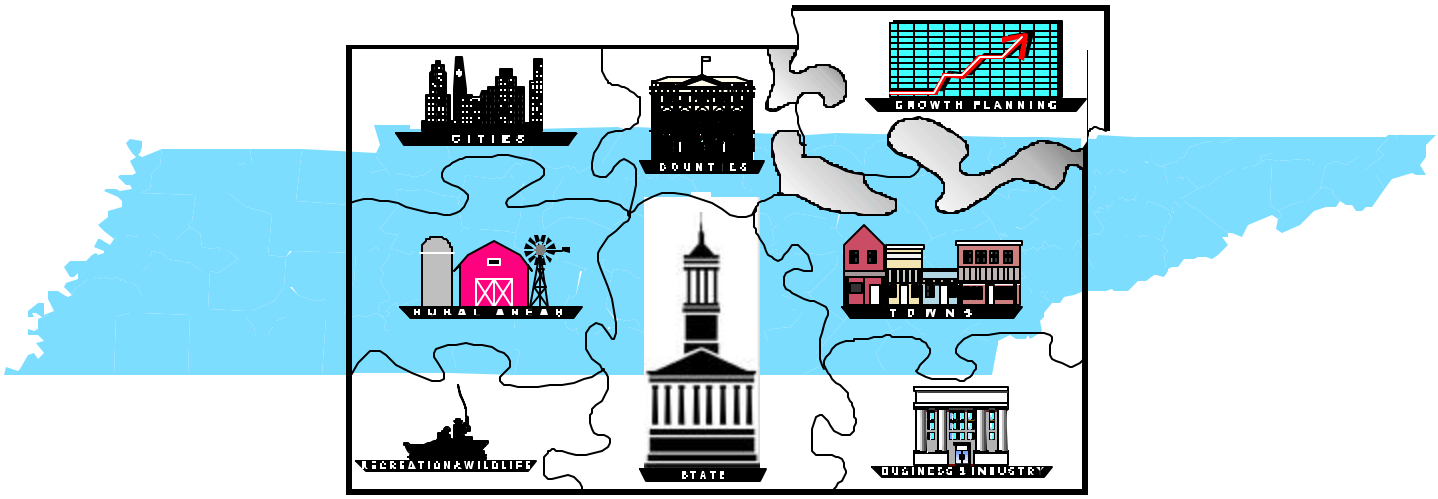
A Commission Report to the
102nd General Assembly

Implementation of Tennessee's Growth Policy Act in CY 2000: A Year of Progress



The Tennessee Advisory Commission on Intergovernmental Relations

January 2001

State of Tennessee

Tennessee Advisory Commission on Intergovernmental Relations

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January 2001

The Honorable John S. Wilder
Speaker of the Senate

The Honorable Jimmy Naifeh
Speaker, House of Representatives

Members of the General Assembly

State Capitol
Nashville, TN 37243

Ladies and Gentlemen:

We are transmitting our study of the implementation of Public Chapter 1101 of 1998. In the Act, the Tennessee Advisory Commission on Intergovernmental Relations was directed to monitor the implementation of this Act and to report its findings to the General Assembly. This report is the result of a year of extensive monitoring of developments across the state.

A major finding of this report is that seventy-five of the ninety-three counties required to develop county-wide growth plans (metro government counties exempt) have secured approval of their plans by the Local Government Planning Advisory Committee. Considerable progress also has been made in the other 18 counties. Overall, this represents a major achievement in public policy in Tennessee.

Sincerely,

Senator Robert Rochelle
Chairman

Harry A. Green, Ph.D.
Executive Director

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TABLE OF CONTENTS

EXECUTIVE SUMMARY

Implementation Developments - Public Chapter 1101

The major implementation developments for Public Chapter 1101 in Calendar Year 2000 are as follows:

- seventy-five counties secured approval of their growth plans from the Local Government Planning Advisory Committee by June 30, 2000 and became eligible to receive bonus points on selected state grant programs;

- in eighteen counties, county commissions and municipal governing bodies failed to reach agreement on the countywide plans by the deadline for bonus points;

- eight counties (Anderson, Blount, Fayette, Hamblen, Hamilton, Knox, Polk, and Roane) officially moved to impasse and requested mediation of their disputes by the Secretary of State's office;

- the Secretary of State's Office facilitated agreements in Knox and Fayette Counties;

- two state agencies announced policies for the imposition of sanctions against counties and municipalities without approved growth plans, beginning in FY 2002;

- fewer than 50% of the counties established Joint Economic and Community Development Boards;

- the refusal by the State Supreme Court to review the Courts of Appeals decision regarding the constitutionality of the provisions of P.C. 1101 concerning "Tiny Town" incorporations, and a subsequent decision by the Attorney General, substantially impacted the legal standing of the incorporated "Tiny Towns";

- voters in Coffee and Warren Counties voted against proposed charters for metropolitan governments while voters in Trousdale County voted in favor of such a charter; and

- the Attorney General issued several important opinions on various aspects of the Act.

INTRODUCTION

This report provides information on the progress made by Tennessee's counties and municipalities in the implementation of P.C. 1101 of 1998 (T.C.A. §6-58-101 *et seq.*) This Act establishes requirements for the development of countywide growth plans and the establishment of countywide Joint Economic and Community Development Boards. It also establishes a new set of requirements for municipal annexations and incorporations, as well as for consolidation of governments. This report focuses on implementation actions for the Calendar Year 2000.

Pursuant to T.C.A. §6-58-113, the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) monitors the implementation of P.C. 1101 and reports its findings to the General Assembly. This report is one of the primary means by which the TACIR fulfills this responsibility. This is the third implementation report issued by the Commission.[1]

The Monitoring Effort

The information provided in this report has been generated through a monitoring effort conducted over the past year. TACIR:

- conducted informal surveys of and exchanged correspondence with local officials;
- scanned press reports and collected press clippings;
- reviewed court decisions and Attorney General findings;
- maintained records of written and oral queries concerning various aspects of the implementation effort or the meaning of provisions of P.C. 1101; and
- participated in the work of the Implementation Steering Committee and coordinated efforts with its member agencies.

The TACIR appreciates the assistance that it has received from all stakeholders in the P.C. 1101 process. It assumes sole responsibility for the accuracy of the material contained in this report.

[1] The first report was entitled *Implementation of Tennessee's Growth Policy Act: The History of P.C. 1101 and the Early Stages of its Implementation* (March 1999). The second report entitled *Tennessee's Growth Policy Act: A Vision for the Future* with the subtitle *of A Staff Information Report on the Implementation of P.C. 1101,* was published in April 2000. Both reports are available on the TACIR web site at www.state.tn.us/tacir.

A. Progress Toward the Development of Growth Plans

Background

P.C. 1101 (T.C.A. §6-58-106) provides that counties and their associated municipalities are to develop countywide growth plans. These plans are to be developed and recommended by coordinating committees and submitted to the county commissions and the governing bodies of the municipalities within the county. Counties and municipalities may either reject or ratify those plans. Ratified plans are submitted to the Local Governmental Planning Advisory Committee (LGPAC) for approval. The plans are to establish Urban Growth Boundaries (UGBs) for municipalities, as well as Planned Growth Areas (PGAs) and Rural Areas (RAs) for counties. Details on these provisions are provided in Appendix One.

Progress in CY 2000

Calendar Year 2000 was critical to the plan development process because counties and municipalities within counties which did not secure the approval of their growth plans by June 30, 2000 were not eligible for bonus points under a number of state loan and grant programs.

Thus, the first six months of CY 2000 were marked by concerted efforts by:

- most of the ninety-three county level Coordinating Committees to develop and recommend plans which could be ratified by county commissions and governing bodies of municipalities in time to secure approval of ratified plans by LGPAC by June 30, 2000; and

- the governing bodies of counties and municipalities to review and approve these plans, sometimes after extensive negotiations involving all the stakeholders within the counties.

Seventy-five (or 81%) of the ninety-three counties[2] were able to secure approval of ratified plans by the LGPAC on or before the June 30, 2000 bonus point cut-off date. Most of these counties secured approval by LGPAC via the submission of maps outlining the UGBs, PGAs or RAs within the counties accompanied by certifications signed by officials of the affected jurisdictions. All of these plans were submitted to the LGPAC after ratifications by all the affected county and municipal governments. Thus, the LGPAC automatically approved them, as required by the Act, without regard to the extent to which the requirements in Section 5 (pertaining to the overall political process to be followed) and Section 7 of the Act (pertaining to the planning process) were met.

[2] In this case the word counties is meant to denote both county and municipal governments within counties.

Comments

A major impetus for the passage of the Act was a desire on the part of the General Assembly to establish requirements designed to induce counties and municipalities to resolve long-standing controversies over annexation and incorporation. Even maps, which met only the minimal requirements of the Act, demonstrate that the Act induced counties and municipalities to resolve disputes about municipal annexations over the next twenty years.

TACIR is unable to arrive at a definitive conclusion as to whether the growth planning intentions of the Act were met within the seventy-five counties that met the deadline for receipt of bonus points. Maps unsupported by documentation simply do not provide any evidence that the Act induced local governments to develop plans addressing those issues of growth that were not directly related to the determination of UGBs, PGAs and RAs within the counties. They did not provide any assurances that the proposals developed by local governments, as part of the planning process, and relative to these boundaries, addressed the planning considerations outlined in Section 7 of the Act, concerning such matters as expected population growth and maximum development of resources within already developed areas.

The TACIR's preliminary assessment of such proposals reveals that there is considerable variation across the state in the thoroughness with which the planning activities outlined in Section 7 were accomplished by municipalities and counties in the development of proposals for UGBs. Until we have completed a more thorough analysis of the proposals we will not be able to offer definitive conclusions on this matter. Nonetheless, it seems clear that there is little reason to expect that the planning requirements of the Act were addressed to the depth that the General Assembly desired.

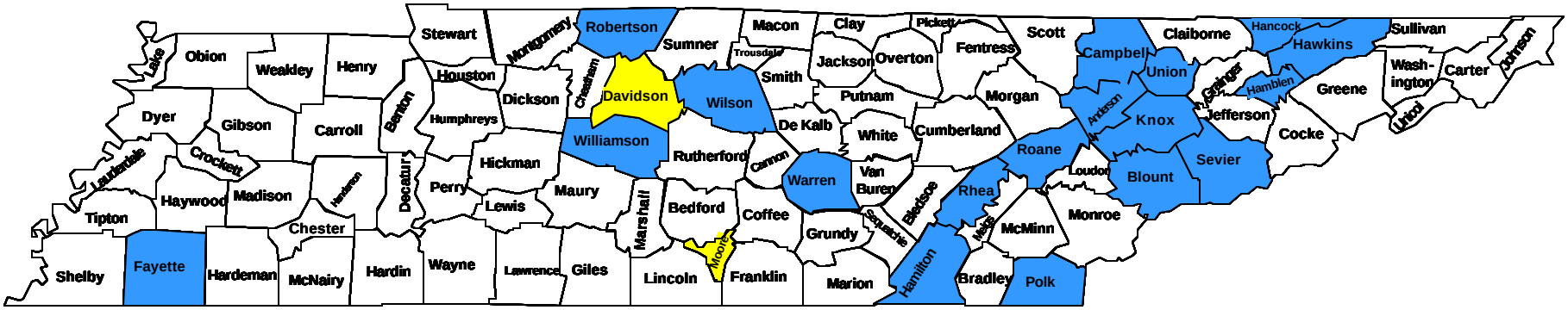
Status of the Remaining Counties

Only eighteen counties did not secure LGPAC approval of their plans in time to receive bonus points. In these counties, the June 30 deadline was missed because the county commissions and/or the municipal governing bodies rejected UGBs or PGAs recommended by their Coordinating Committees.

Negotiations between county commissions and municipal governing bodies in the eighteen counties continued after July 1, 2000. These negotiations focused on the appropriate size of the proposed UGBs, PGAs, and RAs, but especially the UGBs. As of December 31, 2000, none of these negotiations resulted in the ratification of a countywide growth plan. As described below, negotiations reached an impasse in eight counties. In ten counties negotiations continued and no impasses were declared.[3]

[3] The ten counties without growth plans not yet at impasse are: Campbell, Hancock, Hawkins, Rhea, Robertson, Sevier, Union, Warren, Williamson, and Wilson.

Status of Growth Plans
As of November 1, 2000



County with LGPAC approved plan

County without approved plan

Exempt

Comments

The TACIR believes that the fact that eighteen counties did not make the deadline for receipt of the bonus points does not necessarily mean that the process did not work effectively in these counties or that local officials failed to discharge their duties effectively. In most of these counties, county governments and municipalities were simply not able to work out their differences by that deadline because of the intractability of the major points at issue.

Impasse Status and The Administrative Law Judge Process

P.C. 1101 provides that a county governing body or the governing body of a municipality may declare an impasse at any time after the failure of either entity to ratify a plan recommended by the coordinating committee in the county. It may request that the Secretary of State appoint a dispute resolution panel, composed of administrative law judges, to resolve the dispute.

The cities of Benton (Polk County), Clinton (Anderson County), Collegedale (Hamilton County), Knoxville (Knox County), Morristown (Hamblen County), Oak Ridge (Roane County), as well as Blount County, declared impasses and requested mediation/arbitration by the Secretary of State's office. In addition, a number of cities in Fayette County, including Somerville, its largest city, declared impasses. In these counties, the primary disagreement has been between the counties over the size of the UGBs.

In December, three of these disputes were resolved. Local governments in Hamblen County reached agreement prior to the first official mediation session. Local governments in Knox and Fayette Counties reached tentative agreements during the initial mediation effort. As a result of the mediation session on the Hamilton County growth plan, the county developed a proposal for submission to the municipalities in the county. This proposal was rejected by the municipalities who requested arbitration.

In preparation for those sessions, the Administrative Services Division of the Secretary of State's office announced that panels of one to three judges would conduct an initial round of mediation. If that effort did not succeed in resolving the conflicts, an arbitration effort would be initiated and a plan would be imposed on the parties.

Department Policies Regarding Incentives and Sanctions

P.C. 1101 (T.C.A. §6-58-110 and §6-58-111) provides for incentives and sanctions on certain grants and loans administered by the State of Tennessee.[4] In late 1999, the Department of Economic and Community Development (ECD) and the Tennessee Housing Development Authority established policies with regards to the incentives and sanctions established under these sections.

Department of Economic and Community Development

ECD implemented the 5 percent bonus points in its FY 2000, non-economic development Community Development Block Grant Program (CDBG) by increasing the base points earned by any project by 5 percent.

[4] These programs are outlined in Appendix Three.

In September 2000, the ECD announced that CDBG economic development grants, CDBG "regular round" grants, Tennessee Industrial Infrastructure Program (TIIP) grants, and Industrial Training Service Program (ITS) grants will be unavailable in counties (and municipalities therein) that do not have approved growth plans or which cannot certify that they have JECDBs in place by July 1, 2001. It will delay the application of this policy for one year in those communities that have created a metropolitan charter commission but have failed to ratify the charter by July 1, 2001.

Tennessee Housing Development Agency

The Tennessee Housing Development Agency (THDA) is mandated under P.C. 1101 to give five additional points or a comparable percentage increase on evaluation formulas for the loans and grants that it administers.

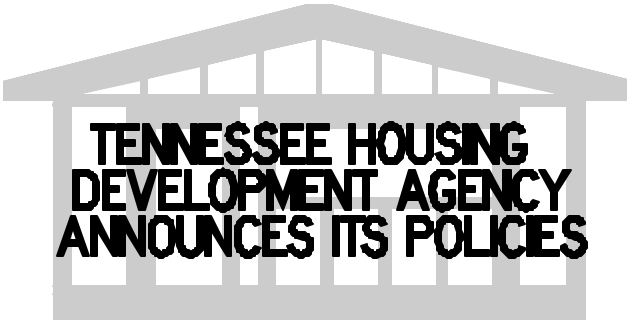
THDA announced that it will:

- Award 14 additional points in the HOME evaluation formula for FY 2001 HOME grant applications received from counties and municipalities with growth plans approved by LGPAC by July 1, 2000, but prior to the HOME grant application deadline of March 2001;

- Deny HOME grants in FY 2002 to any county or municipality which does not have a growth plan approved by LGPAC by July 1, 2001;

- Award 20 additional points (based on a scale of 5 points per 100) for tax credit developments under its 2001 Low Income Housing Tax Credit Qualified Allocation Plan for tax credit developments under its 2001 Low Income Housing Tax Credit Qualified Allocation Plan proposed in counties or municipalities that have growth plans approved by LGPAC on or after July 1, 2000; and

- Award additional points (based on a scale of 5 points per 100) under its 2001 allocation plan for private activity bond authority for multi-family developments proposed in counties or municipalities that have growth plans approved by LGPAC on or after July 1, 2000, if such an allocation plan is developed by THDA.



B. Status of the Efforts to Establish Joint Economic and Community Development Boards

Background

Section 15 of P.C. 1101 (T.C.A. §6-58-114) provides that counties and their associated municipalities are to establish Joint Economic and Community Development Boards (JECDBs). These boards are established to *"foster communication relative to economic and community development between and among governmental entities, industry, and private citizens."*

The Act provides that a county may seek to use an existing board that is "sufficiently similar," subject to approval by the LGPAC. As an alternative, the county may establish a new board.

The Act contains provisions for sanctions by state agencies against counties and municipalities which do not establish JECDBs. All counties and municipalities are to certify that they have such boards in applications for state grants. Those which are not able to do so may not be eligible for state grants.

Progress in CY 2000

1. "Sufficiently Similar" Applications

Seventeen counties sought to have existing boards approved as "sufficiently similar." Among these the counties of Carroll, Lincoln, Loudon, Madison, McMinn[5], and Wilson[5] were successful. The counties of Blount, Bradley, Obion, Putnam, Carter, Smith, Cocke, Sullivan, Hardin, Unicoi, and Williamson were not. These eleven counties failed to secure LGPAC approval primarily because their existing boards did not meet the membership criteria established in the Act.

2. New Joint Economic and Community Development Boards

At least eight counties established new Joint Economic and Community Development Boards. These new boards are in Montgomery, Clay, Dickson, Hawkins, Haywood, Houston, Humphreys, and Rutherford Counties.

Given the fact that there is no requirement for a county or municipality to inform any state agency of the establishment of a new board, it is possible that more that eight counties have created new boards. The TACIR believes that the total number of such boards falls far short of the number of approved growth plans.

TACIR Efforts

In the CY 2000, TACIR issued a staff information report entitled *Joint Economic and Community Development Boards: A Guide for Future Action* (February 2000).

[5] LGPAC approved conditionally upon submission of bylaw changes.

This report was designed to answer a number of questions that had arisen at the local level concerning the requirements of Section 15 of the Act, relative to the JECDBs. A copy of this report is available on the TACIR web site.

State Agency Concerns Regarding the JECDB Requirement For Certifying Compliance

By September 2000, it was clear to many concerned parties that counties and municipalities had not addressed their responsibilities. Based upon available information, the TACIR Staff concluded that fewer than fifty percent of the required boards have been established.

In order to stimulate counties and municipalities to comply with the provisions of the act concerning JECDBs, member agencies of the Ad Hoc Implementation Steering Committee communicated their concerns over the lack of compliance.

- In October, Dr. Harry Green, TACIR Executive Director, wrote a letter to all county executives and the mayors of the larger cities in each county advising them that the JECDB requirement might affect grants after July 1, 2001.

- The University of Tennessee's County Technical Assistance Service (CTAS) notified its county clients that failure to develop JECDB by July 1, 2001 could jeopardize the receipt of state grants.

- Tom Ballard, UT Vice-President and Ad Hoc Steering Committee Chair, wrote a letter to the Governor's office on behalf of the committee. He asked for a coordinated administrative response on the timing of sanctions which could be imposed by state agencies on counties and cities for non-compliance with the provisions of the Act pertaining to JECDBs. This letter was based upon the assumption that greater compliance would follow in the wake of a clear statement on sanctions, if counties or municipalities could not certify that they were in compliance. The Steering Committee hopes this action will remove confusion over the date at which state agencies may impose such sanctions. At that time, only ECD had announced a policy on sanctions relative to JECDBs.

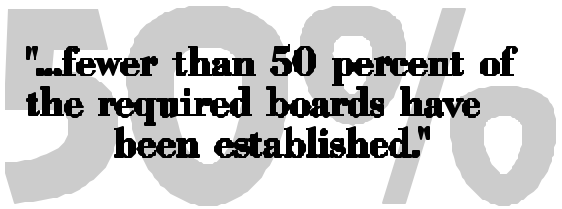


Table 2

Status of County Efforts in Regard to Joint Economic and Community Development Boards

Counties with *Sufficiently Similar* Boards Approved by LGPAC

Carroll	Madison
Lincoln	McMinn*
Loudon	Wilson*

Counties with *Sufficiently Similar* Applications Denied but still in Process

Blount	Putnam
Bradley	Smith
Carter	Sullivan
Cocke	Unicoi
Hardin	Williamson
Loudon	

Counties Considering Applying for *Sufficiently Similar* Status

Green	Washington
Trousdale	

Counties Which Have Formed JECDBs as New Organizations

Clay	Houston
Dickson	Humphreys
Hawkins	Montgomery
Haywood	Rutherford

*LGPAC approved conditionally upon submission of bylaw changes.

C. Formation of Metropolitan Governments

Background

P.C. 1101 (T.C.A. §7-2-101) provides that a charter commission for a metropolitan government may be created within a county by a petition of at least ten percent of the number of votes cast in the county in the last gubernatorial election.

The Act (T.C.A. §6-18-103 (b)) also provides that counties and municipalities actively pursuing the establishment of a metropolitan government will have until July 1, 2002 to adopt a growth plan, before facing sanctions in the form of denial of selected state grant and loan programs. These sanctions are discussed elsewhere in this report.

Developments in CY 2000

Coffee County
In October 2000, the Coffee County Charter Commission completed work on its metropolitan charter. The referendum vote is scheduled for May 2001.

Trousdale County
The Trousdale County Charter Commission created a metropolitan charter in 2000. Citizens approved the charter on November 7, 2000. This vote is now the subject of a court challenge.

Warren County
In June 2000, the Warren County Charter Commission completed a metropolitan charter and submitted it to the public. Voters rejected the metro charter in a referendum on September 21, 2000.

D. Incorporation Developments

Background

In 1998, residents of five "tiny towns" voted to incorporate under Section 9(f)(3) of P.C. 1101 (T.C.A. §6-58-108(f)(3)). In 1999, the Tennessee Court of Appeals ruled that Section 9(f)(3) was unconstitutional in *Huntsville, TN et al v. William I. Duncan et al.* The incorporation of the city of Helenwood was challenged in this case.

Developments in CY 2000

The Attorney General's office twice appealed the Court of Appeals decision to the Tennessee Supreme Court. In March 2000, the Supreme Court issued an order refusing to hear the case for the second time. In May 2000, based on this order, the Attorney General's office determined that it could no longer defend the constitutionality of Section 9(f)(3).

Shortly thereafter, the city of Helenwood turned in its charter and dissolved. In August 2000, a Circuit Court judge in Sumner County ordered the city of Walnut Grove to dissolve. The cities of Three-Way, Hickory Withe and Midtown are continuing to function, although all are subject to suits challenging their existence.

E. Attorney General Opinions in CY 2000

P.C. 1101 has spawned thirteen Attorney General's opinions. Most of the opinions released to date have come from particular county or city concerns, or questions raised in implementing the Act. A brief summary of the opinions in CY 2000 follows. These summaries are offered for information purposes and should not be relied upon as legal interpretations. In each case we highlight the subject matter and summarize the findings.

1. Attorney General Opinion No. 00-018

Inclusion of Federally Owned Lands in a County Growth Plan

- P.C. 1101 allows property owned by the United States Army or the Department of Defense to be included in the urban growth boundary or PGAs of a growth plan because such inclusion does not appear to interfere with the federal government's use of the property.

2. Attorney General Opinion No. 00-022

Effect and Enforcement of Growth Plans

- The term "land use decision" in T.C.A. §6-58-107 includes any decision regarding the use of land within the jurisdiction of the legislative body or the planning commission. This includes approvals by planning commissions or elected bodies of subdivision plats, site plans and "uses on review," "specific use permits," and actions on rezoning applications. A property owner may continue to use his or her property in a manner consistent with zoning provisions in effect before the plan was adopted, even if those zoning provisions are inconsistent with the designation of the area under the growth plan.

- T.C.A. §6-58-107 prohibits any change in zoning designation that conflicts with land classification under the growth plan.

- If a legislative body or a municipality's or county's planning commission makes a land use decision inconsistent with the growth plan, the legal consequences of that action can be determined only by a court of competent jurisdiction based on all the relevant facts and circumstances.

3. Attorney General Opinion No. 00-032

Extraterritorial City Zoning

- The City of Mount Juliet, whose planning commission has been designated as a regional planning commission with respect to territory outside the city limits, could constitutionally adopt zoning ordinances that apply to territory outside the city limits.

4. Attorney General Opinion No. 00-036

Annexation After the Growth Plan is Adopted

- A municipality cannot annex territory outside its UGBs and within the UGBs of another municipality by referendum if it violates an

annexation reserve agreement or an agreement between a municipality and a property owner.

- If the annexation did not violate any agreements, it could be argued that the action is not authorized under T.C.A. §6-58-101 *et seq.*, because it is inconsistent with the purposes of a growth plan.

- A court could conclude that if an annexation is authorized, the annexation by a smaller municipality within the UGBs of a larger municipality is subject to the priority provisions of T.C.A. §6-51-110.

5. Attorney General Opinion No. 00-135

Challenge to a Growth Plan

- County residents who are dissatisfied with a growth plan may obtain judicial review of the growth plan under T.C.A. §6-58-105. This the exclusive method of judicial review of a growth plan, and the persons challenging the plan must prove that the adoption or approval of the plan was granted in an arbitrary, capricious, illegal or other manner characterized by abuse of official discretion.

6. Attorney General Opinion No. 00-184

Zoning and PGAs under Growth Law

- A county government is not required to designate a planned growth area for the county.

- P.C. 1101 requires that "all land use decisions made by the legislative body and the municipality's or county's planning commission shall be consistent with the growth plan." This provision does not apply to a zoning ordinance in place before the growth plan is adopted.

- A growth plan may include only municipal boundaries, UGBs and RAs.

- A growth plan can define the terms "low-density" and/or "high-density."

F. Legal Developments

Challenges to the Constitutionality of the Act

In 1999, Knox and Hamilton counties initiated a lawsuit to contest the constitutionality of P.C. 1101. Several county legislatures voted to support the effort though none officially joined Knox and Hamilton counties in contesting the Act.

In May 2000, Knox and Hamilton counties filed a suit in Knox County Chancery Court contesting the constitutionality of P.C. 1101 and asking for a permanent injunction to stop the state from enforcing the law. In the lawsuit, the counties allege that P.C. 1101 violates several sections of the Tennessee and United States Constitutions. The allegations are that the Act violates:

- Article XI, § 9 of the state constitution because the state legislature seeks to delegate to others what it cannot do itself (i.e. the power to alter municipal boundaries);

- Article XI, § 9 of the state constitution because it gives administrative law judges and LGPAC the power to enact legislation that is local in form and effect but does not require the approval of two-thirds of the local legislative body or the majority of the local electorate. This section of the constitution provides that general law may only alter municipal boundaries;

- Article XI, § 9 because it excludes metropolitan counties and thus is not a general law;

- Article II, §§ 1 and 2 of the state constitution because it improperly delegates legislative power to the Executive Branch without providing sufficient procedural and substantive standards to govern the use of the granted authority; and

- The Fourteenth Amendment of the U.S. Constitution and Article I, § 8 of the state constitution because it is unconstitutionally vague.

On October 17, 2000, a hearing was held in Knox County Chancery Court on several procedural issues in the case. The Court has not yet rendered a decision in that matter.

In late December, Knox County agreed to drop its suit as part of its overall agreement arising from mediation sessions.

Suit Against the Sullivan County Plan

In August, a group calling itself "We the People" filed suit in Chancery Court against the approved Sullivan County Growth Plan. The group alleged insufficient notice of public hearings, a failure to follow the Act's guidelines on boundaries of designated areas, maps were altered without pubic hearings, a misuse of population projections provided by the University of Tennessee, and a misunderstanding or deception by coordinating committee members on boundaries. In late December, Chancellor Richard Ladd dismissed all of the charges except the ones pertaining to public notification and use of the UT population projections. These charges will be heard against the cities of Bluff City, Bristol, Johnson City and Kingston.

CONCLUSION

As the implementation activities of CY 2000 draw to a close, the TACIR wishes to stress that it regards the overall performance of counties and municipalities in the development of approved growth plans, consistent with the minimum requirements of the Act, to be quite satisfactory in many respects, including the extent to which the bonus point deadline was met by counties. At the same time, it understands that there are major milestones yet to be reached, including the development of approved plans in the 18 counties, which have not as of yet secured approvals from the LGPAC, and the establishment of JECDBs. The success of this effort in some counties will depend upon the extent to which the dispute resolution process, outlined in the Act, accomplishes its desired effects.

Moreover, the TACIR has a number of substantive concerns about the adequacy of the growth plans in the context of (1) the goals stated in the Act, e.g. the minimization of sprawl, and (2) the planning requirements outlined in Section 7. As indicated previously in this report, we have only begun our assessment of the adequacy of the plans and supporting proposals in light of the planning criteria established in the Act.

The Commission staff is concerned about the extent to which the implementation of these plans via effective land use decisions, timely annexations, and development of realistic plans for urban services to annexation areas, etc., will proceed in a manner that is consistent with the approved plans or the broader principles contained in the Act. Until these events unfold, the overall effect of the Act cannot be determined.

The Commission anticipates that it will be able to learn a good deal more about these matters throughout CY 2001. By the end of 2001, it should be able to make informed judgments about the adequacy of the Act's major provisions in light of the overall implementation effort.

Accordingly, the Commission recommends that the General Assembly approve no amendments to the Act in the 2001 session. We expect that our monitoring efforts will provide a firm foundation upon which to base any changes in the Act during that session.

APPENDICES

APPENDIX ONE

Overview of P.C. 1101[6]

P.C. 1101 signaled a substantial change in the way growth planning, annexation and incorporation could be accomplished in counties and municipalities around the state. The major provisions of this Act are summarized below. The following summary descriptions focus on the actions that are required or authorized by P.C. 1101. These descriptions are offered in order to provide a basis for understanding the provisions of the Act, as they outline mandatory and authorized actions that serve as the basis for TACIR's monitoring efforts. They are not offered as, and should not be interpreted as, authoritative or complete interpretations of the P.C. 1101.[7]

A. Countywide Growth Planning

Development of a Recommended Growth Plan

P.C. 1101 requires[8] that a coordinating committee be established in each non-metropolitan county.[9] Each coordinating committee is required to develop a comprehensive growth plan that outlines expected development in the next 20 years.[10] Each plan is to identify three distinct areas: an "urban growth boundary," a "planned growth area" and a "rural area." The "urban growth boundary" (UGB) territory contains the corporate limits of a municipality and the adjoining territory where growth is expected. The "planned growth area" (PGA) includes sections outside current municipalities and UGBs where growth is expected. The "rural area" (RA) includes land that is to be preserved for agriculture, recreation, forest, wildlife and uses other than high-density commercial or residential development. There may be one or more of these areas designated in each plan.

In each county, the county and each municipality in the county may[11] propose boundaries for consideration by the coordinating committee in the development of its recommended growth plan. Each committee must give due consideration to these proposed areas in the development of a recommended plan. After two public hearings, the committee must send a recommended growth plan to the county and municipalities[12] for ratification, no later than January 1, 2000.[13]

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[6] This Appendix is a verbatim version of Section II of the April 2000 implementation report by TACIR entitled *Tennessee's Growth Policy Act: A Vision for the Future.*

[7] For additional information on P.C. 1101, see *Growth Policy, Annexation and Incorporation under P.C. 1101 of 1998, A Guide for Community Leaders* (Nashville, A joint publication of the University of Tennessee Institute for Public Service and its agencies: County Technical Assistance Service, Municipal Technical Advisory Service, and the Center for Government Training and the Tennessee Advisory Commission on Intergovernmental Relations, 1998).

[8] Throughout this report the terms "requires", "required", "must" and "mandates" reflect the fact that the described action is prefaced in the Act by the word "shall".

[9] T.C.A. §6-58-104(a)(1)

[10] T.C.A. §6-58-104(a)(2)

[11] In this report the word "may" denotes that the Act authorizes but does not require a specific action.

The county and each municipality in the county, following receipt of the recommended growth plan, must either ratify or reject the plan within 120 days, and specify the grounds for its rejection. Failure of the county or municipality to act within the 120 day time period constitutes ratification of the plan on the part of that county or municipality. The coordinating committee must reconsider any rejected plan and may revise it to meet stated objections.[14]

Once the county and each of the municipalities within it have ratified the plan, the coordinating committee must submit the plan to the LGPAC for approval. LGPAC must approve such a plan.[15]

Any county and or any municipality rejecting a recommended plan or a revised plan may declare an impasse and request that the Secretary of State's office appoint a panel of administrative law judges to mediate the conflict.[16] Any such panel must attempt to mediate the disputes leading to the impasse. The affected county and municipalities may agree to ratify the recommended plans through this process. If the panel cannot mediate an agreement, the panel must adopt a plan, following the provisions of T.C.A.§6-58-106. The panel must submit the adopted plan to the LGPAC, which must review the plan to see that it conforms to the requirements of T.C.A. §6-58-106. A timeline of these actions is provided on page 13 of this report.

B. Incentives and Sanctions

Incentives are provided for counties and municipalities to adopt growth plans in a timely manner.[17] A county whose growth plan has been approved by the LGPAC by July 1, 2000 will get additional points for certain grants and loans. The county and all municipalities in the county will get five additional points on a scale of one hundred or a comparable percentage increase. Metropolitan governments will receive additional points for these programs as well.

Those counties and municipalities in the county whose growth plans have not been approved by the LGPAC by July 1, 2001 will not be eligible for certain loans and grant programs, until such time as they have an approved plan.

Metropolitan governments will not be subject to sanctions. Also, sanctions will be delayed for one year in any county that has formed a metropolitan government charter commission and voters have either rejected or failed to ratify the plan by July 1, 2001.

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[12] In this section of the report, the term county refers to the county legislative body and the term municipality refers to the governing body of each municipality.
[13] T.C.A. §6-58-104(a)(2)
[14] T.C.A. §6-58-104(b)(1)
[15] T.C.A. §6-58-104(d)(1)
[16] T.C.A. §6-58-104(b)
[17] T.C.A. §6-58-109

C. Annexation

One of the important objectives of P.C. 1101 is to place annexation by municipalities in the context of their growth planning. In order to accomplish this, T.C.A. §6-58-108 establishes provisions for the annexation by a municipality both prior to and after the effective date of an approved growth plan.

Before the Growth Plan is Approved

P.C. 1101 provides that a municipality may annex by referendum or by ordinance before the recommended plan is approved by the LGPAC.[18] If annexation is by ordinance, the county legislative body may vote to disapprove the action. Any county which disapproves such an annexation, and which is petitioned by a majority of the property owners in the territory to be annexed, is authorized to file suit to contest the annexation. If it does so, it must carry the burden of proof that the annexation is unreasonable for the overall well being of the communities involved, or the health, safety, and welfare of the citizens and property owners of the municipality will be not be materially retarded in the absence of the annexation.

After the Growth Plan is Approved

After the plan is adopted, a municipality may annex by any statutory method, including annexation by referendum or annexation by ordinance, within its UGB. Outside its UGB, a municipality may annex only by referendum or by amending its UGB through procedures outlined in the statute.

D. Plan of Services

Any newly incorporated municipality must adopt by ordinance a plan of services for the services the municipality proposes to deliver.[19]

Any municipality planning annexation must adopt a plan of services, which establishes the services to be provided and their projected timing.[20] It must submit this plan of services to the local planning commission for study. It must hold a public hearing on the plan of services before it is adopted.

E. Incorporation

P.C. 1101 contains several provisions affecting incorporations. After January 1, 1999, a town may incorporate only within a PGA, and the county must approve its UGB and municipal limits.[21]

It also establishes priority of any incorporation of such a territory over any prior or pending annexation ordinance of an existing municipality which encroaches upon any territory of the new municipality. A new municipality must comply with the requirements of T.C.A. §6-58-112(c).

[18] T.C.A. §6-58-108(a)(1)
[19] T.C.A. §6-58-112(d)(2)
[20] T.C.A. §6-51-102
[21] T.C.A. §6-58-112

F. Tax Revenue Implications

There are provisions in P.C. 1101 that minimize revenue losses associated with the loss of tax base through annexation or incorporation that might otherwise be experienced by a county.[22] Specifically, a county is "held harmless" for the loss of wholesale beer tax revenue and local option sales tax revenue after any new annexation or incorporation. A county will continue to receive this revenue for fifteen years following any new annexation or incorporation.

The amount received by the county annually will be roughly equal to the revenue amount the county received in the twelve months preceding the effective date of the annexation or incorporation. The Department of Revenue (DOR) considers the effective date of an annexation to be thirty days after the final passage of the annexation.[23] Any increases over this amount are distributed to the municipality.

If the wholesale beer tax or local option sales tax is repealed, the county will not continue to receive the revenue due under this provision. Also, if a change in the distribution formula of wholesale beer tax or local options sales tax reduces the amount of revenue received by local governments, the revenue that a county is set to receive under this provision will be reduced accordingly.

G. Joint Economic And Community Development Boards

Each county is required to establish a joint economic and community development board (JECDB).[24] The purpose of the JECDB is "to foster communication relative to economic and community development between and among governmental entities, industry and private citizens."[25]

H. Metropolitan Government

P.C. 1101 provides a new method for the creation of a metropolitan charter commission. The Act provides that a metropolitan charter commission may be created upon receipt of a petition.[26] In any county in which a metropolitan charter commission is created but the metropolitan charter is not ratified by July 1, 2001, sanctions will be delayed until July 1, 2002.

[22] T.C.A. §6-51-118
[23] Telephone Interview with Karen Blackburn, Tennessee Department of Revenue; January 13, 2000.
[24] T.C.A. §6-58-114
[25] T.C.A. §6-58-114(b)
[26] T.C.A. §7-2-101

Table 1
Growth Planning Timeline: Public Chapter 1101

January 1, 2000	By this date, the coordinating committee of each county is required to develop a recommended growth plan and submit it to the governing bodies of each county and each municipality for ratification.
July 1, 2000	Point incentives for grant programs become available for counties and municipalities which have adopted a growth plan.
July 1, 2001	By this date, the growth plan must be submitted to the LGPAC
July 1, 2001	Sanctions are imposed on counties and municipalities without an approved growth plan.
July 1, 2002	Delayed sanctions are imposed upon counties and municipalities that formed a metropolitan charter commission but did not adopt a metropolitan charter if they have no approved growth plan by this date.

APPENDIX TWO

Attorney General Opinions 1998 and 1999

P.C. 1101 has spawned twelve Attorney General's opinions. What follows is a short summary of the pertinent Attorney General's opinions on P.C. 1101 which have been published to date. The original opinions should be consulted for a more in-depth analysis of the issues.

Attorney General Opinion No. 98-148

Under T.C.A. §6-51-110, where two municipalities in the same county seek to annex the same property, the annexation proceedings by the larger municipality take precedence over those by the smaller municipality. Does Public Chapter 1101, particularly Section 12 (T.C.A. §6-58-111) repeal this provision where the smaller municipality is attempting to annex property by referendum under T.C.A. §6-51-104 and §6-51-105?

The Attorney General opined that before the growth plan is approved by LGPAC, the larger municipality would have preference over the smaller municipality when both are attempting to annex the same property and both municipalities are located in the same county.

After the growth plan is approved, if the annexation was not barred by any annexation reserve agreement or other agreement, it was the Attorney General's opinion that a municipality could argue in court that the general law still applied and the larger municipality had priority over the smaller municipality.

Attorney General Opinion No. 98-149

This opinion addressed several issues relating to utility system representation on the coordinating committee. P.C. 1101 provides that one member shall be from a municipally-owned utility system serving the largest number of customers in the county, and one member shall be from a non-municipally owned utility system serving the largest number of customers in the county.[27]

[27] T.C.A. §6-58-104(a)(1)(C) & (D)

Table 2
Attorney General Opinion No. 98-149: Questions and Opinions

Question	Attorney General Opinion
1. Does the phrase "governing board of the municipally-owned utility system serving the largest number of customers in the county" only refer to a system owned by a municipality located within the county, or to any municipally-owned system that provides utility service in that county?	The Attorney General opined that it was the legislature's intent that the phrase referred to any municipally-owned system that provides such service in that county. There was no requirement that the municipality that owns the utility service be located in that county.
2. How should the phrase "largest number of customers" be determined?	The Attorney General states that the legislature intended that the number of utility customers be determined by the number of all persons listed on the utility bills. Therefore, each person listed on a joint account would be listed as a separate customer.
3. What is the definition of a "utility system, not municipally-owned"? Does it include: A. A telephone company; B. A cable television company; C. An electric cooperative; D. A private gas company; or E. A company providing garbage removal services?	It was the Attorney General's opinion that the General Assembly intended that the phrase include privately-owned companies that were included within the definition of T.C.A. §65-4-101.

Attorney General Opinion No. 98-239

This opinion addressed several issues, summarized in Table 6, regarding the constitutionality of certain provisions of P.C. 1101.

Table 3
Attorney General Opinion No. 98-239: Questions and Opinions

Question	Attorney General Opinion
1. Is it constitutional to place the burden of proof on the party challenging the growth plan?	According to the Attorney General, it is constitutional to place the burden of proof on the party challenging the plan because these are "matters regarding the creation and expansion of municipal corporations and are, within the broad constitutional authority vested in the General Assembly in these matters."
2. Is it constitutional to place the burden of proof on the party challenging an annexation?	In the opinion, it was concluded that it is constitutional to place the burden of proof on the party challenging an annexation since federal and state courts have held no equal protection or due process argument can be made if the annexation statute is properly followed, unless there is some proof of invidious discrimination.
3. Does a growth plan, by designating different areas as urban growth, planned growth or rural areas, constitute an illegal "taking" of landowners' property?	Inclusion in the urban growth area, planned growth area or rural area of a growth plan does not constitute an illegal taking of a landowners' property under the federal or state constitution according to the opinion.
4. Is withholding funds or grants under this statute unconstitutional?	The Attorney General noted in the opinion that it was not aware of any federal or state constitutional provisions that prohibited the withholding of grants and loans under Public Chapter 1101.

Attorney General Opinion No. 99-076

Do any of the following have the right to contest an annexation ordinance adopted after May 19, 1998?

A. Individuals who own property bordering the annexed territory;
B. The county where the territory is located;
C. The State.

A. The Attorney General opined that property owners are not authorized to challenge an annexation by ordinance by filing a quo warranto action. It was noted in the opinion that in *State ex rel Earhart v. Bristol* the Tennessee Supreme Court held that "the Declaratory Judgment Act permits property owners to challenge an earlier annexation of adjoining property as part of their challenge to the subsequent annexation of their property," but the opinion further noted that the reasoning in the case was probably limited to its facts.

B. According to the opinion, the county may file a quo warranto action to challenge an annexation ordinance if it owns property that is to be annexed under T.C.A. §6-51-103. Also, a county may also contest the validity of an annexation ordinance by filing a quo warranto action if the conditions of T.C.A. §6-58-108 are met.

C. The Attorney General could find "no statute that authorizes an officer of the state to challenge an annexation ordinance."

Attorney General Opinion No. 99-092

Could the coordinating committee select a non-member to serve as its chair?

It was the opinion of the Attorney General that a growth plan that was adopted by a coordinating committee with a chairperson that was not a member of the coordinating committee would not be overturned by a court.

Attorney General Opinion No. 99-218

This opinion cleared up some of the confusion surrounding the issue of extraterritorial zoning by municipalities under the growth plan.

1. *May the county growth plan provide for municipal extraterritorial zoning and subdivision regulation within the urban growth boundaries surrounding the two municipalities?*

The Attorney General could find nothing in the law that would prohibit a plan from including provisions for extraterritorial zoning by each municipality. However, the Attorney General noted that the designation of an urban growth boundary would affect extraterritorial zoning and subdivision regulation, and that any express provision in the plan must be consistent with the legal effect of the designation of the urban growth boundaries.

2. *If the answer to question 1 is yes:*

    A. *May the growth plan provide for such zoning and subdivision regulation without the consent of the county legislative body?*

    B. *May the growth plan provide for such zoning and subdivision regulation by the dispute resolution panel established under T.C.A. §6-58-104 (b)(3)?*

C. Would the adoption of the growth plan providing for such zoning and subdivision regulation constitute the approval of the county legislative body required under T.C.A. §6-58-106(d)?

In the opinion, it is written that the designation of the UGBs would affect the power of each municipality to exercise planning, subdivision regulation and zoning outside its municipality boundaries. The plan would have this effect whether it was approved by all local governments or adopted through a dispute resolution process. The Attorney General noted in the opinion that express consent by the county government to extraterritorial zoning was not necessary, but that county zoning would supersede municipality zoning under T.C.A. §13-7-306 even after the municipal planning commission has been designated a regional planning commission to all territory in the municipality's urban growth boundary.

3. *Once the growth plan is adopted, does T.C.A. §6-58-106(d) require the county's approval of extraterritorial zoning of two municipalities within their urban growth boundaries even if the county did not adopt county zoning under T.C.A. §13-7-306?*

According to the Attorney General, the answer to this question is no. A municipality may continue to zone territory with respect to which the municipal planning commission has been designated as the regional planning commission, so long as it falls within the UGB. Since the municipality's zoning authority is based on that designation, its authority to zone this area is similarly limited. Thus, the municipal planning commission designated as a regional planning commission will not have planning, subdivision or zoning authority in any area outside the municipality's urban growth boundary, even if the commission had had authority in that area before the adoption of the growth plan. For the territory outside the area which the municipal planning commission has been designated a regional planning commission, but within the municipality's UGB, the Department of Economic and Community Development will have to designate the municipal planning commission as a regional planning commission for all of the area within the municipality's UGB before the municipality and commission will have planning, subdivision and zoning authority in the area. In either case, the county's approval is not required.

4. *Once the growth plan is adopted, would two municipalities have jurisdiction for subdivision regulation within the urban growth boundary if the county adopts zoning, but does not approve extraterritorial zoning and subdivision regulation under T.C.A. §6-58-106(d)?*

The Attorney General opined that in this case for those areas that are within the UGB and for which the municipal planning commission has been designated a regional planning commission, then subdivision regulations adopted by each municipality's planning commission would continue to apply once the plan is adopted. The county's adoption of zoning would not affect this authority.

5. *Notwithstanding the Growth Plan Law, could the county and two municipalities in the county use existing provisions of Tennessee Code Annotated with regard to interlocal agreements to develop a set of customized conditions for the urban growth areas for those two municipalities?*

It was the Attorney General's opinion that nothing in the law would prohibit such an agreement, but the agreement must be consistent with the growth plan and growth law. Any such agreement, however, should be consistent with the county growth plan and with other provisions of the growth plan law. The legality and enforceability of any particular arrangement would depend on its terms and the authorizing statutes.

APPENDIX THREE

Grant and Loan Programs Affected by Public Chapter 1101 Provisions on Growth Planning

P.C. 1101 provides an additional 5 points on a scale of 100 points or a comparable percentage increase on evaluation forms for certain grant and loan programs for counties and municipalities that have their growth plans approved by July 1, 2000.[28] It also makes certain grants unavailable to counties and municipalities that do not have an approved growth plan by July 1, 2001.[29] What follows is a brief description of each program affected by these provisions of P.C. 1101.

A. Programs of the Department of Economic and Community Development

Tennessee Industrial Infrastructure Program

This program provides funds for infrastructure improvements. The funds may only be used in projects where there is a commitment by certain private sector businesses to locate or expand in the state and to create or retain jobs for the state's citizens. The activities funded under the program are limited to those services that are normally provided by local governments and their implementing agencies to businesses that are locating, expanding or operating in Tennessee such as water systems and transportation systems.

Industrial Training Service Program

This program provides training assistance for employees as an incentive for new industry planning to relocate in the state or for existing industry to expand business operations in the state. The funds are intended to support manufacturing and industry-type organizations.

Community Development Block Grants

These funds support economic development and the creation of employment opportunities for individuals of low and moderate incomes. The funds are awarded as grants for public infrastructure and as loans for industrial buildings and equipment.

B. Programs of the Tennessee Housing Development Agency

HOME grants

This program provides federal funds to expand the supply of decent, safe,

[28] T.C.A. §6-58-109
[29] T.C.A. §6-58-110

sanitary and affordable housing for low-income households. The types of activities eligible for funding under this program include homeowner or rental housing rehabilitation programs, new construction of rental housing units, and acquisition and/or rehabilitation of rental housing units.

HOUSE grants

Housing Opportunities Using State Encouragement (HOUSE) is a state-funded program designed to fund local housing programs that promote the production, preservation and rehabilitation of affordable housing for targeted households. This program will not be available for fiscal year 2000, since the Legislature redirected the dedicated tax revenue for the state-funded HOUSE program to the State General Fund for FY 2000.

Low Income Tax Credit

The credit supports the development of low income housing through a credit against federal income tax liability each year for 10 years for owners and investors. The amount of tax credits is based on the reasonable costs of development and the number of qualified low-income units.

C. Programs of the Department of Tourist Development

Tourism Development Grants

The funds provided by this program are to be used to finance tourism promotion and tourism development projects. Types of projects that might be eligible for this funding include promotional publications, advertising, events, hospitality training, educational seminars, photography, feasibility studies, research, Web sites, tourism promotional videos, and tourism-related trade show booth fees and exhibit materials.

D. Programs of the Department of Transportation

Intermodal Surface Transportation Efficiency Act

This act, passed in 1991, provided a means of financing activities that go beyond the traditional elements of a transportation improvement project. The Transportation Equity Act for the 21st Century (TEA-21) continued the program. Local communities may apply for funds to finance transportation enhancement activities. Examples of eligible transportation enhancement activities include provision of facilities for pedestrians and bicycles, acquisition of scenic easements and scenic or historic sites, preservation of abandoned railway corridors, historic preservation and control, and removal of outdoor advertising.

APPENDIX FOUR

Patterns of Tennessee Growth

Growth in Tennessee 1990-1999*

Indicator	State Growth Rate	National Growth Rate
Population	12.40%	8.20%
Employment	10%	10.60%
K-12 Enrollment	9.90%	13.50%
Number of Housing Units	10.50%	7.40%
Number of Motor Vehicles	19.60%	10%
Farm Acreage	-1.70%	-3.50%

* Source: 1990 U.S. Census Bureau; 1999 Tennessee Statistical Abstract.

Population Growth in Grand Divisions of the State 1990-1999*

Grand Division	Growth Rate
East	10.80%
Middle	18.30%
West	7.10%

* Source: 1990 U.S. Census Bureau; 1999 Tennessee Statistical Abstract.

Tennessee Counties with High Population Growth Rates 1990-1999*

County	Growth Rate
Cumberland	30.5%
Hickman	27.0%
Jefferson	36.6%
Maury	28.5%
Meigs	26.2%
Montgomery	28.8%
Tipton	28.7%
Sevier	28.9%

* Source: 1990 U.S. Census Bureau; 1999 Tennessee Statistical Abstract.

Population Growth Rates	
Tennessee	12.4%
National	8.2%

* Source: 1990 U.S. Census Bureau; 1999 Tennessee Statistical Abstract.