

**The Tennessee Advisory Commission
on Intergovernmental Relations**

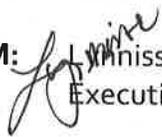


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MEMORANDUM

TO: Commission Members

FROM:  Lynnis Roehrich-Patrick
Executive Director

DATE: 19 June 2013

SUBJECT: Preliminary Report on Tennessee's Growth Policy Act (Public Chapter 1101, Acts of 1998)

TACIR staff is continuing work on the Commission's request from the February meeting to review the status of local governments' 20-year growth plans, determine the status of plans at the end of 20 years, and analyze potential improvements to the planning process. And now the 108th General Assembly has directed the Commission to complete a similar but much broader study. Public Chapter 441, Acts of 2013, which placed a one-year moratorium on annexing property used for residential or agricultural purposes, requires a comprehensive review and evaluation of the efficacy of state policies set forth in Tennessee Code Annotated Title 6, Chapters 51 (Change of Municipal Boundaries) and 58 (Comprehensive Growth Plan). A number of related bills were referred for study by the Senate State and Local Government Committee and the House Finance, Ways and Means Subcommittee and will be incorporated into a single comprehensive study that will be presented to the Commission for review and comment in October and for approval in December 2013 in order to meet the General Assembly deadline of January 14, 2014.

Amendments to Annexation and Public Chapter 1101

Close to 90 bills attempted to amend Title 6, Chapters 51 and 58, between 1998 and 2013. No action was taken on the majority of the bills, but 26 passed, 6 failed, and 27 were referred to the Commission for study. Of the 26 bills that passed

- one deleted obsolete provisions from Title 6, Chapters 51 and 58,
- one amended the law to require that the Commission continue to monitor the implementation of the Growth Policy Act indefinitely,

- five required more parties to receive notice of annexation and some parties who already received notice to receive it earlier,
- three dealt with annexation of particular types of property,
- six addressed issues related to annexation and taxes,
- one added schools to the list of services to be addressed in the plan of services,
- one specified that an airport in a county other than the county where the municipality that created it is located shall be in an annexation-free zone, except upon the approval by resolution of the legislative body of the creating municipality,
- one outlined procedures for municipalities to follow when they elect to be the exclusive provider of utility services within any annexed territory served by an affected instrumentality of the state,
- one dealt with the recording of annexation ordinances and informing the Comptroller and assessor of property of each affected county of the annexation,
- three made it somewhat easier to amend growth plans by laying out more specific procedures for amending them and for authorizing municipalities to expand their urban growth boundaries for certain tracts of land that are ten acres or smaller without reconvening their coordinating committees or getting approval from the county or other municipalities in the county,¹
- one gave the Secretary of State's office more discretion when appointing members to panels to resolve growth plan disputes, and
- two amended the laws governing joint economic and community development boards (JECDBs).

The six bills that failed included

- four that would have required additional notice or limited municipalities' ability to annex by requiring a referendum, eliminating the right to annex by ordinance based on property owner's initiative, or imposing stricter limitations on corridor annexation before the approval of a growth plan,
- one that would have prohibited counties in federal Clean Air Act non-attainment areas from proposing planned growth areas that included certain agricultural property, and
- one that would have extended the deadline for localities to submit growth plans required for grant eligibility.

Twenty-seven bills were referred to the Commission for study, most of them by the 103rd and 104th General Assemblies. Of the twenty-seven, the Commission recommended eight as drafted and one with modifications. The Commission adopted an alternative set of

¹ The provision to expand urban growth boundaries for certain tracts of land ten acres or smaller expires July 1, 2014.

recommendations for that one bill. Six of those were referred by committees of the 103rd General Assembly. Three of the recommended bills were enacted in 2005:

- Public Chapter 411 amended the law to require the annexing municipalities to prepare a plan of services for areas proposed to be annexed by referendum and to notify the county mayor in all cases,
- Public Chapter 278 revised the proceedings and authority of dispute resolution panels, and
- Public Chapter 246 limited the ability of municipalities to annex in other municipalities' urban growth boundaries.

The Commission adopted an alternative set of recommendations for a fourth bill, Senate Bill 2747/House Bill 2855. The bill would have permitted a JECDB's executive committee to meet only as needed. The Commission recommended that

- the required number of executive committee meetings be reduced from eight to four,
- the county mayor or city mayor or manager should be given the authority to appoint an alternate to serve on the JECDB or its executive committee,
- the alternate should have education or experience in the field of public administration, economic and community development or planning and be able to speak definitely for the entity, and
- the law should require that a minimum of one of the executive committee meetings should be held each quarter.

Public Chapter 245, as enacted in 2005, reflected the alternative recommendations of the Commission.

The two other bills, which related to growth plans and consistency requirements, plus twelve more, were referred back to the Commission by the 104th General Assembly. Of those fourteen, the Commission recommended only three:

- Senate Bill 2228, House Bill 2179, which gave greater latitude in certifying existing boards for JECDBs;
- Senate Bill 288, House Bill 237, which required municipalities to notify property owners of proposed annexation; and
- Senate Bill 2005, House Bill 764, which prohibited annexation of land subject to a permanent conservation easement, if it was amended to give special consideration for land subject to conservation easements in the designation of growth boundaries and rural areas.

The General Assembly took no action on the first bill and referred the remaining two bills back to the Commission. Because of the lack of consensus, there were no recommendations made on these bills sent back for study a second time.

A single bill on lawsuits to challenge annexations, Senate Bill 45, House Bill 763, was referred for study by the 105th General Assembly. No action was taken on this bill by the Commission. Two bills on extraterritorial planning and zoning authority, which were referred by the 107th General Assembly, are discussed in the land use report that is being presented for approval at the June meeting (see Land Use Legislation in tab 6).

Previous Studies by the Commission

The Commission was first directed to review annexation issues in Tennessee 20 years ago when the 98th General Assembly requested a study. The final report, *Annexation Issues in Tennessee: A Commission Report to the 99th General Assembly*, published in 1995, included a thorough analysis of the key topics identified during public hearings but only one recommendation: require annexation notices to include a map of the area to be annexed. The 99th General Assembly added this requirement in Public Chapter 283, Acts of 1995. A copy of the report is attached.

In 1997, the Speakers of the General Assembly established an ad hoc study committee on annexation and incorporation in response to a Tennessee Supreme Court decision invalidating Public Chapter 98, Acts of 1997, which allowed towns with as few as 225 persons to incorporate. The court held that the act violated Tennessee Constitution Article II, § 17,² and was void because the restrictive title of the act did not directly or indirectly relate to the broader provisions set forth in the act. The committee, which included four Commission members, worked through the fall of 1997 and into the 1998 legislative session to develop new legislation, which became Tennessee's Growth Policy Act, Public Chapter 1101, Acts of 1998. A 1999 TACIR staff report, *Implementation of Tennessee's Growth Policy Act: The History of PC 1101 and the Early Stages of Its Implementation*, recapped the work of that committee, summarized the Growth Policy Act, and reported progress toward its implementation. A copy of this report is also attached.

The Growth Policy Act directed the Commission to monitor its implementation and report regularly to the legislature. Thereafter, the General Assembly tended to refer most growth-related legislation to the Commission for study. This was the case from 2004 through 2006 when a large number of bills were referred. For a more detailed analysis of these bills, see the attached docket book materials from the December 2004 meeting, the letters to the Senate and House Speakers from February and March 2005, and the excerpt from the 2006 staff report, *Planning for Growth and Paying for It: TACIR Recommendations on 2005 Growth-Related Bills*.

² No bill shall become a law which embraces more than one subject, that subject to be expressed in the title.

Some of the issues identified in the 1995 report, *Annexation Issues in Tennessee*, are still affecting Tennessee's counties, cities, and residents today. The staff has begun researching other states' laws to identify possible alternatives to help resolve these issues; a brief summary of the preliminary results is included below.

Other States' Laws

Other states use a number of annexation methods. The general laws authorizing municipalities to annex property fall into five major categories:

- Annexation by Consent—Annexations must be approved by residents and/or property owners in a referendum or in a petition. In some states, a municipality may not annex property if a majority of residents and/or property owners in the territory to be annexed protest the annexation.
- Unilateral Annexation—A municipality can annex property by a unilateral action of its governing body.
- Judicial Annexation—A court determines whether annexation can take place.
- Legislative Annexation—Annexations are made by a special act of the state legislature.
- Quasi-legislative (or Administrative) Annexation—Annexations must be approved by an entity other than the governing body of the annexing municipality or a court.

Annexation methods authorized by other states don't always fall neatly into one of these five categories. They may require a combination of methods. For example, Alaska requires annexations to be approved by the state's local boundary commission before submission to voters. States may also authorize more than one method of annexation. For example, Colorado law requires most annexations to be approved by a petition signed by at least 50% of the landowners owning at least 50% of land value in the territory to be annexed or by an election in which only the landowners vote. But it also allows a municipality to unilaterally annex territory that is already surrounded.

Preliminary research of the annexation laws of other states indicates that

- four states allow municipalities to unilaterally annex property with few limitations,³
- thirteen states allow municipalities to unilaterally annex property in limited situations such as when unincorporated territory is completely surrounded by a municipality or unincorporated territory outside the corporate limits is owned by the municipality,⁴
- thirty-two states require residents or landowners to approve an annexation,⁵

³ Idaho, Indiana, Nebraska, and Tennessee. Idaho requires annexations to be approved by a majority of the property owners in the territory to be annexed if the territory contains more than 100 separate private ownerships and platted lots of record.

⁴ Alaska, Arkansas, California, Colorado, Georgia, Illinois, Kansas, Montana, Nevada, Oregon, Texas, Wisconsin, and Wyoming.

- two states require annexations to be approved by a court,⁶
- three states have statutes that specifically provide that the state legislature may authorize a municipal annexation,⁷
- five states require annexations to be approved by an entity other than the court or the governing body of the annexing municipality,⁸ and
- six states require annexations to be approved by an entity other than a court or the governing body of the annexing municipality in addition to other requirements such as an election.⁹

Eight New England and Mid-Atlantic states have little unincorporated territory, and annexation of unincorporated territory rarely occurs there.¹⁰ When it does occur, municipalities are usually annexing territory in other municipalities. Annexation does not occur in Hawaii because it does not have municipalities.

⁵ Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, Montana, Nevada, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Texas, Utah, Washington, West Virginia, Wisconsin, and Wyoming. Idaho and Kansas require approval only in certain situations. In Utah, a municipality cannot annex by ordinance if a majority of property owners in the area to be annexed file written protests in Utah. In Nevada, a city cannot annex territory if a majority of property owners in the territory to be annexed protest the annexation.

⁶ Mississippi and Virginia.

⁷ Alabama, Alaska, and Georgia.

⁸ California, Minnesota, New Mexico, Nevada, and Ohio.

⁹ Alaska, Delaware, Iowa, Michigan, Wisconsin, and West Virginia.

¹⁰ Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, and Vermont.