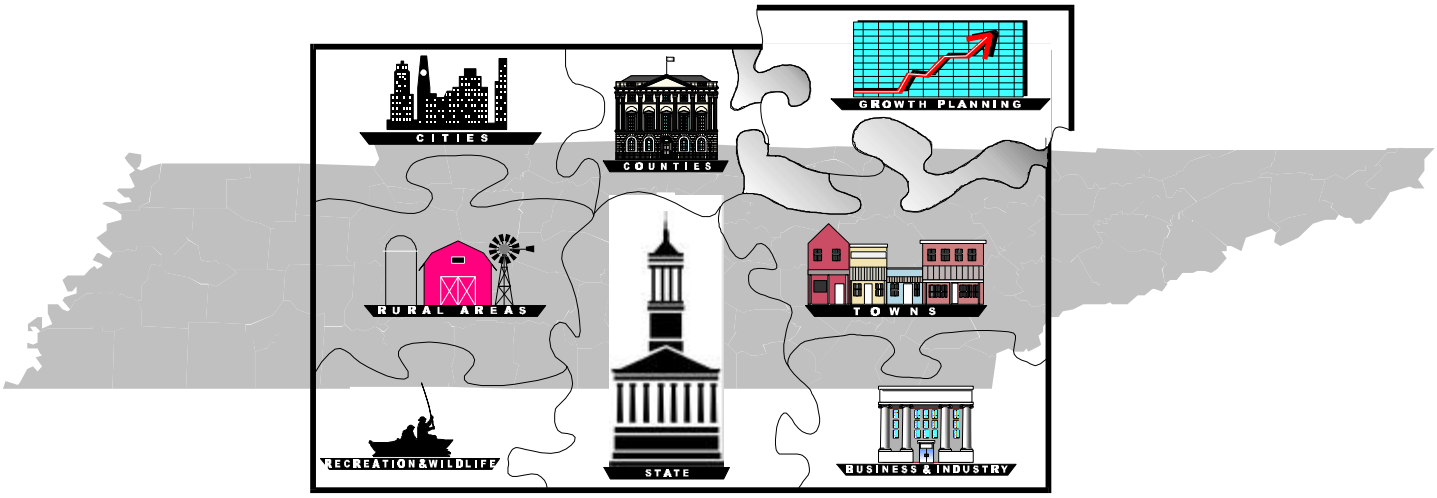
Staff Information Report

Tennessee's Growth Policy Act: A Vision for the Future



The Tennessee Advisory Commission on Intergovernmental Relations

April 2000

TACIR

TENNESSEE'S GROWTH POLICY ACT: A VISION FOR THE FUTURE

A Staff Information Report on the Implementation of Public Chapter 1101

Tennessee Advisory Commission
on Intergovernmental Relations

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EXECUTIVE SUMMARY

Purpose of Report

The purpose of this TACIR report is fulfill the legislative mandate to report on the implementation of Public Chapter 1101 pursuant to T.C.A. § 6-58-113.

Introduction

"The best planning law to be passed in the US in recent history" and "model of wise and modern 'smart growth' planning" are just a few of the phrases that have been used to describe Public Chapter 1101 this past year. Public Chapter 1101 has moved Tennessee to the forefront of states which are attempting to curb growth through legislation, and it has garnered national attention for the state. It has obtained substantial understanding and involvement within the state from diverse groups because of its positive effects on coordinated local planning and annexation.

Background of Public Chapter 1101

Until the legislature passed a general annexation law, the most common method of annexation in Tennessee was via private act of the General Assembly. In 1953, a constitutional amendment was passed which required that changes in municipal boundaries be made under general law. This amendment enabled the General Assembly to pass the first general annexation law in Tennessee, Public Chapter 113, in 1955. This law allowed annexation by referendum and by ordinance.

During the early 1970s, people began to urge the state legislature to make revisions to the law since it tended to favor municipalities. Public Chapter 753 was passed by the legislature in 1974. The legislation made several changes to Public Chapter 113 including adding a requirement that a public hearing be held on the municipal plan of services for the area to be annexed, and the burden of proof was placed on the municipality to prove the reasonableness of the annexation ordinance.

The issue of the need for a change in growth policy in the state intensified with the passage of Public Chapter 666 in 1996 and Public Chapter 98 in 1997. Public Chapter 666 allowed towns with as few as 225 persons to incorporate, however, the geographic requirements were so stringent that only two towns in Tennessee met the requirements. Public Chapter 98 allowed towns to incorporate if they had a population of at least 225 persons. It did not have the geographic limitations of Public Chapter 666. The provisions of Public Chapter 98 were applicable for one year only. Five "tiny towns" incorporated under the provisions of these acts. Both acts were ultimately declared unconstitutional, and the incorporation elections of these "tiny towns" were nullified.

The Ad Hoc Study Committee on Annexation was formed in 1997 by Lieutenant Governor John S. Wilder and Speaker of the House Jimmy Naifeh to study issues related to growth policy. The extraordinary efforts of this Committee led to the enactment of Public Chapter 1101 in 1998.

Public Chapter 1101

This act signaled a substantial change in the way growth planning, annexation and incorporation would be accomplished by counties and municipalities in the state. Public Chapter 1101 requires each non-metropolitan county to create a coordinating committee. It is the duty of this committee to develop a comprehensive growth plan for the county.

Territory in the plan must be placed in one of three distinct areas: an urban growth boundary (UGB); planned growth area (PGA), or rural area (RA). A UGB contains the corporate limits of a municipality and adjoining territory where growth is expected. A municipality may only annex by ordinance in a UGB. A PGA includes territory outside current municipalities and UGBs where growth is expected. A town may incorporate only within a PGA. A RA is territory which is to be preserved for agriculture, forest, wildlife and uses other than high-density commercial or residential development.

One of the important objectives of the Act was to place annexation by municipalities in the context of their growth planning. Public Chapter 1101 provides that a municipality may annex by referendum or by ordinance before the growth plan is approved. After the plan is approved, a municipality may annex within its UGB by any statutory method including annexation by referendum or ordinance. Outside the UGB, the municipality may annex only by referendum or by amending its UGB through procedures outlined in the statute.

The act also requires each county to create a Joint Economic and Community Development Board (JECDB). The purpose of this board is to "foster communication relative to economic and community development between and among governmental entities, industry and private citizens."

Implementation Developments - Public Chapter 1101

Implementation Steering Committee

The Implementation Steering Committee was formed by Senator Robert Rochelle to ensure a consistent interpretation of Public Chapter 1101 and to assist in the allocation of technical assistance resources. It has made major contributions toward the implementation of the Act through holding a growth planning conference, conducting workshops, serving as a clearinghouse for technical assistance efforts, and publishing a guide for local governmental leaders.

Growth Planning

A. In January 2000, sixty-nine coordinating committee chairs indicated that their coordinating committees had developed and recommended growth plans that were ready to be submitted, or have been submitted, to the affected counties and municipalities for ratification. Thirty-three chairs reported that their recommended plans have been ratified by all the associated municipalities, while twenty-eight chairs reported that their recommended plans have been adopted by the affected counties. Twenty-four chairs reported that their ratified plans have been

submitted to the Local Governmental Planning Advisory Committee (LGPAC) for approval. Nine of the plans are pending before LGPAC. LGPAC has approved fifteen of the plans.[1]

If we extrapolate from this sample to all ninety-three counties in the state that are required to develop growth plans, the TACIR staff concludes that

- Seventy-five percent of the ninety-three coordinating committees in the state have submitted (or will soon submit) their recommended growth plans to their counties and municipalities for ratification;
- Twenty-nine percent of the counties affected by such plans have ratified them; and
- Thirty-five percent of the recommended plans have been ratified by the municipalities to which they apply.

B. The administrative law judges, who may be called upon to mediate disputes surrounding the growth plans, were trained in the major provisions of the Public Chapter 1101 by representatives from the Greater Nashville Regional Council, the County Technical Assistance Service and the Municipal Technical Advisory Service.

C. The Department of Economic and Community Development announced a system for the awarding of additional points on grant applications of counties and municipalities whose growth plans have been approved by the LGPAC. Each municipal applicant will receive 11 bonus points, and each county will receive 10 bonus points on "regular round" grants. Municipalities and counties with approved growth plans will receive five additional points on the other grant and loan programs administered by the department.

The Tennessee Housing Development Authority also announced that it will grant 20 additional points to those counties and municipalities whose growth plans are approved by the LGPAC by July 1, 2000, for both its competitive and HOME grants. The latter will be rewarded in the FY 2001 cycle.

D. In a survey of coordinating committee chairs, TACIR staff asked if a Joint and Economic Community Development Board had been established in their county. Thirty-five chairs reported that this board had been established in their county.

Metropolitan Governments

Franklin County voters rejected a proposal for consolidation of government in a referendum on November 9, 1999. Trousdale County citizens have petitioned for the formation of a Metro Charter Commission under the provisions of the Public Chapter 1101. In Warren County, a Metro Study Charter Commission was established in September 1999.

[1] Growth plans were approved for the following counties: Bledsoe, Chester, Crockett, Gibson, Henderson, Henry, Humphreys, Madison, McNairy, Meigs, Obion, Perry, Sequatchie, Stewart and Weakley.

Incorporation

In 1999, the Tennessee Court of Appeals ruled unconstitutional Section 9(f)(3) of Public Chapter 1101, under which the "tiny towns" of Helenwood, Hickory Withe, Midtown, Three Way, and Walnut Grove were incorporated. This ruling in the case of *Town of Huntsville, TN et als v. William I. Duncan et als* was based on the Court's determination that the General Assembly, without a rational basis, had suspended the general law on incorporation in order to benefit an individual or a group of individuals.

Attorney General Opinions

The Attorney General's Office issued four opinions on the meaning and application of Public Chapter 1101 in 2000, and four opinions in 1999, in response to specific requests for opinions on questions that arose in the implementation of the Public Chapter 1101. To date, there have been twelve Attorney General's opinions released on issues related to the Act.

Revenue Provisions

The Department of Revenue began the implementation of a system that will enable it to meets its responsibility under the "hold harmless" provision of Public Chapter 1101.[2] This system will enable it to develop and keep accurate records to ensure that counties in which new annexations and new incorporations occur will retain those tax revenues to which they are entitled.

[2] T.C.A. 6-51-118.

INTRODUCTION

"The best planning law to be passed in the US in recent history" and a "model of wise and modern 'smart growth' planning" are just a few of the phrases that have been used to describe Public Chapter 1101 this past year.[3] Public Chapter 1101 has moved Tennessee to the forefront of states which are attempting to curb growth through legislation, and it has garnered national attention for the state. It has obtained substantial understanding and involvement within the state from diverse groups because of its positive effect on coordinated local planning and annexation.

Pursuant to T.C.A. § 6-58-113, the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) has been charged with the duty of monitoring the implementation of this nationally recognized legislation and reporting its findings to the General Assembly. This report is one of the primary means by which the TACIR fulfills this responsibility.

TACIR's report on the implementation of PC 1101 is designed to meet the following objectives:

- To provide basic information on the essentials of the Act, through a straightforward descriptive account of its major provisions;
- To report on broad patterns of procedural compliance with the mandatory provisions of Public Chapter 1101 pertaining to growth planning, annexation, and incorporation, i.e., those provisions that require specific entities to take certain actions, e.g., designation of planned growth areas by Coordinating Committees;
- To report on the highlights of voluntary actions that have been taken by participants to take advantage of those provisions that enable them to behave in certain ways, e.g., actions by counties to propose planned growth areas; and
- To report on the initiation and resolution of various legal questions, disputes and suits, e.g., court dispositions of county suits against those entities acting under the authorities and powers of the Public Chapter 1101.

The Monitoring Effort

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

- Conducted surveys of local officials;
- Scanned press reports and collected press clippings;
- Reviewed court decisions and Attorney General findings;
- Kept records of written and oral queries concerning various aspects of the implementation effort or the meaning of provisions of the Public Chapter 1101;

[3] Trine Tsouderous, "Tennessee New Urban Growth Law Impresses National Planning Association," *Tennessean*, December 14, 1999.

- Participated in the work of the Implementation Steering Committee; and
- Interviewed various persons involved in the implementation of the Public Chapter 1101.

Many of these monitoring efforts have been facilitated by the cooperation that the TACIR staff has received from all of the participants in the Public Chapter 1101 implementation effort. We appreciate this cooperation.

Throughout the process, TACIR has encouraged all individuals involved in Public Chapter 1101 to communicate to the Commission their experiences with the Act. We have been pleased with the responses we have received from groups and individuals. For example, the city of Oak Ridge recently submitted a letter to us identifying a need for an amendment to the Act that would allow a mayor of a municipality to have a seat on an adjoining county's coordinating committee under certain circumstances. Responses such as this help us to determine if there is a need for any revisions in the law. We hope that TACIR will continue to receive information from groups and individuals on their experiences with the Act throughout the duration of our effort.

I. BACKGROUND

Public Chapter 1101 has been touted as "a very progressive step forward by the state" by national observers.[4] This bold step forward in growth management reform did not occur overnight, however. It was the culmination of years of progressive change in the state's annexation and incorporation laws. This section provides a summary of the developments leading up to the passage of Public Chapter 1101.

A. Annexation in Tennessee Prior to Public Chapter 1101

From 1796 until 1955, the most common method of annexation in Tennessee was the passage of a private act by the state legislature.[5] Annexation by private act was prone to criticism. One major complaint was that the passage of the acts was often contrary to the wishes of local government officials and citizens.[6]

People in Tennessee began to look for an alternative method of annexation after World War II. The years after the war were a time of increasing urbanization. It was also a time during which an increasing number of people began to move from the urban cores of the municipalities to the suburbs.[7] In response to this movement, municipalities that lost population attempted to recoup these losses through annexation. Tensions rose as those in the suburbs sought a way to resist annexation by neighboring municipalities.

[4] Elizabeth S. Betts, "State's Growth Law Turning Heads," *Tennessean*, October 24, 1999.
[5] Ross Loder and Harry A. Green, *Implementation of Tennessee's Growth Policy Act*, (Nashville, Tennessee Advisory Commission on Intergovernmental Relations, 1999), p. 6.
[6] John F. Norman and Harry A. Green, *Annexation Issues in Tennessee: A Report to the 99th General Assembly*, (Nashville, Tennessee Advisory Commission on Intergovernmental Relations, 1995), p. 3.
[7] Ibid, pp. 4-5.

In this environment, the voters of Tennessee passed a constitutional amendment, Article XI, Section 9, in 1953. It requires that all changes in municipal boundaries be made under a general law. It provides that "the General Assembly shall by general law provide the exclusive methods by the which municipalities may be created, merged, consolidated and dissolved and by which municipal boundaries may be altered."[8]

This constitutional amendment enabled the General Assembly to enact Public Chapter 113 in 1955. The law allowed annexation by ordinance and annexation by referendum. Some key features of the law were:

- A municipality could annex territory on its own initiative when it appeared that the property of the municipality and territory would be materially retarded and the safety and welfare of the inhabitants and property endangered;
- A territory to be annexed had to adjoin the municipality;
- An ordinance could not become operative until thirty days after final passage, allowing the opportunity to file a *quo warranto*[9] suit to contest the ordinance;
- Larger municipalities had precedence when two municipalities were attempting to annex the same territory; and
- An aggrieved instrumentality of the state's only remedy was arbitration subject to Chancery Court review.[10]

In the early 1970s, suburban residents, county governments and utility districts began to urge the state legislature to revise Public Chapter 113, since the law tended to favor municipalities. The 88th General Assembly directed the Legislative Council Committee in House Joint Resolution No. 159 to conduct a comprehensive annexation study. This committee determined that:

- Inadequate planning in the urban fringe resulted in poor services and threats to health and safety;
- Inadequate planning in the urban fringe promoted a duplication of facilities and a waste of taxpayer money;
- A proper balance between the interests of the municipality and the fringe is a necessity; and
- The need for deciding who will control the adjustment of municipal boundaries.[11]

The General Assembly passed Public Chapter 753 in 1974 in response to the findings of the Committee. The law made several changes to Public Chapter 113. These changes included requirements that:

[8] Ibid, p. 5.
[9] A *quo warranto* suit allows the plaintiff to contest the validity of an annexation on the ground that it reasonably may not be necessary to protect the safety and welfare of either municipality or the area to be annexed.
[10] Norman and Green, p. 5.
[11] Ibid, pp. 8-9.

- A municipal plan of service must include elements pertaining to police and fire protection, water and electrical services, sewage and waste disposal systems, road construction and repair, and recreational facilities;
- A public hearing on the plan of service had to be conducted before the municipality could adopt its plan;
- Notice of the hearing had to be published in a newspaper of general circulation at least seven days prior to the public hearing; and
- The municipality had to assume the burden of proving the reasonableness of the annexation ordinance.[12]

In 1979, in *State ex rel. Moretz v. City of Johnson City*, the Tennessee Supreme Court held that plaintiffs who filed *quo warranto* actions were entitled to have the issue of reasonableness submitted to the jury.

In 1995, TACIR conducted a study of annexation issues in Tennessee. In conjunction with the study, three public hearings were conducted on annexation issues. Several presenters at the hearings testified that a major problem with the existing annexation law was a lack of requirement for long-range strategic planning. As a result of the study, a recommendation that the annexation law should be amended to include a requirement of a map of the area to be annexed was adopted by TACIR. This led to the planning/annexation provisions of Public Chapter 1101.

B. Public Chapter 666 of 1996 and Public Chapter 98 of 1997: Small Towns and Growth Policy

The annexation study and the discussion it triggered helped to further the momentum for a change in growth policy in Tennessee. This issue came to a head with the passage of Public Chapter 666 of 1996 and Public Chapter 98 of 1997. The controversies that arose out of these acts contributed to the impetus toward a change in growth policy in the state.

Public Chapter 666 was enacted by the General Assembly in 1996. The Act allowed towns with as few as 225 persons to incorporate. However, the geographic requirements were so stringent that the act allowed only one town in east Tennessee and one town in west Tennessee to incorporate.

The residents of Hickory Withe in Fayette County voted to incorporate in 1996 under the provisions of Public Chapter 666. Prior to the election, the municipality of Oakland had filed suit in the Fayette County Chancery Court alleging that the act was unconstitutional. The case was still pending in 1997 when the General Assembly passed Public Chapter 98.

Public Chapter 98, whose provisions were applicable for only one year, resembled Public Chapter 666 in that it allowed towns with a population of 225 people to incorporate under its provisions. However; it did not have the strict geographic limitations of Public Chapter 666. In response, the municipality of Oakland amended its complaint and included an allegation that Public Chapter 98 was also unconstitutional.

[12] Ibid, p. 9.

The Fayette County Chancery Court issued its decision on October 30, 1997. The court held that Public Chapter 666 was unconstitutional because there was no rational basis for the narrowly defined population restrictions. It also held that Public Chapter 98 was unconstitutional on the grounds it was not considered and passed on three separate days in the Senate and the House of Representatives.[13]

Later that same year, the Tennessee Supreme Court ruled in *Tennessee Municipal League, et. al v. Thompson that* Public Chapter 98 was unconstitutional. The court held that the body of the act was broader than its restrictive caption.[14]

These decisions, in effect, nullified the incorporation elections held under the auspices of these two acts. The legal trials and tribulations which erupted from these two acts led Lieutenant Governor and Speaker of the Senate, John S. Wilder, and Speaker of the House, Jimmy Naifeh, to recognize the need for a comprehensive reform of the state's annexation and incorporation laws.

C. Ad Hoc Study Committee on Annexation

Lieutenant Governor John S. Wilder and Speaker of the House Jimmy Naifeh created the Ad Hoc Study Committee on Annexation in 1997, and appointed committee members from both the Senate and the House.[15] They charged the Committee with the task of studying a number of issues related to annexation, incorporation and growth policy. The extraordinary efforts of this committee lead to the enactment of Public Chapter 1101 in 1998.

II. OVERVIEW

Public Chapter 1101 signaled a substantial change in the way growth planning, annexation and incorporation could be accomplished in counties and municipalities around the state. The major provisions of this Act are summarized below. The following summary descriptions focus on the actions that are required or authorized by Public Chapter 1101. These descriptions are offered in order to provide a basis for understanding the provisions of the act, as they outline mandatory and authorized actions that serve as the basis for TACIR's monitoring efforts. They are not offered as, and should not be interpreted as, authoritative or complete interpretations of the Public Chapter 1101.[16]

[13] *Town of Oakland v. McCraw, et al*., Chancery Court of Fayette County, No. 11661, filed October 30, 1997.
[14] 958 S.W.2d 333 (Tenn. S. Ct. 1997)
[15] See Appendix 4 for list of committee members.
[16] For additional information on Public Chapter 1101, see *Growth Policy, Annexation and Incorporation under Public Chapter 1101 of 1998, A Guide for Community Leaders* (Nashville, A joint publication of the University of Tennessee Institute for Public Service and its agencies: County Technical Assistance Service, Municipal Technical Advisory Service and Center for Government Training and the Tennessee Advisory Commission on Intergovernmental Relations, 1998).

A. Countywide Growth Planning

Development of a Recommended Growth Plan

Public Chapter 1101 requires[17] that a coordinating committee be established in each non-metropolitan county.[18] Each coordinating committee is required to develop a comprehensive growth plan that outlines expected development in the next 20 years.[19] Each plan is to identify three distinct areas: an "urban growth boundary," a "planned growth area" and a "rural area." The "urban growth boundary" (UGB) territory contains the corporate limits of a municipality and the adjoining territory where growth is expected. The "planned growth area"(PGA) includes sections outside current municipalities and UGBs where growth is expected. The "rural area" (RA) includes land that is to be preserved for agriculture, recreation, forest, wildlife and uses other than high-density commercial or residential development. There may be one or more of these areas designated in each plan.

In each county, the county and each municipality in the county may[20] propose boundaries for consideration by the coordinating committee in the development of its recommended growth plan. Each committee must give due consideration to these proposed areas in the development of a recommended plan. After two public hearings, the committee must send a recommended growth plan to the county and municipalities[21] for ratification, no later than January 1, 2000.[22]

The county and each municipality in the county, following receipt of the recommended growth plan, must either ratify or reject the plan within 120 days, and specify the grounds for its rejection. Failure of the county or municipality to act within the 120 day time period constitutes ratification of the plan on the part of that county or municipality. The coordinating committee must reconsider any rejected plan and may revise it to meet stated objections.[23]

Once the county and each of the municipalities within it have ratified the plan, the coordinating committee must submit the plan to the LGPAC for approval. LGPAC must approve such a plan.[24]

Any county and or any municipality rejecting a recommended plan or a revised plan may declare an impasse and request that the Secretary of State's office appoint a panel of administrative law judges to mediate the conflict.[25] Any such panel must attempt to mediate the disputes leading to the impasse. The affected county and municipalities may agree to ratify the recommended plans

[17] Throughout this report the terms "requires", "required", "must" and "mandates" reflect the fact that the described action is prefaced in the Act by the word "shall".
[18] T.C.A. § 6-58-104(a)(1)
[19] T.C.A. § 6-58-104(a)(2)
[20] In this report the word "may" denotes that the Act authorizes but does not require a specific action.
[21] In this section of the paper the term county refers to the county legislative body and the term municipality refers to the governing body of each municipality.
[22] T.C.A. § 6-58-104(a)(2)
[23] T.C.A. § 6-58-104(b)(1)
[24] T.C.A. § 6-58-104(d)(1)
[25] T.C.A. § 6-58-104(b)

through this process. If the panel cannot mediate an agreement, the panel must adopt a plan, following the provisions of T.C.A.§ 6-58-106. The panel must submit the adopted plan to the LGPAC, which must review the plan to see that it conforms to the requirements of T.C.A. § 6-58-106. A timeline of these actions is provided on page 13 of this report.

B. Incentives and Sanctions

Incentives are provided for counties and municipalities to adopt growth plans in a timely manner.[26] A county whose growth plan has been approved by the LGPAC by July 1, 2000 will get additional points for certain grants and loans. The county and all municipalities in the county will get five additional points on a scale of one hundred or a comparable percentage increase. Metropolitan governments will receive additional points for these programs as well.

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

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

C. Annexation

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

Before the Growth Plan is Approved

Public Chapter 1101 provides that a municipality may annex by referendum or by ordinance before the recommended plan is approved by the LGPAC.[27] If annexation is by ordinance, the county legislative body may vote to disapprove the action. Any county which disapproves such an annexation, and which is petitioned by a majority of the property owners in the territory to be annexed, is authorized to file suit to contest the annexation. If it does so, it must carry the burden of proof that the annexation is unreasonable for the overall well being of the communities involved, or the health, safety, and welfare of the citizens and property owners of the municipality will be not be materially retarded in the absence of the annexation.

After the Growth Plan is Approved

After the plan is adopted, a municipality may annex by any statutory method, including annexation by referendum or annexation by ordinance, within its UGB. Outside its UGB, a

[26] T.C.A. § 6-58-109
[27] T.C.A. § 6-58-108(a)(1)

municipality may annex only by referendum or by amending its UGB through procedures outlined in the statute.

D. Plan of Services

Any newly incorporated municipality must adopt by ordinance a plan of services for the services the municipality proposes to deliver.[28]

Any municipality planning annexation must adopt a plan of services, which establishes the services to be provided and their projected timing.[29] It must submit this plan of services to the local planning commission for study. It must hold a public hearing on the plan of services before it is adopted.

E. Incorporation

Public Chapter 1101 contains several provisions affecting incorporations. After January 1, 1999, a town may incorporate only within a PGA, and the county must approve its UGB and municipal limits.[30]

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

F. Tax Revenue Implications

There are provisions in Public Chapter 1101 that minimize revenue losses associated with the loss of tax base through annexation or incorporation that might otherwise be experienced by a county.[31] Specifically, a county is "held harmless" for the loss of wholesale beer tax revenue and local option sales tax revenue after any new annexation or incorporation. A county will continue to receive this revenue for fifteen years following any new annexation or incorporation.

The amount received by the county annually will be roughly equal to the revenue amount the county received in the twelve months preceding the effective date of the annexation or incorporation. The Department of Revenue (DOR) considers the effective date of an annexation to be thirty days after the final passage of the annexation.[32] Any increases over this amount are distributed to the municipality.

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

[28] T.C.A. § 6-58-112(d)(2)
[29] T.C.A. § 6-51-102
[30] T.C.A. § 6-58-112
[31] T.C.A. § 6-51-118
[32] Telephone Interview with Karen Blackburn, Tennessee Department of Revenue, January 13, 2000.

governments, the revenue that a county is set to receive under this provision will be reduced accordingly.

G. Joint Economic And Community Development Boards

Each county is required to establish a joint economic and community development board (JECDB).[33] The purpose of the JECDB is "to foster communication relative to economic and community development between and among governmental entities, industry and private citizens."[34]

H. Metropolitan Government

Public Chapter 1101 provides a new method for the creation of a metropolitan charter commission. The Act provides that a metropolitan charter commission may be created upon receipt of a petition.[35] In any county in which a metropolitan charter commission is created but the metropolitan charter is not ratified by July 1, 2001, sanctions will be delayed until July 1, 2002.[36]

Table 1 Growth Planning
Timeline: Public Chapter 1101

January 1, 2000	By this date, the coordinating committee of each county is required to develop a recommended growth plan and submit it to the governing bodies of each county and each municipality for ratification.
May 1,2000 (approximate) Within 120 days after county and municipality receive growth plan from coordinating committee	County and municipalities 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 on counties and municipalities without an approved growth plan.
July 1, 2002	Delayed sanctions are imposed upon counties and municipalities that formed a metropolitan charter commission but did not adopt a metropolitan charter if they have no approved growth plan by this date.
July 2004	Growth plan may be amended 3 years after approval, barring extraordinary circumstances.

[33] T.C.A. § 6-58-114
[34] T.C.A. § 6-58-114(b)
[35] T.C.A. § 7-2-101
[36] T.C.A. § 6-58-103(b)

III. IMPLEMENTATION DEVELOPMENTS AND PROGRESS

A. Progress toward Implementation of Growth Plans

1. Implementation Steering Committee

The Implementation Steering Committee was formed in 1998 at the request of Senator Robert Rochelle, the Senate sponsor of Public Chapter 1101. The purposes of the Committee are to ensure a consistent interpretation of Public Chapter 1101 and to assist in the allocation of technical assistance resources. The Committee is an advisory group that does not have an operating budget nor does it have any independent authority to set policy.

The committee is composed of representatives from the Tennessee Advisory Commission on Intergovernmental Relations (TACIR); the University of Tennessee's Institute for Public Service (IPS) including the Municipal Technical Advisory Service (MTAS), the County Technical Assistance Service (CTAS), and the Center for Government Training (CGT); the Department of Economic and Community Development's Local Planning Office (LPO); the Comptroller's Office and the Tennessee Development District Association (TDDA). The current Implementation Steering Committee members are:

- Tom Ballard - Associate Vice President for Public Service, IPS (Chair);
- J. Rodney Carmical - Executive Director, CTAS;
- Sam Edwards - Planning Advisor;
- Harry A. Green - Executive Director, TACIR;
- John Morgan - State Comptroller;
- Maynard Pate - Secretary/Treasurer, TDDA;
- Robert E. Schettler - Training Administrator, Center for CGT;
- Robert P. Schwartz - Executive Director, MTAS;
- Bill Terry - Planning Advisor; and
- Don Waller - Director, Local Planning Office.

Other individuals who have worked with the Committee include:

- Bob Allen - Senior Research Associate, TACIR;
- Sid Hemsley - Senior Legal Consultant, MTAS;
- Ann Johnson - Legal Consultant, CTAS;
- Ross Loder - Research Director, Tennessee Municipal League;
- Phil Maples - Middle Tennessee Regional Director, LPO;
- Paula Mealka - Director of Special Projects, IPS; and
- Jim Rhody - Training Consultant, CGT.

Under the exemplary leadership of Tom Ballard, Associate Vice-President for Public Service at the University of Tennessee's Institute for Public Service and the exceptional cooperative efforts

of the group's members, the Committee has accomplished a number of tasks in its two years of existence. Over the past two years, the Committee has:

- Conducted a growth policy conference entitled "Bringing the Pieces Together" in June 1999;
- Conducted a series of workshops on Public Chapter 1101 in communities around the state;
- Served as a clearinghouse for technical assistance agency responses to concerns and issues identified by community leaders;
- Prepared and distributed 7,500 copies of *Growth Policy, Annexation, and Incorporation under Public Chapter 1101 of 1998: A Guide for Community Leaders*;
- Coordinated the preparation and dissemination of population projections by the University of Tennessee Center for Business and Economic Research; and
- Arranged Development District funding for the provision of technical assistance to coordinating committees.

2. Status of Countywide Growth Plans

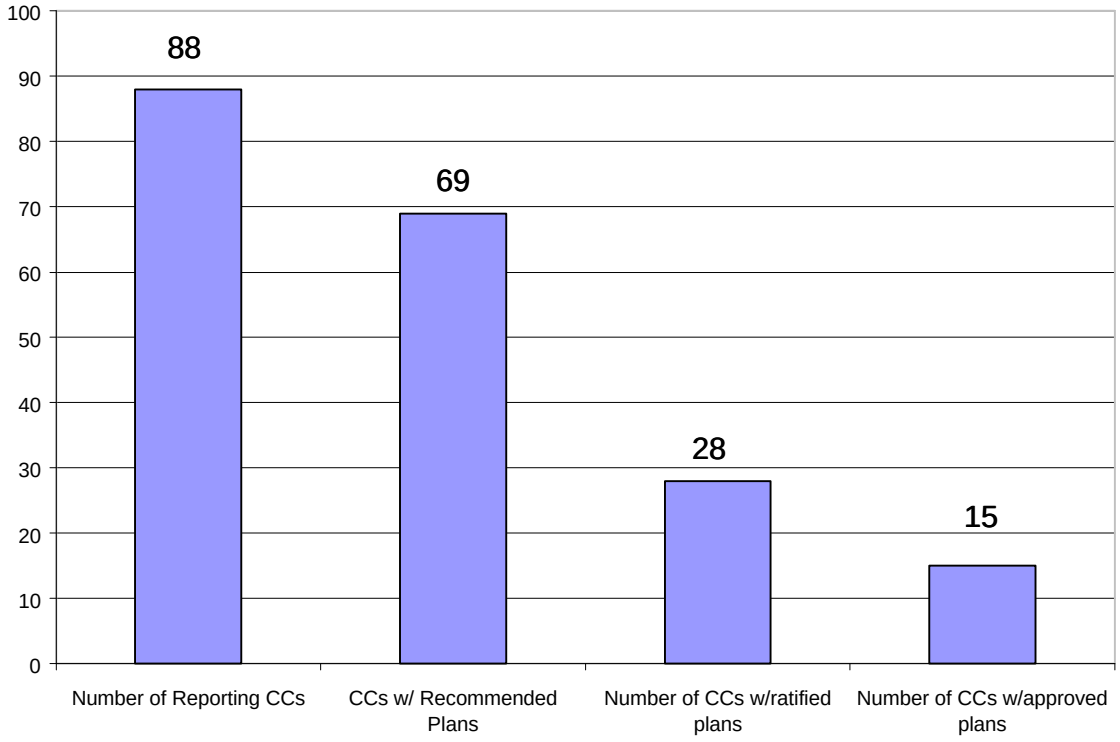
In order to determine the status of implementation of the growth plans, as measured by the progress of the coordinating committees in the planning process, the TACIR staff sent a questionnaire to the chairperson of each committee. Eighty-eight chairs responded.[37] They indicated that substantial progress has been made in the implementation of the provisions of the Public Chapter 1101 pertaining to the development of countywide growth plan.

Sixty-nine chairs reported that their committees have developed recommended growth plans, which are now ready to be submitted or have been submitted to the affected counties and municipalities for ratification. Thirty-three chairs reported that their recommended plans have been ratified by all the associated municipalities, while twenty-eight chairs reported that their recommended plans have been ratified by the affected counties. Twenty-four chairs reported that their ratified plans have been submitted to LGPAC.

Eighty-two chairs reported that municipalities had submitted UGBs. Sixty-five chairs reported that counties had submitted PGAs, and eighty chairs reported that counties had submitted RAs.

[37] The following county coordinating committees did not respond to the survey: Grainger, Hancock, Hardeman, Johnson and Morgan.

TABLE 2
Results of Coordinating Committee (CC) Survey



Given that each county has established a coordinating committee, we can provide some statewide estimates to the effect that at least:

- Seventy-five percent of the coordinating committees in the state have recommended plans which have been submitted (or soon will be submitted) to their counties and municipalities for ratification;
- Twenty-nine percent of the coordinating committees have secured ratification of their plans from the county affected; and
- Thirty-five percent of the coordinating committees have had their recommended plans ratified by the municipalities.

In light of the fact that the statutory deadline for the submission of recommended plans was January 1, 2000, these are substantial accomplishments.

Based upon the survey results, it is clear that most of the coordinating committees and the associated counties and municipalities have advanced to the stage where the overall growth planning process will be dominated by actions involving ratification or rejection of recommended plans by counties and municipalities, dispute resolution efforts and final approvals by the LGPAC. During this phase of the process, we expect the following actions, as mandated or authorized by the Public Chapter 1101 to occur in stages.

Plan Ratification Stage: This stage consists of mandatory actions by counties and municipalities to ratify or reject the plans recommended by the coordinating committees, and actions by coordinating committees to revise their plans. This stage will end in each county when the plans are ratified or when either the county or one or more of the participating municipalities declares an impasse and request mediation by a dispute resolution panel appointed by the Secretary of State.

Dispute Resolution Stage: This stage is dominated by interactions between administrative law judge panels and those counties and municipalities which have rejected recommended growth plans, declared an impasse, and requested an administrative law judge panel. In this stage, administrative law judges will either successfully mediate disputes, or in the event mediation fails, adopt growth plans as required by Public Chapter 1101.

Plan Approval Stage: In this stage, it is the mandatory responsibility of LGPAC to approve plans ratified by counties and municipalities or review, approve, modify or adopt plans that have been mediated or adopted by an administrative law judge panel, if necessary in light of the provisions of T.C.A. § 6-58-106.

TACIR will monitor these developments closely throughout the year in order to determine the extent to which the coordinating committees and their associated counties and municipalities have been able and willing to resolve their differences without resorting to the use of dispute resolution panels.

3. Status of Joint Economic and Community Development Boards

In the survey of the coordinating committee chairs, TACIR staff asked the chairs to indicate if a joint economic and community development board (JECDB) had been established in the county. Thirty-five chairs reported that this board had been established and forty-three chairs reported that the board had not been established in their county.

Public Chapter 1101 creates the JECDBs without reference to the coordinating committees, established in T.C.A. § 6-58-104 of the same Public Chapter 1101, or to the Industrial Development Boards established under Chapter 53 of T.C.A. Questions raised by representatives of affected counties and municipalities revealed they, and perhaps others, were unclear about the relationships between and among these three entities. In order to reduce this uncertainty, TACIR staff developed a side-by-side comparison of the entities in question. The results of this are presented below in Table 3.[38]

[38] For additional information on JECDBs, see *Joint Economic and Community Development Boards: A Guide For Future Action* (Nashville, Tennessee Advisory Commission on Intergovernmental Relations, 2000).

TABLE 3
Comparison of Purposes, Powers, and Funding of the Coordinating Committee, the Joint Economic and Community Development Board, and Industrial Development Corporations

CATEGORY	Joint Economic and Community Development Board	Coordinating Committee	Industrial Development Corporations Under Title 7, Chapter 53
INTENT AND PURPOSES	"that local governments engage in long term planning, and that such planning shall be accomplished through regular communication and cooperation among local governments, the agencies attached to them, and the agencies that serve them" To foster communication among governmental entities, industry, and private citizens on economic and community development	Develop a growth plan that will "direct the coordinated, efficient, and orderly development of he local government and its environs…"	To maintain and increase economic opportunities, increase the production of agricultural commodities, and increase the quantity of housing available
DUTIES	To engage in long range economic and community development planning	To develop a 20 year countywide growth plan, which is to include specified provisions for planning purposes	To conduct industrial development activities.
POWERS	The act provides no specific powers to the Boards, other than the power to accept and expend donations, grants and payments for persons and entities other than the participating governments.	To develop and submit a plan for ratification by the county legislative body and the governing body for each municipality. To draft a revised plan if the original plan is rejected by the county of any municipality	Exercise corporate powers, including the power to acquire, lease, sell, enter into loans, issue bonds, borrow money, employ and compensate agents, exercise powers expressly given in certificate of incorporation
FUNDING	Funds are provided by local governments according to formula in act using federal decennial census [or as adjusted by special census]. The board may also accept donations, grants, and contracts from other sources.	No funding mechanisms are provided. Committees are encouraged to rely on existing resources.	Funds are provided through the issuance of industrial bonds.

TABLE 4
Comparison *of Membership* of the Coordinating Committees, the Joint Economic and Community Development Boards, & Industrial Development Corporations

Category	JECDB	Coordinating Committee	Industrial Development Corporations Under Title 7, Ch. 53
County Executive or representative	Required (County Executive required at a minimum)	Required (or designee)	Prohibited
Mayor or City Manager of each municipality in the county	Required	Required (or designee)	Prohibited
Largest municipally-owned utility representative	Not specified	Required	Prohibited
Largest non-municipally-owned utility representative	Not specified	Required	Not specified
Soil conservation district representative	Not specified	Required	Not specified
Representative of the largest LEA	Not specified	Required	Not specified
Representative of the largest Chamber of Commerce	Not specified	Required	Excepting for certain purposes within a Central Improvement District, Directors chosen by Chamber (or similar trade organization) and elected by governing body of municipality(co.)
Private Citizens	Required[39], but number not specified by Act. One member must be a landowner owning land qualifying for classification and valuation under Tennessee Code Annotated, Title 67, Chapter 5, Part 10.	Required. Two members appointed by county executive and two members appointed by mayor of largest municipality (representing environmental, construction, and homeowner interests]	Required. Must be a duly qualified elector of and taxpayer in municipality (county) [except in case of closed or downsized Federal facility]
Representatives of present industry and business	Required but number not specified by Act [40]	Two members appointed by county executive and two members appointed by mayor of largest municipality (representing environmental, construction, and homeowner interests]	Under the law , the members of IDB's are determined by "largest Chamber of Commerce or other similar Trade Organization

[39] This category has some crossover with other categories. For example, the representative of homeowner interests from the coordinating committee is likely to qualify as a private citizen and landowner.

[40] This category has some crossover with other categories. For example, the representative of "construction" from the coordinating committee might also qualify as a representative of present industry and business. The language in Section 15(c) is ambiguous. It states that this category "shall be" represented, but the category is not included in the "minimum" membership requirements of the same section.

B. Consolidation Developments –The Move To Metro

Over the past year, three counties have taken steps toward the formation of a metropolitan form of government as an alternative to the development of a growth plan. Franklin County voters rejected a metropolitan charter in a referendum in 1999. Last year, Warren County and Trousdale County each formed a metropolitan charter commission to study the metropolitan form of government and develop a metropolitan charter.

1. Franklin County

In 1998, Franklin County citizens showed their support for a metropolitan form of government when they signed a petition requesting the formation of a metropolitan charter commission.[41] In response to the petition, the Franklin County Commission created a metro charter commission.[42]

The major reason behind this interest in the metropolitan form of government was a desire to limit annexation attempts by municipalities within the county and other municipalities outside the county such as Tullahoma and Monteagle.[43]

Despite the strong showing of support for a consolidated government, there was some opposition to it. The Winchester City Council voted unanimously to pass a resolution stating their opposition.[44] The Cowan City Council officially disapproved of a metro government citing a concern over unanswered questions about services and a possible loss of gas and sales tax revenue.[45]

A metropolitan charter was prepared and presented to the public in September 1999, and a referendum on the charter was held November 9, 1999.

The voters rejected the metro charter.[46] Charter commission officials suggested, however, that the subject of a metro government would be reconsidered in the future.[47]

2. Warren County

Interest in a metropolitan form of government began to emerge during several town hall meetings in Warren County in April 1999, much to the surprise of county officials.[48] This prompted the local Chamber of Commerce to begin a petition drive for a metro charter

[41] Donna Baskin, "Franklin County Takes More Steps Toward Metro System," Winchester (TN) *Herald-Chronicle*, July 7, 1998.
[42] Ibid.
[43] Donna Baskin, "Annexation, Quality Of Life Issues Surface Over 'Metro', " *Tullahoma News*, September 15, 1999.
[44] Baskin, " Franklin County Takes More Steps Toward Metro System."
[45] Donna Baskin, "Cowan Council Votes To Oppose Metropolitan Form of Government," Winchester (TN) *Herald-Chronicle*, January 21, 1999.
[46] Brigid Murphy Stewart, "Winchester Rejects Metro Government," *Tennessean*, November 10, 1999.
[47] Ibid.
[48] Amy Satterwhite, "Municipality Officials Cautious On Metro Plan Support" McMinnville (TN) *Southern Standard*, April 25, 1999.

commission. By July, 714 signatures from registered voters had been collected, and this was sufficient to adopt the petition.[49]

The Warren County Metro Study Charter Commission formed and began meeting in September. Since that time, the commission has elected officers and has appointed subcommittees to hear testimony from representatives of other counties that have completed a metropolitan government study.[50] The charter is scheduled to be completed by June 15, 2000.[51]

3. Trousdale County

Residents of Trousdale County are also attempting to form a metropolitan government. In 1999, a metropolitan charter commission was formed using the voter petition method that was created by Public Chapter 1101.[52]

The commission is meeting the second Tuesday each month to prepare the metropolitan charter.[53] It is expected that work on the charter will be completed by August 2000.[54] The charter is set to be voted on in the November 7, 2000 general election.[55]

C. Incorporation Developments

In 1998, the residents of Helenwood, Hickory Withe, Midtown, Three Way and Walnut Grove voted to incorporate under Section 9(f)(3)[56] of Public Chapter 1101. It authorizes residents of a territory with not less than two hundred twenty-five (225) residents in which a majority of residents supported incorporation in a certified vote (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) to file a petition, as provided in T.C.A. § 6-1-202, may conduct another incorporation election.

As shown in Table 5, each of these newly incorporated towns has been subjected to a court challenge.

[49] Darren Dunlap, "Metro Study Gets OK: 714 Voters Give Nod To Metro Charter Study," McMinnville (TN) *Southern Standard*, July 26, 1999.
[50] Darren Dunlap, 'Metro Study Group To Hear White Rep: Commission Hearing Pros, Cons," McMinnville (TN) *Southern Standard*, November 3, 1999.
[51] Darren Dunlap, "Metro Explores Combining Recreational Services," *Southern Standard*, January 30, 2000.
[52] Telephone Interview withTammy Dixon, Member of Trousdale County Metropolitan Charter Commission, January 21, 2000.
[53] Paul Oldham, "County, Hartsville Weighing Metro Vote,"Nashville *Tennessean*, January 9, 2000.
[54] Dixon.
[55] Ibid.
[56] T.C.A. § 6-58-108 (f)(3)

TABLE 5
The Status of "Tiny Town" Court Challenges

Municipality	County	Court Challenge
Helenwood	Scott	Tennessee Court of Appeals ruled in favor of the town of Huntsville; Tennessee Supreme Court refused to hear the case.[57]
Hickory Withe	Fayette	Case still pending[58]
Midtown	Roane	Case still pending[59]
Three Way	Madison	Case still pending[60]
Walnut Grove	Sumner	Chancellor ruled in favor of municipality[61]

The most significant of these cases is the one brought by Huntsville against Helenwood, *Town of Huntsville, TN et als v. William I. Duncan et als.* In that case, the Tennessee Court of Appeals ruled that Section 9(f)(3) (T.C.A. § 6-58-108 (f)(3) was unconstitutional.

Helenwood voted to incorporate under Section 9(f)(3) in August 1998. The municipality of Huntsville then filed suit against Helenwood in August 1998. The trial court ruled in favor of the town of Helenwood in December 1998.

On appeal, the Tennessee Court of Appeals overturned the lower court's ruling. The Court of Appeals held that Section 9(f)(3) violated Article XI, Section 8 of the Tennessee Constitution. This section prohibits the General Assembly from suspending a general state law for the benefit of an individual or group of individuals. A law which violates this section of the Constitution may be upheld only if it passes a "rational basis" test meaning there must be a rational basis for treating a person or class of persons differently.

In its decision, the court declares that:

> "*The Legislature created a special classification of territories, the only basis for distinguishing these territories is that they held incorporation elections under an unconstitutional statute. We find that by creating this exception to the general law, the Legislature made an arbitrary classification. We can find no rational basis to justify it.*
>
> *We therefore find that section 9(f)(3) of Chapter 1101 of the*

[57] *Town of Huntsville, TN et als v. William I. Duncan et als*, Tennessee Court of Appeals No. 03A01-9901-CH-00024.
[58] *City of Oakland v. McGraw, et al*, Fayette County Chancery Court No. 12553.
[59] *City of Harriman v. Foster, et al*, Roane County Chancery Court No. 13,376.
[60] *City of Humboldt v. Ballard, et al*. Madison County Chancery Court No. 55416.
[61] *City of White House v. Moore, et al*., Sumner County Chancery Court No. 98C322. On a motion for Summary Judgment, the Chancellor ruled Section 9(f)(3) was constitutional. The plaintiff did not appeal the case, and the decision became final.

Public Acts of 1998 is unconstitutional because it offends Article XI, Section 8 of the Tennessee Constitution."

The town of Huntsville appealed this decision to the Tennessee Supreme Court, but in January 2000, the Supreme Court refused to hear the case. The Attorney General's office and the Scott County Election Commission have filed a petition asking the Supreme Court to reconsider its decision not to hear the case.[62] The Supreme Court refused to hear the case a second time in March 2000.

Although the holding in the case only technically applies to the municipality of Helenwood, it is thought that this case will have implications for the other "tiny towns" in the future.[63] The case will set precedent for the other four "tiny towns."[64]

It should be noted that this decision affects only Section 9(f)(3) of Public Chapter 1101. It does not affect the validity of the other provisions of Public Chapter 1101.

D. Related Developments

1. Opinions of the Attorney General

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

Attorney General Opinion No. 98-148

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

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

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

[62] Tom Sharp, "Attorney General Asks Court To Reconsider 'Tiny Towns' Law," *Tennessean* January 29, 2000.
[63] Associated Press, "Annexation Rule May Affect Status Of 5 Tenn. Towns," *Commercial Appeal*, October 7, 1999.
[64] "Appeals Court Rules Portion of PC 1101 Unconstitutional," *County News*, September-October 1999.

Attorney General Opinion No. 98-149

This opinion addressed several issues relating to utility system representation on the coordinating committee. Public Chapter 1101 provides that one member shall be from a municipally-owned utility system serving the largest number of customers in the county, and one member shall be from a non-municipally owned utility system serving the largest number of customers in the county.[65]

TABLE 6
Attorney General Opinion No. 98-149: Questions and Opinions

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

Attorney General Opinion No. 98-239

This opinion addressed several issues, summarized in Table 7, regarding the constitutionality of certain provisions of Public Chapter 1101.

[65] T.C.A. § 6-58-104(a)(1)(C) & (D)

TABLE 7
Attorney General Opinion No. 98-239: Questions and Opinions

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

Attorney General Opinion No. 99-076

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

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

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

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

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

Attorney General Opinion No. 99-092

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

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

Attorney General Opinion No. 99-218

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

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

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

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

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

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

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

In the opinion, it is written that the designation of the UGBs would affect the power of each municipality to exercise planning, subdivision regulation and zoning outside its municipality boundaries. The plan would have this effect whether it was approved by all local governments or adopted through a dispute resolution process. The Attorney General noted in the opinion that

express consent by the county government to extraterritorial zoning was not necessary, but that county zoning would supersede municipality zoning under T.C.A. § 13-7-306 even after the municipal planning commission has been designated a regional planning commission to all territory in the municipality's urban growth boundary.

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

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

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

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

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

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

Attorney General Opinion No. 00-018

Does 1998 Public Chapter 1101 regarding development of a county growth plan apply to property owned by the United States Army or the Department of Defense, and may Hawkins County or municipalities bordering the property include it within their urban growth or planned growth areas?

It appears that this property may be included within the urban growth boundaries of a city or a planned growth area because such inclusion does not appear to interfere with the federal government's use of the property.

Attorney General Opinion No. 00-022

1. *What is the meaning of the term "land use decisions" in T.C.A. § 6-58-107?*
2. *Would approvals by planning commissions, or elected bodies, where required or subdivision plats, site plans and "uses on review" or "specific use permits" be considered a "land use decision" under T.C.A.§ 6-58-107 and therefore subject to the requirement that these approvals be consistent with the growth plan?*
3. *Does T.C.A. § 6-58-107 require that actions on rezoning applications by a planning commission, city council or county commission be consistent with the growth plan?*

The term "land use decision" includes any decision regarding the use of land within the jurisdiction of the legislative body or the planning commission. All of the examples listed in Questions 2 and 3, as a general matter, would appear to fall within this category.

4. *May a property owner in a county that approves a growth plan use his or her land for lawful purposes permitted by zoning designations that were in existence prior to the adoption of the growth plan, regardless of whether those zoning designations are consistent with the classification of such property as a PGA, RA or UGB under the growth plan?*

It appears that a property owner may continue to use his or her property in a manner consistent with zoning provisions in effect before the plan was adopted, even if those zoning provisions are inconsistent with the designation of the area under the growth plan.

5. *Does T.C.A. § 6-58-107 bar a property owner from rezoning his or her property to an otherwise lawful zoning designation, if such zoning designation would conflict with the land-type classification under the growth plan?*

Any land use decision made by the legislative body and the planning commission must be consistent with the growth plan. Depending on the facts and circumstances, this legislation would probably prohibit zoning changes by these governmental bodies that are inconsistent with the growth plan.

6. *Are lawful administrative approvals by municipality or county administrations or planning commission staffs subject to T.C.A. § 6-58-107?*

Whether any particular decision by an administrative or staff official would be subject to T.C.A. § 6-58-107 could only be determined by a court of competent jurisdiction based on all relevant facts and circumstances.

7. In the event of a legislative body or a municipality's or county's planning commission makes a land use decision that is not consistent with the growth plan, what is the legal consequence of such action - what remedies are available to an aggrieved party, and who would have standing to enforce the remedies?

This issue could only be determined by a court of competent jurisdiction based on all the relevant facts and circumstances.

Attorney General Opinion No. 00-032

May the city of Mount Juliet, whose planning commission has been designated as a regional planning commission with respect to territory outside the municipality limits, constitutionally adopt zoning ordinances that apply to territory outside the city limits?

Such zoning is constitutional. Once a growth plan is adopted, this authority will be limited to territory within the region and within the municipality's UGBs.

Attorney General Opinion No. 00-036

Under T.C.A. § 6-58-111, after a county growth plan has been adopted, a city may annex territory outside its urban growth boundaries either by proposing an amendment to the growth plan, or by annexing the territory by referendum. Could a municipality annex territory outside its urban growth boundaries and within the urban growth boundaries of another municipality by referendum?

A municipality could not annex under these circumstances if it violated an annexation reserve agreement or an agreement between a municipality and a property owner. If the annexation did not violate any agreements, it could be argued that the action is not authorized under T.C.A. § 6-58-101 *et seq*, and it is inconsistent with the purposes of a growth plan. A court could conclude that if such annexation is authorized annexation by a smaller municipality within the urban growth boundaries of a larger municipality is subject to the priority provisions of T.C.A. § 6-51-110.

2. Administrative Law Judge Training

Public Chapter 1101 provides for the resolution of disputes by an administrative law judge panel. The panel will be formed by the Secretary of State upon a request by a county or a municipality that cannot ratify recommended plans submitted to them by coordinating committees.

To ensure that these judges were well versed on the tenets of the Public Chapter 1101, administrative law judges in the Secretary of State's office attended a training session on the Act on December 10, 1999. The training session was conducted by Sam Edwards of the Greater

Nashville Regional Council, Ann Johnson of the County Technical Assistance Service and Sid Hemsley of the Municipal Technical Advisory Service.

3. Department Policies Regarding Incentives and Sanctions

In late 1999, the Department of Economic and Community Development and the Tennessee Housing Development Authority established policies with regards to the incentives and sanctions established under Public Chapter 1101.

Department of Economic and Community Development

The Department of Economic and Community Development (ECD) administers the Tennessee Industrial Infrastructure program (TIIP), Industrial Training Service program (ITS), the Community Development Block Grant program (CDBG) and the Private Activity Bond program (PAB). The department outlined its position on Public Chapter 1101 incentives in a memorandum it distributed at a grant applicant workshop in October 1999.

Under ECD's policies, counties and the municipalities in the counties, which secure approvals of their growth plans by the LGPAC by July 1, 2000 will receive an additional five points on its application for the TIIP, the ITS, the CDBG economic development grants and PAB. With regards to the CDBG "regular round" (non-economic development) grants, the additional points will be administered as follows:

Applicant	Base Points	Bonus Points	Total Points
Municipality	225	11	236
County	190	10	200

ECD also revised its policies regarding the number of CDBG applications that may be submitted by a metropolitan government. Beginning in the fiscal year 2000 grant cycle, a metropolitan government may submit one application for each former municipal government and one application for the former county government. Previously, a municipal government was only allowed to submit one application for the CDBG program. The department also decided that those counties which have formed a metropolitan charter commission by July 1, 2000, but have not had their growth plans approved by that date, will not get the benefit of bonus points.

In its memorandum, ECD outlined its policy that CDBG economic development grants, CDBG "regular round" grants, TIIP grants, and ITS grants will be unavailable in counties (and municipalities therein) that do not have growth plans approved by July 1, 2001. The sanctions will be delayed for one year in those communities that have created a metropolitan charter commission but have failed to ratify the charter by July 1, 2001.

Tennessee Housing Development Authority

The Tennessee Housing Development Authority (THDA) is mandated under Public Chapter 1101 to give five additional points or a comparable percentage increase on evaluation formulas for the HOUSE or HOME grants or low income tax credits or private bond authority. THDA

outlined its policy regarding incentives under Public Chapter 1101 at a grants committee meeting in January 2000. According to THDA, the HOUSE grants will not be available in 2000 since the money for the grants has been redirected elsewhere.[66]

THDA will grant 20 additional points on the evaluation formula for HOME grants to those counties and municipalities that have their growth plans approved by LGPAC by July 1, 2000.[67] The additional points will be granted next year during the 2001 grant cycle.[68] The additional points will not be granted this year during the 2000 grant cycle. The reason for this was that the decisions on which counties and municipalities would receive the HOME grants for this year will be made before July 1, 2000. It is THDA's interpretation of the statute that they cannot distribute these additional points before July 1, 2000.[69] Thus, it will not distribute the additional points until next year's grant cycle.

Regarding the THDA competitive grants, THDA will grant 20 additional points to the counties and municipalities that have their growth plan approved by LGPAC by July 1, 2000.[70] Counties and municipalities that do not have growth plans approved by LGPAC by July 1, 2001, will become ineligible for the HOME grant beginning in the 2002 grant cycle.[71]

4. Implementation of "Hold Harmless" Provision of Public Chapter 1101

A county is "held harmless" for the loss of wholesale beer tax revenue and local option sales tax revenue after any new annexation or incorporation.[72] A county will continue to receive wholesale beer and sales tax revenue for fifteen years following any new annexation or incorporation.

The Department of Revenue (DOR) has taken steps to ensure that the implementation of this section of Public Chapter 1101 has gone smoothly. During the fiscal year of 1999, it accounted for seven annexations (Johnson Municipality, Munford, Orlinda, Alcoa, Bean Station, Halls, Decherd) and five incorporations (Helenwood, Hickory Withe, Walnut Grove, Three Way, Midtown).[73] DOR began accounting for the new annexations and incorporations using a LOTUS spreadsheet program but by year's end it had begun incorporating this procedure into its mainframe computer system (RITS).[74]

5. 1999 Amendment to Public Chapter 1101

The General Assembly made one amendment to Public Chapter 1101 during the 1999 legislative session. Additional language was added to T.C.A. § 6-58-112 (c). The statute section (with the new language in bold print) now states:

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[66] Telephone Interview with Jane Boles, Tennessee Housing Development Authority, January 20, 2000.
[67] Ibid.
[68] Ibid.
[69] Ibid.
[70] Ibid.
[71] Ibid.
[72] T.C.A. § 6-51-115 (b) and § 6-58-112(c)
[73] Telephone Interview with Karen Blackburn, Department of Revenue, January 13, 2000.
[74] Ibid.

§ 6-58-112

(c) A municipality, incorporated after May 19, 1998, 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 ***as estimated by the department of revenue on or before July 1****.* ***The municipality shall levy and provide for the administration and collection of a property tax in the required amount before the municipality may receive state-shared taxes****. Furthermore, the provisions of § 6-51-115(b), shall apply within the territory of such newly incorporated municipality as if such territory had been annexed rather than incorporated.* ***For purposes of levying a property tax, the incorporation of a municipality shall be effective on January 1 following the election at which the incorporation is approved.***

This statute section requires that the amount of property tax a newly incorporated municipality must raise must equal the amount of state-shared taxes it receives. The new language in the statute states that the amount of state-shared taxes is based on estimates made by the Department of Revenue on or before July 1.

The second sentence of the statute was deleted and replaced with a new sentence. The new sentence states that a municipality "shall levy and provide for the administration and collection of a property tax" before it can receive state-shared taxes. The deleted version of the second sentence stated that a "municipality shall levy and collect a property tax" before it can receive state-shared taxes.

The last sentence of the statute was added in 1999. It states that for purposes of a property tax an incorporation will be effective the January 1 after the incorporation election.

6. Constitutional Challenge to Public Chapter 1101

Around the state, some local governments are not satisfied with Public Chapter 1101. Some counties are now considering challenging the law in court. On December 20, 1999, the Knox County Commission voted 14-5 in favor of authorizing a lawsuit to challenge the constitutionality of Public Chapter 1101.[75] The basis for the constitutional challenge has not yet been determined. The Commission also authorized that $100,000 be appropriated for legal fees.[76]

Some Hamilton County Commissioners were present at the meeting. The Hamilton County Commission has voted to join the lawsuit with Knox county.[77] The commission has also sent letters to 81 other counties requesting their support for a judicial or legislative challenge to the

[75] Michael Silence, "$100,000 Approved For Growth Plan Challenge," *Knoxville News Sentinel*, December 21, 1999.
[76] Ibid.
[77] Tom Humphrey, "Repeal Of Urban Growth Law Urged," *Knoxville News Sentinel*, February 8, 2000.

law.[78] Rhea, Rutherford, Bradley and Hamblen county have voted to support the effort.[79] Robertson county is considering joining the lawsuit as well.[80]

7. Special Case Counties

There are three counties which could be termed "special case" counties. These counties possess unique characteristics which have made the process of adopting a growth plan especially challenging.

Shelby County

Shelby County's situation was unique in that the municipalities in Shelby County had a series of annexation reserve agreements. Annexation reserve agreements designated territories that the municipalities were legally entitled to annex.

Public Chapter 1101 provides that in those counties 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 county shall file a plan based on the agreements with the coordinating committee.[81]

This provision applied to Shelby County. At issue were the unincorporated areas of Shelby County which were not in any of the annexation reserve agreement territories. In June 1999, the mayors of the municipalities in Shelby County signed a "memorandum of understanding" which would divide the unincorporated parts of the county into territories that Memphis and the six suburban towns would have the right to annex over the next 20 years.[82]

It was this "memorandum of understanding" which helped to form the basis for the county's growth plan. The Shelby County Coordinating Committee approved the growth plan in December 1999.[83] The plan was then submitted to the counties and municipalities for ratification.

Madison County and Montgomery County

In counties where the largest municipality is at least sixty percent of the county population and no other municipality is larger than 1,000, the coordinating committee is the planning commission of the largest municipality, combined with the planning commission of the county.[84] Both Madison County and Montgomery County fell within the requirements of this statute.

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[78] Judy Walton, "Hamilton Musters Growth Challenge," *Chattanooga Times Free Press*, December 30, 1999.
[79] "Fight Against New Urban Planning Law," *Columbia Daily Herald*, January 20, 2000.
[80] Toni Dew, "Robertson County Looks At Joining Lawsuit to Test Legality Of Growth Law," *Tennessean*, February 11, 2000.
[81] T.C.A. § 6-58-104(a)(7)
[82] Blake Fontenay, "Shelby Mayors Tout Growth Plan," *Commercial Appeal*, June 18, 1999.
[83] Blake Fontenay, "Leaders OK 20-Year Growth Plan," *Commercial Appeal*, December 23, 1999.
[84] T.C.A. § 6-58-104(a)(9)(a)

In Madison county, the committee managed to complete its growth plan ahead of schedule. The Madison county growth plan was submitted to the county and municipalities for ratification by December 1999.[85] The county and municipalities soon ratified the plan, and it was submitted to and approved by LGPAC in January 2000.

In Montgomery County, the Clarksville/Montgomery County Regional Planning Commission was designated as the county's coordinating committee. The Clarksville/Montgomery County Regional Planning Commission had completed a countywide growth plan, and it has submitted the plan to the municipality and county for ratification.

CONCLUSION

Substantial progress has been made in the implementation of Public Chapter 1101, especially in the development of countywide growth plans. Most coordinating committees have submitted recommended growth plans to their associated counties and municipalities.

Thus, the main focus of the growth planning implementation effort has now shifted to the plan ratification and plan approval stages. This stage of the process is the most sensitive, but the overall framework of communication and cooperation is designed to move to successful conclusion. It is too early to determine if this stage will be completed successfully at the county level or if unresolved disputes will lead to mediation efforts by administrative law judge panels. As the process unfolds, interested parties will begin to understand the extent to which the growth planning process has fostered better communication and created a framework for cooperation and dialogue.

As this process matures, municipalities and counties have a framework to reduce the number and intensity of conflicts over growth and its implications for municipal annexations.

[85] Chris Coil, "Metro Government Talks Renewed In Madison County," *Jackson Sun*, December 20, 1999.

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APPENDICES

APPENDIX 1
GROWTH PLAN PROGRESS SURVEY

County You Represent_____

1. Have all the cities in your county designated their urban growth boundaries ?

   Yes___ No___

2. Has the county designated a planned growth area(s) and/or

   Yes____ No___

   a rural area(s) ?

   Yes ___ No ___

3. Has each of the cities in the county submitted an urban growth boundary to the coordinating committee, and has the county submitted a planned growth area(s) and/or a rural area(s) to the coordinating committee?

   Yes ___ No___

4. Has the coordinating committee developed a countywide growth plan?

   Yes ___ No ___

5. Have two (2) public hearings been held on the countywide growth plan?

   Yes ___ No___

6. Has the coordinating committee voted on and adopted a countywide growth plan?

   Yes ___ No ___

7. Have all the cities in the county ratified the countywide growth plan?

   Yes ____ No ___

8. Has the county ratified the countywide growth plan?

   Yes ___ No ___

9. If the county and all the cities in the county have ratified the countywide

growth plan, has the plan been submitted to the local government planning advisory committee?

Yes ___ No ___

10. Has the coordinating committee sought formal mediation by an administrative law judge?

Yes ___ No ___

11. Has a joint economic and community development board been established in your county pursuant to Section 15 (T.C.A. § 6-58-114)?

Yes ___ No ___

12. Is your county considering forming a metropolitan form of government as an alternative to the growth plan?

Yes ___ No ___

13. Does your coordinating committee need any further technical assistance in complying with Public Chapter 1101?

Yes ___ No ___

APPENDIX 2
SUMMARY OF SURVEY RESULTS (3/2/00)

Year 2000
Number of Counties w/ CCs 93

	Number of CCs	Percentage of Reporting CCs	Percentage of Population of CCs
Number of Reporting CCs	88		
CCs w/ Recommended Plans	69	78.41%	74.19%
CCs w/Plans ratified by all cities	33	37.50%	35.48%
CCs w/Plans ratified by county	28	31.82%	30.11%
CCs w/Plans submitted to LGPAC	23	26.14%	24.73%
Number of CCs w/ratified plans	28	31.82%	30.11%
Number of CCs w/approved plans	15	26.14%	16.13%

APPENDIX 3(a)
PUBLIC CHAPTER 1101 FROM 1999 LEGISLATIVE SESSION: BILLS THAT WERE NOT PASSED

Last year, there were a number of bills introduced that attempted to change the provisions of Public Chapter 1101. The General Assembly did not pass most of these bills. This is a list of Public Chapter 1101 bills that were introduced last year, but they were not passed by the legislature.

SB0452/HB0196 Quo Warranto Actions to Challenge Annexation
Restores right to jury trial for parties who file quo warranto actions challenging annexation ordinances.
(S: McNally H: Dunn)

SB0882/HB0591 Annexation-Jury Trial in Quo Warranto Actions
Restablishes right of jury trial in quo warranto action to challenge annexation bid. Trial shall be before circuit court judge or chancellor.
(S: Atchley H: Boyer)

SB1264/HB1506 Creation of a New Municipality
Deletes requirement that a municipality incorporated after May 19, 1998, must 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.
(S: Springer H: Jackson)

SB0660/HB0679 Growth of Municipal Government
Prohibits the municipality from being able to annex on its own initiative.
(S: Cooper H: Fraley)

SB1627/HB1367 Boundaries Relative to Comprehensive Growth Plan
Specifies that municipal government cannot impose upon territories where moratoria and other limits on building permits are in effect. Specifies that municipalities and counties cannot deny development except for inadequate public facilities. Change rules for designating rural areas within the territory.
(S: Burchett H: Phelan)

SB1930/HB1737 Incorporation of Municipalities
Ensures that a newly incorporated municipality will not suffer certain financial sanctions merely for coming into existence during the middle or later portion of the first fiscal year.
(S: Wilder H: Walley)

APPENDIX 3(b)
PUBLIC CHAPTER 1101 BILLS FROM THE 2000 SESSION

These is a list of the Public Chapter 1101 bills that are currently pending before the General Assembly this year.

SB2997/HB2910 County Comprehensive Growth Plans
Reduces from 20 years to 10 years the length of county comprehensive growth plans adopted under growth planning law.
(S:Burchett H: Stulce)

SB3254/HB3264 Planning and Growth Plans
Provides under certain circumstances, that certain localities automatically become PGAs for purpose of countywide growth plans; certain grants and taxes do not have to be returned or repaid under certain circumstances.
(S: Wilder H: Walley)

SB2391/HB2271 Annexation by Ordinance
Deletes the provisions for municipalities to annex by ordinance under its own initiative.
(S: Fowler H: Stulce)

SB2393/HB2344 Annexation by Ordinance
Deletes the provisions for municipalities to annex by ordinance upon its own initiative.
(S: Fowler H: Wood)

SB2397/HB2270 Burden of Proof in Annexation Cases
Specifies that municipalities have burden of proof in establishing necessity and benefits of annexation in cases where civil action has been brought challenging an annexation.
(S: Fowler H: Stulce)

SB2996/HB2911 Annexation Procedures
Modifies certain urban growth planning procedures relative to annexation.
(S: Burchett H: Stulce)

SB1969/HB1975 Annexation – Overton County
Extends date for developing recommended growth plan for submitting such plan for approval to county legislative body, and for approval by the local government planning advisory committee for Overton County.
(S: L. Davis H: Windle)

SB2600/HB2269 Comprehensive Growth Plan
Deletes the provisions of the comprehensive growth plan from the Tennessee Code.
(S: Springer H: Stulce)

SB2641/HB2447 Comprehensive Growth Plan
Repeals section of the code dealing with the comprehensive growth plan enacted in 1998.
(S: Burchett H: Boyer)

SB2957/HB2785 Public Planning
Extends certain growth planning incentives to certain counties that have formed metropolitan charter commissions.
(S: Cooper H: Fraley)

SB2552/HB2812 Metropolitan Government
Extends from three years to ten years, waiting period for creation by petition of subsequent metropolitan charter commission following defeat of earlier such petition in referendum.
(S: Cooper H: Williams)

SB3254/HB3264 Public Planning
Provides, under certain circumstances, that certain localities automatically became planned growth areas for purposes of countywide growth plans; provides that certain grants and taxes do not have to be repaid or returned under certain circumstances.
(S: Wilder H: Walley, Ferguson)

SB1531/HB0623 General Local Government
Extends deadlines for counties and municipalities to develop and submit growth plan required for certain grant eligibility by one year.
(S: Ramsey H: Wesmoreland, Godsey, Mumpower)

APPENDIX 4
AD HOC STUDY COMMITTEE ON ANNEXATION MEMBERS

The following legislators were appointed to serve on the Ad Hoc Study Committee on Annexation that was established in 1997 to study annexation, incorporation and growth policy issues. It was through the efforts of this committee that Public Chapter 1101 was created and passed in 1998.

Representative Matt Kisber (Co-Chair)
Representative Ed Haley
Representative Ulysses Jones
Representative Randy Rinks
Representative Arnold Stulce
Representative Harry Tindell
Representative Page Wally

Senator Robert Rochelle (Co-Chair)
Senator Ben Atchley
Senator Roscoe Dixon
Senator Tommy Haun
Senator Stephen Cohen
Senator Joe Haynes
Senator Ron Ramsey

APPENDIX 5
GRANT AND LOAN PROGRAMS AFFECTED BY PUBLIC CHAPTER 1101

Public Chapter 1101 provides an additional 5 points on a scale of 100 points or a comparable percentage increase on evaluation forms for certain grant and loan programs for counties and municipalities that have their growth plans approved by July 1, 2000.[86] It also makes certain grants unavailable to counties and municipalities that do not have an approved growth plan by July 1, 2001.[87] What follows is a brief description of each program affected by these provisions of Public Chapter 1101.

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

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

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

State Revolving Fund Program The program provides low-interest loans to assist communities in financing wastewater projects to protect ground and surface waters of Tennessee. Communities can obtain loans with lower interest rates than most can obtain through private financing.

HOME grants This program provides federal funds to expand the supply of decent, safe, sanitary and affordable housing for low-income households. The types of activities eligible for funding under this program include homeowner or rental housing rehabilitation programs, new construction of rental housing units, and acquisition and/or rehabilitation of rental housing units.

HOUSE grants Housing Opportunities Using State Encouragement (HOUSE) is a state-funded program designed to fund local housing programs that promote the production, preservation and rehabilitation of affordable housing for targeted households. This program will not be available

[86] T.C.A. § 6-58-109
[87] T.C.A. § 6-58-110

for fiscal year 2000, since the legislature redirected the dedicated tax revenue for the state-funded HOUSE program to the State General Fund for fiscal year 2000.

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

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

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

APPENDIX 6
TENNESSEE GROWTH FIGURES

Growth in Tennessee
1990-1999*

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

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

Growth in Grand Divisions of the State
1990-1999*

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

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

Tennessee Counties with High Growth Rates 1990-1999*

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

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

Growth Rates	
Tennessee	12.4%
National	8.2%

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

APPENDIX 7
PRINCIPLES OF SMART GROWTH

Across the nation, there is growing concern about the consequences of sprawl. Abandoned buildings, clogged highways and disappearing farmland are just a few examples of the detrimental effects sprawl can have on a community.

Smart growth is a comprehensive philosophy which attempts to combat the negative effects of sprawl through a variety of methods. It is difficult to confine the principle of smart growth to a single definition, however. The Urban Land Institute, a non-profit research and education organization, has identified nine characteristics of smart growth.[88]

- Development is economically viable and preserves open space and natural resources.
- Land use planning is comprehensive, integrated and regional.
- Public, private and nonprofit sectors collaborate on growth and development issues to achieve mutually beneficial outcomes.
- Certainty and predictability are inherent to the development process.
- Infrastructure is maintained and enhanced to serve existing and new residents.
- Redevelopment of infill housing, brownfield sites, and other obsolete buildings is actively pursued.
- Urban centers and neighborhoods are integral components of a healthy regional economy.
- Compact suburban development is integrated into existing commercial areas, new town centers, and/or near existing or planned transportation facilities.
- Development on the urban fringe integrates a mix of land uses, preserves open space, is fiscally responsible, and provides transportation options.

[88] David O'Neill, *Smart Growth Myth and Fact*™ (Washington D.C., ULI-the Urban Land Institute, 1999), p. 3.

APPENDIX 8
STATES WITH SMART GROWTH LEGISLATION

Like Tennessee, a number of states across the country have enacted smart growth legislation. A short summary of each state's legislative provisions follows.[89]

MARYLAND

The Maryland state legislature enacted the Maryland Economic Growth, Resource Protection, and Planning Act in 1992 and the Smart Growth Areas Act in 1997. The 1992 act required municipalities and counties to adopt comprehensive growth plans. The plans must contain a statement of goals and policies that include seven "visions" or policy statements that relate to such items as concentrated development and economic growth.

The 1997 Smart Growth Areas Act limited state funding for growth-related projects to "Priority Funding Areas." Areas eligible for the "priority funding area" designation include the state's 157 municipalities, land within the Baltimore and Washington outer ring highways or beltways, 31 enterprise zones and locally designated growth areas.

In Maryland, there are a number of programs and laws designed to protect farmlands and open spaces. Program Open Space acquires open space for state parks and natural resource protection. The Agricultural Land Preservation Program protects farmland through conservation easements. The Rural Legacy Program provides funding to protect large contiguous tracts of land from sprawl.

NEW JERSEY

In 1985, New Jersey enacted the State Planning Act. The Act contains two major parts: the Statewide Policy Structure and the Resource Planning and Management Structure.

The Statewide Policy Structure consists of eight planning goals and strategies on how the goals are achieved and which group (state or local government agencies, non-profit or business groups) will complete the tasks necessary to achieve the goal. A few of the goals are: the revitalization of the state's urban areas; conservation of natural resources; the promotion of beneficial economic growth; the need for adequate public services; housing at reasonable cost; the preservation of historic, cultural, open space and recreational lands and structures; environmental protection and the existence of sound and integrated planning.

The Resource Planning and Management Structure divides the state into five distinct areas: metropolitan, suburban, fringe, rural and environmentally sensitive. The areas define levels of development and infrastructure service. The Structure helps to encourage development near municipalities and other urbanized areas and away from farmlands and other open spaces.

[89] For additional information on these states' programs, consult *Planning Communities for the 21st Century* (Washington D.C. American Planning Association, 1999).

Other state programs also help to preserve rural areas. Under the Green Acres Program, $ 1.4 billion in bond issues will be used for land acquisition and park development. The Garden State Preservation Trust Act dedicates revenue from the state sales tax to repay bonds which were used to purchase open space and farmland. Additional state programs were set up to protect agricultural lands and acquire lands for conservation and recreation purposes.

OREGON

Oregon has one of the most comprehensive land-use planning systems in the nation. It was passed in 1973, and it has been amended since that time. The program centers around nineteen planning goals that are implemented through municipal and county comprehensive plans.

County and municipal governments must adopt comprehensive plans. These plans guide land use, natural resource conservation, economic development and public services. The plan contains factual information, long-range objectives and implementing measures such as zoning. Also, each municipality in the state must adopt a growth boundary which should include enough land to accommodate growth over the next twenty years.

The state's farmland and open spaces are protected through the local comprehensive plans. County governments must inventory agricultural and forest lands and protect these areas through zoning. Oregon's protection of farmland and open spaces was further augmented by the passage of Measure 66 in 1998. Measure 66 will provide state lottery revenue to acquire open spaces, parks and watershed lands for the next fifteen years.

RHODE ISLAND

Rhode Island's legislature passed the Comprehensive Planning and Land Use Regulation Act in 1988. The legislation created a Statewide Planning Program administered by a State Planning Council and the Office of Statewide Planning.

The Act also created a requirement for a State Guide Plan. The plan contains a number of elements including economic development, energy, housing, land use, natural resources, open space, solid waste management, transportation, and water resources.

Under this legislation, municipalities are required to develop local comprehensive plans. The plans include goals and policies in such areas as land use, housing and economic development. A state agency may not undertake a local project that conflicts with a local comprehensive plan. Zoning must also be consistent with the plan.

The State Guide Plan and local comprehensive plans address the issues of water resource protection, and preservation of natural resources, farmland and open space. In addition, several land trusts purchase land and development rights to property set aside as farmland or open space in the local plan. Another program authorizes the state to issue bonds to raise funds for greenway and bikeway development. "A Greener Path … Greenspace and Greenways for Rhode Island's Future" is a plan for a statewide greenway and greenspace network.

WASHINGTON

Washington's growth management laws were passed by the state legislature in 1990 and 1991. The law requires each municipality and county to adopt a comprehensive plan. The plan must designate urban growth areas. Anything outside the urban growth area is designated as rural. Zoning and land use regulations must be consistent with the comprehensive plan.

The legislation also requires local governments to identify and protect environmentally sensitive areas such as wetlands, agricultural lands and forests.

FLORIDA

In 1985, the state legislature revised the Local Government Comprehensive Planning and Land Development Regulation Act. The Act requires all county and municipal governments to develop a comprehensive plan. All zoning and land use decisions must be consistent with the plan.

GEORGIA

The Georgia Planning Act was passed by the Georgia General Assembly in 1989. It requires that each local government prepare a long-range comprehensive plan. Local governments are required to complete and maintain comprehensive plans to maintain "Qualified Local Government" (QLG) status. A local government must maintain QLG status to receive certain state funding.

There are also rules which direct local governments to establish local protection efforts to protect environmental resources such as water supply wetlands, groundwater wetlands, rivers and mountains.

States with Active Smart Growth Proposals[90]

State	Proposal	Year
Colorado	Responsible Growth Act	1998, 1999
Illinois	Smart Growth Technical Assistance Act	1999
Massachusetts	Sustainable Development Act	1999
New York	Smart Growth Economic Competitiveness Act	1999
North Carolina	Growth Management Act	1999
Pennyslvania	S.B. 300	1999

States with Smart Growth Studies Underway in 1999[91]

State	Legislation	Year
Arizona	Growing Smarter Commission	1998-1999
Colorado	Interim Legislative Committee on Development and Growth	1999
Iowa	Commission on Urban Planning, Growth Management of Cities, and Protection of Farmland	1998-1999
Kentucky	Legislative Subcommittee on Planning and Land Use	1999
New Hampshire	Land Use Management and Farmland Preservation Study	1998
New Mexico	Legislative Subcommittee on Enabling Statutes	1999-2000
North Carolina	Smart Growth Study Commission	1999
Virginia	Joint Legislative Smart Growth Subcommittee	1998

[90] Patty Salkin, *Planning Communities for the 21st Century*, (Washington D.C., American Planning Association, 1999) p. 91.
[91] Salkin, p. 96.

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