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I am submitting herewith a thesis written by Rachel L. Craig entitled "State Sponsored Growth Management Programs: A Comparison of Tennessee to Oregon and Washington." I have examined the final paper copy of this thesis for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Master of Science in Planning, with a major in Planning.

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STATE SPONSORED GROWTH MANAGEMENT PROGRAMS: A COMPARISON OF TENNESSEE TO OREGON AND WASHINGTON

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ABSTRACT

As the realization of the costs associated with urban sprawl grows, more and more state and local governments are adopting growth management programs. Tennessee became the tenth state to enact state growth management legislation with the passage of the Growth Policy Act (Public Chapter 1101) in May 1998.

This thesis compares Tennessee's growth management program under Public Chapter 1101 to those of Oregon and Washington. It does so by first presenting an overview of the history of growth management in Tennessee, Oregon, and Washington, along with summaries of the experience of each program. It then examines seven dimensions of these growth management programs in detail: 1) goals, 2) planning level 3) comprehensive plan requirements, 4) consistency requirements, 5) provisions concerning adequate facilities and concurrency, 6) type and degree of state involvement, and 7) public participation requirements. In general, the growth management programs of Oregon and Washington are found to be stronger on these seven dimensions than that of Tennessee under PC1101.

The thesis concludes by identifying some "lessons learned" from experience with the Oregon and Washington programs which might be applied to Tennessee.

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CHAPTER 1

INTRODUCTION

As the realization of the costs associated with urban sprawl grows, more and more state and local governments are adopting growth management programs. Tennessee is the most recent state to enact growth management legislation, passing the Growth Policy Act (Public Chapter 1101) in May 1998. This thesis compares Tennessee's growth management program under Public Chapter 1101 to those of Oregon and Washington. It examines seven dimensions of these growth management programs: 1) goals, 2) planning level 3) comprehensive plan requirements, 4) consistency requirements, 5) provisions concerning adequate facilities and concurrency, 6) type and degree of state involvement, and 7) public participation requirements. The relative strengths and weaknesses of each program are discussed. Finally, the thesis identifies "lessons learned" from the Oregon and Washington programs which can be applied to Tennessee.

COSTS OF URBAN SPRAWL

Burchell et al. (1998, 124) define *sprawl* as "a form of urban development that contains most of the following elements:

- Low residential density
- Unlimited outward expansion of new development
- Spatial segregation of different types of land use through zoning regulations
- Leapfrog development
- No centralized ownership of land or planning of development
- All transportation dominated by privately owned motor vehicles
- Fragmentation of governance authority over land uses between many local governments

- Great variances in the fiscal capacity of local governments because the revenue-raising capabilities of each are strongly tied to the property values and economic activity occurring within their own borders
- Widespread commercial strip development along major roadways
- Major reliance upon the filtering or 'trickle-down' process to provide housing for low-income households."

The current state of American urban sprawl is unprecedented in the history of the city. Kelbaugh (1997) points out that the United States is the first nation to distribute its population at extremely low densities across the countryside in such a way as to result in both sprawl and congestion. The current pattern of American sprawl is largely the result of forces at work after World War II, including FHA and VA mortgage programs, the construction of interstate highways, and the American love affair with the automobile as an instrument of mobility (Nelson et al. 1995). Euclidean zoning, with its separation of land uses, also contributes to sprawl.

Sprawl has significant economic, environmental, and social costs (Kelbaugh 1997). The economic costs of infrastructure to support sprawling patterns of low-density single-family housing are high (Nelson et al. 1995). These costs incur both to the local governments who provide and service the infrastructure and to the private households who pay for it in higher taxes and housing prices. An additional private cost is that of multiple automobile ownership, which has become the standard for suburban families. In the average American household, twenty percent of the total budget is spent on transportation (Calthorpe 1993).

The environmental costs of sprawl are also high. Sprawl consumes open space, often using prime farmland because it is the cheapest land available. In the process, wetlands, wildlife habitat, and scenic views disappear. Water quality suffers due to increased urban runoff from parking lots and highways. And even though automobiles are required to meet stringent emission standards, vehicle miles traveled continues to rise, contributing to increased air pollution. (Kelbaugh 1997).

Sprawl also has social costs. Increasingly, quality of life in the suburbs is declining. Americans who moved there for privacy, mobility, security, and ownership are confronted with isolation and congestion. More and more leisure time is spent on commuting. Civic life suffers in the typical American suburb. Public spaces, such as parks, schools, libraries, post offices, and civic centers are dispersed and unconnected (Calthorpe 1993).

At the same time, sprawl is also contributing to the deterioration of the inner city. Increasing infrastructure investment in the suburbs has left fewer dollars for the center city. As the infrastructure of the city deteriorates and the tax base moves to the suburbs, less incentive exists for investment in the city, thus creating a vicious cycle. The working poor, who cannot afford to move to the suburbs, are left at a double disadvantage as jobs move out of the city. In many cases they also cannot afford to commute to the suburbs to work, and public transportation is inadequate to get them there (Calthorpe 1993).

GROWTH MANAGEMENT

"Many citizens, and even some public officials, may believe that most communities play a direct role in determining the location and timing of growth, if not its rate. That belief is wrong. The system of land use controls in the United States is largely reactive. Local governments review proposals from private developers and approve, disapprove, or conditionally approve them. Thus, both the timing and the location of growth are substantially dependent on initiatives from the private sector" (Kelly 1993, 2). However, as the realization of the costs associated with sprawl grows, more and more state and local governments are attempting to "play a direct role" by adopting *growth management* programs.

Growth management programs have a variety of objectives, including managing the character and location of community growth, preserving natural resources, ensuring efficient provision of infrastructure, and improving economic opportunities and social equity (Porter 1997). DeGrove (1992, 1) defines growth management as "a commitment to plan carefully for the growth that comes to an area so as to achieve a responsible balance between the protection of natural systems -- land, air, and water -- and the development required to support growth in the residential, commercial, and retail areas."

Growth management programs can be structured to regulate the amount, rate, timing, and/or location of growth (Kelly 1993). They employ a variety of tools. Some of the most common are urban growth boundaries, delineation and protection of critical environmental areas and prime agricultural land, land acquisition or purchase of development rights or easements, adequate public facilities requirements, and affordable housing programs (Porter 1997).

Some local governments, such as those of Minneapolis and Boulder, have growth management programs. Currently ten states -- Tennessee, Oregon, Washington, Georgia, Florida, Maine, Maryland, New Jersey, Rhode Island, and Vermont -- have state growth management legislation.

Tennessee's Growth Policy Act

Tennessee is the most recent state to enact growth management legislation, passing the Growth Policy Act (Public Chapter 1101) in May 1998 (a copy of the legislation is included in the Appendix). Although originally conceived to address continuing issues with state law governing annexation, Public Chapter 1101 (PC1101) evolved into growth management legislation. The intent is clear in the language of the Act: "With this act, the General Assembly intends to establish a comprehensive growth policy for this state that:

… establishes incentives to annex or incorporate where appropriate; more closely matches the timing of development and the provision of public services; …and minimizes urban sprawl."

PC1101 requires each Tennessee county, in cooperation with the municipalities within its borders, to develop a comprehensive growth policy plan based on population and land use projections for the next twenty years. The most important component of that plan is the identification of *urban growth areas*, *rural areas*, and *planned growth areas*. Urban growth areas are those areas contiguous to an existing municipality where high-density growth is expected, while planned growth areas are other areas in the county where medium to high density development is expected. Rural areas include territory not in the other categories reserved for agriculture, recreation, forest, wildlife, and other non high-density uses. PC1101 also has provisions related to such issues as annexation, incorporation, and plan of services.

DESCRIPTION OF STUDY

This thesis compares Tennessee's growth management legislation under PC1101 to that of Oregon and Washington. Oregon and Washington were selected for inclusion in the comparison for three reasons. First and most important is how they deal with urban growth areas. The mandatory designation of urban growth areas is the keystone of the Tennessee legislation. Oregon and Washington are the only other states which mandate the designation of such boundaries. Secondly, some states allow voluntary local compliance with their growth management programs. Tennessee and Oregon require participation from all counties, and Washington requires participation from all counties with large populations or high growth rates. Finally, the history of the Oregon and Washington programs provide useful and complementary opportunities for study. The Oregon growth management program dates from the 1970s and so has been in place long enough to allow examination of its impacts. The Washington program was initiated in the early 1990s and was heavily modeled after programs in Oregon, Georgia, and Florida. Thus Washington provides a picture of how a more recent program learned from the experience of others.

Thesis Organization

The thesis is organized in five sections. First, a literature review examines the evolution of growth management, growth management tools, and current state growth management programs. Second, state growth management programs are analyzed to select those most useful for comparison to the Tennessee program. Third, the history of growth management program in each of the three selected states (Tennessee, Oregon, and Washington) is described, along with an overview of each program. The Tennessee program is then compared to those of Oregon and Washington using seven dimensions: 1) goals, 2) planning level 3) comprehensive plan requirements, 4) consistency requirements, 5) provisions concerning adequate facilities and concurrency, 6) type and degree of state involvement, and 7) public participation requirements. Finally, the relative strengths and weaknesses of each program and "lessons learned" from the Oregon and Washington programs which might be applied to Tennessee are discussed.

Methodology

A literature review examines theoretical and applied growth management approaches, methods of comparing state growth policy programs, and earlier comparisons of state programs.. This information is used to analyze and compare the state programs on several key factors in order to select those states most useful for detailed comparison to Tennessee.

Another literature review yields the descriptions of the history and overview of the Tennessee, Oregon, and Washington growth management programs. The detailed comparison of the three state programs is conducted primarily by using the results of published studies for Oregon and Washington and by direct reference to PC1101 for Tennessee. When necessary, the text of the appropriate state legislative acts and amendments of Oregon and Washington are also used. The effective dates of the most recent legislation and associated administrative rules examined are 1998 for Tennessee, 1997 for Washington, and 1995 for Oregon. There have been few significant changes to the programs since that time.

The final section of the thesis analyzes the relative strengths and weaknesses of the three programs and identifies "lessons learned" from Oregon and Washington relevant to Tennessee. This section is necessarily subjective and exploratory in nature.

Significance of Research

The primary benefit of this research is to help Tennessee planners, government officials and citizens anticipate the impacts of PC1101. By learning from the experiences of other states with similar programs, Tennessee can identify potential problem areas and mistakes to avoid, as well as gain insight into successful approaches to such issues as public participation and intergovernmental coordination. Expectations for key outcomes will be clearer, both in terms of how goals might be met and how long it may take to achieve them. This research may also help identify gaps in the legislation which need to be addressed in order for the program to be successful.

Other states are using PC1101 as a model for growth management legislation. For example, Iowa has been considering legislation modeled on the Tennessee law (APA 1999b), and the 1999 legislation establishing the North Carolina Smart Growth Commission specifically charged the Commission to study PC1101 along with legislation from other states. This research will give such states information with which to more carefully tailor such legislation for desired results.

CHAPTER 2
GROWTH MANAGEMENT

This chapter discusses the evolution of growth management, growth management tools, and current state growth management programs through a literature review.

EVOLUTION OF GROWTH MANAGEMENT

Growth management began as a local undertaking and only later became a significant activity at the state level. Kelly (1993) cites a growth-phasing ordinance adopted by Milford, Connecticut in the early 1950s as one of the first growth management efforts. This ordinance linked new development to adequate public services and facilities (Zovanyi 1998). Around the same time, a growth management ordinance was adopted by Clarkston, New York. This ordinance, which attempted to concentrate growth in portions of the town adjacent to New York City, was significant for the influence it had on its immediate neighbor to the west, Ramapo (Kelly 1993).

The Ramapo program, adopted in 1969, is generally regarded as the first significant growth management effort. In the 1960s, Ramapo, although experiencing rapid growth, still had a primarily rural character. Unable to expand because it was completely surrounded by other political jurisdictions, the town developed a plan for its orderly development. The plan included a comprehensive plan, based on extensive studies, as well as a complementary capital improvements plan spanning eighteen years. To implement the plan, developers were required to obtain permits based on the accumulation of points, which were assigned by considering the availability of such services as sewers, drainage, schools, and roads as specified in the capital improvements plan. Builders lacking points could still get permits if they provided these services

(Porter 1997, Kelly 1993). The Ramapo scheme survived a court challenge and established timing of development as a dimension of land use planning (Kelly 1993).

Another famous early growth management program was that of Petaluma, California. Located just north of San Francisco, Petaluma had a population in 1970 of about 25,000. In the next two years the city experienced annual growth rates of 5000 new residents (Kelly 1993). Alarmed by this twenty percent annual growth rate, in 1972 the city adopted a plan limiting the number of dwelling units in developments of more than four units to 500 units annually. The plan allocated these new units by geographic location within the city and by housing type. To implement the plan, Petaluma established an annual competition using a point system, based on such things as adherence to the plan, good design, and providing low/moderate income housing, to allocate permits to builders. The Petaluma program also survived a court challenge (Porter 1997).

The earliest example of an urban growth boundary in the United States is the Urban Service Area (USA) of Lexington/Fayette County, Kentucky (Porter 1996). The boundary was first adopted in 1958 by the city of Lexington and Fayette County (Nelson et al. 1995) but only became an effective tool in 1974 with the merger of city and county governments (Porter 1996). The drivers for limiting intensive development to a circumscribed geographic area were a desire to protect the economically and culturally important horse farm industry from development pressure and to steer development away from parts of the county whose karst geology made them unsuitable for septic tanks (Porter 1996). Sewer service is not provided in these areas. The state health department mandates a ten-acre lot size for the use of a septic tank (Porter 1997); Lexington/Fayette County reinforces this requirement by zoning all land outside the USA at one unit per ten acres (Porter 1996). The USA is generally regarded as successful both in promoting contiguous development patterns and protecting agricultural uses (Nelson et al. 1995).

Other early efforts at growth management included programs in Boulder, Colorado, which adopted an ordinance patterned after Petaluma's in 1976, and Boca Raton, Florida, which adopted a limit on total development in 1972. However, this limit was struck down by the Florida Appeals Court in 1979 (Porter 1997).

States began to enter the growth management arena in the 1970s, motivated by desires to preserve environmentally sensitive lands (Zovanyi 1998, Porter 1992), natural resources such as farmland, and open space (Porter 1992). The first state to do so was Vermont in 1970. Fueled by the threat from tourism-related development to agriculture, Vermont adopted Act 250, which established a statewide development permitting system. Localities were allowed to issue permits only if the proposed development met state defined standards in ten areas. Five of these standards related to statewide adequate public facilities requirements; the others dealt with environmental issues and conformance to plans (Kelly 1993). The Act also called for the development of a land capability and development plan and a state land planning law. The capability plan was adopted but two early attempts to pass a state planning law failed (DeGrove 1992). However, renewed development pressures in the 1980s resulted in the passage of such an act, Act 200, or the Growth Management Act, in 1988.

Oregon, which passed its landmark Senate Bill 100, the Oregon Land Conservation and Development Act, in 1973, was the first state to adopt a truly comprehensive, state-wide growth management program. The Oregon legislation mandated the setting of statewide planning goals, as well as the preparation by every locality of comprehensive plans consistent with those goals. In addition, localities were required to adopt land use regulations to implement the plans. The local plans would be reviewed and approved by the state (Weitz 1999). One key state goal, goal 14, is "to provide for an orderly and efficient transition from rural to urban land use." To implement this goal, the state required that an urban growth boundary be established for every incorporated city (Nelson 1994). Initially, these UGBs were to be large enough to contain all urban uses until the year 2000; all land not within a UGB was to be designated for rural use (Knapp and Nelson 1992).

Other states followed Oregon's lead throughout the 1980s and 1990s. During these years, motivating factors for growth management efforts -- in addition to earlier recognized needs to preserve environmentally sensitive lands, natural resource lands, and open space -- included the rising costs of providing infrastructure to sprawling development, concern that sprawl contributed to air and water pollution, rising awareness of quality of life issues relating to sprawl (Porter 1992), and annexation issues (TACIR 1999). Ten states currently have state legislation mandating or encouraging the preparation of local comprehensive growth management plans -- Florida, Georgia, Maine, Maryland, New Jersey, Oregon, Rhode Island, Tennessee, Vermont, and Washington. State growth management legislation is summarized in Table 2.1.

TABLE 2.1
STATE GROWTH MANAGEMENT LEGISLATION

STATE	LEGISLATION	DATE
Oregon	Land Conservation and Development Act (Senate Bill 100)	1973
Florida	Omnibus Growth Management Act	1985
New Jersey	State Planning Act	1986
Maine	Comprehensive Planning and Land Use Regulation Act	1988
Rhode Island	Comprehensive Planning and Land Use Regulation Act	1988
Vermont	Growth Management Act (Act 200)	1988
Georgia	Georgia Planning Act (House Bill 215)	1989
Washington	Growth Management Act	1990/91
Maryland	Smart Growth Initiative (package of 5 bills)	1997
Tennessee	Growth Policy Act (Public Chapter 1101)	1998

The Federal government took a renewed interest in growth management under the Clinton-Gore administration, whose Livability Agenda was to promote regional "smart growth" strategies by providing matching funds for localities to design and pursue such strategies across jurisdictional lines (CEQ 1999a, 1999b). It is not clear yet if and how the Bush administration will support "smart growth." However, HUD secretary Mel Martinez served as Chairman of Florida Governor Jeb Bush's Growth Management Study and testified in his confirmation hearing as HUD Secretary that "the issues relating to how we grow and develop as communities must be part of our discussions during the next few years. If confirmed, I intend to initiate a national dialogue on the challenges of growth and its impact on quality of life issues."

GROWTH MANAGEMENT TOOLS

General descriptions of growth management programs and objectives include those by Brower et al. (1989), DeGrove and Metzger (1991), Kelly (1993), Nelson et al. (1995), and Porter (1997).

Kelly (1993) points out that as far back as 1974, the Planning Board of Montgomery County, Maryland, noted that an effective growth management policy must address location, timing, and cost. Zoning, the most common land use tool, addresses only location, and that not always effectively. Other tools are now commonly used to address these concerns. Some of the major growth management tools used by state programs are requiring comprehensive plans, consistency, concurrency, urban containment devices such as urban growth boundaries, and delineation and protection of critical environmental areas and prime agricultural land.

In addition to requiring localities to prepare comprehensive plans, growth management programs also commonly require that these plans be internally *consistent*. In addition to the requirement that all plan elements be consistent with one another, consistency addresses the historical disconnect between land-use planning and land-use regulation by requiring that land-use regulations be consistent with the comprehensive plan (Nelson et al. 1995). Weitz (1999) calls this *implementation consistency.*

Two other types of consistency – horizontal and vertical – are also common elements of growth management programs. *Horizontal consistency* means that plans within a particular region (for example, all plans within a single county, or in a multi-county urban region) be consistent with one another. *Vertical consistency* requires that local plans be consistent with any regional and/or state plans (DeGrove 1992). Since managing growth effectively requires coordination beyond the boundaries of a single jurisdiction, the consistency requirement is a key component of state growth management programs.

A second major tool in the growth management toolbox is *concurrency*. Nelson et al. (1995, 163) refer to concurrency as the "truth in planning concept." Concurrency, also referred to as adequate facilities requirements, is emerging as one of the most common elements of growth management programs (Porter 1997). Concurrency requires that adequate infrastructure such as roads, sewers, and schools must be in place in an area before new building permits are issued. Kelly (1993) argues that while concurrency may not change the total **amount** of growth, it does significantly influence its **location** – that is, concurrency requirements can force development to follow infrastructure, rather than vice versa.

Urban containment devices such as urban growth boundaries and urban services districts are another tool for influencing the location of development. These techniques create clean boundaries between urban and rural land uses. They are intended to "promote more efficient use and extension of infrastructure systems, encourage more compact development, and preserve open space and natural resources in rural areas" (Porter 1997, 44). Boundaries typically are drawn so as to accommodate expected development over the next twenty years.

A fourth common growth management technique is the protection of natural resource and/or environmentally sensitive land. Several different tools can be used to accomplish this, including land acquisition or purchase of development rights or easements (Porter 1997), delineation of critical environmental areas where little or no development is allowed, and protection of resource lands (such as prime farmland) by exclusive use zoning and tax differentials (DeGrove 1992).

Growth management programs may employ a variety of other tools. DeGrove (1992) points out that all states with growth management programs at that time either included an affordable housing component as part of their program or had "elevated affordable housing to a much higher position on its public policy agenda" (DeGrove 1992, 165). Economic development strategies for slow growth areas are also emerging as an element of some state growth management programs (DeGrove 1992). Kelly (1993) suggests that annexation policy is another important component of growth management; that suggestion is borne out by the Tennessee program, which has a strong focus on annexation. At least one state, Maryland, is experimenting with a non-regulatory approach in which no state funds are allowed to be used for development in designated non-growth areas (Meck and Wittenberg 1998).

STATE GROWTH MANAGEMENT PROGRAMS

States are uniquely positioned to take the lead in growth management. Local governments rarely control enough territory to make growth management meaningful (Kelly 1993) and it is unlikely that significant action can be taken at the federal level. Ten states currently have state legislation mandating or encouraging the preparation of local comprehensive growth management plans -- Florida, Georgia, Maine, Maryland, New Jersey, Oregon, Rhode Island, Tennessee, Vermont, and Washington.

Descriptions of specific state growth management programs appear in many publications on the subject, including DeGrove (1992), Nelson et al. (1995), and Kelly (1993). Meck and Wittenberg (1998) also published an excellent descriptive review of state programs. All of these include Oregon; some discuss Washington as well. Tennessee's growth management program under PC1101 is summarized by IPS and TACIR (1998).

Several recent studies have explicitly compared state growth management programs. Gale's (1992b) is perhaps the most extensive, comparing programs on over ten dimensions, including primary plan review authority, resolving plan issues, making plan changes, consistency between local, regional, and state plans, consistency between zoning and the plan, and sanctions for noncompliance. Bollens (1992) examined state growth management programs with respect to intergovernmental frameworks and policy objectives. Other comparisons of state growth management programs include those of Howe (1991) and Neumann (1991). None of these studies are recent enough to include Tennessee; nor do they examine changes made to the Washington legislation in 1997.

Weitz (1999), who more recently compared programs in Florida, Georgia, Oregon, and Washington, includes a discussion of the 1997 amendments to Washington legislation but does not consider the Tennessee program. Williamson (2000) examines the Tennessee program but compares it only to the weak Arizona program under the Arizona Growing Smarter Act of 1998. The Florida Department of Community Affairs completed a study in 2000 of selected state programs, including Tennessee, Washington, and Oregon, on a few selected factors.

Few authors have directly drawn on the experiences of a particular state growth management program to make recommendations for implementing a program in another state. Exceptions include Meck and Wittenburg (1998) for Ohio and Stancil (1996) for North Carolina. Washington acknowledges modeling elements of its program after those in Florida, Georgia, and Oregon, but no record seems to exist of exactly how this was done.

CHAPTER 3

SELECTION OF STATES FOR COMPARISON TO TENNESSEE

Ten states currently have state legislation mandating or encouraging the preparation of local comprehensive growth management plans -- Florida, Georgia, Maine, Maryland, New Jersey, Oregon, Rhode Island, Tennessee, Vermont, and Washington. Two other states, Arizona and Hawaii, are sometimes included in the list of "growth management" states. This chapter analyzes the state growth management programs to select those most useful for comparison to Tennessee. Two states -- Oregon and Washington -- are selected.

ANALYSIS OF STATE PROGRAMS

The analysis of state programs was conducted in two steps. First, four states – Arizona, Hawaii, New Jersey, and Maryland -- were eliminated from the comparison based on the unique characteristics of their programs. The remaining eight states were then examined on six key program elements -- planning level, state review of local plans, consistency with land use controls, concurrency requirements, sanctions for non-compliance, and required plan elements -- to determine which programs are most similar to that of Tennessee

New Jersey And Maryland – Unique Approaches

New Jersey and Maryland both have taken approaches to growth management that differ from those of other states. New Jersey, while not requiring local plans, uses what it calls a cross-acceptance process. In this process, the state and localities who choose to participate negotiate various elements of the state and local plans so that they are both in agreement and also fit the particular local situation (Gale 1992).

Maryland employs a "carrot" rather than a "stick" approach. The state has defined priority growth areas, which include existing municipalities and industrial areas and other areas where the state wants to direct growth (e.g., inside the Washington, D.C. beltway). Localities were also allowed to designate priority growth areas for residential growth. The state now funds state "growth" projects (such as transportation projects) **only** inside these priority growth areas. Localities are free to grow into non-priority areas, but they cannot use state money to do so (Meck and Wittenberg 1998).

Because the New Jersey and Maryland programs are unique and have little in common with the Tennessee program, they are not considered further in this analysis.

Arizona and Hawaii

Two states sometimes mentioned as having state growth management programs are Arizona and Hawaii. Arizona passed the Growing Smarter Act in 1998. However, the Arizona program is extremely weak as growth management legislation. The Act contains the statement that "the comprehensive reforms in the Growing Smarter Act conflict with … the establishment of urban growth areas, growth management plans…" (Williamson 2000, 57). Also, a ballot initiative designed by the Arizona legislature (which passed in November 1998) prohibits the state from mandating specific growth management techniques (Colton and DiTullio 1999). Therefore, for purposes of this thesis, Arizona is not considered to have a state growth management program. Hawaii certainly has a statewide land use planning system, but that system is largely managed at the state rather than at the local level (Gale 1992), and so is also excluded from this discussion.

Detailed Analysis of State Programs

The second step of this analysis compares the remaining eight states -- Florida, Georgia, Maine, Oregon, Rhode Island, Tennessee, Vermont, and Washington – on six key program elements -- planning level, state review of local plans, consistency with land use controls, concurrency requirements, sanctions for non-compliance, and required plan elements. . Most of this material was taken from DeGrove (1992), Meck and Wittenberg (1998), Gale (1992), IPS and TACIR (1998), and Weitz (1999).

Planning Level. Four of the states -- Tennessee, Florida, Oregon, and Rhode Island -- mandate the preparation of local plans. Of these, Rhode Island mandates local plans at the community level; Tennessee at the county level, and Oregon and Florida at both the community and the county level. Washington mandates county plans for those counties with large populations or high population growth rates. Although Vermont does not require localities to plan, or that local plans be in compliance with the state goals (Kelly 1993), localities are encouraged to make local plans based on state goals by allowing such local plans approved by regional planning agencies to take precedence over state agency plans (Dean 1996).

Although Georgia and Vermont make local plans optional, they mandate the preparation of regional plans with input from localities. Florida also mandates regional planning, as does Oregon for the Portland region. Washington does not mandate regional plans, but does require that counties "coordinate" planning efforts with adjacent counties. Only Maine has a totally voluntary program.

Because Tennessee requires local growth management plans, states not requiring local plans -- Georgia, Maine, and Vermont -- are not included in further analysis.

State Review of Local Plans. Of the remaining five states, Florida, Oregon, and Rhode Island maintain a high degree of state involvement by mandating review and approval of local plans by the state. In addition, Florida requires local plans to be consistent with the state plan and state policies, Oregon requires them to be consistent with its 19 state goals, and Rhode Island requires consistency between local plans and the state policy plan.

Washington has no state plan and the state does not formally approve local plans but does review and comment on them. Tennessee has the weakest state involvement. There is no state plan and the state automatically ratifies any local plan ratified by the local legislative bodies.

Consistency with Land Use Controls. Rhode Island requires that any local land use controls must be consistent with the local plan. Washington and Florida go a step further, by specifically requiring that localities adopt land use controls consistent with the local plan. Oregon is most specific, mandating local zoning and subdivision controls consistent with the local plan. Again, Tennessee has the weakest specifications; the Tennessee Act says simply that "all land use decisions must be consistent with the plan." It does not require localities to develop land use controls nor does it specify who has standing to sue if inconsistent decisions are made.

Concurrency Requirements. Florida is known for the stringency of its concurrency requirements. Development proposals in Florida cannot be approved unless adequate roads, sewers, water, solid waste, drainage, parks, and recreational facilities are already available, are under construction, or are guaranteed in a development agreement (Nelson et al. 1995). Rhode Island requires consistency between local capital improvement plans and the comprehensive plan, and also enjoins state projects from violating local plans.

Oregon requires that water, sewer, and transportation capacity must be available to support new development before it is approved, and that a jurisdiction must at least have a plan to expand other public facilities such as schools, parks, and fire and police protection into the area under consideration for development (Knaap and Nelson 1992). Since 1985, Oregon has also required local plans to contain a public facilities plan for urban areas with populations greater than 2500 (Knaap and Nelson 1992), and since 1991 has required a transportation plan for jurisdictions of the same size (Weitz 1999).

Washington applies strict concurrency only to transportation. Local governments in Washington must deny approval for new development unless transportation facilities sufficient to provide a specified level of service (as defined in the transportation element of the local comprehensive plan) are concurrently available. "Concurrently" is defined as either in place at the time of development or financially committed to be in place within six years (Walsh and Pearce 1993). To address other public facilities, Washington requires that the capital facilities element of the comprehensive plan contain an inventory of existing facilities, a forecast of future needs, proposed new facilities, and a six year plan for financing those facilities. The land use element of the plan must be revised if the expected funding is inadequate for the proposed capital facility expansion (Settle and Gavigan 1993). Although this does not ensure that adequate public facilities will be in place before development is authorized, it does tie the land use and capital facilities plans tightly together.

Tennessee's concurrency requirements are bound up with the section of the Growth Policy Act dealing with annexation and incorporation of new municipalities. Before either such an annexation or incorporation can take place, the municipality must develop a plan of services, addressing police service, fire protection, water, electricity, sewer, roads, recreation, street lighting, and zoning.

Sanctions For Non-Compliance. All five states make localities who do not comply with state growth management legislation ineligible for various forms of state revenues and/or grants. In addition, Florida and Rhode Island allow the state to impose a plan on localities who fail to develop an adequate one. Tennessee allows the state to impose a plan on localities who fail to adopt one. Oregon has the most stringent penalties for non-compliance; its state government is allowed to suspend the powers of a non-complying locality to approve subdivisions and issue building permits.

Required Plan Elements. In addition to Tennessee, only Oregon and Washington require localities to set urban growth boundaries. Since this is the centerpiece of the Tennessee program, only Oregon and Washington were selected for detailed comparison to Tennessee.

In addition to the specification of UGBs, Oregon requires that plans address all 19 state goals. These goals address a wide range of issues, including land use, agricultural lands, forest lands, open and scenic spaces, environmental quality, recreational needs, economic development, housing, public facilities, transportation, and energy conservation. Local plans in Washington must address land use, housing, capital facilities, rural lands (counties only), utilities, and transportation. In Tennessee, no additional plan elements are required, although the Act mentions several, including land use, transportation, public infrastructure, housing, and economic development, that may be considered.

SELECTION OF STATES FOR COMPARISON

Although sometimes mentioned in discussions of growth management, Arizona does not really have a state growth management program. The programs in New Jersey, Maryland, and Hawaii are unique and do not compare easily to other state programs. Therefore, they were not selected for inclusion in the comparison to Tennessee.

After examination of the state growth management programs on six key factors -- planning level, state review of local plans, consistency with land use controls, concurrency requirements, sanctions for non-compliance, and required plan elements -- Oregon and Washington were selected for detailed comparison to Tennessee. Because Tennessee requires local growth management plans, states not requiring local plans -- Georgia, Maine, and Vermont -- were also dropped from further analysis. Rhode Island and Florida were not selected because they do not require localities to set UGBs, which are the cornerstone of the Tennessee program.

CHAPTER 4

HISTORY AND OVERVIEW OF TENNESSEE, OREGON, AND WASHINGTON STATE GROWTH MANAGEMENT PROGRAMS

This chapter discusses the history of the growth management programs in Tennessee, Oregon, and Washington. It presents an overview of each program and summarizes the experience of the program.

TENNESSEE PUBLIC CHAPTER 1101

History. The genesis of most state growth management programs was a desire to control the perceived costs of sprawl – loss of environmentally sensitive or natural resource lands, increased air and water pollution, increasing infrastructure costs, and declining quality of life. However, Tennessee's route to a state growth management program was a different one. It grew from issues with state annexation law.

Annexation is "the expansion of a municipality by the extension of its boundaries to include new territory" (TACIR 1999, 5). Annexation by private law; i.e., an annexation requiring a specific, special act of the legislative branch, was the predominant means of annexation in Tennessee until 1955. In that year, the Tennessee General Assembly passed Public Chapter 113 (PC113), which allowed municipalities to annex territory either by ordinance or referendum. Annexation by ordinance is the annexation of territory by a municipality on its own initiative. PC113 allowed this for territory "adjoining" the municipality as necessary for the "welfare of the residents and property owners of the affected territory as well as for the municipality as a whole." Property owners wishing to contest an annexation had to show that it was unreasonable. In addition, property could be annexed by referendum; i.e., at the request of the affected property owners (TACIR 1999).

In the 1970s suburban residents began to pressure the General Assembly to make annexation more difficult. The legislature responded by passing Public Chapter 753 (PC753) in 1974. This legislation required a municipality wishing to annex territory to prepare a plan of services for the affected territory and to hold a public hearing on the plan. It also shifted the burden of proof regarding the reasonableness of the proposed annexation. Where before a contesting property owner was required to show the annexation was unreasonable, PC753 required the municipality to show that it was **reasonable**. In 1979, Tennessee annexation law became even less friendly to municipalities when the Tennessee Supreme Court held that parties contesting an annexation were entitled to submit the reasonableness issue to a jury (TACIR 1999).

In 1994 the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) held a series of public hearings on the annexation issue. Several participants in the hearings pointed out that since Tennessee municipalities were not required to develop comprehensive plans, it was difficult to plan for orderly annexations or to judge the effects of proposed annexations. Three major questions arising from the hearings were summarized by TACIR (1999, 9-10):

1. Should the state require all municipalities to prepare and annually update a comprehensive plan of growth…?
2. Should the state require municipalities and counties to work with a regional planning body on growth plans?
3. Should municipal annexations be tied to a statewide comprehensive urban and regional growth plan?

The debate over annexation policy continued in 1996 with the passage of Public Chapter 666 (PC666). PC666 allowed for the incorporation of territory containing as few as 225 persons. However, it deliberately restricted such incorporation geographically so that it only applied to two small communities which wished to incorporate. The following year the General Assembly lifted these geographic restrictions when it passed Public Chapter 98 (PC98), known as the "Tiny Towns Law." PC98 allowed for the incorporation of territory with as few as 225 persons statewide. However, the law was written so as to remain in effect for only one year (TACIR 1999).

Litigation was filed regarding both statutes and in 1997, the Tennessee Supreme Court found both PC666 and PC98 unconstitutional (TACIR 1999). Determined to "create a comprehensive solution to the problems surrounding annexation and incorporation" (TACIR 1999, 12), Lt. Governor and Speaker of the Senate John Wilder and House Speaker Jimmy Naifeh established the Ad Hoc Study Committee on Annexation. This committee, consisting of members of the Tennessee House and Senate, assembled a staff from various state agencies. Although it consulted a few key stakeholders such as municipal and county representatives and the Tennessee Farm Bureau, the Committee itself hammered out the details of what would eventually become the Tennessee Growth Policy Act, or PC 1101 (PC1101). PC1101 was passed overwhelmingly by both the Tennessee House and Senate and signed into law by Governor Don Sundquist on May 19, 1998 (TACIR 1999).

Prior to the passage of PC1101 Tennessee's counties and municipalities, although empowered to do so, were not required to develop comprehensive plans. There was no state guidance or standards for local comprehensive planning, nor were there any statutes requiring reporting on local planning efforts to the state (Detch and Weakley 1991).

Overview. Although conceived as a response to continuing problems with annexation policy and with a strong focus on annexation issues, the Tennessee Growth Policy Act is also intended to be growth management legislation. This intent seems clear in the language of the Act: "With this act, the General Assembly intends to establish a comprehensive growth policy for this state that eliminates annexation or incorporation out of fear, establishes incentives to annex or incorporate where appropriate; more closely matches the timing of development and the provision of public services; ...and minimizes urban sprawl." The details of the Act, however, make it clear that its major focus is annexation policy, with growth management taking a secondary role.

PC1101 requires each Tennessee county (except the two counties with metro government), in cooperation with the municipalities within its borders, to develop a comprehensive growth policy plan based on population and land use projections for the next twenty years. The most important component of that plan is the identification of *urban growth boundaries*, *rural areas*, and *planned growth areas*. Urban growth boundaries (UGBs) are those areas contiguous to an existing municipality where high-density growth is expected, while planned growth areas (PGAs) are other areas in the county where medium to high density development is expected. Rural areas (RAs) include territory not in the other categories reserved for agriculture, recreation, forest, wildlife, and other non high-density uses. The definitions of high,- medium-, and low-density are left to the localities. After the plan is in place, municipalities can only annex within their UGBs and new cities can incorporate only within a PGA. The plan must be ratified by all the local legislative bodies within the county (IPS and TACIR 1998).

The role of the state is limited. Local plans are automatically approved by the state Local Government Planning Advisory Committee (LGPAC) upon ratification by local legislative bodies. Except in cases of disputed plans, the state does no content review of local plans (IPS and TACIR 1998).

Experience. TACIR, which is charged with monitoring progress on PC1101 for the General Assembly through 2002, has published several reports on early implementation efforts (TACIR 1999, TACIR 2000, TACIR 2001). The most recent points out that it is still much too early to completely gauge results:

> 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 (TACIR 2001, 2).

Since PC1101 is too recent for its impacts and effectiveness to be demonstrated, published work to date emphasizes progress toward completing and ratifying the plans. In general, counties are progressing well toward meeting PC1101 deadlines. For example, the law gave each county until January 1, 2000, to develop a growth plan; 69 of Tennessee's 93 counties required to plan under PC1101 met that deadline (TACIR 2000). As of January 2002, 89 counties had received approval of ratified plans from LGPAC, with 3 counties still to receive approval (McLeod 2002).

In 2000, eight counties officially declared an impasse and requested mediation of their disputes by the Secretary of State's office. The state facilitated agreements in two of the counties; another county resolved its differences prior to the first state mediation session. Five counties still had outstanding disputes at the end of 2000 (TACIR 2001). The issues surrounding the disputes in two of the counties, Anderson and Blount, are documented in reviews by La Rue (2000) and Campbell (2000) of the plan development process in those counties. In general, the most prevalent disputed issue is the size of the UGBs; municipalities desire them to be much larger than counties are comfortable with.

Several court challenges to the constitutionality of PC1101 have been filed; none had been heard at the end of 2000 (TACIR 2001). Although several bills have been introduced in the General Assembly to drastically modify or repeal the Act, none have enjoyed any broad support.

GROWTH MANAGEMENT IN OREGON

History. Efforts to manage growth in Oregon grew out of two primary concerns: a desire to protect the environment and the perceived need to protect the state's agricultural lands from encroaching suburban development. These efforts have been detailed by Little (1974), Knapp and Nelson (1992), Abbott and Howe (1993), and MacColl (1995), among others.

Oregon has history of protecting its natural and environmental resources. The state's beaches have been protected for public use since 1911, when the legislature asserted public ownership to the high-tide water mark. In 1971, a "Beach Bill" extended state authority to the vegetation line. Other environmental bills passed in 1971 included the nation's first bottle bill (requiring a deposit on soft-drink and beer cans), a billboard removal law, and a bicycle bill setting aside a percentage of highway revenues for bike paths. In addition, this year saw the establishment of the Oregon Coastal Conservation and Development Commission and the state Department of Environmental Quality (MacColl 1995).

Around this time, concerns about uncontrolled development along Oregon's pristine coast began to surface. Not only were some areas becoming congested, overloaded septic systems were dumping under-treated sewage into the Pacific Ocean and estuaries (Knapp and Nelson 1992).

Oregon does not have an abundance of land to accommodate growth. The State and Federal governments own 54 percent of land (like many western states, much of Oregon is in the hands of the USDA Forest Service and the Bureau of Land Management). In addition, much of the land in the state is mountain or high desert, and so is difficult to develop (Knapp and Nelson 1992). Protecting farmland had become a concern as early as 1961, when the legislature authorized lower tax assessments for land in exclusive farm use zones (MacColl 1995).

The one region with plenty of easily developable land - close to rail, river, and interstate transportation - is the Willamette Valley in the western part of the state (see Figure 4.1).

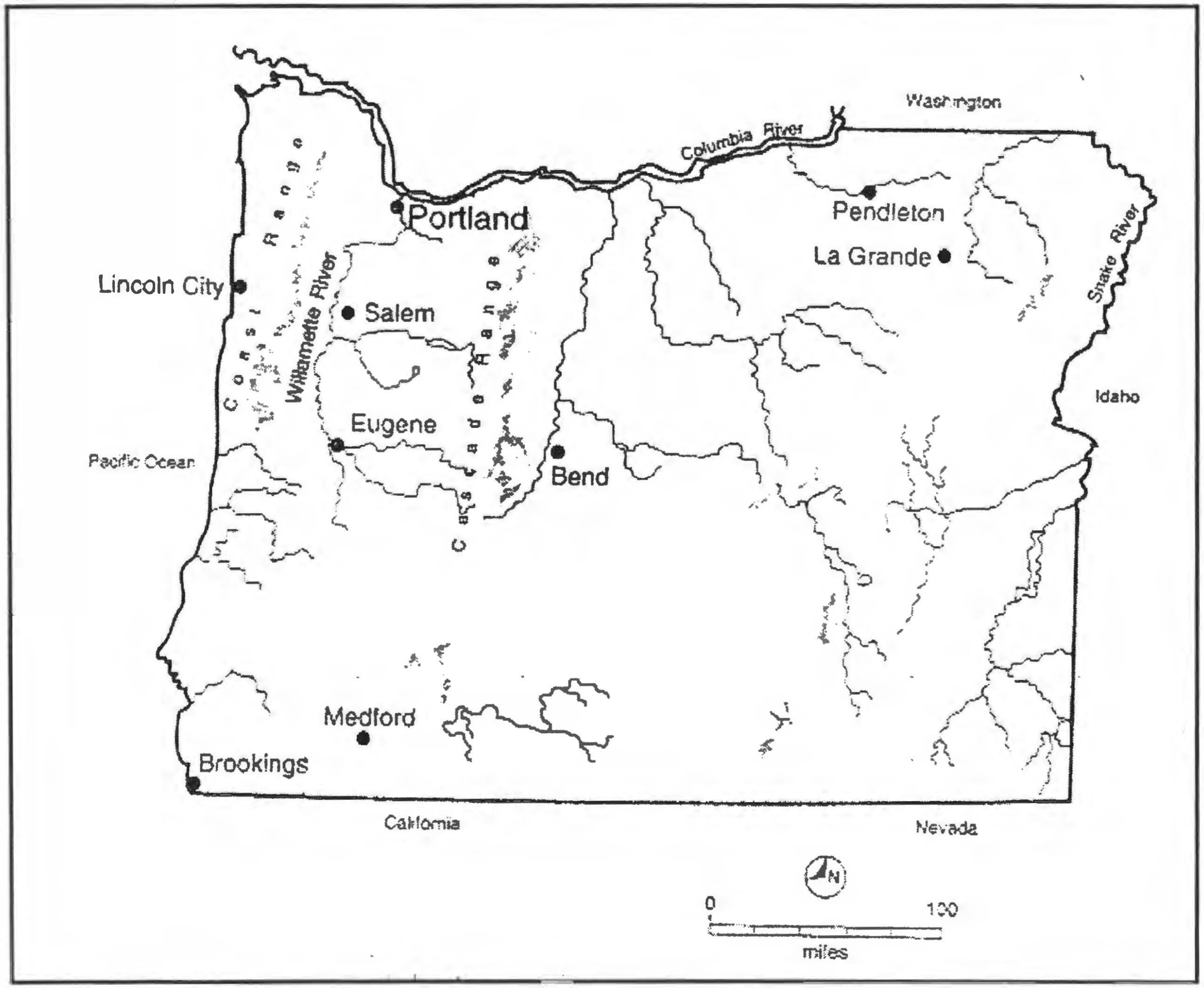

FIGURE 4.1
MAP OF OREGON

Only 120 miles long and 20-50 miles wide, the Willamette Valley contains about three-quarters of the state's population. It also accounts for half of its agricultural production (Knapp and Nelson 1992). In the 1960s and early 1970s Valley farmland was facing severe suburban development pressure. Concerns existed in eastern Oregon as well. Rapid subdivision of land without adequate planning for infrastructure was causing problems in this region (Knapp and Nelson 1992).

Oregon cities have been empowered to plan and regulate land use since 1919. However, under the 1919 legislative act, municipalities were not allowed to regulate land in unincorporated areas. In addition, Oregon's annexation laws made annexation difficult. These two factors combined to make control of development around the edges of cities difficult. In 1947, zoning and planning authority was extended to counties. However, by 1963, although 28 of Oregon's 36 counties had planning commissions, only eight had land use plans. In addition, cities and counties rarely coordinated planning efforts (Knapp and Nelson 1992).

In response to these concerns, the legislature passed Senate Bill 10 (SB10) in 1969. SB10 required all cities and counties to prepare comprehensive plans (Knapp and Nelson 1992) and zone all land (MacColl 1995). This made Oregon the first state to require all local governments to do so (MacColl 1995). However, SB10 did not establish a role for the state, either in supporting or regulating these planning efforts (Knapp and Nelson 1992, MacColl 1995). Willamette Valley farmland continued to disappear.

An 1970 initiative to repeal SB10 failed by a margin of 55 - 45 percent. Governor Tom McCall, who had actively campaigned against the repeal, saw these results as a mandate to continue land use reform (MacColl 1995). In 1972 he commissioned a study of development in the Willamette Valley which estimated that, in the absence of intervention, the amount of urban land in the valley would increase by 75 percent by

2020. This would consume nearly of quarter of the valley's prime farmland (Knapp and Nelson 1992).

Around this time State Senator Hector Macpherson began pushing for the formation of a legislative committee to develop stronger land use legislation. He was rebuffed by the Senate president but welcomed by the Governor's Local Government Relations Division, which partnered with him to set up a citizens' Land Use Policy Action Group to study issues of state-wide planning and develop the legislation. One piece of that legislation was Senate Bill 100 (SB100), the overall state land-use planning bill (Little 1974).

In 1973, in a famous speech to the opening session of the legislature, Governor McCall kicked off the effort to pass SB100 by declaring: "There is a shameless threat to our environment." Oregon, he said, was faced with "unfettered despoiling of the land, sagebrush subdivisions, coastal 'condomania,' and the ravenous rampage of suburbia in the Willamette valley" (MacColl 1995, p 201).

The fascinating struggle to pass SB100 has been documented by Little (1974), Maccoll (1995), and Abbot and Howe (1993). The bill faced a tough fight in the Senate Environmental and Land Use Committee, which the Senate president had "stacked" with members unsympathetic to the bill (MacColl 1995). However, committee chair Ted Halleck of Portland co-opted much of the opposition by setting up an ad hoc committee of lobbyists representing lumber interests, manufacturing, agriculture, home builders, environmental organizations, and county and municipal governments to work on the bill. The bill as revised by this group was passed by the Committee and then two weeks later by the entire Senate by a margin of 18-10. The House Environmental and Land Use Committee then passed the bill unchanged, as did the full House on May 23, 1973, by a margin of 40-20. Governor McCall signed SB100 into law six days later (Little 1974).

Overview. The scope of the Oregon program is statewide land use planning, although growth management is clearly an important component of the program. The Oregon legislation mandates the setting of statewide planning goals, as well as the preparation by every locality of comprehensive plans consistent with those goals. In addition, localities are required to adopt land use regulations to implement the plans. Local plans are reviewed and approved by the state (Weitz 1999). One key state goal, goal 14, is "to provide for an orderly and efficient transition from rural to urban land use." To implement this goal, the state requires that an urban growth boundary be established for every incorporated city (Nelson 1994). The state administers the program through the Land Conservation and Development Commission (LCDC), whose members are appointed by the Governor and confirmed by the Senate (Little 1974, MacColl 1995). The state Department of Land Conservation and Development provides staff support to the LCDC (Abott and Howe 1993).

Experience. After almost thirty years of experience, a body of work is beginning to emerge about the outcomes of the Oregon growth management program. Knaap and Nelson published a book length evaluation in 1992, as did Abbott et al. in 1994. Liberty (1992) performed a similar analysis. In general, assessments of the Oregon program are positive.

It did take longer than expected to get the program in place. The original legislation anticipated all local plans would be developed and approved within two years – but final approval of the last local plan did not take place until 1986 -- thirteen years after passage of SB100 and twelve years after the statewide planning goals were adopted (Liberty 1992).

Since UGBs are a cornerstone of the Oregon program, much research has focused on assessing their effectiveness. Articles on the effects of Oregon UGBs include those by Nelson and Moore (1993, 1996) and Weitz and Moore (1998), as well as dissertations by

Alkadi (1996) on Portland housing prices and Hwang (1998) on spatial impacts of the Portland growth boundary. Most of these studies found positive impacts of the UGBs, especially Portland's.

Hwang (1998) concluded that the Portland UGB both discouraged the building of new single-family residences outside its boundaries and encouraged infill and redevelopment for residential use inside the UGB. Nelson and Moore (1996) also found that Portland's UGB was forcing development inside the boundary; between 1985 and 1989 only 5% of the single and multiple family dwellings in the Portland metro area were built outside the UGB. This is supported by evidence of increased density within the Portland UGB. A 1991 study jointly funded by 1000 Friends of Oregon and The Home Builders Association of Metropolitan Portland found that in Portland:

- The *volume* of multiple-family and attached single-family development increased dramatically;
- The *proportion* of multiple-family and attached single-family housing increased dramatically; and
- The *proportion* of smaller and more affordable developed single-family lots increased (Kelly 1993, 138).

However, Nelson and Moore (1996) also found that the Portland experience is at one end of a continuum. The record is not so impressive in Oregon counties with less strict enforcement. During the same period, Deschutes County, at the other end of the continuum, allowed 59 percent of all new residences in the county to be built outside the county's three UGBs.

A complicating factor in evaluating the Portland UGB is the presence just across the Columbia River of the bedroom communities of Clark County, Washington. With a 33 percent annual growth rate, Clark County is the fastest growing county in Washington (Fulton 1999). Clark County undoubtedly has served as a "safety valve" for growth inside the Portland UGB (Porter 1997) but no one has estimated by how much. This spill-over effect will probably be reduced in the future since the municipalities of Clark County are now required to set their own UGBs under Washington's GMA.

UGBs have been criticized as contributing to higher housing prices by constraining land supply. Others take a different view, including the Home Builders of Metropolitan Portland, who said in a 1992 letter to then-Secretary of Housing and Urban Development Jack Kemp, "Land use regulation can in fact be a powerful force to reduce housing costs and red tape. In Oregon, it has done just that."

Alkadi (1996) found no relation between housing prices and the imposition of the UGB in Washington County (a part of the Portland metro area) between 1978 and 1990. However, in 1990 the median price of a single-family house in Portland was well below the average for western cities. By 1996, at $144,000 it had jumped to about average for western cities. A recent study by Phillips and Goodstein (2000) concluded that the Portland UGB is responsible for only a small portion of the increase in housing costs; most of it is instead a reflection of economic conditions.

Nelson's (1992) examination of the effects of the Oregon program on the preservation of prime farmland found that large tracts of farmland have indeed been preserved and that many small farms in the Willamette Valley have become commercially viable. The amount of farmland in the Willamette Valley remained virtually unchanged during the 1980s. EFU zoning has been criticized for allowing so called "hobby farms" – essentially large dwellings with "farming" operations just large enough to qualify for the EFU tax break. But changes passed by the Legislature in 1993 to tighten up standards for housing in EFU zones helped address this issue (Franzen and Hunsberger 1999). The same legislation also prohibits new golf courses, churches, and schools in EFU zones.

Although still controversial, the Oregon program has enjoyed widespread support from Oregonians. Three referenda to repeal SB100 have failed. – in 1976 by 57 to 43 percent and in 1978 by 61 to 39 percent. A third effort in 1982 failed 55 to 45 percent even though the state was deep in an economic recession (Knapp and Nelson 1992). A fourth effort in 1984 failed to gather enough signatures to be placed on the ballot (MacColl 1995). Legislative efforts to repeal or weaken the program continued into the 1990s. Most were defeated, due to strong support for state land use planning from the advocacy group 1000 Friends of Oregon, environmental groups, and a series of governors willing to exercise their veto power if necessary (Liberty 1996). Support has also come from traditionally conservative organizations - the Home Builders Association of Metropolitan Portland and the Portland Chamber of Commerce opposed the 1982 repeal referendum. And in 1995, the Oregon Farm Bureau and the Oregon Forest Industry Council helped defend the planning program from attack by conservatives in the legislature (Liberty 1998).

GROWTH MANAGEMENT IN WASHINGTON

History. Washington was an early leader in environmental issues In 1970 Washington adopted the Shoreline Management Act, and was the first state to have its coastal planning and management program approved by the Federal Office of Coastal Zone Management (DeGrove 1992). The Washington State Environmental Policy Act, enacted around the same time, mandated environmental review of all state and local government actions with potentially adverse environmental consequences (Settle and Gavigan 1993).

However, Settle and Gavigan (1993, 875) point out that this environmental legislation operated as an "overlay" on Washington's existing system of land use planning and regulation, which was "a crumbling foundation." Local land use planning and regulation was optional. Formal comprehensive plans were not required prerequisites to zoning authority. In addition, it has been observed that there is an "excessive commitment" (DeGrove 1992, 119) to home rule in Washington state. This made it difficult to address any problem - like growth management - which reached beyond the boundaries of a particular municipality or county. Cities and counties which may have been doing a good job of planning for their own jurisdictions lacked a vehicle to coordinate growth management efforts with others.

The strong interest in environmental issues and their relationship to land use issues caused Washington to begin looking at growth management policy about the same time as its neighbor, Oregon. In the early 1970s Governor Daniel Evans was a strong supporter of comprehensive, state-wide land use planning legislation (DeGrove 1992). The prospects for passing the legislation were enhanced by the possibility that the U.S. Congress would enact a bill which contained subsidies for states with such programs. But shortly after this legislation died in Washington, D.C., the Washington state legislature rejected the proposed land use legislation (Settle and Gavigan 1993).

Then the political and economic conditions changed. The election of a conservative governor, Dixie Lee Ray, and a recession in the timber industry that lasted into the 1980s combined to put growth management on the back burner. However, in the late 1980s the economy recovered and the state began to experience rapid population growth, especially in the western part of the state around the Puget Sound. Sprawling suburbs threatened the open space which Washingtonians valued. Lack of investment in the transportation infrastructure combined with the population growth to produce excessive traffic congestion. And farmland was disappearing - the state lost 1.5 million acres of farmland between 1969 and 1987. The greatest losses were in the growth counties around the Puget Sound - King County (Seattle) lost over 9 percent of its farmland during this period, and Pierce and Thurston counties lost 14.7 and 16.1 percent respectively (DeGrove 1992).

All of these factors combined to revive interest in state growth management legislation. In 1989 Governor Booth Gardner established the Washington Growth Strategies Commission. It's mission was "to recommend ways to preserve the environment and the high quality of life Washingtonians value while maintaining steady economic growth for all regions of the state" (DeGrove 1992, 120). While the Commission was working, the legislature also began addressing growth management. In 1990, it passed the Growth Management Act known as GMA I. After the Growth Strategies Commission released its final report in late 1990, the legislature codified some of its recommendations into law with the passage of a second Growth Management Act (known as GMA II) in 1991. Together, GMA I and GMA II, known collectively as GMA, form the basis for Washington's state growth management program.

Overview. While GMA addresses general land use planning issues, the focus of the legislation, unlike Oregon's, is clearly on growth management per se. GMA applies to the state's most populous and faster growing counties and to any other counties which chose to participate. Under GMA, a county must prepare a comprehensive plan which must include land use, housing, capital facilities, utilities, rural, and transportation elements. Land use regulations must be consistent with the plan (DeGrove 1992). Each county must develop county-wide planning policies which are used by it and by all the municipalities within it, and each county is required to coordinate with surrounding counties (Settle and Gavigan 1993). Concurrency is mandated for the transportation element (DeGrove 1994). GMA also mandates urban growth areas (UGAs) for each municipality, which are to be defined in such a way as to accommodate twenty-year population growth. The State reviews and comments on local plans but does not approve them (DeGrove 1992).

Experience. Because it has been in effect for considerably less time than the Oregon program, there have been fewer evaluations of the Washington program. A descriptive evaluation was published by the State in 1997. Fulton (1999) and Evans et al. (1999) described some impacts. Weinman (1999) looked briefly at some implementation issues and Cleveland and Hansen (1994) looked at public participation in plan development for one small Washington community.

The rate of compliance with GMA is generally good. By 1999, 76 percent of Washington counties required to plan under GMA were in compliance (Weinman 1999).

The Washington UGBs appear to be working, at least in metropolitan Seattle. Before GMA, King County (Seattle) was consuming rural land at three times the rate of its population growth. Since King County adopted its new growth management plan, over 97 percent of all development in the county has been inside the UGB. Similar trends are in evidence in other parts of the Seattle metro region (Evans et al. 1999). According to the Puget Sound Regional Council 80 percent of the new building permits issued in the four-county region in 1997 also fell within the boundary (Fulton 1999).

GMA remains a controversial statute in Washington. The Act is particularly unpopular in rural Washington - especially in the eastern parts of the state, where one county commissioner compared the law to slavery during his 1996 reelection campaign (Fulton 1999). Virtually every session of the legislature since 1991 has seen attempts to change it. However, the most substantive amendments, added in 1997, are generally regarded as strengthening the program (Black 1998). A statewide property rights initiative, which would have cut into the power of the law, was defeated in 1995 (Fulton 1999). The Act has also survived a constitutional challenge in the courts (Weinman 1999).

GMA has enjoyed strong support from Washington governors. Governor Mike Lowry was willing to impose stiff sanctions against counties dragging their feet on GMA compliance (Fulton 1999). The most recent Governor, Gary Locke, vetoed a bill passed by the legislature in 1998 permitting rural counties to opt out of the Growth Management Act (Fulton 1999). And like that of Oregon, Washington's land use program benefits from the support of an advocacy group, 1000 Friends of Washington, modeled after its Oregon counterpart.

CHAPTER 5

DETAILED COMPARISON OF TENNESSEE, OREGON, AND WASHINGTON STATE GROWTH MANAGEMENT PROGRAMS

This chapter compares in detail Tennessee's growth management program under Public Chapter 1101 to those of Oregon and Washington on seven dimensions: 1) goals, 2) planning level 3) comprehensive plan requirements, 4) consistency requirements, 5) provisions concerning adequate facilities and concurrency, 6) type and degree of state involvement, and 7) public participation requirements.

GOALS

Goals of state growth management systems tend to be multi-faceted and at times even somewhat contradictory. However, they are important for several reasons. First, and most importantly, they articulate the state's vision for growth management. Second, they serve as a framework for the entire planning process, what Knapp and Nelson (1992, 214) call a "planning constitution." In this context they both provide a guide for localities in developing the elements of their plans and can serve as a checklist for the state in reviewing those plans. If written in general language, goals can help generate political support by allowing consensus to emerge on the specifics of how to achieve them. Goals also serve as the legally binding framework for the program (Knapp and Nelson 1992).

Tennessee

PC1101 explicitly states the goals of the legislation: "With this act, the General Assembly intends to establish a comprehensive growth policy for this state that: 1) eliminates annexation or incorporation out of fear; 2) establishes incentives to annex or incorporate where appropriate; 3) more closely matches the timing of development and the provision of public services; 4) stabilizes each county's education funding base and establishes an incentive for each county legislative body to be more interested in education matters, and 5) minimizes urban sprawl." Interestingly, education is only mentioned once in the substantive requirements of the Act (in a section that prohibits existing cities and any new cities from establishing a city school system).

Oregon

The goals of the Oregon growth management program are not specified in the enabling legislation. Rather, that legislation gives LCDC the charge to develop and amend state goals (Weitz 1999). The Oregon state growth management program currently has 19 goals. Goals 1 through 14 were adopted in December 1974, followed by Goal 15 in 1975, and Goals 16 through 19 the following year (Oregon Department of Land Conservation and Development 2001). All local plans must address and be consistent with the goals.

There are some mandatory considerations in setting the goals. One of the most important procedural requirements for establishing a goal is that of extensive public hearings. Any proposed goal or amendment must consider existing state and local plans. Also, LCDC has been required since 1977 to find that a "need" exists for a goal or amendment. In practice LCDC has exercised fairly broad discretion in setting the goals (Sullivan 1993).

The 19 statewide goals can be summarized as follows (Oregon Department of Land Conservation and Development 2001):

1. Citizen involvement - calls for "the opportunity for citizens to be involved in all phases of the planning process." It requires each city and county to have a citizen involvement program.
2. Land use planning - land use decisions are to be made in accordance with a comprehensive plan. Suitable "implementation ordinances" to put the plan's policies into effect must be adopted.

3. Agricultural lands - defines "agricultural lands" and requires counties to inventory such lands and to "preserve and maintain" them through farm zoning.
4. Forest lands - defines forest lands and requires counties to inventory them and adopt policies and ordinances that will "conserve forest lands for forest uses."
5. Open spaces, scenic and historic areas and natural resources - establishes a process for natural and cultural resources such as wildlife habitats and wetlands to be inventoried and evaluated.
6. Air, water and land resources quality - requires local comprehensive plans and implementing measures to be consistent with state and federal environmental regulations.
7. Areas subject to natural disasters and hazards - requires jurisdictions to apply "appropriate safeguards" when planning for development in places subject to natural hazards.
8. Recreation needs - calls for each community to evaluate its areas and facilities for recreation and develop plans to deal with the projected demand for them.
9. Economy of the state - calls for diversification and improvement of the economy. It asks communities to inventory commercial and industrial lands, project future needs for such lands, and plan and zone enough land to meet those needs.
10. Housing - requires each city to inventory its buildable residential lands, project future needs for such lands, and plan and zone enough buildable land to meet those needs. It also prohibits local plans from discriminating against needed housing types.
11. Public facilities and services - calls for efficient planning of public services such as sewers, water, law enforcement, and fire protection in accordance with a community's needs and capacities rather than in response to development as it occurs.
12. Transportation - stresses providing "a safe, convenient and economic transportation system."
13. Energy - declares that "land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles."

14. Urbanization - requires cities to estimate future growth and needs for land and then plan and zone enough land to meet those needs. This goal calls for each city to establish an "urban growth boundary" (UGB) to "identify and separate urbanizable land from rural land."
15. Willamette Greenway - describes procedures for administering the 300 miles of greenway along the Willamette River.
16. Estuarine resources - requires local governments to classify major estuaries in four categories and describes types of land uses and activities that are permissible in each category.
17. Coastal shorelands - defines a planning area bounded by the ocean beaches on the west and the coast highway (State Route 101) on the east and specifies how certain types of land and resources there are to be managed.
18. Beaches and dunes - sets planning standards for development on various types of dunes.
19. Ocean resources - aims "to conserve the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf." Its main requirements are directed at state agencies rather than localities.

Over the years most of the goals have been amended once or twice (Oregon Department of Land Conservation and Development 2001). The most significant change occurred in 1990 when the Transportation and Growth Management Program was founded to address goal 12 (Florida Department of Community Affairs 2000).

Washington

Like Tennessee, the goals of the Washington program are embedded in the legislation. GMA specifies fourteen goals as follows (Washington State Growth Management Services 1997, Black 1998):

1. Focus urban growth in urban areas

2. Reduce sprawl
3. Provide efficient multi-modal regional transportation
4. Encourage affordable housing
5. Encourage sustainable economic development
6. Protect property rights
7. Process permits in a timely and fair manner to ensure predictability
8. Maintain and enhance natural resource-based industries
9. Retain open space and habitat areas and develop recreation opportunities
10. Protect the environment
11. Encourage citizen participation and regional coordination
12. Ensure adequate public facilities and services
13. Preserve important historic resources
14. Encourage local efforts at shoreline protection

GMA specifies that these goals are to be used "exclusively for the purpose of guiding the development of comprehensive plans and development regulations" and explicitly states that there is no priority order among the goals (Settle 1999), although the core mandates of GMA address the goals unequally, tending to emphasize goals 1-4, 8-10, and 12.

Comparison

Weitz (1999) compares the goals of the Oregon and Washington programs, among other states. A similar comparison extended to include Tennessee yields the results in Table 5.1.

TABLE 5.1

GOALS
TENNESSEE, OREGON, AND WASHINGTON
STATE GROWTH MANAGEMENT PROGRAM

GOAL	TENNESSEE	OREGON	WASHINGTON
Land use planning		√	
Urbanization		√	√
Reduce sprawl	√		√
Annexation and incorporation	√		
Agricultural lands		√	
Forest lands		√	
Resource lands			√
Public services and infrastructure	√	√	√
Transportation		√	√
Economic development		√	√
Housing		√	√
Education	√		
Environmental protection		√	√
Historic and cultural resources		√	√
Recreation and open space		√	√
Natural hazard areas		√	
Energy conservation		√	
Citizen involvement		√	√
Property rights			√
Permitting			√
Willamette Greenway		√	
Coastal resources		√	√

The most significant difference in the goals is the much more limited scope of the Tennessee program. Both Washington and Oregon explicitly address things on which PC1101 is silent such as environmental issues, preservation of resource lands, housing, and transportation. Both Washington and Oregon stress citizen involvement (in fact, it is goal number 1 of the Oregon program), which is missing from the Tennessee goals.

A second difference is what PC1101 includes that the Washington and Oregon programs do not. The Tennessee legislation contains annexation and education goals which are missing from the Oregon and Washington programs. The education goal is treated only peripherally in the substantive requirements of PC1101 but annexation has a major focus.

Only one goal, that dealing with public services and infrastructure, is explicitly common to all three programs. However, the "urbanization" and "reduce sprawl" goals could be considered roughly the same goal, since the thrust of the urbanization goal in both Oregon and Washington is to constrain growth into defined areas; that is, to contain urban sprawl. The Washington program, and to a lesser extent the Tennessee program, addresses land use planning in its substantive requirements. Therefore, one can consider improving land use planning, reducing urban sprawl, and providing for the efficient delivery of public services and facilities as the common threads in the objectives of the three state programs.

PLANNING LEVEL

The growth management programs of all three states require comprehensive plans at the "local" level. However, their definitions of "local" vary.

Tennessee

Tennessee PC1101 mandates the preparation of local plans at the county level. Each Tennessee county is required to prepare a growth plan under PC1101 except for the two counties (Davidson and Moore) which have metropolitan governments. The county plan is developed by a "coordinating" committee, whose makeup is mandated by the legislation (Table 5.2). The plan must then be approved by the county legislative body and by the legislative body of each municipality within the county.

Oregon

Oregon requires that all cities and counties prepare comprehensive plans consistent with the statewide planning goals. Each county is responsible for coordinating the plans that affect that county, including the plans of all cities within the county, as well as special districts and state agencies which operate within the county. The state also requires a regional plan for the three-county Portland metropolitan area, and designates the Portland Metropolitan Services District (Metro) as the agent for that plan (Sullivan 1993).

TABLE 5.2

COUNTY COORDINATING COMMITTEE MEMBERSHIP UNDER TENNESSEE PC1101

TYPE OF MEMBER	NUMBER
County Executive or designee	1
Mayor of each Municipality or designee	At least 1
Appointed by largest municipally-owned utility	1
Appointed by largest non-municipally-owned utility	1
Appointed by county soil conservation district	1
Appointed by education agency with largest enrollment	1
Appointed by largest Chamber of Commerce	1
At-large appointed by County Executive	2
At-large appointed by Mayor of largest municipality	2

Source: University of Tennessee Institute for Public Service (IPS) and The Tennessee Advisory Commission on Intergovernmental Relations (TACIR), 1998

Washington

The Washington GMA assigns responsibility for preparation of comprehensive plans to counties. All cities within a county required to plan are also required to plan (Weitz 1999). Counties are required to "coordinate" plan development with any municipalities within their borders. Each county is required to adopt countywide planning policies, which are used by all the jurisdictions within the county. The three-county Seattle metropolitan area must adopt planning policies used in all three counties. Counties are also required to coordinate with bordering counties (Settle and Gavigan 1993).

Counties are required to plan under GMA based on population thresholds. Specifically, a county must plan if it has a ten-year growth rate of at least twenty percent. Additionally, a county with a population of 50,000 or more must plan under GMA if its ten-year growth rate was at least ten percent in the decade ending May 16, 1995, or is at least seventeen percent in any decade thereafter (Weitz 1999). In 1991, when GMA was enacted, this translated into 16 of 39 Washington counties being required to plan under GMA (De Grove 1992).

Washington counties which do not meet the population threshold are allowed to "opt in" to planning under GMA. If they choose to do so, they cannot later "opt out" (Black 1998). By 1999, 29 of the 39 counties were planning under GMA (Weinman 1999).

While not necessarily required to prepare comprehensive plans, **all** Washington counties are required by GMA to identify *natural resource areas* (forest, timber, and mineral lands) and *critical environmental areas* (wetlands, aquifer recharge areas, fish and wildlife habitat, frequently flooded areas, and geological hazard areas) and to develop regulations protecting the critical areas (De Grove 1992). The intent of these identifications is very different; natural resource areas are intended to protect natural resource-based industries; critical areas to protect environmentally sensitive areas.

Comparison

The differences in required planning levels between the three states is summarized in Table 5.3. All three states assign counties the primary responsibility for growth management. Oregon alone requires such planning from **all** counties, while Washington bases the planning requirement on population thresholds and Tennessee on the local form of government. The Oregon approach is based on the perceived need for land use planning in all parts of the state, and may arise from conditions at the time of the 1973 legislation, when each part of the state was threatened by a different form of unmanaged development (in Governor McCall's colorful language, the Willamette Valley by "the ravenous rampage of suburbia," the Oregon coast by "coastal condomania," and the eastern part of the state by "sagebrush subdivisions"). Since the Tennessee legislation is largely focused on annexation issues, it is obvious why PC1101 does not apply to counties with metropolitan government; these counties do not **have** annexation issues.

In terms of achieving general growth management objectives, the Washington approach seems particularly reasonable, as it focuses efforts on managing growth in those places most under growth pressure. This exempts counties with small populations and limited resources from spending those resources developing detailed plans that may not really be needed. It also allows limited state technical assistance resources to be used where they can be most beneficial.

All three states in some sense use the county as a unit of "regional" coordination. Oregon and Washington require coordination between all plans within a county, and Washington requires each jurisdiction within a county to use the same set of planning policies. In these western state with large counties, it is somewhat reasonable to use a county as a proxy for a region.

TABLE 5.3

PLANNING LEVELS
TENNESSEE, ORGON, AND WASHINGTON
STATE GROWTH MANAGEMENT PROGRAMS

STATE	LOCAL PLANNING LEVEL	REQUIRED TO PLAN	REGIONAL PLANNING
Tennessee	County	All except counties with metro government	None
Oregon	County and city	All	Portland area only
Washington	County and city	Based on county population and growth rate; **all** counties must designate resource lands and designate and protect critical areas	Coordination with adjoining counties; regional planning policies for Seattle area only

Using the county as a unit of regional planning makes less sense for Tennessee, with its 95 small counties. However, this is the only attempt at "regional" planning in the Tennessee program, which specifies representation from all parties on the coordinating committee which develops the plan, and also requires ratification of the county plan by both the county and any municipalities within its boundaries.

Only Oregon requires development of a bona fide regional plan, and that only for the Portland area. Washington introduces some limited weak regional planning into the GMA process by requiring "coordination" by each county with those bordering it and regional planning policies for the three-county Seattle area. Tennessee fails to address regional planning beyond county boundaries. At least for major metropolitan areas, this lack of regional growth management is a real weakness, since growth management issues do not respect county boundaries.

COMPREHENSIVE PLAN ELEMENTS

Tennessee

The only comprehensive plan elements required by PC1101 are the designation of *urban growth boundaries, planned growth areas*, and *rural areas*. Urban growth boundaries are defined as existing municipalities plus those contiguous areas where high density growth is expected to take place over the next twenty years. Planned growth areas are those areas not contiguous with an existing municipality where high or moderate density growth is expected to occur over the next twenty years. The rest of a county is considered a rural area. Rural areas are intended to be preserved for agriculture, forestry, wildlife, recreation, and other low density uses. PC1101 specifies that the three types of areas are to be defined on the basis of population projections prepared by the University of Tennessee, projected infrastructure costs, land demand forecasts, and expected impacts to agricultural, forest, recreational, and wildlife lands. PC1101 requires that the three types of areas be delineated on a map, but it does not require that the committee develop supporting definitions or document the processes it used to develop the map.

No additional plan elements are required, although PC1101 does identify "goals and objectives of a growth plan" as:

- a unified physical design for the development of the local community
- compact and contiguous high density development guided into growth areas
- timely provision of consistent levels of public services and facilities
- adequate employment opportunities and economic health
- conservation of significant statewide architectural, cultural, historical, and archaeological resources
- protection from natural disasters
- provision of a variety of housing choices, including affordable housing

PC1101 also specifically mentions several elements -- land use, transportation, public infrastructure, housing, and economic development -- that may be considered in preparing a plan, but it does not require them.

PC1101 allows for plans to be amended after three years. Amendments must go through the same process as the original plans.

Oregon

SB100 does not specify required elements of local comprehensive plans. It does, however, grant to LCDC the authority to set statewide goals and the power to set rules on how localities must address those goals. LCDC in turns requires that all local plans address all 19 state goals unless they are inapplicable (inland counties do not address coastal goals, for example). This in effect makes the 19 goals the required elements of each local comprehensive plan (Weitz 1999).

Goal 14 mandates an urban growth boundary for every municipality. An Oregon UGB is defined in much the same way as in Tennessee; that is, it must contain current developed land and enough undeveloped land to contain expected development over the next twenty years (Meck and Wittenberg 1998). Goal 14 lists seven factors that must be considered in drawing an urban growth boundary:

- demonstrated need to accommodate long-range urban population growth requirements
- need for housing, employment opportunities, and livability
- orderly and economic provision for public facilities and services
- maximum efficiency of land uses within and on the fringe of the existing urban area
- environmental, energy, economic and social consequences
- retention of agricultural land

- compatibility of the proposed urban uses with nearby agricultural activities (Florida Department of Community Affairs 2000)

Land outside these boundaries is considered *rural.* Most rural land (approximately 97 percent) is zoned for *exclusive farm use* (EFU) or as forest or ranch land (Liberty 1998). EFU zoning is a highly restrictive form of agricultural zoning limiting use and structures to farming and closely related activities. EFU land is taxed as farmland rather than as developable land (Meck and Wittenberg 1998). Counties wishing to classify rural land as anything other than forest or EFU land must justify this to the state (Pease 1995).

Localities are allowed to amend plans at will but the State or any citizen can challenge the amendment (Gale 1992). The State conducts a formal review of each local plan every 4-7 years and may be required plan amendments as a result of the review process. Localities must also amend their plans as needed to implement any new or amended state goals (Weitz 1999).

Washington

GMA sets forth several six required plan elements -- land use, housing, capital facilities, rural (required for counties only), utilities, and transportation. The plan must include a future land use map, and all elements of the plan must be consistent with this map. Each plan must also include a process for siting such public facilities as airports, prisons, landfills, and hospitals. GMA specifically forbids localities from excluding such facilities in their plans (Settle and Gavigan 1993).

GMA also mandates urban growth boundaries for all municipalities in counties planning under the Act. Washington uses the term *urban growth area (UGA).* As in Tennessee and Oregon, a Washington UGA is designed to accommodate a county's expected growth for the next twenty years, as determined by population projections from the State Office of Financial Management (Washington Growth Management Services 1997). A county is also allowed to authorize "fully contained new communities" and "master plan resorts" outside the UGA but must do so in its comprehensive plan and reduce the land supply allocated to its UGAs accordingly (Weitz 1999). All other land outside the UGA is classified as *rural.*

Because GMA left the definition of "rural" somewhat open-ended, much debate has centered on that definition. Up until 1997, allowed uses in rural areas were limited to low-density residential development, natural resource based industries, and limited-scale commercial operations serving the rural population (Black 1998). In that year, the Washington state legislature passed an amendment to GMA refining the definition of "rural" (Black 1998, Meck and Wittenberg 1998) and adding to the specifications of what must be included in the rural element of the comprehensive plan (Weitz 1999). Counties are now allowed to define limited areas of more intensive rural development such as infill and redevelopment around existing crossroads, villages, and rural activity centers, as well as new recreation centers and isolated cottage industries and businesses as long as they do not encourage "low-density sprawl." If a county decides to allow such areas of more intensive rural development, it must specify a "rural development boundary" to contain them (Weitz 1999).

Designation of critical areas and resource lands must also be included in each county's comprehensive plan.

Washington recommends that amendments to the plan occur not more than once every 5 years (Gale 1992), when localities are required to report their degree of compliance with GMA to the state (Weitz 1999).

Comparison

It is clear from Table 5.4 that Oregon and Washington have much more stringent requirements for local comprehensive plans than does Tennessee under PC1101. PC1101, although suggesting some desirable plan elements directly and others as growth plan "goals and objectives," requires nothing of its local comprehensive plans beyond the specification of growth boundaries. Washington and Oregon, on the other hand, specify long lists of elements required in local comprehensive plans. By providing guidance to localities about what constitutes an acceptable comprehensive plan, Oregon and Washington seem seems more likely to meet the goal of achieving better land use planning.

Another interesting difference in the elements of the three programs is that the PC1101 is completely silent on the environment and resource lands as components of local

TABLE 5.4

REQUIRED COMPREHENSIVE PLAN ELEMENTS TENNESSEE, OREGON, AND WASHINGTON STATE GROWTH MANAGEMENT PROGRAMS

STATE	REQUIRED GROWTH BOUNDARIES	OTHER REQUIRED ELEMENTS
Tennessee	Urban growth boundaries, planned growth areas, rural areas.	None.
Oregon	Urban growth boundaries, rural areas.	Must address 19 state goals.
Washington	Urban growth areas, rural areas.	Land use, capital facilities, housing, rural (counties only), utilities, transportation. Delineation of critical areas and resource lands. Process for siting certain public facilities.

comprehensive plans. It fails to mention either environmental protection or the protection of key resource lands even in its list of suggested elements or goals. By contrast, both Oregon (in several goals, but most notably goals 3,4, and 6) and Washington (in the requirement for the delineation of critical areas and resource lands) explicitly address these issues. The argument could be made that resource-based industries, particularly forestry, are more important to the economies of Oregon and Washington than to that of Tennessee, and so protection of key resource lands is not as highly a significant planning issue for Tennessee counties. It is difficult to make the same argument about environmental protection, however.

The required definitions of urban and rural areas are essentially the same for all three states. Tennessee adds the extra wrinkle of planned growth areas, which were designed to accommodate moderate density growth outside of urban centers. However, the Washington concepts of optional rural development boundaries and "fully contained new communities" seems somewhat analogous to the Tennessee planned growth areas.

CONSISTENCY

In addition to requiring localities to prepare comprehensive plans, growth management programs also commonly require that these plans be *consistent*. There are four types of consistency: internal consistency, which requires all plan elements be consistent with one another; implementation consistency, which requires land-use regulations consistent with the comprehensive plan; horizontal consistency, requiring all plans within a particular region be consistent with one another, and vertical consistency, requiring local plans be consistent with any regional and/or state plans. It is instructive to compare the growth management programs of the three states on these four types of consistency.

Tennessee

Since PC1101 does not mandate any required elements for comprehensive plans other than the definition of urban growth boundaries, planned growth areas, and rural areas, the question of internal plan consistency with respect to Tennessee is moot.

The provisions of PC1101 with respect to consistency between land use planning and land use regulation are unique among state programs. Tennessee does not require localities to develop and implement land use controls, nor does the language of PC1101 require that if such regulations exist, they must be consistent with the growth plan. Instead, the Tennessee Act says 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." The Act does not define "land use decisions" and is silent on who has standing to sue if inconsistent decisions are made.

This somewhat ambiguous provision has resulted in requests for opinions from the state Attorney General's office. One such opinion (No. 00-022) states that PC1101 "would probably" prohibit any zoning changes that are inconsistent with a county's growth plan. The AG refused to speculate on who would have standing to sue, or on what remedies would be available to an aggrieved party, saying that "this issue could only be determined by a court of competent jurisdiction based on all the relevant facts and circumstances" (TACIR 2000). It appears that the issue of required consistency between land use plans and regulations may eventually be settled by the Tennessee courts.

Horizontal consistency in Tennessee is addressed at the county level. Although only a county growth plan is required, municipalities must participate in the creation of the plan through their representatives on the county coordinating committee and are required to ratify the plan.

Like internal consistency, vertical consistency in Tennessee is a moot issue. Tennessee does not have a state plan or goals, so nothing exists at the state level with which county plans must be consistent. There is also no formal regional planning in Tennessee.

Oregon

Oregon does not require internal consistency between the elements of local comprehensive plans either by statute or by administrative rule. However, in practice, internal consistency is enforced to some extent during the state review of all local plans (Weitz 1999).

Oregon has strong implementation consistency requirements. The state specifically acknowledges that land use regulations which implement the local comprehensive plans are a matter of statewide concern and requires that each city and county adopt such regulations consistent with their comprehensive plans (Weitz 1999).

Oregon's requirement for horizontal coordination is weak. Although each county is responsible for coordinating all the planning activities of the jurisdictions within its boundaries, state legislation and administrative rules give little guidance as to how to achieve this. However, Oregon is the only one of the three states to mandate an actual regional plan; requiring one for the three county Portland metro region (Sullivan 1993).

Oregon does not have a state plan per se; however, it requires consistency between local comprehensive plans and the 19 state goals. The state also requires consistency between local plans in the three-county Portland area and the Portland regional plan (Gale 1992).

Washington

Washington has the strongest internal consistency requirement of the three states. GMA mandates that the six required elements of local comprehensive plans -- land use, housing, capital facilities, rural, utilities, and transportation -- be consistent with one another (Meck and Wittenberg 1998) and with the future land use map (Weitz 1999).

Only Washington counties planning under GMA are required to have comprehensive plans, but **all** counties with comprehensive plans (both GMA and non-GMA counties) must have land use regulations consistent with their plans. Washington also requires that all counties adopt development regulations to protect designated critical areas and that each county planning under GMA adopt regulations to conserve natural resource areas (Weitz 1999).

With respect to horizontal consistency, Washington requires that all jurisdictions within a county use the same set of planning policies, and that counties "coordinate" their plans with those of cities within their boundaries. Washington does not mandate regional plans, but does require that counties "coordinate" planning efforts with adjacent counties. Some additional horizontal consistency is required at the regional level by the requiring the three-county Seattle urban area to develop and use a regional set of planning policies (Settle and Gavigan 1993).

Like Tennessee, Washington has no state plan or goals, so vertical consistency is a non-issue with respect to the state (Weitz 1999). There is also no formal regional planning in Washington.

Comparison

Table 5.5 shows that although Oregon has a reputation for the strongest state land use planning program, it does not uniformly have the strongest consistency requirements. Washington, as the only state to mandate it in the legislation, has the strongest requirement for internal consistency among elements of local comprehensive plans. Neither Oregon nor Tennessee mandates internal consistency, although Oregon enforces it somewhat in practice during the state review process.

Oregon is the only one of the three states with vertical consistency requirements. However, in most respects its horizontal consistency requirements are weaker than those of the other two states. Washington requires a high degree of horizontal consistency, mandating coordination within and among adjoining counties, as well as formal development of shared planning policies within each county and within the Seattle metro area. The Tennessee legislation spells out how horizontal coordination must take place within each county. By contrast, Oregon simply calls for coordination within a county without any real guidance as to how that coordination should be achieved.

The one area in which Oregon has more stringent horizontal consistency requirements than Tennessee and Washington is that of regional planning. In mandating a regional plan for the Portland metro area, Oregon is the only state to require any kind of formal regional planning. This is a significant achievement in a growth management strategy. Since growth management issues do not stop at jurisdictional boundaries the only effective way to address them for an urban area is to deal with the entire urban area as a unit; i.e., to plan and regulate at the regional level.

Perhaps the most important tool in the growth management toolbox is that of implementation consistency. Without land use regulations to implement them, growth

TABLE 5.5

COMPREHENSIVE PLAN CONSISTENCY REQUIREMENTS
TENNESSEE, OREGON, AND WASHINGTON
STATE GROWTH MANAGEMENT PROGRAMS

STATE	INTERNAL PLAN CONSISTENCY	CONSISTENCY WITH LAND USE REGULATION	HORIZONTAL CONSISTENCY	VERTICAL CONSISTENCY
Tennessee	Not applicable	Land use **decisions** must be consistent with the growth plan	All jurisdictions within a county participate in county plan creation and ratify the completed plan	None required; no state or regional plans
Oregon	Not formally required but in practice enforced by state review process	All cities and counties must adopt land use regulations consistent with comprehensive plan	A county must coordinate plans for jurisdictions within its boundaries; regional plan required for three-county Portland metro area	All city and county plans must be consistent with 19 state goals; local plans in three-county Portland area must be consistent with Portland regional plan
Washington	Required	**All** counties and cities with comprehensive plans must adopt land use regulations consistent with plan; **all** counties must adopt regulations protecting critical areas; counties planning under GMA must adopt regulations conserving natural resource areas	All jurisdictions within a single county must coordinate plans and use same set of planning policies; counties required to coordinate plans with surrounding counties; regional planning policies required for three-county Seattle metro area	None required; no state or regional plans

and comprehensive plans are mere documents. Here Oregon is clearly a leader, requiring all localities to adopt land use regulations consistent with local comprehensive plans. Washington has a similar requirement, but only for counties with comprehensive plans (this includes all counties planning under GMA as well as any other counties with comprehensive plans). Washington also acknowledges the statewide interest in protecting sensitive environmental areas by requiring all counties to adopt regulations protecting them.

Tennessee's implementation requirements under PC1101 are still something of a mystery. It is clear that neither PC1101 nor any other state law mandate a locality to adopt land use regulations, making the Tennessee program much weaker than that of Oregon and Washington. However, it is not at all clear how much consistency PC1101 requires between the application of any adopted regulations and the growth plan. While the presumption is that the phrase "all land use decisions .... shall be consistent with the growth plan" implies that land use regulations inconsistent with the growth plan are illegal, it will take a court case or two to sort out the exact boundaries of the required relationship between land use plans and regulations.

CONCURRENCY REQUIREMENTS

Concurrency, sometimes referred to as adequate public facilities requirements, has been called the "truth in planning concept" (Nelson et al. 1995, 163). Concurrency requires that adequate infrastructure such as roads, sewers, and schools be in place before new development is allowed. Kelly (1993) argues that while concurrency may not change the total **amount** of growth, it does significantly influence its **location** -- that is, concurrency requirements can force development to follow infrastructure, rather than vice versa.

Tennessee

The Tennessee Growth Policy Act does not deal with concurrency directly. Although it does call for projected infrastructure costs to be one of the determining elements in locating UGBs, PGAs, and RAs, PC1101 does not require public facilities or infrastructure planning to be part of the growth plan. No rule or statute calls for infrastructure to proceed development. Rather, Tennessee's concurrency requirements are bound up with the section of the Growth Policy Act dealing with annexation and incorporation of new municipalities.

Under the Act, a municipality is allowed to annex by ordinance only that land within its defined urban growth boundary. In addition, new municipalities can be established only within defined planned growth areas. Before either such an annexation or incorporation can take place, the municipality or proposed municipality must develop a plan of services, addressing police service, fire protection, water, electricity, sewer, roads, recreation, street lighting, and zoning.

The Tennessee law gives the plan of service "teeth" in two ways. The first is that at the time such a plan of service is developed, a majority of property owners in the affected area can petition the county to sue on their behalf. Such a petition gives the county standing to challenge the reasonableness of the plan. The burden is on the municipality to show that the plan is reasonable.

Another provision of PC1101 states that after the annexation or incorporation takes place, if the plan of service is not followed, any property owner in the affected area has standing to sue to compel the municipality to implement the plan. Also, any municipality in default on a plan of services is prohibited from further annexations until it has implemented the plan in default. According to Sid Helmsley, Senior Legal Consultant for the University of Tennessee's Municipal Technical Advisory Service (personal communication, June 28, 2001), these provisions represent new policy for Tennessee. Prior to PC1101, a property owner had no right to sue to enforce a plan of services, nor were there any sanctions for municipalities who failed to implement such a plan.

Oregon

One of Oregon's statewide planning goals (goal 11) deals with concurrency. Goal 11, adopted in 1974, explicitly required that localities provide appropriate services to three types of areas - urban, urbanizable (land inside the UGB which is not currently developed and does not possess the infrastructure to support development), and rural. However, the goal provided no guidance on what levels of services were appropriate for each area. Until 1975 communities were allowed to approve development without regard to the availability of infrastructure and public services. In 1975 LCDC adopted a rule that development inside a UGB could not be denied for lack of services unless it involved zone changes or plan amendments, or resulted in "premature development" of urbanizable areas. This rule was followed until 1985. However, court cases and other pressures have forced changes in this policy. Currently, Oregon requires that water, sewer, and transportation capacity must be available to support new development before it is approved, and that a jurisdiction must at least have a plan to expand other public facilities such as schools, parks, and fire and police protection into the area under consideration for development (Knaap and Nelson 1992).

Since 1985, Oregon has also required local plans to contain a public facilities plan for urban areas with populations greater than 2500. However, there is an express condition that capital improvement plans are not land use decisions nor can they serve as a basis for an appeal of land use decisions (Knapp and Nelson 1992). The most important implications of this condition are in the resolution of disputes (see the section on Dispute Resolution).

In 1991, Oregon implemented a new transportation rule to support Goal 12 (transportation). This rule required that jurisdictions of at last 2500 persons include a transportation systems plan as part of their comprehensive plan (Weitz 1999). These plans must include a financing component, and must promote infill and redevelopment rather than encourage "greenfield" development. However, like the capital improvement plan, the transportation plan is not considered a land use decision (Adler 1994).

Washington

Although Washington modeled much of GMA on the growth management program of its neighbor Oregon, it looked to Florida as a model for concurrency provisions. Florida is known for the stringency of its requirements in this area. Development proposals in Florida cannot be approved unless adequate roads, sewers, water, solid waste, drainage, parks, and recreational facilities are already available, are under construction, or are guaranteed in a development agreement (Nelson et al 1995).

Washington applied the stringency of Florida concurrency only to transportation, however. Local governments in Washington must deny approval for new development unless transportation facilities sufficient to provide a level of service specified in the transportation element of the local comprehensive plan are concurrently available. "Concurrently" is defined as in place at the time of development or financially committed to be in place within six years. GMA also requires localities to adopt ordinances implementing this transportation concurrency requirement (Walsh and Pearce 1993).

Although GMA does not mandate concurrency in areas other than transportation, it does authorize them. The state encourages localities to designate those capital facilities, in addition to transportation, for which concurrency is required (Walsh and Pearce 1993). In addition, the capital facilities element of the comprehensive plan must contain an inventory of existing facilities, a forecast of future needs, proposed new facilities, and a six year plan for financing those facilities. The land use element of the plan must be revised if the expected funding is inadequate for the proposed capital facility expansion (Settle and Gavigan 1993). Although this does not insure that adequate public facilities will be in place before development, it does tie the land use and capital facilities plans tightly together.

Comparison

Table 5.6 summarizes the concurrency requirements in Tennessee, Oregon, and Washington. Tennessee under PC1101 addresses concurrency through its plan of services

TABLE 5.6

**CONCURRENCY REQUIREMENTS
TENNESSEE, OREGON, AND WASHINGTON
STATE GROWTH MANAGEMENT PROGRAMS**

STATE	REQUIRMENTS FOR DEVELOPMENT APPROVAL	RELATED PROVISIONS
Tennessee	None	Plan of services (police, fire, water, electricity, sewer, roads, recreation, street lighting, and zoning) required for annexation by ordinance or incorporation
Oregon	Water, sewer, and transportation capacity; plan to expand other public facilities such as schools, parks, and fire and police protection	Most jurisdictions must include capital facilities plan and transportation plan with financing component in comprehensive plan
Washington	Transportation facilities sufficient to provide a specified level of service in place at the time of development or financially committed within six years.	Localities required to adopt ordinances implementing transportation concurrency requirement; capital facilities element of comprehensive plan must include funding component and must be reconciled with land use component

requirements for annexations or newly incorporated cities. Washington and Oregon (for most jurisdictions) require capital facilities plans as part of local comprehensive plans, thus assuring a link between land use planning and public facilities planning. Tennessee has no such requirement. And unlike Oregon and Washington, Tennessee has no requirement for any kind of public facilities or infrastructure to be available before new development is approved.

Concurrency plays a smaller role in general in the programs of these three states than it does in some other state growth management programs (especially that of Florida, which is known for its concurrency requirements). This may be partly because of the use by these states of UGBs. Knaap and Nelson (1992) suggest that concurrency in Oregon is not so much a tool for establishing the location of new development (this is handled by the UGB boundaries) but rather to manage short-term growth **within** the UGB; this conclusion would apply to Washington as well. Tennessee's attempt in PC1101 to "beef up" its plan of services requirements for annexation or incorporation can be looked at in this same light; i.e. as an effort to manage short-term growth within a UGB.

STATE INVOLVEMENT

Tennessee, Oregon, and Washington share the common program structure of state-mandated local planning. However, the type and degree of state influence on local planning differs. This section examines the degree of state involvement in five areas – the application of the state plan, state review and approval of local plans, dispute resolution procedures, sanctions for non-compliance, and technical and financial assistance.

State Plan

None of the three states has an official state plan so the question of whether local plans must conform to such a plan is mostly moot. However, Oregon's 19 state goals can be regarded as a sort of state policy plan. Since Oregon does requires local plans to be consistent with these 19 state goals (Gale 1992), it can be considered the only one of the three states requiring any kind of conformance between a state plan and local plans.

State Review Of Local Plans

Tennessee automatically ratifies any local plan ratified by the local legislative bodies. Ordinarily there is no content review of local plans by the state. However, if the growth plan is a result of the dispute resolution process (see the section on "Dispute Resolution"), the state Local Government Planning Advisory Committee does review and approve the plan's UGBs, PGAs, and RAs.

Oregon maintains a high degree of state involvement by mandating review and approval of local plans by the state. This process, called *acknowledgment*, has detailed provisions for how plans are submitted, how they are reviewed, who may be involved in the review, and what kind of final order is issued. Plans that are not approved are sent back to the local jurisdictions for revision and re-submittal (Sullivan 1993).

In Washington, the state does not formally approve local plans but does review and comment on them (Gale 1992, Weitz 1999). As in Tennessee, local plans are presumed valid upon adoption by the local jurisdiction (Washington Growth Management Services n.d.). However, plans may be appealed to one of three regional Growth Management Hearing Boards (Eastern Washington, Central Puget Sound, and Western Washington). Although the Boards do not review all local plans, they do have the authority to hear petitions alleging that a state agency, county or city is out of compliance with GMA (Smith 1993, APA 1999a).

Each of the Boards consists of three members appointed by the Governor. At least one member must be licensed to practice law in Washington and at least one must be a former city or county official (Washington Growth Management Services 1997). The Boards do not have the power to rewrite plan elements or redraw UGA boundaries; rather they simply reject a flawed plan and send it back to the local jurisdiction for revision (Smith 1993). In this way the Boards serve as state quasi-reviewers for disputed plans.

Dispute Resolution

Tennessee PC1101 spells out a detailed procedure for settling disputes over the growth plan. If a county or city rejects the growth plan recommended by the coordinating committee, it must send its objections and the reasons for them to the committee. The committee then reconsiders the plan, and may revise it or resubmit the original plan. If the plan is rejected a second time, the county or any municipality within the county may declare an impasse and ask the Tennessee Secretary of State to appoint a dispute resolution panel. The dispute resolution panel consists of three administrative law judges trained in dispute resolution and mediation. The panel attempts to mediate the dispute, and sends its suggestions to the county and municipalities for ratification. If the panel's suggestions are rejected by any one of the affected jurisdictions, the panel is then empowered to impose a growth plan. Costs of the dispute are prorated among the jurisdictions based on population unless the Secretary finds that one of them acted frivolously or in bad faith. In such a circumstance, the Secretary can assess costs in a punitive manner against the offending entity.

In addition to the procedure for resolving disputes among the cities and counties involved in creating a growth plan, PC1101 allows for citizens to dispute the plan. A county, a municipality, or any resident or property owner may file suit against the plan in chancery court. This must be done within 60 days of final approval of the plan. The plaintiffs bear the burden of demonstrating that the plan is arbitrary, capricious, illegal, or created by abuse of official discretion. The case is heard by a judge rather than a jury. Growth plans set aside by a judge through this process must go back to the coordinating committee; essentially the entire process begins again from scratch.

It is unclear what happens under PC1101 when someone wishes to dispute plan **implementation**. The legislation states that after a county's growth plan is adopted "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." However, it does not define "land use decisions" and is silent on who has standing to sue if inconsistent decisions are made. These questions will eventually be decided by the Tennessee courts.

Initial judicial review of land use decisions in Oregon is done, not by the courts, but by The Land Use Board of Appeals (LUBA). (Capital improvement plans and transportation plans are explicitly not considered land use decision and cannot be appealed to LUBA. Disputes of these plans are resolved by the Oregon courts.) Since 1983, LUBA has had the power, granted by the legislature, to review land use decisions of local governments, state agencies, and special districts. Knaap and Nelson refer to LUBA as "tantamount to a state land use court" (1992, 34). Anyone who has participated in a local land use hearing has standing to appeal to LUBA (Moore 1998). However, an appeal must be filed within 21 days of the contested decision (Liberty 1992). Review of LUBA decisions goes directly to the Oregon appellate courts. LUBA's three members are appointed to four-year terms by the governor and confirmed by the legislature, and must be attorneys in good standing in Oregon (Sullivan 1993).

Washington does not use either a state agency or the courts as the first line in dispute resolution, but instead uses the three regional Growth Management Hearing Boards. The

Boards have the authority to hear petitions alleging that a state agency, county, or city is out of compliance with GMA, or that the 20-year population forecast used in creating urban growth boundaries should be adjusted (Smith 1993, APA 1999a). "Nearly anyone" (Smith 1993, 143) can petition the appropriate Board to challenge a comprehensive plan or population forecast. However, the burden of proof is on the challenger to show that the locality is out of compliance (Smith 1993).

The Boards do not have the power to rewrite plan elements or redraw UGA boundaries; rather they simply reject the plan and send it back to the local jurisdiction for revision. If the locality still fails to comply, the Board may request that the Governor impose sanctions. Decisions of the Boards may be appealed to the superior court in Thurston County (Smith 1993).

The rulings of the three Boards are not always consistent. However, to a degree this was designed into the system. The legislature was aware that the specifics of appropriate land use techniques and approaches could vary across the three somewhat distinct regions of the state and expected the Boards to act accordingly (APA 1999a, Washington Growth Management Services 1997).

Sanctions for Non-Compliance

All three states impose sanctions on localities who do not comply with state growth management legislation.

In Tennessee, counties out of compliance with PC1101 after July 1, 2001, will be ineligible for certain state revenues, including Community Development Block Grants, Tennessee Industrial Infrastructure grants, state Industrial Training Service and Tourism Development grants, and Tennessee Housing Development Agency grants. The state will also withhold TEA-21 and other federal transportation funds from such counties. In addition, Tennessee allows the state to impose a plan on counties whose jurisdictions fail to agree on one.

Oregon has the most stringent penalties for non-compliance; LCDC has the power not only to identify corrective action to be taken by local governments but to suspend local authority to issue building permits or approve land subdivisions if the action is not taken. Conversely, LCDC can also force localities to issue building permits and subdivision approvals in urban areas where the localities are opposed to development at the densities the plan requires (Liberty 1992). LCDC can also block distribution of certain state tax revenues to a local government. In the over twenty-five years of its existence, LCDC has used all of these sanctions (Liberty 1992, APA 1999a).

Washington also can impose sanctions for localities not in compliance with GMA. However, the determination that a locality is out of compliance is made by one of the Growth Management Hearing Boards only if a petition is brought before it (not in an automatic state review, as in Oregon). In addition, the Board itself may not impose sanctions, but must request that the Governor do so (Weitz 1999). Sanctions include loss of eligibility for certain state revenues ordinarily passed through to local governments (Smith 1993).

Financial and Technical Assistance

PC1101 does not provide for technical and financial assistance for local jurisdictions in developing their growth plans. One need identified early on was for technical assistance to coordinating committees. While those in larger counties generally were receiving assistance from local planning commission staffs, committees in smaller counties often had no such source of assistance. Therefore, the Tennessee Department of Finance and Administration appropriated funding to the state's nine development district offices for the provision of such technical assistance to those coordinating committees who needed it. The Department also funded the preparation of population projections by the University of Tennessee, as specified by PC1101 (TACIR 1999).

The various Tennessee state agencies involved in providing assistance to local governments have joined together to form a PC1101 Implementation Steering Committee, chaired by Tom Ballard, Associate Vice President for Public Service at the University of Tennessee Institute for Public Service. The primary purpose of the Committee is to coordinate technical assistance for the implementation of the legislation. The Committee's role is purely advisory, and it has no budget or formal authority aside from that of the various agencies involved with the committee. However, it has been successful at several key tasks:

- Preparing and distributing written guidance on interpreting PC1101
- Organizing and conducting regional briefing sessions for community leaders
- Coordinating preparation and dissemination of population projections (TACIR 1999)
- Sponsoring a statewide growth policy conference (TACIR 2000), and
- Producing guidance in planning for rural areas (English and Hoffman 2001).

The total amount to date spent by various Tennessee state agencies in providing technical assistance for PC1101 is estimated by Tom Ballard (personal communication, June 19, 2001), at "several hundred thousand dollars, maybe as much as a half million."

Both Oregon and Washington offer financial and technical assistance to localities in the development of their comprehensive plans. The difference is that the Oregon statute specifies that DLCD "may" establish a technical assistance program, while GMA specifies that the Washington Department of Community, Trade, and Economic Development (DCTED) "shall" establish such a program. Assistance in both states takes the form of state planning assistance grants and hands-on guidance from staff (Weitz 1999).

Through 1994, the Oregon legislature appropriated an average of $3.6 million annually to funding LCDC. About 56 percent of this money was passed through to local governments for planning and implementation activities (Weitz 1999). A new Oregon program, the Transportation and Growth Management Program (TGM), was approved by the legislature in 1993 to channel even more money to localities. TGM offers grants to communities to assist them in solving local transportation and growth problems, solving transportation needs through land use planning, and developing urban growth management strategies (APA 1999a). Funding for the TGM program in its first few years ran around $7 million annually, of which approximately $5 million went to localities (Weitz 1999).

Washington has distinguished itself in providing written guidance to localities. As of 1994, the state had produced more than 41 growth management publications and guidebooks. A separate guidebook is available for each required and optional element of the comprehensive plan. In addition, the state has published guidance on such topics as integrating growth management and environmental planning under the Washington State Environmental Protection Act, techniques for resource lands, and impact fees. The state also publishes a quarterly newsletter, *About Growth* (Weitz 1999).

The financial commitment of the state in Washington has also been significant. Between 1991 and 1997 the state provided over $40 million to localities in local growth management grants. Each county in the state received some of these funds (Weitz 1999).

Discussion And Comparison

Tennessee, Oregon, and Washington share the common program structure of state-mandated local planning. However, the type and degree of state influence on local planning differs from state to state.

Table 5.7 summarizes the role of the state in the content of local plans. Oregon clearly has the greatest degree of state involvement in the final content of local plans. Oregon requires all local plan to be consistent with the state "plan" embodied in the 19 state goals, and the state reviews and approves all local plans. In contrast, Washington and Tennessee have no state plans. Washington reviews local plans but does not have any power to affect their content except in cases appealed to the regional Growth Management Hearing Boards. Tennessee does not even review content of local plans except in cases where local jurisdictions cannot agree on a plan and are forced into the state-managed dispute resolution procedure.

TABLE 5.7

STATE ROLE IN LOCAL PLAN CONTENT AND APPROVAL
TENNESSEE, OREGON, AND WASHINGTON
STATE GROWTH MANAGEMENT PROGRAMS

STATE	STATE REVIEW OF LOCAL PLANS	CONSISTENCY WITH STATE PLAN
Tennessee	No state content review; automatic approval of locally ratified plans. Review of UGBs, PGAs, and RAs in plans resulting from dispute resolution process.	No state plan
Oregon	Review and approval	Required for state goals
Washington	Review and comment; regional Growth Management Hearing Boards review disputed plans	No state plan

Table 5.8 is a summary of state sanctions and assistance. All three states impose sanctions for non-compliance. All three use loss of certain state revenues as part of their sanctions package. But Oregon clearly has the strongest sanctions - the authority given to the state to suspend local powers to issue building permits and approve subdivisions. The Tennessee program also includes a powerful sanction by allowing the state to impose a growth plan on counties whose component jurisdictions cannot agree on one.

Oregon and Washington are far ahead of Tennessee in providing technical and especially financial assistance to localities. Both the Oregon and Washington legislation specifically provide for such assistance while PC1101 is silent on the matter. Washington and Oregon have both achieved a good record in providing financial assistance to

TABLE 5.8

**STATE SANCTIONS AND ASSISTANCE
TENNESSEE, OREGON, AND WASHINGTON
STATE GROWTH MANAGEMENT PROGRAMS**

STATE	SANCTIONS	STATE ASSISTANCE
Tennessee	Loss of eligibility for various grants; growth plan imposed by state if impasse is reached.	Technical assistance to county coordinating committees; state-funded population projections; various state guidance documents and conferences
Oregon	Loss of eligibility for various grants; suspension of powers to approve subdivisions and issue building permits; loss of certain sales tax revenues.	State planning grants; "hands-on" technical assistance
Washington	Loss of eligibility for certain state revenues.	State planning grants; "hands-on" technical assistance; extensive state guidance documents

localities in the form of planning grants. By contrast, financial assistance from the state in Tennessee has been limited to state funding of population projections and technical assistance from development districts to county coordinating committees.

Table 5.9 shows that the Oregon and Washington programs include a large role for the state in the dispute resolution process. A plan or its implementation may be challenged in a state-managed arena (LUBA in Oregon and the regional Growth Management Hearing Boards in Washington). There is no corresponding state entity in Tennessee; challenges to plans are resolved in chancery court and it is as yet unclear how and where challenges to plan implementation will be resolved. However, through the use of the dispute resolution panel of three administrative law judges, Tennessee state government **does** exercise a strong role in resolving disputes between jurisdictions in a single county over the ratification of that county's plan.

A final indication of the relative importance of the role of the state is the designation of state agencies responsible for the administration of the growth management program. Oregon created two new state agencies to oversee its growth management program. The state administers the program through the Land Conservation and Development Commission (LCDC), whose members are appointed by the Governor and confirmed by the Senate (Little 1974, MacColl 1995). The state Department of Land Conservation and Development provides staff support to the LCDC (Abott and Howe 1993).

Washington does no state review of local plans and had no need to develop goals since they were included in the legislation. Therefore, the legislature chose not to create a dedicated state agency to carry out the state's more limited duties. Rather, the existing Department of Community Development was given the charge to provide technical assistance and to adopt procedural criteria for localities to follow in formulating their plans (De Grove 1992). The only new agencies created were the three regional Growth Management Hearing Boards to adjudicate disputes.

TABLE 5.9

**DISPUTE RESOLUTION PROCEDURES
TENNESSEE, OREGON, AND WASHINGTON
STATE GROWTH MANAGEMENT PROGRAMS**

STATE	TYPE OF DISPUTE	GOVERNING BODY	PARTIES WITH STANDING
Tennessee	Jurisdictions within a county unable to agree on growth plan	Three member panel of administrative law judges	Any affected jurisdiction can declare an impasse to begin dispute resolution process
	Challenge to growth plan	Chancery court of county in question	County government, any affected municipality, any county resident or property owner
	Challenge to growth plan implementation	Not addressed in legislation; yet to be determined	Not addressed in legislation; yet to be determined
Oregon	Challenge to plan or plan implementation	Land Use Board of Appeals (LUBA)	Anyone who has participated in local land use hearing
Washington	Challenge to plan or plan implementation; challenge to population forecasts	One of three regional Growth Management Hearing Boards	"Almost anyone" - county, municipalities, state, an individual or organizational party of record in decision in question, others with "special interests" in decision

The Tennessee legislature did not designate in PC1101 any new or existing state agency to oversee the requirements of the Act, with two small exceptions. The Tennessee Advisory Commission on Intergovernmental Relations is charged with monitoring implementation of the Act until the end of 2002 and with making reports to the General Assembly. The Local Government Planning Advisory Committee, an appointed arm of the Department of Economic and Community Development, reviews plans arising from the dispute resolution process.

PUBLIC PARTICIPATION

Designing and implementing an effective public participation program requires expertise, time, and money. The pay back is increased public understanding and ownership of the program. A proactive public participation program can also improve the product by incorporating creative input from people with a wide variety of interests and skills. Tennessee, Oregon, and Washington address public participation in their growth management programs in very different ways.

Tennessee

Tennessee's approach to public participation as laid out in PC1101 emphasizes the public hearing. Hearings are required at several points in the process of developing the growth plan. If the county or a municipality chooses to suggest a plan to the county coordinating committee, it must first hold a minimum of two public hearings. In addition, the coordinating committee must hold two public hearings on its recommended plan before submitting it to the local jurisdictions for approval. All hearings require 15 day notice.

Oregon

Public participation is a key component of the Oregon program. Indeed, the first of the 19 state goals is "to develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process" (Oregon DLCD 2001).

The tradition of citizen involvement is deeply rooted in Oregon. This tradition led the legislature when it passed SB100 to also adopt a statement of intent that LCDC would develop the state goals only after extensive public input. This was accomplished in a year-long process that began by mailing out over 100,000 questionnaires and holding nearly one hundred workshops in all parts of the state. Input from these efforts was used by technical committees to draft goals, which were then presented directly to citizens in two additional rounds of workshops. In all, 10,000 Oregonians participated in the development of the goals. Although this process was time-consuming and arduous, it developed a constituency with a stake in the goals, and may help explain why all the referenda to repeal the program have failed (Abbott 1994).

Oregon's emphasis on public participation is also evident in the language of the goals. Goal 1 requires that each locality's citizen involvement program have six elements: citizen involvement, communication, citizen influence, technical information, feedback mechanisms, and financial support. In addition, Goal 2, the land-use planning goal, spells out requirements for public hearings on land use plans, implementing development regulations, and any amendments to the plan or regulations (Manderscheid 1999).

To assist localities with their programs, the state published a guide to public participation in 1992. Oregon also uses state and local advisory committees to assure citizen participation in the planning process. The state Citizen Involvement Advisory Committee and local Committees for Citizen Involvement review and comment on programs designed by local governments to ensure public participation (Manderscheid 1999).

Washington

Washington's GMA includes "encourage citizen participation" as one of its 14 goals. GMA also requires each city or county planning under GMA to "establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans" (RCW 36.70A.140). The public participation program must include the following elements:

- broad dissemination of proposals and alternatives
- opportunity for written comments
- public meetings after effective notice
- provision for open discussion
- communication programs
- information services, and
- consideration of and response to public comments.

The importance Washington places on public participation is evident in the work of the Washington Land Use Study Commission, an advisory board created by the legislature in the mid-1990s. The Commission held numerous public forums before drafting recommendations for the legislature on amendments to GMA (Black 1998). The Commission found that local public participation programs were inadequate, particularly in the area of adequate public notification, and recommended that the legislature beef up the notification requirements (Black 1998, Washington Land Use Study Commission 1997). The legislature did so in 1997 (Black 1998).

To assist local governments in their public participation efforts, the state also prepared and disseminated two technical assistance guides, one on visioning and one on citizen participation.

Comparison

Table 5.10 shows that Oregon and Washington clearly place greater importance on public participation than does Tennessee. Both include it as one of the goals of their growth management programs. Both mandate localities to develop and implement public participation programs, and both states have provided written guidance to localities in how to do so. Oregon takes the additional step of using citizen advisory committees to ensure meaningful public participation. The public participation efforts of these states, especially Oregon, can be characterized as proactive.

By contrast, the public participation requirements of the Tennessee program under PC1101 can be characterized as reactive and unimaginative. There is no mention in PC1101 of citizen involvement in the planning process other than the public hearings. This reliance on public hearings as the sole means of citizen participation leaves the

TABLE 5.10

**PUBLIC PARTICIPATION REQUIREMENTS
TENNESSEE, OREGON, AND WASHINGTON
STATE GROWTH MANAGEMENT PROGRAMS**

STATE	INCLUDED IN GOALS?	LOCAL PROGRAM REQUIRED?	PUBLIC HEARINGS REQUIRED?	ADDITIONAL ELEMENTS
Tennessee	No	No	Yes	None
Oregon	Yes	Yes	Yes	State written assistance; state and local advisory committees
Washington	Yes	Yes	Yes	State written assistance

public with no opportunity to provide up-front input into the content of the growth plans or into the process of developing them. Rather, citizens must merely react to plans drafted by official bodies.

SUMMARY

This chapter compared in detail Tennessee's growth management program under Public Chapter 1101 to those of Oregon and Washington on seven dimensions: 1) goals, 2) planning level 3) comprehensive plan requirements, 4) consistency requirements, 5) provisions concerning adequate facilities and concurrency, 6) type and degree of state involvement, and 7) public participation requirements.

In general, the comparisons show that the Tennessee program is more narrowly focused than those in Oregon and Washington, having only five goals to their 19 and 14, respectively. Oregon and Washington also have much more stringent requirements for local comprehensive plans than does Tennessee under PC1101. PC1101, although suggesting some desirable plan elements directly and others as growth plan "goals and objectives," requires nothing of its local comprehensive plans beyond the specification of growth boundaries. Washington and Oregon, on the other hand, specify long lists of elements required in local comprehensive plans. Oregon and Washington both also require more comprehensive public participation programs than does Tennessee.

Another important difference among the three states is the degree required of implementation consistency; i.e., the requirement that development regulations be consistent with the plan. Here Oregon is clearly a leader, requiring all localities to adopt land use regulations consistent with local comprehensive plans. Washington has a similar requirement, but only for counties with comprehensive plans (this includes all counties planning under GMA as well as any other counties with comprehensive plans).

Tennessee's implementation requirements under PC1101 are somewhat unclear, although weaker than the other two states. Neither PC1101 nor any other state law mandate a locality to adopt land use regulations. However, the PC1101 requirement that "all land use **decisions** .... shall be consistent with the growth plan" leaves it unclear how much consistency the legislation requires between the application of any adopted regulations and the growth plan.

None of the three states have particularly strong concurrency requirements. This may be partly because of the use by these states of UGBs, which serve as the primary tool for managing the location of new development. Concurrency then becomes a tool for managing short-term growth **within** the UGB.

The role of the state is strongest in Oregon, where the state defines state goals that local plans must address and reviews and approves all local plans. Oregon also has state agencies dedicated to the growth management program. The state's role is less strong in Washington, where state involvement in local plan content is limited to review and comment, and where the Department of Community Development provides technical assistance to the growth management program as only one of its duties. It is weakest in Tennessee, which does not review local plan content except under very limited circumstances and which has no state agency designated to administer the growth management program.

CHAPTER 6

ASSESSMENT AND CONCLUSIONS

This thesis has presented an overview of the history of growth management in Tennessee, Oregon, and Washington, along with summaries of the experience of each program. The Tennessee program was compared in detail to those of Oregon and Washington on seven dimensions: 1) goals, 2) planning level 3) comprehensive plan requirements, 4) consistency requirements, 5) provisions concerning adequate facilities and concurrency, 6) type and degree of state involvement, and 7) public participation requirements. This final chapter will assess the programs by examining their relative strengths and weaknesses and identify "lessons learned" from the Oregon and Washington programs which might be applied to Tennessee.

ASSESSMENT

The growth management programs in the three selected states grew from very different concerns – and resulted in programs with different foci. In Oregon, the original primary concern was to protect farmland in the Willamette Valley. However, poor land use planning also threatened other parts of the state. Because of the statewide interest in the issue, Oregon's SB100, and the program that it spawned, is a land use planning effort with a secondary focus on growth management. By contrast, the driving force in Washington was a perceived need to control growth in the Puget Sound region. As a result, Washington's GMA can be characterized as a growth management program with a secondary focus on land use planning. The impetus behind Tennessee's PC1101 was ongoing battles between city and county governments over annexation issues. The resulting legislation is primarily focused on annexation policy and city/county cooperation, with land use planning as a very secondary focus.

Common Themes

The different foci of the three states' programs give rise to distinct differences in their details and create differing sets of strengths and weaknesses for each program. However, there are some important common threads running through all three of the programs.

First, all three programs essentially leave land use planning to the entities who have, at least in this country, traditionally been responsible for it -- local governments. The state may mandate that planning be done, may provide guidelines for achieving it, may require the development of implementing regulations, and may review and approve the work. However, the state does not develop the plan itself, nor does it develop the implementing regulations. The only exception to the local development of plans is the regional plan required for the Portland metro area, which is developed, not through coordination of the local governments involved, but by the nation's only elected regional government, Portland Metro.

Another common thread is the increased intergovernmental conversation and opportunity for collaboration attributed to these programs (Meck 1999, Porter 1997, Knaap and Nelson 1992). In all three states, county and municipal governments within a county must coordinate on setting UGBs. In doing so, they jointly address both land use and political issues within the county. As Moore (1998, 361) puts it, UGBs "force inter-jurisdictional conversation and encourage cooperation." Rohse (1999) cites this not only as a lesson other states can learn from the Oregon experience but also the "chief benefit" of the Oregon UGB-setting process.

Program Strengths And Weaknesses

Table 6.1 highlights the strengths and weaknesses of the three state programs on several important dimensions.

TABLE 6.1

**COMPARISON OF SELECTED FACTORS
TENNESSEE, OREGON, AND WASHINGTON
STATE GROWTH MANAGEMENT PROGRAM**

	Tennessee	**Oregon**	**Washington**
Goals	Limited	Comprehensive	Comprehensive
Flexibility	Too flexible	Inflexible	Appropriate
Plan content	Weak	Strong	Strong
Consistency	Weak	Strong	Strong
Concurrency	Weak	Moderate	Moderate
Review process	Weak	Strong	Moderate
Dispute resolution procedures	Strong/weak[1]	Strong	Strong
State assistance	Weak	Strong	Strong
Public participation	Weak	Strong	Moderate
Governmental champion	Weak	Strong	Strong
Popular support	Weak	Strong	Moderate

[1]Procedures are strong for resolutions of disputes among local jurisdictions over plan content; weak with respect to other kinds of disputes.

Goals. All three states lay out specific goals their growth management programs are expected to address. Tennessee and Washington do so within the authorizing legislation; Oregon's goals were developed by LCDC after extensive citizen input.

The goals of the Tennessee program are much more limited than those of Oregon and Washington. All three states articulate the common growth management goals of minimizing urban sprawl and matching the timing of development to the delivery of services. However, unlike the other states, Tennessee omits environmental protection -- commonly considered an important growth management goal – from its list. Kelly (1993) notes that by constraining land supply, a growth management program may put greater development pressure on environmentally sensitive lands. This would logically seem to lead to the need to protect these areas up front. Meck (1999) identified the lack of emphasis on environmental protection as one of the significant shortcomings of the Tennessee program.

The Tennessee program also omits items closely related to growth management such as housing and transportation, as well as public participation, from its goals list. All are present in the Oregon and Washington goals. By contrast, two of Tennessee's five goals address annexation, reasonable given the impetus for and emphasis of the Tennessee legislation.

Flexibility. Weitz (1999) notes the conflict between uniformity and flexibility in growth management programs. On the one hand, requiring all local plans to address the key elements in a similar way helps assure that the program goals are achieved. On the other hand, different standards and procedures may be appropriate in localities with different political cultures, population sizes and growth rates, or geographic and environmental conditions. Of the three states, Washington seems to strike the best balance between flexibility and uniformity. Oregon's program is too inflexible, while Tennessee's needs to be more standardized.

One weakness of the generally effective Oregon program is its "one size fits all" approach. All Oregon cities and counties are subject to the same state land use planning standards. This has been mitigated somewhat in recent years by the adoption of standards based on population for the transportation and capital improvements plans, but still holds for most of the program requirements.

Washington modified Oregon's approach to make it more flexible by mandating that GMA apply to only those counties with large populations or high population growth rates. However, all counties required to plan under GMA are held to the same standards. Washington also introduces some flexibility into its program by its use of three regional

Growth Management Hearing Boards, which may interpret GMA provisions differently to allow regional differences to dictate the most appropriate tools and approaches.

Tennessee's PC1101 is inflexible in that it applies to all Tennessee counties without metro government. However, it gives the counties a great degree of latitude in how to develop their growth plans, and in what those plans must contain. The only requirement is a map delineating the urban growth boundaries, planned growth areas, and rural areas. One could argue that this is **too much** flexibility.

Nor does PC1101 define terms such as "high density," leaving this instead to the individual counties. Other states have learned the importance of carefully defining terms. For example, Washington's failure to adequately define "rural areas" in the original GMA legislation resulted in so much confusion that the legislation was forced to amend the Act in 1997 to refine that definition.

Plan content. One obvious weakness in the Tennessee growth management program is its relatively small list of required elements for local growth plans. Washington and Oregon specify several required elements for local plans, including such items as land use, housing, transportation, and capital facilities. In short, these states require localities to develop real comprehensive land use plans.

PC1101, on the other hand, contains a list of **desirable** elements of a comprehensive growth plan, but the legislation does not **require** them. The only required element is a map delineating the urban growth boundaries, rural areas, and planned growth areas. Although the legislation does specify what these boundaries are to based on (twenty year population projections, projected infrastructure costs, land demand forecasts, and expected impacts to agricultural, forest, recreational, and wildlife lands), it does not require county Coordinating Committees to develop supporting definitions or document the processes used to develop the map.

The delineation of UGBs, PGAs, and RAs, along with the other provisions of PC1101 dealing with annexation policy, is probably sufficient to accomplish the legislation's annexation-related goals. TACIR (2001, 2) concluded that "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."

UGBs can also be good growth management tools -- but only when linked to other elements of good comprehensive planning, development regulations, and infrastructure planning (Porter 1997, Rohse 1999). Rohse says that UGBs are a "necessary but not sufficient" tool for successful growth management program.

There has been considerable criticism of PC1101 on this point -- that it fails as growth management or real land use planning legislation. TACIR reported that it "is unable to arrive at a definitive conclusion" as to whether the growth planning intentions of the Act were being met by counties who had completed their growth plans, and went on to say:

> 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... addressed the planning considerations ...of the Act... Preliminary assessment of such proposals reveals that there is considerable variation across the state in the thoroughness with which the planning activities ... were accomplished ... 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 (TACIR 2001, 2).

John Ely, TACIR Director of Growth Planning, has said "I feel that many of the ... counties that approved their growth plans did so by pretty much ignoring the planning aspects, but instead focusing primarily on setting boundaries using a political process" (University of Tennessee Master of Public Administration Program 2000).

Porter (1997) asserts that state growth planning efforts have resulted an increased understanding of the planning process by public officials, citizens, and interest groups. Certainly this is probably true for states like Oregon and Washington, whose growth management legislation requires localities to engage in a real comprehensive planning process. It is probably less true for Tennessee, although any discussion of future development patterns between county leaders is undoubtedly a step in the right direction.

Consistency. Another important difference among the three states is the required degree of consistency. While all four types of consistency are desirable, implementation consistency, the requirement that development regulations be consistent with the plan, is perhaps the most important tool in the growth management toolbox. Without land use regulations to implement them, growth and comprehensive plans are mere documents. For example, Weitz (1999) details some of the problems that have resulted from the lack of an implementation consistency requirement in the Georgia growth management program, calling this one of the most "significant failures" (1999, 298) of the program and asserting that it has had a "crippling effect" (1999, 296).

In this area Oregon is clearly a leader, requiring all localities to adopt land use regulations consistent with local comprehensive plans. Washington has a similar requirement, but only for counties with comprehensive plans (this includes all counties planning under GMA as well as any other counties with comprehensive plans). Tennessee's implementation consistency requirements under PC1101 are somewhat fuzzy, although clearly weaker than the other two states. Neither PC1101 nor any other state law mandates a locality to adopt land use regulations. The PC1101 requirement that "all land use **decisions** .... shall be consistent with the growth plan" also leaves it unclear how much consistency the legislation requires between any regulations that **are** adopted and the growth plan.

Concurrency. Concurrency plays a smaller role in the programs of these three states than it does in some other state growth management programs. This may be related to the use by Tennessee, Oregon, and Washington of UGBs. The UGB becomes the primary tool for controlling the location of long-term growth, with concurrency serving as a secondary tool to manage short-term growth **within** the UGB. At any rate, the Oregon and Washington programs require (for most jurisdictions) that capital facilities plans be included in local comprehensive plans, thus assuring a link between land use planning and public facilities planning. Tennessee has no such requirement, addressing concurrency solely through its plan of services requirements for annexations or newly incorporated cities. This makes the concurrency provisions of the Tennessee program under PC1101 considerably weaker than those of Oregon and Washington.

Review process. The review process is important because review can create consistency between different plans and assure a minimum level of compliance (Gale 1992). This is an area where the differences among the states are significant. Clearly Oregon's program is the strongest, and Tennessee's is the weakest.

Oregon's LCDC reviews and approves all local plans. Washington's DCD reviews and comments on local plans but has no power to insist on changes in them. However, plans appealed to one of the Washington Growth Management Hearing Boards are reviewed by the Board and may be sent back to the locality for revision; in this way the Boards act as quasi-reviewers for disputed plans. In Tennessee under PC1101 the state ordinarily does no content review of local plans; it simply automatically ratifies any plan approved by all the local jurisdictions with a county. An exception is for a growth plan subject to the dispute resolution process; in such cases LGPAC reviews **only** the UGBs, PGAs, and RAs of the plan.

Dispute resolution procedures. It is important that dispute resolution procedures be fair and efficient. The perception of procedural fairness and speedy decisions can help attract support for the program from citizens and stakeholders such as developers (Liberty 1992).

All three states succeed at least to a degree in this regard. Washington and Oregon provide state-managed arenas (LUBA in Oregon and the regional Growth Management Hearing Boards in Washington) where a plan or its implementation may be challenged. The decisions rendered by these quasi-judicial venues come from people who are trained and knowledgeable in their state growth management legislation and programs. They also tend to move more quickly than would the courts.

There is no corresponding state entity to LUBA or the Growth Management Hearing Boards in Tennessee; challenges to plans are resolved in chancery court and it is as yet unclear how and where challenges to plan implementation will be resolved. However, through the use of the dispute resolution panel of three administrative law judges, Tennessee state government **does** provide a fair and efficient venue for resolving disputes between jurisdictions in a single county over the ratification of that county's plan.

State technical and financial assistance. It is difficult to overestimate the importance of providing financial and technical assistance to localities in the preparation of their growth plans. Nelson et al. (1995) point out that although the cost of such support may be high on the front end, it will be recovered many times over if it results in more efficient land use patterns or savings in public facilities costs. Although in general the record of states in providing such assistance to localities is poor (Porter 1997, Weitz 1999), Oregon and Washington have consistently been exceptions. Tennessee has done a reasonably good job providing technical assistance for the first round of local growth plan development, but it has been done on a piecemeal, ad-hoc basis. Unlike the Oregon and Washington legislation, PC1101 contains no provisions for technical or financial assistance to localities, making it doubtful that such assistance will be provided on an ongoing basis.

Public participation. Nelson et al. (1995, 145) call citizen participation "the cornerstone of any effective growth management policymaking process." Effective citizen participation can increase public understanding and ownership of the program, as well as improve it by incorporating creative input from people with a wide variety of interests and skills. This is another area in which there are clear differences among the three states.

Oregon and Washington place greater importance on public participation than does Tennessee. Both include it as one of the goals of their growth management programs; Tennessee does not. Both Oregon and Washington mandate localities to develop and implement public participation programs, and both states have provided written guidance to localities in how to do so. Oregon takes the additional step of using citizen advisory committees to ensure meaningful public participation. In addition, the 19 goals of Oregon's growth management program were developed only after extensive statewide public input. The public participation efforts of these states, especially Oregon, can be characterized as proactive.

By contrast, the public participation requirements of the Tennessee program under PC1101 can be characterized as reactive and unimaginative. There is no mention in PC1101 of citizen involvement in the planning process other than requirements for public hearings. This leaves the public with no opportunity to provide up-front input into the content of the growth plans or into the process of developing them. By not placing more emphasis on public participation, Tennessee is missing an opportunity to build citizen understanding and support for both the growth management program and individual local growth plans.

Governmental champion. Many authors (Knaap and Nelson 1992, Nelson et al.1995, Porter 1997) stress the importance of a governmental champion for the success of state growth management. More often than not this champion is in the governor's office.

Nelson et al. (1995, 144) note that "we do not know of a successful growth management planning process that lacked executive leadership." Support for the growth management program by the governor has a long tradition in Oregon, going back to Tom McCall's push for creation of the program. Washington's program has also enjoyed support from its governors. Fulton (1999) quotes Mary McCumber, Executive Director of the Puget Sound Regional Council: "We've had a good governor. That seems to be a prerequisite for these things to work."

Although several legislators worked hard for the passage of PC1101, a clear governmental champion is yet to emerge in Tennessee. This may be partly because for the last several years the General Assembly and the Governor have been preoccupied with an ongoing state budget crisis and the related debate over state tax reform.

Popular support. Citizen advocacy groups are regarded as important to ongoing success of state growth management programs (Liberty 1992, Meck 1999). The oldest and most well known example is 1000 Friends of Oregon, founded in 1975 by outgoing governor Tom McCall. 1000 Friends is a non-profit organization dedicated to monitoring the Oregon land use planning program. The organization also conducts educational programs, participates in plan development and reviews, and litigates as necessary (Liberty 1992). A similar 1000 Friends organization, modeled after the Oregon group, has been founded in Washington. Tennessee has yet to see the formation of such a citizens' advocacy group.

LESSONS FOR TENNESSEE FROM OREGON AND WASHINGTON

Tennessee PC1101 succeeds at the purpose that inspired its creation – improving state annexation law. By providing a measure of certainly about the location of future annexations, the delineation of urban growth boundaries should help mute disputes between county and municipal governments over this issue.

However, PC1101 falls short of fulfilling its secondary purpose of managing growth through good land use planning. If Tennessee desires to succeed at anything beyond ending the annexation wars, there are some important lessons it can take from the Oregon and Washington growth management programs.

- Growth management programs need to time to mature. It took 13 years in Oregon before the last local plan was approved; there are still local plans under development in Washington. Meck (1999) says Tennessee should expect a six-year "shakedown period." During this time, the program should be monitored and fine-tuned. TACIR has been doing a good job monitoring the implementation of PC1101 and reporting to the legislature. Its mandate to so expires at the end of 2002 but should be extended.
- The five goals in PC1101 should be carefully reviewed and revised. While it can be argued that Oregon's 19 and Washington's 14 goals are too many, PC1101 fails to include goals key to most growth management programs; in particular, environmental protection. The education goal, which is not addressed further in the Act, should be eliminated.
- The biggest criticism of PC1101 is that it fails as growth management legislation because its mandatory requirements (a map delineating UGBs, PGAs, and RAs) are so limited that it does not really require localities to **plan**. This is in stark contrast to Oregon and Washington, which require localities to develop comprehensive plans with a specified set of elements. It is probably not politically feasible nor desirable to require all 95 Tennessee counties to produce a comprehensive plan. However, a tiered approach, similar to the one in Washington, could be a good solution. Such a system would require all counties with large populations, or with high population growth rates, to produce true comprehensive plans.
- A second major flaw in the Tennessee growth management program is the fuzziness surrounding implementation consistency. Rather than wait for the courts to decide the implications of "all land use decisions … shall be consistent with the growth plan,"

the legislature should move to eliminate the confusion. Again, it is likely not possible to require all localities to implement land use regulations. But implementation consistency could be required for the counties required, by virtue of their population or population growth, to develop comprehensive plans.

- PC1101 should be amended to require **all** counties to submit, at a minimum, supporting documentation for their map. The documentation should include any definitions the county used (e.g., ***high-density***) and a description of the process used to delineate the boundaries. This will make it much easier for TACIR and other monitoring groups to assess the outcomes of PC1101.
- Tennessee's process for reviewing local plans should be strengthened. Stewart (2000) endorses Tennessee adoption of the Oregon model of state review and approval of local plans. The Oregon model is probably too expensive and politically untenable for use in Tennessee, but the Washington model of state review and comment should be investigated. Review of local plans by qualified state professionals could both improve plan quality and help fine tune the legislation by uncovering problem areas.
- If PC1101 is amended to require at least some counties to produce real comprehensive plans and supporting development regulations, then the state should investigate creating a special body for dispute resolution similar to Oregon's LUBA or Washington's Growth Management Hearing Boards. These have proven to be fair and efficient vehicles for settling disputes over plans and plan implementation. Stewart (2000) points out that such a judicial tribunal would allow land use disputes to be settled more quickly and also provide greater judicial access for the general public.
- Although Tennessee is currently facing a budget crisis, the Oregon and Washington programs suggest that if growth management is to succeed, it will require continued technical and financial support from the state. In particular, the state should continue to underwrite the development of population projections and support for county Coordinating Committees who do not have such support locally available.

- The public participation portions of the program should be strengthened. Oregon and Washington provide good models with their requirement that localities develop public participation programs as part of their comprehensive planning efforts. Again, this could be implemented in Tennessee, as it is in Washington, only for those large or fast-growing counties required to plan.
- If the program is to succeed, and especially if it is to be strengthened, it will need support from a wide variety of stakeholders. This suggests that more public education about planning in general and PC1101 in particular would be useful. This is an area where the state, state universities, interest groups such as the Sierra Club, and professional organizations such as the Tennessee Chapter of the American Planning Association should collaborate.

PC1101, conceived out of the need to reduce annexation disputes, evolved into something more. It is to be hoped that it will continue to evolve into legislation that will better support and enforce its growth management goals.

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APPENDIX

APPENDIX
TENNESSEE PUBLIC CHAPTER 1101

CHAPTER NO. 1101
SENATE BILL NO. 3278
By Rochelle

Substituted for: House Bill No. 3295
By Kisber, Walley, Rinks, McDaniel, Curtiss

AN ACT To amend Tennessee Code Annotated, Title 4; Title 5; Title 6; Title 7; Title 13; Title 49;Title 67 and Title 68, relative to growth.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. As used in this act, unless the context otherwise requires:

(1) "Committee" means the local government planning advisory committee established by §4-3-727.

(2) "Council" means the joint economic and community development council established by Section 15 of this act.

(3) "Growth Plan" means the plan each county must file with the committee by July 1, 2001, as required by the provisions of Section 8.

(4) "Planned growth area" means an area established in conformance with the provisions of Section 7(b) and approved in accordance with the requirements of Section 5.

(5) "Rural area" means an area established in conformance with the provisions of Section 7(c) and approved in accordance with the requirements of Section 5.

(6) "Urban Growth Boundary" means a line encompassing territory established in conformance with the provisions of Section 7(a) and approved in accordance with the requirements of Section 5.

SECTION 2. Tennessee Code Annotated, Title 6, is amended by adding Sections 3 through 16 as a new Chapter 58.

SECTION 3. With this act, the General Assembly intends to establish a comprehensive growth policy for this state that:

(1) Eliminates annexation or incorporation out of fear;

(2) Establishes incentives to annex or incorporate where appropriate;

(3) More closely matches the timing of development and the provision of public services;

(4) Stabilizes each county's education funding base and establishes an incentive for each county legislative body to be more interested in education matters; and

(5) Minimizes urban sprawl.

SECTION 4.

(a) The provisions of this chapter shall not apply to any county having a metropolitan form of government. Provided, however, each such county shall receive full benefit of all incentives available pursuant to Section 10, and each such county shall escape the sanctions imposed by Section 11. Provided, further, any municipality that lies within a county having a metropolitan form of government and another county must establish an urban growth boundary in conjunction with the county containing the territory that is not within the county having a metropolitan form of government.

(b) Notwithstanding the provisions of this act to the contrary, IF a metropolitan government charter commission is duly created within any county after the effective date of this act but prior to July 1, 2001, AND IF the metropolitan charter proposed by such commission is either rejected or otherwise not ratified by the voters prior to July 1, 2001, THEN the sanctions established by Section 11 shall not be imposed in such county prior to July 1, 2002.

SECTION 5.

(a)(1) Except as otherwise provided pursuant to subdivision (a)(9), effective September 1, 1998, there is created within each county a coordinating committee which shall be composed of the following members:

(A) The county executive or the county executive's designee, to be confirmed by the county legislative body; provided, however, a member of the county legislative body may serve as such designee subject to such confirmation;

(B) The mayor of each municipality or the mayor's designee, to be confirmed by the municipal governing body;

(C) One (1) member appointed by the governing board of the municipally owned utility system serving the largest number of customers in the county;

(D) One (1) member appointed by the governing board of the utility system, not municipally owned, serving the largest number of customers in the county;

(E) One (1) member appointed by the board of directors of the county's soil conservation district, who shall represent agricultural interests;

(F) One (1) member appointed by the board of the local education agency having the largest student enrollment in the county;

(G) One (1) member appointed by the largest chamber of commerce, to be appointed after consultation with any other chamber of commerce within the county; and

(H) Two (2) members appointed by the county executive and two (2) members appointed by the mayor of the largest municipality, to assure broad representation of environmental, construction and homeowner interests.

(2) It shall be the duty of the coordinating committee to develop a recommended growth plan not later than January 1, 2000, and to submit such plan for ratification by the county legislative body and the governing body of each municipality. The recommended growth plan shall identify urban growth boundaries for each municipality within the county and shall identify planned growth areas and rural areas within the county, all in conformance with the provisions of Section 7. In developing a recommended growth plan, the coordinating committee shall give due consideration to such urban growth boundaries as may be timely proposed and submitted to the coordinating committee by each municipal governing body. The coordinating committee shall also give due consideration to such planned growth areas and rural areas as may be timely-proposed and submitted to the coordinating committee by the county legislative body. The coordinating committee is encouraged to utilize planning resources that are available within the county, including municipal or county planning commissions. The coordinating committee is further encouraged to utilize the services of the local planning office of the Department of Economic and Community Development, the county technical assistance service, and the municipal technical advisory service.

(3) Prior to finalization of the recommended growth plan, the coordinating committee shall conduct at least two (2) public hearings. The county shall give at least fifteen (15) days advance notice of the time, place and purpose of each public hearing by notice published in a newspaper of general circulation throughout the county.

(4) Not later than January 1, 2000, the coordinating committee shall submit its recommended growth plan for ratification by the county legislative body and by the

governing body of each municipality within the county. Provided, however, and notwithstanding any provision of this act to the contrary, if a municipality is completely contiguous to and surrounded by one or more municipalities, then the corporate limits of the surrounded municipality shall constitute the municipality's urban growth boundaries and such municipality shall not be eligible to ratify or reject the recommended growth plan. Not later than one hundred twenty (120) days after receiving the recommended growth plan, the county legislative body or municipal governing body, as the case may be, shall act to either ratify or reject the recommended growth plan of the coordinating committee. Failure by such county legislative body or any such municipal governing body to act within such one hundred twenty (120) day period shall be deemed to constitute ratification by such county or municipality of the recommended growth plan.

(5) If the county or any municipality therein, rejects the recommendation of the coordinating committee, then the county or municipality shall submit its objections, and the reasons therefor, for resolution in accordance with subsection (b). In resolving disputes arising from disagreements over which urban growth boundary should contain specific territory, due consideration shall be given if one (1) of the municipalities is better able to efficiently and effectively provide urban services within the disputed territory. Due consideration shall also be given if one (1) of the municipalities detrimentally relied upon priority status conferred under prior annexation law and, thereby, justifiably incurred significant expense in preparation for annexation of the disputed territory.

(6)(A) A municipality may make binding agreements with other municipalities and with counties to refrain from exercising any power or privilege granted to the municipality by this title, to any degree contained in the agreement including, but not limited to, the authority to annex.

(B) A county may make binding agreements with municipalities to refrain from exercising any power or privilege granted to the county by Title 5, to any degree contained in the agreement including, but not limited to, the authority to receive annexation date revenue.

(C) Any agreement made pursuant to this subdivision need not have a set term, but after the agreement has been in effect for five (5) years, any party upon giving ninety (90) days written notice to the other parties is entitled to a renegotiation or termination of the agreement.

(7)(A) Notwithstanding any provisions of this chapter or any other provision of law to the contrary, any annexation reserve agreement or any agreement of any kind either between municipalities or between municipalities and counties setting out areas reserved for future municipal annexation and in effect on the effective date of this act are ratified and remain binding and in full force and effect. Any such agreement may be amended from time to time by mutual agreement of the parties. Any such agreement or amendment may not be construed to abrogate the application of any provision of this chapter to the area annexed pursuant to the agreement or amendment.

(B) In any county with a charter form of government, the annexation reserve agreements in effect on January 1, 1998, are deemed to satisfy the requirement of a growth plan. The county shall file a plan based on such agreements with the committee.

(8)(A) No provision of this chapter shall prohibit written contracts between municipalities and property owners relative to the exercise of a municipality's rights of annexation or operate to invalidate an annexation ordinance done pursuant to a written contract between a municipality and a property owner in existence on the effective date of this act.

(9)(A) Instead of the coordinating committee created under subsection (a)(1), in any county in which the largest municipality comprises at least sixty percent (60%) of the population of the entire county and on the effective date of this act there is no other municipality in the county with a population in excess of one thousand (1,000), according to the 1990 federal census or any subsequent federal census, the coordinating committee in such county shall be the municipal planning commission of the largest municipality and the county planning commission, if the county has a planning commission. The mayor of the largest municipality and the county executive of such county may jointly appoint as many additional members to the coordinating committee as they may determine. Notwithstanding the provisions of subsection (a) with respect to the adoption or ratification of the recommended growth plan, in any county to which subdivision (9)(A) applies, upon adoption of a recommended growth plan, the coordinating committee shall submit its recommendation to the countylegislative body for ratification. The county legislative body may only disapprove the recommendation of the coordinating committee if it makes an affirmative finding, by a two-thirds (2/3) vote, that the committee acted in an arbitrary, or capricious manner or abused its official discretion in applying the law. If the county legislative body disapproves the recommendation of the coordinating committee, then the dispute resolution process of this section shall apply.

(B) Instead of the coordinating committee created pursuant to subsection (a)(1), if the county legislative body and the governing body of each municipality located therein all agree that another entity shall perform the duties assigned by this act to the coordinating committee, then such other entity shall perform such duties of the coordinating committee, and such coordinating committee shall not be created or continued, as the case may be.

(b)(1) If the county or any municipality rejects the recommended growth plan, then the coordinating committee shall reconsider its action. After such reconsideration, the coordinating committee may recommend a revised growth plan and may submit such revised growth plan for ratification by the county legislative body and the governing body of each municipality. If a recommended growth plan or revised growth plan is rejected, then the county or any municipality may declare the existence of an impasse and may request the Secretary of State to provide an alternative method for resolution of disputes preventing ratification of a growth plan.

(2) Upon receiving such request, the Secretary of State shall promptly appoint a dispute resolution panel. The panel shall consist of three (3) members, each of whom shall be appointed from the ranks of the administrative law judges employed within the administrative procedures division and each of whom shall possess formal training in the methods and techniques of dispute resolution and mediation. Provided, however, if the county and all municipalities agree, the Secretary of State may appoint a single administrative law judge rather than a panel of three (3) members. No member of such panel, nor the immediate family of any such member or such member's spouse, may be a resident, property owner, official or employee of the county or of any municipality therein.

(3) The panel shall attempt to mediate the unresolved disputes. If, after reasonable efforts, mediation does not resolve such disputes, then the panel shall propose a non-binding resolution thereof. The county legislative body and the municipalities shall be given a reasonable period in which to consider such proposal. If the county legislative body and the municipal governing bodies do not accept and approve such resolution, then they may submit final recommendations to the panel. For the sole purpose of resolving the impasse, the panel shall adopt a growth plan. In mediating the dispute or in making a proposal, the panel may consult with the University of Tennessee or others with expertise in urban planning, growth, and development. The growth plan adopted by the panel shall conform with the provisions of Section 7.

(4) The Secretary of State shall certify the reasonable and necessary costs incurred by the dispute resolution panel, including, but not necessarily limited to, salaries, supplies, travel expenses and staff support for the panel members. The county and the municipalities shall reimburse the Secretary of State for such costs, to be allocated on a pro rata basis calculated on the number of persons residing within each of the municipalities and the number of persons residing within the unincorporated areas of the county; provided, however, if the dispute resolution panel determines that the dispute resolution process was necessitated or unduly prolonged by bad faith or frivolous actions on the part of the county and/or any one (1) or more of the municipalities, then the Secretary of State may, upon the recommendation of the panel, reallocate liability for such reimbursement in a manner clearly punitive to such bad faith or frivolous actions.

(5) If a county or municipality fails to reimburse its allocated or reallocated share of panel costs to the Secretary of State after sixty (60) days notice of such costs, the Department of Finance and Administration shall deduct such costs from such county's or a municipality's allocation of state shared taxes.

(d)(1) No later than July 1, 2001, the growth plan recommended or revised by the coordinating committee and ratified by the county and each municipality therein or alternatively adopted by a dispute resolution panel shall be submitted to and approved by the local government planning advisory committee. IF urban growth boundaries, planned growth areas and rural areas were recommended or revised by a coordinating committee and ratified by the county and each municipality therein, THEN the local government planning advisory committee shall grant its approval, and the growth plan shall become immediately effective. In addition, in any county with a charter form of government, the annexation reserve agreements in effect on January 1, 1998, are deemed to satisfy the requirement of a growth plan, and the local government planning advisory committee shall approve such plan. In all other cases, IF the local government planning advisory committee determines that such urban growth boundaries, planned growth areas and rural areas conform with the provisions of Section 7, THEN the local government planning advisory committee shall grant its approval and the growth plan shall immediately become effective; HOWEVER, IF the local government planning advisory committee determines that such urban growth boundaries, planned growth areas and/or rural areas in any way do not conform with the provisions of Section 7, THEN the committee shall adopt and grant its approval of alternative urban growth boundaries, planned growth areas and/or rural areas for the sole purpose of making the adjustments necessary to achieve conformance with the provisions of Section 7. Such alternative urban growth boundaries, planned growth areas and/or rural areas shall supersede and replace all conflicting urban growth boundaries, planned growth areas and/or rural areas and shall immediately become effective as the growth plan.

(2) After the local government planning advisory committee has approved a growth plan, the committee shall forward a copy to the county executive who shall file the plan in the register's office. The register may not impose a fee on the county executive for this service.

(e)(1) After the local government planning advisory committee has approved a growth plan, the plan shall stay in effect for not less than three (3) years absent a showing of extraordinary circumstances. After the expiration of the three (3) year period, a municipality or county may propose an amendment to the growth plan by filing notice with the county executive and with the mayor of each municipality in the county. Upon receipt of such notice, such officials shall take appropriate action to promptly reconvene or re-establish the coordinating committee. The burden of proving the reasonableness of the proposed amendment shall be upon the party proposing the change. The procedures for amending the growth plan shall be the same as the procedures in this section for establishing the original plan.

(2) In any county with a charter form of government with annexation reserve agreements in effect on January 1, 1998, any municipality or the county may immediately file a

proposed amendment after the effective date of this act in accordance with this subsection (e).

SECTION 6. (a) The affected county, an affected municipality, a resident of such county or an owner of real property located within such county is entitled to judicial review under this section, which shall be the exclusive method for judicial review of the growth plan and its urban growth boundaries, planned growth areas and rural areas. Proceedings for review shall be instituted by filing a petition for review in the chancery court of the affected county. Such petition shall be filed during the sixty (60) day period after final approval of such urban growth boundaries, planned growth areas and rural areas by the local government planning advisory committee. In accordance with the provisions of the Tennessee rules of civil procedure pertaining to service of process, copies of the petition shall be served upon the local government planning advisory committee, the county and each municipality located or proposing to be located within the county.

(b) Judicial review shall be de novo and shall be conducted by the chancery court without a jury. The petitioner shall have the burden of proving, by a preponderance of the evidence that the urban growth boundaries, planned growth areas and/or rural areas are invalid because the adoption or approval thereof was granted in an arbitrary, capricious, illegal or other manner characterized by abuse of official discretion. The filing of the petition for review does not itself stay effectiveness of the urban growth boundaries, planned growth areas and rural areas; provided, however, the court may order a stay upon appropriate terms if it is shown to the satisfaction of the court that any party or the public at large is likely to suffer significant injury if such stay is not granted. If more than one (1) suit is filed within the county, then all such suits shall be consolidated and tried as a single civil action.

(c) IF the court finds by a preponderance of the evidence that the urban growth boundaries, planned growth areas and/or rural areas are invalid because the adoption or approval thereof was granted in an arbitrary, capricious, illegal or other manner characterized by abuse of official discretion, THEN an order shall be issued vacating the same, in whole or in part, and remanding the same to the county and the municipalities in order to identify and obtain adoption or approval of urban growth boundaries, planned growth areas and/or rural areas in conformance with the procedures set forth within Section 5.

(d) Any party to the suit, aggrieved by the ruling of the chancery court, may obtain a review of the final judgment of the chancery court by appeal to the court of appeals.

SECTION 7.

(a)(1) The urban growth boundaries of a municipality shall:

(A) Identify territory that is reasonably compact yet sufficiently large to accommodate residential and nonresidential growth projected to occur during the next twenty (20) years;

(B) Identify territory that is contiguous to the existing boundaries of the municipality;

(C) 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 twenty (20) years based on historical experience, economic trends, population growth patterns and topographical characteristics; (if available, professional planning, engineering and/or economic studies may also be considered);

(D) Identify territory in which the municipality is better able and prepared than other municipalities to efficiently and effectively provide urban services; and

(E) Reflect the municipality's duty to facilitate full development of resources within the current boundaries of the municipality and to manage and control urban expansion outside of such current boundaries, taking into account the impact to agricultural lands, forests, recreational areas and wildlife management areas.

(2) Before formally proposing urban growth boundaries to the coordinating committee, the municipality shall develop and report population growth projections; such projections shall be developed in conjunction with the University of Tennessee. The municipality shall also determine and report the current costs and the projected costs of core infrastructure, urban services and public facilities necessary to facilitate full development of resources within the current boundaries of the municipality and to expand such infrastructure, services and facilities throughout the territory under consideration for inclusion within the urban growth boundaries. The municipality shall also determine and report on the need for additional land suitable for high density, industrial, commercial and residential development, after taking into account all areas within the municipality's current boundaries that can be used, reused or redeveloped to meet such needs. The municipality shall examine and report on agricultural lands, forests, recreational areas and wildlife management areas within the territory under consideration for inclusion within the urban growth boundaries and shall examine and report on the likely long-term effects of urban expansion on such agricultural lands, forests, recreational areas and wildlife management areas.

(3) Before a municipal legislative body may propose urban growth boundaries to the coordinating committee, the municipality shall conduct at least two (2) public hearings. Notice of the time, place and purpose of the public hearing shall be published in a newspaper of general circulation in the municipality not less than fifteen (15) days before the hearing.

(b)(1) Each planned growth area of a county shall:

(A) Identify territory that is reasonably compact yet sufficiently large to accommodate residential and nonresidential growth projected to occur during the next twenty (20) years;

(B) Identify territory that is not within the existing boundaries of any municipality;

(C) Identify territory that a reasonable and prudent person would project as the likely site of high or moderate density commercial, industrial and/or residential growth over the next twenty (20) years based on historical experience, economic trends, population growth patterns and topographical characteristics; (if available, professional planning, engineering and/or economic studies may also be considered);

(D) Identify territory that is not contained within urban growth boundaries; and

(E) Reflect the county's duty to manage natural resources and to manage and control urban growth, taking into account the impact to agricultural lands, forests, recreational areas and wildlife management areas.

(2) Before formally proposing any planned growth area to the coordinating committee, the county shall develop and report population growth projections; such projections shall be developed in conjunction with the University of Tennessee. The county shall also determine and report the projected costs of providing urban type core infrastructure, urban services and public facilities throughout the territory under consideration for inclusion within the planned growth area as well as the feasibility of recouping such costs by imposition of fees or taxes within the planned growth area. The county shall also determine and report on the need for additional land suitable for high density industrial, commercial and residential development after taking into account all areas within the current boundaries of municipalities that can be used, reused or redeveloped to meet such needs. The county shall also determine and report on the likelihood that the territory under consideration for inclusion within the planned growth area will eventually incorporate as a new municipality or be annexed. The county shall also examine and report on agricultural lands, forests, recreational areas and wildlife management areas within the territory under consideration for inclusion within the planned growth area and shall examine and report on the likely long-term effects of urban expansion on such agricultural lands, forests, recreational areas and wildlife management areas.

(3) Before a county legislative body may propose planned growth areas to the coordinating committee, the county shall conduct at least two (2) public hearings. Notice of the time, place and purpose of the public hearing shall be published in a newspaper of general circulation in the county not less than fifteen (15) days before the hearing.

(c)(1) Each rural area shall:

(A) Identify territory that is not within urban growth boundaries;

(B) Identify territory that is not within a planned growth area;

(C) Identify territory that, over the next twenty (20) years, is to be preserved as agricultural lands, forests, recreational areas, wildlife management areas or for uses other than high density commercial, industrial or residential development; and

(D) Reflect the county's duty to manage growth and natural resources in a manner which reasonably minimizes detrimental impact to agricultural lands, forests, recreational areas and wildlife management areas.

(2) Before a county legislative body may propose rural areas to the coordinating committee, the county shall conduct at least two (2) public hearings. Notice of the time, place and purpose of the public hearing shall be published in a newspaper of general circulation in the county not less than fifteen (15) days before the hearing.

(d) Notwithstanding the extraterritorial planning jurisdiction authorized for municipal planning commissions designated as regional planning commissions in Title 13, Chapter 3, nothing in this act shall be construed to authorize municipal planning commission jurisdiction beyond an urban growth boundary; provided, however, in a county without county zoning, a municipality may provide extraterritorial zoning and subdivision regulation beyond its corporate limits with the approval of the county legislative body.

SECTION 8. Not later than July 1, 2001, a growth plan for each county shall be submitted to and approved by the local government planning advisory committee in accordance with the provisions of Section 5. After a growth plan is so approved, 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. The growth plan shall include, at a minimum, documents describing and depicting municipal corporate limits, as well as urban growth boundaries, planned growth areas, if any, and rural areas, if any, approved in conformance with the provisions of Section 5. The purpose of a growth plan is to direct the coordinated, efficient, and orderly development of the local government and its environs that will, based on an analysis of present and future needs, best promote the public health, safety, morals and general welfare. A growth plan may address land-use, transportation, public infrastructure, housing, and economic development. The goals and objectives of a growth plan include the need to:

(1) Provide a unified physical design for the development of the local community;

(2) Encourage a pattern of compact and contiguous high density development to be guided into urban areas or planned growth areas;

(3) Establish an acceptable and consistent level of public services and community facilities and ensure timely provision of those services and facilities;

(4) Promote the adequate provision of employment opportunities and the economic health of the region;

(5) Conserve features of significant statewide or regional architectural, cultural, historical, or archaeological interest;

(6) Protect life and property from the effects of natural hazards, such as flooding, winds, and wildfires;

(7) Take into consideration such other matters that may be logically related to or form an integral part of a plan for the coordinated, efficient and orderly development of the local community; and

(8) Provide for a variety of housing choices and assure affordable housing for future population growth.

SECTION 9.

(a)(1) After the effective date of this act but before the approval of the growth plan by the local government planning advisory committee, a municipality may annex territory by ordinance as provided by § 6-51-102 unless the county legislative body adopts a resolution disapproving such annexation within sixty (60) days of the final passage of the annexation ordinance.

(2) If the county disapproves the annexation by adopting a resolution within the sixty (60) day period, then the ordinance shall not become operative until ninety (90) days after final passage subject to the proceedings under this section.

(3) If a quo warranto action is filed to challenge the annexation, if and after the requirements of subsection (b) below are met, a county filing the action has the burden of proving that:

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

(B) 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.

(4) If the court without a jury finds that the ordinance by a preponderance of the evidence satisfies the requirements of subdivision (a)(3), the annexation ordinance shall take effect.

(b)(1) If a county disapproves the annexation as provided in subsection (a) and if the county is petitioned by a majority of the property owners by parcel within the territory which is the subject of the annexation to represent their interests, a county shall be deemed an aggrieved owner of property giving the county standing to contest an annexation ordinance. In determining a majority of property owners, a parcel of property with more than one (1) owner shall be counted only once and only if owners comprising a majority of the ownership interests in the parcel petition together as the owner of the particular parcel.

(2) A petition by property owners under this section shall be presented to the county clerk, who shall forward a copy of such petition to the county executive, county assessor of property and the chairperson of the county legislative body. After examining the evidence of title based upon the county records, within fifteen (15) days of receiving the copy of the petition, the assessor of property shall report to the county executive and the chairperson of the county legislative body whether or not in his or her opinion a majority of the property owners by parcel have petitioned the county according to this section.

(3) Notwithstanding any other provision of this chapter, a petition by property owners to the county under this section to contest an annexation shall be brought within sixty (60) days of the final passage of the annexation ordinance, and if the county legislative body adopts a resolution to contest the annexation, the county shall file suit to contest the annexation pursuant to this section within ninety (90) days of the final passage of the annexation ordinance.

(4) If the county or any other aggrieved owner of property does not contest the annexation ordinance under §6-51-103 within ninety (90) days of final passage of the annexation ordinance, the ordinance shall become operative ninety (90) days after final passage thereof.

(5) If the county legislative body does not vote to permit the county to contest an annexation, the provision of Section 6-51-103 shall apply.

(c) After the effective date of this act, and before the approval of the growth plan by the local government planning advisory committee, a municipality may not extend its corporate limits by means of corridor annexation of a public right-of-way, or any easement owned by a governmental entity or quasi-governmental entity, railroad, utility company, or federal entity such as the U.S. Army Corps of Engineers or the Tennessee Valley Authority, or natural or man-made waterway, or any other corridor except under the following circumstances:

(1) The annexed area also includes each parcel of property contiguous to the right-of-way, easement, waterway or corridor adjacent on at least one (1) side; or

(2) The municipality receives the approval of the county legislative body of the county wherein the territory proposed to be annexed lies; or

(3) The owners of the property located at the end of the corridor petitioned the municipality for annexation, such owners agree to pay for necessary improvements to infrastructure on such property, such owners' property totals three (3) acres or more and is located within one and one-half (1.5) miles of the existing boundaries of the municipality, and the corridor annexation does not constitute an extension of any previous corridor annexation.

(d) Nothing in this section shall be construed to prevent a municipality from proposing extension of its corporate limits by the procedures in Sections 6-51-104 and 105. Provided, further, if the territory proposed to be annexed does not have any residents, such annexation may be accomplished only with the concurrence of the county as provided in (a) above.

(e) After the effective date of this act a municipality may not 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, unless one (1) of the following applies:

(1) A municipality that is located in two (2) or more counties as of November 25, 1997, may annex by ordinance in all such counties, unless the percentage of the municipal population residing in the county or counties other than that in which the city hall is located is less than seven percent (7%) of the total population of the municipality; or

(2) A municipality may annex by ordinance with the approval by resolution of the county legislative body of the county in which the territory proposed to be annexed is located; or

(3) A municipality may annex by ordinance in any county in which, on January 1, 1998, the municipality provided sanitary sewer service to a total of one hundred (100) or more residential customers, commercial customers, or a combination thereof.

(4) This subsection (e) shall not affect any annexation ordinance adopted on final reading by a municipality prior to the effective date of this act, if such ordinance annexed property within the same county where the municipality is located or annexed property in a county other than the county in which the city hall is located if the property is used or is to be used only for industrial purposes.

(f)(1) After the effective date of this act but prior to January 1, 1999, a new city may be incorporated under the provisions of this act as long as the population requirements and the distance requirements of Sections 6-1-201, 6-18-103 or 6-30-103 and the requirements of Section 13(c) of this act are met.

(2) After January 1, 1999, a new municipality may only be incorporated in accordance with this act and with an adopted growth plan.

(3)(A) Notwithstanding any other provision of law to the contrary, if any territory with not less than two hundred twenty-five (225) residents acted pursuant to Chapter 98 of the Public Acts of 1997 or Chapter 666 of the Public Acts of 1996 from January 1, 1996, through November 25, 1997, and held an incorporation election, and a majority of the persons voting supported the incorporation, and results of such election were certified, then such territory upon filing a petition as provided in § 6-1-202, may conduct another incorporation election.

(B) If such territory votes to incorporate, the new municipality shall have priority over any prior or pending annexation ordinance of an existing municipality which encroaches upon any territory of the new municipality. Such new municipality shall comply with the requirements of Section 13(c) of this act.

SECTION 10.

(a) Upon approval of the growth plan by the local government planning advisory committee but beginning no earlier than July 1, 2000, each municipality within the county and the county shall receive an additional five (5) points on a scale of one hundred (100) points or a comparable percentage increase as determined by the commissioner in any evaluation formula for the allocation of private activity bond authority and for the distribution of grants from the department of economic and community development for the:

(1) Tennessee Industrial Infrastructure Program;

(2) Industrial Training Service Program; and

(3) Community Development Block Grants.

(b) Upon approval of the growth plan by the local government planning advisory committee but beginning no earlier than July 1, 2000, each municipality within the county and the county shall receive an additional five (5) points on a scale of one hundred (100) points or a comparable percentage increase as determined by the commissioner if permissible under federal requirements in any evaluation formula for the distribution of grants from the Department of Environment and Conservation for state revolving fund loans for water and sewer systems; provided, however, no such preferences shall be granted if prohibited by federal law or regulation.

(c) Upon approval of the growth plan by the local government planning advisory committee but beginning no earlier than July 1, 2000, each municipality within the county and the county shall receive an additional five (5) points on a scale of one hundred (100) points or a comparable percentage increase as determined by the executive director in any evaluation formula for the distribution of HOUSE or HOME grants from the Tennessee Housing Development Authority or low income tax credits or private activity bond authority; provided, however, no such preferences shall be granted if prohibited by federal law or regulation.

SECTION 11. Effective July 1, 2001, the following loan and grant programs shall be unavailable in those counties and municipalities that do not have growth plans approved by the local government planning advisory committee, and shall remain unavailable until growth plans have been approved:

(1) Tennessee Housing Development Agency Grant Programs;

(2) Community Development Block Grants;

(3) Tennessee Industrial Infrastructure Program Grants;

(4) Industrial Training Service Grants;

(5) Intermodal Surface Transportation Efficiency Act funds or any subsequent federal authorization for transportation funds; and

(6) Tourism Development Grants.

SECTION 12.

(a) Within a municipality's approved urban growth boundaries, a municipality may use any of the methods in Title 6, Chapter 51 to annex territory. Provided, however, 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.

(b) In any such action, the action shall be tried by the circuit court judge or chancellor without a jury.

(c) A municipality may not annex territory by ordinance beyond its urban growth boundary without following the procedure in subsection (d).

(d)(1) If a municipality desires to annex territory beyond its urban growth boundary, the municipality shall first propose an amendment to its urban growth boundary with the coordinating committee under the procedure in Section 5.

(2) As an alternative to proposing a change in the urban growth boundary to the coordinating committee, the municipality may annex the territory by referendum as provided in §§6-51-104 and 6-51-105.

SECTION 13.

(a)(1) After January 1, 1999, a new municipality may only be created in territory approved as a planned growth area in conformity with the provisions of Section 5;

(2) A county may provide or contract for the provision of services within a planned growth area and set a separate tax rate specifically for the services provided within a planned growth area; and

(3) A county may establish separate zoning regulations within a planned growth area, for territory within an urban growth boundary or within a rural area.

(b) An existing municipality which does not operate a school system or a municipality incorporated after the effective date of this act, may not establish a school system.

(c) A municipality, incorporated after the effective date of this act, shall impose a property tax that raises an amount of revenue not less than the amount of the annual revenues derived by the municipality from state shared taxes. The municipality shall levy and collect the property tax before the municipality may receive state shared taxes. Furthermore, the provisions of Tennessee Code Annotated, Section 6-51-115(b), shall apply within the territory of such newly incorporated municipality as if such territory had been annexed rather than incorporated.

(d)(1) 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.

(2) Within six (6) months of the incorporation election, the municipality shall adopt by ordinance a plan of services for the services the municipality proposes to deliver. The municipality shall prepare and publish its plan of services in a newspaper of general circulation distributed in the municipality. The rights and remedies of §6-51-108 apply to the plan of services adopted by the municipality.

SECTION 14. Until December 31, 2002, the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) shall monitor implementation of this act and shall periodically report its findings and recommendations to the General Assembly. Each agency of the executive branch, each municipal and county official, each local government organization, including any planning commission and development district, shall cooperate with the commission and provide necessary information and assistance for the commission's reports. TACIR reserve funds may be expended for the purpose of performing duties assigned by this section.

SECTION 15.

(a) It is the intent of the General Assembly that local governments engage in long-term planning, and that such planning be accomplished through regular communication and cooperation among local governments, the agencies attached to them, and the agencies that serve them. It is also the intent of the General Assembly that the growth plans required by this bill result from communication and cooperation among local governments.

(b) There shall be established in each county a joint economic and community development board which shall be established by interlocal agreement pursuant to Tennessee Code Annotated, Section 5-1-113. The purpose of the board is to foster communication relative to economic and community development between and among governmental entities, industry, and private citizens.

(c) Each joint economic and community development board shall be composed of representatives of county and city governments, private citizens, and present industry and businesses. The final makeup of the board shall be determined by interlocal agreement but shall, at a minimum, include the county executive and the mayor or city manager, if appropriate, of each city lying within the county and one (1) person who owns land qualifying for classification and valuation under Tennessee Code Annotated, Title 67, Chapter 5, Part 10. Provided, however, in cases where there are multiple cities, smaller cities may have representation on a rotating basis as determined by the interlocal agreement.

(d) There shall be an executive committee of the board which shall be composed of members of the joint economic and community development board selected by the entire board. The makeup of the executive committee shall be determined by the entire joint economic and community development board but shall, at a minimum, include the county executive and the mayors or city manager of the larger municipalities in the county.

(e) The terms of office shall be determined by the interlocal agreement but shall be staggered except for those positions held by elected officials whose terms shall coincide with the terms of office for their elected positions. All terms of office shall be for a maximum of four (4) years.

(f) The board shall meet, at a minimum, four (4) times annually and the executive committee of the board shall meet at least eight (8) times annually. Minutes of all meetings of the board and the executive committee shall be documented by minutes kept and certification of attendance. Meetings of the joint economic and community development board and its executive committee are subject to the open meetings law.

(g)(1) The activities of the board shall be jointly funded by the participating governments. The formula for determining the amount of funds due from each participating government shall be determined by adding the population of the entire county as established by the last federal decennial census to the populations of each city as determined by the last federal decennial census, or special census as provided for in Section 6-51-114, and then determining the percentage that the population of each governmental entity bears to the total amount.

(2) If a special census has been certified pursuant to Tennessee Code Annotated, Section 6-51-114, during the five (5) year period after certification of the last federal decennial census, the formula shall be adjusted by the board to reflect the result of the special census. Provided, however, the board shall only make such an adjustment during the fifth year following the certification of a federal decennial census.

(3) The board may accept and expend donations, grants and payments from persons and entities other than the participating governments.

(4) If, on the effective date of this act, a county and city government have a joint economic and community development council which has an established funding mechanism to carry out a unified economic and community development program for the entire county, such funding mechanism shall be utilized in lieu of the formula established in this subsection. (h) An annual budget to fund the activities of the board shall be recommended by the executive committee to the board which shall adopt a budget before the first day of April of each year. The funding formula established by this act shall then be applied to the total amount budgeted by the board as the participating governments' contributions for the ensuing fiscal year. The budget and a statement of the amount due from each participating government shall be immediately filed with the appropriate officer of each participating government. In the event a participating government does not

fully fund its contribution, the board may establish and impose such sanctions or conditions as it deems proper.

(i) When applying for any state grant a city or a county shall certify its compliance with the requirements of this section.

(j) If there exists within a county a similar organization on the effective date of this act, that organization may satisfy the requirements of this section. The county executive shall file a petition with the committee who shall make a determination whether the existing organization is sufficiently similar to the requirements of this section. When the committee has made its determination, an affected municipality or county may rely upon that status of the existing organization to satisfy the certification requirements of subsection (i).

SECTION 16. The provisions of this chapter shall not apply to any annexation ordinance that was pending, but not yet effective, on November 25, 1997.

SECTION 17.

SECTION 18. (a) Tennessee Code Annotated, Section 7-2-101, is amended by adding the following as subdivision (4):

(4) The commission may be created upon receipt of a petition, signed by qualified voters of the county, equal to at least ten percent (10%) of the number of votes cast in the county for governor in the last gubernatorial election.

(A) Such petition shall be delivered to the county election commission for certification. After the petition is certified, the county election commission shall deliver the petition to the governing body of the county and the governing body of the principal city in the county. Such petition shall become the consolidation resolution of the county and the principal city in the county. The resolution shall provide that a metropolitan government charter commission is established to propose to the people the consolidation of all, or substantially all, of the government and corporate functions of the county and its principal city and the creation of a metropolitan government for the administration of the consolidated functions.

(B) Such resolution shall either:

(i) Authorize the county executive or county mayor to appoint ten (10) commissioners, subject to confirmation by the county governing body, and authorize the mayor of the principal city to appoint five (5) commissioners, subject to confirmation by the city governing body; or

(ii) Provide that an election shall be held to select members of the metropolitan government charter commission; provided, however, if the governing body of the county and the governing body of the principal city cannot agree on the method of selecting members of the metropolitan government charter commission within sixty (60) days of certification, then an election shall be held to select members of the metropolitan government charter commission as provided in Section 7-2-102.

(C) It is the legislative intent that the persons appointed to the charter commission shall be broadly representative of all areas of the county and principal city and that every effort shall be made to include representatives from various political, social, and economic groups within the county and principal municipality.

(D) When such resolution shall provide for the appointment of commissioners of the county and city, the metropolitan government charter commission shall be created and duly constituted after appointments have been made and confirmed.

(E) When such resolution shall provide for an election to select members of the metropolitan government charter commission, copies thereof shall be certified by the clerk of the governing bodies to the county election commission, and thereupon an election shall be held as provided in Section 7-2-102.

(F) When the consolidation resolution provides for the appointment of members of the metropolitan government charter commission, such appointments shall be made within thirty (30) days after the resolution is submitted to the governing bodies of the county and the principal city.

(G) If the referendum to approve consolidation fails, another commission may not be created by petition for three (3) years.

(b) Tennessee Code Annotated, Section 7-2-101(1)(B)(i), is amended by deleting the words "presiding officer of the county governing body" and substituting instead the words "county executive or county mayor".

(c) Tennessee Code Annotated, Section 7-2-101(2)(B), is amended by deleting the words "presiding officer of the county governing body" and substituting instead the words "county executive or county mayor".

(d) Tennessee Code Annotated, Section 7-2-101(2)(B)(i), is amended by deleting wherever they may appear, the words "presiding officer of the county governing body" and substituting instead the words "county executive or county mayor".

SECTION 19. Tennessee Code Annotated, Section 6-51-102, is amended by deleting subsection (b) and substituting instead the following:

(b)(1) Before any territory may be annexed under this section by a municipality, the governing body shall adopt a plan of services establishing at least the services to be delivered and the projected timing of the services. The plan of services shall be reasonable with respect to the scope of services to be provided and the timing of the services.

(2) The plan of services shall include, but not be limited to: 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, and zoning services. The plan of services may exclude services which are being provided by another public agency or private company in the territory to be annexed other than those services provided by the county.

(3) The plan of services shall include a reasonable implementation schedule for the delivery of comparable services in the territory to be annexed with respect to the services delivered to all citizens of the municipality.

(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, to be rendered within ninety (90) days after such submission, unless by resolution of the governing body a longer period is allowed. 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 in the municipality not less than fifteen (15) days before the hearing. The notice shall include the locations of a minimum of three (3) copies of the plan of services which the municipality shall provide for public inspection during all business hours from the date of notice until the public hearing.

(5) A municipality may not annex any other territory if the municipality is in default on any prior plan of services.

(6) If a municipality operates a school system, and if the municipality annexes territory during the school year, any student may continue to attend his or her present school until the beginning of the next succeeding school year unless the respective boards of education have provided otherwise by agreement.

SECTION 20. Tennessee Code Annotated, Section 6-51-102(a)(2), is amended by adding the following new subdivisions:

(2)(A) If an annexation ordinance was not final on November 25, 1997, and if the municipality has not prepared a plan of services, the municipality shall have sixty (60) days to prepare a plan of services. (B)(1) For any plan of services that is not final on the effective date of this act or for any plan of services adopted after the effective date and before the approval of the growth plan by the committee, the county legislative body of the county where the territory subject to the plan of services is located may file a suit in the nature of a quo warranto proceeding to contest the reasonableness of the plan of services.

(2) If the county is petitioned by a majority of the property owners by parcel within the territory which is the subject of the plan of services to represent their interests, a county shall be deemed an aggrieved owner of property giving the county standing to contest the reasonableness of the plan of services. In determining a majority of property owners, a parcel of property with more than one (1) owner shall be counted only once and only if owners comprising a majority of the ownership interests in the parcel petition together as the owner of the particular parcel.

(3) A petition by property owners under this section shall be presented to the county clerk, who shall forward a copy of such petition to the county executive, county assessor of property and the chairperson of the county legislative body. After examining the evidence of title based upon the county records, within fifteen (15) days of receiving the copy of the petition, the assessor of property shall report to the county executive and the chairperson of the county legislative body whether or not in his or her opinion a majority of the property owners by parcel have petitioned the county according to this section.

(4) Notwithstanding any other provision of this chapter, a petition by property owners to the county under this section to contest the reasonableness of the plan of services shall be brought within sixty (60) days of the final adoption of the plan of services, and if the county legislative body adopts a resolution to contest the plan of services, the county shall file suit to contest the plan of services pursuant to this section within ninety (90) days of the final adoption of the plan of services.

(C) If the court finds the plan of services to be unreasonable, or to have been done by exercise of powers not conferred by law, an order shall be issued vacating the same, and the order shall require the municipality to submit a revised plan of services for the territory within thirty (30) days; provided, however, by motion the municipality may request to abandon the plan of services, and in such case the municipality is prohibited from annexing by ordinance any part of such territory proposed for annexation for not less than twenty-four (24) months. In the absence of such finding, an order shall be issued sustaining the validity of such plan of services ordinance, which shall then become operative thirty-one (31) days after judgment is entered unless an abrogating appeal has been taken therefrom.

(D) If a municipal plan of services has been challenged in court under this section and if the court has rendered a decision adverse to the plan, then a municipality may not annex any other territory by ordinance until the court determines the municipality is in compliance.

SECTION 21.

(a) Tennessee Code Annotated, Section 6-51-108(b), is amended by deleting the first sentence and substituting instead the following:

Upon the expiration of six (6) months from the date any annexed territory for which a plan of service has been adopted becomes a part of the annexing municipality, and annually thereafter until services have been extended according to such plan, there shall be prepared and published in a newspaper of general circulation in the municipality a report of the progress made in the preceding year toward extension of services according to such plan, and any changes proposed therein. The governing body of the municipality shall publish notice of a public hearing on such progress reports and changes, and hold such hearing thereon.

(b) Tennessee Code Annotated, Section 6-51-108, is amended by deleting the next to the last sentence in subsection (b) and by adding the following as new subsections (c) and (d):

(c) A municipality may amend a plan of services by resolution of the governing body only after a public hearing for which notice has been published at least fifteen (15) days in advance in a newspaper of general circulation in the municipality when:

(1) The amendment is reasonably necessary due to natural disaster, act of war, act of terrorism, or reasonably unforeseen circumstances beyond the control of the municipality; or

(2) The amendment does not materially or substantially decrease the type or level of services or substantially delay the provision of services specified in the original plan; or

(3) The amendment:

(i) Proposes to materially and substantially decrease the type or level of services under the original plan or to substantially delay those services; and

(ii) Is not justified under (c)(1); and

(iii) Has received the approval in writing of a majority of the property owners by parcel in the area annexed. In determining a majority of property owners, a parcel of property with more than one (1) owner shall be counted only once and only if owners comprising a majority of the ownership interests in the parcel petition together as the owner of the particular parcel.

(d) 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, and may bring an action to challenge the legality of an amendment to a plan of services if such action is brought within thirty (30) days after the adoption of the amendment to the plan of services. If the court finds that the municipality has amended the plan of services in an unlawful manner, then the court shall decree the amendment null and void and shall reinstate the previous plan of services. If the court finds that the municipality has materially and substantially failed to comply with its plan of services for the territory in question, then the municipality shall be given the opportunity to show cause why the plan of services was not carried out. If the court finds that the municipality's failure is due to natural disaster, act of war, act of terrorism, or reasonably unforeseen circumstances beyond the control of the municipality which materially and substantially impeded the ability of the municipality to carry out the plan of services, then the court shall alter the timetable of the plan of services so as to allow the municipality to comply with the plan of services in a reasonable time and manner. If the court finds that the municipality's failure was not due to natural disaster, act of war, act of terrorism, or reasonably unforeseen circumstances beyond the control of the municipality which materially and substantially impeded the ability of the municipality to carry out the plan of services, then the court shall issue a writ of mandamus to compel the municipality to provide the services contained in the plan, shall establish a timetable for the provision of the services in question, and shall enjoin the municipality from any further annexations until the services subject to the court's order have been provided to the court's satisfaction, at which time the court shall dissolve its injunction. If the court determines that the municipality has failed without cause to comply with the plan of services or has unlawfully amended its plan of services, the court shall assess the costs of the suit against the municipality.

SECTION 22. For any land that is presently used for agricultural purposes, a municipality may not use its zoning power to interfere in any way with the use of such land for agricultural purposes as long as the land is used for agricultural purposes.

SECTION 23. Tennessee Code Annotated, Title 6, Chapter 51, Part 1, is amended by adding the following as a new section:

Section __. No provision of this act applies to an annexation in any county with a metropolitan form of government in which any part of the general services district is annexed into the urban services district. Provided, however, any section of Title 6, Chapter 51, Part 1, specifically referenced on the effective date of this act in the charter of any county with a metropolitan form of government shall refer to the language of such sections in effect on January 1, 1998.

SECTION 24. Tennessee Code Annotated, Section 6-51-115, is amended by designating the existing section as subsection (a), renumbering present subsections as subdivisions, and adding the following as new subsections:

(b) In addition to the preceding provisions of this section, when a municipality annexes territory in which there is retail or wholesale activity at the time the annexation takes effect or within three (3) months after the annexation date, the following shall apply:

(1) Notwithstanding the provisions of Section 57-6-103 or any other law to the contrary, for wholesale activity involving the sale of beer, the county shall continue to receive annually an amount equal to the amount received by the county in the twelve (12) months immediately preceding the effective date of the annexation for beer establishments in the annexed area that produced Wholesale Beer Tax revenues during that entire twelve (12) months. For establishments that produced Wholesale Beer Tax revenues for at least one (1) month but less than the entire twelve (12) month period, the county shall continue to receive an amount annually determined by averaging the amount of Wholesale Beer Tax revenue produced during each full month the establishment was in business during that time and multiplying this average by twelve (12). For establishments which did not produce revenue before the annexation date but produced revenue within three (3) months after the annexation date, and for establishments which produced revenue for less than a full month prior to annexation, the county shall continue to receive annually an amount determined by averaging the amount of Wholesale Beer Tax revenue produced during the first three (3) months the establishment was in operation and multiplying this average by twelve (12). The provisions of this subdivision are subject to the exceptions in subsection (c). A municipality shall only pay the county the amount required by this subdivision, for a period of fifteen (15) years.

(2) Notwithstanding the provisions of Section 67-6-712 or any other law to the contrary, for retail activity subject to the Local Option Revenue Act, the county shall continue to receive annually an amount equal to the amount of revenue the county received pursuant to Section 67-6-712(a)(2)(A) in the twelve (12) months immediately preceding the effective date of the annexation for business establishments in the annexed area that produced Local Option Revenue Act revenue during that entire twelve (12) months. For business establishments that produced such revenues for more than a month but less than the full twelve (12) month period, the county shall continue to receive an amount annually determined by averaging the amount of Local Option Revenue produced by the establishment and allocated to the county under Section 67-6-712(a)(2)(A) during each full month the establishment was in business during that time and multiplying this average by twelve (12). For business establishments which did not produce revenue

before the annexation date and produced revenue within three (3) months after the annexation date, and for establishments which produced revenue for less than a full month prior to annexation, the county shall continue to receive annually an amount determined by averaging the amount of Local Option Revenue produced and allocated to the county under Section 67-6-712(a)(2)(A) during the first three (3) months the establishment was in operation and multiplying this average by twelve (12). The provisions of this subdivision are subject to the exceptions in subsection (c). A municipality shall only pay the county the amount required by this subdivision, for a period of fifteen (15) years.

(c) Subsection (b) is subject to these exceptions:

(1) Subdivision (b)(1) ceases to apply as of the effective date of the repeal of the Wholesale Beer Tax, should this occur.

(2) Subdivision (b)(2) ceases to apply as of the effective date of the repeal of the Local Option Revenue Act, should this occur.

(3) Should the General Assembly reduce the amount of revenue from the Wholesale Beer Tax or the Local Option Revenue Act, accruing to municipalities by changing the distribution formula, the amount of revenue accruing to the county under subsection (b) will be reduced proportionally as of the effective date of the reduction.

(4) A county, by resolution of its legislative body, may waive its rights to receive all or part of the revenues provided by subsection (b). In these cases, the revenue shall be distributed as provided in Sections 57-6-103 and 67-6-712 of the respective tax laws unless otherwise provided by agreement between the county and municipality.

(5) Annual revenues paid to a county by or on behalf of the annexing municipality are limited to the annual revenue amounts provided in subsection (b) and known as "annexation date revenue" as defined in subdivision (e)(2). Annual situs-based revenues in excess of the "annexation date revenue" allocated to one (1) or more counties shall accrue to the annexing municipality. Any decrease in the revenues from the situs-based taxes identified in subsection (b) shall not affect the amount remitted to the county or counties pursuant to subsection (b) except as otherwise provided in this subsection. Provided, however, a municipality may petition the Department of Revenue no more often than annually to adjust annexation date revenue as a result of the closure or relocation of a tax producing entity.

(d)(1) It is the responsibility of the county within which the annexed territory lies to certify and to provide to the department of revenue a list of all tax revenue producing entities within the proposed annexation area.

(2) The Department of Revenue shall determine the local share of revenue from each tax listed in this section generated within the annexed territory for the year before the annexation becomes effective, subject to the requirements of subsection (b). This revenue shall be known as the "annexation date revenue".

(3) The Department of Revenue with respect to the revenues described in subdivision (b)(2), and the municipality with respect to the revenues described in subdivision (b)(1), shall annually distribute an amount equal to the annexation date revenue to the county of the annexed territory.

SECTION 25. Tennessee Code Annotated, Section 13-3-102, is amended by inserting in the first sentence between the words "is" and "more" the language "outside the municipality's urban growth boundary or, if no such boundary exists,".

SECTION 26. Tennessee Code Annotated, Section 13-3-401(2), is amended by inserting between the words "is" and "more" the language "outside the municipality's urban growth boundary or, if no such boundary exists,".

SECTION 27. Tennessee Code Annotated, Section 6-1-201(b), is amended by adding the following language as subdivision (1):

If any part of the unincorporated territory proposed for incorporation is within five (5) miles of an existing municipality of one hundred thousand (100,000) or more according to the most recent federal census and if the governing body of such municipality adopts a resolution by a two-thirds (2/3) vote indicating that the municipality has no desire to annex the territory, such territory may be included in a proposed new municipality. A petition for incorporation shall include a certified copy of such resolution from the affected municipality.

SECTION 28. Tennessee Code Annotated, Section 6-1-202, is amended by deleting subsection (a) and substituting instead the following:

The county election commission shall hold an election for the purpose of determining whether this charter shall become effective for any municipality or newly incorporating territory upon the petition in writing of at least thirty-three and one-third percent (33 1/3%) of the registered voters of the municipality or territory. The petition shall include a current list of the registered voters who live within the proposed territory. The petition shall state in a sufficient manner the boundaries of the proposed municipal corporation, which may be done by a general reference to the boundaries then existing if there is one. Upon receipt of the petition the county election commission shall examine the petition to determine the validity of the signatures in accordance with Section 2-1-107. The county election commission shall have a period of twenty (20) days to certify whether the petition has the sufficient number of signatures of registered voters. If the petition is sufficient to call for an election on the issue of incorporation, the county election commission shall hold an election, providing options to vote "FOR" or "AGAINST" the incorporation of the new charter, not less than forty-five (45) days nor more than sixty (60) days after the petition is certified. The date of the election shall be set in accordance with Section 2-3-204. The county election commission shall, in addition to all other notices required by law, publish one (1) notice of the election in a newspaper of general circulation within the territory of the municipality or of the proposed municipality, and post the notice in at least three (3) places in the territory.

SECTION 29. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 30. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 1, 1998

APPROVED this 19th day of May 1998

VITA

Rachel L. Craig was born in Knoxville, Tennessee on February 5, 1952. She attended public schools in Tennessee and Georgia, and graduated from Warren County Senior High School in McMinnville, Tennessee in 1970. She entered the University of Tennessee, Knoxville later that year, where she majored in statistics. She was awarded the Bachelor of Science degree with highest honors in 1974 and the Master of Science degree in 1975.

After teaching for two years in the mathematics department at Lincoln Memorial University in Harrogate, Tennessee, Ms. Craig worked for four years as a statistical programmer analyst at Oak Ridge Associated Universities in Oak Ridge, Tennessee. She then worked for fourteen years in various positions of the information systems group at the Tennessee Valley Authority in Knoxville, Tennessee.

In 1997, Ms. Craig returned to the University of Tennessee to pursue a Master's degree in urban and regional planning. She received the Master of Science in Planning degree in August, 2002.

Ms. Craig is married to James R. Hagerman of Knoxville, Tennessee. She is currently working as a planning consultant.