

# Municipal Boundaries in Tennessee:

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## *Annexation and Growth Planning Policies after Public Chapter 707*

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A Draft Report of the Tennessee Advisory Commission on Intergovernmental Relations

## Contents

|   |    |
|---|----|
| Refining Policies for Growth Planning and Municipal Boundary Changes .....            | 4  |
| Petitions: a more efficient and inclusive method of annexation .....                  | 4  |
| Non-Contiguous Annexation: supporting economic development.....                       | 5  |
| More Informative Plans of Services: making annexation attractive .....                | 6  |
| Deannexation: initiation by residents and landowners under limited circumstances..... | 6  |
| Mutual Boundary Adjustment: informing residents and landowners .....                  | 7  |
| Implementing Statutory Allocation of Tax Revenue After Annexation.....                | 7  |
| Updating Growth Plans: the next 20 years.....   | 8  |
| Unilateral Retraction of Cities' Urban Growth Boundaries .....                        | 8  |
| Joint Economic Community Development Boards: making them more effective.....          | 9  |
| Clarifying Statutory Language .....   | 9  |
| Annexation and Municipal Boundary Changes after Public Chapter 707 .....              | 10 |
| The Annexation-by-Referendum Process.....   | 11 |
| Difficulties with expanding non-resident voting in referendums .....                  | 12 |
| Petitions: a more efficient and inclusive method of annexation .....                  | 13 |
| Non-Contiguous Annexation: supporting economic development.....                       | 17 |
| More Informative Plans of Services: making annexation attractive .....                | 19 |
| Deannexation: initiation by residents and landowners under limited circumstances..... | 20 |
| Mutual Boundary Adjustment: informing residents and landowners .....                  | 22 |
| Implementing Statutory Allocation of Tax Revenue After Annexation.....                | 23 |
| Comprehensive Growth Policies .....   | 24 |
| Updating Growth Plans: the next 20 years.....   | 25 |

Unilateral Retraction of Cities' Urban Growth Boundaries .....27

Making the Joint Economic Community Development Board more Effective ..... 28

Appendix: Clarifying Statutory Language..... 31

    Inapplicable sections, references to deleted sections or "ordinance", and clarification in general: .....31

    Statutes Applying to Plans of Services: .....34

    Changes to Annexation by Resolution with Written Consent:..... 36

    Annexation by Ordinance in another County:..... 36

    Same Territory Annexed by Multiple Municipalities: .....38

DRAFT

## Refining Policies for Growth Planning and Municipal Boundary Changes

The 108<sup>th</sup> General Assembly eliminated unilateral, nonconsensual annexation with the enactment of Public Chapter 707, Acts of 2014, and strengthened the annexation moratorium established by Public Chapter 441, Acts of 2013. The 2014 Act extended the review of state policies governing comprehensive growth plans and changes in municipal boundaries begun by Public Chapter 441 on which the Commission released an interim report in December 2013.

Until May 15, 2015, cities may annex by ordinance only those formally initiated before passage of Public Chapter 707 and approved by the county or with the written consent of the owners. After that date, cities can annex property only with the written consent of the owner or by referendum. Cities can annex agricultural land only with written consent of the owner.

While Public Chapter 707 settled many important issues surrounding annexation, its passage raised a few new questions and left others unresolved:

- Issues that Public Chapter 707 did not resolve:
  - non-resident participation in annexation decisions
  - annexing non-contiguous areas
  - deadlines and standards for implementing plans of services and inclusion of financial information
    - participation in deannexation decisions and deannexing agricultural property
    - informing the public before adjusting cities' shared boundaries
    - implementing statutory allocation of tax revenue after annexation
    - reviewing and updating growth plans
    - retracting cities' urban growth boundaries
    - duties and responsibilities of joint economic and community development boards
- Issues that Public Chapter 707 created:
  - references to annexation by ordinance that were not removed
    - apparent ambiguities created in sections that were not amended

### ***Petitions: a more efficient and inclusive method of annexation***

Except in cases with unanimous owner consent, cities can annex property only by referendum, a costly and cumbersome process unless aligned with a regular election, which is one of the main reasons referendums were rarely used by cities when annexation by ordinance was possible. Moreover, referendums exclude non-resident landowners from the decision-making process, allowing them to participate in annexation decisions only if they can be accomplished

by written consent, for example, when the property they own is adjacent to the city. Allowing non-resident individuals to participate in referendums would introduce administrative challenges for local election officials, such as verifying these voters' eligibility and, in cases of more than one owner, determining which owners are eligible to vote. Although some Tennessee cities allow non-resident property owners—no more than two per parcel—to register and vote in municipal elections, this privilege is granted only to natural persons who are otherwise qualified to vote in Tennessee elections, not to non-resident property owners organized as corporations. It is not clear whether allowing corporate property owners to vote would be constitutional in Tennessee.

A formal petition process for annexation, something allowed by 24 states, would avoid these problems. It could easily be structured to allow non-residents, including corporations, to participate in the annexation process. This is the most common method used by other states to allow non-resident owners to participate in annexation decisions; only five states allow them to vote in annexation referendums. Twenty-three states allow non-resident landowners to sign annexation petitions. Only one state with a formal petition process restricts it to residents; fourteen restrict it to landowners only and do not allow residents to sign annexation petitions. States that permit businesses to participate restrict them to one signature. Only four states allow businesses, including corporations, to vote in annexation referendums: Colorado, Delaware, Maryland, and West Virginia. All four allow only one vote per business. Those four states and one additional state—Kansas—allow any non-resident landowners to vote in annexation referendums.

Any formal petition process in Tennessee must be designed to protect the interests of those who prefer not to be annexed as well as the interests of those who are requesting annexation. 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—with the petition with the most signatures determining the outcome. Structuring the petition process in this way avoids diluting the will of residents and makes it more comparable to a referendum.

### ***Non-Contiguous Annexation: supporting economic development***

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. In the past, these properties were annexed by ordinances that often took in roads and other rights-of-way as well as some unwilling residents and property owners. Cities can no longer do this without the consent of voters by referendum or all owners in writing who live along those roads and rights-of-way and own the land under them.

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. Six other states allow cities to annex non-contiguous territory. Three of these allow non-contiguous annexation only of government-owned property. Indiana,

Kansas, and North Carolina all permit cities to annex other non-contiguous property only when it is within a certain distance of the city limits and with the owners' consent. These states do not allow the non-contiguous territory to be used to establish contiguity for further annexations. Indiana limits non-contiguous annexations to commercial or industrial development only, which avoids problems associated with unmanageable service to widespread residential development. Kansas requires the city to get county approval for the annexation.

When the most appropriate area for development has a landowner willing to be annexed but is both unincorporated and not adjacent to the city, and residents or landowners in between don't want to be annexed, allowing non-contiguous annexation can accommodate that development without affecting the unwilling owners and residents. Tennessee's urban growth boundaries could be used to establish county consent for non-contiguous annexations and limit them to areas already designated for development. If the General Assembly deems this appropriate, it should be limited to commercial or industrial development and government-owned property.

### ***More Informative Plans of Services: making annexation attractive***

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. As originally written, the bills that became Public Chapter 462, Acts of 2013 (Senate Bill 1054 by Kelsey and House Bill 1263 by D. Carr) would have required this information, but the provisions were removed before the bill passed. 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.

### ***Deannexation: initiation by residents and landowners under limited circumstances***

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, including by those who own agricultural land, would be to allow them to petition for deannexation using the same formal dual-petition process proposed for annexation when a city has not fully implemented the plan of services adopted for the area.

Of the 36 states with deannexation laws, Tennessee is one of only ten that do not allow residents or owners to initiate deannexation proceedings. Local officials in Tennessee have expressed concern that allowing residents to initiate any deannexation could create donut holes and disorderly boundaries that lead to confusion over provision of services. In order to remedy these problems, eight states prohibit deannexations that would create donut holes by limiting them to areas on the city borders.

Because 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, allowing residents and landowners 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. However, because counties may be obligated to assume responsibility for infrastructure such as roads or for emergency or other services, their approval for deannexation should be required. Moreover, deannexation should not be allowed where it would create islands, donut holes, or noncontiguous areas.

### ***Mutual Boundary Adjustment: informing residents and landowners***

Current Tennessee law allows adjacent cities, without giving notice or holding a public hearing, to adjust their mutually shared boundaries by contract. These boundary adjustments are permitted to avoid boundary lines that do not align with streets, lot lines, or rights-of-way but may have important consequences for those being shifted from one city to another, for example, a change in tax regime, change in school district, or a change in level of services provided.

Ten other states allow mutual adjustments outside the normal annexation/deannexation process. Four, like Tennessee, have no notice or hearing requirements. Six require notice; four of those also require a hearing. Because these boundary adjustments may have significant consequences for residents and landowners, cities should be required to give notice and hold a public hearing before finalizing them.

### ***Implementing Statutory Allocation of Tax Revenue After Annexation***

As discussed in the interim report on Public Chapter 441, 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.

## ***Updating Growth Plans: the next 20 years***

The stated purpose of Tennessee's Growth Policy Act was to establish a comprehensive growth policy for the state, part of which was a requirement 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. No city can annex territory in another's urban growth boundary, and new cities can only incorporate in planned growth areas. Growth boundaries also delineate cities' planning and zoning authority outside city limits in counties where cities have been granted that authority.

Growth plans were first adopted starting in 2000, nearly 15 years ago, and were based on 20-year projections that have since become outdated. Not only are they old, but the economic recession has fundamentally changed growth patterns in many areas. Actual growth and development in some counties has lagged projections and in other places far exceeded them. This is certain to happen again.

Consequently, any plan not revisited in the last few years is likely to be outdated. The legislature should require all counties to convene their coordinating committees and 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.

### ***Unilateral Retraction of Cities' Urban Growth Boundaries***

Making even small amendments to growth plans can be cumbersome. If a single city wants to retract 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.

## ***Joint Economic Community Development Boards: making them more effective***

The Growth Policy Act also required each non-metropolitan county to establish a joint economic community development board (JECDB) to “foster communication relative to economic and community development between and among governmental entities, industry, and private citizens.”<sup>1</sup> Other than this, JECDBs have no statutory powers or authority. Any other functions they may have are determined by interlocal agreement among the municipalities and county. JECDBs, at a minimum, include all city and county mayors plus one person with land in Tennessee’s Greenbelt program. More members can be added if the board chooses. JECDBs are required to meet four times annually.

These boards have been useful in many counties, but others question the need for required meetings and wish to have more flexibility. Giving them 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. Consolidating the functions of JECDBs in county growth plan coordinating committees would expand them to include representatives of the largest municipal and non-municipal utilities, the largest school system, the largest chamber of commerce, the soil conservation district, and four members representing environmental, construction, and homeowner interests.

Many cities and counties have formed industrial development corporations—commonly known as industrial development boards or IDBs—to support economic development. IDBs are non-profit corporations with broad powers to acquire and develop buildings and sites for economic development and can sell industrial revenue bonds to pay for them. Nine joint IDBs have been formed by cities and counties, and many county IDBs serve cities as well. Although city and county officers, city managers, and other comparable chief administrative officers can serve as directors of joint IDBs, no local government officer or employee may serve on an IDB formed by a single city or county. In counties where IDBs have not yet been formed, granting those powers to JECDBs could make them more useful.

### ***Clarifying Statutory Language***

Public Chapter 707 left a number of obsolete references to annexation by ordinance in other sections of the code that need to be removed. Some of these are simple corrections, where the words “by ordinance” or reference to annexations under Section 6-51-102 can be deleted without changing the meaning of the statute. Others include

- removing notice and hearing requirements for annexations with all owners’ written consent,

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<sup>1</sup> Tennessee Code Annotated Section 6-58-114(b).

- removing obsolete prohibitions of annexation by ordinance across certain county lines, and
- clarifying priority for annexation when multiple cities attempt to annex the same area by referendum outside their urban growth boundaries.

A complete list and analysis, including suggestions for correcting the statutory language in each section, follows the report in the appendix .

## **Annexation and Municipal Boundary Changes after Public Chapter 707**

As the 108<sup>th</sup> General Assembly convened in 2013, a great deal of debate was taking place over whether changes should be made to the growth planning and municipal annexation laws that had governed Tennessee municipalities since passage of the 1998 Growth Policy Act—Public Chapter 1101. In May 2013, the legislature adopted Public Chapter 441, which established a moratorium on non-consensual annexations of agricultural and residential property and directed the Tennessee Advisory Commission on Intergovernmental Relations to conduct a comprehensive review of state policies related to growth planning and municipal boundary changes. The Commission released an interim report to the legislature in January 2014. That report compared and contrasted how similar issues are handled in other states with current and proposed laws in Tennessee, and the Commission recommended extending the moratorium for another year and identified a number of options for further consideration and study.

In April 2014, the General Assembly enacted Public Chapter 707. This Act did away with unilateral, nonconsensual annexation, strengthened the annexation moratorium established by Public Chapter 441, and instructed the Commission to continue its review of state policies. While Public Chapter 707 settled the issues of non-consensual annexation and annexation of agricultural land, its passage raised some new questions and left others unresolved. The changes made by this act created a need to clarify other statutes that either refer to deleted sections or are made ambiguous by the deletions. These statutes are analyzed in the appendix. Unresolved issues related to annexation include: non-resident owners' ability to participate in annexation decisions, accommodating requests for annexation from non-contiguous properties, requirements for plans of services, initiating deannexation, informing residents of mutual boundary adjustments, and proper allocation of tax revenue after annexation. Also unresolved after Public Chapter 707 is the status of counties' growth plans, including the need to review and update them periodically, allowing cities to unilaterally retract their own UGBs, and the duties and responsibilities of joint economic and community development boards.

Public Chapter 707 ensured that after May 15, 2015, cities can only annex property with written consent of the owner or by referendum. Cities cannot annex agricultural land without written owner consent. Prior law allowed cities to annex without consent any area within their urban growth boundary that was adjacent to the city limits. Although Public Chapter 707 did not

change the process for annexation by referendum, this annexation method has not been used often because of the comparable ease with which cities had been able to annex by ordinance and the expense and time required to hold a referendum. In an annexation referendum only qualified resident voters can vote—excluding businesses and non-resident owners from the decision.

### ***The Annexation-by-Referendum Process***

Annexation in Tennessee can be initiated by request from any number of residents and owners or by a city itself. The process begins when the governing body of a city adopts a resolution that sets a date for a required public hearing on the proposed annexation. The city must also prepare a plan of services for the annexed area. The resolution describing the annexation, along with the proposed plan of services, must be mailed to each owner of property in the annexation area. Note that this notice is only mailed to the address of record for the property owner, not necessarily to residents living on property owned by someone else. It must also be posted in public places, both in the city and the territory being annexed, and published online and in a newspaper. After public hearings for the plan of services and for the annexation itself, the city legislative body may approve the plan of services and adopt a resolution to submit the question of annexation to a referendum of voters in the annexation area.<sup>2</sup>

The referendum must be held 30–60 days after the last publication of public notices.<sup>3</sup> The city also has the option of submitting the annexation question to a vote of city residents. Both a majority of votes cast in the annexed territory and a separate majority of votes cast in the city would be required to pass the referendum. If a city wants to time an annexation referendum to coincide with a regular election, it may have to delay when it publishes notice and adopts the resolution. County and statewide offices are decided only in even-numbered years.<sup>4</sup> There is no uniform date for municipal elections as there is for county elections.<sup>5</sup>

Except in cases with unanimous owner consent, cities can annex property only by referendum, a costly and cumbersome process unless aligned with a regular election. Fiscal notes on two annexation-related bills introduced in 2013 stated that election costs depend on the size of the municipality holding the referendum, ranging anywhere from \$6,000 to \$500,000.<sup>6</sup> Tennessee will be one of six states (Alabama, Delaware, Florida, New York, and North Carolina being the

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<sup>2</sup> Tennessee Code Annotated, Section 6-51-104.

<sup>3</sup> Tennessee Code Annotated, Section 6-51-105.

<sup>4</sup> University of Tennessee County Technical Assistance Service (CTAS) Reference Number: CTAS-867.

<http://ctas-eli.ctas.tennessee.edu/reference/dates-regular-elections>, accessed 10/20/2014.

<sup>5</sup> University of Tennessee Municipal Technical Advisory Service (MTAS) Reference Number: MTAS-184.

<http://resource.ips.tennessee.edu/reference/conducting-municipal-elections>, accessed 10/20/2014.

<sup>6</sup> Senate Bill 731 by Watson (House Bill 230 by Carter) and Senate Bill 279 by Watson (House Bill 475 by Carter).

others)<sup>7</sup> where the only possible methods for cities to annex territory are with 100% owner consent or through a referendum.

### **Difficulties with expanding non-resident voting in referendums**

Moreover, referendums exclude non-resident landowners from the decision-making process, except in cases where owners adjacent to the city limits are giving unanimous written consent to be annexed. Only “qualified voters who reside in the territory proposed for annexation” may vote in a referendum.<sup>8</sup> According to Tennessee Code Annotated Section 2-2-102, “A citizen of the United States 18 years of age or older who is a resident of this state is a qualified voter.” The Tennessee Attorney General was asked whether legislation could constitutionally restrict voting in an annexation referendum to just property owners, or if the legislature could allow both residents and non-resident landowners to vote. The opinion explained that restricting voting rights to just landowners—excluding residents who do not own property—would be an unconstitutional violation of equal protection under the law. The General Assembly could, however, constitutionally extend voting rights to include both residents and non-resident owners.<sup>9</sup> On the other hand, allowing non-resident individuals to participate in elections would introduce administrative challenges for local election officials, such as verifying these voters’ eligibility and, in cases of more than one owner, determining which owners are eligible to vote.

Tennessee has long allowed non-resident property owners—no more than two per parcel<sup>10</sup>—to register and vote in municipal elections,<sup>11</sup> but this privilege is granted only to natural persons who are otherwise qualified to vote in Tennessee elections, not to non-resident property owners organized as corporations.<sup>12</sup> It is not clear whether allowing corporate property owners to vote would be constitutional in Tennessee, because only “person[s], being eighteen years of age, being a citizen of the United States, being a resident of the State, and being duly registered” are entitled to vote.<sup>13</sup> Separate voter registration for non-resident property owners is required. Therefore, non-resident property owners who also are registered to vote

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<sup>7</sup> Alabama’s constitution also permits annexation by legislative act. Annexation in Florida requires referendum of residents when there is less than 100% owner consent, but it also provides alternatives for when land has no resident voters or is owned by corporations.

<sup>8</sup> Tennessee Code Annotated Section 6-51-105.

<sup>9</sup> Office of the Attorney General, State of Tennessee, Opinion No. 13-106.

<sup>10</sup> Tennessee Code Annotated, Section 2-2-107(a).

<sup>11</sup> “It has been the practice of the legislature since the adoption of the constitution of 1870 to permit owners of real estate situated within the corporate limits to vote in a municipal election, independent of his place of residence or other qualifications.” *Ledgerwood v. Pitts*, 122 Tenn. 570, 125 S.W. 1036 (1910)

<sup>12</sup> MTAS Reference Number: MTAS-287, <http://resource.ips.tennessee.edu/reference/determination-residency>

<sup>13</sup> Tennessee Constitution, Article IV, Section 1.

anywhere in Tennessee must register as property-rights voters.<sup>14</sup> Knoxville is an example of a city with a charter authorizing property-rights voting:

*Nonresidents of the City of Knoxville who have owned a fee interest in a parcel of real property at least four thousand (4,000) square feet in size within the City of Knoxville for at least six (6) months prior to the date of election and who own said property on the day of election and who are otherwise lawfully registered and qualified to vote under the general laws of the State of Tennessee shall be eligible to vote in all municipal elections. Not more than two (2) nonresident voters shall be allowed to vote upon such parcel of real property.*<sup>15</sup>

Of the twenty-seven states with an annexation referendum process, only four allow businesses, including corporations, to vote in annexation referendums: Colorado, Delaware, Maryland, and West Virginia.<sup>16</sup> Doing so creates even more challenges, especially with more complex business entities like corporations, such as deciding who votes on behalf of the business or corporation. These issues have to be carefully defined in statutes. There are several definitions of “owner” in various sections of the Tennessee Code, but each is a little different based on the particular statute to which it refers. The four states that allow businesses to vote explain how an officer or agent is designated to vote on behalf of the company. Cities in Delaware even permit corporate leaseholders to vote. Those four states and one additional state—Kansas—allow any non-resident landowners to vote in annexation referendums.

### **Petitions: a more efficient and inclusive method of annexation**

A formal petition process for annexation, something allowed by 24 states, avoids these problems. Petitions are the most common method used by other states to allow non-resident owners, including corporate owners, to participate in annexation decisions. Petition processes are less costly and less cumbersome than referendums. City officials and their representatives from several states confirmed that their petition methods are inexpensive.<sup>17</sup> Some explain, though, that referendums are often reserved for larger annexations, where obtaining many signatures on a petition is more difficult. By their nature, these elections are more costly than petitions for smaller areas—especially where the petition requires more than a simple majority. If the formal petition process can avoid costs such as providing ballots, using voting machines, securing polling locations and compensating election workers, as well as eliminate the need for

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<sup>14</sup> MTAS Reference Number: MTAS-287, <http://resource.ips.tennessee.edu/reference/determination-residency>

<sup>15</sup> Knoxville, Tennessee Code of Ordinances, Section 703.

<sup>16</sup> Colorado Revised Statutes, Section 31-12-112. Title 15, Delaware Code Annotated, Section 7543. Section applies only to city of Wilmington, but other cities in Delaware with home rule charters follow similar procedures Annotated Code of Maryland, Section 1-114 and 4-413, and Michie’s West Virginia Code, Section 8-6-2.

<sup>17</sup> Rachel Allen, Staff Attorney, Colorado Municipal League, e-mail October 23, 2014, Larry Weil, Planning Director, City of West Fargo, email October 23, 2014, Eric Budd, Deputy Executive Director, Municipal Association of South Carolina, October 22, 2014.

public notice and hearings, it could be cheaper than a referendum election. Some states require the owner or owners petitioning for the annexation to bear the cost of the petition process, whereas referendums are paid for by the annexing city. In Arizona, the cost of the petition process is paid by the county.<sup>18</sup>

Out of 30 states identified where annexation goes through a process for consent, twenty-four allow annexation decisions to be made through formal petition processes. Many have different processes for whether annexation is initiated by the city or by owners and residents. Who can sign the petition and how large a majority is needed to pass it varies from state to state. Typically, states permit a business that owns property proposed for annexation to designate one agent to sign a petition for annexation. Twenty-three states allow non-resident landowners to sign annexation petitions. Mississippi is the only state that restricts the petition to residents: "qualified electors residing in the territory."<sup>19</sup>

North Dakota cities may annex territory with petition from owners, excluding residents, but also have a separate provision for petition from qualified electors.<sup>20</sup> And in Oklahoma, when a city initiates annexation it can do so with written consent of the owners of a majority of the acres to be annexed, excluding non-owner residents and enabling the city to attach many unwilling residents and owners to an annexation of one large parcel.<sup>21</sup> Fourteen other states allow only landowners to sign the petition, excluding non-owner residents from the decision.<sup>22</sup>

How landowners are counted in petitions also varies. Of these 16 states where residents can be excluded from petitions for annexation, six accept petitions from the owners of just a majority of land area, three accept petitions from a majority in number of landowners, two require both a majority of owners in number and in land area, and two require both owners of a majority of the parcels and a majority of the value of land being annexed. Some of the states require more than a majority to sign the petition. Nevada requires owners of 75% of the lots

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<sup>18</sup> Tom Belshe, League of Arizona Cities and Towns, phone call October 24, 2014.

<sup>19</sup> "The qualified electors of any territory contiguous to and adjoining any existing municipality. . . shall prepare a petition and file same in the chancery court of the county. . . signed by at least two-thirds of the qualified electors residing in the territory proposed to be included." Mississippi Code Annotated, Section 21-1-45. All annexation proceedings in Mississippi go through chancery court.

<sup>20</sup> "Upon a written petition signed by not less than three-fourths of the qualified electors or by the owners of not less than three-fourths in assessed value of the property in any territory contiguous or adjacent to any incorporated municipality . . . the governing body of the municipality, by ordinance, may annex such territory to the municipality." North Dakota Century Code, Section 40-51.2-03.

<sup>21</sup> Oklahoma Statutes Annotated, Section 21-103. Oklahoma requires both  $\frac{3}{4}$  of registered voters and owners of  $\frac{3}{4}$  in value of the property when petitioning for annexation. (O.S.A. 21-105)

<sup>22</sup> Arizona, Arkansas, Colorado, Idaho, Indiana, Montana, Nevada, New Mexico, Ohio, Oregon, South Carolina, Utah, Washington, and Wyoming. Five of these have additional annexation methods that include referendum of resident voters. Montana cities can annex with a petition from either a majority of resident landowners (excluding non-owner residents) or any owners of a majority of the land area being annexed. (Montana Code Annotated, Section 7-2-4601.)

being annexed. Indiana and North Dakota accept a petition from owners of 75% of the land value. South Carolina needs 75% of the owners who also own 75% of the land value. (This adds up to 17 because Montana has two methods.)

Eight states<sup>23</sup> require signatures from both a majority of resident voters and a majority of property owners for annexation by petition. Of these, Maryland has the lowest threshold for approval, requiring signatures from only 25% of registered voters and owners of 25% of the assessed land value. However, opponents to an annexation can force a referendum with a petition of either 20% of the residents being annexed or 20% of all city residents. The county legislative body can also vote to require the city hold a referendum. Three of the eight states—Illinois, West Virginia, and Wisconsin—require a simple majority each of qualified voters and landowners. Louisiana also requires a majority of both voters and landowners, but is alone in specifying that they be “resident” owners, who must own at least 25% of the land value of the annexation. Three of the other states require a higher percentage. Georgia requires signatures from 60% of resident electors and owners of at least 60% of the land area. Oklahoma and South Dakota both require signatures from 75% of the registered voters as well as owners of 75% in value of the property. See table 1.

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<sup>23</sup> Georgia, Illinois, Louisiana, Maryland, Oklahoma, South Dakota, West Virginia, and Wisconsin.

**Table 1: States where both residents and owners sign annexation petition**

| State                       | Residents who sign           | Owners who sign             |
|-----------------------------|------------------------------|-----------------------------|
| Maryland <sup>24</sup>      | 25% of registered voters     | Owners of 25% of land value |
| Illinois <sup>25</sup>      | Majority of qualified voters | Majority of landowners      |
| West Virginia <sup>26</sup> | Majority of qualified voters | Majority of landowners      |
| Wisconsin <sup>27</sup>     | Majority of qualified voters | Majority of landowners      |
| Louisiana <sup>28</sup>     | Majority of resident owners  | Owners of 25% of land value |
| Georgia <sup>29</sup>       | 60% of resident electors     | Owners of 60% in land area  |
| Oklahoma <sup>30</sup>      | 75% of registered voters     | Owners of 75% of land value |
| South Dakota <sup>31</sup>  | 75% of registered voters     | Owners of 75% of land value |

A process with dual petitions—one for those who favor annexation and one for those opposed to it—protects the interests of those who prefer not to be annexed as well as the interests of those who are requesting annexation. Structuring the petition process in this way avoids diluting the will of residents and makes it more comparable to a referendum. For example, imagine a situation like that in figure 1 below, where a landowner seeks annexation to develop retail on his property, but it is not adjacent to the city limits. Many nearby businesses and property owners would like the development, but the residents along this road do not want to be annexed. Under former annexation laws, the city could have annexed just the road right-of-way and retail property by ordinance, excluding all other properties. After Public Chapter 707 takes full effect in 2015, the developer seeking annexation either would need 100% consent from adjoining owners or would have to win a referendum in which only the residents in the area could vote, excluding all of the business and non-resident property owners.

A petition process similar to that used in other states to annex the retail development site and the five properties on the same side of the road might require four of six residents to sign and

<sup>24</sup> Annotated Code of Maryland, Section 4-402 et seq.

<sup>25</sup> Illinois Compiled Statutes, Section 5/7-1-2.

<sup>26</sup> West Virginia Code, Section 8-6-4.

<sup>27</sup> Wisconsin Annotated Statutes, Section 66.0217.

<sup>28</sup> Non-resident owners in Louisiana may petition for annexation through a referendum, in which only qualified residents can vote. If the area is vacant, with no resident owners or voters, it can only be annexed with written consent from all owners. Louisiana Revised Statutes, Section 33:172.

<sup>29</sup> Official Code of Georgia Annotated, Section 36-36-32.

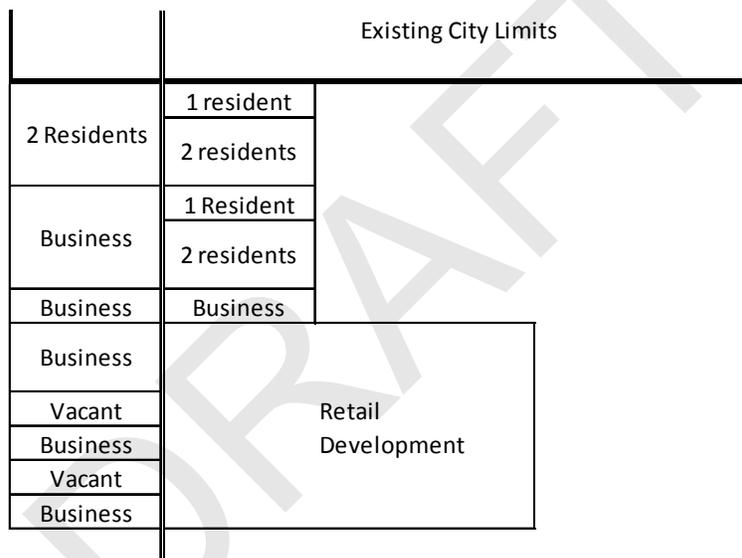
<sup>30</sup> Oklahoma Statutes Annotated, Section 21-105.

<sup>31</sup> South Dakota Codified Laws, Section 9-4-1.

four of six property owners (including the properties with residents) as well. It is a high bar to overcome, but less difficult than obtaining 100% owner consent. However, it could prevent a willing landowner from developing his property in a manner appropriate for the growth of the city. Under that type of petition system, even if the developer and business owners drew the proposed annexation area in their petition so that it went across the road and excluded the residents on the right side, the eight owners could not pass the annexation without the consent of the two residents adjacent to the city limits on the left.

Under a dual-petition system, in the described scenario, the developer and businesses favoring annexation would sign one petition and the residents and any other owners opposed to annexation would sign another. Voices from both sides would get to make their cases, and the petition with the most signatures determines the outcome.

**Figure 1.**



***Non-Contiguous Annexation: supporting economic development***

As illustrated in the example above, 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. In the past, these properties were annexed by ordinances that often took in roads and other rights-of-way as well as some unwilling residents and property owners. Cities can no longer do this without the consent of voters by referendum or all owners in writing who live along those roads and rights-of-way and own the land under them. Non-contiguous annexation may allow areas appropriate for industrial or commercial development to receive city services they need without interfering with residents’ desire to remain in unincorporated territory.

A 1994 ruling by the Supreme Court of Tennessee on a proposed annexation of the area of Topside into the city of Alcoa determined that, even when the territory being annexed is

limited to a road's right-of-way (a "strip", "shoestring", or "corridor" annexation), residents of adjacent property that extends into that right-of-way are entitled to vote in a referendum.<sup>32</sup> This decision created a broad definition of "voters who reside in the territory" when those owners own the land that lies beneath the road right-of-way. There may be certain circumstances, however limited, where the county or state government is truly the owner in fee of the land upon which a highway is built. In these instances, unlike the situation in Topside, the adjacent residents' property would not extend into the right-of-way, and a city could use it to establish contiguity for annexation without including these voters in a referendum. Interstate highways are one example of this. The court has not invalidated the general practice of corridor annexation in and of itself.<sup>33</sup>

One of the stated purposes of the Growth Policy Act was to create a policy that "establishes incentives to annex or incorporate where appropriate" and "more closely matches the timing of development and the provision of public services."<sup>34</sup> Urban growth boundaries were created to "identify territory that a reasonable and prudent person would project as the likely site of high density commercial, industrial, and/or residential growth over the next 20 years."<sup>35</sup> When the most appropriate area for development has a landowner willing to be annexed but is both unincorporated and not adjacent to the city, and residents or landowners in between don't want to be annexed, allowing non-contiguous annexation can accommodate that development without affecting the unwilling owners and residents. Tennessee's urban growth boundaries could be used to establish county consent for non-contiguous annexations and limit them to areas already designated for development.

Six other states allow cities to annex non-contiguous territory. Three of these allow non-contiguous annexation of only government-owned property.<sup>36</sup> Indiana, Kansas, and North Carolina all permit cities to annex other non-contiguous property only when it is within a certain distance of the city limits and with the owners' consent. Indiana limits non-contiguous annexations to commercial or industrial development only, which avoids problems associated with unmanageable service to widespread residential development. Counties in Indiana need a legislative act to opt-in to the statute that permits noncontiguous annexation, and eleven have done so.<sup>37</sup> Kansas requires the city to get county approval for the annexation. In addition to these six states, Georgia permits annexation by state legislative act, and a 1997 decision by the Supreme Court of Georgia determined that noncontiguous annexation by the legislature is

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<sup>32</sup> Committee To Oppose The Annexation Of Topside And Louisville Road, et al., v. The City Of Alcoa And The Blount County Election Commission, 881 S.W.2d 269; 1994 Tenn. LEXIS 222

<sup>33</sup> See State ex rel Collier v. City of Pigeon Forge, 599, S.W.2d 545 (Tenn.1980)

<sup>34</sup> Tennessee Code Annotated, Section 6-58-102.

<sup>35</sup> Tennessee Code Annotated, Section 6-58-106.

<sup>36</sup> California, Missouri, and Wisconsin.

<sup>37</sup> Burns Indiana Statutes Annotated, Section 36-4-3-4(b).

valid, since the authority to annex is limited only by the state and federal constitutions.<sup>38</sup> These states do not allow the non-contiguous territory to be used to establish contiguity for further annexations. While not technically non-contiguous annexation, Louisiana explicitly permits cities to use a narrow strip of right-of-way, excluding the paved road and adjacent properties, to annex non-contiguous government-owned property. But it prohibits annexation of the paved roadway without also including all property on one side of the road.<sup>39</sup>

North Carolina's form of non-contiguous annexation has been cited as an example to follow in other neighboring states, listing some of the same concerns that have been brought up here in Tennessee:

*"Some may express concern over limiting annexation to contiguous land and the possibility that undeveloped land on the fringe of a city could block annexation of more developed land close by. North Carolina provides a good model here. It allows voluntary annexation of nearby noncontiguous land that is urbanized so long as it is not more than three miles from the municipality's border. The result of this policy is avoidance of the patchwork quilt pattern city boundary now possible in South Carolina, and evidenced by the City of Columbia and others. This pattern decreases the efficiency of city services, is confusing to citizens and makes planning and coordination difficult among the area governments."<sup>40</sup>*

### ***More Informative Plans of Services: making annexation attractive***

Since the passage of Public Chapter 707, it will be more important than ever for cities to make annexation appealing to residents. Cities must now obtain the consent of residents or landowners through a referendum or petition process. If residents are not adequately informed about the effects of annexation, they are more likely to oppose it.

Before annexing new territory, Tennessee requires cities to adopt plans explaining what services will be extended to the area.<sup>41</sup> This includes 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, zoning services, and city schools if maintained separately. These plans are required to include a reasonable implementation schedule for those services.<sup>42</sup> Unlike Tennessee, nine other states require that at least some services be extended in accordance with a statutory timeline.<sup>43</sup> These timelines vary in length between one year and ten years. Although Tennessee does not set a specific

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<sup>38</sup> City of Fort Oglethorpe v. Boger, 267 Ga. 485

<sup>39</sup> Louisiana Revised Statutes, Section 33:180.

<sup>40</sup> Tyer 1995.

<sup>41</sup> Tennessee Code Annotated, Section 6-51-104

<sup>42</sup> Tennessee Code Annotated, Section 6-51-102

<sup>43</sup> Arizona, Georgia, Indiana, Iowa, Missouri, Montana, North Carolina, Oklahoma, Texas.

timeline for any services by statute, residents can sue if the city materially alters the implementation schedule without their consent.<sup>44</sup>

Tennessee also requires a public hearing on the plan of services before it is adopted.<sup>45</sup> This is in addition to the public hearing on the annexation itself. Only six states require multiple hearings before finalizing annexation process.<sup>46</sup> North Carolina has one annexation hearing and one informational meeting that covers general information about the annexation but also incorporates information on the plan of services.<sup>47</sup>

Although plans of services in Tennessee contain a wide range of information, cities are not required to provide financial information about their ability to implement those plans. City residents and residents of the unincorporated area are not informed as to how the city plans to pay for the extension of services, nor do they know what kind of tax consequences or service charges will result from the extension of services. Cities should already have this information before deciding to undertake the annexation process. Cities are required to submit their proposed plans of services to their local planning commission for study and written report. As originally written, the bills that became Public Chapter 462, Acts of 2013 (Senate Bill 1054 by Kelsey and House Bill 1263 by D. Carr) would have required this information, but the provisions were removed before the bill passed. Fifteen other states already provide this information through their plans of services.<sup>48</sup> The requirement may be very general, like Florida, which calls for the "method under which the municipality plans to finance extension of services,"<sup>49</sup> or it may be very specific like Utah, which calls for projected costs, tax consequences, and other information.<sup>50</sup>

### ***Deannexation: initiation by residents and landowners under limited circumstances***

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 the deannexation process.<sup>51</sup> Of the 36 states with deannexation laws, Tennessee is one of only ten

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<sup>44</sup> Tennessee Code Annotated, Section 6-51-108.

<sup>45</sup> Tennessee Code Annotated, Section 6-51-102.

<sup>46</sup> Florida, Iowa, Kentucky, North Carolina, Texas, Utah.

<sup>47</sup> North Carolina General Statutes, Section 160A-58.55.

<sup>48</sup> Delaware, Florida, Indiana, Kansas, Kentucky, Maryland, Missouri, Montana, Nebraska, Nevada, North Carolina, Oklahoma, South Dakota, Utah, Wyoming.

<sup>49</sup> Florida Statutes, Section 171.042.

<sup>50</sup> Utah Code Annotated, Section 10-2-401.5.

<sup>51</sup> Tennessee Code Annotated, Section 6-51-201.

that do not allow residents or owners to initiate deannexation proceedings.<sup>52</sup> Fifteen states allow only residents and landowners to initiate<sup>53</sup> while eleven allow either cities or residents and landowners to initiate the process.<sup>54</sup> Even in those other states where cities can initiate the process, residents are often given a chance to participate. Eight states require a referendum.<sup>55</sup> Including Tennessee, which requires a petition of ten percent of registered voters, five states allow those who don't want to be deannexed to petition for a referendum.<sup>56</sup> Two states allow protests to completely halt a deannexation.<sup>57</sup> Three states require court approval before deannexing territory,<sup>58</sup> while three more require no approval whatsoever from a court or residents.<sup>59</sup>

Local officials in Tennessee have expressed concern that allowing residents to initiate any deannexation could create donut holes and disorderly boundaries that lead to confusion over provision of services. This could increase travel time for services such as police or fire and reduce the ability of local governments to protect and care for their citizens. In order to remedy these problems, eight states prohibit deannexations that would create donut holes by limiting them to areas on the city borders.<sup>60</sup> Some specifically prohibit the creation of donut holes.

City officials have also raised concerns over recouping costs of extending services to deannexed areas. Cities make a substantial investment in an area when they extend services and expect to recover that investment through taxation or service charges. If residents initiate deannexation after the city has extended services, the city may lose money. However, cities in Tennessee, as in twelve other states,<sup>61</sup> already have the power to continue taxing deannexed areas for indebtedness existing at the time of the deannexation.<sup>62</sup> Only Kansas has adopted legislation specifically requiring owners to reimburse the cost of extending services, and this occurs only under narrow circumstances.<sup>63</sup> Furthermore, Texas and Missouri, although they

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<sup>52</sup> Alabama, Alaska, Arizona, Arkansas, Delaware, Idaho, Kentucky, Oregon, Tennessee, Virginia.

<sup>53</sup> Colorado, Georgia, Illinois, Indiana, Michigan, Minnesota, Montana, Nebraska, North Dakota, Ohio, South Dakota, Utah, West Virginia, Wisconsin, Wyoming.

<sup>54</sup> Florida, Iowa, Kansas, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, South Carolina, Texas, Washington

<sup>55</sup> Alaska, Arkansas, Delaware, Iowa, Kentucky, Louisiana, Missouri, Washington

<sup>56</sup> Alabama, Arizona, Florida, Tennessee, Oregon

<sup>57</sup> Kansas, Nevada

<sup>58</sup> Minnesota, Mississippi, Virginia

<sup>59</sup> Idaho, Oklahoma, Texas

<sup>60</sup> Arkansas, Florida, Georgia, Illinois, Minnesota, Oklahoma, South Dakota, Wyoming

<sup>61</sup> Arizona, Colorado, Florida, Idaho, Illinois, Iowa, Minnesota, Montana, Ohio, Oregon, Washington, Wyoming

<sup>62</sup> Tennessee Code Annotated, Section 6-51-204

<sup>63</sup> Kansas Statutes Annotated, Section 12-505; only applies when residents initiate a deannexation within two years after resident initiated non-contiguous annexation

allow other forms of resident initiated deannexation, make it easier for residents to deannex where the city has failed to provide services within a reasonable time. Tennessee law also requires cities to charge users sufficient rates for utilities to pay for services provided to annexed areas. Residents who become deannexed could pay higher rates than they did as customers within the city.

Furthermore, counties may be obligated to assume responsibility for infrastructure such as roads or for emergency or other services in deannexed areas. In Wyoming, the city has to give 60-days' notice to the county so that the county can study the potential impact on their service burden.<sup>64</sup> In Kentucky, counties can refuse to accept uninhabited territory deannexed by cities.<sup>65</sup>

### ***Mutual Boundary Adjustment: informing residents and landowners***

Public Chapter 707 amended Tennessee's annexation law to require a more participatory process, but did not change the mutual adjustment process. Current Tennessee law allows adjacent cities, without giving notice or holding a public hearing, to adjust their mutually shared boundaries by contract. These boundary adjustments are permitted to avoid boundary lines that do not align with streets, lot lines, or rights-of-way<sup>66</sup> Although mutual adjustments are rare, they may have important consequences for those being shifted from one city to another. For example, residents may be subject to higher taxes or a school district they had not expected, or they may experience a change in the level of services they are provided.

Ten other states allow mutual adjustments outside the normal annexation and deannexation processes. Four, like Tennessee, have no notice or hearing requirements.<sup>67</sup> The six states that require notice require anywhere between five days' and three weeks' notice of the public hearing.<sup>68</sup> The notice must be published in a newspaper in Arkansas, Illinois, Iowa, and Utah. Arizona requires mailed notice and Missouri does not specify the method of notice. Four of these six states also require a public hearing before the adjustment can be finalized.<sup>69</sup>

Tennessee has no provision for affected owners and residents to consent to a boundary adjustment, but seven of these ten states do. Like Tennessee, cities in Arkansas, Massachusetts, and Ohio can perform adjustment without any form of resident or landowner consent. Arizona and Utah allow property owners to petition to stop the adjustment. Illinois and Missouri allow residents to force an election to approve the adjustment if enough protest.

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<sup>64</sup> Wyoming Statutes, Section 15-1-421.

<sup>65</sup> Kentucky Revised Statutes, Section 81A.440.

<sup>66</sup> Tennessee Code Annotated, Section 6-51-302

<sup>67</sup> Kentucky, Massachusetts, Minnesota, and Ohio.

<sup>68</sup> Arizona, Arkansas, Illinois, Iowa, Missouri, Utah

<sup>69</sup> Arizona, Arkansas, Iowa, Utah

Iowa and Kentucky require property owners or voters to petition for the adjustment first. Minnesota allows residents or cities to petition for mutual adjustment, but it must be approved by a judge.

### ***Implementing Statutory Allocation of Tax Revenue After Annexation***

As discussed in the interim report on Public Chapter 441, 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. The law requires that counties continue to collect revenue from the local option sales tax and beer wholesale tax—“taxes distributed on the basis of situs of collection”—in the annexed areas until July 1 following the annexation. Then, for the next 15 years, the county is supposed to receive an annual amount equal to what these taxes produced in the annexed area in the twelve months preceding that July 1. Increases above this hold harmless amount are distributed to the annexing city.<sup>70</sup>

Partly because of a lack of data on retail beer sales in annexed areas, all of the beer wholesale tax has gone to the annexing cities since the hold harmless provision went into effect, not just the increases. Recent changes in reporting requirements may make it possible for the Tennessee Department of Revenue to identify beer retailers among the lists of annexed businesses and request beer wholesalers selling to these businesses to provide the tax payment information necessary to calculate the hold harmless amounts.

The revenue department, cities, and counties all have roles in the reporting and distribution of the hold harmless amounts. Cities are responsible for reporting annexations to the Department of Revenue, but counties are responsible for providing the names and addresses of businesses in the annexed territory.<sup>71</sup> Using the reported information, the department is responsible for calculating the “annexation date revenue,” which represents the local share of revenue from the local options sales and beer wholesale taxes collected from annexed businesses during the previous year. Annexing cities are responsible for distributing the beer wholesale tax amounts.<sup>72</sup>

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. First, when the impacted city and county governments notify the Department of Revenue of the name and location of businesses in the annexed area, which they report so that the department can correctly track local sales tax collections, they could also report if any of these businesses hold a retail beer

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<sup>70</sup> Tennessee Code Annotated, Section 6-51-115.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

license. Retailers in county areas that sell beer are required to have a county beer tax license, and when they are annexed into a city, they must obtain a new license from the city.

Next, the department also has a way of identifying likely or possible beer retailers from the list of businesses that were furnished to it by local governments. Every sales tax account has a four-digit business activity code. The department can use the code to determine if any of the businesses identified as involved in annexations were likely or possible beer retailers, for example, grocery stores, eating places, drinking places, drug stores, and gas stations. The Department could then check with local governments to determine if any of these businesses hold a retail beer license. Once identified, the department, with authority given to it under Tennessee Code Annotated Section 57-5-206, could request beer wholesalers to provide the appropriate data needed to calculate the hold harmless amount for wholesale beer tax collections.

Finally, since the passage of Public Chapter 657, Acts of 2012, the department now receives detailed data from beer wholesalers that identifies all retailers to whom they sell beer. This information includes the sales tax account number of each retailer. Crosschecking this information with the information they already have on businesses they are tracking for purposes of the hold harmless requirements on local sales taxes would identify those that sell beer and paid wholesale beer taxes. The Department could then request wholesalers to provide the necessary data with which to calculate the annexation date revenue wholesale beer tax hold-harmless amount.

## **Comprehensive Growth Policies**

The stated purpose of Tennessee's Growth Policy Act (Public Chapter 1101) was to establish a comprehensive growth policy for the state, part of which was a requirement to designate urban growth boundaries, planned growth areas, and rural areas.<sup>73</sup> While the focus of the Act at the time was to deal with Tennessee's frequent battles over annexation and incorporation, it was also an attempt to further growth planning statewide. Counties and cities agreed that urban growth boundaries would contain "territory that is reasonably compact yet sufficiently large to accommodate residential and nonresidential growth" over the following 20 years. This was to be territory contiguous to existing cities where the city could "efficiently and effectively provide urban services."<sup>74</sup> Planned growth areas were designed to accommodate other areas of expected growth outside the boundaries of cities and their UGBs. This 20-year planning period is soon coming to an end.

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

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<sup>73</sup> Tennessee Code Annotated, Section 6-58-102.

<sup>74</sup> Tennessee Code Annotated, Section 6-58-106.

several ways growth plans determine where annexation and incorporation can occur. No city can annex territory in another's urban growth boundary, even by owner request. Non-contiguous annexations could be limited to be within urban growth boundaries, if that type of annexation is made available in Tennessee. New cities can only incorporate in a planned growth area. Growth boundaries may also delineate cities' planning and zoning authority outside city limits if a city has been given regional planning powers within a planning region by the Local Government Planning Advisory Committee (LGPAC).<sup>75</sup> This committee, with members appointed by the Governor, operates as part of the Department of Economic and Community Development, and has always been the authority responsible for regional planning commissions, as well as approving growth plans and changes to them. Cities that do not currently have regional planning status may apply to the LGPAC for regional designation, but any such planning region may not extend beyond the city's urban growth boundary. In counties that do not have county zoning, the exercise of the regional powers is subject to the approval of the county legislative body.<sup>76</sup> There are 100 cities designated as regional planning authorities, with extraterritorial planning and zoning authority inside their UGB.<sup>77</sup>

### ***Updating Growth Plans: the next 20 years***

Growth plans do not expire after 20 years—or after any length of time—but there is also no statutory requirement to update them. Although other states' comprehensive plans are different than Tennessee's growth plans, the Commission's interim report noted that states typically require plans to be updated every two to ten years, providing an opportunity in those states to engage the public on issues related to future growth and development and municipal annexation. Tennessee's county growth plans were based, in part, upon "historical experience, economic trends, population growth patterns"—which have most likely changed significantly over the past 15 years and will continue to change over the next 20. Actual growth and development in some counties has lagged projections and in other places far exceeded them—and this is certain to happen again. See the map below and tables 2 through 5. Thirty-six counties already have Census-estimated 2013 populations higher than they were projected to have in 2020. Some counties have no designated planned growth areas and others have vast planned growth areas and no rural areas. This may not reflect current patterns of development in those counties.

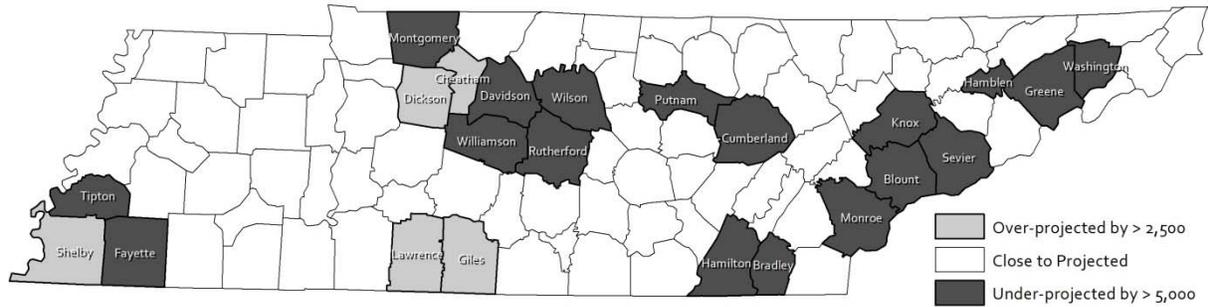
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<sup>75</sup> Tennessee Code Annotated, Section 13-3-102.

<sup>76</sup> Tennessee Code Annotated, Section 6-58-106(d).

<sup>77</sup> *Status of Planning & Land Use Controls*. Tennessee Department of Economic and Community Development Local Planning Assistance Office, as of April 1, 2011.

## Comparing Projected 2010 County Population to Census 2010



**Table 2. Counties with greatest population over-projection (2010)**

| County   | 2010 Projection | 2010 Census | Difference | % Difference |
|----------|-----------------|-------------|------------|--------------|
| Shelby   | 943,806         | 927,644     | -16,612    | -1.7%        |
| Cheatham | 49,721          | 39,105      | -10,616    | -27.1%       |
| Dickson  | 53,594          | 49,666      | -3,928     | -7.9%        |
| Lawrence | 44,529          | 41,869      | -2,660     | -6.4%        |
| Giles    | 32,047          | 29,485      | -2,562     | -8.7%        |

**Table 3. Counties with greatest population under-projection (2010)**

| County     | 2010 Projection | 2010 Census | Difference | % Difference |
|------------|-----------------|-------------|------------|--------------|
| Davidson   | 574,279         | 626,681     | +52,402    | +8.4%        |
| Rutherford | 215,417         | 262,604     | +47,187    | +18.0%       |
| Hamilton   | 305,767         | 336,463     | +30,696    | +9.1%        |
| Williamson | 153,589         | 183,182     | +29,593    | +16.2%       |
| Knox       | 404,666         | 432,226     | +27,560    | +6.4%        |

**Table 4. Counties with highest percentage over-projection (2010)**

| County   | 2010 Projection | 2010 Census | Difference | % Difference |
|----------|-----------------|-------------|------------|--------------|
| Cheatham | 49,721          | 39,105      | -10,616    | -27.1%       |
| Lewis    | 14,116          | 12,161      | -1,955     | -16.1%       |
| Benton   | 18,910          | 16,489      | -2,421     | -14.7%       |
| Grundy   | 15,361          | 13,703      | -1,658     | -12.1%       |
| Stewart  | 14,595          | 13,324      | -1,271     | -9.5%        |

**Table 5. Counties with highest percentage under-projection (2010)**

| County     | 2010 Projection | 2010 Census | Difference | % Difference |
|------------|-----------------|-------------|------------|--------------|
| Sequatchie | 11,203          | 14,112      | +2,909     | +20.6%       |
| Rutherford | 215,417         | 262,604     | +47,187    | +18.0%       |
| Williamson | 153,589         | 183,182     | +29,593    | +16.2%       |
| Fayette    | 32,236          | 38,413      | +6,177     | +16.1%       |
| Monroe     | 37,565          | 44,519      | +6,954     | +15.6%       |

Source: Population projections prepared by UT Center for Business and Economic Research, March 1999; US Census Bureau Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2013.

### ***Unilateral Retraction of Cities' Urban Growth Boundaries***

Making even small amendments to growth plans can be cumbersome. Although growth plans can be amended as often as deemed necessary, only 25 counties have done so. If a single city wants to retract its urban growth boundary for whatever reason, the entire coordinating committee has to be convened and two public hearings must be held. This coordinating committee is made up of the county mayor and each city mayor in the county, along with an owner of greenbelt property. If the coordinating committee approves of the amendment, each municipal government in the county must also approve it before it can be adopted. In an amended plan, the area formally part of an urban growth boundary would be re-designated as part of another city's urban growth boundary or either a rural or planned growth area. The proposed change is then presented to the state's Local Government Planning Advisory Committee for approval.

The General Assembly has considered legislation that would change the way growth plans can be amended, but none of these previous bills would have permitted unilateral retraction of a city's urban growth boundary. For example, 2013 Senate Bill 613 by Yager (House Bill 135 by Keisling) would have established two different processes for changing growth plans. Under this bill, an "amendment" to a growth plan would be when a city proposes to change only its

own UGB, or a county proposes to adjust a boundary between a planned growth and rural area. This type of amendment would follow the existing procedures for adoption. Any proposed change that affects more than one growth plan boundary would be a “revision” and go through an even more rigorous process. Under the proposed bill, growth plans could be revised only once every seven years, and the process would generally follow current law except that convening the coordinating committee would require approval either by the county legislative body or by the municipal legislative bodies representing at least half of the municipal population of the county, making revisions much more difficult than they are under current law.

### ***Making the Joint Economic Community Development Board more Effective***

The Growth Policy Act required each non-metropolitan county to establish a joint economic community development board (JECDB) to “foster communication relative to economic and community development between and among governmental entities, industry, and private citizens.”<sup>78</sup> Other than this, JECDBs have no statutory powers or authority. Any other functions they may have are determined by interlocal agreement among the municipalities and county. These boards have been useful in many counties, but others question the need for required meetings and wish to have more flexibility.

The state has other widely used entities for promoting local economic development. Industrial Development Corporations—commonly known as IDBs—are non-profit corporations with broad powers to acquire and develop buildings and sites for economic development.<sup>79</sup> There are currently 165 active industrial development boards in Tennessee, according to the Secretary of State’s office, which is responsible for maintaining certificates of incorporation for IDBs.<sup>80</sup> Of the 95 counties in Tennessee, 88 have at least one IDB incorporated, but the majority of boards are incorporated either by a single city or by the county alone. Just nine boards are joint boards with city and counties together, although county boards commonly represent the economic interests of the cities within them.

When a city or county government forms an IDB individually, local government officers or employees cannot serve as directors. At least seven directors are elected by the municipal governing body—city council, board of aldermen, or county commission—and each must be a qualified elector and taxpayer of the municipality.<sup>81</sup> When two or more local governments

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<sup>78</sup> Tennessee Code Annotated, Section 6-58-114(b).

<sup>79</sup> Tennessee Code Annotated, Section 7-53-102.

<sup>80</sup> Tennessee Code Annotated, Section 7-53-203. List received from Kevin Rayburn, Assistant Director, Business Services Division, Office of Tennessee Secretary of State, October 2, 2014.

<sup>81</sup> Tennessee Code Annotated, Section 7-53-301.

form a joint IDB—permissible under Tennessee Code Annotated Section 7-53-104—city and county officers, but not other employees, can serve as directors.<sup>82</sup>

JECDBs, at a minimum, include all city and county mayors plus one person with land in Tennessee’s Greenbelt program. More members can be added if the board chooses. JECDBs are required to meet four times annually. JECDBs are not the same as county coordinating committees, which convene only to adopt and amend county growth plans and have more requirements for including representatives from various interests. The coordinating committee was intended to be a broad-based group that includes all of the mayors, as well as representatives of the largest municipal and non-municipal utilities, the largest school system, the largest chamber of commerce, the soil conservation district, and four members representing environmental, construction, and homeowner interests.<sup>83</sup>

The JECDB can help bridge gaps between cities and counties by bringing the different leaders together on a regular basis. For example, one former city manager recounted how his county’s JECDB was able to pool funds from the county and three cities to hire a full-time economic development director and also successfully applied for a THDA housing grant that the county alone had been unable to receive.<sup>84</sup>

The Tennessee Department of Economic and Community Development (ECD) administers the state’s ThreeStar Program, which promotes “county progress in the areas of economic development, responsible fiscal management, public safety, health and education.” Each county’s ThreeStar program must be administered by the county JECDB or another designated administrator. Participating counties become eligible for an annual ThreeStar grant, as well as other program incentives from ECD. There are only minimal requirements, however, that the Joint Economic Development Board simply meets statute requirements and that JECDB meeting minutes must be submitted for documentation.<sup>85</sup> There is no incentive in the program to do more with the JECDB. Eighty-five Tennessee counties were granted ThreeStar status in 2014.<sup>86</sup>

An industrial development corporation can recruit businesses and sell industrial revenue bonds to fund the development of industrial plants or commercial sites and buildings. The Tennessee Attorney General has opined that JECDBs do not have the authority to construct a manufacturing building or to lend or grant funds contributed to the Board by the participating

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<sup>82</sup> Tennessee Code Annotated, Section 7-53-104 does not define “officers”, but provides that the “city manager or other comparable chief administrative officer” may serve as a director.

<sup>83</sup> Tennessee Code Annotated, Section 6-58-104 explains the composition of the coordinating committee.

<sup>84</sup> Dana Deem, MTAS Municipal Management Consultant, via email October 2, 2014.

<sup>85</sup> Program Overview, January 2014. <http://www.tn.gov/e cd/threestar/pdf/ThreeStarProgramOverview.pdf>

<sup>86</sup> Tennessee Department of Economic and Community Development, “ThreeStar Status Awarded to 85 Counties,” press release, August 14, 2014. <http://news.tn.gov/node/12820>

local governments to an industrial development corporation.<sup>87</sup> The opinion added that there is no statutory authority under which the interlocal agreement could be written to authorize the Board to issue bonds on behalf of all its members.

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<sup>87</sup> Opinion No. 05-176 — Joint Economic Development Board of Weakley County.

## Appendix: Clarifying Statutory Language

While Public Chapter 707 deleted from statute the method of annexation by ordinance and prohibits any annexations by ordinance after May 15, 2015, there are a number of obsolete references to annexation by ordinance in other sections of the code that need to be addressed to make annexation policy and procedures consistent going forward. Some of these are simple corrections, where the words "by ordinance" or reference to annexations under Section 6-51-102 can be deleted without changing the meaning of the statute. Other types of clarification need more careful discussion.

### ***Inapplicable sections, references to deleted sections or "ordinance", and clarification in general:***

Acts 2014 ch. 707, § 2(b) prohibits any annexation by ordinance that is not both operative and effective prior to May 16, 2015.

1. § 6-51-101. Part definitions and definitions for § 6-51-301.
  - (3): ""Notice" means publication . . . The notice, whether by ordinance as stipulated in § 6-51-102(a)(1) and (b) or by referendum as stipulated in § 6-51-104(b) shall be satisfied by inclusion of a map... "
  - Note that 6-51-301 is about utility service and has nothing to do with notice of annexation.
2. § 6-51-103. Quo warranto to contest annexation ordinance -- Appellate review.
  - Review under T.C.A. § 6-51-103 applies only to annexation by ordinance cases and was inapplicable to annexation by referendum case. *State ex rel. Vicars v. Kingsport*, 659 S.W.2d 367, 1983 Tenn. App. LEXIS 707 (Tenn. Ct. App. 1983).
  - (a)(1)(A): "Any aggrieved owner of property that borders or lies within territory that is the subject of an annexation ordinance prior to the operative date thereof, may file a suit in the nature of a quo warranto proceeding . . . to contest the validity thereof on the ground that it reasonably may not be deemed necessary for the welfare of the residents and property owners of the affected territory and the municipality as a whole and so constitutes an exercise of power not conferred by law."
  - This entire section could be repealed. In annexation cases (by resolution / referendum) there is no equal protection or due process argument that can properly be made when the statutes are properly followed.
3. § 6-51-105. Referendum on annexation.
  - (b): "The legislative body of the municipality affected may also at its option submit the questions involved to a referendum of the people residing within the municipality."

- (e): "If a majority of all the qualified voters voting thereon in the territory proposed to be annexed, or in the event of two (2) elections as provided for in subsections (a) and (b), a majority of the voters voting thereon in the territory to be annexed and a majority of the voters voting thereon in the municipality approve the resolution, annexation as provided therein shall become effective thirty (30) days after the certification of the election or elections."
- To clarify that both a majority of voters in the territory AND a majority of voters in the municipality each have to approve for the annexation to become effective, the subsection could be reorganized:
  - (e)(1) If a majority of all the qualified voters voting thereon in the territory proposed to be annexed approve the resolution, annexation as provided therein shall become effective thirty (30) days after the certification of the election or elections.

(e)(2) In the event of two (2) elections as provided for in subsections (a) and (b), if both a majority of the voters voting thereon in the territory to be annexed and a majority of the voters voting thereon in the municipality approve the resolution, annexation as provided therein shall become effective thirty (30) days after the certification of the election or elections.

- (f): "The mode of annexation provided in this section is in addition to the mode provided in § 6-51-102."
  - This subsection could be deleted entirely, as 6-51-102 will not provide a mode of annexation after May 15, 2015.

4. § 6-51-106. Abandonment of proceedings.

- "Any annexation proceeding initiated under § 6-51-102 or § 6-51-104 may be abandoned and discontinued at any time by resolution of the governing body of the municipality."

5. § 6-51-109. Annexation of smaller municipality by larger municipality.

- "...larger municipality may by ordinance annex such portion of the territory of the smaller municipality described in the petition or the totality of such smaller municipality if so described in the petition only after a majority of the qualified voters voting in an election in such smaller municipality vote in favor of the annexation.
  - This section requires at least 20% of the voters in a smaller municipality to petition to a larger municipality for an election on the question of getting annexed into the larger city. Only voters in the smaller city vote on it.
  - Larger municipality "may" annex; it can choose not to pass ordinance.

- Although the action is by ordinance, this annexation is still subject to voter approval. However, it varies from other requests for annexation:
    - The larger city has no option to put the annexation to a vote of its current residents.
    - Plan of services requirements would not apply unless other changes were made to 6-51-102.
    - Other notice and hearing requirements do not seem applicable.
  - Changing “by ordinance” to “by resolution” alone does not address the peculiarities of this section.
6. § 6-51-111. Municipal property and services.
- (a): “Upon adoption of an annexation ordinance or upon referendum approval of an annexation resolution as provided in this part, **or upon adoption of an annexation resolution having written owner consent**, an annexing municipality and any affected instrumentality of the state . . . shall attempt to reach agreement in writing for allocation and conveyance to the annexing municipality of any or all public functions, rights, etc.”
    - Something would have to be added to extend provisions to annexations by resolution without referendum approval when there is written consent.
7. § 6-51-119. Provision of copy of annexation ordinance, the plan for emergency services and map designating the annexed area to emergency communications district.
- (a): “The legislative body of an annexing municipality or its designee shall provide a copy of the annexation ordinance **resolution**, along with a copy of the portion of the plan of services dealing with emergency services and a detailed map designating the annexed area, to any affected emergency communications district upon final passage of the ordinance. **adoption of a resolution with written consent or upon certification of an annexation referendum.**”
8. § 6-51-121. Recording of annexation ordinance of resolution by annexing municipality.
- Upon adoption of an annexation ordinance or upon referendum approval of an annexation resolution as provided in this part, **or adoption of an annexation resolution without a referendum when all owners have given written consent**, an annexing municipality shall record the ordinance or resolution with the register of deeds in the county or counties where the annexation was adopted or approved. The ordinance or resolution shall

describe the territory that was annexed by the municipality. A copy of the ordinance or resolution shall also be sent to the comptroller of the treasury and the assessor of property for each county affected by the annexation.

9. § 6-58-111. Annexation procedure -- Quo warranto action to challenge annexation.
  - (a): "A municipality possesses exclusive authority to annex territory located within its approved urban growth boundaries; therefore, no municipality may annex by ordinance or by referendum any territory located within another municipality's approved urban growth boundaries. Within a municipality's approved urban growth boundaries, a municipality may use any of the methods in chapter 51 of this title to annex territory..."
    - This would also mean that annexation with written consent (not by referendum) cannot take place in another municipality's UGB.
    - If an owner in one UGB wanted to be annexed into an adjacent municipality instead, it would have to go through growth plan amendment (subsection revised to apply to any annexation, not only by ordinance):
      - (c)(1) Prior to a municipality annexing by ordinance territory outside its existing urban growth boundary, whether the territory desired for annexation is within another municipality's urban growth boundary or a county's planned growth area or rural area, it must first amend the growth plan by having its desired change to the urban growth boundary submitted to the coordinating committee...
  - (c)(2) allows annexation outside a UGB in a PGA or RA by referendum "as provided for in §§ 6-51-104 and 6-51-105."
    - "...the annexation must be by referendum only and not by ordinance. The municipality must follow the referendum process as provided for in §§ 6-51-104 and 6-51-105."
  - (c): "The municipality shall have the burden of proving that an annexation ordinance is reasonable for the overall well-being of the communities involved."
    - This part of 6-58-111 should be removed.

### ***Statutes Applying to Plans of Services:***

1. § 6-51-102. Annexation by ordinance. *[This should be re-named.]*
  - (b)(1): "Before any territory may be annexed under this section, the governing body of the municipality shall adopt a plan of services establishing

at least the services to be delivered and the projected timing of the services.”

2. § 6-51-104. Resolution for annexation by referendum -- Notice.
  - (b)(1)(A): “A copy of the resolution, describing the territory proposed for annexation, shall be promptly sent by the municipality to the last known address listed in the office of the property assessor for each property owner of record within the territory proposed for annexation . . . The resolution shall also include a plan of services for the area proposed for annexation. ***The plan of services shall address the same services and timing of services as required in § 6-51-102.*** Upon adoption of the plan of services, the municipality shall cause a copy of the resolution to be forwarded to the county mayor in whose county the territory being annexed is located.”
    - **“Same services”—6-51-102(b)(2):** “The plan of services shall include, but not be limited to: police protection, fire protection, water service, etc.”
    - **“Timing of services”—6-51-102(b)(3):** “The plan of services shall include a reasonable implementation schedule for the delivery of comparable services...”
    - Question has been asked: Do other parts of 102 not specific to “services and timing of services” apply to annexations under 104 and 105? Rules of statutory construction seem to indicate that the intent of the legislature was to have all plan of service provisions of 102 apply equally.
      - (b)(4): “Before a plan of services may be adopted, the municipality shall submit the plan of services to the local planning commission, if there is one, for study and a written report . . . 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...”
      - (b)(5): “A municipality may not annex any other territory if the municipality is in default on any prior plan of services.”
  - § 6-51-104(b)(1)(A) could be amended to make the intent clearer:
    - The resolution shall also include a plan of services for the area proposed for annexation. The plan of services shall address the same services and timing of services **adhere to all provisions** as required in § 6-51-102.
3. § 6-51-108. Rights of residents of annexed territory -- Plan of service and progress report.

- (b)(1): “This subsection (b) shall apply to any municipality whose annexation ordinance becomes effective by court order pursuant to § 6-51-103(d).”
  - 6-51-103(d)(1): “...order shall be issued sustaining the validity of such ordinance, which shall then become operative thirty-one (31) days after judgment is entered, or (2) order that the effective date of the ordinance be fixed as December 31 following the date of entry of the judgment or determination of appeal.”
  - When a court upholds a city’s annexation ordinance, this section then requires the city to provide notice that the order has been upheld and that the annexation will take effect. This subsection should remain as-is until there are no more ordinances being challenged in court, and then it could be repealed along with 6-51-103.
- 6-51-108(e): An aggrieved property owner in the annexed territory may bring an action in the appropriate court of equity jurisdiction to enforce the plan of services at any time after one hundred eighty (180) days after an annexation by ordinance takes effect, and until the plan of services is fulfilled...

***Changes to Annexation by Resolution with Written Consent:***

1. § 6-51-104. Resolution for annexation by referendum -- Notice.
  - (a): “Notwithstanding any provision of this part or any other law to the contrary, property being used primarily for agricultural purposes shall be annexed only with the written consent of the property owner or owners. A resolution to effectuate annexation of any property, with written consent of the property owner or owners, shall not require a referendum, **nor shall it require the hearing or publication of notices required for referendums.**”
    - Because this is part of 6-51-104, all other provisions of this section apply: public hearing on the annexation, mailing copies of the resolution to owners, publishing notice in newspapers and public places, and including a copy of the plan of services.
    - The plan of services for a consensual annexation must also go through planning commission review and public hearing on its own, which includes more notice requirements.
    - Section could be amended as above to exempt annexations with owner consent from certain requirements.
  - Alternatively, removing this type of annexation by consent to a new part of section 102 could allow more flexibility in how these annexations are carried out compared to those that go through the referendum process.

***Annexation by Ordinance in another County:***

1. § 6-51-116. Annexation of territory in a county in a different time zone.

- “Notwithstanding any provision of law to the contrary, after December 31, 1992, it is unlawful for any municipality to annex, by ordinance upon its own initiative, territory in any county other than the county in which the city hall of the annexing municipality is located, if the two (2) counties involved are located in different time zones.”
  - Should this section be amended to prohibit a municipality from initiating an annexation by referendum in another time zone, or just deleted entirely?
2. § 6-58-108. Annexation by ordinance -- Growth plan required for incorporation of new city.
- (a)(1): “After May 19, 1998, a municipality may not annex by ordinance upon its own initiative territory in any county other than...” This statute established limits on when a city could annex by ordinance of its own initiative in a county other than where city hall is located.
    - (A) At least 7% of the city’s population has to be in the second county; (B) the city can get county commission approval in the second county; or (C) the city has to serve at least 100 customers with sanitary sewer service.
    - Example: City hall and 95% of the population of Cityville are in one county; 5% of the population is in another county. Cityville does not provide sewer service to at least 100 customers in the other county. Under § 6-58-108, Cityville could not annex by ordinance of its own initiative in the other county without getting approval from that county legislature [6-58-108(a)(1)(B)].
  - No such limits exist on annexation by resolution and referendum in other statutes. A city in multiple counties can adopt an annexation resolution in the secondary county and hold a referendum under 6-51-104 and 105.
    - Would the Commission want to consider placing these limitations on annexations by resolution and referendum, or would it be best to delete this language entirely?
  - Subsection (b) of 6-58-108 could also be deleted:
    - “After January 1, 1999, a new municipality may only be incorporated in accordance with this section and with an adopted growth plan.”
    - Municipalities are not incorporated under 6-58-108. They are generally incorporated under one of the forms in chapters 1-4 of Title 6.
    - This is not the only section that says a new municipality is required to adopt a growth plan. § 6-58-112(d)(1) says that:

"If the residents of a planned growth area petition to have an election of incorporation, the county legislative body shall approve the corporate limits and the urban growth boundary of the proposed municipality before the election to incorporate may be held."

***Same Territory Annexed by Multiple Municipalities:***

1. § 6-51-110. Priority of municipalities in annexation.
  - (b): "If two (2) municipalities that were incorporated in the *same county* shall initiate annexation proceedings with respect to the same territory, the proceedings of the *municipality having the larger population shall have precedence* and the smaller municipality's proceedings shall be held in abeyance pending the outcome of the proceedings of such larger municipality."
  - (c): "If two (2) municipalities that were incorporated in *different counties* shall initiate annexation proceedings with respect to the same territory, the proceedings of the *municipality that was incorporated in the same county in which the territory to be annexed is located shall have precedence* and the other municipality's proceedings shall be held in abeyance pending the outcome of the proceedings of the municipality that was incorporated in the same county as the territory to be annexed."
  - (e): "If the ordinance of annexation of the larger municipality does not receive final approval within one hundred eighty (180) days after having passed its first reading **a resolution calling for annexation by referendum is adopted by the larger municipality, and the majority of voters voting in the referendum as provided in §6-51-105 do not approve**, the proceeding shall be void and a smaller municipality shall have priority with respect to annexation of the territory; provided, that its annexation ordinance shall likewise be adopted upon final passage within one hundred eighty (180) days after having passed its first reading **a resolution for annexation by referendum is adopted by the legislative body of the smaller municipality and a referendum is held in accordance with §6-51-105.**"
    - When two cities both adopt resolutions calling for annexation of the same territory by referendum, this would give priority for the larger municipality to hold its election first.
    - This could only take place outside of the cities' urban growth boundaries in accordance with § 6-58-111(c).
    - Subsection (f) allows the smaller municipality to challenge the larger city's annexation in court.
  - (g): "A smaller municipality may, by ordinance, extend its corporate limits by annexation of any contiguous territory, when such territory within the corporate limits of a larger municipality is less than seventy-five (75) acres in area, is not populated, is separated from the larger municipality by a limited

access express highway, its access ramps or service roads, and is not the site of industrial plant development. The provisions of this chapter relative to the adoption of a plan of service and the submission of same to a local planning commission, if there be such, shall not be required of the smaller municipality for such annexation.”

- This subsection allows a small city—by ordinance and without consent—to annex up to 75 acres of territory (not an industrial plant) already in the limits of a larger city when the land in question is separated from the rest of the larger city by a limited-access highway.
- This should be repealed, or at least require an owner’s written consent.

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