

Hot Topics for Tennessee cities and towns

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New Law Requires Countywide Growth Plan and Limits Annexation and Incorporation

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Public Acts 1998, Chapter 1101, is the new law governing annexation and incorporation in Tennessee. It's effective date is May 19, 1998. It makes the following changes to *Tennessee Code Annotated*:

- adds a new Chapter 58 in Title 6, composed of Sections 3 through 16.
- adds a new Section to Title 6, Chapter 51, Part 1.
- makes significant amendments to Sections 6-1-201, 6-1-202, 6-51-102, 6-51-108, 6-51-115, 7-2-101, 13-3-102, and 13-3-401.

Changes in annexation and incorporation include a required countywide land use planning process that limits annexations and incorporations to certain areas and subjects them to new restrictions. The law also gives counties a major new role in the annexation planning process and in annexation and incorporation decisions. It also preserves their revenues in newly-annexed and incorporated territories.

This summary is organized as follows:

- I. Annexation** – how annexation is accomplished before and after completion of the required countywide growth plan, including new limitations and requirements for all annexations.
- II. Countywide Planning** – how the required countywide growth plan is created, adopted, and amended, as well as the criteria for setting the various boundaries required in the plan.
- III. Plan of Services in Annexed Areas** – extensive new rules that govern the creation and enforcement of plan of services for newly-annexed areas, including the county's standing in disputes over plan of services.
- IV. Incorporation** – how incorporation is accomplished before and after Jan. 1, 1999, including the plan of services requirements for newly-incorporated municipalities.
- V. Tax Revenue Implications of Annexation** – how situs-based taxes are distributed between the county and the city following annexations and incorporations.
- VI. Miscellaneous Provisions** – zoning implications of the act, the required Joint Economic and Community Development Board, and other significant provisions.

I. ANNEXATION

The law governs annexation both before and after the required countywide growth plan is adopted, including *any* annexation initiated after May 19, 1998. Counties have been added to the parties who have legal standing to contest annexations. In addition, as noted in Section III, *Plan of Services in Annexed Areas*, counties and other persons also have the right to challenge the reasonableness of plans of services.

A. Annexation BEFORE the Adoption of the Growth Plan

After the effective date of the new law (May 19, 1998) and before final adoption of the countywide growth plan, cities still have the right to annex territory by ordinance or by referendum. However, that right is considerably restricted, especially annexation by ordinance.

(1) Annexation by Ordinance – Before Growth Plan

There appear to be two methods for contesting an annexation ordinance before the adoption of the growth plan:

(a) **First Method:** The county legislative body can contest the annexation, but only if three events occur:

(i) The county must pass a resolution disapproving the annexation within 60 days of the final passage of the annexation ordinance. Passage of such a resolution would change the effective date of the annexation to 90 days after final passage.

(ii) Within the same 60 days, a majority of the property owners *within* the territory to be annexed must petition the county to contest the annexation. The county property assessor has 15 days after receiving the petition to determine if it represents 50 percent of the property holders. He must report on his finding to the county executive and to the county legislative body. Successful completion of such a petition gives the county standing to contest an annexation ordinance.

(iii) The county legislative body may then adopt a resolution contesting the annexation and authorizing a suit. The suit must be filed within 90 days of the final passage of the annexation ordinance. Therefore, the resolution in most cases would need to pass in less than 90 days. The county is not required to take the final step of authorizing a suit.

(b) **Second Method:** An aggrieved owner of property that borders *on or lies within the territory proposed for annexation* appears to have the right to contest the annexation under T.C.A. 6-51-103. Apparently, the property owner has 90 days to file suit.

(c) **Jury Trial and Burden of Proof:** There appear to be separate standards for jury trial and burden of proof depending on whether the county or aggrieved property owner is the plaintiff.

(i) County as the Plaintiff

Jury Trial: Cases are tried by chancellor or circuit court judge without a jury.

Burden of Proof: Burden of proof is on county to prove that:

- the annexation is “.... unreasonable for the overall well-being of the communities involved,” or
- “the health, safety, and welfare of the citizens and property owners of the municipality and (the annexed) territory will not be materially retarded in the absence of such annexation.”

(ii) Aggrieved Property Owner as Plaintiff

Jury Trial: Apparently, plaintiff is entitled to jury trial.

Burden of Proof: Apparently, burden of proof is on the city to prove the reasonableness of annexation.

(2) Annexation by Referendum – Before Growth Plan

Cities are still entitled to annex by referendum before the adoption of the growth plan, under T.C.A. 6-51-104 and 105. However, if there are no residents in the territory, annexation by ordinance must be used, and the county may approve or intervene in the process as described above.

B. Annexation AFTER the Adoption of the Growth Plan

(1) Annexation by a City Within Its Urban Growth Boundary (UGB) – After Growth Plan

Within its UGB, a city can use any of the annexation methods provided by Tennessee’s annexation law contained in T.C.A. Title 6, Chapter 51. This includes annexation by ordinance and by referendum, as modified by the new law.

Presumably, aggrieved owners of property that borders on or lies within the territory annexed have 30 days to challenge an annexation.

(2) Annexation by a City Outside Its UGB

A city may annex territory outside its UGB in two ways:

- (a) by obtaining approval of a change in its UGB in the same way that the original growth plan was established, and
- (b) by referendum, under T.C.A. 6-51-104 and 105.

(3) Jury Trial and Burden of Proof

(a) **Jury Trial:** Cases are tried by chancellor or circuit court judge without a jury.

(b) **Burden of Proof:** Burden of proof is on the plaintiff to prove that:

- the annexation is “....unreasonable for the overall well-being of the communities involved,” or
- “the health, safety, and welfare of the citizens and property owners of the municipality and (the annexed) territory will not be materially retarded in the absence of such annexation.

C. Restrictions on Corridor Annexations

(1) Corridor Annexations – Before Growth Plan

Before the adoption of the growth plan, "corridor" annexations achieved by annexing public rights of way, easements owned by governmental or quasi-governmental entities, railroads, utility companies, or federal entities (such as TVA, DOE, etc.), or by annexing natural waterways, are prohibited, except under the following conditions:

- (a) the annexed areas also include each parcel of property contiguous on at least one side of the right of way, easement, waterway, or corridor; or
- (b) the city receives the approval of the county legislative body of the county where the territory proposed to be annexed is located; or
- (c) the owners of the property at the end of the corridor petition the city for annexation, the owners agree to pay for necessary infrastructure improvements to the property, the property is larger than three acres, the property is located within 1.5 miles of the existing boundaries of the city, and the corridor annexation is not an extension of any previous corridor annexation.

(2) Corridor Annexations – After Approval of the Growth Plan

After the adoption of the countywide growth plan, these particular provisions on corridor annexations no longer apply and any annexation within the UGB, presumably including a "corridor" annexation, is authorized. (Development of the UGB is discussed in the following section on Countywide Planning.)

However, any "corridor" annexations completed before or after the effective date of the new act (May 19, 1998) might still be challenged under *State of Tennessee ex rel. Earhardt v. City of Bristol*, Tennessee Supreme Court, filed April 27, 1998.

D. Annexation by a City in More Than One County

A city can annex by ordinance upon its own initiative only territory within the county in which the city hall is located. There are three main exceptions:

- (1) a municipality located in two or more counties as of Nov. 25, 1997, may annex in all such counties unless the percentage of the city population residing in the county or counties other than the one in which the city hall is located is less than 7 percent of the total population of the municipality; or
- (2) a municipality may annex in the second county if the legislative body of the county in which the territory proposed for annexation is located approves the annexation by resolution; or
- (3) the city may annex in any county in which, on Jan. 1, 1998, it provided sanitary sewer service to 100 or more residential and/or commercial customers.

The following table lists all Tennessee municipalities that are in more than one county. Those cities that meet the 7 percent population requirement in the non-city hall county listed above in provision 1 and thus, can annex in the second county, appear with an asterisk (*). The population distribution percentages are drawn from the 1990 Census, which is the only source for this data. The total population figures, however, are the State Planning Office's 1997 Certified Population figures. It is entirely possible that a few cities on the list, particularly Kingsport and Tullahoma, may now meet the 7 percent requirement through population growth in their second county areas. Absent a special census, there is no way to determine this, and the new law is silent on what source of information is to be used for such decisions.

Table 1. Cities/Towns in More than One County**Sources:** Population Percentage by County: 1990 Census Population

1997 Certified Population: Local Planning Assistance Office

(* = Can annex in the second & third county, except Oliver Springs in Morgan County)

City (City Hall County)	Total Pop.	County 1	%	County 2	%	County 3	%
Enville (Chester)	244	Chester	100	McNairy	0		
*Goodlettsville (Davidson)	12,526	Davidson	73	Sumner	27		
Grand Junction (Hardeman)	365	Hardeman	99	Fayette	1		
Iron City (Lawrence)	402	Lawrence	100	Wayne	0		
Johnson City (Washington)	52,739	Washington	98	Carter	1.8	Sullivan	.2
*Kenton (Obion)	1,397	Obion	44	Gibson	56		
Kingsport (Sullivan)	41,338	Sullivan	93.9	Hawkins	6.1		
Lake City (Anderson)	2,166	Anderson	96	Campbell	4		
McKenzie (Carroll)	5,197	Carroll	94.4	Henry	.2	Weakley	.4
*Milledgeville (McNairy)	290	McNairy	52.7	Hardin	15.1	Chester	32.2
*Monteagle (Grundy)	2,562	Grundy	61	Marion	39		
*Oak Ridge (Anderson)	27,310	Anderson	91	Roane	9		
*Oliver Springs (Roane)	3,433	Roane	28.5	Anderson	70	Morgan	1.5
*Petersburg (Lincoln)	612	Lincoln	71	Marshall	29		
Ridgetop (Robertson)	1,843	Robertson	95.5	Davidson	4.5		
*Scotts Hill (Henderson)	699	Henderson	65	Decatur	35		
Silerton (Hardeman)	102	Hardeman	98	Chester	2		
Spring Hill (Maury)	4,357	Maury	100	Williamson	0		
Trimble (Dyer)	766	Dyer	100	Obion	0		
Tullahoma (Coffee)	16,761	Coffee	94	Franklin	6		
*White House (Sumner)	5,594	Sumner	43	Robertson	57		

II. COUNTYWIDE PLANNING

A. Coordinating Committee

In each county, a "Coordinating Committee" must be established to develop the required countywide growth plan, and submit the plan for ratification to the county and each city within the county. The membership of this committee is to include:

<u>Category</u>	<u>Number</u>
County Executive, or designee	1
Mayor of each municipality in the county (or their designees)	1 (minimum)
One member from the governing body of the largest municipally-owned utility	1 (0 possible)
One member from the governing body of the largest non-municipally-owned utility	1 (0 possible)
One member appointed by the board of directors of the county's soil conservation district (expressly representing "agricultural interests")	1
One member appointed by the board of the school system having the largest student enrollment	1
One member appointed by the largest chamber of commerce	1
Two members appointed by the county executive	2
Two members appointed by the mayor of the largest municipality	2

This scheme will produce a committee with a minimum of 10 members. The membership will be as high as 20 or 21 in some counties, depending on the number of municipalities and utility arrangements. The committee must be appointed by Sept. 1, 1998.

B. Alternatives to Coordinating Committee

(1) Alternative Coordinating Committees by Agreement of County and Cities

The governing bodies of the county and each city within the county can all agree that another entity shall perform the duties of the coordinating committee.

(2) Special-Case Counties

In any county where the largest city is at least 60 percent of the county population and no other city's population is larger than 1,000, the coordinating committee is the planning commission of the largest city, combined with the planning commission of the county. In addition, the mayor of the largest city, and the county executive can jointly appoint as many additional members as they determine are necessary. This alternative applies to Madison and Montgomery Counties. This will exclude Medon (pop. 233) from representation in the Madison County process; Clarksville is the only city in Montgomery County.

(3) Counties with Metropolitan Governments

Counties with Metropolitan Governments (Davidson and Moore) are not required to appoint a committee or develop a plan. Any city that is in a county with Metropolitan Government and also in another county must participate in the second county's planning process. This applies only to Goodlettsville, which is in both Davidson and Sumner Counties.

C. Developing the Countywide Plan

The coordinating committee is charged with developing a countywide growth plan based on a 20-year projection of growth and land use, using a variety of measures, which divides the county into three types of areas:

Urban Growth Boundaries (UGB) – the municipality and contiguous territory where high density residential, commercial, and industrial growth is expected, or where the municipality is better able than other municipalities to provide urban services.

Planned Growth Areas (PGA) – territory outside municipalities where high or moderate density commercial, industrial, and residential growth is projected.

Rural Areas (RA) – territory not in a UGB or a PGA, and that is to be preserved as agricultural lands, forests, recreational areas, wildlife management areas or for other uses other than high density commercial, industrial, or residential development.

(1) Proposing Urban Growth Boundaries (UGBs) – Municipalities

(a) Criteria for Defining the UGB

The Urban Growth Boundary is to include territory:

- that is reasonably compact but large enough to accommodate 20 years of growth;
- that is contiguous to the existing municipal boundaries;
- that is reasonably likely to experience growth over the next 20 years, based upon history, economic, and population trends, and topographical characteristics;
- that reflects the municipality's duty to fully develop the area within the current boundaries, and to control and manage future growth within the UGB, taking into account the impact on forests, agriculture, and wildlife; and
- where the municipality is better able than other municipalities to efficiently and effectively provide urban services.

(b) Factors to be Considered in Developing the UGB

Every municipality is required to include the following tasks in the process for developing its UGB:

- develop and report population growth projections in conjunction with the University of Tennessee;
- determine and report the costs and projected costs of core infrastructure, urban services, and public facilities necessary to fully develop the resources within the city's current boundaries;
- determine and report the costs of expanding such facilities and services throughout the territory proposed for inclusion within the UGB;
- determine and report on the need for additional land suitable for high-density development after considering all areas within the city's current boundary that can be used, reused, or redeveloped to meet such needs; and
- examine and report on agricultural areas, forests, recreational areas, and wildlife management areas under consideration for inclusion in the UGB, and on the likely long-term impact of urban expansion in such areas.

(c) Public Hearing Requirements

Each municipality will hold two public hearings with at least 15 days advance notice in a newspaper of general circulation in the county before formally proposing its UGB to the coordinating committee.

(2) Proposing Planned Growth Areas (PGAs) and Rural Areas (RAs) – Counties

Each county is required to follow the same criteria as cities in defining PGAs, which are growth areas that will fall outside of any city's UGB. Rural Areas are the remainder of the county not designated as UGBs or PGAs. The county will also hold two public hearings, with the same public notice requirement before formally proposing PGAs and RAs to the coordinating committee.

(3) Coordinating Committee Process

The coordinating committee will hold two public hearings with at least 15 days advance notice in a newspaper of general circulation in the county. After the hearings, and **no later than Jan. 1, 2000**, the coordinating committee will submit its recommended growth plan to the governing bodies of the county and of each municipality in the county for their approval. (In the case of a municipality surrounded by one or more municipalities, the municipality's corporate limits are its UGB, and the city will not have a vote on the plan.)

In developing the plan, the legislation encourages the coordinating committee to seek the assistance of the Local Planning Office, CTAS, and MTAS.

No later than 120 days after receiving the recommended growth plan from the coordinating committee, the county, and municipal governing bodies in the county must either ratify or reject the plan. The failure of a county or municipality in the county to do one or the other within the 120 days serves as a ratification of the recommended growth plan.

In Madison and Montgomery Counties, the coordinating committee submits its recommended growth plan to the county legislative body for ratification. That body may only disapprove the recommendation of the coordinating committee if, by two-thirds vote, it makes an affirmative finding that the committee acted in an arbitrary or capricious manner or abused its official discretion in applying the law. If the such finding is made, the dispute resolution process described in this section applies.

(4) Annexation Reserve Agreements

Any annexation reserve agreements between one or more cities, or between one or more cities and a county, which are in effect on the effective date of the act (May 19, 1998) remain in effect. Such agreements may be subsequently amended by consensus of the parties to the agreement. The provisions of the act applicable to annexations also apply to annexations made pursuant to such agreements and amended agreements. The act specifically provides that in a county with a charter form of government (Shelby and Knox Counties), the annexation reserve agreements in effect on Jan. 1, 1998, satisfy the requirement for a growth plan, and the growth plan submitted for final approval by the county is based on those agreements. However, the growth plans approved for all other counties apparently must also respect any annexation reserve agreements and amendments.

(5) Procedure Upon Rejection by a City or County

If a city or county rejects the proposed plan, it must submit its objections and supporting reasons (presumably in writing) to the coordinating committee for reconsideration. Following reconsideration of the recommended growth plan, the coordinating committee may submit to the county or city a revised recommended growth plan or its original recommended growth plan.

In resolving disputes between cities over UGBs, the committee is directed to favor the municipality that is "better able to efficiently and effectively provide urban services within the disputed territory." Consideration is also to be given to any municipality that "relied upon priority status conferred under prior annexation laws" and had incurred expenses based on that status to prepare for annexation of the disputed territory. This will favor those cities with the larger population of the two, since under preexisting T.C.A. 6-51-110(b) the larger city has priority in an annexation dispute with a smaller city.

If the city or county rejects whichever plan the coordinating committee submits to it the second time, an impasse is declared, and the county or any city in the county may request the Tennessee Secretary of State to appoint a dispute resolution panel.

(6) Role of the Dispute Resolution Panel

In the event of a dispute resolution request, the Tennessee Secretary of State must promptly appoint a dispute resolution panel. The panel will consist of three administrative law judges (or one judge, if the county and all municipalities in the county agree) trained in dispute resolution and mediation.

The panel will attempt to mediate the dispute. If resolving the dispute by mediation fails, the panel would then propose a non-binding resolution to the county and the cities. The county and the cities have a reasonable time to consider the resolution and either adopt or reject it. If the county and/or the city governing bodies reject the resolution, they must then submit their final recommendations to the panel. Then, "for the sole purpose of resolving the impasse the panel shall adopt a growth plan."

All costs of the dispute resolution process will be billed by the Secretary of State to the participating county and cities, prorated by population. Any failure to pay this assessment will lead to withholding state-shared taxes to satisfy the bill.

(7) Adoption of the Growth Plan by Local Government Planning Advisory Committee

No later than **July 1, 2001**, the growth plan ratified by the county and cities within the county, or adopted by the dispute resolution panel, must be submitted to and approved by the Local Government Planning Advisory Committee (LGPAC), an appointed body of local planning officials established in the Department of Economic and Community Development by T.C.A. 4-3-727 to oversee the establishment, appointments to, and operations of regional planning commissions in the state.

The LGPAC *must* approve the growth plan

- if the UGB, PGA, and RA boundaries were developed by the coordinating committee and ratified by the county and each city in the county, or
- if it reflects certain annexation reserve agreements entered into by any county with a charter form of government (Shelby and Knox Counties). Apparently, the same is true for annexation reserve agreements entered into by other cities and/or counties.

In all other cases, the LGPAC approves growth plans only if the UGB, PGA, and RA boundaries conform to the requirements contained in the law. If the LGPAC determines that the UGB, PGA, and RA boundaries do not conform to those requirements, it may adopt alternative UGB, PGA, and RA boundaries for the sole purpose of ensuring that they comply with the requirements of the law.

(8) Term of the Approved Growth Plan and Amendments

In all counties except charter counties (Shelby and Knox), once a growth plan has been formulated and approved by the LGPAC, the plan will stay in effect for three years, "absent a showing of extraordinary circumstances," a term that is not further defined in the law. After the end of the three-year period, a city or county may propose amendments to the plan by filing notice with the county executive and the mayor of every city. The coordinating committee is then reestablished and uses the original process to amend the growth plan.

In charter counties (Shelby and Knox), amendments (to the annexation reserve scheme that serves as the growth plan) may be proposed any time following the same notice requirements to the county and all municipalities.

D. Appealing a Growth Plan to the Courts

Any "effected" county or city, any resident of the county, or any owner of real property located in the county can obtain judicial review of the growth plan.

Suits must be filed in the chancery court of the effected county within 60 days after the final approval of the growth plan by LGPAC. The suit is heard by the court without a jury. The county, city, or other person bringing the suit has the burden of showing by a preponderance of the evidence that the UGB, PGA, or RA boundaries were approved in "an arbitrary, capricious, illegal, or other manner characterized by the abuse of official discretion."

The filing of a suit does not automatically stay the effectiveness of the plan, but the chancellor may order a stay if any party would be likely to suffer injury if a stay were not granted.

If the chancery court does find against the growth plan, it vacates the same "in whole or in part," and the process for adopting the appropriate new UGB, or PGA, or RA boundary or boundaries is the same as for the adoption of the original urban growth plan.

E. Incentives/Penalties for Completing/Not Completing the Growth Plan

(1) Incentives for Completing the Growth Plan

Beginning July 1, 2000, any county (and municipalities within the county) that have an LGPAC-approved countywide growth plan will receive an additional 5 percent score in any evaluation formula for allocation of:

- Private activity bonding authority
- Community Development Block Grants
- Tennessee Industrial Infrastructure grants
- Industrial Training Service grants
- State revolving fund loans for water and wastewater systems
- HOUSE and HOME grants and some other Tennessee Housing Development Agency programs

(2) Penalties for Not Completing the Growth Plan

Effective July 1, 2001, any county (and municipalities within the county) that does not have an LGPAC-approved countywide growth plan in place will not be eligible for or receive:

- Community Development Block Grants
- Tennessee Industrial Infrastructure grants
- Industrial Training Service grants
- Tourist Development grants
- Tennessee Housing Development Agency grant programs
- Intermodal Surface Transportation Efficiency Act (ISTEA) funds or any subsequent federal authorization for transportation funds.

The county and its cities will remain ineligible for all of these programs until a growth plan is adopted.

III. PLAN OF SERVICES IN ANNEXED AREAS

The plan of services requirement applies to annexation ordinances that were not final on Nov. 25, 1997. In such cases where the city has not prepared a plan of services, it will have 60 days from the effective date of the act (May 19, 1998) to do so.

The governing body of the annexing city must adopt a plan of services that is "reasonable" with respect to both the scope of services to be delivered and to the implementation schedule. It is not clear whether a "reasonable" scope of services includes all of the services listed in Section A, *Plan of*

Services Requirements, below, or only the same services other citizens of the city receive. However, it appears that the plan of services must *address* all of the services below.

A. Plan of Services Requirements

The plan of services "shall include":

- police and fire protection
- water, electrical, and sanitary sewer services
- road and street construction and repair
- recreational facilities and programs
- street lighting
- zoning services

The plan of services may exclude services that are provided by another public or private agency other than those services provided by the county.

The plan of services must be submitted to the planning commission within 90 days. The city governing body is required to hold a public hearing on the plan of services after giving 15 days written notice of the hearing in a newspaper of general circulation in the city. The notice must include the locations where at least three copies of the plan of services are available for public inspection.

If the city "is in default on any other plan of services," it may not annex any other territory.

If a city operates a school system, any students annexed into the city from a neighboring school system may continue to attend their present school until the beginning of the next school year, unless the two school systems agree otherwise.

B. County Standing to Contest the Plan of Services

(1) County Standing Before Approval of the Growth Plan

The county has standing to challenge the reasonableness of any plan of services not final on the effective date of the act, or any plans of services adopted after the effective date of the act (May 19, 1998), but before the approval of the growth plan.

(2) County Standing After Approval of the Growth Plan

If the county is petitioned by a majority of the property owners within the territory proposed for annexation, the county is treated as an aggrieved owner of property with standing to challenge the reasonableness of the plan of services. The petition must be filed with the county clerk within 60 days of the adoption of the plan of services. The county property assessor has 15 days to determine whether the petition represents a majority of the property owners. The assessor reports his or her determination to the county executive and the county legislative body. The county legislative body may then decide by resolution to contest the reasonableness of the plan of services. The suit must be filed within 90 days of the adoption of the plan of services.

(3) Amending a Plan of Services

A plan of services can be amended under limited conditions:

- (a) an occurrence such as a natural disaster, an act of war, terrorism, or other unforeseen circumstances beyond the control of city;
- (b) the amendment does not substantially or materially decrease the type or the level of services, or delay the provision of such services; or

(c) the amendment has received approval in writing of a majority of the property owners by parcel in the annexed area.

(4) Court Review of the Plan of Services

If the court finds the plan of services to be unreasonable or outside the city's powers conferred by law, the city has 30 days to submit a revised plan of services. However, the city can by motion request to abandon the plan of services. In that case, it cannot annex by ordinance any part of the territory originally proposed for annexation for 24 months. The city cannot annex *any* territory where the court has issued a decision adverse to a plan of services until the court determines the plan is in compliance.

Any aggrieved property owner can sue the city to enforce the plan of services after 180 days following the date the annexation ordinance takes effect. A property owner can also challenge the legality of an amendment to the plan of services within 30 days following the adoption of the amendment. The right to sue ends when the plan of services have been fulfilled.

The court has the duty to issue a writ of mandamus to compel the city to comply with the plan of services, establish written timetables for the provision of services, and enjoining the city from further annexations until the services called for in the plan of services have been provided to its satisfaction.

IV. INCORPORATION

A. Incorporation BEFORE Jan. 1, 1999

Prior to Jan. 1, 1999, new cities may be incorporated provided they meet the population and distance requirements contained in the general law charters. In addition those incorporations must meet all of the requirements contained in Section C, *Incorporation AFTER Jan. 1, 1999*.

B. Special Incorporation Exceptions

(1) Prior Incorporation Attempts

A second incorporation election is permitted for territories that attempted to incorporate under Public Acts 1997, Chapter 98, and Public Acts 1996, Chapter 666, (Midtown, Hickory Wythe, Walnut Grove, Helenwood, and Three Way). If the second incorporation election is successful, the new city in question has priority over any prior or pending annexation ordinance by any other municipality.

(2) Exception for Seymour/Knoxville

The incorporation of a territory is permitted that under the general law charters is within the prohibited distance of a city of more than 100,000, if that city adopts a resolution by two-thirds vote, indicating that it has no desire to annex the territory proposed for incorporation. This provision allows for an incorporation attempt by Seymour, southeast of Knoxville in Knox and Sevier Counties.

There is no express time limit on when those special incorporation elections must be held, but apparently, it is Jan. 1, 1999. Any such new city must also meet the requirements listed in the following section.

C. Incorporation AFTER Jan. 1, 1999

After Jan. 1, 1999, (one year *prior* to the final date for the adoption of growth plans) new cities may only be incorporated in a PGA. Presumably, an incorporation petition is filed as prescribed by the

appropriate general law charter. The county legislative body must approve the corporate limits and the new UGB of the proposed city before the incorporation election can be held.

D. Conditions that Apply to ALL Newly-Incorporated Cities

All newly-incorporated cities, including those incorporated under special provisions of the act, must meet the following conditions:

(1) Property Tax Required

All new cities must levy a property tax that raises revenue at least equal to the annual revenues the city receives from state-shared taxes. The tax must be levied *and collected* before the city receives state shared taxes.

(2) County Revenue Held Harmless

The county continues to receive situs-based wholesale beer and local option sales tax revenue from businesses in the newly-incorporated area for 15 years in the same manner as if the territory had been annexed. (See Section V, *Tax Revenue Implications of Annexation* listed below.) The county continues to receive all other situs-based state shared tax revenues until the July 1 date following the incorporation.

(3) No New City School Systems

The new city cannot establish a city school system. The same provision applies to existing cities that do not already have a school system.

(4) Plan of Services

(a) The plan of services required for a new incorporation is similar to the binding enforceable plan required under the act when a city annexes territory.

(b) The plan of services must be adopted by ordinance within six months of incorporation.

(c) The plan of services must be published in a newspaper of general circulation in the city.

(d) Citizens in the newly incorporated municipalities have all the rights and remedies prescribed by *T.C.A. 6-51-108* for plans of services for annexed areas, including:

(i) the annual publication in a newspaper of general circulation in the city of a report on the progress in last year on fulfilling the plan of services, and any proposed changes;

(ii) a public hearing on the report by the city governing body; and

(iii) ability to obtain a writ of mandamus to compel the city to complete items (i) and (ii).

(e) The plan of service can be amended and enforced in the manner outlined in Section III, *Plans of Services in Annexed Areas*.

(5) Simplified Petition for Incorporation

T.C.A. 6-1-202 is changed to clarify and simplify the petition for incorporation. The most significant change is that the petition must include the list of registered voters in the territory proposed for incorporation. Under the prior law, the list had to include the persons who would be qualified voters in the territory, which probably included everyone more than 18 years of age.

V. TAX REVENUE IMPLICATIONS OF ANNEXATION

A. County Held Harmless for Revenue Losses for 15 Years

For 15 years following any annexation or new incorporation, the county is "held harmless" for the loss of wholesale beer and local option sales tax revenues that would otherwise have gone to the city under prior law. This dollar amount for any annexed tax-generating property is referred to as "annexation date revenue."

The only exceptions to this rule are:

- if the Wholesale Beer Tax is repealed;
- if the Local Option Revenue Act is repealed; or
- if the General Assembly changes the formula for the distribution of wholesale beer or local option sales tax revenues, in which case the county's entitlement to revenue will be reduced proportionally.

(1) Increases and Decreases in "Annexation Date Revenue"

Increases in the beer and local option sales tax beyond the annexation date revenue go into the annexing city's coffers.

Decreases fall on the city to absorb except where there has been a closure or relocation of a tax-producing business in the annexed territory. However, the act is vague on the question of whether the city is absolutely entitled to a deduction for decreases in such cases. It provides only that the city can "petition" the Department of Revenue annually for an adjustment in the annexation date revenue for those reasons.

(2) County Can Waive Its Rights to Revenues

The county legislative body can waive its right to receive all or part of its revenues, in which case the revenue shall be distributed as the law presently provides (*T.C.A.* 57-6-103 and 67-6-712), unless the county and city have agreed to a different manner of distribution.

VI. MISCELLANEOUS PROVISIONS

A. The Effect of Special Agreements and Contracts Upon the Growth Plan

Cities and counties are permitted to make binding agreements that reallocate or restrain the powers and privileges they have under the act, including with respect to annexation and annexation date revenue. Any agreements between cities, and between cities and counties, reserving territory for future annexation and are in effect on the effective date of the act (May 19, 1998) are ratified and binding.

In addition, cities and property owners can enter into written contracts relative to the right of the city to annex, and the law does not invalidate an annexation ordinance arising from a written contract between a city and a property owner in existence on the effective date of the law. However, all the new requirements of the law apply to any territory annexed under such an agreement.

B. Zoning Implications

(1) Restrictions on Municipal Planning Commission

A municipal planning commissions designated as a regional planning commission cannot exercise jurisdiction beyond its UGB, in spite of the authority given to such a planning commission in *T.C.A.*, Title 13. However, if a county has no zoning, a city can provide zoning and subdivision regulations beyond its corporate limits with the approval of the county legislative body.

(2) Restrictions on City Zoning of Agricultural Land

A city cannot use its zoning power to interfere with the use of land presently being used for agricultural purposes. (It is not clear what this limitation accomplishes, considering that Tennessee's Preexisting Nonconforming Use Law already generally protects present land uses against zoning changes.)

(3) County Zoning in UGBs, PGAs, and RAs

Under the law, counties can "establish separate zoning regulations within a PGA, for territory within an UGB or within a RA." The meaning of this provision is not clear with respect to existing law permitting cities to zone within their own boundaries. Presumably, it applies only to territory in the UGB outside of municipal limits.

(4) County Services in Planned Growth Areas (PGAs)

Counties can provide or contract for services in a PGA and set a separate tax rate for such services. Presumably, this provision includes all types of governmental and proprietary services including utilities.

C. Economic and Community Development Board

(1) Establishment and Purpose

A joint economic and community development board must be established by interlocal agreement under T.C.A. 5-1-113. The purpose of the board is to foster communication among governmental entities, industry, and private citizens on economic and community development.

(2) Membership and Terms

Membership is determined by the interlocal agreement, but must include the county executive, the mayor or city manager of ". . . the larger municipalities in the county," and one landowner. In counties with multiple small municipalities, the interlocal agreement may provide for rotating terms between the smaller cities. Terms are to be staggered, except for the elected officials, whose terms are to correspond with their terms of elected office. No term can exceed four years.

(3) Executive Committee

The board selects an executive committee, but it must include the county executive and the mayors or city managers of the "larger municipalities in the county."

(4) Meetings

The board must meet at least four times a year, and the executive committee must meet at least eight times a year.

(5) Funding

All local governments represented on the board fund the board's activities according to a formula set out in the act. The formula uses the population in the federal decennial census, as adjusted by any special censuses occurring at least five years after the certification of the federal census results. The board may also accept donations, grants, and contracts from any source.

D. Metropolitan Government

This section adds to the ways a Metropolitan Government Charter Commission is created under T.C.A. 7-2-101. This section is of interest only to those communities considering a metropolitan government study/proposal process.

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