

**Remarks of Mayor David Gordon, City of Covington, Tennessee  
Tennessee Advisory Commission on Intergovernmental Relations  
August 22, 2013**

Mr. Chairman and Commissioners, good morning. My name is David Gordon and I am the mayor of the City of Covington. Thank you for this opportunity to share some thoughts on these important matters.

A number of bills seeking to amend Public Chapter 1101 were referred to TACIR for incorporation in your report to the General Assembly.

We have analyzed each of these bills and prepared written comments, which we will provide for your review. However, out of respect for your time and recognizing the task before you today and over the next few months, I will limit my remarks to the current moratorium and proposed referendum as their effects are essentially the same.

Before I get to the substance of my remarks, I want to mention that questions have arisen as a result of the lack of clarity in the language of the moratorium, itself. For example, one of the key components of the moratorium is its prohibition on annexation of any land “used primarily for residential or agricultural purposes.” Does this mean its designated use as delineated in zoning or its active use? What constitutes a “primary use” of land? Does the use have to exist over the entirety of the territory to be annexed or is it sufficient that it exists on any portion of the territory to be annexed?

Another example is found in the phrasing associated with the potential for exception afforded an annexation ordinance that was “formally initiated,” prior to April 15, 2013. There are many steps and stages relating to the process of annexation. Which of these steps or stages constitutes “formal initiation” of an ordinance?

These questions merit attention and we will provide these and other questions regarding the language of the moratorium to the Commission and request that they be considered for inclusion in your review.

Now, I will address some of the more troubling aspects of promoting the policy of substituting the moratorium or referendum for the law that governed growth in the state for nearly 15 years.

Mr. Fleming mentioned the impact of the flexibility afforded under Public Chapter 1101 as well as the local prerogative granted under the law.

This combination of flexibility and local prerogative found in the law produced one of its greatest benefits... CERTAINTY.

Certainty for counties, certainty for municipalities, and certainty for all the residents of the county whether they reside in a municipality or in the unincorporated areas.

This certainty has enabled local governments across this state to be proactive in their approach to growth.

As a result, the flawed practices of the past have largely been left in the past, just as the authors and supporters of 1101 intended.

And we have successfully created an environment that promotes and facilitates responsible, planned and intentional growth, or what the law's authors described as "orderly growth."

It is an irrefutable fact that the most efficient and cost effective time to address growth is before it occurs.

It is far more efficient and less costly to ensure the location of proper facilities for water, sewer, storm water and fire protection before land is fully developed.

Similarly, it is more efficient and less costly to plan and finance streets and other necessary infrastructure in advance of development.

It is also more efficient and less costly to establish basic life-saving building and development standards that promote a safe and healthy environment for property owners and residents before all the homes and businesses have been built.

And it is more efficient and less costly to plan for the delivery of services in advance of development.

For these reasons, municipalities annex territory within their Urban Growth Boundary, consistent with the intent of the law and the plan that has been duly adopted by the local governing bodies of each county.

And it is for these reasons that municipalities have invested in capital projects, facilities, streets and other infrastructure and provided services to those areas where they are afforded the autonomy to annex under the growth plan.

Again, this manifestation of responsible planning and orderly growth is directly attributable to the certainty that allows a proactive approach to growth.

A certainty that is due solely to the credibility and existence of a duly adopted local plan and the autonomy granted a municipality to act on that plan within the processes and rules spelled out in the law.

However, if the General Assembly were to choose to permanently substitute the current moratorium or any of the other referendum proposals for the exclusive authority granted municipalities under PC1101, then the benefits of orderly growth will be greatly diminished. Such a decision would also likely hasten a return to some of the very practices and circumstances the law was enacted to preclude.

A referendum, even a qualified or limited referendum, would negate the autonomy afforded under the law. It would also fundamentally alter the processes and rules established under the law; effectively nullifying county growth plans – in spirit if not in form and substance.

Consequently, municipal limits would be largely determined by the unwilling property owners rather than a reasoned approach to development.

The certainty that has empowered a proactive approach to growth would be eliminated, leaving counties, municipalities and their residents shrouded in uncertainty.

It is far less likely that growth would be the byproduct of a responsible, planned and intentional effort. Rather, any growth would likely resemble the unregulated growth most often associated with sprawl.

There would be no assurance that development was occurring in the most efficient and least costly manner.

A municipality would have to question the wisdom of continuing to partner with the county or the state on capital projects outside their existing incorporated border.

It would create the possibility that a municipality's facilities could remain stranded indefinitely in an area that could no longer be incorporated or that those facilities already in place would be in a location from which it no longer made sense to serve those who are included or who wish to be included within the incorporated limits. The likelihood of this occurring will inevitably lead many municipalities to end the practice of providing utilities and services beyond their city limits.

What is to happen in those areas where the municipality elects not to provide services and neither the county nor another governmental or private provider is able to fill the void? When substandard development occurs and harms the character of the area, driving down property values? Or when property owners find themselves with failing septic systems? Or when there is a desire for fire or police protection beyond that currently afforded in their area?

Remember, the city taxpayers will have a choice too. In an era of uncertainty in which infrastructure is established and services provided after development has occurred, there is no assurance that annexation will be an option or that either the property owners or city residents will be willing to incur the associated costs.

And as the justification for the loss of the many benefits derived under the law, advocates for this change counter that a referendum means that the people get to decide whether their land is annexed rather than an elected body.

Thus, if an individual wants to be annexed, then they may be annexed. Conversely, if an owner does not want their property to be annexed, then it will not be annexed.

Sounds appealing, but is it accurate?

The supporters of the current moratorium seem to share a common belief that anyone that requests to be annexed by a municipality will be granted that opportunity. This is simply not the case.

First, the law requires that any territory to be annexed must touch the city limits. In addition, the courts have taken a very disapproving view of the utilization of strip, corridor or finger annexations because of their affect on the physical border of a municipality as well as their association with the practice of cherry-picking only the most attractive areas and the existence of a disparate level of services available to property owners within close proximity.

Consider two likely hypotheticals: First, assume a property owner is requesting to be annexed for the purposes of developing land for residential or commercial activity. Second, assume a group of property owners residing in a subdivision decide they want to be annexed in order to receive sewer and city services.

Now, let's further assume that the properties presented in the hypotheticals are not contiguous to the city limits.

Under either scenario, the city and requesting properties would likely be confronted by some very difficult circumstances and facts under the current moratorium should the owners of the property occupying the space between the requesting owners and the city limits not want to be annexed.

Absent exclusive authority to annex within its urban growth boundary, the city would have no means of reaching the requesting properties, other than a highly suspect corridor annexation. Even if the city were willing to risk inviting a likely legal challenge, the issues associated with bypassing properties and the obstacles it would present with respect to providing police and fire protection and the viability of extending utilities and maintaining streets and other infrastructure would remain. As such, annexation would be unlikely.

Therefore, the mere fact that owners opposed to annexation are in closer proximity to the city limits than those requesting annexation would preclude the annexation. This would not be the case under Public Chapter 1101 as the city could annex all of the properties by ordinance.

The same is true with respect to a referendum in which the owners that are unwilling to be annexed are equal to or greater in number than those owners desiring to be annexed. In this case, the owners in opposition would prevent the owners requesting annexation from realizing their desires.

| As these hypotheticals illustrate, neither the moratorium nor a referendum is the cure all that it is perceived to be. Whether you are operating under PC1101 with its exclusive authority to annex by ordinance or under the moratorium or referendum, someone loses. Under a city-initiated annexation by ordinance, it is the unwilling owners. Under the moratorium or the referendum, the willing property owners are the losers. Thus, the choice between city-initiated annexation and the moratorium or referendum constitutes a determination as to who wins and who loses.

With a city-initiated annexation there are the restrictions of the law and its process, including the county growth plan, public meetings, and the requirement that an annexation be approved by a vote of elected representatives in a public session. And there is the opportunity to challenge the validity of the annexation in court. Therefore, city-initiated annexations under 1101, at least offer the prospect that the annexation is consistent with the interests of the community as a whole. While under the moratorium or referendum, annexations will be determined solely by individual preferences and self-interest.

Many of the supporters of the current moratorium also seem to share a common belief that a municipality is free to annex any territory other than that which is used primarily for residential or agricultural purposes by ordinance. Again, this belief presumes that all such properties are either contiguous to the city limits or that there are not any properties that are being utilized for residential or agricultural purposes between the property to be annexed and the city limits.

If the property to be annexed were not contiguous and there were properties being utilized for residential or agriculture purposes occupying the space between it and the city limits, then that annexation could only be executed by referendum.

Another issue to consider regarding the moratorium or referendum is the management of the pockets of unincorporated areas that are either completely or predominantly within the incorporated limits, commonly referred to as doughnut holes. Similar to corridor annexations, doughnut holes create confusion and inequity, add to the cost of providing services, and pose challenges for emergency responders.

Many of the doughnut holes that existed prior to enactment of Public Chapter 1101 have been closed. Moreover, very few new doughnut holes have been created following enactment. The few that have been created are often the result of a municipality's attempt to either exclude or work around those owners that opposed proposed annexations. Under Public Chapter 1101, a city has the assurance that when it becomes necessary or as it is prudent, it may annex these areas and close the doughnut hole.

However, with the moratorium or referendum, it is very likely that most of these doughnut holes will remain indefinitely.

Mr. Chairman, that concludes my remarks. Thank you for your consideration.