



# TACIR

The Tennessee Advisory Commission  
on Intergovernmental Relations



# 11

226 Capitol Boulevard Bldg., Suite 508  
Nashville, Tennessee 37243-0760  
Phone: (615) 741-3012  
Fax: (615) 532-2443  
www.tn.gov/tacir

## ***MEMORANDUM***

**TO:** Commission Members

**FROM:** *Lynnis* Lynnis Roehrich-Patrick  
Executive Director

**DATE:** 20 November 2014

**SUBJECT:** Municipal Boundary Changes and Comprehensive Growth Plans—Draft Report  
for Review and Comment

---

The attached draft report on municipal boundary changes and comprehensive growth plans is presented for review and comment. It was prepared in response to Public Chapter 707, Acts of 2014, which dramatically changed annexation law in Tennessee. The act eliminated annexation without consent and strengthened the annexation moratorium established by Public Chapter 441, Acts of 2013, which became effective on May 16, 2013. Public Chapter 707 also extended the comprehensive review and evaluation of the efficacy of state policies set forth in Tennessee Code Annotated Title 6, Chapter 51 (Change of Municipal Boundaries) and 58 (Comprehensive Growth Plan) initiated by Public Chapter 441.

The report makes several draft recommendations to address key issues concerning municipal boundary changes and growth planning policies:

- Annexation referendums can be costly and cumbersome unless aligned with a regular election. Moreover, referendums exclude non-resident landowners from the decision-making process. A formal petition process would solve both these problems, but must be designed to protect the interests of those who prefer not to be annexed. The best way to protect their interests while allowing nonresident landowners to participate in the process is to require dual petitions—one for those who favor annexation and one for those opposed to it—structuring it as much like a referendum as possible.

- Accommodating willing landowner requests for annexation of areas not adjacent to the city limits will be more difficult under the new law because landowners and residents in between can stop them. But these areas may be well-suited for commercial or industrial development. Giving cities a way to annex non-contiguous properties could help them accommodate development requests and meet the community's needs without taking in unwilling residents of unincorporated areas but should be limited to commercial or industrial development and government-owned property.
- Before a city can annex any territory it must propose and adopt a plan of services that explains to residents what services they will receive and provides a reasonable schedule for when they will receive them. Current law does not require plans of services to include information about cities' financial ability to implement them. Residents in areas proposed for annexation often believe cities will not implement their plans of services and, therefore, oppose annexation, which may make it difficult or impossible to pass a referendum. In order to demonstrate their ability to serve residents of the area proposed for annexation, cities should provide sufficient information to demonstrate their financial ability to implement the plan of services proposed. Current notice and public hearing requirements are adequate.
- When a city has failed to fully implement a plan of services adopted when an area was annexed, residents and landowners' only recourse under current law is to sue the city to provide the services. Although deannexation may seem to be a reasonable alternative and one that might be acceptable to the city, residents and owners have no way to initiate or even participate in the deannexation process except by petitioning to force a vote in hopes of stopping a deannexation. One way to enable greater resident and landowner participation would be to allow them to petition for deannexation using the same formal dual-petition process proposed for annexation. Tennessee law, like laws in most other states, allows cities to continue taxing deannexed property to repay debt incurred in order to meet the needs of those areas and requires them to charge sufficient rates for utilities to pay for services provided to the area. Consequently, when cities have failed to fully implement their plans of services, allowing residents and landowners, including owners of agricultural land, to petition for deannexation is unlikely to cause issues with provision of services as long as those deannexations are limited to areas on the city border so that they do not create islands, donut holes, or noncontiguous areas and approved by the county.
- Current Tennessee law allows adjacent cities, without giving notice or holding a public hearing, to adjust their mutually shared boundaries by contract to avoid confusion over boundary lines that do not align with streets, lot lines, or rights-of-way. This mutual adjustment may have important consequences for those

being shifted from one city to another, for example, a change in tax regime, school district, or in the level of services provided. Therefore, cities should be required to give notice and hold a public hearing before finalizing these boundary adjustments.

- The Growth Policy Act (Public Chapter 1101, Acts of 1998) requires local option sales tax and beer wholesale tax revenue collected in newly annexed areas to continue to go to the county for 15 years except for any increase in revenue, which goes to the annexing city. This has not happened with the wholesale beer tax revenue, all of which has gone to the annexing cities since the Growth Policy Act became effective. While it is not clear that it would be possible to calculate the amount improperly paid to cities in the past, this error can and should be avoided going forward using information that is now available to local governments and the Department of Revenue.
- The Growth Policy Act required local governments (except metropolitan counties) to designate urban growth boundaries, planned growth areas, and rural areas based on projections of growth over a 20-year period that is soon coming to an end. These growth plans do not expire, but there is also no requirement to update them. While one of the primary reasons for cities and counties to establish growth plans—to define where cities could annex by ordinance without consent—has been eliminated, there are still several ways growth plans determine where annexation and incorporation can occur. The legislature should require all counties to review their growth plans before a certain date and revise or readopt them and repeat this process at regular intervals or as circumstances require. Where counties have not adopted subdivision regulations and zoning, to better ensure that development within growth boundaries is consistent with city standards approval by the county legislative body of the newly adopted growth plan should be deemed approval of extraterritorial planning authority for cities within their urban growth boundaries.
- Making even small amendments to growth plans can be cumbersome. If a single city wants to reduce its urban growth boundary for whatever reason, the entire coordinating committee has to be convened and two public hearings must be held. To simplify the process where only a single city is affected, cities should be allowed to retract their growth boundaries without approval from other members of their coordinating committees, but only where the boundary abuts a rural or planned growth area and only after giving notice to the county and to residents of the area and holding a public hearing. The affected county should then decide whether to include the removed area in the adjoining rural or planned growth area or to designate a new planned growth area, and the proposed change should be presented to the state's Local Government Planning Advisory Committee for approval.

- The Growth Policy Act required each non-metropolitan county to establish a joint economic community development board (JECDB) to encourage communication among local governments about economic and community development issues. These boards have been useful in some counties, but others question the need for required meetings and wish to have more flexibility. Giving JECDBs additional authority may address concerns about their effectiveness and make them more useful, for instance by allowing local governments to decide whether to consolidate the functions of their JECDBs in their coordinating committees or grant them the economic development powers of a joint industrial development corporation.

Further, while Public Chapter 707 repealed authority for annexation by ordinance, it left a number of obsolete references to annexation by ordinance in other sections of the code that need to be removed or clarified. A complete list and analysis, including suggestions for how to correct the statutory language in each section, is included in appendix A of the report.

A final report will be submitted for approval at the January 2015 Commission meeting to meet the General Assembly's deadline of February 15, 2015.