

Presentation to the Tennessee Municipal Attorneys Association Winter Seminar
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Annexation and Growth Planning in Tennessee — Proposed Changes

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Public Chapter 441, Acts of 2013

- placed a **moratorium** through May 15, 2014, on **annexation** by ordinance **without consent** of territory being used primarily for **residential or agricultural** purposes and
- required the Tennessee Advisory Commission on Intergovernmental Relations to review and evaluate the **efficacy of state laws** on
 - comprehensive **growth plans**
(Tennessee Code Annotated, Title 6, Chapter 58) and
 - on changing **municipal boundaries**
(Tennessee Code Annotated, Title 6, Chapter 51)

Referred by Senate State and Local Government Committee and by House Finance, Ways and Means Subcommittee

- **Senate Bill 1316** by Bowling, **House Bill 1249** by Van Huss prohibits a municipality from annexing any land within its urban growth boundary that is zoned for agricultural use until there is a change in use triggered by a request for a non-agricultural zoning designation or by sale of the territory for use other than agricultural purposes.
- **Senate Bill 1381** by Bowling, **House Bill 1319** by Van Huss requires any municipality proposing to annex territory within the municipality's urban growth boundary to mail notice to any property owners within that urban growth boundary 90 days prior to the date of proposed annexation and to hold at least three public, informational meetings.

Referred by Senate State and Local Government Committee

- **Senate Bill 613** by Yager [House Bill 1035 by Keisling] revises the procedure for amending growth plans; establishes procedures for adoption of a revised growth plan.
- **Senate Bill 731** by Watson [House Bill 230 by Carter] requires all annexations within a municipality's urban growth boundaries under an amended growth plan to be by referendum only and not by ordinance.
- **Senate Bill 732** by Watson [House Bill 0231 by Carter] places restrictions on the ability of the mayor of a municipality that has not annexed all territory within its urban growth boundaries to propose an amendment to the growth plan and to serve on the coordinating committee reconvened or reestablished to amend the growth plan.

Referred by House Finance, Ways and Means Subcommittee

- **House Bill 590** by Van Huss [Senate Bill 869 by Crowe] requires, prior to a municipality annexing within its urban growth boundary, the approval of a majority vote of qualified voters in the territory proposed for annexation.

The Growth Policy Act
three types of areas,
two of which require
referendums for
annexations

The Growth Policy Act

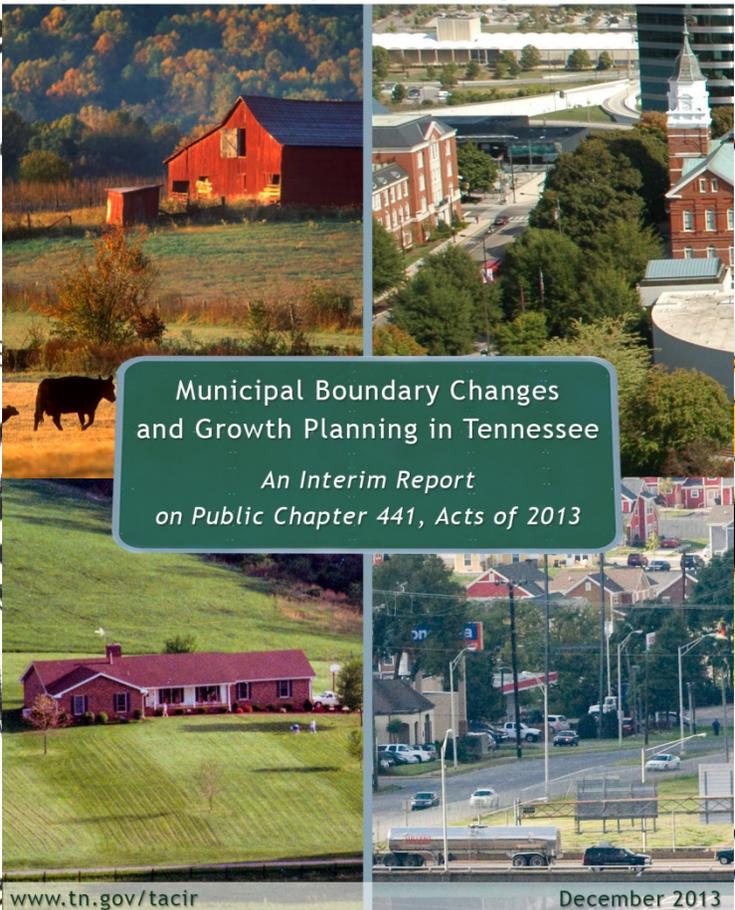
- **Urban Growth Boundaries (UGBs)**—areas contiguous to cities in which **cities can annex by ordinance** and outside of which they cannot.
- **Planned Growth Areas (PGAs)**—areas outside cities and their UGBs where **new cities may be incorporated** and in which **existing cities can only annex with the consent of residents** within those areas.
- **Rural Areas (RAs)**—areas not included within UGBs or PGAs where **cities cannot be incorporated** and **existing cities cannot annex except by consent**.

TACIR Interim Report on Public Chapter 441

**Annexation Issues
In Tennessee**
A Commission Report to the 99th General Assembly

Report of the Tennessee Advisory Commission on Intergovernmental Relations

**Planning for Growth and Paying for It:
TACIR Recommendations
on 2005 Growth-Related Bills**



Municipal Boundary Changes
and Growth Planning in Tennessee
An Interim Report
on Public Chapter 441, Acts of 2013



Tennessee Advisory Commission on Intergovernmental Relations
February 1995
www.tn.gov/tacir

December 2013
Tennessee Advisory Commission on Intergovernmental Relations
February 2006
TACIR Recommendations

Changing Municipal Boundaries

Tennessee Code Annotated, Title 6, Chapter 51

- Part 1: expanding city boundaries by annexation
- Part 2: deannexation of territory from cities
- Part 3: merger of cities
- Part 4: mutual adjustment of city boundaries

Merger Of Cities

How it works now:

- ✓ Two or more contiguous cities located in the same county in Tennessee can merge into one city.
- ✓ Mergers can be initiated either by resolution of the cities or by petition of registered voters.
- ✓ Regardless of who initiates the merger, it must be approved by majorities of those voting in separate referendums in each of the cities.

Merger Of Cities

How it works in other states:

- Thirty-six states have similar laws.
- Thirty-three require referendums before mergers can be finalized.

Commission Recommendation:

“The Commission finds existing laws governing merger sufficient and sees no issues requiring further consideration.”

Mutual Adjustment of City Boundaries

How it works now:

- ✓ cities may adjust their mutual boundaries by contract to align them with easements, rights-of-way, and lot lines “to avoid confusion and uncertainty about the location of the contiguous boundary or to conform the contiguous boundary” to these lines
- ✓ no provision for residents or property owners to participate in these decisions

Mutual Adjustment of City Boundaries

How it works in other states:

- Ten other states have specific laws authorizing cities to adjust their mutual boundaries, usually through a simultaneous process where one city deannexes property that the other city annexes.
 - Three, like Tennessee, provide no opportunity for residents or property owners to participate in their boundary-adjustment processes.
 - In three, cities initiate the process, but the people can either stop or must approve the transfer.
 - The other four states allow individuals to petition for a boundary adjustment with various processes for determining whether that change will occur, including the possibility of a referendum in one state.

Mutual Adjustment of City Boundaries

Commission Recommendation:

“Consistent with its recommendation to create a more participatory process for annexation in general, the Commission recommends further consideration of requiring a public hearing before adjusting cities’ corporate boundaries.”

Deannexation of Territory From Cities

How it works now:

- ✓ Tennessee provides two methods for deannexation, both of which can be initiated only by cities.
 - One puts the question directly to voters in an election and requires a two-thirds majority to pass.
 - The other begins with adoption of an ordinance but allows a simple majority of residents in the area proposed for deannexation to overturn it.
- ✓ There is no provision for residents to initiate deannexation, although they can request it.

Deannexation of Territory From Cities

How it works in other states:

- Thirteen states authorize only property owners to initiate deannexation.
- Nine authorize only cities to do so.
- Fourteen authorize both property owners and cities to initiate.
- A majority of states require a referendum or consent to complete the deannexation.

Deannexation of Territory From Cities

Commission Recommendation:

“The Commission recommends further consideration of giving property owners the right to initiate deannexation provided that it does not create non-contiguity or unincorporated islands and that the city is compensated for its investment in municipal infrastructure other than those associated with rate-paid services.”

Annexation and Growth Planning in Tennessee— Proposed Changes

Bills Sent to TACIR in 2013



Issues Presented by Related Bills

- annexation methods
- informational meetings and public hearings
- notice requirements
- annexation of agricultural property
- growth plan amendments

Comprehensive Growth Policy — Title 6, Chapter 58

Why PC 1101?

- ✓ eliminate annexation or incorporation out of fear
- ✓ establish incentives to annex or incorporate where appropriate
- ✓ more closely match the timing of development and the provision of public services
- ✓ stabilize each county's education funding base and establish an incentive for each county legislative body to be more interested in education matters
- ✓ minimize urban sprawl

Tennessee Code Annotated § 6-58-102

Comprehensive Growth Policy

Why PC 1101?

- ✓ The Growth Policy Act sought to structure decisions about service levels and development, including annexation, in a local but comprehensive process.
- ✓ Decisions about annexation powers are decisions about local government service levels and economic development potential that have countywide implications.
- ✓ The areas established by the urban growth boundaries, by definition, were to be capable of and appropriate for urban services provided by a city within a 20-year planning horizon.

Comprehensive Growth Policy

Why PC 1101?

- ✓ The law requires representation of many key interests though the composition of the coordinating committee, the public hearing process, and the required approvals of the local governmental legislative bodies.
- ✓ Other than through public hearings, there is no direct participation by affected residents and property owners.
- ✓ The Growth Policy Act does not require popular approval of the decisions reflected in the designation of rural areas, planned growth areas and urban growth boundaries in the growth plans.

Comprehensive Growth Policy—Proposed Changes

Senate Bill 613 by Yager (House Bill 135 by Keisling)

- ✓ would have revised the procedure for amending growth plans, providing a detailed, step-by-step process for amendments that change a single UGB or PGA without affecting any other UGB or PGA
- ✓ would deem anything else a revision, and limit revisions to ***no more than once every seven years***
- ✓ would also require either a vote by the county commission or by a municipality or combination of municipalities representing at least half of the city residents of the county to initiate the revision process, thereby making revisions much more difficult than they are under current law

Comprehensive Growth Policy—Proposed Changes

Senate Bill 732 by Watson (House Bill 231 by Carter)

- ✓ would have prohibited mayors of municipalities that have not annexed all territory within their UGBs and fully complied with all the plans of services adopted for the annexed areas from proposing amendments to growth plans and from serving on coordinating committees.
- ✓ The House Local Government Committee amended the bill to remove the requirement to annex all territory within a municipality's UGB before proposing amendments.

Comprehensive Growth Policy—Proposed Changes

Commission Recommendation:

“The consensus of the Commission is that further consideration should be given to requiring all growth plans to be ***reviewed and either revised or readopted within two years and every five years thereafter.***”

Continued.

Comprehensive Growth Policy—Proposed Changes

Commission Recommendation:

“The Commission also recommends further study of allowing cities on their own initiative to ***unilaterally retract their urban growth boundaries*** and allowing ***individual property owners to be removed from within urban growth boundaries by petition to the city, so long as removal does not create non-contiguity or unincorporated islands or cause problems with delivering urban services.***”

Continued.

Comprehensive Growth Policy—Proposed Changes

Commission Recommendation:

“Moreover, because urban growth boundaries create areas in which unilateral annexation is allowed, ***the Commission recommends further consideration of making the revision process more participatory.***

“The following process is an example of a way to link popular approval of growth plans to the annexation method so that unilateral annexation may continue where urban growth boundaries receive voter approval:”

Continued.

Comprehensive Growth Policy—Proposed Changes

1. Growth plans adopted by the coordinating committees are submitted to the local legislative bodies for approval according to current provisions in the law.
2. Counties hold general, countywide elections to approve the growth plans adopted by the local legislative bodies.
3. If the voters approve the new plan, then annexation within any voter-approved urban growth boundary continues under current law; otherwise the existing plan remains in place and annexation can occur only by consent.
4. The same sanctions applicable to local governments that did not timely adopt an initial growth plan are reinstated in any county that does not have a voter-approved growth plan.
5. The moratorium imposed by Public Chapter 441, Acts of 2013, continues in each county until the revised approval process is completed there.

Comprehensive Growth Policy—Proposed Changes

Other Commission Recommendations:

“The Commission recommends no changes in the composition of the coordinating committees, but related issues may require further consideration.

“The Commission recommends further consideration of allowing local governments to decide how often the JECDBs and their executive committees should meet and whether to move their functions to the coordinating committees responsible for developing the growth plans or to allow JECDBs to serve as industrial development corporations at the option of the local community.”

Annexation Methods

Issues in a nutshell:

Cities need authority to annex unilaterally in order to facilitate economic development and prevent disorganized growth.

but

People should have a choice in whether they are taken into cities.

Annexation Methods

How it works in other states:

- Most states require a more participatory process for most annexations, generally by referendum.
- Some states authorize only cities to call for referendums.
- Others allow residents seeking either to be annexed or to avoid annexation to call for referendums.
- Some states allow both cities and residents to call for referendums.
- Referendums in some states are held in person, others by mail-in ballot, and still others through a petition process.
- Some states authorize multiple methods.

Annexation Methods

How it works in other states:

- Annexation referendums are generally decided in one of three ways:
 - ✓ by voters in the area proposed for annexation
 - ✓ by voters in the city and in the area proposed for annexation with the votes counted separately
 - ✓ by voters in the city and in the area proposed for annexation with the votes counted together

Annexation Methods

How referendums work in Tennessee:

- Annexation referendums in Tennessee can be initiated by cities or by petition of “interested persons.”
- Voting is governed by general elections laws and is in person only or by absentee ballot.
- Only qualified voters in the area to be annexed are entitled to vote in an annexation referendum, but cities may opt to put the question to a vote of city residents.
- If city residents are allowed to vote, a majority in each area—both the area to be annexed and the city—must approve the referendum in order for it to pass.

Annexation Methods

Commission Recommendation:

“The consensus of the Commission is that adopting **a more participatory process, one that gives people more control over whether and when they are annexed,** should be given further consideration.”

Annexation Methods

Three clearly distinguishable options:

- ✓ annexation ***by consent only***, for example, by referendum, inside urban growth boundaries as well as outside them;
- ✓ ***approval of the urban growth boundary*** itself ***by popular vote*** after which unilateral annexation could continue; or
- ✓ ***petition for removal*** from annexed areas and/or from within urban growth boundaries provided that removal does not create non-contiguity or unincorporated islands and that the city is compensated for its investment in municipal infrastructure other than those associated with rate-paid services."

Annexation Methods

- Any one of these options could be made a statewide requirement, or counties could be allowed to choose among them by popular vote.
- Restrictions suggested for the third option, removal after the fact, are drawn both from concerns about problems potentially created by annexation generally and from concerns about the potential for significant loss of cities' investments in infrastructure if residents are allowed to initiate and approve deannexation.
- Balancing the interests of those who wish to have their property removed from cities and those who remain may require constraints on removal that could have the effect of preventing removal under certain conditions.

Annexation Methods

- Participation in the annexation process could be through voting in person or by mail or by petition without a vote.
- If by voting in person, then the referendum should take place during a primary or general election in order to reduce costs and ensure that the decision represents the widest possible consensus.
- Any referendum should otherwise follow the process laid out in current law for annexation by referendum.

Annexation Methods— Related Issues

Annexing *non-contiguous property* as an alternative to strip annexation

- Fourteen states prohibit corridor annexation outright or restrict it through case law or by statute.
- Five states allow cities to annex non-contiguous property under limited circumstances:
 - Indiana allows annexation of non-contiguous parcels for industrial development with the consent of the owner.
 - Others states generally limit non-contiguous annexation to city-owned parcels.

Annexation Methods— Related Issues

Notice Period and Method

“The consensus of the Commission is that further consideration be given to applying the notice period and method for referendums under current law to unilateral annexations as well, that is by *mailing* a copy of the resolution in the case of referendum or a copy of the proposed ordinance in the case of unilateral annexation **14 days in advance** of the public hearing.”

Annexation Methods— Related Issues

Public Hearings and Informational Meetings

“The Commission recommends further consideration of adding a second public hearing for unilateral annexations and of holding an informational meeting for all annexations.

“Informational meeting requirements similar to those in North Carolina could be combined with the existing requirement for a public hearing on the plans of services adopted by cities for newly annexed areas instead of requiring an additional meeting.”

Annexation Methods— Related Issues

Plans of Services

“The Commission recommends further consideration of establishing a deadline of five years for provision of the required services and of the provisions amended out of Senate Bill 1054, those related to requiring standards for delivering services and information about the city’s financial ability to provide those services in its plan.”

The original version of Senate Bill 1054 by Kelsey (House Bill 1263 by Carr, D.), which became Public Chapter 462, Acts of 2013, included sections that would have required for plans of services to include standards for delivering the services and information about the financial ability of the city to provide services to the territory proposed to be annexed. Those sections were removed before the bill was passed.

Annexation Methods— Related Issues

Annexation of Agricultural Land and Other Open Space

“The consensus of the Commission is that requiring consent for ***annexation of land used primarily for agricultural purposes***, as well as state and federally owned open lands, ***should be given further consideration*** as should requiring deannexation upon petition by the owner of any such lands currently inside cities’ corporate limits, especially given the possibility that ***deannexation could create non-contiguity or unincorporated islands or a loss of cities’ investment in municipal infrastructure*** other than those associated with rate-paid services.”

Annexation and Growth Planning in Tennessee— Proposed Changes

Bills Moving Through the General
Assembly as of 21 February 2014



HB 590: Annexation by Petition Would Remain

6-51-102. Annexation by ordinance.

(a)(1) A municipality, when petitioned by a majority of the residents and property owners of the affected territory, ~~or upon its own initiative when it appears that the prosperity of such municipality and territory will be materially retarded and the safety and welfare of the inhabitants and property endangered,~~ after notice and public hearing, by ordinance, may extend its corporate limits by annexation of such territory adjoining its existing boundaries as may be deemed necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole; provided, that the ordinance shall not become operative until thirty (30) days after final passage thereof. During this thirty-day period, the municipality shall notify the county mayor in whose county the territory being annexed is located that territory located in the unincorporated part of the county is being annexed by the municipality. The notification shall include a copy of the annexation ordinance and a map of the area being annexed.

HB 590: Annexation Other Than by Petition Would Require Vote by Residents

6-51-102. Annexation by ordinance.

(a)(2)(A) A municipality, *upon its own initiative when it appears that the prosperity of such municipality and territory will be materially retarded and the safety and welfare of the inhabitants and property endangered*, after notice and public hearing, by ordinance, may extend its corporate limits by annexation of such territory adjoining its existing boundaries as may be deemed necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole; **provided, that the ordinance shall not become operative until approval of such annexation by a majority of qualified voters who reside in the territory proposed for annexation.**

HB 590: Election at the Municipality's Expense

6-51-102. Annexation by ordinance.

~~(a)(2)(B) The provisions of subdivision (a)(1) that are in conflict with this subdivision (a)(2) do not apply to any county having a population of not less than three hundred nineteen thousand six hundred twenty five (319,625) nor more than three hundred nineteen thousand seven hundred twenty five (319,725), according to the 1980 federal census or any subsequent federal census. In such county,~~ [If a] proposal to extend the corporate limits by the annexation of territory adjoining the existing boundaries of a municipality is proposed by the municipality upon its own initiative by ordinance, the ordinance shall not become operative until an election is held at the expense of the proposing municipality for approval or disapproval of such annexation by the qualified voters who reside in the territory proposed for annexation. The operation of the ordinance shall be subject to approval of the voters who reside in such territory **to be determined in an election pursuant to subdivision (a)(2)(C).**

HB 590: Schedule and Effect of Vote

6-51-102. Annexation by ordinance.

(a)(2)(C) The county election commission shall hold an election thereon **at the next regularly scheduled election for the county**, providing options to vote "For" or "Against" the ordinance. ~~not less than forty five (45) days nor more than sixty (60) days after the receipt of a certified copy of such ordinance, and~~ [A] majority vote of those voting in the election shall determine whether the ordinance is to be operative. A vote "For" the ordinance shall be a vote "For Annexation" and a vote "Against" the ordinance shall be a vote "Against Annexation." If the vote is for the ordinance, the ordinance shall become operative thirty (30) days after the date that the county election commission makes its official canvass of the election returns; such ordinance shall not become operative before the expiration of one hundred twenty (120) days following the final passage of the annexation ordinance. If the ordinance is rejected, all relevant provisions in this chapter shall apply to the question of annexation in such county.

HB 590: Exclusive Right to Annex w/in UGB Would Remain

6-58-111. Annexation procedure -- Quo warranto action to challenge annexation.

(a) **Except as provided in § 6-51-102(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; provided, that if a quo warranto action is filed to challenge the annexation, the party filing the action has the burden of proving that:

(1) An annexation ordinance is unreasonable for the overall well-being of the communities involved; or

(2) The health, safety, and welfare of the citizens and property owners of the municipality and territory will not be materially retarded in the absence of such annexation.

HB 2371: Strikes Annexation on City's Initiative

6-51-102. Annexation by ordinance.

(a)(1) A municipality, when petitioned by a majority of the residents and property owners of the affected territory, ~~or upon its own initiative when it appears that the prosperity of such municipality and territory will be materially retarded and the safety and welfare of the inhabitants and property endangered,~~ after notice and public hearing, by ordinance, may extend its corporate limits by annexation of such territory adjoining its existing boundaries as may be deemed necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole; provided, that the ordinance shall not become operative until thirty (30) days after final passage thereof. During this thirty-day period, the municipality shall notify the county mayor in whose county the territory being annexed is located that territory located in the unincorporated part of the county is being annexed by the municipality. The notification shall include a copy of the annexation ordinance and a map of the area being annexed.

HB 2371: Strikes Limitations to 25% in Two Years

6-51-102. Annexation by ordinance.

~~(3) (A) No municipality having a population greater than ten thousand (10,000), according to the 1970 federal census or any subsequent federal census shall, by means of annexation by ordinance upon its own initiative, increase the land area contained within its boundaries by more than twenty five percent (25%) during any twenty four month period.~~

~~— (B) (i) Subdivision (a)(3)(A) shall not apply to any municipality having a population of less than twelve thousand (12,000), according to the 1980 federal census or any subsequent federal census, and the charter of which is provided for by a private act of the general assembly, and not under the general law of this title.~~

~~— (ii) Subdivision (a)(3)(B)(i) shall not apply to any municipality located in any county having a population of not less than thirty four thousand one hundred (34,100) nor greater than thirty four thousand two hundred (34,200), or located in any county having a population of not less than thirty seven thousand (37,000) nor greater than thirty seven thousand one hundred (37,100), or located in any county having a population of not less than forty nine thousand four hundred (49,400) nor greater than forty nine thousand five hundred (49,500), each according to the 1980 federal census or any subsequent federal census.~~

HB 2371: Strikes Moratorium and Study

~~6-51-122. No municipality permitted to extend corporate limits by annexation ordinance on municipality's own initiative for certain period of time -- Exceptions -- Comprehensive review and evaluation of state policies.~~

~~-(a) (1) (A) Notwithstanding this part or any other law to the contrary, from April 15, 2013, through May 15, 2014, no municipality shall extend its corporate limits by means of annexation by ordinance upon the municipality's own initiative, pursuant to § 6-51-102, in order to annex territory being used primarily for residential or agricultural purposes; and, except as otherwise permitted pursuant to subdivision (a)(2), no such ordinance to annex such territory shall become operative during such period.~~

~~— (B) As used in this subsection (a), "municipality" does not include any county having a metropolitan form of government.~~

~~-(2) If, prior to April 15, 2013, a municipality formally initiated an annexation ordinance delayed by subdivision (a)(1)(A); and if the municipality would suffer substantial and demonstrable financial injury if such ordinance does not become operative prior to May 15, 2014; then, upon petition by the municipality, the county legislative body may, by a majority vote of its membership, waive the restrictions imposed on such ordinance by subdivision (a)(1)(A).~~

~~(b) On or before January 14, 2014, the Tennessee advisory commission on intergovernmental relations (TACIR) shall complete a comprehensive review and evaluation of the efficacy of state policies set forth within title 6, chapters 51 and 58, and shall submit a written report of findings and recommendations, including any proposed legislation, to the speaker of the senate and the speaker of the house of representatives.~~