A Comprehensive Review of the Laws Governing Municipal Boundary Changes and Growth Planning in Tennessee

Before 1955, most city incorporations and annexations in Tennessee were accomplished by the General Assembly. While incorporation was possible under general law, in most cases, residents living in an unincorporated area would ask their state senator(s) and representative(s) to introduce a private act to incorporate their community as a city. The General Assembly nearly always gave the sponsors the legislative courtesy of passing such private acts.[1]

There are a number of reasons that people might seek to incorporate their community:

- preventing annexation,
- adjusting public service levels,
- preserving current land use patterns,
- preventing changes in racial or socioeconomic makeup,
- creating a sense of community, and
- promoting tourism.

Other reasons include reactions to population growth, state laws, and the efforts of political entrepreneurs.[2]

Annexation is the method most frequently used by municipalities to change their boundaries. The annexation process is generally defined as the expansion of a municipality achieved by extending its corporate limits—boundaries—to include new territory as an integral part of the municipality. One of the main reasons for annexing given by cities during discussions of the bills sent to the Commission for study is that they must be able to annex in order to ensure that they and the surrounding area remain fiscally viable and economically competitive.

General law through the first half of the 20th century already allowed for annexation by petition and referendum, but just as with incorporations, the general law was rarely used.[3] Instead, most annexations, like most incorporations, were by private act. The Commission's 1995 report, *Annexation Issues in Tennessee*, included an account of how and why the General Assembly came to create a process in general law for local governments to adjust their own boundaries:

> Annexation . . . has been in existence since the late 1700s when state constitutions were being ratified. Early annexation was accomplished in two

[1] Hobday 1963.
[2] Waldner 2010.
[3] Hobday 1963.

ways. The first and most often used method was the introduction and passage of a private act of the state's legislative body. In our American federal system, local governments are legal "creatures of the states, established in accordance with state constitutions and statutes."[4] Thus, the power to extend or contract municipal boundaries "is a legislative power." The second most commonly used method was by petition from land owners living adjacent to the municipality and desiring to become part of the municipality.

In Tennessee, until the legislature passed a general annexation law in 1955, annexations were mostly accomplished via private act of the General Assembly. Before cities and counties were granted "home rule" powers, a private act of the General Assembly was about the only way for local governments to bring about needed changes. Unfortunately, at times, the powers of certain legislatures were abused; private acts were passed against the wishes of local government officials and citizens. Annexation accomplished by private acts was described as "an exercise of governmental power of which persons newly taken in could not be heard to complain; they had no voice in the matter, no power to resist, nor was any legal right of theirs infringed thereby."[5]

The Commission's 1999 report, *Implementation of Tennessee's Growth Policy Act*, picks the story up and carries it through the 20th century:

A major complaint against annexation by private act was that, at times, the powers of the legislature could be abused. This abuse could take the form of the passage of annexation acts against the wishes of local government officials and citizens. This fear of abuse was complicated by the increasing urbanization of Tennessee during the two decades following World War II. Tennessee was becoming increasingly more urban, but at the same time traditional core cities were losing much of their economic strength to their suburban fringes. The resulting economic segregation heightened annexation tension as municipalities eyed their newly urbanized fringes, and those fringes sought ways to resist annexation by their core cities.

Despite these concerns, annexations by private law remained the predominant method of annexation in Tennessee until the General Assembly enacted Public Chapter 113 in 1955. Public Chapter 113 resulted from a 1953 vote by the people of Tennessee for a constitutional amendment requiring that all future changes in municipal boundaries be made under terms of a general statute.

The resulting constitutional clause, Article XI, Section 9, provides in pertinent part that "the General Assembly shall by general law provide the exclusive

[4] *Clinton v Cedar Rapids and the Missouri River Railroad*, 24 Iowa 455 (1868).
[5] *McCallie v. Mayor of Chattanooga*, 40 Tennessee 317 (1859).

methods by which municipalities may be created, merged, consolidated and dissolved and by which municipal boundaries may be altered." Public Chapter 113 allowed municipalities to annex by either ordinance or referendum. The legislation contained several key features, as follows.

- A municipality could annex territory on its own initiative ". . . when it appears that the property of the municipality and territory will be materially retarded and the safety and welfare of the inhabitants and property endangered . . . as may be necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole. . . ."
- A territory to be annexed had to be "adjoining" the municipality (no definition for adjoining was included).
- An ordinance could not become operative until 30 days after final passage, allowing quo warranto actions contesting the ordinance.
- Larger municipalities had precedence when two municipalities were attempting to annex the same territory.
- Remedies to an aggrieved instrumentality of the state were limited to arbitration subject to Chancery Court review.

The provisions of Public Chapter 113 generally favored municipal annexation interests. Therefore, it is not surprising that Tennessee experienced a considerable amount of annexation in the two decades following the chapter's creation. Most of these annexations were by ordinance. This is evident in the fact that between 1955 and 1968 annexation by referendum was used 18 times while annexation by ordinance was used 716 times.

The momentum in favor of annexation enjoyed by municipalities shifted by the early 1970s. Suburban residents, county governments and utility districts, working to make annexation more difficult, put pressure on the General Assembly to change the law. The 88th General Assembly responded to this pressure with House Joint Resolution No. 159, which directed the Legislative Council Committee to perform a comprehensive study of annexation. In the final report resulting from this study, the Committee acknowledged 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

- basic to the adjustment of boundaries is determining who will decide– who should control the process.

Responding to the report of the Legislative Council Committee, the General Assembly, in 1974, passed Public Chapter 753. This chapter, the first major revision to Public Chapter 113, made several major changes, as follows.

- A [municipal] plan of service was required to 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 properly conducted before a municipality could adopt its plan of service. Notice of the public hearing had to be published in a newspaper of general circulation seven days before the hearing.
- The burden of proving the reasonableness of an annexation ordinance was removed from the plaintiff and placed on the municipality.

Municipal interests took exception to the revision placing the burden of proof on the municipality, arguing that this amendment "reverses the presumption of constitutionality of legislation in favor of a presumption of unconstitutionality."

Another major revision to annexation law in Tennessee occurred in 1979, when the Tennessee Supreme Court held that quo warranto plaintiffs were entitled to have the issue of reasonableness submitted to a jury. This decision, in State ex rel. Moretz v. City of Johnson City is described as "the most devastating judicial blow to municipal annexation in the history of the act."

The next major development was the passage of Tennessee's Growth Policy Act in 1998. Public Chapter 666, Acts of 1996, started the process that culminated in this new law. Public Chapter 666 authorized incorporation of areas with as few as 225 residents. Called the "Tiny Town Bill," the Act was defined quite narrowly—so narrowly that it applied only to two small communities, Hickory Withe in Fayette County and Elder Mountain in Hamilton County, leading to questions about its constitutionality. It quickly became the subject of a lawsuit to stop the incorporation of Hickory Withe.[6] Perhaps in recognition that Public Chapter 666 might be held unconstitutional, the General Assembly passed far less restrictive legislation the following year allowing incorporation without the narrow geographic classifications of Public Chapter 666. This new law was found unconstitutional because the substance of the amendment that became Public Chapter 98 went beyond the caption of the original bill.

Because of this mess, the speakers of the House and Senate created an ad hoc study committee on annexation and broadly charged it to study not just annexation and

[6] Elder Mountain never incorporated but was later annexed by Chattanooga.

incorporation but also the foundation upon which local governance is based. Issues the committee was assigned to explore included

1. whether the citizens in an annexed area should have the right to vote;
2. whether cities should be encouraged to annex areas solely for the purpose of grabbing revenue;
3. whether cities should take county tax revenues used to fund schools;
4. what measures should be in place to provide for the orderly growth of our cities;
5. whether 95 counties are enough or too many and whether 300-plus cities are enough or too many;
6. whether the state should establish incentives for combining city and county governments to form metropolitan governments to deal with competing interests and eliminate the overlapping services provided by cities and counties; and
7. whether the sovereignty of the county and the sovereignty of the city have equal dignity.[7]

The committee worked through the fall of 1997 and into the 1998 legislative session to develop what became Public Chapter 1101, Acts of 1998. This law is fundamentally a local prerogative act, an effort to resolve incorporation and annexation disputes by requiring local governments in each county to prepare a 20-year growth plan with agreed-upon boundaries where new cities could be formed (planned growth areas) and existing cities could annex unilaterally (urban growth boundaries). Outside these boundaries are planned growth areas and rural areas where annexation can occur only by referendum. For the first time, residents of these designated rural areas were protected from annexation without consent. This concept of urban growth boundaries (UGBs) was not new and did not originate with the Act. As used in Lexington, Kentucky and other places, UGBs were developed as a part of a long-range comprehensive or general plan to concentrate growth within the boundary and reduce the impacts of growth over a broader area.

Changing Municipal Boundaries

Annexation

Annexations in Tennessee and Other States Before and Since the Growth Policy Act Passed

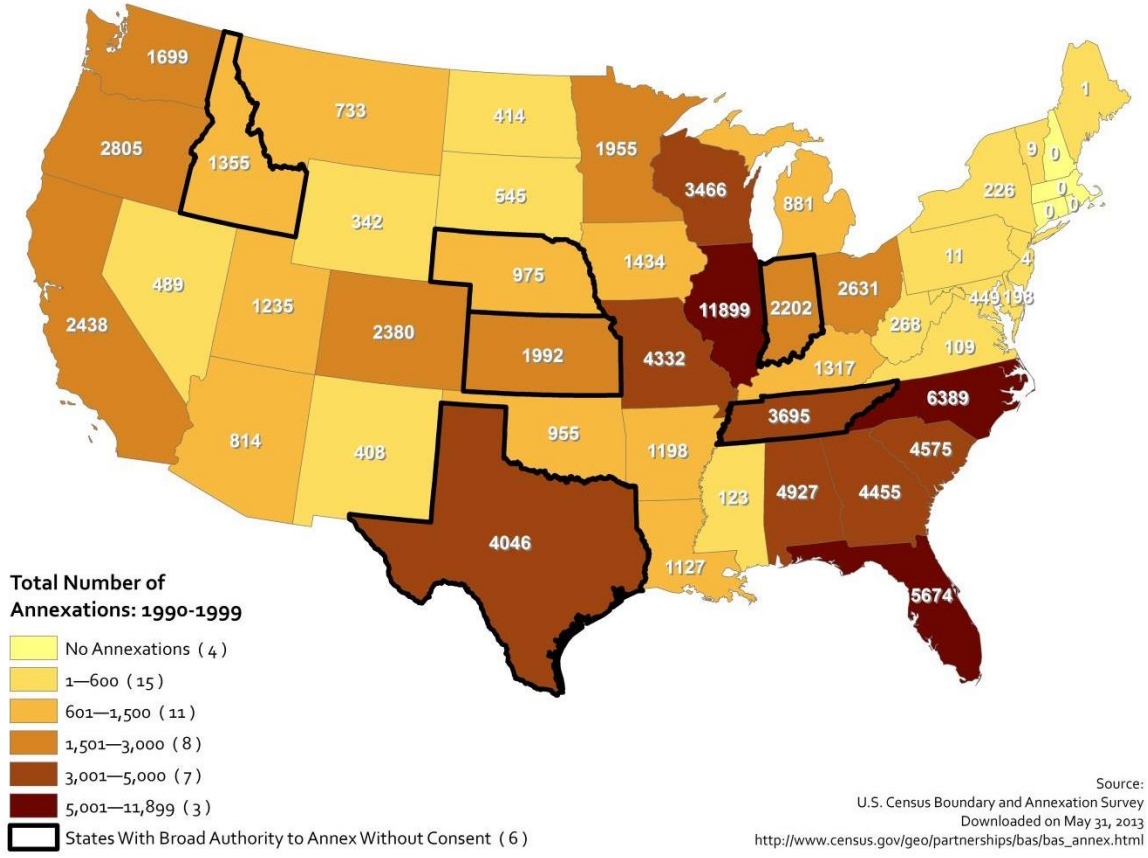
The number of annexations and the amount of land annexed by cities in Tennessee decreased following the adoption of the Growth Policy Act. The first county growth plans were approved in January of 2000. US Census Boundary and Annexation Survey[8] data from 1990 to 1999

[7] Undated letter referred to in Tennessee Advisory Commission on Intergovernmental Relations 1999.

[8] The US Census Bureau conducts the Boundary and Annexation Survey (BAS) annually to collect information about selected legally defined geographic areas. The Census Bureau makes no claims to the completeness of the annexation data in the boundary change files. The data in these files were collected through the BAS and BAS

indicates that there were 3,695 annexations statewide in the decade preceding the implementation of the Act. See map 1. Tennessee ranked 9th-highest among the 50 states for that period. There were more annexations in Tennessee than in four of the five other states where cities have broad authority to annex unilaterally without referendum—Texas being the exception. However, there were fewer annexations in Tennessee than there were in some neighboring southeast states with more restrictive annexation laws. During this time though, North Carolina had laws similar to Tennessee's and had the second-highest number of annexations in the nation. Cities may need to annex more often in places where the population is increasing. Between the 1990 and 2000 Censuses, states in the southeast were growing rapidly; Tennessee's population increased by 16.7%. Neighboring states with slower growth rates but more annexations than Tennessee include Missouri, Alabama, and South Carolina.[9]

Map 1. Total Number of Annexations: 1990-1999



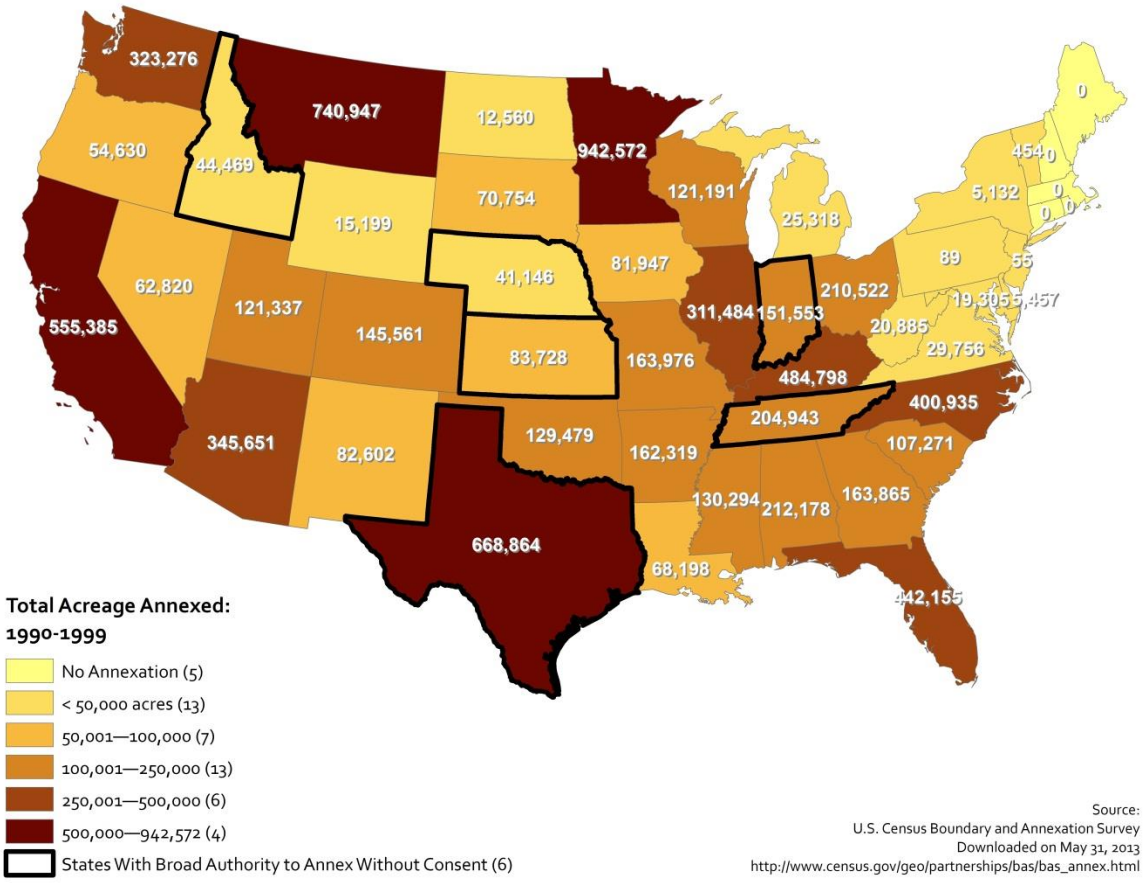
State Certification program in which local, county, and state governments voluntarily participated. The level of completeness and accuracy of the data are subject to the participants' continued effort in providing the Census Bureau with up to date boundary information.

[9] Census 2000 PHC-T-2. Ranking Tables for States: 1990 and 2000
http://www.census.gov/population/www/cen2000/briefs/phc-t2/tables/tab03.pdf

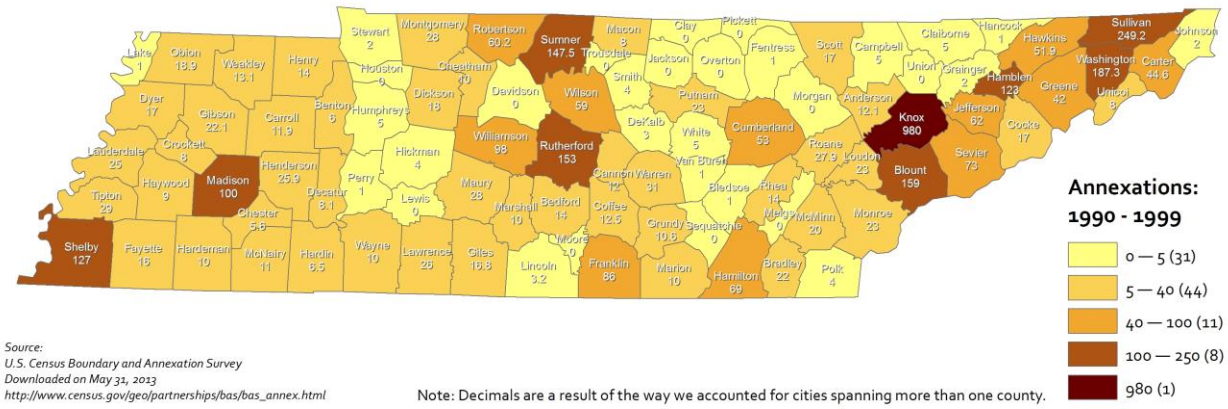
Another way to measure and compare annexations between states is to see how much acreage was annexed during this period. By this measure, Tennessee ranked 13th in the nation, reporting more acres annexed than other states with broad authority for unilateral annexation (except Texas) and more than several neighboring states. 1997 and 1998 were the peak years for acreage annexed in Tennessee, when over 71,000 acres (or 112 square miles—about the size of Trousdale County) were added to 144 different cities. For each of these cities that means an average of about 500 acres was annexed in 1997-98, demonstrating, perhaps, an effort to annex what territory a city could before the law was changed. See map 2.

Among Tennessee's 95 counties, there was a wide range in the number of annexations during the 1990s. While a third of counties experienced fewer than five annexations, nine saw more than 100—including 980 reported in Knox County alone. See map 3.

Map 2. Total Acreage Annexed: 1990-1999

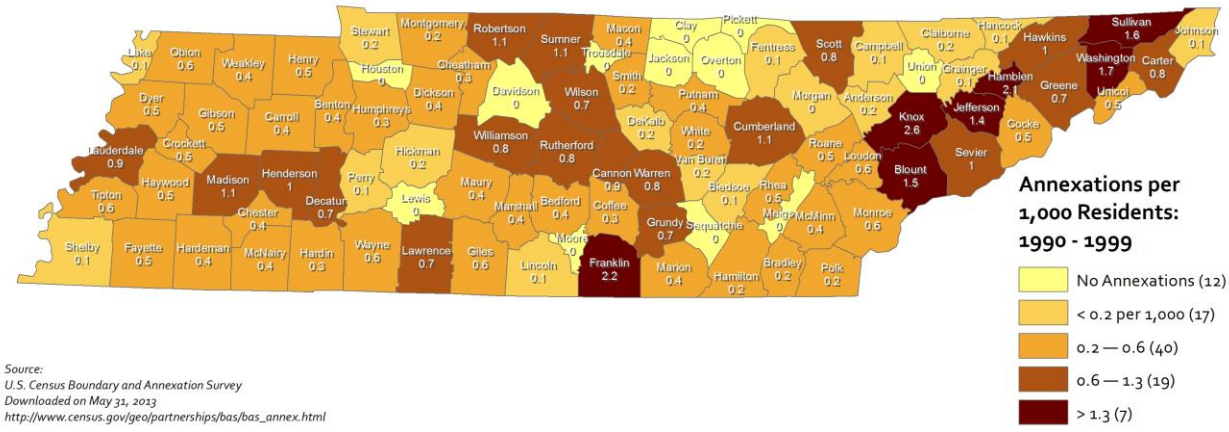


Map 3. Annexations in Tennessee: 1990-1999



Comparing annexation numbers relative to county populations, northeast counties had a higher rate of annexation than most of the state. Also, some less-populated counties such as Scott, Lauderdale, Warren and Cannon, while not near the top in total number of annexations, saw high rates of annexation for their population. See map 4.

Map 4. Annexations per 1,000 Residents: 1990-1999



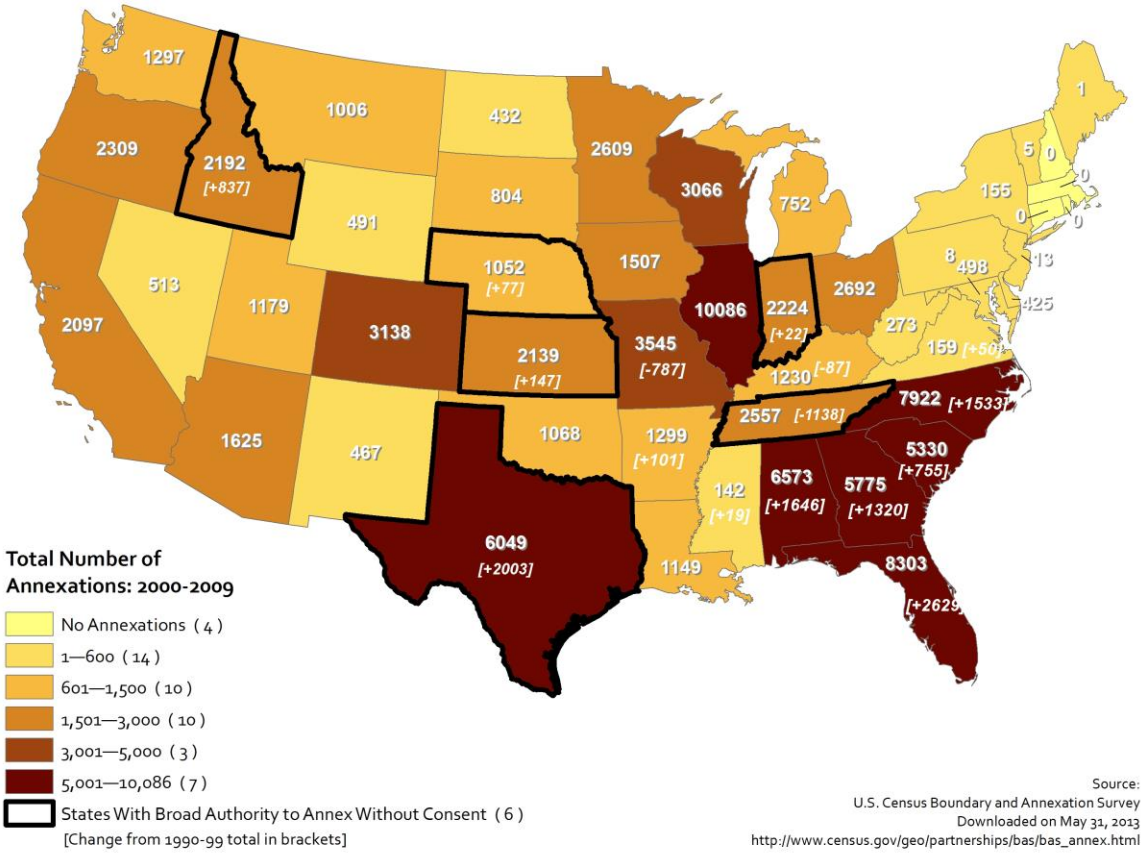
On average, in each Tennessee county, cities annexed 2,157 acres of land from 1990 to 1999. In 63% of the 81 counties reporting annexation acreage during this period, cities annexed fewer than 2,000 acres. Cities in Shelby County annexed far more land than those in any other county—double the amount in second-highest Sullivan County. Counties in growing metropolitan areas seem to show the greatest amounts of land being annexed by cities. See map 5.

Map 5. Acres Annexed by County in Tennessee: 1990-1999

It would appear that the changes implemented by the Act had a downward influence on the rate of annexation in Tennessee. For the years 2000 to 2009, the decade following the passage of the Growth Policy Act, Tennessee had 2,557 annexations and its position among the 50 states fell to 13th. See map 6. This downward trend occurred while the other states in the fast-growing southeast—defined here as the eight states bordering Tennessee, plus South Carolina and Florida—continued to see their numbers of annexations increase. Of these ten states, only Kentucky and Missouri had fewer annexations during this period than they did from 1990-99. Tennessee's population also did not grow as rapidly from the 2000 Census to 2010 as it did from 1990 to 2000, increasing by 11.5% compared to 16.7% over the prior decade.[10] With the exception of South Carolina, whose population growth rate increased by 0.2%, population growth cooled in all of these neighboring states. North Carolina, Georgia, Florida and South Carolina all continued to grow faster than Tennessee, and all showed high numbers of annexations. The other five states that grant cities broad authority for unilateral annexation saw an increase in their number of annexations over this time as well

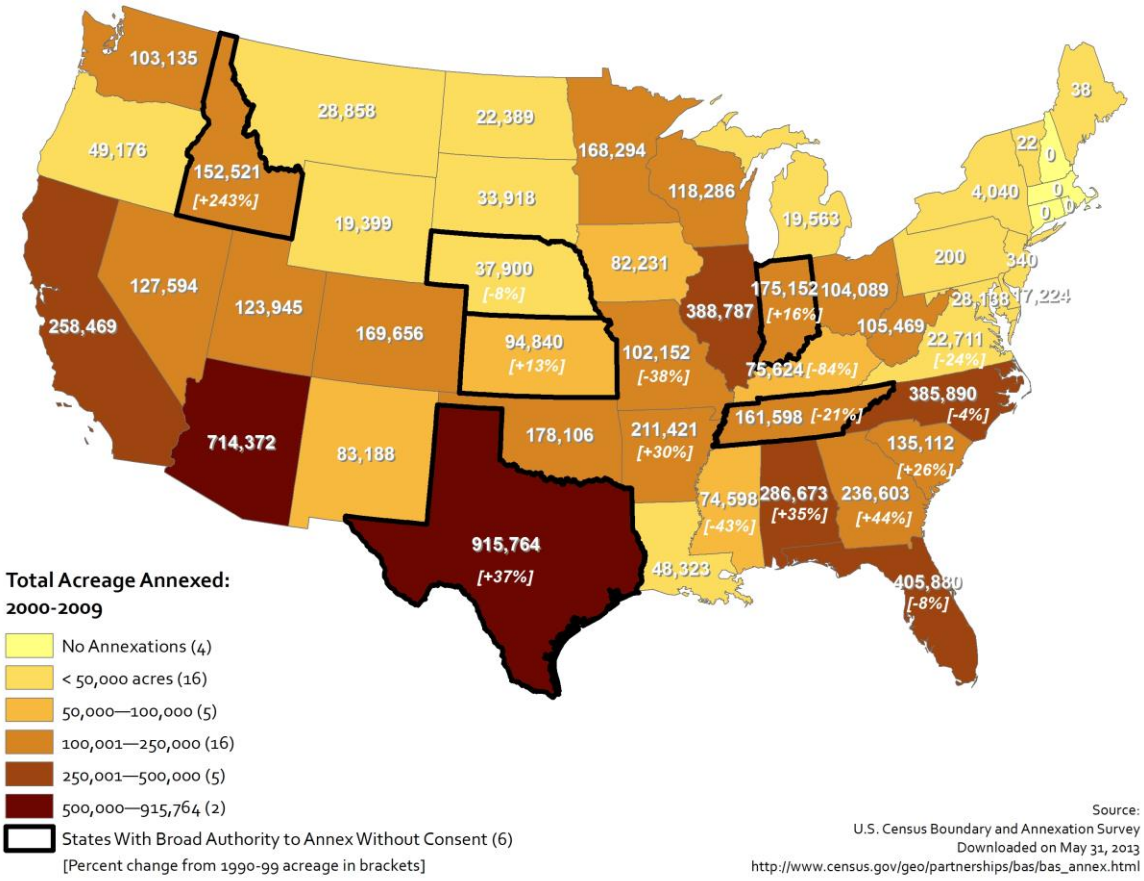
[10] US Census Bureau, 2010 Census and Census 2000

Map 6. Total Number of Annexations: 2000-2009



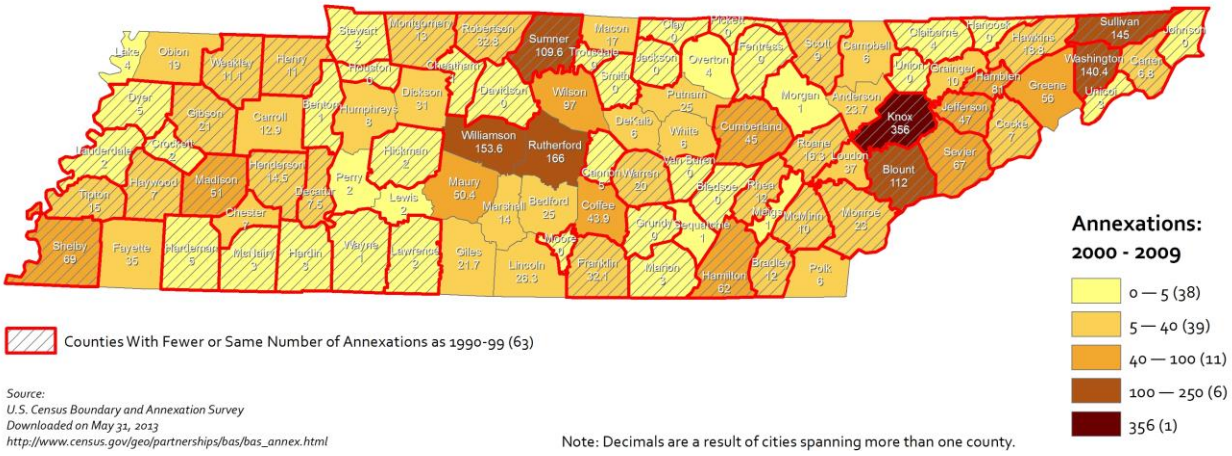
The amount of land annexed by cities in Tennessee has also decreased since the implementation of the Act. However, Tennessee's position among all states has not changed much in this measure, as the amount of land annexed across all states has decreased as well. From 2000 to 2009, Tennessee municipalities annexed a total of 161,598 acres of land. Compare this to an average of 144,217 among all states with annexations. So while acres annexed in Tennessee decreased by 21% from the previous period, acreage annexed declined 18% among all states, and Tennessee still ranked 14th for the time period. Acres annexed also decreased in the 10 neighboring and other southeast states. Interestingly, acreage annexed by cities increased in 4 of the other 5 states where cities have broad authority for unilateral annexation. See map 7.

Map 7. Total Acreage of Annexations: 2000-2009



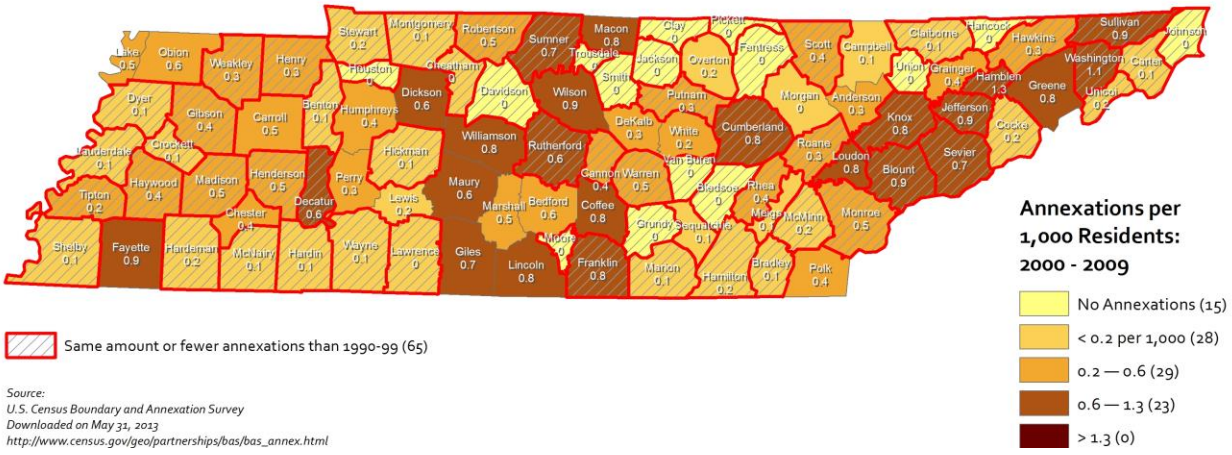
In Tennessee, 63 counties had fewer—or the same number of—annexations after adopting growth plans required by the Growth Policy Act. Those that saw annexations increase from the period before were mainly either growing suburban counties (Fayette, Rutherford, Williamson, and Wilson) or counties with a small number to begin with (i.e. Polk from 4 to 6). There were still seven counties with over 100 annexations; 40% had fewer than five. See map 8.

Map 8. Annexations in Tennessee: 2000-2009



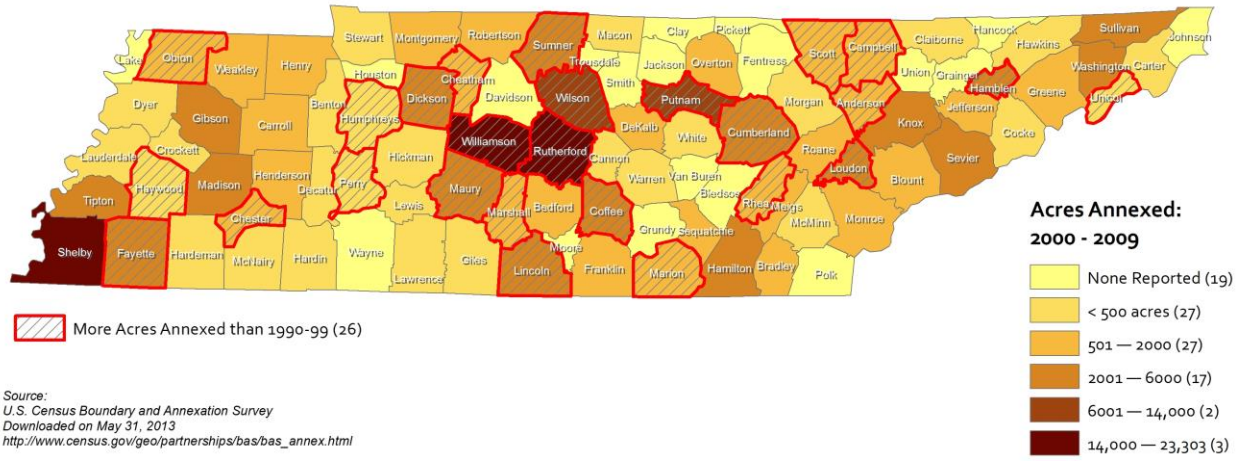
Since the implementation of the Growth Policy Act, 65 counties have seen either the same or a reduced number of annexations relative to their populations as well. Annexations per capita do remain highest in middle Tennessee and the northeast. See map 9.

Map 9. Annexations Per 1,000 Residents: 2000-2009



The amount of acreage annexed per county decreased to 1,701 for 2000 to 2009. Shelby County again topped all counties in the amount of land annexed by cities. Rutherford and Williamson were next, while there was a noticeable decline in the acreage being annexed throughout East Tennessee. In all, cities in 26 counties did increase the amount of land they annexed. See map 10.

Map 10. Acres Annexed By Tennessee Counties: 2000-2009



Source:
U.S. Census Boundary and Annexation Survey
Downloaded on May 31, 2013
http://www.census.gov/geo/partnerships/bas/bas_annex.html

Annexation Methods in Tennessee and Other States

Tennessee is one of only a handful of states where most annexations are unilateral, meaning they occur without the direct approval of the annexed residents. For the years 1990 to 2009, data from the US Census Boundary and Annexation Survey for Tennessee shows 6,252 total annexations statewide. Nearly all (99%) were accomplished by ordinance. The Census survey does not distinguish annexation ordinances initiated by cities from those requested by owners. Annexations by referendum were less than one percent (0.66%) of the total during the ten years before growth plans became effective (1990 through 1999), and less than half a percent (0.43%) from 2000 through 2009.

Annexation Methods

- Unilateral Annexation—A city can annex property by a unilateral action of its governing body without consent of residents or property owners.
- Annexation by Consent—Annexations must be approved by residents or property owners in a referendum or in a petition. In some states, a city may not annex property if a majority of residents or property owners in the territory to be annexed protest the annexation.
- Third Party Annexation—A court or entity other than the city governing body approves the annexation.

Two bills sent to TACIR for study would have significantly changed the number of annexations requiring referendums in Tennessee. House Bill 590 by Van Huss [Senate Bill 869 by Crowe], referred by the House Finance, Ways, and Means Subcommittee would require referendums for all annexations within UGBs. Senate Bill 731 [by Watson [House Bill 230 by Carter], referred by the Senate State and Local Government Committee, would require referendums for all annexations within UGBs under an amended growth plan. The original version of the bill that became Public Chapter 441 (Senate Bill 279 by Watson; House Bill 475 by Carter) would have done the same thing. Proponents of these bills include residents and property owners who believe that they should have a say in whether they should be annexed. They argue that annexation should be contingent on their consent, either through a referendum or a petition. They contend that cities annex land mainly in order to get tax revenue and often don't provide services to the area that is annexed.

Local officials counter that requiring voter approval of annexation would hinder their ability to recruit business and commercial development. They assert that private citizens do have a say in the annexation process since there are public hearings before annexation, they can protest annexations in court, and that their elected county representatives had to agree to the boundaries of the urban growth boundaries. They also note that once annexed, property owners can file a lawsuit to force the city to provide the services it said it would provide in its plan of services. Arguments for and against aside, it is clear that if the only way cities can annex is by referendum, then control over annexation will shift to property owners and the number of annexations or the amount of land annexed in any given period will likely be less.

In addition to the unilateral annexation and annexation by consent methods being debated in Tennessee, another method found in some states is third party annexation, which requires a court or entity other than the city governing body to approve the annexation. While cities across the country generally annex property in one of these three ways, state laws do not always fall neatly into these categories and some states may authorize more than one method to annex property. This is the case in Tennessee, where the law authorizes both annexation by consent and unilateral annexation. Some state require a combination of methods. For example, Alaska requires a third-party board to approve an annexation before the issue is submitted to voters in a referendum.

Only nine states are without general laws addressing annexation.[11] Most of these are New England or Mid-Atlantic states where there is no or little unincorporated territory left or, in the case of Hawaii, there are no city governments, just county and state level governments.

Unilateral Annexation

The number of states that allow cities to unilaterally annex new territory has been dwindling at the same time that concern over the practice has been growing in Tennessee. North Carolina, in 2011, was the most recent state to require consent for annexation. Indiana and Nebraska authorize cities broad power to annex without consent, not even limiting unilateral annexations to certain regions as they are in Tennessee. According to a study of annexation methods by Jamie Palmer and Greg Lindsey, unilateral annexation is administratively efficient. It may help cities to limit urban sprawl and avoid duplication of services. One of the drawbacks to this method is that it allows cities to choose not to annex areas that need more services but are unlikely to generate a high amount of tax revenue. This method also permits land grabs by cities.[12] Three states—Kansas, Idaho, and Texas—require cities to get consent for annexation in some situations but also permit annexation without consent in a broad range of other circumstances. Kansas allows cities to unilaterally annex territory under any of the following conditions: if territory is platted and contiguous, territory has a common perimeter with the city of more than 50%, territory is city or government owned, or annexing territory would make the city boundary more harmonious (21 acre limit).[13] If a city wants to annex a tract that is less than 40 acres and is not covered under the provisions above, the annexation must be approved by the board of county commissioners by a 2/3 vote. If a city wants to annex a tract that is not covered under these provisions and is 40 acres or larger, then a city may petition the county in order to annex the territory. The board of county commissions must approve the annexation by a 2/3 vote. Then, the majority of landowners in the territory to be annexed must approve the annexation in a mail ballot referendum.[14] A representative for Kansas cities reports that the overwhelming majority of annexation happens without consent.[15]

[11] Connecticut, Hawaii, Maine, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, and Vermont.
[12] Palmer and Lindsey 2001.
[13] Kansas Statutes Annotated Section 12-520.
[14] Kansas Statutes Annotated Section 12-521.
[15] Dan Moler, Executive Director League of Kansas Municipalities, Phone interview with Bob Moreo, October 2013.

In Idaho, whether consent is required depends on the size of the area.[16] If the area contains more than 100 owners owning lots five acres or less, a majority of the landowners must approve the annexation by written consent. Otherwise, cities can annex unilaterally.

In Texas, home rule cites are allowed to annex without consent if their charter provisions allow it.[17] General law cities, on the other hand, can only annex by consent.[18] To adopt a home rule charter, a city must have a population over 5,000. The charter must be approved by residents in an election.[19] There are more than 350 home rule cities in Texas, and more than 2/3 of the state population lives in these cities. It is unclear what proportion of Texas' home rule cities have charters allowing unilateral annexation, but since 13% of Texans (more than 3 million people) live within 3 miles of a home rule city, a large number of residents outside of incorporated areas may be subject to possible annexation without consent.[20]

In addition to these states with broad unilateral authority, some states authorize annexation without consent in very limited circumstances. A number of these states allow cities to annex areas of unincorporated property surrounded by a city, also known as islands or donut holes, without the consent of voters or owners. Other states allow cities to annex city-owned property. See appendix B, chart 3.

Annexation by Consent

In Tennessee, cities are required to get consent for annexation in the planned growth areas and rural areas that were established as part of the implementation of the Growth Policy Act, but it is optional within urban growth boundaries.[21] Only qualified voters who reside in the territory are permitted to vote in an annexation referendum, but the city may also opt to put the question to a vote of city residents. If the city residents get to vote, then a majority of the combined votes is needed to approve the annexation.

Most other states, thirty, require consent from voters or owners for annexations.[22] The form of consent varies. In some cases, referendums are called for by cities seeking to annex and in other cases they are called by residents seeking either to be annexed or to avoid annexation. How the referendum is conducted also varies. Depending on the state, they may be held in person, by mail-in ballot,[23] or through a petition process. Most states requiring referendums also require voters to vote in person or by referendum.

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[16] Idaho Code Section 50-222.
[17] Texas Local Government Code Section 43.021.
[18] Texas Local Government Code Chapter 43.
[19] Texas Constitution Article XI, section 5 and Texas Local Government Code Section 9.003.
[20] Houston 2012.
[21] Tennessee Code Annotated Section 6-51-104 and 6-58-111.
[22] Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maryland, Michigan, Missouri, Montana, Nevada, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Utah, Washington, West Virginia, Wisconsin, and Wyoming.
[23] Alabama, Alaska, Florida, Indiana, Kansas, Louisiana, Missouri, North Dakota, Oregon, South Carolina, South Dakota, West Virginia, Wisconsin, and Wyoming.

According to the annexation study by Palmer and Lindsey, annexation by consent allows people to live under the government of their choosing and provides a check on actions by city officials. However, it does have some drawbacks. Referendums can be expensive. This annexation method also allows a minority of residents to rule on issues that may benefit the area as a whole.[24]

Four states [25] require cities to hold a referendum if enough voters petition for one and a few other states[26] authorize voters or owners to stop an annexation if enough voters or owners protest the annexation. And in some states, annexation is a multi-step process that requires that a third party approve the annexation before the issue is submitted to voters. Depending on the state, an annexation may have to be approved by a state-level[27] or local-level board,[28] the county,[29] or the courts[30] before the voters get a chance to vote on it.

Who gets to vote also varies, with the referendums are generally decided in one of three ways:

- Voters in the territory approve the annexation.
- Voters in the city and the territory approve the annexation. The votes are counted separately.[31]
- Voters in the city and the territory approve the annexation. The votes are counted together.[32]

While twenty-one states allow only voters or owners in the territory being annexed to vote,[33] only a small number give voters in the annexing city a say, with seven[34] requiring that the issue of annexation be submitted to those voters. Alaska and Florida make this optional.

Because Tennessee law states that only "qualified voters who reside in the territory" can vote in a referendum, an issue can arise if the land to be annexed by consent has no residents. Some states authorize property owners to vote in referendums, though most don't specifically address non-resident owners. Of the 30 states that require consent before annexing, only 2 specifically address the issue of unoccupied land. Colorado[35] provides that if the territory is

[24] Palmer and Lindsey 2001.
[25] California, Kentucky, Maryland, and Michigan.
[26] California, Nevada, Utah, and Wyoming.
[27] Local Boundary Commission (Alaska) and State Boundary Commission (Michigan).
[28] Local Agency Formation Commission (California).
[29] Delaware (cities over 50,000) and Kansas.
[30] Illinois, Missouri, and Wisconsin (if city initiates).
[31] Louisiana, Missouri, Montana, and West Virginia.
[32] Arkansas, South Dakota, and Iowa.
[33] Alabama, Alaska, Arkansas, Colorado, Delaware, Florida, Georgia, Illinois, Iowa, Louisiana, Maryland, Michigan, Missouri, Montana, New York, North Carolina, South Carolina, South Dakota, Washington, West Virginia, and Wisconsin.
[34] Arkansas, Iowa, Louisiana, Missouri, Montana, South Dakota, and West Virginia.
[35] Colorado Revised Statutes Section 31-12-112.

unoccupied then an annexation referendum must be held in the adjacent territory. Louisiana[36] allows annexation of unoccupied property once each nonresident property owner has consented. Texas allows annexation of contiguous property less than a half-mile in width that is vacant, or inhabited by three or fewer people, after a hearing of the governing body.[37] Texas also allows vacant land to be annexed upon petition of the school board if the annexing municipality meets certain population requirements.

During the Commission's deliberation on annexation measures, it was suggested that requiring a referendum might not be a one-size fits all approach and that Tennessee may want to require them for certain size cities but not others. Similar approaches have been tried in other states; three have different annexation procedures based on a city's population or the population of the county a city is located in. In one of these states, the law places greater restrictions on larger cities, while in the other two it gives somewhat more flexibility to larger cities than it does smaller cities.

In Delaware, the law has more stringent annexation requirements for cities with a population over 50,000. This provision currently affects only one city, Wilmington. In addition to requiring the approval of their own chief executive officers and legislative bodies, they must also be approved by the county legislative body and then go to a vote of the residents in the territory to be annexed. Smaller cities can follow procedures outlined in their city charters, which are generally less stringent.

In Nevada, there are two sets of annexation laws, one applying to cities in counties with a population of 700,000 or more, and the other to all other cities. Currently, there is only one county with a population over 700,000, Clark County, where Las Vegas is located. While the annexation procedures for cities in both types of counties are similar, there are some differences that favor the cities in the more populated counties. For example, in counties with a population in excess of 700,000, an annexation of a donut hole may be approved over the protests of property owners if certain requirements are met. Cities in the smaller counties can't do this.

Kentucky also has different annexation laws for cities based on population, one set for first-class cities (cities with a population of 100,000) and another for all other cities. There are only two first-class cities in Kentucky, Louisville and Lexington, but since both have consolidated with their county governments the provisions no longer apply to any cities that can annex. The primary difference in the laws seems to be the way annexations can be protested. In first-class cities, property owners or residents must file a lawsuit to protest an annexation. In other cities, if a petition opposing the annexation is signed by at least 50% of the voters or owners in the territory and is presented to the mayor, then a referendum must be held. If 55% or more of those voting in the referendum oppose the annexation, then the annexation will not take place.

[36] Louisiana Revised Statutes 33:172.
[37] Texas Local Government Code 43.028 and 43.029.

Third-Party Annexation

In five states, a third party—a court or other entity—approves the annexation. According to the Palmer and Lindsey study, third party approaches can be more rational, deliberate, and unbiased, and may not be as susceptible to political influence as other methods, but they may also create an additional layer of government, costing time and money, and can raise separation of power concerns.[38] Two of these, Mississippi and Virginia, require annexations to be approved by a court. In Mississippi, it is the chancery court; in Virginia, it is a panel of three circuit court judges. In the other three states, a non-judicial third party entity approves the annexation. In Ohio, it is the board of county commissions, in Minnesota it is a state department known as the Municipal Boundaries Adjustment Unit, and in New Mexico annexations are approved by a local level arbitration board or a state level city boundary commission.

Court Challenges

Tennessee law specifically authorizes court appeals of annexations by ordinance but not of annexations by referendum. Annexations by ordinance can be overturned only if a lawsuit known as a quo warranto action is filed to challenge the annexation.[39] The party challenging the annexation has the burden of proving the annexation ordinance is unreasonable for the overall well-being of the communities involved or that the health, safety, and welfare of the citizens and property owners of the city and territory will not be materially retarded in the absence of such annexation. The case must be tried before a circuit court judge or a chancellor without a jury. Before the Growth Policy Act was passed, the burden of proof rested with the city and a jury trial was available to the party challenging the annexation. The standard of proof—that the annexation both was reasonable for the well-being of the communities and necessary to prevent worsening health, safety, and welfare in the area—remained the same.

Laws in just over half of the other states, twenty-five, specifically address court appeals of annexation decisions. Seventeen of these states allow for appeals after the final annexation ordinance has passed.[40] Three others allow appeals after the final ordinance, but place additional limitations on the appeal.[41] North Carolina[42] and Illinois[43] allow appeals during the annexation process itself. North Dakota[44] and Washington[45] allow appeals after the final

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[38] Palmer and Lindsey 2001.
[39] Tennessee Code Annotated Section 6-58-111.
[40] Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Montana, Nevada, New Mexico, Utah, Wisconsin, and Wyoming.
[41] In Virginia, the appeal must be in the form of a request for certiorari to the state Supreme Court. In Kentucky, the appeal only applies to annexations by cities of the first class, and in Ohio the appeal may take place when the annexation is resident initiated. Ohio law specifically prohibits an appeal from a grant of annexation that was city initiated.
[42] North Carolina General Statute Section 160A-58.60.
[43] 65 Illinois Compiled Statutes 5/7-1-3.
[44] North Dakota Code 40-51.2-08.

ordinance, but those appeals are referred to a third party instead of a court. Michigan's laws[46] provide only that every final decision of its boundary commission is subject to judicial review.

The laws in only two states, Arizona and Louisiana, explicitly state who has the burden of proof. In Arizona, it is the petitioner. A parish can protest the annexation of vacant land in Louisiana. In those cases, the parish has the burden if the property is contiguous, and the city has the burden if it noncontiguous.

Annexing Noncontiguous Property

Because cities in Tennessee cities can annex only land contiguous to their boundaries,[47] one rationale given for unilateral annexation is the difficulty of reaching willing owners of noncontiguous properties. The cities often want to annex noncontiguous property to promote economic development or provide services to residential areas. Consequently, they either annex the land in between or annex a strip of land just big enough to reach the target property. Most often, the desired parcels are proposed to be or are already used for commercial or industrial purposes. The concern here is balancing the economic development interests of the communities with the desire of landowners between those areas and the municipal boundary to remain outside the city. The Growth Policy Act struck that balance by requiring every city to establish urban growth boundaries within which they could continue to annex without consent and outside of which they could not.

Even inside their UGBs, some cities make it a practice to annex only those parcels whose owners wish to be annexed, which may require creative line drawing. Bypassing unwilling landowners often means annexing narrow corridors along roads, rivers, or other avenues to reach property that is not contiguous to cities' corporate boundaries. In time, this practice tends to create pockets of unincorporated areas that are nearly or entirely surrounded by cities. County highway officials have expressed concern about this practice. Annexing roads but not the adjoining property, or vice versa, can create confusion about who is responsible for maintenance and emergency services.

Annexing only part of a right-of-way, leaving responsibility for the road or bridge to the county, creates similar problems. This occurred in Hawkins County. A municipality annexed up to the bridge, skipped over it, and continued with the annexation on the other side of the structure. The bridge has been condemned and is in the process of being replaced by the county. It will cost $7.2 million to replace it. The county has already spent $28,600 to make temporary repairs in order to keep the bridge open.[48] Strip annexation is explicitly prohibited in the statutes of five states[49] and has been prohibited through case law in nine others.[50] Some

[45] Revised Code of Washington 35.10.217.
[46] Michigan Compiled Laws Section 123.1018.
[47] Tennessee Code Annotated Sections 6-51-102 and 6-51-104.
[48] Rodney Carmical, Executive Director of the Tennessee County Highway Officials Association, Testimony before TACIR, August 21, 2013.
[49] Delaware, Florida, Kansas, North Carolina, and South Carolina.

states set forth specific criteria property must meet in order to be contiguous.[51] For example, it may require a piece of property to be adjoined to a city's corporate limits for a certain number of feet in order to be considered contiguous.

Allowing for annexation of non-contiguous property may reduce the desire to annex along corridors, which has long been a contentious practice. Indiana, Kansas, and North Carolina allow the annexation of noncontiguous property if property owners consent to it. Two of these require the property to be within a certain distance of the city boundary—two miles in Indiana and three in North Carolina—and the other, Kansas, requires that the relevant board of county commissioners approve the annexation. Indiana further requires that the property be used as an industrial park. Indiana also authorizes the annexation of noncontiguous, city-owned property, as does California and Wisconsin. Other states laws dealing with annexation of noncontiguous property are summarized in appendix B, chart 1.

Notice Period and Method

Some citizens have expressed concerns that residents and property owners do not receive adequate notice before annexation. Currently, notice requirements in Tennessee depend on the annexation method. If the annexation is by referendum, notice must be given by mail 14 days in advance of a public hearing on that referendum[52] and posted in six public places 7 days in advance of the hearing. Three of the places must be in the city; three must be in the area to be annexed.[53] Neither notice by mail nor by posting in public places is required for unilateral annexation. In all cases, whether by referendum or by ordinance without consent, notice must be published in a newspaper 7 days in advance of the public hearing.

Legislation to change Tennessee's notice requirements has been introduced many times, including two bills sent to the Commission for study this past session. Senate Bill 1381 by Bowling, House Bill 1319 by Van Huss, would require any city proposing to annex territory within the city's UGB to mail notice to any property owners within that UGB 90 days before "the proposed date of annexation." House Bill 590 by Van Huss [Senate Bill 869 by Crowe] would require "90 days' notice" of the annexation. A House Local Government Committee amendment to the bill, House Amendment 422, would change the notice period from 90 days to 180 days.

Some states' required notice periods are longer than Tennessee's, others' are shorter, with the minimum notice requirement before a public hearing ranging from 6 to 60 days. The five states with broad unilateral annexation authority require as little as 1 week notice (Kansas) to

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[50] Arkansas, Idaho, Illinois, Kentucky, Ohio, Oregon, South Dakota, Wisconsin, and Wyoming. North Carolina's annexation laws were amended in 2011. It is unclear if strip or corridor annexations are restricted by the new law. In older case law, North Carolina courts have held that corridor annexations contravened the clear purpose of the annexation law. See *Hughes v. Town of Oak Island*, 158 North Carolina App. 175 (2003).

[51] Arizona, California, Colorado, Georgia, Indiana, Louisiana, Missouri, Nebraska, Nevada, Oklahoma, and Texas.

[52] Tennessee Code Annotated Section 6-51-104.

[53] Tennessee Code Annotated Section, 6-51-101.

60 days (Indiana) notice before the public hearing. Ten states require a minimum of 14 or 15 days' notice, 5 states require a minimum of 10 days' notice, and 9 states require a minimum of between 20 and 30 days' notice. Four states, other than Tennessee, require a minimum of 7 days, and Arizona requires just 6. Georgia is the only state other than Tennessee to require different notice periods depending on who initiates the annexation. It requires 21 days' notice if the cities initiate but only 14 days' notice if the landowners and electors initiate the annexation.

Notice methods also vary by state. Eight states, two of which (Idaho and Kansas) give broad authority for unilateral annexation, require notice both by mail and by newspaper. Nineteen states, including two (Nebraska and Texas) with broad unilateral annexation powers, require notice only by newspaper. Three states, including Indiana, which allows unilateral annexation, require notice of public hearings only by mail.

Other states require notice at different points in the annexation process. The minimum notice requirement for intent to annex in other states ranges from 7 to 30 days before beginning the annexation process; eight states with notice of intent provisions require newspaper notice;[54];four states require notice by mail.[55] The minimum public notice requirement before a referendum ranges from 4 to 30 days: nine states require newspaper notice before a referendum;[56] only Montana requires notice by mail.

Public Hearings and Informational Meetings

Some citizens have expressed concern that the annexation process does not give enough opportunity for those affected to learn about their rights, and that there is not enough opportunity for public input. In Tennessee, one public hearing is required before annexation by ordinance or by consent.[57] The hearing has to be held before the final passage of the annexation ordinance.[58] The law does not specify that the hearing have to occur before the final vote on the annexation ordinance; therefore, the hearing could be held on the same day as the final vote on the annexation ordinance.[59] Cities must also hold a public hearing on the plan of services.[60]

Thirty-one other states,[61] including four of the other five states with broad unilateral annexation, Indiana, Idaho, Kansas, and Nebraska, also require only one. The sixth state with

[54] Michigan, Montana, New York, North Carolina, Oklahoma, Utah, Virginia, and Wisconsin.
[55] North Carolina, Oklahoma, Utah, and Wisconsin.
[56] Alabama, Arkansas, Florida, Iowa, Louisiana, Maryland, Texas, West Virginia, and Wisconsin.
[57] Tennessee Code Annotated Section 6-51-104.
[58] Tennessee Code Annotated Section 6-51-102.
[59] *Gentry v. Bristol* Tenn. June 5, 1972 (unreported case).
[60] Tennessee Code Annotated Section 6-51-108.
[61] Alaska, Arizona, California, Colorado, Delaware, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Utah, Vermont, Washington, Wisconsin, and Wyoming.

broad unilateral annexation authority, Texas, requires two, as do three other states. No state requires more than two. No informational meetings are required in Tennessee, though many cities hold them. North Carolina, which now allows annexation only by consent, is the only state that requires an informational meeting. North Carolina is also one of the four states that require two public hearings.

North Carolina's informational meeting statute requires explanation of the plan adopted by the city for extending services to the newly annexed area, including the cost of those services and how to request them, a summary of the annexation process and time lines, and distribution of forms for requesting services. The meeting must also include information on the reason the city is interested in annexing the area. Property owners and residents of the area proposed for annexation, as well as residents of the city, must be given an opportunity to ask questions and receive answers about the annexation.[62]

Like North Carolina, Tennessee requires cities to adopt a plan of services for newly annexed territory before annexation can occur, and the plan of services must be presented at a public hearing. The public hearing requirement in Tennessee, however, does not specify what must occur at that hearing. No informational meetings are required, but many cities hold them. Senate Bill 1381 by Bowling, House Bill 1319 by Van Huss, would add three informational meetings before annexing by ordinance to inform property owners of "the potential impacts of the annexation." The House Local Government Committee amended the bill, reducing the number of informational meetings to one "to allow for questions from property owners . . . and provide information regarding the planned annexation."

Providing Municipal Services

Current law in Tennessee requires cities to have a plan of services before annexing whether by referendum or by ordinance.[63] The requirement that cities provide a plan of services when annexing by ordinance was added to the law in 1961.[64] In 1974, the legislature expanded that requirement to include police and a fire protection, water and electrical services, sewage and waste disposal systems, road construction and repair, zoning and recreational facilities was added.[65] The requirement to provide a plan of services before annexing by referendum was added in 2005 at the recommendation of this Commission.[66] Some people have argued that cities are not following their plans of services.

Before it is adopted, the plan must be submitted to the planning commission (if the city has one). The planning commission must submit a written report on it within 90 days after the submission. The city's governing body is required to hold a public hearing on the plan. The public hearing notice for the plan of services must include information on where the public can

[62] General Statutes of North Carolina Section 160A-58.55.
[63] Tennessee Code Annotated Sections 6-51-102 and 6-51-104.
[64] Public Chapter 320, Acts of 1961.
[65] Public Chapter 753, Acts of 1974.
[66] Public Chapter 411, Acts of 2005.

view copies of the plan. The level of service provided to the annexed territory has to match that of current city residents. A reasonable implementation schedule for the provision of services is required, but there is no deadline for providing the services, but the city must publish in a newspaper an annual report on progress toward extending the services.[67] An aggrieved property owner in the annexed territory can file suit to enforce the plan if the city fails to provide services.

Twenty-four states[68] require cities to develop a plan of services before they can annex an area. Ten states[69] require the plan to be made available before the public hearing. Four states require the plan to be provided on or before the date of adopting the annexation ordinance or resolution.[70] The remaining ten states laws differ. Delaware, for example, requires a plan of service but does not specify when it must be provided.

Tennessee's requirement of a "reasonable implementation schedule" does not provide a clear deadline. Other states, including Kansas and Nebraska, which allow unilateral annexation, require that the annexing city specify a timeline for implementing services. Nine states[71], including Indiana and Texas, both of which allow broad unilateral annexation, set a specific timeline in the statute. Nine other states[72], including Kansas and Nebraska, which both also allow broad unilateral annexation, require that the annexing city specify a timeline for implementing services. The timelines range from three to ten years.

Fifteen states[73], including three of the other states unilateral annexation with broad unilateral annexation powers, require that budget or financial information be provided in the plan of services. Nine states[74] require the level of services provided to the annexed territory match that of the current city residents.

Senate Bill 1054 by Kelsey, House Bill 1263 by Carr D., which became Public Chapter 462, Acts of 2013, was amended before being passed, removing sections 5 and 6. These sections would have added some requirements for the plan of services including standards for delivering the services and information about the financial ability of the city, including estimated costs and any commitment to make expenditures or to budget additional resources, to provide services to the territory proposed to be annexed.

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[67] Tennessee Code Annotated Section 6-51-108.
[68] Arizona, Colorado, Delaware, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Maryland, Missouri, Montana, Nebraska, Nevada, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wyoming.
[69] Georgia, Indiana, Maryland, Missouri, Montana, Nevada, North Carolina, Oklahoma, West Virginia, and Wyoming.
[70] Arizona, Colorado, Kentucky, and Nebraska.
[71] Arkansas, Georgia, Indiana, Iowa, Missouri, Montana, North Carolina, Oklahoma, and Texas.
[72] Florida, Kentucky, Maryland, Nebraska, Ohio, Oregon, South Carolina, South Dakota, and Wyoming.
[73] Delaware, Florida, Indiana, Kansas, Kentucky, Maryland, Missouri, Montana, Nebraska, Nevada, North Carolina, Oklahoma, South Dakota, Utah, and Wyoming.
[74] Florida, Georgia, Indiana, Kansas, Kentucky, Montana, Nevada, Texas, and Wyoming.

Extending Utilities Beyond Municipal Boundaries

Cities often extend utility lines outside the city to encourage economic development. They consider extending services outside their corporate boundaries essential to attracting business and industry. They also extend utility lines outside their limits to provide much needed services to residents and property owners who may not be able to get these services any other way. It must be noted that the law in Tennessee requires public utilities to be self-supporting, funded by ratepayers. They also argue that requiring a referendum for annexation could slow economic development and hinder Tennessee's competitiveness. Without the certainty of being able to annex territory, cities may be unwilling to extend services beyond their borders, which may make it difficult to attract business and industry to areas where counties and utility districts are unable to provide the necessary infrastructure. Idaho addressed this problem of annexing land where municipal utility lines have been laid by making consent to annexation implied in an area connected to a city water or sewer system if the connection was requested by the owner before July 1, 2008.[75] It might be expected that annexations would have increased after this change. They have decreased. At this point and with the data available it is not possible to say whether the decline was because of the change.

Vesting of Pre-Annexation Development Rights

Tennessee homebuilders, as well as some legislators and local officials, have expressed concern over complications that arise when a development is annexed at some point during its construction. What happens, they say, is that preliminary approval is granted by a county planning commission, design development continues and some construction begins. Then if the property is annexed into a city, the city planning commission can choose to enforce a different level of standards than what the developer had initially planned for. The new standards may be costlier to meet.

Some situations defy a simple explanation. After a preliminary plat has been approved, a developer can file for final plat approval by following the process in the county's adopted subdivision regulations. Once the final plat has been recorded in the office of the County Register the plat is a legal document and development can proceed according to the plat. When a plat is approved under county jurisdiction, signed by the county highway commissioner, and then the territory is annexed into a city, the city's legislative body would have to accept the streets as public streets. A potential problem comes up at this point if an annexing city's street standards are different from those under which the plat was approved. This problem can be avoided if the city's planning commission has been designated as regional and has a planning region that encompasses the urban growth boundary. In this situation, the city can apply the same street standards in region as in the city.

Courts around the country have historically been reluctant to grant developers a vested right until a final building permit for construction have been issued, and in many cases not until

[75] Idaho Code Section 50-222.

substantial expense has been committed to actual construction. What constitutes "substantial expense" is open to debate. The approval of a preliminary subdivision plat is only sufficient to vest development rights when it is the last discretionary permit needed. Where final approval of the plat is the responsibility of the governing body, however, approval by the planning commission creates no vested rights. Some jurisdictions have equated the approval of a site plan with the issuance of a building permit. The Virginia Supreme Court observed: "The site plan has virtually replaced the building permit as the most vital document in the development process."[76] Permits and applications are to be considered using statutes and ordinances in place at the time the applications are submitted. Because the process for modern land development is complex, requiring several levels of approval, some state legislatures have attempted to address the difficulty of applying the historical rule.

There is no clear consensus among the states as to when development rights become vested. In most states, the common law controls vesting of rights; however, even within the individual states there may be confusion over when rights vest. For example, Indiana has two divergent strings of case law, one calling for early vesting and another for later vesting. In order to remedy this kind of confusion, some states have adopted vested rights statutes or have incorporated the vested rights concept into their zoning laws. There is no consensus among these states either. Some states, such as Kansas, vest rights upon recording of a plat while others, such as Arkansas, require a separate development rights plan.

Recent cases in Tennessee include a situation in Nolensville in which a developer filed suit when the city required it to build roads in a new phase of development to current standards and not those in place when the first phase of development began.[77] The court ruled that the developer did not acquire vested rights in the application of the 2003 road standards to roads to be built in phases of the development not yet approved. The modification of road standards was not a zoning change. The local ordinance sets out a clear approval process in which approval of a concept plan is only a preliminary step and final approvals must be obtained. In a case in Farragut, landowners acquired a lot in order to build a convenience store. The city sought to annex the land where the lot was located. Construction had not yet started when the land was annexed. The landowners had acquired permits from the county, but not from the city. The city later adopted an ordinance that extended a residential zone to the annexed land. The court held that the landowners had not acquired a vested right in the county permits that had allowed the construction project. The court explained that private rights did not vest until substantial construction or substantial liabilities were incurred. The court found that the landowners' expenses that were incurred did not qualify as substantial liabilities.[78]

It would be in the best interest of developers of property near municipal borders within an urban growth boundary to obtain permits for as much of their construction as possible while

[76] *Board of Supervisors of Fairfax County, Virginia v. Medical Structures, Inc*.213 Virginia 355, 192 S.E.2d 799 (1972).
[77] *CK Development, LLC v. Town of Nolensville,* 2012 WL 38287, (Tennessee Court of Appeals 2012).
[78] *PEP Properties v. Farragut*, 1991 Tennessee Court of Appeals LEXIS 238, (Tennessee Court of Appeals April 10, 1991).

they remain in the jurisdiction of the county planning commission. It is also possible to seek some sort of legal agreement with the city that would allow development to continue under existing conditions for a set length of time. Cities and counties may also enter into interlocal agreements to permit certain development to continue.

A bill introduced this year, Senate Bill 915 by Niceley, House Bill 964 by Todd, would allow development standards in effect on the date of application for the building permit or the date of approval of the preliminary plat or site plan to remain the standards for final approval of the development. It would grant a "vesting period" of five years beginning on the date of issuance of the building permit or date of approval of the preliminary plat or site plan that allows the development to proceed. In the case of developments that proceed in two or more sections or phases, there will be a separate vesting period applicable to each section or phase. The bill was sent to a summer study committee for further review.

Fiscal Impact of Annexation

The claim that expanding cities' boundaries is essential to economic growth is not clearly supported by studies of annexation. Case studies of individual cities show that annexation's fiscal effects depend on a number of variables including the type of annexation, the fiscal analysis method used, the state and local fiscal landscape, and the fiscal position of the community at the time of annexation. Analyses of multiple cities have mixed results, with no conclusive evidence that annexation results in increased efficiency, revenue, wealth, or equity. Some of these studies suffer from methodological problems, and many use old data.[79]

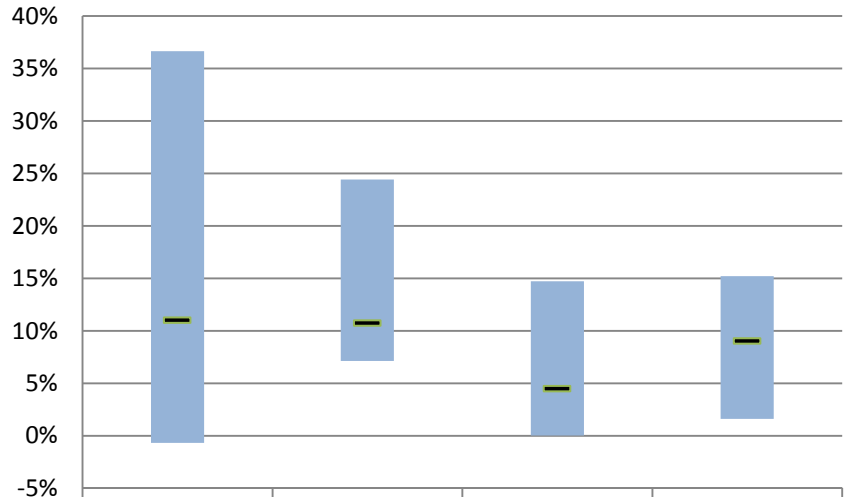
Moreover, since annexation's effects vary by jurisdiction and depend in part on the revenue streams involved, it is simplistic to assume that cities always benefit and counties always lose from annexation.[80] One of the most often cited studies of annexation asserts that a city's ability to annex land from the surrounding area is a primary determinant of its fiscal health.[81] This study, David Rusk's *Annexation and the Fiscal Fate of Cities*, found that cities with more room to annex have higher bond ratings. Rusk's study, however, did not consider the effect of the methods of annexation available to those cities. It is also not clear that the fiscal health was the result of the ability to annex or its cause, a classic "which came first" conundrum.

Consistent with the lack of conclusive evidence in the literature, comparing states' economic performances since 2000, demonstrates no clear indication that the annexation methods available to cities have an effect on economic growth. The states are grouped by type of annexation method—consent only, broad unilateral authority, none, and third party approval—and their performance is compared using growth per capita since 2000 in four measures, population, gross domestic product (GDP), personal income, and employment.

[79] Edwards 2008.
[80] Steinbauer 2002.
[81] Rusk 2006.

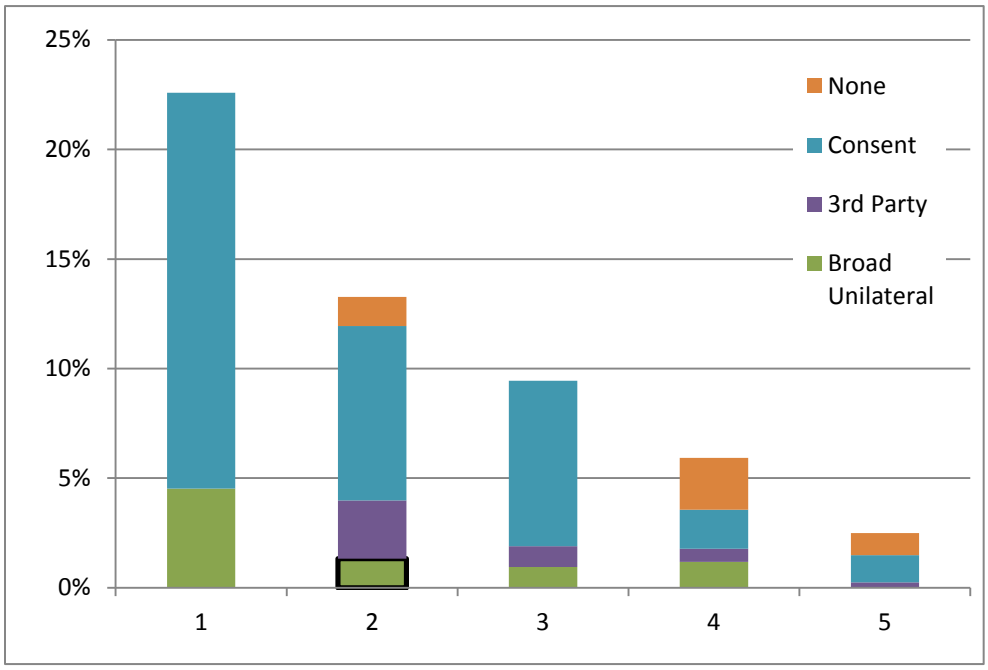
As shown in figure 1, population growth varied widely for each of the groups of states. The state with the largest growth rate, Nevada at 37%, is a consent state, though the consent states and the states with broad annexation authority had the same average (median) growth rate, 11%. Texas had the largest population growth (24%) among the broad unilateral states; Tennessee's growth rate was 13%. Figure 2 displays the 50 states by growth quintile (the ten with the largest growth, the next ten, etc.) and the average growth rate for each quintile. Also, each quintile's bar has bands indicating the proportion of that quintile made up of states of the various annexation types. The ten states making up the first quintile averaged 23% population growth since 2000. The group included eight consent states and two broad unilateral states (Texas and Idaho). Tennessee was in the second quintile, which averaged 13% growth. The second quintile also included six consent states, two states that use third party approval of annexation, and Hawaii, which has no annexation. One other broad unilateral annexation state, Nebraska, was in the third quintile and two, Indiana and Kansas, were in the fourth quintile.

Figure 1. Population Growth Per Capita, 2000-2012
Comparison by Annexation Type



	Consent (30 states)	Broad Unilateral (6 states)	None (9 states)	3rd Party (5 states)
Min	-1%	7%	0%	2%
Max	37%	24%	15%	15%
Median	11%	11%	4%	9%

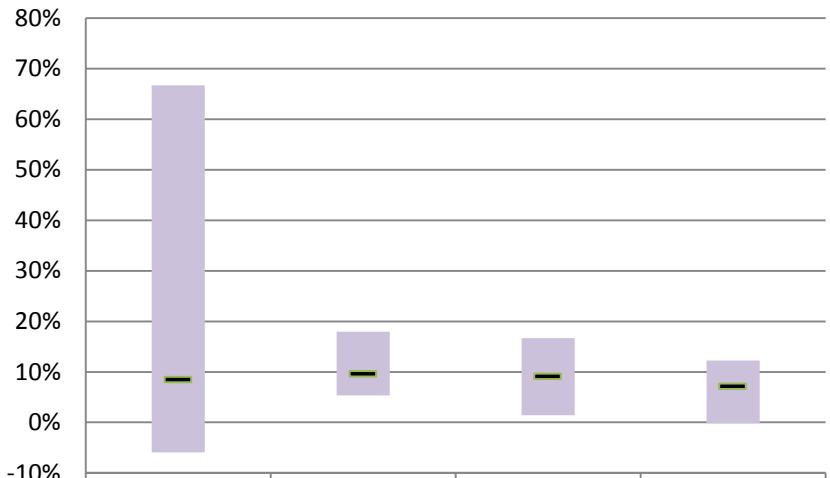
Figure 2. Population Growth per Capita, 2000-2012, by Quintile and Annexation Type



The median growth rate for real GDP per capita was similar across the annexation type groups, ranging from 7% for third party states to 10% for broad unilateral states.[82] North Dakota, a consent state, had the largest growth (67%). Nebraska had the largest growth (18%) among the broad unilateral states; Tennessee's growth was 7%. See figure 3. The ten states making up the first quintile for real GDP averaged 24% growth since 2000. The quintile included eight consent states, Nebraska, and Vermont, a state with no annexation. Tennessee was in the third quintile, which averaged less than 9% growth. The third quintile also includes four consent states, two states that use third party approval of annexation, two that have no annexation, and Indiana, another of the broad unilateral states. Among the other broad unilateral states, Texas and Kansas were in the second quintile and Idaho was in the fourth. See figure 4.

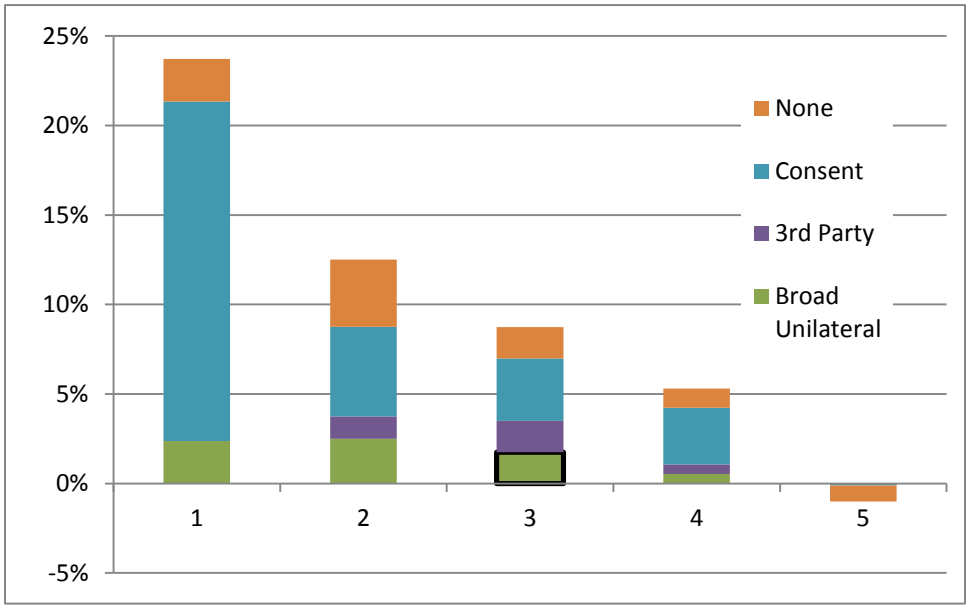
[82] Real GDP is the market value of the nation's goods and services, adjusted for inflation.

Figure 3. Change in Real GDP Per Capita, 2000-2012
Comparison by Annexation Type



	Consent (30 states)	Broad Unilateral (6 states)	None (9 states)	3rd Party (5 states)
Min	-6%	5%	1%	0%
Max	67%	18%	17%	12%
Median	8%	10%	9%	7%

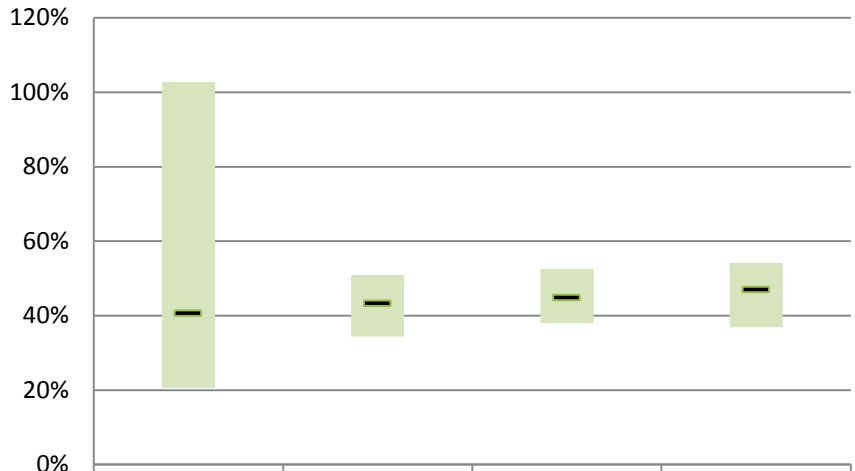
Figure 4. Real GDP Growth Per Capita, 2000-2012, by Quintile and Annexation Type



The median growth rate for real personal income per capita was also similar across the annexation type groups, ranging from 41% for consent states to 47% for third party states. North Dakota was again the leading state, with 103% growth in personal income per capita

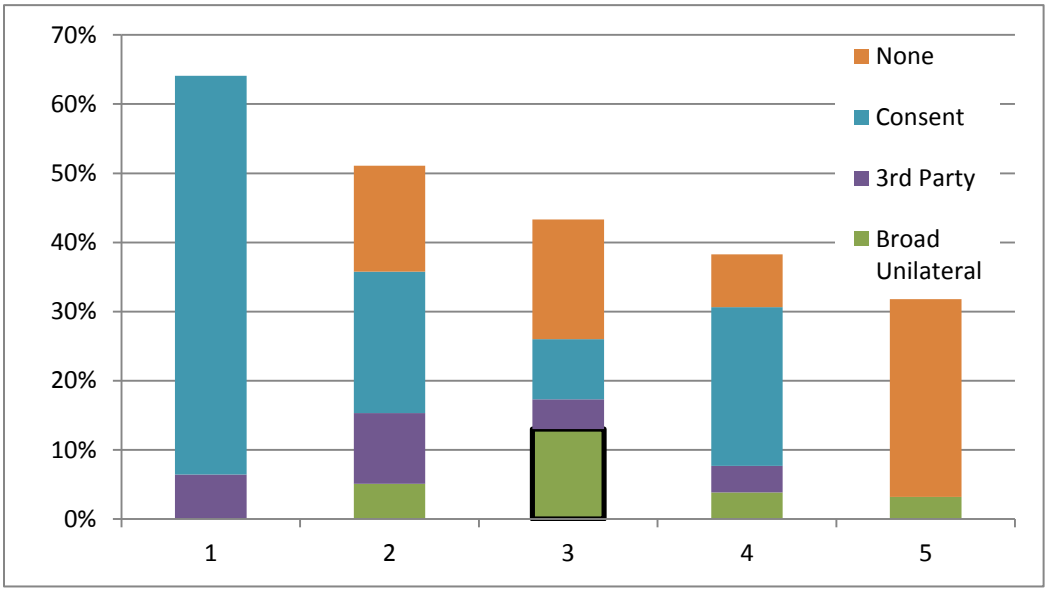
since 2000. Tennessee slightly lagged the other broad unilateral states, with 41% growth compared to their average of 43%. See figure 5. The ten states making up the first quintile averaged 64% growth in personal income. The group included nine consent states and New Mexico, a third party state. Tennessee was again in the third quintile, which averaged 43% growth. The third quintile also included two consent states, one state that uses third party approval of annexation, four that have no annexation, and two other broad unilateral states (Kansas and Texas). The other broad unilateral states were spread among the second (Nebraska), fourth (Idaho), and fifth (Indiana) quintiles. See figure 6.

Figure 5. Change in Personal Income Per Capita, 2000-2012
Comparison by Annexation Type



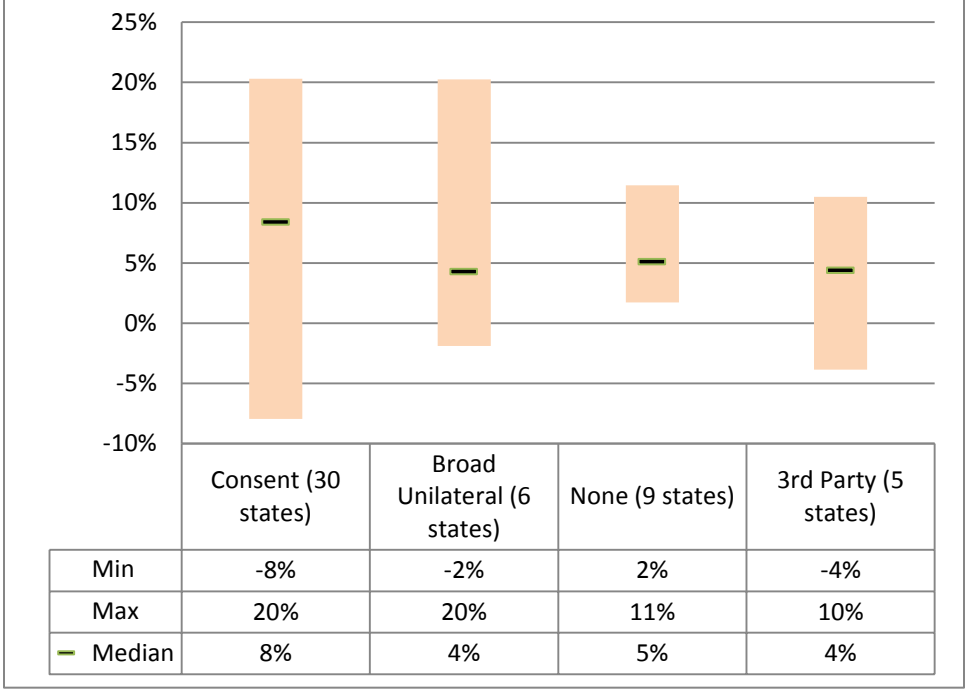
	Consent (30 states)	Broad Unilateral (6 states)	None (9 states)	3rd Party (5 states)
Min	21%	34%	38%	37%
Max	103%	51%	53%	54%
Median	41%	43%	45%	47%

Figure 6. Personal Income Growth per Capita, 2000-2012, by Quintile and Annexation Type



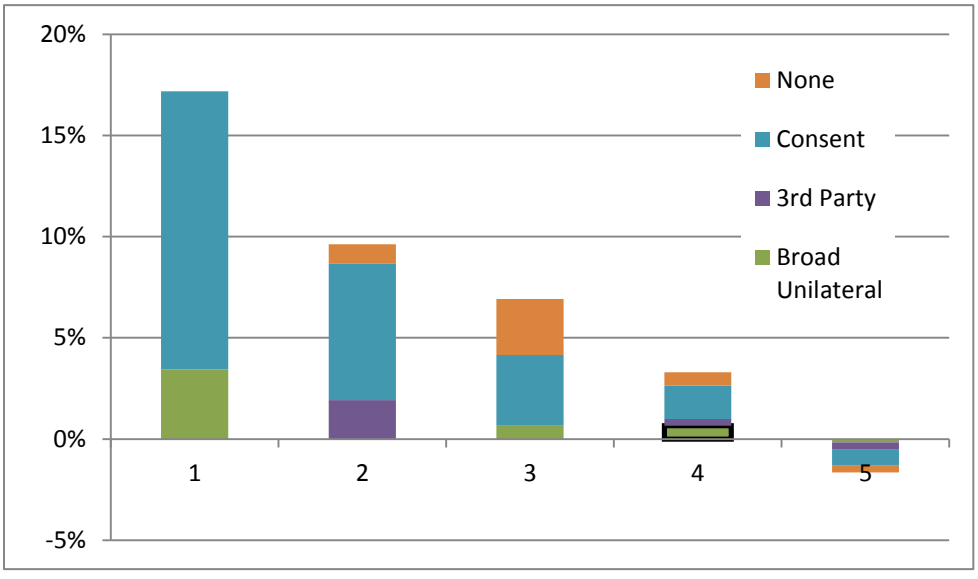
The median growth rate for employment per capita ranged from 4% for third party states and broad unilateral states to 8% for consent states. Utah, Wyoming, and Nevada, all consent states, and Texas, a broad unilateral state, tied at 20% growth in full and part time employment growth per capita from 2000 to 2011, the latest year of data available. Tennessee's growth rate was at approximately the average of the broad unilateral states (4%). See figure 7. The ten states making up the first quintile averaged 17% growth in employment. The group included eight consent states and two broad unilateral states (Texas and Idaho). Tennessee and Kansas were in the fourth quintile, which averaged 7% growth. The fourth quintile also included five consent states, two states that have no annexation, and one of the third party states. The other two broad unilateral annexation states, Nebraska and Indiana, were in the second and fifth quintiles. See figure 8.

Figure 7. Percent Growth in Employment 2000-2011 Comparison by Annexation Type



	Consent (30 states)	Broad Unilateral (6 states)	None (9 states)	3rd Party (5 states)
Min	-8%	-2%	2%	-4%
Max	20%	20%	11%	10%
Median	8%	4%	5%	4%

Figure 8. Full and Part Time Employment Growth per Capita, 2000-2012 by Quintile and Annexation Type



Allocation of Tax Revenue after Annexation

Since the Growth Policy Act, when territory is annexed, local option sales tax and wholesale beer tax revenue generated in the annexed area continues to go to the county for 15 years

after the date of the annexation. Counties continue to collect revenue from the local option sales tax and beer wholesale tax in annexed areas until July 1 and then for the next 15 years receive an amount equal to what these taxes produced in the annexed area in the year preceding annexation. Increases above this hold harmless amount are distributed to the annexing city. If commercial activity in the annexed area decreases because of business closures or relocations, a city may petition the Tennessee Department of Revenue to adjust the payments it makes to the county. Such an amount can be the result of growth in sales that produce higher taxes or a higher city local option sales tax rate.[83] The hold harmless provision does not affect the distribution of the half of the local option sales tax that is earmarked for schools. Also, the property tax, a major source of local revenue, is not included in the hold harmless provision because counties tax all property in the county regardless of whether the property is inside or outside a city. When property annexed into a city is developed, its taxable value increases and the county will receive increased property tax revenue from it.

The revenue department, cities, and counties all have roles in the reporting and distribution of the hold harmless amounts. Cities are responsible for reporting annexations to the Department of Revenue, but counties are responsible for providing the names and addresses of businesses in the annexed territory.[84] Using the reported information, the department is responsible for calculating the "annexation date revenue," which represents the local share of revenue from the local options sales and beer wholesale taxes collected from annexed businesses during the previous year. A change in law effective July 1, 2015, allows the Commissioner of Revenue to determine the local option sales tax hold harmless amount using the best information available when that amount cannot be determined from tax returns. The department is responsible for distributing the local option sales tax hold harmless amounts to counties, while the annexing cities are responsible for distributing the beer wholesale tax amounts.[85]

Tennessee is the only state that requires cities to hold counties harmless for local option sales tax collections for a period following annexation. This is not quite as striking as it sounds because only 14 of the 41 states where annexation occurs allow both cities and counties to collect local option sales taxes: Alabama, Arizona, Arkansas, California, Illinois, Kansas, Louisiana, Minnesota, New Mexico, New York, Texas, Utah, and Washington in addition to Tennessee.[86] Wyoming holds counties harmless for losses of state -shared sales tax revenue when annexations cause a 5% or larger reduction in the county's general fund. The hold harmless is realized through a gradual shift of credit for the population in the annexed area. The city gets credit for 35% of the annexed population in the first year following the annexation and for 16.25% in each of the next four years.[87] As in Tennessee, property tax

[83] Tennessee Code Annotated, Section 6-51-115.
[84] Ibid.
[85] Tennessee Code Annotated, Section 6-51-115.
[86] Compiled from Sjoquist, D. and Rayna Stoycheva (2012), Gandhi, N. (2011), Due, J. and J. Mikesell (1995), US ACIR (1994), and Vermont (2008).
[87] Wyoming Statutes Annotated Section 39-15-111.

collections are generally not affected by annexation in most states. The cities and counties have overlapping rates, and the county taxes all property, both inside and outside incorporated areas.[88] Two states, Ohio and Wisconsin, hold a non-coterminous town or township harmless for property tax revenue losses.[89]

Local Option Sales Tax

Currently, the Department of Revenue distributes around $12 million in local option sales tax hold harmless payments to counties. As shown in table 1, a total of $300,549 in hold harmless payments to seven counties will expire in 2014. An additional $3.2 million spread across 32 counties will expire within five years. See appendix D for a complete account of all local option sales tax hold harmless revenue expiring by county and year through 2027.

Table 1. Local Option Sales Tax Hold Harmless Payments Expiring 2014-2018 (excluding half earmarked for education)

County	2014	2015	2016	2017	2018
Anderson	-	-	$7,264	-	-
Blount	3,754	6,076	120,973	-	6,718
Chester	-	-	45,828	-	-
Cumberland	-	6,787	-	-	-
Gibson	-	-	3,367	-	-
Grainger	19,791	-	-	-	-
Greene	-	-	66,608	-	33
Hamblen	-	51	-	2,942	57,288
Hamilton	-	-	-	-	148,236
Hancock	-	-	1,668	-	-
Hardin	-	-	3,314	-	-
Hickman	-	-	-	472	-
Knox	-	185,303	371,482	246,874	615,763
Lewis	-	-	13,348	-	-
Loudon	-	-	35,082	-	-
Madison	118,370	-	-	-	-
Marshall	-	-	-	10,301	18,935
Polk	-	-	-	-	48,014
Putnam	-	25,255	68,103	-	1,008
Rhea	-	-	-	-	29,820

[88] The exceptions being Hawaii with no municipal governments, Connecticut and Rhode Island with no county governments, Virginia with non-coterminous cities and counties, and various "free cities" and metropolitan governments. See US Census Bureau (2012).
[89] Ohio Revised Code Annotated Section 709.19 and Wisconsin Statute Section 66.219(10)(a).

County	2014	2015	2016	2017	2018
Robertson	461	-	-	-	-
Scott	-	-	50,862	-	-
Sevier	138,047	3,681	-	-	-
Shelby	-	542,161	-	95,606	-
Sullivan	-	-	24,727	-	-
Sumner	-	-	-	232	-
Tipton	2,501	-	-	-	5,321
Warren	-	1,346	-	-	-
Washington	17,625	-	123,862	-	-
Weakley	-	212	-	-	-
Williamson	-	-	-	3,506	-
Wilson	-	-	-	133,156	2,149
TOTAL	$300,549	$770,874	$936,489	$493,089	$933,285

Source: Tennessee Department of Revenue (allocations divided by half)

Wholesale Beer Tax

The hold harmless process for wholesale beer taxes is more complicated than that for the local option sales tax, in part because the tax is, in effect, administered by the beer wholesalers, who maintain detailed records on wholesale beer sales by business and by situs. Beer wholesalers file monthly reports with the Department of Revenue showing total wholesale beer tax collections, total tax distributed to each city and county (96.5% of total collections), total amount retained by the wholesalers for their commission (3.0%), and the total amount to the state for audit and administration (0.5%). The law does not require wholesalers to provide information about individual retailers. Consequently, neither cities, counties, nor the Department of Revenue have adequate data with which to compute the wholesale beer tax hold harmless amounts, and the counties have not been held harmless for these losses.

Public Chapter 657, Acts of 2012, created the Retail Accountability Program, which requires beer and tobacco wholesalers to provide the Department of Revenue an electronic report on all sales to retailers. That report includes the name, address, and most importantly for situs identification purposes, sales tax account number for each retailer. This information may make it possible for the Tennessee Department of Revenue to identify beer retailers among the lists of annexed businesses and request beer wholesalers selling to these businesses to provide the tax payment information necessary to calculate the hold harmless amounts. According to the Tennessee Malt Beverage Association, 18 distributors account for most of the

wholesale beer activity in the state.[90] This small number of distributors, and the fact that they are large, sophisticated companies, should assist in calculating the hold harmless amount.

Annexation of Agricultural Land

Some farmers are concerned about being annexed by cities. They fear that if they are annexed their property taxes could increase and municipal laws and regulations could impact the use of their land. Tennessee has always allowed cities to annex property used for agricultural purposes. A temporary moratorium, expiring May 2014, was placed on the annexation of agricultural land with the passage of Public Chapter 441, Acts of 2013. This is in addition to the restraint on annexation of open space within cities' urban growth boundaries.[91] Certain conditions are required to be met before annexing state parks or natural areas including public hearings and a report by the Department of Environment and Conservation on the effects of annexation. When agricultural land is assessed in Tennessee, the appraised value is based upon the most probable selling price of the land. If development occurs around an agricultural property, its assessed value—and therefore its property taxes—may be driven higher. In addition, if the property is annexed into a city it will be subject to city property taxes. To prevent the increase in assessed value when development occurs, Tennessee has a voluntary greenbelt program that allows the property to continue to be valued as agricultural land or open space rather than its "highest and best use" as commercial property.

Farming operations are also protected under the Right to Farm Act from nuisance lawsuits regardless of how long they have been in place.[92] The farm operation is protected so long as it conforms to generally accepted agricultural practices and is not operating in violation of statutes or regulations. Tennessee law protects a farming operation that has initiated a new type of farming that is materially different in character and nature after such change has been in effect a minimum of one year.

Eight states constrain annexation of agricultural land.[93] Four of these prohibit annexation of agricultural land; each has a different definition of what that means. In Arkansas, land cannot be annexed if its highest and best use is agriculture. Nebraska law specifies that agricultural lands that are rural in nature may not be annexed by ordinance. In Oregon, land used for agriculture or horticulture purposes and is valuable because of such use, may not be annexed. In Florida, the only agricultural land than can be annexed is land that is being used for urban purposes.

Three states require consent of the property owners before annexing agricultural lands. Kansas law specified that no portion of any unplatted tract of land 21 acres or more in size that is devoted to agricultural use shall be annexed by any city without the written consent of the

[90] Rich Foge, President of the Malt Beverage Association, phone conversation with Stan Chervin, September 2013.
[91] Tennessee Code Annotated 6-51-102.
[92] Tennessee Code Annotated Section 43-26-103.
[93] Arkansas, Florida, Kansas, Nebraska, North Carolina, Oregon, South Carolina, and Virginia.

owner. In North Carolina, property that is being used for bona fide farm purposes on the date of the resolution of intent to consider annexation may not be annexed without the written consent of the property owners. In South Carolina, if the property owner files a written notice objecting to the annexation, the property must be excluded from the area to be annexed. While Virginia does not require consent of the property owners, it does require a court to consider the adverse impact on agricultural operations when determining whether to grant an annexation.

Two states allow landowners to petition for deannexation of farmland. In Idaho, owners of five or more acres can petition the court for deannexation if the lands are used exclusively for agricultural purposes. In Ohio, owners of unplatted farmlands may petition the court for deannexation.

Only a handful of states specifically place restrictions on the annexation of forests, parks, or nature reserves. Illinois prohibits annexation of conservation areas without the consent of conservation district. Similarly, Arizona requires the consent of the park district before annexing county-owned parks, or parks operated on public land. Arkansas prohibits the annexing the land around state parks unless the majority of resident voters approve.

Texas and Louisiana are even less restrictive. Texas allows cities to annex forest or nature reserve land once the city has attempted to negotiate a development agreement unsuccessfully with the property owner. Louisiana allows annexation once the city has completed an impact report and sent it to the governor.

Every state also has a Right to Farm Act. These acts protect the states' agricultural land from nuisance lawsuits. Sixteen[94] of these states have laws protecting farmland from local ordinances that would make agricultural use a nuisance. Idaho and Louisiana have statutes prohibiting zoning and nuisance ordinances from applying to agricultural operations that were established outside the corporate limits of a city and then were incorporated into the city by annexation.

Senate Bill 1316 by Bowling, House Bill 1249 by Van Huss, as sent to the Commission for study by the Senate Local Government Committee and the House Finance, Ways and Means Subcommittee, would prohibit cities from annexing any land within its UGB that is zoned for agricultural use until there is a change in use triggered by a request for a non-agricultural zoning designation or by sale of the territory for use other than agricultural purposes.

Deannexation

While no specific legislation was introduced to amend the statutes governing deannexation, Public Chapter 441 required the Commission to review these laws. Some citizens in the state are concerned that they do not have the ability to initiate a deannexation in Tennessee.

[94] Alabama, Arkansas, California, Colorado, Florida, Idaho, Louisiana, Maine, Michigan, New Mexico, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, and Virginia.

Residents in the Memphis area of Cordova have been trying to gather support from Shelby County and Memphis officials to get the city to deannex it from Memphis.[95] Some county officials are also concerned when a city deannexes roads or bridges and the county has no say in the process.

In Tennessee, deannexation can be initiated by cities using one of two methods.[96] The first method requires the deannexation to be approved by three-fourths of voters voting in the referendum.[97] The other method allows for a vote by only residents of the area to be deannexed. The city must provide notice and hold a public hearing for a deannexation ordinance that the city legislative body must approve. Then the voters within the affected area get 75 days to petition for a referendum. If the petition is signed by 10% of the registered voters in the area, then a referendum among just the voters in the affected area is held. In this case a simple majority is all that is required to approve the deannexation. State Representative Steve McManus, who represents the Cordova area, requested an Attorney General's opinion this year on the issue of deannexation.[98] In the opinion, the Attorney General confirmed that state law dictates that deannexation proceedings must be initiated by the city legislative body.

Like Tennessee, nine other states[99] authorize only cities to initiate deannexation. Who authorizes and who has a say in approving these deannexations varies among the states. Thirteen states[100] authorize only property owners to initiate deannexation and fourteen states[101] authorize both property owners and cities to initiate. Thirteen states[102] do not have deannexation laws.

Eight states[103] require a referendum before finalizing the deannexation, nine states[104] allow property owners to petition for a referendum, and five other states[105] require some other method of consent before the property is deannexed. Iowa and Louisiana may require a referendum or written consent depending on whether the annexation was initiated by the city

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[95] Bailey 2013.
[96] Tennessee Code Annotated Section 6-51-201.
[97] The language in the statute is somewhat vague. It is unclear whether only those residing in the territory to be deannexed can vote or whether those in the city can vote. According to the 2007 Municipal Technical Advisory Service's *Annexation Handbook for Cities and Towns in Tennessee II,* it probably means the voters voting in a city referendum.
[98] Tennessee Attorney General Opinion 13-45.
[99] Alabama, Alaska, Arizona, Delaware, Idaho, Kentucky, Missouri, Oregon, and Virginia.
[100] Colorado, Georgia, Illinois, Indiana, Michigan, Montana, Nebraska, Ohio, South Dakota, Utah, Washington, West Virginia, and Wisconsin.
[101] Arkansas, California, Florida, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Nevada, North Dakota, Oklahoma, South Carolina, Texas, and Wyoming.
[102] Connecticut, Hawaii, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, Rhode Island, and Vermont.
[103] Alaska, Arkansas, Delaware, Iowa, Kentucky, Louisiana, Michigan, and West Virginia.
[104] Alabama, California, Florida, Ohio, Oregon, South Carolina, Texas, Washington, and Wisconsin.
[105] Arizona, Georgia, Montana, Nevada, and Wyoming.

or the residents. In six states,[106] the entire city may vote in the referendum while the others only require a referendum in the affected territory. Property owners have the exclusive right to initiate deannexation in four states, but the city may make the ultimate decision whether to grant deannexation.[107] The city may deannex unilaterally or the property owners may request deannexation with the city's consent in three states.[108] In Idaho and Missouri, the city may deannex unilaterally and the property owners may not request deannexation. A judge makes the final determination whether deannexation is appropriate in five states.[109]

County highway officials in Tennessee have expressed concerns about cities deannexing roads and bridges when they do not want to make the necessary repairs. For example, Johnson City annexed 1,000 feet of a county right of way. After the Tennessee Department of Transportation's bridge inspection identified necessary repairs, the city deannexed 40 feet of a 238-foot bridge that was in the right of way.[110]

Notice of Deannexation

Tennessee law requires notice be provided before deannexation, but it does not specify when the notice should be provided or what form it should take.[111] Nine[112] of the thirty-five states with laws on deannexation do not have notice requirements for deannexation. Eleven states[113] require publication of notice in a newspaper before a hearing. The notice period ranges from one week to four weeks. Four states[114] require publication of notice of referendum. The notice period ranges from 10 days to 4 weeks. Three states[115] have notice requirements for both hearings and referendums. Alabama requires 10 to 30 days mail notice before a hearing, and publication for at least seven days in a newspaper for referendums. Florida requires notice once a week for two consecutive weeks of both hearings and referendums; Louisiana requires 10 days' notice.

Mutual Adjustment of Corporate Boundaries

Tennessee cities may adjust boundaries by contract to align them with easements, rights-of-way, and lot lines "to avoid confusion and uncertainty about the location of the contiguous boundary or to conform the contiguous boundary" to these lines.[116] There is no provision for residents or property owners to participate in these decisions. There was only one instance found in which mutual adjustment by contract has been used. In September 2007, Brentwood

[106] Arkansas, Delaware, South Carolina, Washington, West Virginia, and Wisconsin.
[107] Colorado, Indiana, South Dakota, and Utah.
[108] Kansas, North Dakota, and Oklahoma.
[109] Illinois, Minnesota, Mississippi, Nebraska, and Virginia.
[110] John Deakins, Washington County Highway Superintendent, testimony to the Commission, August 21, 2013.
[111] Tennessee Code Annotated Section 6-51-201.
[112] California, Colorado, Delaware, Iowa, Kentucky, Minnesota, Missouri, Nebraska, and Washington.
[113] Alaska, Illinois, Indiana, Kansas, Mississippi, Nevada, Ohio, Oregon, South Dakota, Utah, and Virginia.
[114] Idaho, Montana, South Carolina, and West Virginia.
[115] Alabama, Florida, and Louisiana.
[116] Tennessee Code Annotated Section 6-51-302.

entered into a boundary adjustment agreement with Franklin to shift over 300 acres south of Split Log Road into the Brentwood city limits.[117]

Ten other states[118] have specific laws authorizing cities to mutually adjust their boundaries, usually through a simultaneous process where one city deannexes property while the other city annexes. In three states, the process is initiated and completed by the cities with no form of resident or property owner participation.

In the remaining seven, the level of participation by residents or property owners varies. In Arizona and Utah, while the process is initiated and completed by the cities, landowners can protest by petition to stop the change. In Kentucky, two cities first enact ordinances to transfer territory from one city to another but the transfer is not complete unless a majority of voters in the area consents by petition.

Iowa's law is similar to Kentucky's but the property owner must first petition for the transfer. Illinois provides two methods by which property owners and electors may petition cities for annexation from one to the other. One of these requires approval in a referendum. In Massachusetts, a person can initiate a transfer of property from one city to another but it must be approved by both cities in town meetings and the state legislature. Owners or residents affected by the transfer cannot protest. In Minnesota, where all annexations are approved through an administrative process, owners can petition for land to be deannexed by one city and annexed by another as long as one city passes a resolution supporting it. An administrative law judge ultimately approves the annexation.

Notice of Mutual Corporate Boundary Adjustment

Tennessee law does not specify notice requirements for mutual adjustment. Of the ten states with laws on mutual adjustments, three[119] require notice be sent by mail two to four weeks before the public hearing. Four states[120] require notice be published in a newspaper five days to three weeks before the hearing. Three states[121] did not have notice requirements for mutual adjustment. Illinois requires that a notice of referendum and the requirements for signing the petition be published in a newspaper.

Merger of Cities

In Tennessee, two or more contiguous cities located in the same county are authorized to merge into one city.[122] Either the cities or voters can initiate a merger. Cities may initiate a merger by passing a joint resolution requesting a referendum in the cities to approve or disapprove a merger. Voters can initiate a merger by a petition signed by 10% of the

[117] Roger Horner, City Attorney, City of Brentwood, interview by Bill Terry, July 19, 2013.
[118] Arizona, Arkansas, Illinois, Iowa, Kentucky, Massachusetts, Minnesota, Missouri, Ohio, and Utah.
[119] Arizona, Kentucky, and Minnesota.
[120] Minnesota, Arkansas, Iowa, and Utah.
[121] Massachusetts, Missouri, and Ohio.
[122] Tennessee Code Annotated Title 6, Chapter 51, Part 4.

registered voters in each of the cities. Regardless of who initiates the merger, it must be approved by a majority of those voting in the referendum in each of the cities.

Thirty-six states have laws authorizing merger of cities. Thirty-three of these states require a referendum before the merger can be finalized. Among those where a referendum is required, nine states[123] only allow the process to be initiated by the city. In six states,[124] the process may only be initiated by voter petition. Eighteen states[125] allow either the city or voters to initiate the merger.

Three states do not require a referendum to merge municipalities. In Mississippi, each city passes an ordinance, and the merger must be approved in a court. In Minnesota, either a voter petition or city council resolution is presented to an administrative law judge for approval. In Kansas, the governing bodies of the cities adopt a joint resolution, but a referendum can be forced if at least 5% of qualified voters in one of the cities petition for it.

Notice of Merger of Cities

Tennessee law does not specify notice requirements for merger. Of the 36 states with laws on mergers, 21 do not have notice requirements. See appendix B, chart 10. Fifteen,[126] however, require some form of a hearing and therefore have notice requirements. These states require newspaper notice that ranges from five days to four weeks before the hearing.

Comprehensive Growth Policy

Tennessee has a long history of planning. The General Assembly passed the State and Regional Planning Act in 1935, creating a Tennessee State Planning Commission, as well as adopting the County Zoning Act, the Regional Subdivision Control Act, the Municipal Planning Act, the Municipal Zoning Act, and the Municipal Subdivision Control Act. The scope of the powers conferred upon the State Planning Commission included that the commission develop a comprehensive general state plan and further called for the formulation of a land utilization program for Tennessee.[127]

In 1945, six divisions were created within the State Planning Commission, including a Local Planning Assistance Program to provide technical planning assistance to local planning commissions in development of local programs in counties and cities. Through the 1950s, laws were passed that allowed a municipal planning commission to be designated as a regional planning commission, as well as granting those commissions extraterritorial zoning authority if the county had not adopted zoning. The Tennessee Development District Act of 1965

[123] Arizona, Colorado, Kentucky, Montana, New Mexico, South Carolina, Vermont, Wisconsin, and Wyoming.
[124] Arkansas, Michigan, Oregon, Pennsylvania, South Dakota, and Texas.
[125] Alabama, Alaska, Florida, Idaho, Indiana, Illinois, Louisiana, Maryland, Missouri, Nebraska, New Jersey, New York, North Dakota, Ohio, Oklahoma, Utah, Virginia, and Washington.
[126] Alaska, Idaho, Michigan, Minnesota, Mississippi, New Jersey, New York, North Dakota, Ohio, South Carolina, Utah, Vermont, Virginia, Washington, and Wyoming.
[127] Guess 1949.

established a statewide system of nine regional planning and economic development organizations to promote intergovernmental cooperation on growth and development issues, including regional and statewide concerns.

There is no longer a state-level growth planning agency in Tennessee. Through several reorganizations over time, the State Planning Commission was moved to the Department of Finance and Administration and then to Governor's Office while being renamed the State Planning Office. The office and all its functions were abolished in 1995. The Office of Local Planning Assistance was moved from the State Planning Office into the Department of Economic and Community Development in 1993 and continued providing professional planning advice and preparation of plans for cities and counties until it was disbanded in 2011.

While the state no longer has an agency tasked with growth planning, the Department of Economic and Community Development's Division of Community and Rural Development does staff the Local Growth Planning Advisory Committee (LGPAC), the committee responsible for approving growth plans and any amendments to the approved growth plans. The Division of Community and Rural Development is statutorily charged with establishing regional planning commissions and appointing members of certain regional planning commissions, subject to the approval of LGPAC.

While the state-level planning agencies that provided professional assistance and prepared various planning studies and planning research have been discontinued, most cities and counties have local planning commissions and perform some aspects of a planning program. According to the Department of Economic and Community Development, 82.1% of the counties and 81.6% of the cities have active planning commissions. [128] Many cities over 10,000 in population and some counties have their own professional staffs, and smaller cities and counties obtain professional planning assistance through the state's nine development districts.

While the main focus of the 1998 Growth Policy Act was to deal with Tennessee's tumultuous battles over annexation and incorporation, it was also an attempt at furthering statewide growth planning. Although cities, counties and regions had been given the ability to develop growth plans, recommendations resulting from the plans were always advisory and could not be enforced. With the passage of the Growth Policy Act, every county and their respective cities were required to develop and approve a growth plan.[129]

The first step in the process to prepare a county growth plan is the creation of a coordinating committee representing each local government in the county. These plans were developed and recommended by coordinating committees and submitted to the county commissions and the municipal governing bodies within the county. Counties and cities could either reject or ratify those plans. Ratified plans were submitted to the Local Government Planning Advisory

[128] Department of Economic and Community Development *2011 Status of Planning.*
[129] Except those in counties with a metropolitan form of government.

Committee (LGPAC) for approval. Once the growth plan is approved, the committee has no further responsibilities. However, when amendments to a county's growth plan are proposed, the coordinating committee must be reconvened, and the process begins.

Each growth plan was to identify three distinct areas: urban growth boundaries (UGB), planned growth areas (PGA), and rural areas (RA). There are one or more of these areas designated in each plan except for those growth plans that designated all of the county outside of UGBs as PGAs. These plans have no designated RAs. Some counties have also chosen not to designate any PGAs leaving all areas outside the UGBs as RAs.

Although the Growth Policy Act required all local governments in the state to prepare and adopt countywide growth plans, comprehensive planning is optional. There is a difference between a growth plan and a comprehensive plan. A growth plan must include, at a minimum, UGBs, PGAs, and RAs. The general purpose of a regional (county) or a municipal comprehensive plan is to guide and accomplish the economic, coordinated, and efficient development of the jurisdiction. A growth plan may address land-use, transportation, public infrastructure, housing, and economic development.[130] These elements are generally contained in a comprehensive plan. However, a comprehensive plan will also include population and land use projections and a local government's vision and goals for the future of the area.

Current law does require that certain planning studies and land use projections be completed before proposing a UGB, PGA, or RA.[131] The requirements for planning studies and projections represent an effort to link a growth plan to typical city and county planning as authorized under city and regional planning laws.[132] Although some counties took the opportunity to develop plans that took into account these studies and projections that the growth policy act calls for (for example, Sumner, Williamson, and Hamilton Counties), most plans in Tennessee are primarily maps. At the time the original growth plans went before LGPAC for approval, the LGPAC did not require the counties to submit the studies and projections.[133] Even when additional material was submitted, the LGPAC approved only the map.

Twenty states do require at least some local governments to develop some form of a comprehensive plan.[134] Rather than the simple map required in Tennessee, these plans are

[130] Tennessee Code Annotated Section 6-58-107.
[131] Tennessee Code Annotated Section 6-58-106.
[132] Tennessee Code Annotated Title 13, Chapters 3 and 4.
[133] Dan Hawk, Former Director of Rural Development at the Tennessee Department of Economic and Community Development, at the June 2008 Commission meeting, said there are communities that took the Growth Policy Act's planning process seriously. The Department of Economic and Community Development made the decision to have LGPAC approve the growth plans as they were submitted as long as they were consistent with the requirements in the statute. The minimum requirements were a map showing the UGBs, PGAs, and RAs. Many communities may have done studies and plans locally, but these were not submitted with the growth plans.
[134] Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Kentucky, Maryland, Nebraska, Nevada, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Virginia, and Washington.

often very comprehensive, with text, maps, illustrations, tables, and whatever else is needed to clearly describe the local government and its conditions and goals in a wide variety of areas, including land use, transportation, open spaces, housing, utilities and economic development. In states that do require comprehensive planning, the plans are usually developed by local planning commissions.[135] Four of the states with comprehensive plans—Hawaii, Maryland, Oregon, and Washington—also require growth boundaries. Idaho, Colorado, and Delaware have required growth boundaries where the municipality plans to annex new territory. Maine requires growth boundaries if the local government adopts an optional growth plan. California and Florida have mandatory comprehensive planning while growth boundaries are permissive. In Georgia, comprehensive planning is permissive; however, if local governments want to obtain state grants and funding, they must have a comprehensive plan that meets the requirements spelled out in state law. Similarly, comprehensive planning is permissive in Vermont; but here again, if a local government wants to obtain state grants or if the government wants to adopt zoning, a comprehensive plan is required.

Status of the Plans

Because the plans were required to consider where growth would occur over the first 20 years of the plan, concerns have been raised about the status of the growth plans at the end of 20 years and whether they should be reviewed or amended periodically. While the plans were based on 20-year growth projections, there is no indication that they would expire at the end of this period. The law does not address what happens to the growth plans at the end of 20 years, and there is no requirement to revise or update them. Most other states require cities to review or revise their comprehensive plans every two to ten years but most other states' plans are more comprehensive than Tennessee's growth plan maps.

The use of a 20-year time period for projections and for plans has long been common throughout the planning profession in the preparation of comprehensive plans as envisioned in the state planning enabling laws. It is also typical that adopted plans are revised or amended periodically. There is no requirement in Tennessee that growth plans must be revised or updated at any time. The growth boundaries in Tennessee can be amended as often as needed. This is left to local discretion. The same holds true for local comprehensive plans.

In Tennessee, developing the original growth plans was difficult and time-consuming, and people expect the amendment process to be equally difficult—although 25 counties have done so since initial approval. Six of those counties have amended their growth plans multiple times. For example, Hamblen County amended its growth plan four times between 2004 and 2008.

Tennessee's growth plan amendment process is spelled out in the law.[136] A municipal mayor, the county mayor, or the county executive may, at any time after the initial period, propose an

[135] Huntington and Weaver 2001.
[136] Tennessee Code Annotated Section 6-58-104(d)(1).

amendment by filing notice with the county mayor or county executive and each municipal mayor. Upon receipt of the proposal, the county mayor or county executive is required to reconvene or re-establish the county coordinating committee within 60 days of receipt of the notice. The procedures for amending the growth plan are the same as for the initial plan preparation, and the burden of proving the reasonableness or necessity of the amendment is on the party proposing the amendment. The coordinating committee must submit the amended plan to the respective legislative bodies with six months of the date of its first meeting to consider the amendment. After approval by the legislative bodies and by the state LGPAC, the amendment becomes a part of the county growth plan.

The Senate State and Local Government Committee referred two bills to TACIR for study affecting growth boundaries. Both of the referred bills would have changed the current process. Senate Bill 613 by Yager, House Bill 135 by Keisling, changes the procedures for changing growth plans. The process would involve two different procedures. An amendment to the growth plan would involve an amendment to one boundary either an urban growth boundary or a boundary between a PGA and an RA. A revision to the growth plan would involve more than one amendment to a boundary either an UGB or a boundary between a PGA and a RA.

The process for <u>amending</u> a growth plan would be as follows:

- A municipal mayor may propose an amendment to that municipality's UGB or a county mayor may propose an amendment to the boundary between a PGA and RA.
- After notification of a proposed amendment, the county mayor must reconvene or reestablish the coordinating committee within 60 days, determine the date and place for the first meeting, and provide adequate public notice of the meeting. It would require that the committee and local governments use the planning criteria and procedures in Tennessee Code Annotated Section 6-58-106 when developing the amendment. It could not just submit a map.
- The coordinating committee must take action on the proposal within six months of the first meeting.
- Once the coordinating committee approves the plan, the local governments must approve it and then it has to be submitted to LGPAC for approval.

The process for <u>revising</u> a growth plan would be as follows:

- The adoption of a resolution by either the county legislative body or by the legislative bodies of municipalities in the county representing at least one-half of the population of the county asking for the coordinating committee to be re-established for the purpose of developing a revised growth plan starts the process of revision.
- After notification of a proposed amendment, the county mayor must reconvene or reestablish the coordinating committee within 60 days, determine the date and place for the first meeting, and provide adequate public notice of the meeting. It would require that the committee and local governments use the planning criteria and

procedures in Tennessee Code Annotated Section 6-58-106 when developing the amendment. It could not just submit a map.

- The coordinating committee must develop a revised growth plan within one year after the first meeting of the committee.
- Once the coordinating committee approves the plan, the local governments must approve it and then it has to be submitted to LGPAC for approval.
- After approval of the revised growth plan by the LGPAC, the plan must be in effect for seven years before the revision process can be initiated again but a revised growth plan may be amended as described above three years after the approval date of the revised growth plan.

Senate Bill 732 by Watson, House Bill 231 by Carter, would have also prohibited a municipality that has not annexed all territory within its UGB and has not fully complied with all plans of services adopted for all annexed territories from proposing an amendment to the growth plan and from serving on the coordinating committee.

House Amendment 9 changed the language about annexing all the area in the growth boundary to require that a municipality must have fully complied with all plans of service for all annexed territories for the mayor to propose an amendment to the growth boundary. A similar requirement applies to the mayor's ability to serve on the coordinating committee. This amendment removed the requirement that the city annex all territory in its UGB.

Coordinating Committees

The initial growth plans called for in the Growth Policy Act had to be approved by coordinating committees and adopted by local governments. These coordinating committees are broad-based and complex. They are composed of representatives from the cities and the counties, soil conservation districts, utilities, local education agencies, chambers of commerce, and others representing environmental, construction, and homeowner interests. Reconvening the coordinating committee is required for any amendment to the growth plans, and local officials have said that doing so is both expensive and time consuming. There has been some discussion of finding a way to simplify the process in cases where two adjoining cities mutually agree to adjust their growth boundaries.

Local officials and other interests have also expressed concerns about the complex composition of coordinating committees. They do not want to have to seek approval from other local governments before adjusting their boundaries. This is especially true for the local governments that went beyond the basic requirements of the Act in developing their boundaries. The Growth Policy Act said "a growth plan may address land-use, transportation, public infrastructure, housing, and economic development."[137] Only a few counties' growth plans included these optional planning criteria. Further, farming interests have argued that the

[137] Tennessee Code Annotated Section 6-58-107.

membership is skewed in favor of cities in counties with multiple cities and does not give adequate consideration to their concerns. There are no entities similar to Tennessee's coordinating committees in other states. Consequently, other states' laws cannot be looked to for guidance.

Joint Economic and Community Development Boards

The General Assembly stated in the Growth Policy Act that

> it is the intent of the general assembly that local governments engage in long-term planning, and that such planning be accomplished through regular communication and cooperation among local governments, the agencies attached to them, and the agencies that serve them. It is also the intent of the general assembly that the growth plans required result from communication and cooperation among local governments.[138]

To accomplish that intent, the law required that each county establish a Joint Economic and Community Development Board (JECDB). The membership of the JECDB is determined by an interlocal agreement but must, at a minimum, include the county mayor or executive, the city mayor or city manager of each city in the county, and one person who owns land classified under the greenbelt law. JECDBs must meet at least four times a year. The required executive committee must also meet four times a year. Funding for the board is apportioned among the counties and cities based on the population distribution within each county.

The law provides no specific powers to the JECDBs other than the intent of the law. Each county board is free to develop its own program based upon the interlocal agreement between the governments in a county that establishes the board. The Wilson County JECDB, for example, is the economic development entity within the county and is focused on the recruitment and retention of industrial, retail, office, and business activities. It is important to note that any city or county must certify its compliance with this section of the law when applying for any state grant.[139]

The experience with the JECDBs varies widely across the state. In some areas the boards serve a useful purpose and meet the intent of the law. Examples include Wilson, Williamson, Marshall, Perry, and Giles Counties. Some specific examples of how the boards are used other than the Wilson County example above are listed:

- Marshall County indicated that the board was essential in developing the "shop local" program, establishing wireless internet in the downtown area, and in the county's participation in the Jack Trail, the Quilt Trail, and the Civil War Trail.

[138] Tennessee Code Annotated Section 6-58-114(a).
[139] Tennessee Code Annotated Section 6-58-114(i).

- Perry County indicated that the board was instrumental in the county receiving a $1.76 million grant from the Economic Development Administration for the reconstruction of the roof of the NYX industrial building.
- Giles County's industrial developer gives the board credit for the recent business expansions of Integrity, Frito-Lay, and Richland.[140]

In some other areas, there is just the opposite experience, and the JECDBs are regarded as serving no useful purpose. They meet only to observe the statutory requirements and to certify compliance for local governments to obtain Community Development Block Grants. In the east Tennessee area, it is stated that the functionality of the boards ranges from poor to mediocre. None functions at a high level.[141]

No other state has such a board although almost all states address economic development in some way in their planning and community development laws. It has been suggested that allowing the JECDB to serve as the coordinating committee could streamline the growth planning process and the process for amending growth plans, but the JECDBs are not as broadly representative as the coordinating committees. Ensuring adequate representation of all parties currently represented on coordinating committees would require a different makeup for the JECDBs.

[140] Information submitted by the South Central Tennessee Development District.
[141] Information submitted by the East Tennessee Development District.

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