will not have a vote on the plan.)

In developing the plan, the legislation encourages the coordinating committee to seek the assistance of local planning resources, the state local planning office, County Technical Advisory Service (CTAS), and Municipal Technical Advisory Service (MTAS). It is the duty of the coordinating committee to submit the proposed amendment with its recommendation for or against approval within six months of the date of the committee's first meeting on the proposed amendment. No later than 120 days after receiving the recommended amended growth plan from the coordinating committee, the county and municipal governing bodies in the county must either ratify or reject the plan. The failure of a county or municipality in the county to do one or the other within the 120 days serves as a ratification of the recommended growth plan.

In Madison and Montgomery Counties, the coordinating committee submits its recommended growth plan to the county legislative body for ratification. That body may only disapprove the recommendation of the coordinating committee if, by two-thirds vote, it makes an affirmative finding that the committee acted in an arbitrary or capricious manner or abused its official discretion in applying the law. If such finding is made, the dispute resolution process described in this section applies.

[11] Tennessee Code Annotated, Sections 6-58-104 (a)(2),(3) and (4).

(5) Annexation Reserve Agreements and Other Agreements Regarding Powers[12]

Any annexation reserve agreements between one or more cities, or between one or more cities and a county, that were in effect on the effective date of the Act (May 19, 1998) remain in effect. These agreements may be subsequently amended by consensus of the parties to the agreement. The provisions of the act applicable to annexations also apply to annexations made pursuant to these agreements and amended agreements. There was a specific provision for counties with a charter form of government (Shelby and Knox Counties), stating that the annexation reserve agreements in effect on Jan. 1, 1998, satisfy the requirement for a growth plan, and the growth plan submitted for final approval by the county was based on those agreements.

Counties and cities are authorized to make agreements with or without a set term to refrain from exercising powers, including annexation and receipt of revenue. Regardless of whether an agreement contains a set time for termination, after five years it may be renegotiated or terminated upon 90 days' notice. The act also explicitly allows written contracts between municipalities and owners (developers) regarding annexation, validating those in existence on the effective date of the Act.

(6) Procedure Upon Rejection by a City or County[13]

If a city or county rejects the recommended amended growth plan, it must submit its objections and supporting reasons to the coordinating committee for reconsideration. Following reconsideration of the recommended growth plan, the coordinating committee may submit to the county and each city a revised recommended growth plan or its original recommended growth plan.

In resolving disputes between cities over UGBs, the committee is directed to favor the municipality that is "better able to efficiently and effectively provide urban services within the disputed territory." Consideration is also to be given to any municipality that "relied upon priority status conferred under prior annexation laws" and had incurred expenses based on that status to prepare for annexation of the disputed territory. This will favor those cities with the larger population of the two, since under preexisting Tennessee Code Annotated, Section 6-51-110(b), the larger city has priority in an annexation dispute with a smaller city.

If a city or county rejects whichever plan the coordinating committee submits to it the second time, the county or any municipality may declare

[12] Tennessee Code Annotated, Section 6-58-104 (a)(6) and (7).
[13] Tennessee Code Annotated, Section 6-58-104(b)(1).

an impasse, and ask the Tennessee Secretary of State to appoint a dispute resolution panel.

(7) Role of the Dispute Resolution Panel[14]

In the event of a dispute resolution request, the Tennessee Secretary of State, through its Administrative Procedures Division, must promptly appoint a dispute resolution panel. The panel will consist of a minimum of one member and a maximum of three members. All members of the panel must be administrative law judges trained in dispute resolution and mediation.

The panel will attempt to mediate the dispute. If resolving the dispute by mediation fails, the panel would then propose a non-binding resolution to the county and the cities. The county and the cities have a reasonable time to consider the resolution and either adopt or reject it. If the county and/or the city governing bodies reject the resolution, they must then submit their final recommendations to the panel. Then, "for the sole purpose of resolving the impasse the panel shall adopt a growth plan." During the period of time when the growth plans were originally being developed up to the point where the plans were approved, 11 counties went through the dispute resolution process. In one of the cases the ALJ panel assisted by a planning consultant developed and recommended the growth plan to LGPAC, which subsequently approved the plan.

All costs of the dispute resolution process are billed by the Secretary of State to the participating county and cities, prorated by population. The panel could determine if one party acted frivolously or in bad faith in initiating or prolonging the process, and then costs could be reallocated "in a manner clearly punitive" to these actions. Any failure to pay this assessment could lead to withholding state-shared taxes to satisfy the bill.

(8) Adoption of the Growth Plan by Local Government Planning Advisory Committee[15]

The Act requires that an amended growth plan ratified by the county and cities within the county, must be submitted to and approved by the LGPAC, an appointed body of local planning officials established in the Tennessee Department of Economic and Community Development by Tennessee Code Annotated, Section 4-3-727, to oversee the establishment, appointments to, and operations of regional planning commissions in the state.

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[14] Tennessee Code Annotated, Section 6-58-104(b)(2)-(5).
[15] Tennessee Code Annotated, Section 6-58-104(c)(1).

If the amended growth plan is recommended by the coordinating committee and ratified by the county and all cities, then the Act requires LGPAC to grant approval of the plan automatically. The LGPAC has no authority to conduct a content review of the plan or to change any of its provisions.

If the growth plan resulted from the dispute resolution process, the LGPAC could approve growth plans only if the UGB, PGA, and RA boundaries conform to the requirements contained in the law. If the LGPAC determined that the UGB, PGA, and RA boundaries did not conform to those requirements, it could adopt alternative UGB, PGA, and RA boundaries for the sole purpose of ensuring that they comply with the requirements of the law.

After the proposed amendment is approved by the county and all municipalities in the county, as well as by LGPAC, the amendment becomes part of the county's growth plan. In Shelby County, amendments to the annexation reserve scheme that serves as the growth plan in the county may be proposed at any time by following the same notice requirements to the county and all municipalities. After approval of the plan, a copy is sent to the county mayor/executive, who in turns files the plan in the county register's office.

(9) Consistency Requirement[16]

After the approval of the amended growth plan, all land use decisions made by a city or county must be consistent with the provisions of the growth plan.

D. Appealing a Growth Plan to the Courts[17]

Any affected county or city, any resident of the county, or any owner of real property located in the county can obtain judicial review of the growth plan. Suits must be filed in the chancery court of the affected county within 60 days after the final approval of the growth plan by LGPAC. The suit is heard by the court, without a jury. The county, city, or other person bringing the suit has the burden of showing by a preponderance of the evidence that the UGB, PGA, or RA boundaries were approved in "an arbitrary, capricious, illegal, or other manner characterized by the abuse of official discretion," which is a difficult standard to prove. If more than one suit is filed in the county, they are consolidated and tried as one.

The filing of a suit does not automatically stay the effectiveness of the plan, but the chancellor may order a stay if any party would be likely to suffer

[16] Tennessee Code Annotated, Section 6-58-107.
[17] Tennessee Code Annotated, Section 6-58-105.

injury if a stay were not granted. If the chancery court does find against the growth plan, it vacates the same "in whole or in part," and the process for adopting the appropriate new UGB, PGA, or RA boundary or boundaries is the same as for the adoption of the original growth plan.

Any party to the suit, if aggrieved by the ruling of the chancery court, may obtain a review of the final judgment by appeal to the court of appeals.

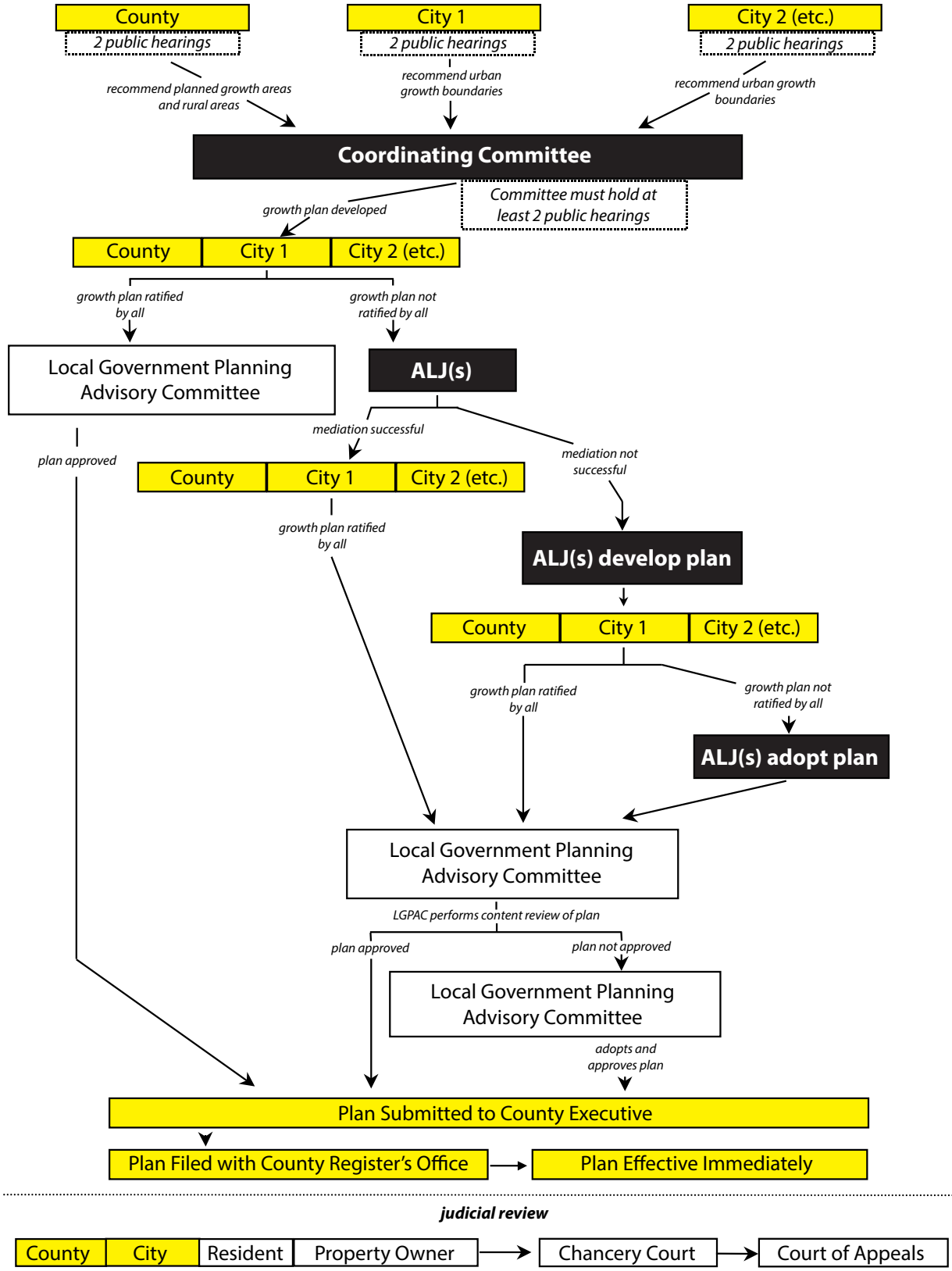
E. Incentives for Completing the Growth Plan[18]

Beginning July 1, 2000, any county (and municipalities within the county) with an LGPAC-approved countywide growth plan will receive an additional 5% score in any evaluation formula for allocation of

- private activity bonding authority,
- Community Development Block Grants,
- Tennessee Industrial Infrastructure grants,
- Industrial Training Service grants,
- state revolving fund loans for water and wastewater systems, and
- HOUSE and HOME grants and some other Tennessee Housing Development Agency programs.

[18] Tennessee Code Annotated, Section 6-58-109.

Flow Chart of Growth Plan Development under Public Chapter 1101



II. Annexation

The Act governed annexation both before and after adoption of the required countywide growth plan.[19] After the growth plan was approved by LGPAC, a municipality could use any statutory method to annex property within its UGB, including annexation by ordinance and referendum. However, as the 108th General Assembly convened in 2013, concerns from citizen groups prompted debate over whether changes should be made to the state's municipal annexation laws, which dated back to 1955. To allow adequate time for proper consideration of the complex issues raised in the debate, the legislature established a moratorium on non-consensual annexations of agricultural and residential property and called for a comprehensive review of state policies related to growth planning and municipal boundary changes. TACIR released its interim report to the legislature in January 2014, comparing and contrasting current and proposed laws in Tennessee with those in other states and recommending extension of the moratorium for another year to allow for further consideration of options presented in the report. That April, the General Assembly enacted Public Chapter 707, Acts of 2014, repealing municipalities' authority for unilateral, nonconsensual annexation, strengthening the annexation moratorium established by Public Chapter 441, Acts of 2013, and instructing the Commission to continue its review of state policies.

Public Chapter 707, Acts of 2014, left the existing referendum method unchanged but added a more formal method for individual owner consent, one that requires consent in writing, something that was not necessary in the past. The Act ensured that after May 15, 2015, municipalities could annex property only with written owner consent or by referendum, and certain agricultural land could only be annexed with written owner consent. Prior law allowed Tennessee cities to annex without consent any area within their urban growth boundary and adjacent to the city limits.

Annexation Within a Municipal Urban Growth Boundary[20]

As a result of changes to the annexation statutes as described above, municipalities may annex new territory located within the UGB by

- written consent of the property owner(s) or
- majority vote in a referendum in the area proposed for annexation.

[19] Tennessee Code Annotated, Section 6-58-108, repealed 2015.
[20] Tennessee Code Annotated, Section 6-58-111(a) and (b).

Annexation Outside a Municipal Urban Growth Boundary[21]

A municipality may annex territory outside the UGB by

- obtaining approval of an amendment to the UGB to include the new territory using the same methods involved in the initial approval of a growth plan, and then annexing the territory by resolution with written consent of the property owner(s);
- referendum under Tennessee Code Annotated Section 6-51-104; or
- referendum after annexing a tract of land without reconvening the coordinating committee or approval from the county or any other municipality if
  (1) the tract is contiguous to a tract of land that has the same owner and has already been annexed by the municipality;
  (2) the tract is being provided water and sewer services; and
  (3) the owner of the tract, by notarized petition, consents to being included within the urban growth boundaries of the municipality. An amendment of a growth plan, including any boundary it contains, requires the same steps described above for the initial adoption of the plan.[22]

A new wrinkle was added to the annexation laws by the 110th General Assembly in 2017: non-contiguous annexation.[23] Prior to this law, any territory annexed had to be contiguous or adjoining the existing boundary of the municipality at some point. The new law permits municipalities to annex territory that is not contiguous under the following conditions:

- the territory is entirely within the municipality's UGB;
- it is to be used for industrial, commercial, or future residential development purposes; or
- it is owned by one or more governmental entities.

The new law includes the following requirements:

- A resolution for annexation shall be ratified only with written consent of the property owner(s).
- The resolution shall include the plan of services adopted under Tennessee Code Annotated, Section 6-51-102, which shall be prepared by the municipality in cooperation with the county in which the territory is located.
- The municipality and county shall enter into an interlocal agreement pursuant to Tennessee Code Annotated, Section 5-1-

[21] Tennessee Code Annotated, Section 6-58-111(c).
[22] Tennessee Code Annotated, Section 6-58-118.
[23] Public Chapter 399, Acts of 2017.

113, to provide emergency services for any interceding properties and to maintain roads and bridges comprising the primary route to the area thus annexed as the municipality and county deem necessary.

Challenges to Annexation

Any challenges to annexation by ordinance following the adoption or amendment of the growth plan are heard by the judge without a jury, and the burden of proof is on the petitioner to show that the annexation is unreasonable.[24] However, Tennessee's annexation law makes no provision for court review of an annexation accomplished by referendum. It is said in Vicars v. Kingsport, 659 S.W.2d 367 (Tenn. Ct. App. 1983), that absent some claim of constitutional infirmities in the annexation, it is not subject to judicial review and that no equal protection or due process argument can be made when the statute is properly followed.

Tennessee Code Annotated, Section 8-3-102 authorizes a person who is uncertain if their property has been annexed to file a complaint against the city with the Secretary of State to determine whether the person's property has been annexed by a municipality. The Secretary of State shall appoint an administrative judge who shall set an administrative hearing on the matter. If the final order includes a finding that the property has not been annexed, any property taxes paid by the owner to the municipality shall be reimbursed to the owner, with interest.

III. Plan of Services in Annexed Areas[25]

The governing body of the annexing municipality must adopt a plan of services, which outlines the services to be provided and their timing. The plan of services must be "reasonable" with respect to both the scope of services to be delivered and the implementation schedule. The implementation schedule must provide for delivery of services in the new territory that are comparable to those provided to all citizens of the municipality. The plan must address all of the services below, regardless of whether or not the city currently provides those services.

Plan of Services Requirements

The plan of services "shall include"

- police and fire protection,
- water, electrical, and sanitary sewer services,
- road and street construction and repair,

[24] Tennessee Code Annotated, Section 6-58-111(a) and (b).
[25] Tennessee Code Annotated, Section 6-51-102.

- recreational facilities and programs,
- street lighting, and
- zoning services.

The plan of services may exclude services that are provided by another public or private agency, other than those services provided by the county. The city may include services in addition to those required.

Before adoption, the plan of services must be submitted to the city's planning commission (if the city has a planning commission), which must issue a written report on the plan within 90 days. In addition, the city governing body is required to hold a public hearing on the plan of services after giving 15 days' written notice of the hearing in a newspaper of general circulation in the city. The notice must include the locations where at least three copies of the plan of services are available for public inspection. If the city is in default on any other plan of services, it may not annex any other territory.

If a city operates a school system, any students annexed into the city from a neighboring school system may continue to attend their present school until the beginning of the next school year, unless the two school systems agree otherwise.

The municipality shall cause a copy of the plan of services to be forwarded to the county mayor in whose county the territory being annexed is located. After receiving the notice from the municipality, the county mayor shall notify the appropriate departments within the county regarding the information received from the municipality.

Progress Report[26]

Six months after the plan is adopted and then annually until it is fully implemented, the city must publish a report on the progress it has made in fulfilling the plan and must hold a public hearing on the report. These reporting and hearing requirements, which are also contained in previous law, apply to any plan of services "which is not fully implemented." Any owner of property in an annexed area to which the plan applies may file a suit for mandamus to compel the legislative body to comply with the reporting and hearing requirements.

Amending a Plan of Services

A plan of services can be amended under limited conditions:

[26] Tennessee Code Annotated Section 6-51-108.

(1) in the event of an occurrence such as a natural disaster, an act of war, terrorism, or other unforeseen circumstances beyond the control of city;
(2) when the amendment does not substantially or materially decrease the type or the level of services, or delay the provision of services; or
(3) when the amendment has received approval in writing of a majority of the property owners by parcel in the annexed area.

Before any amendment, the city must hold a public hearing, giving at least 15 days' notice.

Court Review of the Plan of Services

If the court finds the plan of services to be unreasonable or outside the city's powers conferred by law, the city has 30 days to submit a revised plan of services. However, the city can by motion request to abandon the plan of services. In that case, it cannot annex by ordinance any part of the territory originally proposed for annexation for 24 months. The city cannot annex any territory by ordinance where the court has issued a decision adverse to a plan of services until the court determines the city is in compliance. The city also may not annex any new territory if it is in default on any prior plan of services.

Enforcement of the Plan of Services

Any aggrieved property owner can sue the city to enforce the plan of services after 180 days following the date the annexation takes effect. A property owner can also challenge the legality of an amendment to the plan of services within 30 days following the adoption of the amendment. If an amendment is found unlawful, it is void and the prior plan of services is reinstated. The right to sue ends when the plan of services has been fulfilled.

The court has the duty to issue a writ of mandamus to compel the city to comply with the plan of services, to establish written timetables for the provision of services, and to enjoin the city from further annexations until the services called for in the plan of services have been provided to its satisfaction. If the court determines that the municipality has failed without cause to comply with the plan of services or has unlawfully amended its plan of services, the court shall assess the costs of the suit against the municipality.

IV. Incorporation of New Municipalities[27]

New cities may only be incorporated in a PGA.[28] The law does not change the procedures for filing an incorporation petition as prescribed by the appropriate general law charter. The county legislative body must approve the corporate limits and the new UGB of the proposed city before the incorporation election can be held.[29]

Conditions that Apply to All Newly Incorporated Cities

All newly-incorporated cities, including those incorporated under special provisions of the act, must meet the following conditions:

(1) Property Tax Required[30]

All new cities must levy a property tax that raises revenue at least equal to the annual revenues the city receives from state-shared taxes. The tax must be levied and collected before the city receives state shared taxes.

(2) County Revenue Held Harmless[31]

The county continues to receive situs-based wholesale beer and local option sales tax revenue from businesses in the newly-incorporated area for 15 years in the same manner as if the territory had been annexed. (See Section V, Tax Revenue Implications of Annexation, below.) The county continues to receive all other situs-based state shared tax revenues until the beginning of the next fiscal year following the incorporation.

(3) Plan of Services[32]

The plan of services for a new incorporation is similar to the binding enforceable plan required under the act when a city annexes territory. Existing general law provisions previously required a plan for delivering services to be included with the incorporation proposal; these provisions have not been changed. The plan must be adopted by ordinance within six months of incorporation, and before adoption, it must be published in a newspaper of general circulation in the city. Citizens in the newly incorporated municipality have all the rights and remedies prescribed by Tennessee Code Annotated, Section 6-51-108, for plans of services for annexed areas, including

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[27] Tennessee Code Annotated, Section 6-58-112.
[28] Tennessee Code Annotated, Section 6-58-112(a)(1).
[29] Tennessee Code Annotated, Section 6-58-112(c)(1).
[30] Tennessee Code Annotated, Section 6-58-112(b).
[31] Tennessee Code Annotated, Section 6-51-115.
[32] Tennessee Code Annotated, Section 6-58-112(c)(2).

(a) the annual publication in a newspaper of general circulation in the city of a report on progress during the last year toward fulfilling the plan of services, as well as any proposed changes;
(b) a public hearing on the report by the city governing body; and
(c) ability to obtain a writ of mandamus to compel the city to complete items (a) and (b).

(4) Simplified Petition for Incorporation

Tennessee Code Annotated, Section 6-1-202, was changed to clarify and simplify the petition for incorporation. The most significant change was that the petition must include the list of *registered voters* in the territory proposed for incorporation.

V. Tax Revenue Implications of Annexation[33]

For 15 years following any annexation or new incorporation, the county is "held harmless" for the loss of wholesale beer and local option sales tax revenues that would otherwise have gone to the city under prior law. This dollar amount for any annexed tax-generating property is referred to as "annexation date revenue." Any increases over this amount are distributed to the annexing municipality. (Note that these provisions do not affect the distribution of the first half of the local option sales tax, which continues to go to education funding.)

A. Formula for Distribution

The annexation date revenue is calculated as follows:

- If the business operated for a full 12 months before annexation, the county receives the monthly average for that period.
- If the business operated for at least one full month but fewer than 12 months before annexation, the county receives the monthly average of all full months of operation.
- If the business operated for less than a month before annexation, or if it began operation within three months of annexation, then the revenue for the first three months is averaged, and the county receives that amount.
- When the amount of local option sales tax produced by businesses in the annexed area cannot be determined from sales tax returns filed by the businesses, the commissioner may determine the amount to be distributed to the county over the fifteen-year period based on the best information available. For this purpose, the commissioner may use information obtained from business tax

[33] Tennessee Code Annotated Section 6-51-115.

returns or obtain additional information from the businesses involved.

B. Exceptions

- If the wholesale beer tax or the local option sales tax is repealed, revenue amounts from the repealed tax will end.
- If the General Assembly changes the formula for the distribution of wholesale beer or local option sales tax revenues, thereby reducing the amounts for local governments, the annexation date revenue will be reduced proportionally.
- A county may voluntarily waive rights to the revenue.
- If a business closes or relocates, thereby reducing tax revenues, the city may petition to the Department of Revenue no more than once annually for a proportional reduction.

C. County Responsibility

Upon annexation, each county is responsible for identifying tax-producing properties and providing a list of them to the Department of Revenue.

VI. Miscellaneous Provisions

A. Consolidation of City and County Governments[34]

The Act allows the creation of a consolidation commission upon the petition of 10% of the county's voters. (Previous law required the county and principal city to call for a consolidation commission.) The Act also specifies procedures for appointment of the consolidation commission.

B. Zoning Implications

(1) Restrictions on Municipal Planning Commission[35]

(a) Municipal Planning Commissions with Extra-Territorial Zoning Authority

Municipal planning commissions that have been designated as the regional planning commission (and therefore have zoning authority beyond their city limits under Tennessee Code Annotated, Section 13-3-102) retain this extra-territorial zoning authority; however, once the growth plan has been adopted, the city may not exercise planning and zoning authority beyond its UGB, even with this additional authority.

[34] Tennessee Code Annotated, Section 7-2-101.
[35] Tennessee Code Annotated, Section 6-58-106(d).

(b) Municipal Planning Commissions without Extra-Territorial Zoning Authority

A second method by which a city may establish zoning and subdivision regulations beyond its corporate limits (up to its UGB) is to obtain the approval of the county legislative body. Without such approval or the designation as a regional planning commission (described above), a city has no authority to zone beyond its city limits. The city is not authorized to zone beyond its UGB in either circumstance.

(2) Restrictions on City Zoning of Agricultural Land[36]

A city cannot use its zoning power to interfere with the use of land that was being used for agricultural purposes.

(3) County Zoning in UGBs, PGAs, and RAs[37]

Under the Act, counties can "establish separate zoning regulations within a PGA, for territory within a UGB or within a RA." Since existing law permits cities to zone within their own boundaries, this provision applies in the UGB only to territory outside of municipal limits.

(4) County Services in Planned Growth Areas (PGAs)[38]

Counties can provide or contract for services in a PGA and set a separate tax rate for services. This provision evidently includes all types of governmental and proprietary services, including utilities.

C. Joint Economic and Community Development Board[39]

(1) Establishment and Purpose[40]

A joint economic and community development board must be established by interlocal agreement under Tennessee Code Annotated, Section 5-1-113. The purpose of the board is to foster communication among governmental entities, industry, and private citizens on economic and community development.

(2) Membership and Terms[41]

The board is composed of representatives of local governments, private citizens, industry, and business. Membership is determined by the

[36] Tennessee Code Annotated, Section 6-54-126.
[37] Tennessee Code Annotated, Section 6-58-112(a)(3).
[38] Tennessee Code Annotated, Section 6-58-112(a)(2).
[39] Tennessee Code Annotated, Section 6-58-114.
[40] Tennessee Code Annotated, Section 6-58-114(b).
[41] Tennessee Code Annotated, Section 6-58-114(c).

interlocal agreement but must include the county mayor/executive, the mayor or city manager of ". . . each city lying within the county," and one landowner. In counties with multiple small municipalities, the interlocal agreement may provide for rotating terms among the smaller cities. Terms are to be staggered, except for the elected officials, whose terms are to correspond with their terms of elected office. No term can exceed four years.

(3) Executive Committee[42]

The board selects an executive committee, but it must include the county mayor/executive and the mayors or city managers of the "larger municipalities in the county."

(4) Meetings[43]

The board must meet at least four times a year, and the executive committee must meet at least four times a year.

(5) Funding[44]

All local governments represented on the board fund the board's activities according to a formula set out in the act. The formula uses the population in the federal decennial census, as adjusted by any special censuses occurring at least five years after the certification of the federal census results. The board may also accept donations, grants, and contracts from any source. Sanctions may be levied against any local government that fails to fund their share of the budget. The board may prevent a local government from voting at meetings and from serving as an officer of the board.

D. Monitoring and Reporting: Role of the Tennessee Advisory Commission on Intergovernmental Relations[45]

TACIR monitors the implementation of the act, periodically reporting its findings and recommendations to the General Assembly. TACIR may call upon state agencies, as well as local governmental officials and organizations, for cooperation, information, and assistance.

[42] Tennessee Code Annotated, Section 6-58-114(d) and (e).
[43] Tennessee Code Annotated, Section 6-58-114(f).
[44] Tennessee Code Annotated, Section 6-58-114(g).
[45] Tennessee Code Annotated, Section 6-58-113.

Appendix A: Recommended Minimum Requirements to Comply with Tennessee Code Annotated, Section 6-58-106

INTRODUCTION

Minimum Planning Requirements of Public Chapter 1101

Tennessee Code Annotated, Section 6-58-104(a)(2) of Public Chapter 1101 requires that urban growth boundaries, planned growth areas, and rural areas recommended by the coordinating committee must all conform to the provisions of Tennessee Code Annotated, Section 6-58-106. In this section, local governments are directed to identify certain characteristics or attributes of an area before that area receives its recommended designation. The purpose of the following is to provide information that will assist local governments in carrying out their respective responsibilities as required by the Act. This additional information has been arranged in basic "steps," with each step containing elements that must be considered in the process of identifying and recommending urban growth boundaries, planned growth areas, and rural areas.

URBAN GROWTH BOUNDARY

Responsibility of the Municipal Government

Step 1. Existing Land Use Inventory and Analysis Including Land Capability/Suitability

The first step in determining an urban growth boundary is an inventory and analysis, which includes a discussion of the following areas:

- land development capability/suitability based on physiographic limitations, including topography, bodies of water and flood hazard, karst geology, regulatory wetlands, etc.;
- unimproved and improved vacant land;
- existing residential, commercial, and industrial land;
- land devoted to existing or proposed transportation systems; and
- existing land devoted to agricultural, forest, recreation and wildlife management uses.

Included in this first step is the preparation of a report that describes the need for additional land outside the municipality for high-density development after the available land within the municipality has been used, reused, or redeveloped, and that also describes the likely long term effects of urban expansion on agricultural, forested, recreational, and wildlife management lands.

Step 2. Urban Public Services Inventory and Analysis

In addition to the land use analysis in Step 1, identification of an urban growth boundary also requires an inventory and analysis of services, which should include the following:

- police protection,
- fire protection,
- water service,
- electrical service,
- sanitary sewer service,

- solid waste collection,
- road and street construction and repair,
- recreational facilities and programs,
- street lighting, and
- zoning services.

The first ten items are identified in PC 1101 as the minimum, but other services a municipality provides would apply.

The municipality should also prepare a report that identifies the current costs and projected costs for urban services and infrastructure required to accommodate the full potential of complete development within the municipality and throughout the territory under consideration for inclusion within the Urban Growth Boundary.

Step 3. Identification of Territory for Urban Growth Boundary

The data and analysis derived from Steps 1 and 2, used in conjunction with the UT population projections, are used to identify territory that

(1) is reasonably compact yet sufficiently large to accommodate residential and non-residential growth projected to occur in twenty years;
(2) is contiguous to the existing municipal corporate boundary;
(3) a reasonable person, based upon historical experience, economic trends, and topographical characteristics, would project as the likely site of high-density growth over the next twenty years;
(4) the municipality is better able and prepared to provide efficient and effective urban services; and
(5) reflects the municipality's duty to facilitate full development of resources inside the municipality, and to manage and control urban expansion outside the municipality while taking into account the effect on agricultural lands, forests, recreational areas, and wildlife management areas.

PLANNED GROWTH AREA

Responsibility of the County Government

Step 1. Existing Land Use Inventory and Analysis Including Land Capability/Suitability

The first step in the determination of a planned growth area (PGA) is a land use inventory and analysis, which includes a discussion of the following factors:

- land development capability/suitability based on physiographic limitations, including topography, bodies of water and flood hazard, karst geology, regulatory wetlands, etc.;
- unimproved and improved vacant land;
- existing residential, commercial, and industrial land;
- land devoted to existing or proposed transportation systems; and
- existing land devoted to agricultural, forest, recreation, and wildlife management uses.

Also included is the preparation of a report that describes the need for additional land outside all municipalities in the county for high-density development after the available land within the municipalities has been used, reused, or redeveloped, that determines the likelihood that proposed PGA's will eventually incorporate

or be annexed, and that describes the likely long term effects of urban expansion on agricultural, forested, recreational, and wildlife management lands within the PGA.

Step 2. Urban Public Services Inventory and Analysis

In addition to the consideration of land use in Step 1, the process of identifying a planned growth area also requires an inventory and analysis of services, which should include the following:

- police protection,
- fire protection,
- water service,
- electrical service,
- sanitary sewer service,
- solid waste collection,
- road and street construction and repair,
- recreational facilities and programs,
- street lighting, and
- zoning services.

The first ten items are the "urban type" services identified, and other urban services may apply.

This step also includes the preparation of a report that identifies the current costs and projected costs for urban services and infrastructure required to accommodate the full potential of complete development throughout the territory under consideration for inclusion within the PGA, including the feasibility of recouping cost through fees or taxes within the PGA.

Step 3. Identification of Territory for Planned Growth Area

The data and analysis derived from Steps 1 and 2, used in conjunction with the UT population projections, are used to identify territory that

(1) is reasonably compact yet sufficiently large to accommodate residential and non-residential growth projected to occur in twenty years;
(2) is not within the existing boundaries of any municipality;
(3) a reasonable person, based upon historical experience, economic trends, and topographical characteristics, would project as the likely site of high or moderate density growth over the next twenty years;
(4) identifies territory that is not contained within municipal urban growth boundaries; and
(5) reflects the county's duty to manage and control urban growth while taking into account the effect on agricultural lands, forests, recreational areas, and wildlife management areas.

RURAL AREA

Responsibility of the County Government

Step 1. Identification of Rural Area

Along with the identification of planned growth areas, the county is to identify rural areas by defining territory that

(1) is not within urban growth boundaries;
(2) is not within planned growth areas;
(3) is to be preserved as agricultural, forest, recreational, wildlife management, or uses other than high-density commercial, industrial, or residential development over the next twenty years; and
(4) reflects the county's duty to manage and control urban growth while taking into account the effect on agricultural lands, forests, recreational areas, and wildlife management areas.