

***IMPLEMENTATION OF TENNESSEE'S
GROWTH POLICY ACT***

**A Staff Information Report on the
History of Public Chapter 1101 and the
Early Stages of its Implementation**

by the staff of the

**Tennessee Advisory Commission
on Intergovernmental Relations**

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I. BACKGROUND– THE ROAD TO PUBLIC CHAPTER 1101

A. A BRIEF HISTORY OF ANNEXATION

The history of annexation in Tennessee is one of evolutionary change. Annexation has evolved from annexation by private act, to annexation by general law, and finally, through Public Chapter 1101, to annexation by general law within the framework of comprehensive growth policy. *Annexation Issues in Tennessee*, a TACIR Commission Report to the 99th General Assembly, published in 1995, documented the history of the first two phases of annexation in Tennessee and provided the orientation required to arrive at the current phase.

In *Annexation Issues in Tennessee*, TACIR seems to have prophesized the enactment of Public Chapter 1101 by noting that, although not a finding or recommendation of the Commission, it was not unlikely that the General Assembly would some day consider prohibiting annexations not in conformance with long range plans.

Annexation Issues in Tennessee resulted from a directive within the state's Appropriations Act, Public Chapter No. 535, Acts of 1993, for TACIR to conduct a study on municipal annexation. While the Appropriations Act offered no specific guidance on the parameters of the required study, TACIR was able to develop a research plan with the assistance of Commission members, local government advocacy groups, and members of the General Assembly's House State and Local Government Committee. This research plan involved:

- a review of the evolution of Tennessee's annexation statute;
- research of the most important court cases concerning annexation in Tennessee;
- a review of annexation statutes of other states;
- public hearings across the state to garner the views of public officials and concerned citizens; and
- Commission deliberation of resulting issues.¹

The core of the report resulting from this study process was a discussion of the evolution of Tennessee's annexation statute and a review of major points raised during the public hearings.

The Evolution of Tennessee's Annexation Statute

¹ John F. Norman and Harry A. Green, *Annexation Issues in Tennessee: A Report to the 99th General Assembly*, (Nashville, Tennessee Advisory Commission on Intergovernmental Relations, 1995), p. 1.

Annexation, the expansion of a municipality by the extension of its boundaries to include new territory as an integral part of the municipality, has been in existence in the United States since state constitutions were first ratified in the late 1700s. The most often used annexation method in those times was the passage of a private act by a state’s legislature.²

The power to annex was considered a legislative power because, in the American federal system, local governments are legal “creatures of the state, established in accordance with state constitutions and statutes.”³ Another common method to initiate annexation was a petition from land owners living adjacent to and desiring to join the municipality.⁴

A major complaint against annexation by private act was that, at times, the powers of the legislature could be abused. This abuse could take the form of the passage of annexation acts against the wishes of local government officials and citizens.⁵ This fear of abuse was complicated by the increasing urbanization of Tennessee during the two decades following World War II. Tennessee was becoming increasingly more urban, but at the same time traditional core cities were losing much of their economic strength to their suburban fringes.⁶ The resulting economic segregation heightened annexation tension as municipalities eyed their newly urbanized fringes, and those fringes sought ways to resist annexation by their core cities.

Despite these concerns, annexations by private law remained the predominant method of annexation in Tennessee until the General Assembly enacted Public Chapter 113 in 1955. Public Chapter 113 resulted from a 1953 vote by the people of Tennessee for a constitutional amendment requiring that all future changes in municipal boundaries be made under terms of a general statute.

The resulting constitutional clause, Article XI, Section 9, provides in pertinent part that “the General Assembly shall by general law provide the exclusive methods by which municipalities may be created, merged, consolidated and dissolved and by which municipal boundaries may be altered.”⁷ Public Chapter 113 allowed municipalities to annex by either ordinance or referendum. The legislation contained several key features, as follows.

² *Ibid*, p. 3.

³ Quote by Justice John F. Dillon of the Iowa Supreme Court in the 1880s and known as the “Dillon Rule.” Quoted in James A. Maxwell and J. Richard Aronson, *Financing State and Local Governments*, 3rd edition (Washington, D.C.: The Brookings Institution, 1977), p. 11.

⁴ Norman, p. 3.

⁵ *Ibid*.

⁶ *Ibid*, pp. 4-5.

⁷ *Ibid*, p. 5.

- A municipality could annex territory on its own initiative “...when it appears that the property of the municipality and territory will be materially retarded and the safety and welfare of the inhabitants and property endangered...as may be necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole....”
- A territory to be annexed had to be “adjoining” the municipality (no definition for adjoining was included).
- An ordinance could not become operative until thirty days after final passage, allowing *quo warranto*⁸ actions contesting the ordinance.
- Larger municipalities had precedence when two municipalities were attempting to annex the same territory.
- Remedies to an aggrieved instrumentality of the state were limited to arbitration subject to Chancery Court review.⁹

The provisions of Public Chapter 113 generally favored municipal annexation interests. Therefore, it is not surprising that Tennessee experienced a considerable amount of annexation in the two decades following the chapter’s creation. Most of these annexations were by ordinance. This is evident in the fact that between 1955 and 1968 annexation by referendum was used 18 times while annexation by ordinance was used 716 times.¹⁰

The momentum in favor of annexation enjoyed by municipalities shifted by the early 1970s. Suburban residents, county governments and utility districts, working to make annexation more difficult, put pressure on the General Assembly to change the law. The 88th General Assembly responded to this pressure with House Joint Resolution No. 159, which directed the Legislative Council Committee to perform a comprehensive study of annexation. In the final report resulting from this study, the Committee acknowledged that:

- inadequate planning in the urban fringe resulted in poor services and threats to health and safety;
- inadequate planning in the urban fringe promoted a duplication of facilities and a waste of taxpayer money;
- a proper balance between the interests of the municipality and the fringe is a necessity; and
- basic to the adjustment of boundaries is determining who will decide– who should control the process.¹¹

⁸ A *quo warranto* suit allows the plaintiff to contest the validity of an annexation on the ground that it reasonably may not be necessary to protect the safety and welfare of either the municipality or the area to be annexed.

⁹ Norman, p. 5.

¹⁰ Ibid, p. 7.

¹¹ Ibid, pp. 8-9.

Responding to the report of the Legislative Council Committee, the General Assembly, in 1974, passed Public Chapter 753. This chapter, the first major revision to Public Chapter 113, made several major changes, as follows.

- A [municipal] plan of service was required to include elements pertaining to police and fire protection, water and electrical services, sewage and waste disposal systems, road construction and repair, and recreational facilities.
- A public hearing on the plan of service had to be properly conducted before a municipality could adopt its plan of service. Notice of the public hearing had to be published in a newspaper of general circulation seven days prior to the hearing.
- The burden of proving the reasonableness of an annexation ordinance was removed from the plaintiff and placed on the municipality.¹²

Municipal interests took exception to the revision placing the burden of proof on the municipality, arguing that this amendment “reverses the presumption of constitutionality of legislation in favor of a presumption of unconstitutionality.”¹³

Another major revision to annexation law in Tennessee occurred in 1979, when the Tennessee Supreme Court held that *quo warranto* plaintiffs were entitled to have the issue of reasonableness submitted to a jury. This decision, in *State ex rel. Moretz v. City of Johnson City* is described as “the most devastating judicial blow to municipal annexation in the history of the act.”¹⁴

Findings from the Public Hearings

Pursuant to the municipal annexation study research plan, TACIR conducted three public hearings on annexation during Fiscal Year 1994. During these hearings, 45 persons presented testimony to special committees composed of TACIR members. Presenters included:

- state, county and municipal officials (including public safety officers);
- business and home owners affiliated with groups opposing present annexation statutes; and
- other private citizens or representatives of organizations with no expressed affiliation with the aforementioned groups.¹⁵

¹² Ibid, p. 9.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid, p. 11.

***Annexation Issues in Tennessee* identified following major issues raised during the public hearings:**

- **the adequacy of the annexation notification process;**
- **the appropriateness of unilateral annexation by ordinance;**
- **the reasonableness of corridor annexation;**
- **the loss of situs/state-shared taxes to county government;**
- **planned growth and annexation policy; and**
- **property tax increases in annexed territory.¹⁶**

These discussions concerning planned growth and annexation policy foreshadowed the development of Public Chapter 1101. Several presenters testified that a problem with the existing annexation law was its lack of a requirement for long-range, strategic planning. They noted that:

- **the lack of a comprehensive plan may inhibit the orderly extension of municipal boundaries and, subsequently, inhibit the orderly and effective delivery of urban services; and**
- **a comprehensive plan allows citizens and policy makers in the city and the county to better judge the effect of an annexation.¹⁷**

Several municipal representatives echoed these sentiments, noting that:

- **long range plans enable the city planning commission and city council to anticipate when developing areas may need to be or want to be part of the municipality;**
- **long range planning sometimes resolves conflicts within the city legislative body concerning services to be delivered to the areas planned for annexation; and**
- **well-planned annexation helps prevent fragmentation of government, the duplication of government services and the proliferation of new municipal governments and special districts.¹⁸**

In summarizing, *Annexation Issues in Tennessee* identified three major questions raised by the public hearings on growth and annexation. These questions are:

1. **should the state require all municipalities to prepare and annually update a comprehensive plan of growth, covering a period of at least the next five years or some other reasonable period as a prerequisite to annexation by any method other than petition;**

¹⁶ Ibid.

¹⁷ Ibid, pp. 18-19.

¹⁸ Ibid, p. 19.

2. should the state require municipalities and counties to work with regional planning bodies on growth plans; and
3. should municipal annexations be tied to a statewide comprehensive urban and regional growth plan?¹⁹

Significance of the TACIR Annexation Study

TACIR adopted only one recommendation as a result of its annexation study. The Commission recommended that those sections of the Tennessee Code Annotated that address the annexation notification procedure should be amended to include the requirement of a map of the area to be annexed.

While this finding is significant, the greater significance of the study is the role it played in bringing Tennessee officials and citizens together to discuss ways to improve the state's often contentious annexation laws. The TACIR study and the discussions it triggered are among the factors that furthered the momentum for change in growth policy among Tennessee's local governments.

B. MOMENTUM FOR CHANGE— PUBLIC CHAPTER 666 OF 1996 AND PUBLIC CHAPTER 98 OF 1997

As evidenced by TACIR's 1995 report on annexation issues in Tennessee, the creation of a new vision for growth policy in Tennessee was decades in the making. Arguably, the momentum for change gathered strength beginning in 1996. The passage of House Bill 2033 and Senate Bill 2710 by the General Assembly in 1996, which became Public Chapter 666 of 1996, started a process that culminated in Public Chapter 1101 of 1998.

Public Chapter 666 allowed for the incorporation of territory containing as few as 225 persons. The Act was defined quite narrowly. The geographic restrictions on incorporation were found to be sufficiently narrow that the Act had applicability to two small communities, one in East Tennessee and one in West Tennessee.

It was under the provisions of Public Chapter 666, that the community of Hickory Withe in Fayette County sought to incorporate. Suit was filed in the Chancery Court of Fayette County by the Town of Oakland against the Fayette County Election Commission, three petitioners for the incorporation of Hickory Withe in Fayette County, and the Attorney General of Tennessee, seeking temporary and permanent injunctions enjoining an election on the incorporation of Hickory Withe. The Fayette County Chancery Court found that no irreparable suffering would be endured by the City of Oakland pending a final ruling, and the Court declined to issue a temporary injunction.

¹⁹ Ibid, p. 20.

On August 1, 1996 an election was held, and the voters of the Hickory Withe area voted overwhelmingly to incorporate. Perhaps in recognition that Public Chapter 666 might be held unconstitutional, in 1997 the General Assembly passed far less restrictive legislation that would allow for the incorporation of certain small communities. With the suit over Public Chapter 666 still pending in the Fayette County Chancery Court, Public Chapter 98 of 1997 became law on April 16, 1997, and was to remain in effect for one year from the date the Act became law.

Like Public Chapter 666, Public Chapter 98 allowed for the incorporation of territories with as few as 225 persons. However, Public Chapter 98 did not contain the narrow geographic classifications found in PC 666, thus, it had application statewide for a period of one year.

The City of Oakland amended its original complaint regarding Public Chapter 666 to include the question of the constitutionality of Public Chapter 98. The Attorney General had already opined that Public Chapter 666 was unconstitutional,²⁰ as there was no rational basis for the narrowly defined population classifications. As such, Public Chapter 666 was not a general law, as is required under the Tennessee Constitution.²¹ The Attorney General declined to defend the suit regarding Public Chapter 666, but did defend Public Chapter 98.

In a decision filed October 30, 1997, the Fayette County Chancery Court found Public Chapter 666 of 1996 to be unconstitutional,²² and adopted the Attorney General's Opinion on PC 666 in full. The Court's decision, authored by Chancellor Tatum, found Public Chapter 98 of 1997 to be unconstitutional on the grounds that the bills that became PC 98 were not considered and passed on three separate days in each house.

In a separate challenge to the constitutionality of Public Chapter 98 of 1997, a Davidson County Chancery Court found the Act to be constitutional.²³ Chancellor Kilcrease considered the consolidated claims for an injunction and declaratory judgment, and adopted the proposed findings of fact and conclusions of law submitted by defendant Brook Thompson, the Tennessee State Election Coordinator and the intervenor defendants David Sanders, David Ranson, James Blount III, and

²⁰ Opinion of the Attorney General No. U96-049.

²¹ Tenn. Const. Art. XI, Sect. 9.

²² Town of Oakland v. McCraw, et al., Chancery Court of Fayette County, No. 11661, filed October 30, 1997.

²³ Tennessee Municipal League v. Brook Thompson, Chancery Court for the Twentieth Judicial District, Davidson County, No. 97-2497-I; also see Tennessee Mun. League v. Thompson, 958 S.W.2d 333 (Tenn. S. Ct. 1997) for a discussion of Chancellor Kilcrease's ruling and subsequent Supreme Court analysis and reversal.

Thomas Leatherwood III. The adopted findings led the Court to conclude that PC 98 was constitutional.

The Tennessee Supreme Court granted an expedited appeal on the Davidson County case, and in a decision dated December 10, 1997, reversed the Davidson County Chancery Court's decision that PC 98 was constitutional. The Tennessee Supreme Court found that the body of the Act was broader than its restrictive caption.

The end product of this extensive legal wrangling was that both Public Chapter 666 and Public Chapter 98 were found to be unconstitutional, and the incorporation elections conducted pursuant to the Acts were nullified.

While the end had come for PC 666 and PC 98, the turmoil surrounding the litigation spilled over into the legislative arena. Ultimately, Lieutenant Governor John S. Wilder, Speaker of the Senate, and House Speaker Jimmy Naifeh declared a commitment to create a comprehensive solution to the problems surrounding annexation and incorporation.

II. THE DEVELOPMENT OF PUBLIC CHAPTER 1101

A. THE AD HOC STUDY COMMITTEE ON ANNEXATION

The Ad Hoc Study Committee on Annexation, established by Lt. Governor Wilder and Speaker Naifeh, worked through the fall of 1997 and into the 1998 legislative session to develop a new vision for growth policy in Tennessee. Under the leadership of its co-chairs, Senator Robert Rochelle and Representative Matt Kisber, the Ad Hoc Committee vigorously pursued a solution that sought to meet the public service demands of commercial and residential growth, while maintaining the character of Tennessee's rural areas.

The two Speakers gave the Ad Hoc Committee a broad charge to study not just annexation and incorporation, but also the very foundation upon which local governance is based. The two Speakers charged the committee with exploring issues surrounding growth policy, to include the following.²⁴

- 1. Whether the citizens in an annexed area should have the right to vote.***
- 2. Whether cities should be encouraged to annex areas solely for the purpose of grabbing revenue.***
- 3. Whether cities should take county tax revenues used to fund schools.***
- 4. What measures should be in place to provide for the orderly growth of our cities.***
- 5. Whether 95 counties are enough or too many; whether 300+ cities are enough or too many.***
- 6. Whether the state should establish incentives for combining city and county governments to form metropolitan governments to deal with competing interests and eliminate the overlapping services provided by cities and counties.***
- 7. Whether the sovereignty of the county and the sovereignty of the city have equal dignity.***

The Speakers appointed the following House and Senate Members to serve on the Ad Hoc Study Committee.

Representative Ed Haley
Representative Ulysses Jones
Representative Matt Kisber
Representative Randy Rinks
Representative Arnold Stulce
Representative Harry Tindell
Representative Page Walley

Senator Ben Atchley
Senator Stephen Cohen
Senator Roscoe Dixon
Senator Tommy Haun
Senator Joe Haynes
Senator Ron Ramsey
Senator Robert Rochelle

²⁴ Undated joint letter issued by Governor Wilder and Speaker Naifeh, available upon request.

From the earliest stages of Ad Hoc Committee hearings, in addressing the questions posed by the Speakers, it became clear that in the effort to balance divergent and competing interests, a piecemeal plan would not be adequate. Rather, a comprehensive and far-reaching framework must simultaneously balance the many interests and needs of Tennesseans.

The first action of the Ad Hoc Study Committee was to gather input from experts and policy stakeholders.²⁵ In public meetings held in October, November, and December of 1997, the Committee charged committee staff, all of whom were on loan from other state agencies, with gathering information on Tennessee's experience with growth issues, as well as other states' experiences. The Committee devoted considerable time to policy stakeholder input, including municipal representatives, county representatives, Farm Bureau representatives, private citizens, and others.

The Ad Hoc Committee was staffed from the existing resources of other state agencies. Coordinating authority for the staff effort was assumed by the Office of Research and Education Accountability, a unit of the State Comptroller's Office. Other entities that contributed staff support include the Tennessee Advisory Commission on Intergovernmental Relations, House Finance Ways and Means Committee, House and Senate State and Local Government Committees, and the Senate Education Committee. The State Department of Revenue also contributed a great deal of staff time in support of the Ad Hoc Study Committee on Annexation.

After the information gathering stage was well underway, the Ad Hoc Committee evolved into a legislative working group. Indeed, the group became much like a legislative think tank, through which policy options were considered, enhanced, and ultimately converted into legislation.

The Ad Hoc Study Committee ultimately conceived of a framework that simultaneously addressed comprehensive statewide growth policy, annexation, incorporation, plans of services, situs tax revenues, and other matters.

After the House and Senate passed similar versions of the framework recommended by the Ad Hoc Committee, a Conference Committee resolved differences between the Senate and House. The Conference Committee report was approved by an overwhelming margin in the Senate and House, and the bill was signed into law by Governor Sundquist on May 19, 1998.

²⁵ See Appendix 1 for a list of presenters that were scheduled to appear before the Ad Hoc Study Committee on Annexation. Provided in Appendix 2 is data on Tennessee annexations for the period from 1980 to 1996. As requested by Ad Hoc Study Committee members, this dataset was provided to the Committee during its deliberations.

Public Chapter 1101 of 1998 provided a growth policy law that is, while comprehensive, fundamentally a local prerogative act. The General Assembly provided the processes by which local governments can determine their own future cooperatively, but did not impose a single statewide solution. Public Chapter 1101 provides sufficient flexibility so that local governments may tailor their growth plans to suit the unique character of their area. Another key feature of the new law is citizen involvement. Before cities and counties recommend growth plan elements, at least two public hearings must be held. A county Coordinating Committee is charged with developing the county's growth plan. Like cities and counties, the Coordinating Committee must hold public hearings before adopting a plan.

B. A BRIEF SUMMARY OF PUBLIC CHAPTER 1101

The following is a brief summary of the growth policy legislation that passed the Tennessee General Assembly in 1998. There are numerous exceptions and limitations in the bill which cannot all be covered in a brief treatment; more detailed information is contained in *Growth Policy, Annexation, and Incorporation Under Public Chapter 1101 of 1998: A Guide for Community Leaders* (A joint publication of the University of Tennessee Institute for Public Service and its agencies [County Technical Assistance Service, Municipal Technical Advisory Service, and Center for Government Training] and the Tennessee Advisory Commission on Intergovernmental Relations) (1998). The brief summary of the Act is divided into the following eight sections:

Countywide Growth Policy– how the required countywide growth plan is created, adopted, and amended, as well as the criteria for setting the various boundaries.

Annexation– how annexation is accomplished before and after completion of the required countywide growth plan, including new limitations and requirements.

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

Incorporation– how incorporation is accomplished before and after Jan. 1, 1999, including the plan of services requirements for newly-incorporated municipalities.

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

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

Monitoring and Reporting- provisions for monitoring and reporting on the implementation of the Act.

Flow Chart of Growth Plan Development- visual portrayal of the growth policy process.

1. Countywide Planning

The law calls for a comprehensive growth policy plan in each county that outlines anticipated development during the next 20 years. The initial draft of the growth plan is formulated by a Coordinating Committee, which has a membership 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, 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 Secretary of State to appoint a dispute resolution panel of administrative law judges to settle the conflict. It is important to note that in the event the county and each city ratify the growth plan recommended by the Coordinating Committee (without the involvement of the administrative law judge panel), then the Local Government Planning Advisory Committee (the state-level entity charged with approving growth plans) is required to approve the growth plan. However, once the administrative law judges are empanelled, the Local Government Planning Advisory Committee is charged with performing a content review of the plan. This is true even if ratification of the plan was eventually achieved with the assistance of the administrative law judges.

The deadline for completing and approving plans is July 1, 2001. Once adopted, a plan may not be amended for three years, except in unusual circumstances. The amendment process is the same as that for initial adoption. A visual portrayal of this process is provided below as "Number 8. Flow Chart of Growth Plan Development."

The plan identifies three distinct types of areas: (1) "urban growth boundaries" (UGBs), regions which contain the corporate limits of a municipality and the adjoining territory where growth is expected; (2) "planned growth areas" (PGAs), compact sections outside incorporated municipalities where growth is expected (if there are such areas in the county), and where new incorporations may occur; (3) "rural areas" (RAs), 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.

2. Annexation

Annexation procedures vary according to whether the annexation takes place before or after the county's growth plan is in place. Before the plan is adopted, a city may annex by referendum or by ordinance. If annexation is by ordinance, the county legislative body may vote to disapprove the action.

After this disapproval vote, the county may file suit contesting the annexation if it is petitioned by a majority of the property owners within the territory. The petition must be filed within 60 days and the suit filed within 90 days of the final passage of the annexation ordinance. The case is tried by a judge without a jury and the burden is on the petitioner to prove that the annexation is unreasonable.

A citizen affected by the annexation also retains the right to challenge the annexation as under previous law. Before adoption of the growth plan, corridor annexations are generally prohibited unless the city also annexes all parcels on one side of the corridor, obtains consent of the county legislative body, or annexes by referendum.

After the growth plan is adopted, a city may use any statutory method to annex property within its UGB, including annexation by ordinance and referendum. Outside the UGB a city may annex by referendum or by amending its UGB (through the Coordinating Committee) to include the new territory.

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 after the adoption 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.

A city may annex upon its own initiative only territory within the county in which the city hall is located, with three main exceptions: (1) at least 7 percent of the city's population was located in the second county on November 25, 1997; (2) the county legislative body in the second county approves the annexation; or (3) the city provided sewer service to 100 or more customers on January 1, 1998. These restrictions do not apply to annexation by referendum.

3. Plan Of Services

For any area to be annexed, a municipality must formulate a plan of services that addresses police and fire protection; water, electrical, and sanitary sewer service; street construction and repair; recreation; street lighting; and zoning. 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 which are comparable to those delivered to other citizens of the community. Amendments are allowed only if the changes are not material, if they are necessary because of reasonably unforeseen circumstances, or if they are approved by majority of property owners.

Counties have standing to challenge the reasonableness of the plan before the growth plan is adopted; after adoption, the county has standing only if it is petitioned by a majority of the landowners in the annexed area. 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 apply to any plan of services which was not finalized by November 25, 1997.

4. Incorporation

Before January 1, 1999, new cities may be incorporated if they meet 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, 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 continues 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.

5. 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.

6. Miscellaneous Provisions

There are several sections of the law which affect zoning regulations: (1) Even if a city has received extra-territorial zoning authority under *Tennessee Code Annotated* Title 13, it may not enact zoning or planning regulations beyond its UGB. If it has not been granted this authority, it may nevertheless enact zoning provisions outside its city limits (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 (UGBs, PGAs, and RAs).

The law requires establishment of a joint economic and community development board to foster communications among all sectors of the community. The law also allows the creation of a consolidation commission upon petition of 10 percent of the county's voters (prior law required the county and principal city to call for a commission). It also prohibits establishment of any new city school systems.

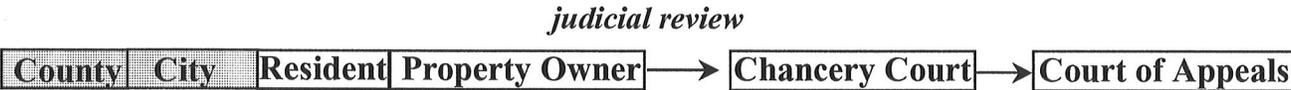
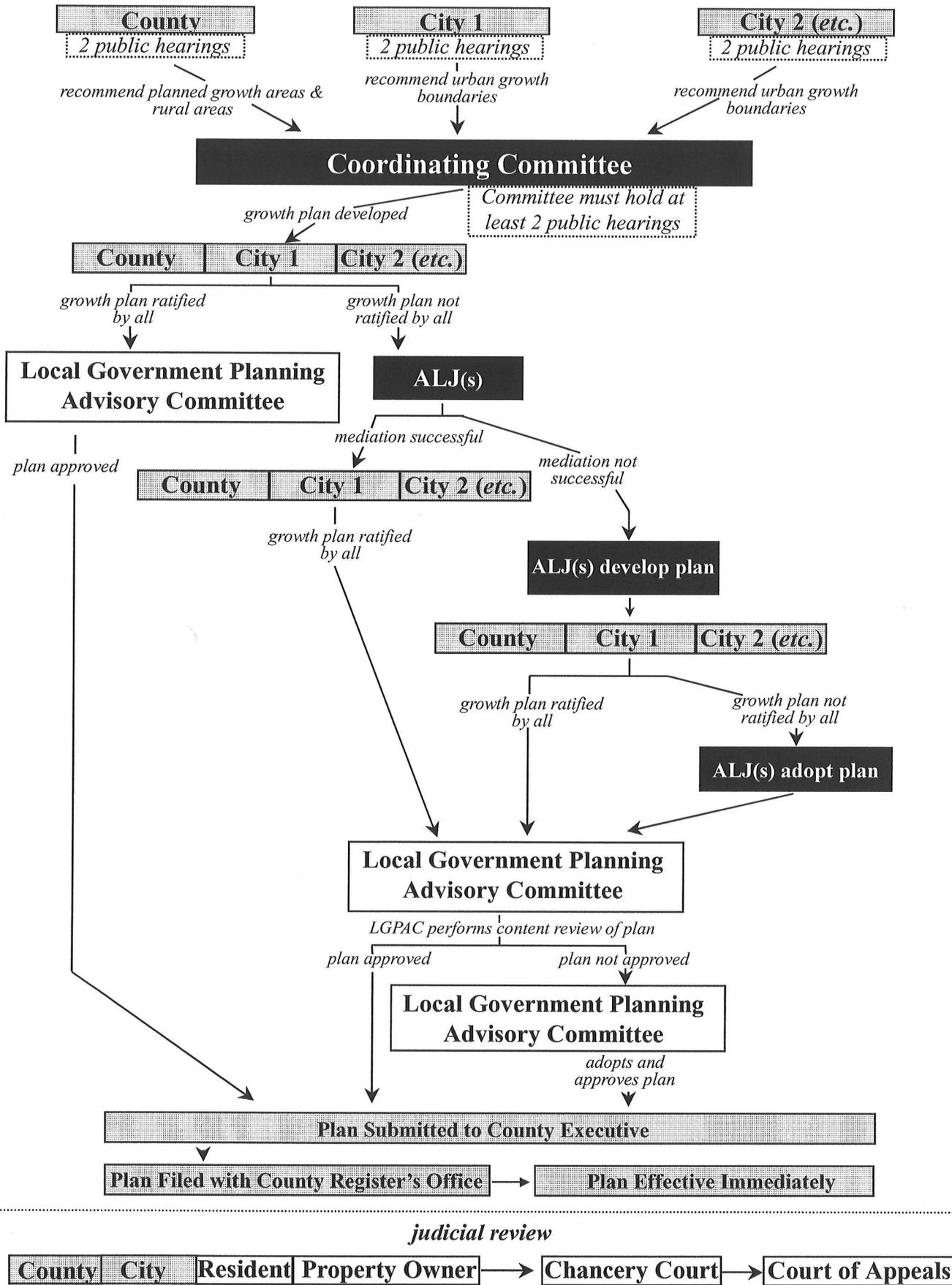
7. Monitoring and Reporting

The Tennessee Advisory Commission on Intergovernmental Relations is charged with monitoring the implementation of Public Chapter 1101 and reporting its findings and recommendations to the General Assembly.

8. Flow Chart of Growth Plan Development

Depending upon the level of cooperation and agreement on the components of a proposed growth plan, the process for approval may be very simple, or rather complex. A working group of the Implementation Steering Committee for Public Chapter 1101 developed a road map to growth policy under public chapter 1101, which is included as Appendix 3. Appendix 4 provides a synopsis of the planning requirements contained in Public Chapter 1101 as such requirements are interpreted by the Implementation Steering Committee. To assist community leaders in understanding some of the more complex processes involved in the development of a growth plan, TACIR staff developed a flow chart depicting the alternate “paths” that a county may follow as it moves toward growth plan approval (see next page).

Flow Chart of Growth Plan Development under Public Chapter 1101



III. IMPLEMENTATION DEVELOPMENTS AND PROGRESS

A. IMPLEMENTATION STEERING COMMITTEE

In order to facilitate consistent statewide application of this Act and to maximize the deployment of limited technical assistance resources, the state-level entities that provide assistance to local governments have joined in a cooperative effort to formulate a unified approach to the implementation of the law. Such groups as the Tennessee Advisory Commission on Intergovernmental Relations (TACIR); the University of Tennessee's Institute for Public Service (IPS) including Municipal Technical Advisory Service (MTAS), County Technical Assistance Service (CTAS), and Center for Government Training (CGT); the Department of Economic and Community Development Local Planning Office; the Comptroller's Office; and the state's nine development districts have consolidated their efforts and resources in the deployment of technical assistance.

Furthermore, the agencies participating in this cooperative effort have relied heavily upon the guidance of the "Implementation Steering Committee," which was created to ensure that a proactive and cooperative approach is taken to implement this important act. The Implementation Steering Committee members include:

- Tom Ballard, Associate Vice President for Public Service, IPS (Chair)
- J. Rodney Carmical, Executive Director, CTAS
- Sam Edwards, Planning Advisor
- Harry A. Green, Executive Director, TACIR
- John Morgan, State Comptroller
- Maynard Pate, Secretary/Treasurer, Tennessee Development District Association
- Robert E. Schettler, Training Administrator, Center for Government Training
- Robert P. Schwartz, Executive Director, MTAS
- Bill Terry, Planning Advisor
- Don Waller, Director, Local Planning Office

The "Implementation Steering Committee" has become an integral part of the implementation of Public Chapter 1101. Within days of the passage of the Act, there was a recognition by key local government leaders, state agency staff, and policy stakeholders, that there was a need for coordination of technical assistance resources.²⁶ On the advise of Senator Robert Rochelle, the Senate sponsor of the

²⁶ Notable among the policy stakeholders supporting the creation of a working group to maximize deployment of technical assistance resources were the Tennessee County Commissioners Association, the Tennessee County Services Association, and the Tennessee Municipal League.

legislation that became Public Chapter 1101, the Implementation Steering Committee was created as an informal working group to help guide implementation of Public Chapter 1101.

The Steering Committee is an entity whose role is purely advisory, with no budget and no formal authority apart from the independent authority and responsibilities of the agencies represented on the committee. The activities and endeavors of the Steering Committee are self-determined, provided of course that the Steering Committee has no authority to set policy. Coordination of the activities of the Committee has been assumed by the University of Tennessee Institute for Public Service under the leadership of Tom Ballard, Associate Vice-President for Public Service.

As is the case with local government duties and responsibilities under Public Chapter 1101, the role of state technical assistance agencies is not heavily proscribed by Public Chapter 1101. As is also true of local governments, it has taken considerable initiative on the part of the state's technical assistance agencies to come together to cooperatively implement a complex and resource intensive act.

From the outset, the Steering Committee set as two of its primary goals the creation of a "single reference document" on Public Chapter 1101 and the development of a "train the trainers" conference to educate technical assistance personnel on Public Chapter 1101. It was thought that if the various technical assistance and advisory agencies, TACIR included, were to proceed independently with the publication of resource material and staff training on Public Chapter 1101, the result would be divergent and competing interpretations of the Act. This, in turn, would compound the already large task faced by Tennessee's local governments as they work to develop their growth plans.

For an entity with no budget and no authority, the Implementation Steering Committee has enjoyed remarkable success. Both of the initial goals have been accomplished, and a great deal more. In the judgement of TACIR staff, the tremendous cooperation and success of the Steering Committee has contributed immensely to the statewide Public Chapter 1101 implementation effort. What follows is a brief summary of the accomplishments of the Implementation Steering Committee.

Under the guidance of the Implementation Steering Committee, the state's technical assistance agencies have:

- Convened a special multi-agency working group to arrive at a single interpretation of the provisions of Public Chapter 1101;**

- **Prepared and distributed 7,500 copies of a “single reference document” that reflects the joint interpretation of the Act;**
- **Organized and conducted a “train the trainers” conference in Nashville for state technical assistance personnel;**
- **Organized and conducted eight regional briefing sessions throughout the state as an introduction to Public Chapter 1101 for community leaders;**
- **Served as a “clearinghouse” for technical assistance agency responses to major concerns and issues identified by community leaders;**
- **Coordinated the preparation of population projections by the University of Tennessee Center for Business and Economic Research;**
- **Arranged for Development District funding for the provision of technical assistance to county Coordinating Committees; and**
- **Further engaged Development Districts in the dissemination of population projections.**

Through regular meetings, the Implementation Steering Committee is continuing its important role in guiding the deployment of state level technical assistance resources.

B. PROGRESS TOWARD IMPLEMENTATION

Public Chapter 1101 requires the creation of two entities in 93 of the 95 counties (Davidson and Moore, with their metropolitan forms of government, are excluded from most of the requirements of Public Chapter 1101). Effective September 1, 1998, in each of the 93 counties in question, there was created a Coordinating Committee to be convened for the purposes of developing or amending a growth plan for the county.

Public Chapter 1101 also requires the creation of a Joint Economic and Community Development Board that is to be a permanent board charged with fostering communication and cooperation relative to economic and community development.²⁷

The role and nature of these two entities has been a source of some confusion among local government leaders. During a TACIR staff presentation to county officials

²⁷ If a county has an existing entity whose purpose and membership is similar to that required by Section 15 of the Act, the county may petition the Local Government Planning Advisory Committee for a determination that the entity satisfies the requirements of the Act.