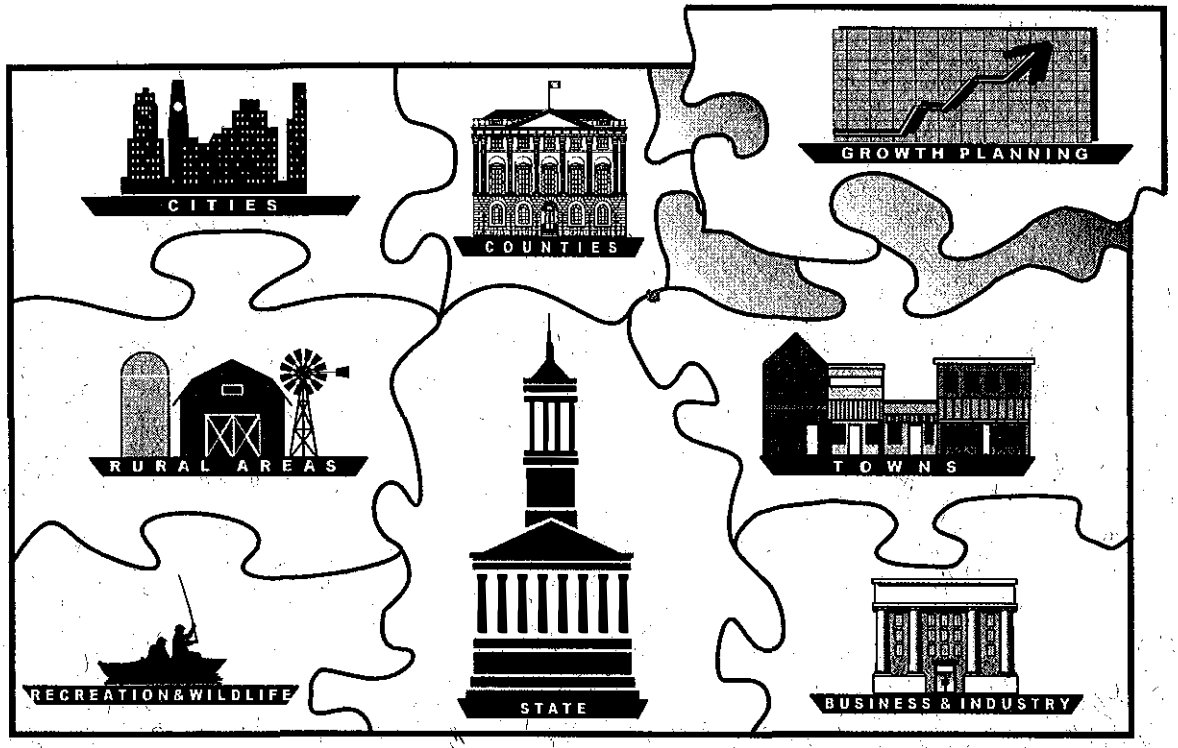
Growth Policy, Annexation, and Incorporation

Under Public Act 1101 of 1998:

A Guide for Community Leaders



A Joint Publication of

The University of Tennessee Institute for Public Service

and its agencies:

County Technical Assistance Service
Municipal Technical Advisory Service
Center for Government Training

and

The Tennessee Advisory Commission on Intergovernmental Relations

August 1998

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Growth Policy, Annexation, and Incorporation Under Public Act 1101 of 1998: A Guide for Community Leaders

INTRODUCTION

The Ad Hoc Study Committee on Annexation, established by Lt. Governor Wilder and Speaker Naifeh, worked through the fall of 1997 and into the 1998 legislative session to develop a new vision for growth policy in Tennessee. Under the leadership of its co-chairs, Senator Robert Rochelle and Representative Matt Kisber, the Ad Hoc Committee vigorously pursued a solution that seeks to meet the public service demands of commercial and residential growth, while maintaining the character of Tennessee's rural areas. The general concepts embraced by the Ad Hoc Committee found substantial support in the House and Senate. Ultimately, differences between the two bodies were resolved in a conference committee, and the House and Senate approved the conference committee report by an overwhelming margin. Public Chapter 1101 became law on May 19, 1998, with the signature of Governor Don Sundquist.

Through Public Chapter 1101, the General Assembly provided the structures and processes for local governments to cooperatively determine their own future, but did not impose a single statewide solution. Instead, Public Chapter 1101 provides sufficient flexibility so that local governments may tailor their growth plans to suit the unique character of their area. With flexibility and local prerogative, the act positions local governments as the linchpins in the process of successful implementation. Given the complexity and importance of the task before them, local government leaders will need to take action almost immediately. Prompt response by city, county, and other local leaders will help ensure that solutions are made based upon careful planning, public input, and reasoned negotiation.

In order to facilitate consistent statewide application of this act, the different organizations that provide assistance to local governments have joined in a cooperative effort to formulate a unified approach to education and an analytical summary of the law. Such groups as the Tennessee Advisory Commission on Intergovernmental Relations (TACIR), the University of Tennessee's Institute for Public Service (including the Municipal Technical Advisory Service (MTAS), the County Technical Assistance Service (CTAS), and the Center for Government Training (CGT)), the Division of Local Planning, development districts, and other agencies have participated in this effort.

Furthermore, the agencies participating in the development of this document relied heavily upon the guidance of the "Implementation Steering Committee," which was created to ensure that a proactive and cooperative approach is taken to implement this important growth policy act. The Implementation Steering Committee members include:

- Tom Ballard, Associate Vice President for Public Service, UT-IPS (Chair)
- J. Rodney Carmical, Executive Director, CTAS
- Sam Edwards, Planning Advisor
- Harry A. Green, Executive Director, TACIR
- John Morgan, Executive Assistant to the State Comptroller

- Maynard Pate, Secretary/Treasurer, Tennessee Development District Association
- Robert E. Schettler, Acting Executive Director, UT Center for Government Training
- Robert P. Schwartz, Executive Director, MTAS
- Bill Terry, Planning Advisor
- Don Waller, Director, Division of Local Planning

Multi-agency staff support for the Implementation Steering Committee is being coordinated by Paula Mealka, Director of Special Projects, UT-IPS. The following summary and analysis is a joint product of IPS, TACIR, MTAS, CTAS, and CGT. It is organized as follows:

I. **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.

II. **Annexation** – how annexation is accomplished before and after completion of the required countywide growth plan, including new limitations and requirements for all annexations.

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.

Brief Summary

The following is a brief summary, organized according to subject areas, of the growth policy legislation that passed the Tennessee General Assembly in 1998. There are numerous exceptions and limitations in the bill which cannot all be covered in a brief treatment; more detailed information is contained in the longer summary.

I. COUNTYWIDE PLANNING

The law calls for a comprehensive growth policy plan in each county that outlines anticipated development during the next 20 years. The initial draft of the growth plan is formulated by a coordinating committee whose membership is composed of representatives of the county, cities, utilities, schools, chambers of commerce, the soil conservation districts, and others. The county and cities may propose boundaries for inclusion in the plan. After the growth plan is developed, the committee conducts public hearings and submits the plan to each city and county for ratification. The committee may revise the plan upon objection from these local governments. If the governmental entities cannot agree on a plan, any one of them may petition the Secretary of State to appoint a dispute resolution panel of administrative law judges to settle the conflict. The deadline for completing and approving all plans is July 1, 2001. Once adopted, a plan may not be amended for three years, except in unusual circumstances. The amendment process is the same as that for initial adoption.

The plan identifies three distinct types of areas: (1) "urban growth boundaries" (UGB), regions which contain the corporate limits of a municipality and the adjoining territory where growth is expected; (2) "planned growth areas" (PGA), compact sections outside incorporated municipalities where growth is expected (if there are such areas in the county), and where new incorporations may occur; (3) "rural areas" (RA), territory not within one of the other two categories which is to be preserved for agriculture, recreation, forest, wildlife, and uses other than high-density commercial or residential development.

II. ANNEXATION

Annexation procedures vary according to whether the annexation takes place before or after the county's growth plan is in place. Before the plan is adopted a city may annex by referendum or by ordinance. If annexation is by ordinance, the county legislative body may vote to disapprove the action. After this disapproval vote, the county may file suit contesting the annexation if it receives a petition signed by a majority of the property owners within the territory. The petition must be filed within 60 days, and the suit within 90 days of the final passage of the annexation ordinance. The case is tried by a judge without a jury, and the burden is on the petitioner to prove that the annexation is unreasonable. A citizen affected by the annexation also retains the right to challenge the annexation as under previous law. Before adoption of the growth plan, corridor annexations are generally prohibited unless the city also annexes all parcels on one side of the corridor, obtains consent of the county legislative body, or annexes by referendum.

After the growth plan is adopted a city may use any statutory method to annex property within its UGB, including annexation by ordinance and referendum. Outside the UGB a city may annex by referendum or by amending its UGB to include the new territory. Amendment of a growth plan, including any boundary it contains, requires the same steps described above for the initial adoption of the plan. Any challenges to annexation after the

adoption of the growth plan are heard by the judge without a jury, and the burden of proof is on the petitioner to show that the annexation is unreasonable.

A city may annex upon its own initiative only territory within the county in which the city hall is located, with three main exceptions: (1) at least 7% of the city's population was located in the second county on November 25, 1997; (2) the county legislative body in the second county approves the annexation; or (3) the city provided sewer service to 100 or more customers on January 1, 1998. These restrictions do not apply to annexation by referendum.

III. PLAN OF SERVICES

For any area to be annexed, a municipality must formulate a plan of services which addresses police and fire protection; water, electrical, and sanitary sewer service; street construction and repair; recreation; street lighting; and zoning. If any of these services are provided to the area by another entity (except the county), the municipality may omit those from the plan. The plan must include a description of the level of each service and a reasonable schedule for implementing services in the annexed area which are comparable to those delivered to other citizens of the community. Amendments are allowed only if the changes are not material, if they are necessary because of reasonably unforseen circumstances, or if they are approved by majority of property owners. Counties have standing to challenge the reasonableness of the plan before the growth plan is adopted; after adoption, the county has standing only if it is petitioned by a majority of the landowners in the annexed area. Aggrieved property owners have standing to enforce the plan. A municipality in default on a plan of services may not annex additional territory until it complies with the previous plan. These provisions are retroactive and apply to any plan of services which was finalized after November 25, 1997.

IV. INCORPORATION

Before January 1, 1999, new cities may be incorporated if they meet population and distance requirements contained in previously existing law, as well as the requirements listed below. After this date, a territory may be incorporated only inside a PGA (after the growth plan is adopted), and only with approval of its growth boundary and city limits by the county legislative body. All newly incorporated cities, both before and after January 1, 1999, are subject to the following requirements: (1) a new city must enact a property tax that raises revenue at least equal to the annual amount the city receives from state-shared taxes; (2) the amount of situs-based wholesale beer and local option sales tax revenues generated in the territory on the day of incorporation continues to be distributed to the county for 15 years, just as if the territory were annexed (see discussion below under "Tax Revenue Implications"); and (3) the city must develop a plan of services similar to that required for annexation.

V. TAX REVENUE IMPLICATIONS OF ANNEXATION

When a city annexes territory, the county is "held harmless" for the loss of a portion of tax revenue which was distributed to cities under prior law. Revenue amounts generated in the annexed area by local option sales taxes and wholesale beer taxes which had been received by the county prior to the annexation continue to go to county for fifteen years after the date of the annexation. Any increases in these revenues generated in the annexed area are distributed to the annexing municipality. (Note that this does not affect the distribution of the first half of the local option sales tax, which continues to go to education funding.) If commercial activity in the annexed area decreases due to business closures or

relocations, a city may petition the Department of Revenue to adjust the payments it makes to the county.

VI. MISCELLANEOUS PROVISIONS

There are several sections of the law which affect zoning regulations: (1) Even if a city has received extra-territorial zoning authority under Title 13, it may not enact zoning or planning regulations beyond its UGB. If it has not been granted this authority, it may nevertheless enact zoning provisions outside its city limits (but inside its UGB) with the approval of the county legislative body. (2) A city may not use its zoning power to interfere with land used for agricultural purposes. (3) Counties have the authority to establish separate taxing districts for the provision of services, and to establish separate zoning regulations for territory in different types of areas.

The law requires establishment of a joint economic and community development board to foster communications among all sectors of the community. The law also allows the creation of a consolidation commission upon petition of 10% of the county's voters (previous law required the county and principal city to call for a commission). It also prohibits establishment of any new school system.

Moreover, the TACIR is charged with monitoring the implementation of Public Act 1101 and reporting its findings and recommendations to the General Assembly.

I. COUNTYWIDE PLANNING

A. Coordinating Committee[1]

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

CATEGORY	NUMBER
County Executive (or designee confirmed by county legislative body)	1
Mayor of each municipality in the county (or designee confirmed by governing body)	1 (minimum)
One member appointed by the governing board of the largest municipally-owned utility	1
One member appointed by the governing board of the largest non-municipally-owned utility	1
One member appointed by the board of directors of the county's soil conservation district (representing agricultural interests)	1
One member appointed by the board of the local education agency having the largest student enrollment	1
One member appointed by the largest chamber of commerce (after consulting others)	1
Two members appointed by the county executive (representing environmental, construction, and homeowner interests)	2
Two members appointed by the mayor of the largest municipality (representing environmental, construction, and homeowner interests)	2

This scheme will produce a committee with a minimum of 11 members. The membership will be as high as 20 or 21 in some counties, depending on the number of municipalities. The committee becomes effective **September 1, 1998.**

B. Alternatives to Coordinating Committee

(1) Alternative Coordinating Committees by Agreement of County and Cities[2]
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[3]
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[4]

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, and to Ridgetop, which is in both Davidson and Robertson Counties.

C. Developing the Countywide Plan[5]

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 uses other than high density commercial, industrial, or residential development.

Cities may propose UGBs and counties may propose PGAs and RAs to the coordinating committee, if they do so in a timely fashion.

(1) Proposing Urban Growth Boundaries (UGBs) - Municipalities[6]

(a) Criteria for Defining the UGB
The Urban Growth Boundary is to include territory:

- 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;
- where the municipality is better able than other municipalities to efficiently and effectively provide urban services; and
- that reflects the municipality's duty to fully develop the area within the current boundaries, while controlling and managing growth outside those boundaries, taking into account the impact on agriculture, forests, recreation, and wildlife.

(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, as well as the cost of expanding these into the territory proposed for inclusion within the UGB;

- determine and report on the need for additional land suitable for high density industrial, commercial, and residential development, after taking into account areas within current municipal boundaries that can be used, reused, or redeveloped to meet such needs;

- 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 city before formally proposing its UGB to the coordinating committee.

(2) Proposing Planned Growth Areas (PGAs) - Counties[7]

(a) Criteria for Defining the PGA

The Planned Growth Area is to include territory:

- that is reasonably compact yet sufficiently large to accommodate residential and nonresidential growth projected to occur during the next 20 years;

- that is not within the existing boundaries of any municipality or within an urban growth boundary;

- 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 county's duty to manage natural resources and to manage and control urban growth, taking into account the impact on agriculture, forests, recreation, and wildlife.

(b) Factors to be Considered in Developing the PGA

Before proposing a PGA the county must take the following actions:

- develop and report population growth projections in conjunction with the University of Tennessee;

- determine and report projected costs of providing core infrastructure, urban services, and public facilities in the area, as well as the feasibility of funding them through taxes or fees within the area;

- determine and report on the need for additional land suitable for high-density development, after considering areas within current municipal boundaries that could be used, reused, or redeveloped to meet those needs;

- determine and report on the likelihood that the territory will eventually incorporate as a new municipality or be annexed; and

- examine and report on agricultural, forest, recreation, and wildlife management areas within the territory proposed for inclusion within the PGA, and the likely long-term effects of urban expansion on these areas.

(c) Public Hearing Requirements
Before proposing a PGA to the coordinating committee, the county must hold two public hearings with at least 15 days advance notice of each in a newspaper of general circulation in the county.

(3) Proposing Rural Areas (RAs) - Counties[8]

(a) Criteria for Defining the RA
A Rural Area is to include territory:

- that is not within an urban growth boundary or a planned growth area;

- that is to be preserved over the next 20 years as agricultural, forest, recreation, or wildlife management areas, or for uses other than high-density development; and

- that reflects the county's duty to manage growth and natural resources in a way that reasonably minimizes detrimental impact to agricultural, forest, recreation, and wildlife management areas.

(b) Public Hearing Requirements
Before proposing a rural area to the coordinating committee, the county must hold two public hearings with at least 15 days advance notice of each in a newspaper of general circulation in the county.

(4) Coordinating Committee Process[9]
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 local planning resources, the state 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.

(5) Annexation Reserve Agreements and Other Agreements Regarding Powers[10]
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. There is a specific provision for counties with a charter form of government (Shelby and Knox Counties), stating that 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.

Counties and cities are authorized to make agreements with or without a set term to refrain from exercising powers, including annexation and receipt of revenue. Regardless of whether such an agreement contains a set time for termination, after five years it may be renegotiated or terminated upon 90 days notice. The act also explicitly allows written contracts between municipalities and owners (developers) regarding annexation, validating those in existence on the effective date of the act.

(6) Procedure Upon Rejection by a City or County[11]
If a city or county rejects the recommended growth plan, it must submit its objections and supporting reasons to the coordinating committee for reconsideration. Following reconsideration of the recommended growth plan, the coordinating committee may submit to the county and each 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 a city or county rejects whichever plan the coordinating committee submits to it the second time, the county or any municipality may declare an impasse, and ask the Tennessee Secretary of State to appoint a dispute resolution panel.

(7) Role of the Dispute Resolution Panel[12]
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. If the panel finds that one party acted frivolously or in bad faith in initiating or prolonging the process, costs may be reallocated "in a manner clearly punitive" to these actions. Any failure to pay this assessment will lead to withholding state-shared taxes to satisfy the bill.

(8) Adoption of the Growth Plan by Local Government Planning Advisory Committee[13]
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.

If the growth plan was recommended by the coordinating committee and ratified by the county and all cities, then the LGPAC grants approval of the plan automatically. The LGPAC has no authority to conduct a content review of the plan or to change any of its provisions. Approval is also automatic for charter counties with annexation reserve agreements in effect on January 1, 1998 (Shelby), which become the growth plan.

If the growth plan resulted from the dispute resolution process, 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.

After approval of the plan, a copy is sent to the county executive, who in turns files the plan in the county register's office.

(9) Term of the Approved Growth Plan and Amendments[14]
Except in Shelby County, 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." 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 with annexation reserve agreements existing on January 1, 1998 (Shelby), amendments to the annexation reserve scheme that serves as the growth plan may be proposed at any time by following the same notice requirements to the county and all municipalities.

(10) Consistency Requirement[15]
After the approval of the growth plan, all land use decisions made by a city or county must be consistent with the provisions of the growth plan.

D. Appealing a Growth Plan to the Courts[16]

Any affected 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 affected 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," which is a difficult standard to prove. If more than one suit is filed in the county, they are consolidated and tried as one.

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 growth plan.

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

(1) Incentives for Completing the Growth Plan[17]
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[18]
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:

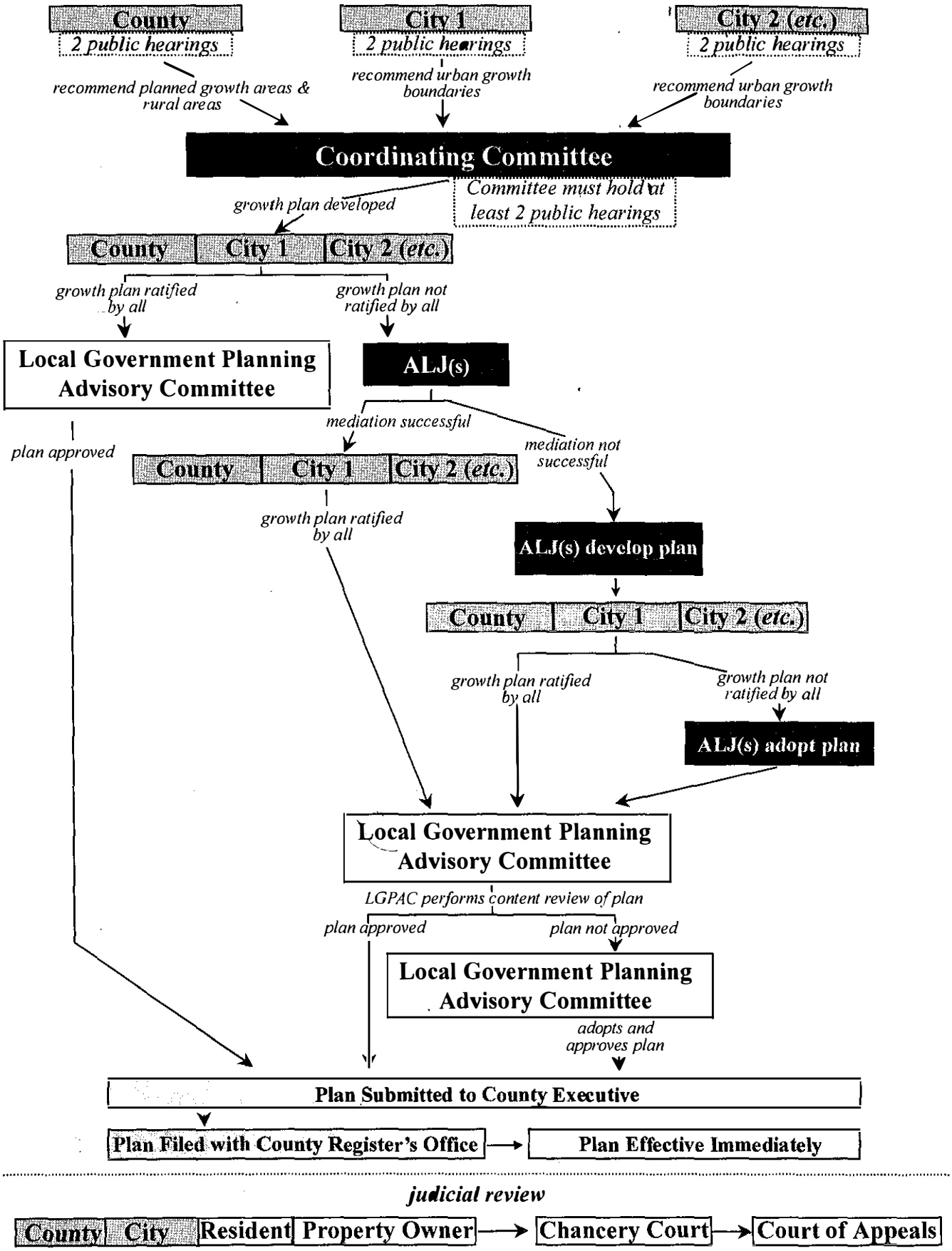
- Community Development Block Grants
- Tennessee Industrial Infrastructure grants
- Industrial Training Service grants
- Tourist Development grants

- 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.

Flow Chart of Growth Plan Development under Public Act 1101 of 1998



II. ANNEXATION

The law governs annexation both before and after the required countywide growth plan is adopted, including any annexation initiated after May 19, 1998.

A. Annexation BEFORE the Adoption of the Growth Plan[19]

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 for annexation by ordinance.

(1) Annexation by Ordinance - Before Growth Plan

There are 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 after the completion of events (i), (ii), and (iii), below:

(i) The county passes a resolution disapproving the annexation within 60 days of the final passage of the annexation ordinance.

(ii) Within the same 60 days, a majority of the property owners *within* the territory to be annexed petition the county to contest the annexation. Each parcel is counted only once; a parcel with multiple owners is counted if the majority of the owners petition together. The county property assessor has 15 days after receiving the petition to determine if it represents 50 percent of the property holders. The assessor reports whether the 50 percent threshold has been met 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. Even if the petition is filed, the county is not required to file suit.

(iv) No Jury Trial – Cases are tried by chancellor or circuit court judge without a jury.

(v) Burden of Proof – The burden of proof is on the 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."

(b) **Second Method**[20]: An aggrieved owner of property that *borders on or lies within* the territory proposed for annexation[21] retains the right to contest the annexation

under *T.C.A. § 6-51-103*. The property owner has 90 days to file suit, instead of the 30 days specified in *T.C.A. § 6-51-103*.

(i) Jury Trial – Plaintiff is entitled to a jury trial.

(ii) Burden of Proof – The burden is on the city to prove the reasonableness of the annexation.

(2) Annexation by Referendum – Before Growth Plan[22]
Cities are still entitled to annex by referendum 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 disapprove or intervene in the process as described above.

B. Annexation AFTER the Adoption of the Growth Plan[23]

(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. As provided in those statutes, aggrieved owners of property that borders on[24] 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 either of two ways:

(a) by obtaining approval of an amendment to its UGB in the same way that the original growth plan was established, or

(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[25]

(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.

Restrictions prohibiting corridor annexation do not apply to annexation by referendum.[26]

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

After the adoption of the countywide growth plan, these provisions on corridor annexations no longer apply.[27]

D. Annexation by a City in More Than One County (Before and After Growth Plan Approval)[28]

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;[29] 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.

These restrictions do not apply to annexation by referendum.[30] After growth plan approval, any annexation must also conform to the provisions of the growth plans in both counties.

III. PLAN OF SERVICES IN ANNEXED AREAS[31]

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), or until July 20, 1998, to do so.

The governing body of the annexing city must adopt a plan of services which outlines the services to be provided and their timing. The plan of services must be "reasonable" with respect to both the scope of services to be delivered and to the implementation schedule; the implementation schedule must provide for delivery of services in the new territory which are comparable to those provided to all citizens of the municipality. The plan must address all of the services below, regardless of whether the city currently provides those services.

A. Plan of Services Requirements[32]

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 city may include services in addition to those required.

Before adoption, the plan of services must be submitted to the city's planning commission (if the city has a planning commission), which must issue a written report on the plan within 90 days. Also, 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[33]

(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 by parcel 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.

C. Progress Report[34]

Six months after the plan is adopted and then annually until it is fully implemented, the city must publish a report on the progress it has made in fulfilling the plan, and must hold a public hearing on the report. These reporting and hearing requirements, which are also contained in previous law, apply to any plan of services "which is not fully implemented."

D. Amending a Plan of Services[35]

A plan of services can be amended under limited conditions:

(1) an occurrence such as a natural disaster, an act of war, terrorism, or other unforseen circumstances beyond the control of city;

(2) the amendment does not substantially or materially decrease the type or the level of services, or delay the provision of such services; or

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

Before any amendment, the city must hold a public hearing, giving at least 15 days notice.

E. Court Review of the Plan of Services[36]

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 by ordinance where the court has issued a decision adverse to a plan of services until the court determines the city is in compliance.

F. Enforcement of the Plan of Services[37]

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. If an amendment is found unlawful, it is void and the prior plan of services is reinstated. The right to sue ends when the plan of services has been fulfilled.

The court has the duty to issue a writ of mandamus to compel the city to comply with the plan of services, to establish written timetables for the provision of services, and to enjoin the city from further annexations until the services called for in the plan of services have been provided to its satisfaction. The city must pay the costs of the suit if the court finds the city has unlawfully amended a plan or failed without cause to comply with a plan.

IV. INCORPORATION

A. Incorporation BEFORE Jan. 1, 1999[38]

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 below, *Conditions that Apply to ALL Newly-Incorporated Cities.*

There are two exceptions to the general rule stated above that all new incorporations must meet general law population and distance requirements:

(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 to the Five-Mile Distance Rule
The law allows territory to incorporate even though it may be within five miles of an existing municipality of 100,000, if the existing city adopts, by a two-thirds vote, a resolution indicating it has no desire to annex that territory. 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 Section C, below.

B. Incorporation AFTER Jan. 1, 1999

After Jan. 1, 1999, new cities may only be incorporated in a PGA.[39] The new law does not change the procedures for filing an incorporation petition 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.[40] Note that after this date, there can be no new incorporations until after the growth plan is adopted.

C. 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[41]
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[42]

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, below.) The county continues to receive all other situs-based state shared tax revenues until the beginning of the next fiscal year following the incorporation.[43]

(3) No New City School Systems[44]

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[45]

The plan of services for a new incorporation is similar to the binding enforceable plan required under the act when a city annexes territory. Existing general law provisions previously required a plan for delivering services to be included with the incorporation proposal; these provisions have not been changed. The plan must be adopted by ordinance within six months of incorporation; before adoption it must be published in a newspaper of general circulation in the city. Citizens in the newly incorporated municipality have all the rights and remedies prescribed by *T.C.A. § 6-51-108* for plans of services for annexed areas, including:

(a) 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;

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

(c) ability to obtain a writ of mandamus to compel the city to complete items (a) and (b).

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

(5) Simplified Petition for Incorporation[46]

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.

V. TAX REVENUE IMPLICATIONS OF ANNEXATION[47]

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." Any increases over this amount are distributed to the annexing municipality. (Note that these provisions do not affect the distribution of the first half of the local option sales tax which continues to go to education funding.)

A. Formula for Distribution

The annexation date revenue is calculated as follows:

- If the business operated for a full 12 months before annexation, the county receives the monthly average for that period.
- If the business operated for at least one full month but fewer than 12 months before annexation, the county receives the monthly average of all full months of operation.
- If the business operated for less than a month before annexation, or if it began operation within three months of annexation, then the revenue for the first three months is averaged, and the county receives that amount.

B. Exceptions

- If the wholesale beer tax or the local option sales tax is repealed, revenue amounts from the repealed tax will end.
- If the General Assembly changes the formula for the distribution of wholesale beer or local option sales tax revenues, thereby reducing the amounts for local governments, the annexation date revenue will be reduced proportionally.
- A county may voluntarily waive rights to the revenue.
- If a business closes or relocates, thereby reducing tax revenues, the city may petition to the Department of Revenue no more than once annually for a proportional reduction.

C. County Responsibility

Upon annexation, each county is responsible for identifying tax-producing properties and providing a list of them to the Department of Revenue.

VI. MISCELLANEOUS PROVISIONS

A. Consolidation of City and County Governments[48]

The new law allows the creation of a consolidation commission upon the petition of 10 per cent of the county's voters (previous law required the county and principal city to call for a consolidation commission). The law also specifies procedures for appointment of the consolidation commission. In any county in which a charter commission is created but the charter is not ratified by July 1, 2001, sanctions regarding grants are delayed for a year, until July 1, 2002.[49]

B. Zoning Implications

(1) Restrictions on Municipal Planning Commission[50]

(a) Municipal Planning Commissions *With* Extra-Territorial Zoning Authority:[51]
Municipal planning commissions which have been designated as the regional planning commission (and therefore have zoning authority beyond their city limits under *T.C.A. § 13-3-102*) retain this extra-territorial zoning authority; however, once the growth plan has been adopted, the city may not exercise planning and zoning authority beyond its UGB, even with this additional authority.

(b) Municipal Planning Commissions *Without* Extra-Territorial Zoning Authority:
A second method by which a city may establish zoning and subdivision regulations beyond its corporate limits (up to its UGB) is to obtain the approval of the county legislative body. Without such approval or the designation as a regional planning commission (described above), a city has no authority to zone beyond its city limits. The city is not authorized to zone beyond its UGB in either circumstance.[52]

(2) Restrictions on City Zoning of Agricultural Land[53]
A city cannot use its zoning power to interfere with the use of land presently being used for agricultural purposes.

(3) County Zoning in UGBs, PGAs, and RAs[54]
Under the law, counties can "establish separate zoning regulations within a PGA, for territory within a UGB or within a RA." Since existing law permits cities to zone within their own boundaries, this provision applies in the UGB only to territory outside of municipal limits.

(4) County Services in Planned Growth Areas (PGAs)[55]
Counties can provide or contract for services in a PGA and set a separate tax rate for such services. This provision evidently includes all types of governmental and proprietary services, including utilities.

C. Economic and Community Development Board[56]

(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

The board is composed of representatives of local governments, private citizens, industry, and business. 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 among 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. No New School Systems[57]

Neither an existing municipality nor a newly incorporated one may establish a school system after the effective date of the act.

E. Monitoring and Reporting: Role of the Tennessee Advisory Commission on Intergovernmental Relations[58]

Until December 31, 2002, TACIR will monitor the implementation of the act, periodically reporting its findings and recommendations to the General Assembly. TACIR may call upon state agencies, as well as local governmental officials and organizations for cooperation, information, and assistance.

ENDNOTES

[1] *Section 5(a), 1998 Public Chapter 1101.*

[2] *Section 5(a)(9)(B), 1998 Public Chapter 1101.*

[3] *Section 5(a)(9)(A), 1998 Public Chapter 1101.*

[4] *Section 4(a), 1998 Public Chapter 1101.*

[5] *Section 7, 1998 Public Chapter 1101.*

[6] *Section 7(a), 1998 Public Chapter 1101.*

[7] *Section 7(b), 1998 Public Chapter 1101.*

[8] *Section 7(c), 1998 Public Chapter 1101.*

[9] *Section 5(a), 1998 Public Chapter 1101.*

[10] *Section 5(a), 1998 Public Chapter 1101.*

[11] *Section 5(b), 1998 Public Chapter 1101.*

[12] *Section 5(b), 1998 Public Chapter 1101.*

[13] *Section 5(d), 1998 Public Chapter 1101.*

[14] *Section 5(e), 1998 Public Chapter 1101.*

[15] *Section 8, 1998 Public Chapter 1101.*

[16] *Section 6, 1998 Public Chapter 1101.*

[17] *Section 10, 1998 Public Chapter 1101.*

[18] *Section 11, 1998 Public Chapter 1101.*

[19] *Section 9, 1998 Public Chapter 1101.*

[20] *Section 9(b)(5), 1998 Public Chapter 1101.*

[21] Although current statutory language authorizes landowners bordering the territory proposed for annexation to bring suit to challenge the annexation, see State ex rel. Cordova Area Residents for the Env't v. City of Memphis, 862 S.W.2d 525 (Tenn. App. 1992), which states that bordering landowners do not have standing.

[22] *Section 9(d), 1998 Public Chapter 1101.*

[23] *Section 12, 1998 Public Chapter 1101.*

[24] See Endnote 21, above.

[25] *Section 9(c), 1998 Public Chapter 1101.*

[26] *Section 9(d), 1998 Public Chapter 1101.*

[27] The ability of an aggrieved party to challenge a corridor annexation is discussed in the recent Supreme Court case of State of Tennessee ex rel. Earhardt v. City of Bristol, (June 22, 1998).

[28] *Section 9(e), 1998 Public Chapter 1101.*

[29] See Table 1 (below) for a listing of all Tennessee municipalities in more than one county.

[30] *Section 9(d), 1998 Public Chapter 1101.*

[31] *Section 19, 20, and 21, 1998 Public Chapter 1101.*

[32] *Section 19, 1998 Public Chapter 1101.*

[33] *Section 20, 1998 Public Chapter 1101.*

[34] *Section 21(a), 1998 Public Chapter 1101.*

[35] *Section 21(b), 1998 Public Chapter 1101.*

[36] *Section 20, 1998 Public Chapter 1101.*

[37] *Section 21(b), 1998 Public Chapter 1101.*

[38] *Section 9(f), 1998 Public Chapter 1101.*

[39] *Section 13(a)(1), 1998 Public Chapter 1101.*

[40] *Section 13(d)(1), 1998 Public Chapter 1101.*

[41] *Section 13(c), 1998 Public Chapter 1101.*

[42] *Section 13(c), 1998 Public Chapter 1101.*

[43] *1998 Public Chapter 651.*

[44] *Section 13(c), 1998 Public Chapter 1101.*

[45] *Section 13(d)(2), 1998 Public Chapter 1101.*

[46] *Section 28, 1998 Public Chapter 1101.*

[47] *Section 24, 1998 Public Chapter 1101.*

[48] *Section 18, 1998 Public Chapter 1101.*

[49] *Section 4(b), 1998 Public Chapter 1101.*

[50] *Section 25, 1998 Public Chapter 1101.*

[51] *T.C.A. § 13-3-102*, as amended by *Section 25 of 1998 Public Chapter 1101.* This statute, along with *T.C.A. § Title 13, Chapter 7, Part 2,* allows a city planning commission which has been designated a

regional planning commission (under the procedures of *Title 13, Chapter 3*) to zone within its UGB or, if there is no UGB, up to five mile beyond its city limits. The city may be granted regional zoning authority only if the county has not adopted zoning; if the county subsequently adopts zoning after such designation of the regional planning commission, then the city's extra-territorial zoning authority is automatically repealed. *T.C.A. §§ 13-7-302 and 306.*

[52] *Section 7(d), 1998 Public Chapter 1101.*

[53] *Section 22, 1998 Public Chapter 1101.*

[54] *Section 13(a), 1998 Public Chapter 1101.*

[55] *Section 13(a), 1998 Public Chapter 1101.*

[56] *Section 15, 1998 Public Chapter 1101.*

[57] *Section 13(c), 1998 Public Chapter 1101.*

[58] *Section 14, 1998 Public Chapter 1101.*

Table 1. Cities/Towns in More than One County

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 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 1997 Certified Population figures produced by the Local Planning Assistance Office in the Department of Economic and Community Development. A few cities on the list 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.

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	100.0	McNairy	0.0		
*Goodlettsville (Davidson)	12,526	Davidson	73.0	Sumner	27.0		
Grand Junction (Hardeman)	365	Hardeman	99.0	Fayette	1.0		
Iron City (Lawrence)	402	Lawrence	100.0	Wayne	0.0		
Johnson City (Washington)	52,739	Washington	98.0	Carter	1.8	Sullivan	0.2
*Kenton (Obion)	1,397	Obion	44.0	Gibson	56.0		
Kingsport (Sullivan)	41,338	Sullivan	93.9	Hawkins	6.1		
Lake City (Anderson)	2,166	Anderson	96.0	Campbell	4.0		
McKenzie (Carroll)	5,197	Carroll	96.0	Henry	2.1	Weakley	1.9
*Milledgeville (McNairy)	290	McNairy	52.7	Hardin	15.1	Chester	32.2
*Monteagle (Grundy)	2,562	Grundy	61.0	Marion	39.0		
*Oak Ridge (Anderson)	27,310	Anderson	91.0	Roane	9.0		
*Oliver Springs (Roane)	3,433	Roane	28.5	Anderson	70.0	Morgan	1.5
*Petersburg (Lincoln)	612	Lincoln	71.0	Marshall	29.0		
Ridgetop (Robertson)	1,843	Robertson	95.5	Davidson	4.5		
*Scotts Hill (Henderson)	699	Henderson	65.0	Decatur	35.0		
Silerton (Hardeman)	102	Hardeman	98.0	Chester	2.0		
Spring Hill (Maury)	4,357	Maury	100.0	Williamson	0.0		
Trimble (Dyer)	766	Dyer	100.0	Obion	0.0		
Tullahoma (Coffee)	16,761	Coffee	94.0	Franklin	6.0		
*White House (Sumner)	5,594	Sumner	43.0	Robertson	57.0		

Table 2. TIMETABLE
1998 Public Chapter 1101

July 20, 1998	Municipalities must adopt a plan of services for any annexations not final on November 25, 1997.
September 1, 1998	Coordinating committee is created within each county. Composed of members specified in statute.
January 1, 1999	A new municipality may be incorporated only within a county's PGA and in accordance with other requirements in the act.
Before January 1, 2000	Counties and municipalities may propose UGBs, PGAs, and RAs to coordinating committee for inclusion in the growth plan.
January 1, 2000	By this date, the coordinating committee of each county is required to develop a recommended growth plan and submit it to the governing bodies of the county and each municipality for ratification.
May 2000 (approximate) – Within 120 days after county and cities receive growth plan from coordinating committee	County and cities must ratify or reject proposed growth plan. Failure to act within 120 days constitutes ratification.
July 1, 2000	Point incentives for grant programs become available for counties and municipalities which have adopted a growth plan.
July 1, 2001	By this date the growth plan must be submitted to the Local Government Planning Advisory Committee.
July 1, 2001	Sanctions are imposed upon those cities and counties without an approved growth plan.
July 1, 2002	Delayed sanctions are imposed upon counties and cities that formed a metropolitan charter commission but did not adopt a metro charter, if they have no approved growth plan by this date.
July 2004 (approximate) – Three years after growth plan approval	Growth plan may be amended 3 years after approval, barring extraordinary circumstances.

PUBLIC 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: 6-58-101

(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: 6-58-102

(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. 6-58-103

(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. 6-58-104

(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 county legislative 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 (c).

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. 6-58-105

(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. 6-58-106

(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.

6-58-107

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.

6-58-108

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. 6-58-109

(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: 6-58-110

(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. 6-58-111

(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. 6-58-112

(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.

6-58-113

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.

6-58-114

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. 6-58-115

SECTION 17.

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

(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: 6-51-102

(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: 6-51-102

(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. 6-51-102

(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: 6-51-118

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: 6-51-118

(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.

13-3-102

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,".

13-3-401

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,".

6-1-201

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.

6-1-202

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.

Effective date 5/19/98

State of Tennessee
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