

Municipal Boundary Changes and Growth Planning in Tennessee

Draft for Commission Review and Comment

DRAFT

Contents

Changing Municipal Boundaries.....	5
Annexation Methods	5
Annexing Noncontiguous Property	6
Providing Municipal Services.....	6
Extension of Utilities Beyond Municipal Boundaries	7
Allocation of Tax Revenue after Annexation.....	7
Informational Meetings and Public Hearings	8
Notice Requirements	8
Annexation of Agricultural Land.....	8
Deannexation	9
Mutual Adjustment of Corporate Boundaries	9
Merger of Cities	10
Comprehensive Growth Policy.....	10
Status of the Plans.....	10
Coordinating Committees.....	11
Joint Economic and Community Development Boards.....	12
A Comprehensive Review of the Laws Governing Municipal Boundary Changes and Growth Planning in Tennessee	12
Changing Municipal Boundaries.....	17
Annexation	17
Annexations in Tennessee and Other States Before and Since the Growth Policy Act Passed.....	17
Annexation Methods in Tennessee and Other States.....	29
Court Challenges	32

Annexing Noncontiguous Property.....	33
Annexation of Agricultural Land	34
Providing Municipal Services	36
Extending Utilities Beyond Municipal Boundaries	37
Fiscal Impact of Annexation.....	37
Allocation of Tax Revenue after Annexation	44
Informational Meetings and Public Hearings	47
Notice Requirements.....	47
Deannexation	48
Mutual Adjustment of Corporate Boundaries	50
Merger of Cities.....	51
Comprehensive Growth Policy	52
Status of the Plans	53
Coordinating Committees.....	55
Joint Economic and Community Development Boards	56
References	58
Persons Interviewed	62

Municipal Boundary Changes and Growth Planning in Tennessee

Annexation disputes amongst counties, cities, and affected residents have been a recurring theme in Tennessee's history. Twice in the late 1990s, the General Assembly passed legislation relaxing the requirements for creating new cities to allow communities to incorporate in order to avoid annexation. Both acts were challenged in the courts.¹ Tennessee's Growth Policy Act (Public Chapter 1101, Acts of 1998) was an effort to resolve these disputes by requiring local governments in each of the state's 92 non-metropolitan counties to adopt 20-year growth plans limiting where future incorporations and annexations could occur. It has been 15 years since the passage of the Act, and questions remain about whether it has served its intended purpose and whether the annexation and growth planning processes can be improved.

A large number of bills addressing annexation and growth planning issues were considered by the 108th General Assembly in its first legislative session. The one that drew the most attention would have required all annexations in Tennessee to be by consent in the form of referendums. That bill became Public Chapter 441, Acts of 2013,² which places a moratorium through May 15, 2014, on annexation by ordinance without consent of territory being used primarily for residential or agricultural purposes and requires the Tennessee Advisory Commission on Intergovernmental Relations to review and evaluate the efficacy of state laws³ on comprehensive growth plans and on changing municipal boundaries, including

- expanding city boundaries by annexation,
- deannexation of territory from cities,
- merger of cities, and
- mutual adjustment of city boundaries.

In addition to Public Chapter 441, the legislature sent several related bills to the Commission for study.⁴ These bills focused on

- annexation methods,
- informational meetings and public hearings,
- notice requirements,
- annexation of agricultural property, and
- growth plan amendments.

¹ City of Oakland v. McCraw, et al., No. 11661 (1997); Tennessee Municipal League v. Thompson, 958 S.W.2d 333 (1997).

² See appendix A.

³ Tennessee Code Annotated Title 6, Chapters 51 (Change of Municipal Boundaries) and 58 (Comprehensive Growth Plan).

⁴ See appendix A.

Changing Municipal Boundaries

While the study required by Public Chapter 441 includes all statutes governing municipal boundary changes, annexation by referendum was the topic of the original bill and the focus of discussion. Before passage of Tennessee's Growth Policy Act, referendums were authorized but not required. The Act changed that, giving residents of certain areas the right to vote on whether to be annexed. Even so, annexation by referendum in Tennessee was and continues to be rare.

The Growth Policy Act called for three types of areas to be established, two of which would require referendums for annexations:

- Urban Growth Boundaries (UGBs)—areas contiguous to cities in which cities can annex by ordinance and outside of which they cannot.
- Planned Growth Areas (PGAs)—areas outside cities and their UGBs where new cities may be incorporated and in which existing cities can only annex with the consent of residents within those areas.
- Rural Areas (RAs)—areas not included within UGBs or PGAs where cities cannot be incorporated and existing cities cannot annex except by consent.

Some counties did not establish PGAs, and some did not designate RAs. Although many public hearings were required and held before the plans establishing UGBs were adopted, it is not clear that the general public or residents of those areas fully understood the implications for them of being included or excluded from those areas.

Annexation Methods

Tennessee is one of a small handful of states that do not require consent for annexation, and the number of states that allow cities to unilaterally annex new territory has been dwindling as concern in Tennessee has been growing. Many bills calling for the end of annexation by ordinance without consent were introduced before the Growth Policy Act was adopted in 1998, and many have been introduced since then. Some of those were sent to the Commission for study, but none have been recommended.

The 108th General Assembly sent the Commission two bills that would require referendums for all or nearly all annexations. Issues raised by these bills were incorporated into the general review called for by Public Chapter 441. House Bill 590 by Van Huss [Senate Bill 869 by Crowe] would require referendums for all annexations within urban growth boundaries. Senate Bill 731 by Watson [House Bill 230 by Carter] would require referendums for all annexations within urban growth boundaries *under an amended growth plan*.

Most states require referendums for most annexations. See appendix B, chart 1 and chart 3. Referendums may be called for by cities seeking to annex or by residents seeking either to be annexed or to avoid annexation. Referendums may be held in person, by mail-in ballot, or through a petition process. They 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.
- Voters in the city and the territory approve the annexation. The votes are counted together.

Annexation in some states requires approval by a third party, such as a court or a state or local board. In Tennessee, as in most states, annexations can be overturned through a lawsuit.

Annexing Noncontiguous Property

One rationale given for annexing by ordinance without consent is the difficulty of reaching willing owners of noncontiguous properties. 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. Sometimes this requires creative line drawing, creating narrow strips of annexed land to bypass the unwilling landowners and pockets of unannexed territories that are nearly but not entirely surrounded by cities.

Although some states allow cities to annex noncontiguous territory under limited circumstances, Tennessee does not. Consequently, some cities annex narrow corridors along roads, rivers, or other avenues to reach property that is not contiguous to their corporate boundaries. County highway officials have expressed concern over cities using corridor annexation along rights-of-way in order to establish contiguity. When cities annex a road but not its adjoining properties, or vice versa, there is sometimes confusion over who is responsible for maintenance and for emergency response. Another concern is when the city annexes only part of a right-of-way, leaving responsibility for the road or bridge to the county. A number of states prohibit or restrict corridor annexation either through case law or explicitly by statute.

Allowing for annexation of some noncontiguous territory may reduce the desire to annex along corridors, which has long been a contentious practice. For example, cities in various states are permitted to annex noncontiguous city-owned property. Cities in Indiana can annex noncontiguous parcels for industrial development with the owner's consent. Other states laws dealing with annexation of noncontiguous property are summarized in appendix B, chart 1.

Providing Municipal Services

Tennessee's current law requires annexing cities to develop plans of services for newly annexed areas that include, at a minimum, fire, police, water, electrical, and sanitary sewer services, as well as services related to solid waste collection, street construction and repair, recreation

facilities and programs, street lighting, and zoning. Most other states also require a plan of services before annexing territory. Many require budget or financial information to be included in the plan of services.

While no bills dealing with plans of services were sent to the Commission for study during the most recent session, a small number of bills adding requirements to Tennessee's plans of services have been introduced over the years.⁵ The original version of Senate Bill 1054 by Kelsey, House Bill 1263 by Carr, D., which was amended before being passed, included sections that would have added some requirements for the plan of services including standards for delivering the services and information on the financial ability of the city.

Extension of Utilities Beyond Municipal Boundaries

Tennessee law allows cities to extend utility lines beyond their corporate limits.⁶ Many cities have done so to encourage economic development or in anticipation of future annexation. Some local officials are concerned that without the ability to annex by ordinance, cities may not be able to annex areas served by their utilities and recoup their utility investments outside their corporate boundaries. 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 has addressed this problem 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, 2008.⁷

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. Increases above this "hold harmless" amount are distributed to the annexing city. Some county officials have expressed concern about the sudden loss of these revenues at the end of the 15-year period and would like to see a gradual reduction instead. Tennessee is the only state that holds counties harmless for these taxes following annexation, but every state's tax structure is unique. Some states do not authorize these two taxes for both cities and counties, and those that do may not have the same earmarks Tennessee has, notably the one requiring half of the local sales tax to be divided among the counties' school systems.

⁵ Senate Bill 1054 by Kelsey, House Bill 1263 by Carr, D. See appendix A.

⁶ Tennessee Code Annotated Section 7-51-401.

⁷ Idaho Code Section 50-222.

Moreover, partly because of a lack of data on retail beer sales in annexed areas, all of the beer wholesale tax has gone to the annexing cities since the hold harmless provision went into effect, not just the increases. Recent changes in reporting requirements 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. But the law establishing the process for collecting, reporting, and remitting these revenues may need to be changed to make the hold harmless provision easier to implement.

Informational Meetings and Public Hearings

Senate Bill 1381 by Bowling, House Bill 1319 by Van Huss, would require three informational meetings before annexing by ordinance. The House Local Government Committee amended the bill, reducing the number of informational meetings to one and requiring the notice be sent by certified mail. Current law requires one public hearing before annexation by ordinance or by referendum. No informational meetings are required, but many cities hold them. North Carolina is the only state that requires an informational meeting before annexing. See appendix B, chart 5.

Notice Requirements

Two bills sent for study focused on the requirement for notice before annexation. 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 86g by Crowe] would require "90 days' notice" of the annexation. The House Local Government Committee amended the bill, changing 90 days to 180 days. Current law requires cities to publish notice of all annexations in a newspaper of general circulation at least seven days in advance of the required public hearing. When annexing by referendum, cities must also mail notices to affected property owners at least 14 days before the public hearing.

Notice is required in other states at one or more of three points in the annexation process: notice of intent, notice of public hearing, and notice of election. The minimum public notice requirement for intent to annex in other states ranges from 7 to 30 days. The minimum notice requirement before a public hearing ranges from 6 to 60 days. The minimum notice requirement before an election ranges from 4 to 30 days. Indiana, which like Tennessee allows largely unlimited unilateral annexation, requires that a notice be sent by mail for all annexations by ordinance. See appendix B, chart 4.

Annexation of Agricultural Land

Senate Bill 1316 by Bowling, House Bill 1249 by Van Huss, would prohibit annexation of land in UGBs that is zoned for agricultural use until a change in use is triggered by a request for a non-agricultural zoning designation or by sale of the land for a different use. Tennessee has always allowed cities to annex property used for agricultural purposes but allows agricultural uses to

continue. The only constraint on annexing agricultural land is the temporary moratorium placed on the annexation of agricultural and residential land except by consent by Public Chapter 441, Acts of 2013. As noted above, that moratorium expires next May.

Only eight states restrict annexation of agricultural lands. Several prohibit annexation of agricultural or rural land. Two states allow owners of annexed agricultural land to request deannexation. In Idaho, owners of annexed agricultural land greater than five acres petition the court for deannexation. Ohio also allows owners of unplatted farmland to petition the court for deannexation. See appendix B, chart 7.

Deannexation

While no specific legislation was introduced to amend the statutes governing deannexation, Public Chapter 441 required the Commission to review these laws. Tennessee provides two methods for deannexation, both of which can be initiated only by cities. The language in one is vague, requiring the deannexation to be approved by “three-fourths of the voters assent to the contraction.”⁸ The other allows cities to pass deannexation ordinances but gives residents an opportunity to petition for a vote.

Thirteen states authorize only property owners to initiate deannexation, while nine authorize only cities to do so, and fourteen authorize both property owners and cities to initiate. A majority of states require a referendum or consent to complete the deannexation. See appendix B, chart 8.

Mutual Adjustment of Corporate Boundaries

The study required by Public Chapter 441 also includes laws on mutual adjustment of city borders. Tennessee cities may adjust their mutual 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. There is no provision for residents or property owners to participate in these decisions.

Ten other states have laws authorizing cities to adjust shared boundaries by mutual agreement. Only Iowa allows mutual adjustment by contract. The other nine require cities to use their existing annexation and deannexation processes to move their boundaries. See appendix B, chart 9.

⁸ Tennessee Code Annotated Section 6-51-201. 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 election.

Merger of Cities

Public Chapter 441 also required the Commission to review laws governing city mergers. Two or more contiguous cities located in the same county in Tennessee can merge into one city, and mergers can be initiated either by resolution of the cities or by petition of registered voters. Regardless of who initiates the merger, it must be approved by majorities of those voting in separate referendums in each of the cities. Thirty-six states have similar laws. Thirty-three require a referendum before the merger can be finalized. See appendix B, chart 10.

Comprehensive Growth Policy

The review of Tennessee's growth policy laws called for by Public Chapter 441 included analysis of two referred bills dealing with amending plans as well as more general aspects of the law, including the status of the growth plans after 20 years, coordinating committees, and joint economic and community development boards (JECDBs). The purpose stated by the General Assembly for Tennessee's comprehensive growth policy statutes was to

- eliminate annexation or incorporation out of fear;
- establish incentives to annex or incorporate where appropriate;
- more closely match the timing of development and the provision of public services;
- stabilize each county's education funding base and establishes an incentive for each county legislative body to be more interested in education matters; and
- minimize urban sprawl to eliminate annexation or incorporation out of fear.

Status of the Plans

Plans were adopted starting in 2000, and the oldest are now 13 years old. Most are maps depicting the agreed-upon urban growth boundaries (UGBs) and planned growth areas (PGAs) or rural areas (RAs). Twenty-five plans have been amended.⁹ The amendment process is spelled out in the law.¹⁰ A city or county mayor may propose an amendment by filing notice with the county mayor and with each city mayor. Upon receipt of the proposal, the county mayor is required to reconvene the county coordinating committee. The coordinating committee must submit the amended plan to the respective legislative bodies within six months of the date of its first meeting to consider the amendment. After approval by the legislative bodies and the state Local Government Planning Advisory Committee, the amendment becomes a part of the county growth plan.

Both of the referred bills would have changed the current process. Senate Bill 613 by Yager [House Bill 135 by Keisling] would have revised the procedure for amending growth plans,

⁹ Ninety-two counties are required to have plans. The state's three metropolitan counties are exempt from the law.

¹⁰ Tennessee Code Annotated Section 6-58-104(d)(1).

providing a detailed, step-by-step process. Senate Bill 732 by Watson [House Bill 231 by Carter] would have prohibited a municipality that has not annexed all territory within its UGB to propose an amendment to the growth plan and to serve on the coordinating committee.

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.

A lot has changed since the first plans were adopted. Projections are always tentative. The population projections that were used at that time have already been changed several times. The economic downturn changed the economy in ways that are affecting growth and development. Some counties are growing faster than projected while others are growing more slowly. Plans based on outdated information may not be useful today. One of the reasons given for not revisiting the plans more often is the cumbersome process for changing them.

Coordinating Committees

The initial plans were required to be approved by coordinating committees and adopted by local governments. The make-up of these committees is complex. They consist 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. Amending the plans requires the same process and approvals as the initial plans.

Local officials and other interests have expressed concerns about the 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 that "a growth plan may address land-use, transportation, public infrastructure, housing, and economic development."¹¹ Only a few counties' growth plans included these optional planning criteria. Further, farming interests have argued that the membership is skewed in favor of cities in counties with multiple cities and does not give adequate consideration to their concerns.

It is important to remember that Tennessee's growth plans are not the comprehensive plans required in other states. Consequently, other states' laws cannot be looked to for guidance.

¹¹ Tennessee Code Annotated Section 6-58-107.

Joint Economic and Community Development Boards

Tennessee is also unique with respect to its joint economic and community development boards (JECDBs). The intent of the boards is to engage in long-term planning, but there is no specific function for the boards laid out in the law. The concept for these boards arose from discussions during development of the Growth Policy Act about the need to ensure that economic development issues were a part of the growth planning process and to have a mechanism for continuing cooperation and coordination among county and city officials. The existing JECDB in Wilson County was the model.

The makeup 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. The boards can define their own function. No other state requires local governments to have such boards.

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.

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 done 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.¹² 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 factors include reactions to population growth, state laws, and the efforts of political

¹² Hobday 1963.

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.

entrepreneurs.¹³ One of the main reasons 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.¹⁴ 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 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."¹⁵ 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."¹⁶

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

¹³ Waldner 2010.

¹⁴ Hobday 1963.

¹⁵ *Clinton v Cedar Rapids and the Missouri River Railroad*, 24 Iowa 455 (1868).

¹⁶ *McCallie v. Mayor of Chattanooga*, 40 Tenn. 317 (1859).

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 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.¹⁷ 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 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.¹⁸

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 (urban growth boundaries). Outside these boundaries are 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.

¹⁷ Elder Mountain never incorporated but was annexed later by Chattanooga.

¹⁸ Undated letter referred to in Tennessee Advisory Commission on Intergovernmental Relations 1999.

Tennessee's Growth Policy Act was intended to bring some control over the issues of growth, including population and economic, annexation, and sprawl, and provide a framework for planning for growth in both cities and counties. The Act introduced the concept of urban growth boundaries to the state. This concept was not new and did not originate with the Act. The idea of boundaries, either an urban growth boundary (UGB), an urban service area, or a planning region, came about as a part of a long-range comprehensive or general plan that would concentrate growth within the boundary and reduce the impacts of growth over a broader area.

A comprehensive planning process for local governments has been in place since 1935¹⁹ and continues to grant cities and counties broad authority to plan for the future within their regions. Although the Growth Policy Act required all local governments in the state²⁰ to prepare and adopt countywide growth plans, comprehensive planning is optional. However, most cities and counties have 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.

The general purpose of a regional (county) or a municipal plan is to guide and accomplish the economic, coordinated, and efficient development of the jurisdiction. A major part of any general or comprehensive plan has long been to prepare for and manage the growth of the community.

Cities have also had authority to develop plans and regulations for areas outside their corporate limits that were related to the planning of the city. This power was written into the law in 1950. Known as a planning region, this is now equated with a UGB.

Additionally, planning for future transportation needs is a part of planning for growth. This is carried out locally but is coordinated regionally by multi-county organizations known as metropolitan planning organizations (MPOs) in the urbanized areas of the state and rural planning organizations (RPOs) in the rural parts of the state. For example, the Nashville MPO has performed transportation planning functions since the 1960s and now includes five counties and parts of two others.

Changing Municipal Boundaries

Annexation

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

To answer the question of whether annexations have increased or decreased since adoption of the Act, staff looked at US Census Boundary and Annexation Survey data from 1990 to 1999

¹⁹ Tennessee Code Annotated Title 13.

²⁰ Except those in counties with a metropolitan form of government.

and from 2000 to 2009.²¹ What this research revealed is that both the number of annexations and the amount of land being annexed by cities in Tennessee decreased following the adoption of the Growth Policy Act.

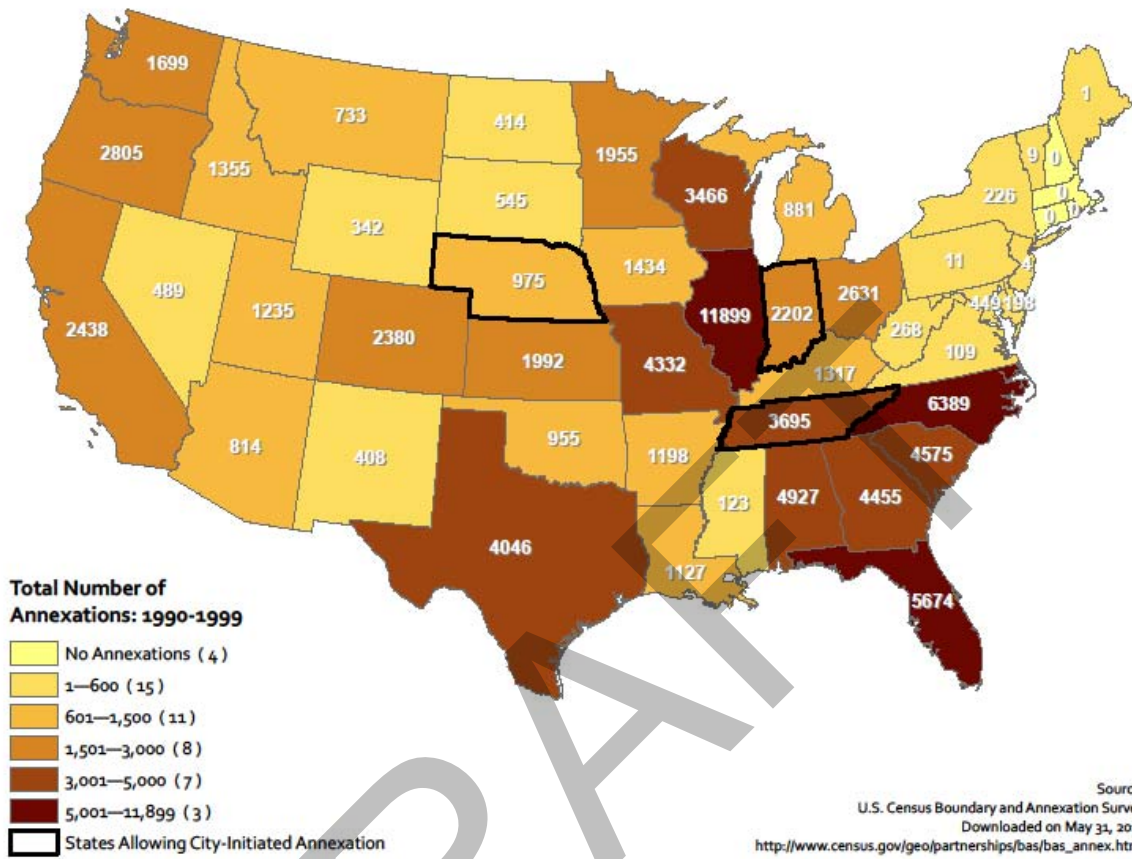
Before the Growth Policy Act

With 3,695 annexations statewide from 1990 to 1999, Tennessee ranked 9th among the 50 states for that period. There were more annexations in Tennessee than in the other two states allowing cities to annex unilaterally without referendum. However, there were fewer annexations in Tennessee than there were in 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. See map 1.

DRAFT

²¹ 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 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.

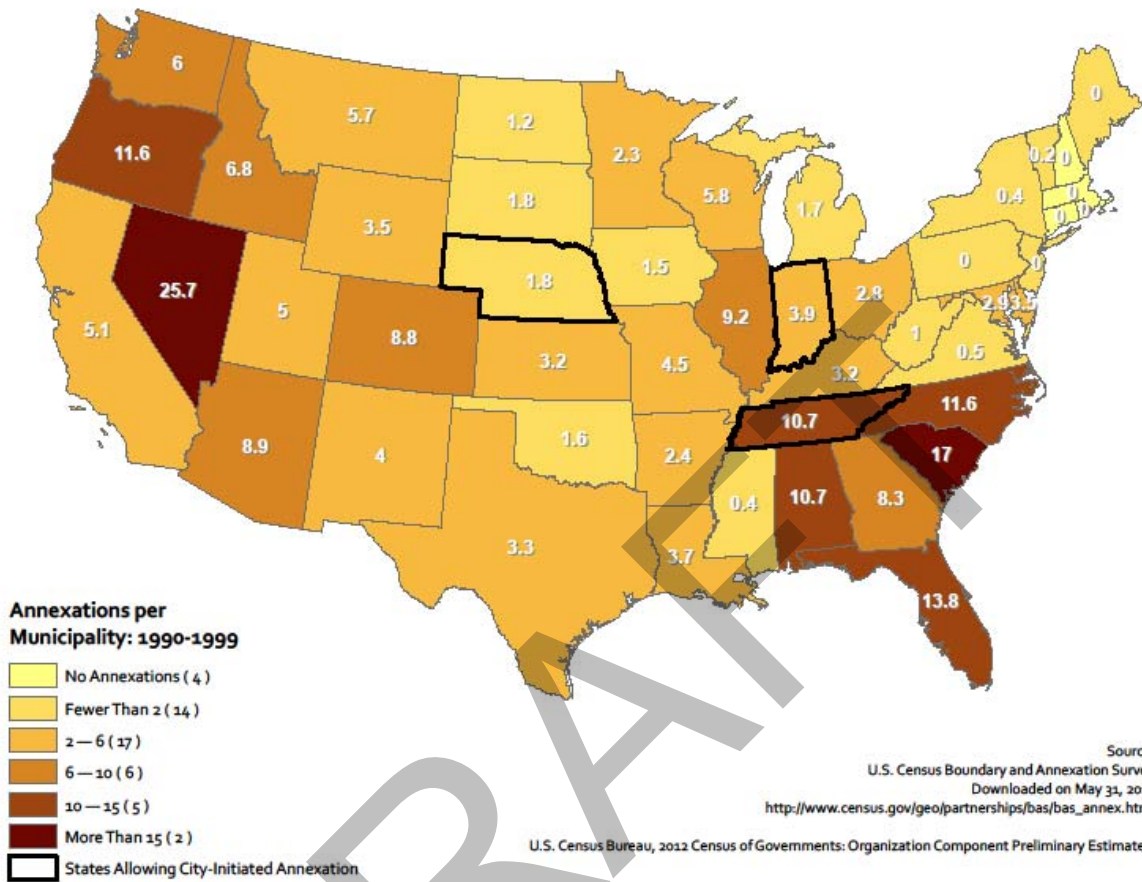
Map 1. Total Number of Annexations: 1990-1999



Another way to measure and compare annexations between states is to adjust for the number of cities in each state.²² Because annexations occur at the city level, having more cities in a given state could lead to more total annexations. From 1990 to 1999, the average number of annexations per city in Tennessee was 10.7. This was comparable to other states in the southeast and was again higher than the other states permitting annexation without consent. See map 2.

²² US Census Bureau, 2012 Census of Governments: Organization Component Preliminary Estimates.

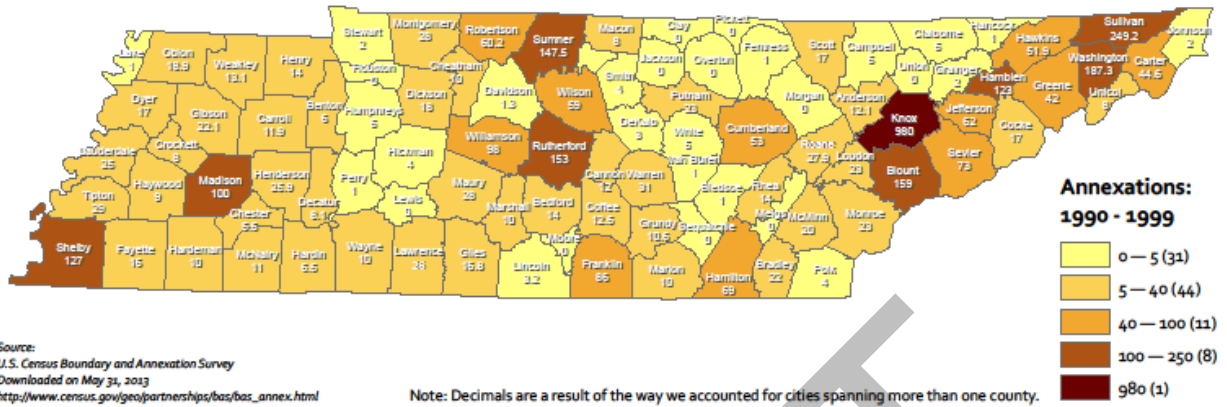
Map 2. Annexations per Municipality: 1990-1999



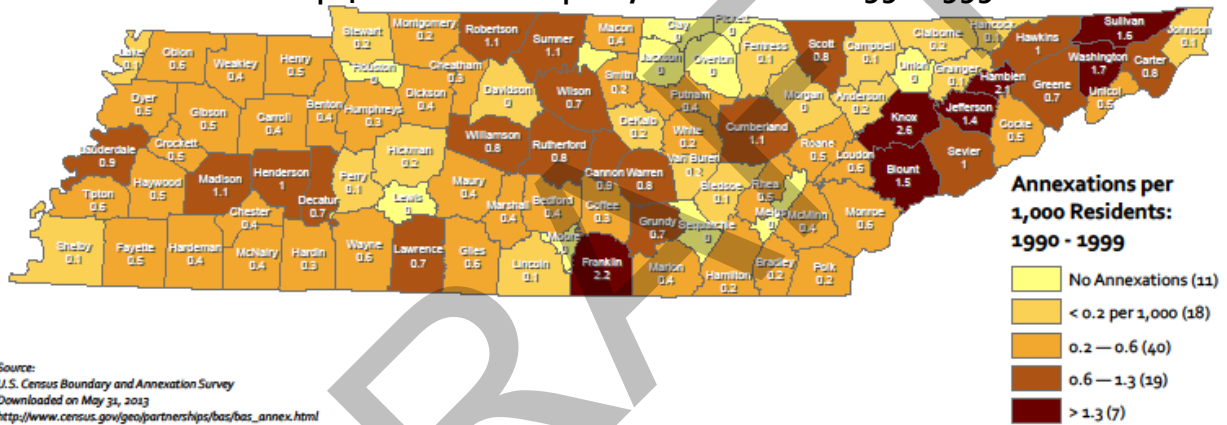
Among Tennessee’s 95 counties, there was a wide range in the number of annexations taking place during the 1990s. While a third of counties experienced fewer than five annexations over the period, nine saw more than 100—including 980 reported annexations in Knox County alone. See map 3.

At the state level, staff looked at annexation numbers relative to county populations. By this measure, cities in northeast counties annexed at a higher rate than in much of the state. Also, some less-populated counties such as 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 3. Annexations in Tennessee: 1990-1999

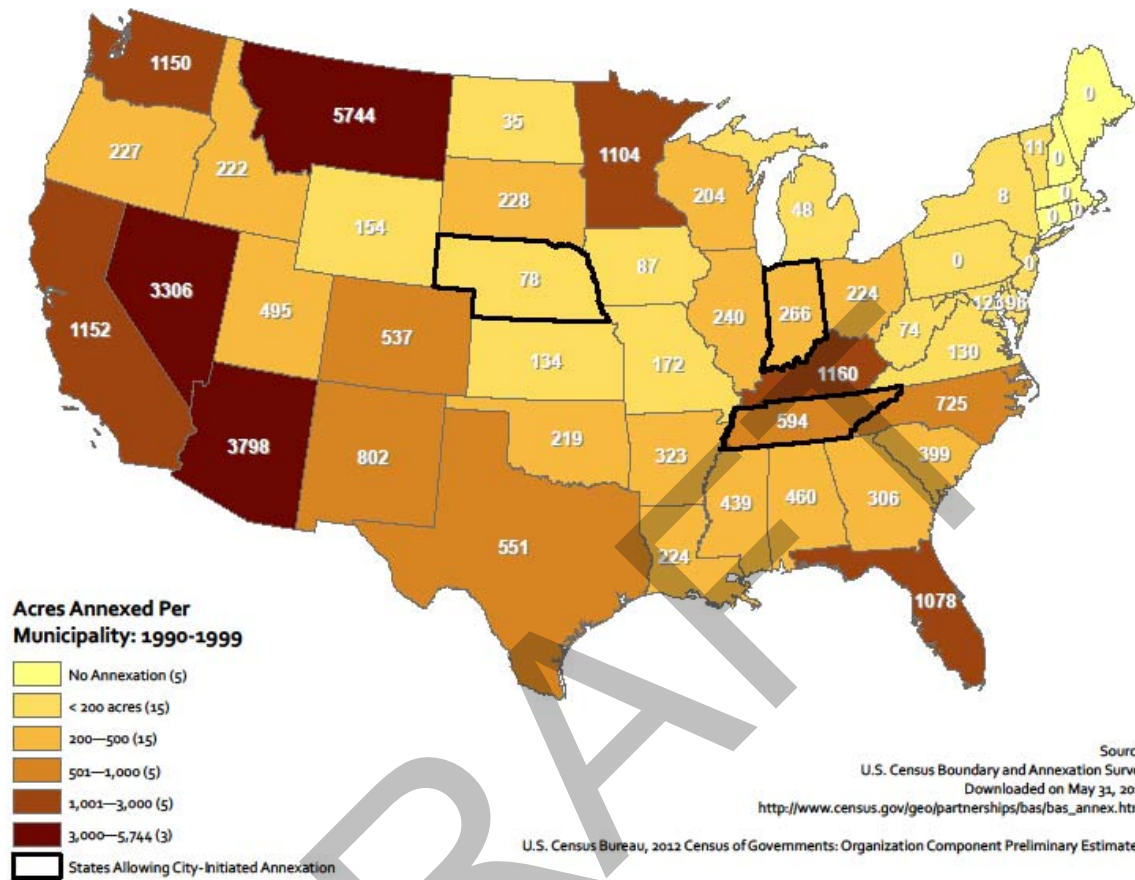


Map 4. Annexations per 1,000 Residents: 1990-1999



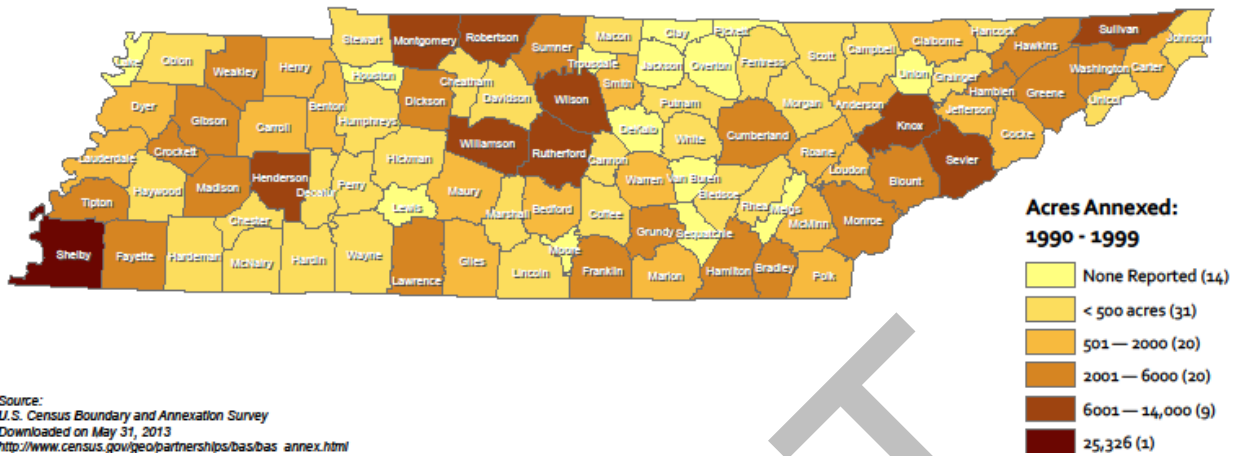
Looking at the amount of land annexed by cities in Tennessee compared to other states, the average city annexed 594 acres of land from 1990 to 1999. This was higher than most neighboring southeast states and more than other states permitting unilateral annexation. States where population is sparse—Montana, Arizona, and Nevada—had much larger areas of land annexed. See map 5.

Map 5. Acres Annexed per Municipality: 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, cities annexed fewer than 2,000 acres during this period. 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 6.

Map 6. Acres Annexed by County in Tennessee: 1990-1999

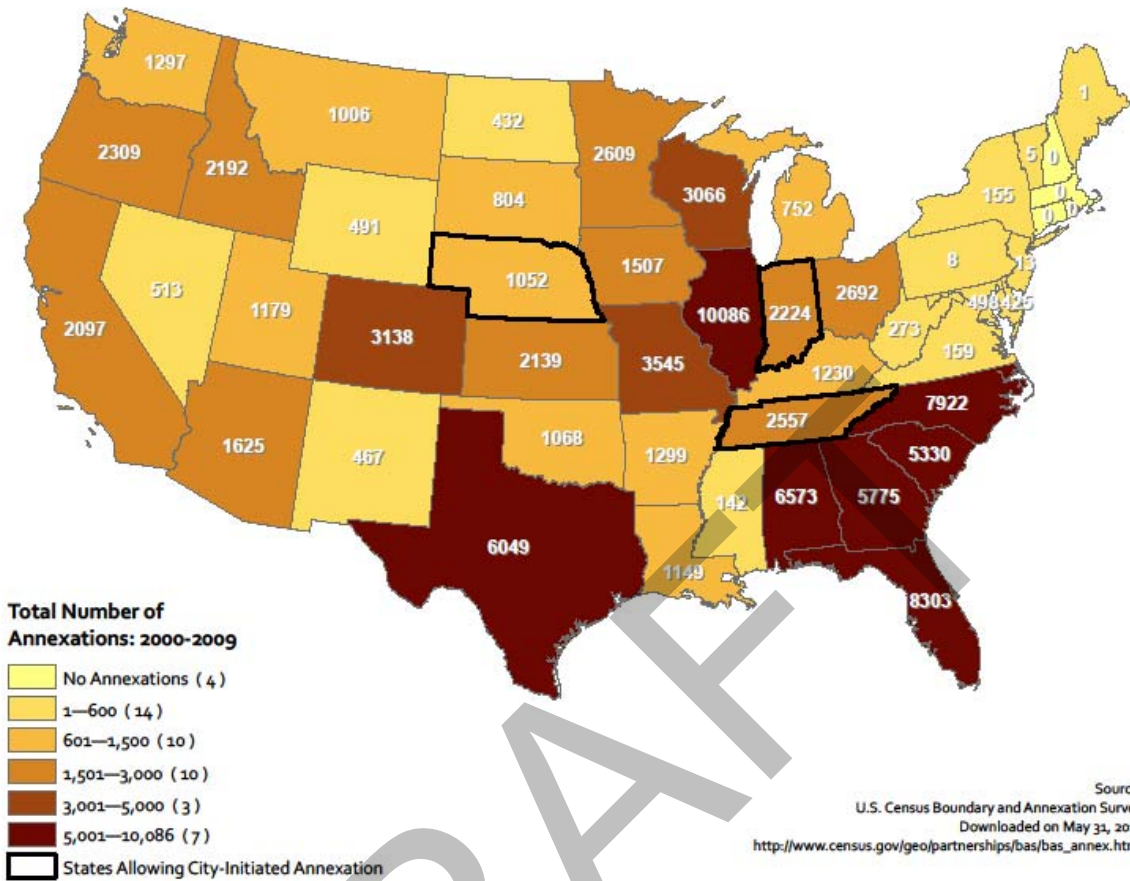


Source:
U.S. Census Boundary and Annexation Survey
Downloaded on May 31, 2013
http://www.census.gov/geo/partnerships/bas/bas_annex.html

After the Growth Policy Act

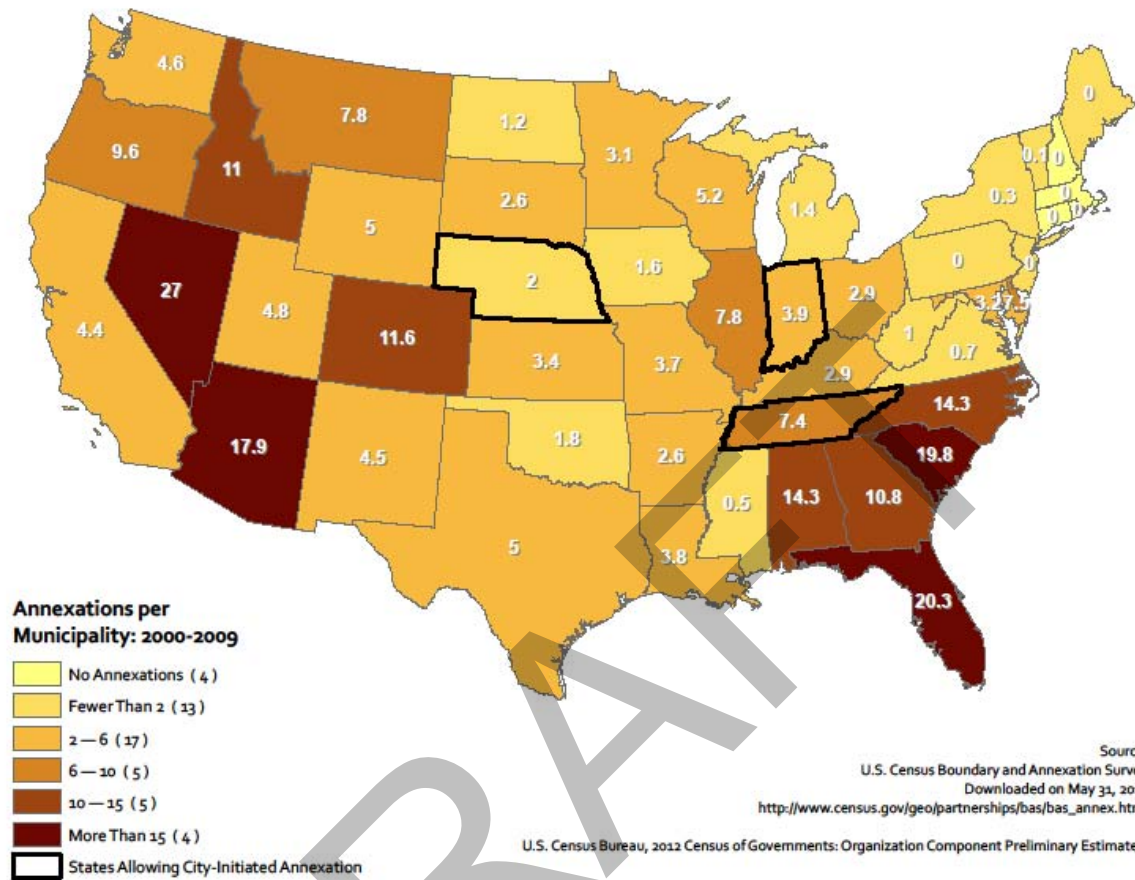
For the years 2000 to 2009, Tennessee had 2,557 annexations and its position among the 50 states fell to 13th. This downward trend occurred while the other states in the fast-growing southeast continued to see their numbers of annexations increase. The other two states with laws allowing cities to annex unilaterally saw a slight increase in their number of annexations over this time as well. The three states identified as “hybrid”—Kansas, Idaho, and Texas—where many annexations do take place without resident consent also saw their number of annexations increase during the period. See map 7.

Map 7. Total Number of Annexations: 2000-2009



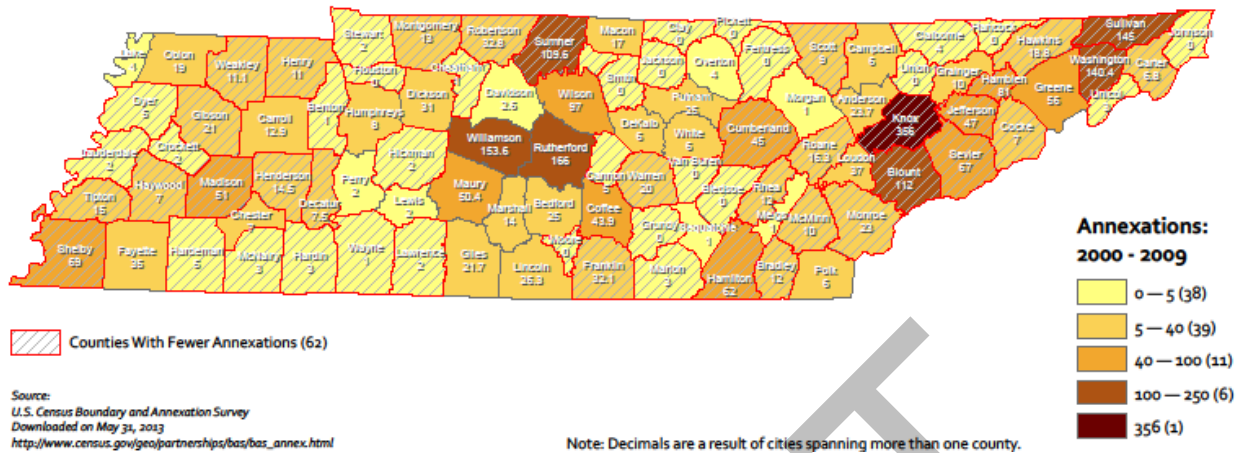
From 2000 to 2009, after growth plans were adopted, Tennessee saw an average of 7.4 annexations per city—a decrease of 30% from the previous 10.7 figure. In all other southeast states, hybrid states, and states with unilateral annexation, annexations per municipality increased. Again, during this time North Carolina had not yet implemented its current restrictions on annexation; it was operating under laws similar to those in Tennessee before passage of the Growth Policy Act. It would appear that the changes implemented by the Act had a downward influence on the rate of annexation in Tennessee. See map 8.

Map 8. Annexations Per Municipality: 2000-2009



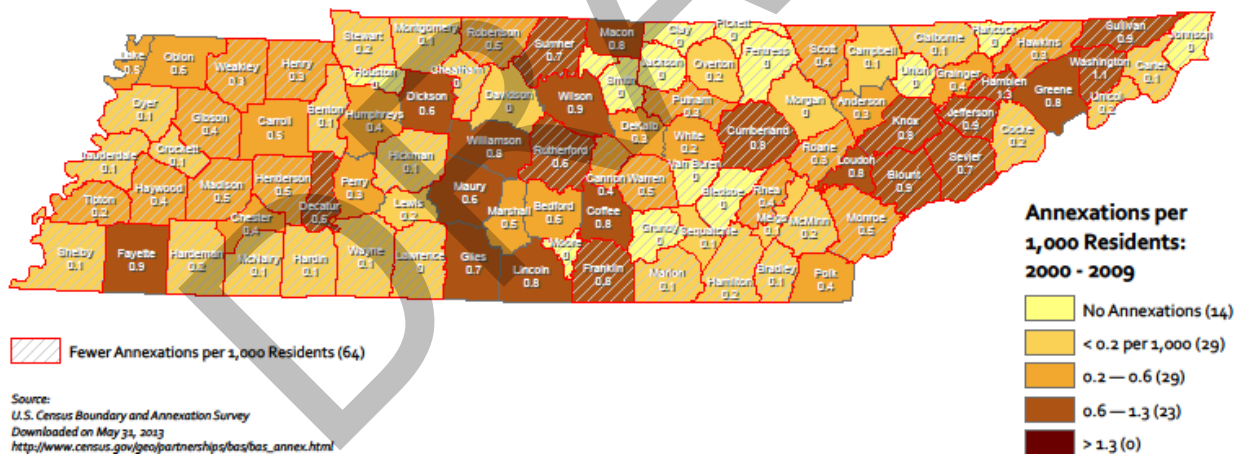
In Tennessee, 62 counties had fewer annexations after adopting growth plans required by the Growth Policy Act. Those that saw annexations increase from the period before were mainly either growing suburban counties (Fayette, Rutherford, Williamson, and Wilson) or counties with a small number to begin with (i.e. Polk from 4 to 6). There were still 7 counties with over 100 annexations; 40% had fewer than 5. See map 9.

Map 9. Annexations in Tennessee: 2000-2009



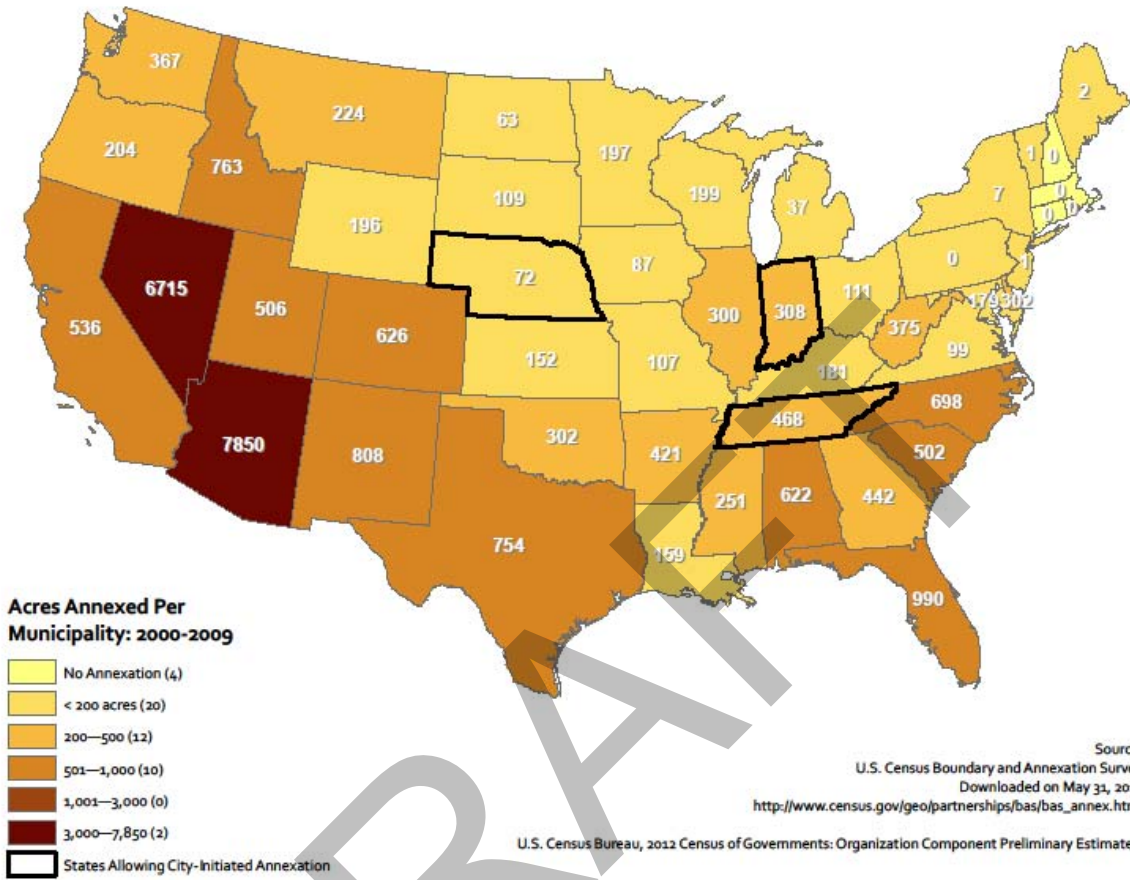
Since the implementation of the Growth Policy Act, 64 counties have seen a reduced number of annexations relative to their populations as well. Annexations per capita do remain highest in middle Tennessee and the northeast. See map 10.

Map 10. Annexations Per 1,000 Residents: 2000-2009

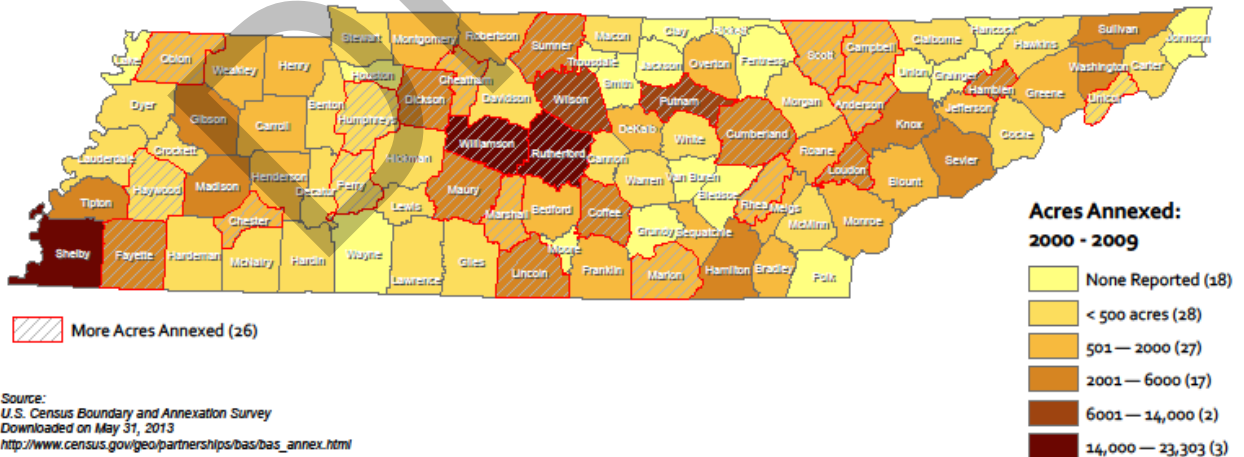


The amount of land being annexed by Tennessee cities fell from an average of 594 acres to 468 for the period from 2000 to 2009. Tennessee's position among all states has not changed much in this measure, as the amount of land being annexed across all states has decreased as well. However, three of the five other southeast states had an increase in the amount of land being annexed. Indiana, along with all three hybrid states, also saw cities annex greater amounts of land. See map 11.

Map 11. Acres Annexed Per Municipality: 2000-2009



Map 12. Acres Annexed By Tennessee Counties: 2000-2009

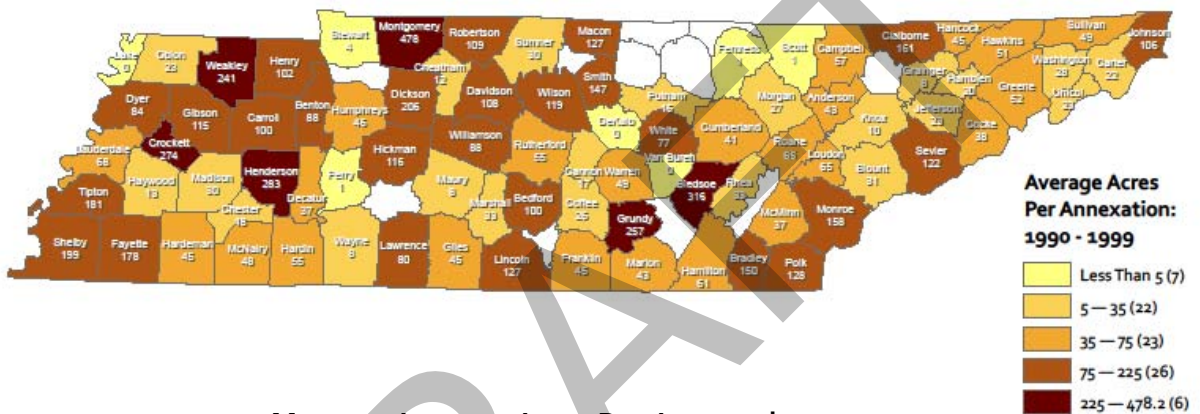


The amount of acreage annexed per county decreased to 1,701 for 2000 to 2009. Shelby County again led all counties in the amount of land annexed by cities. Rutherford and Williamson were next, while there was a noticeable decline in the acreage being annexed

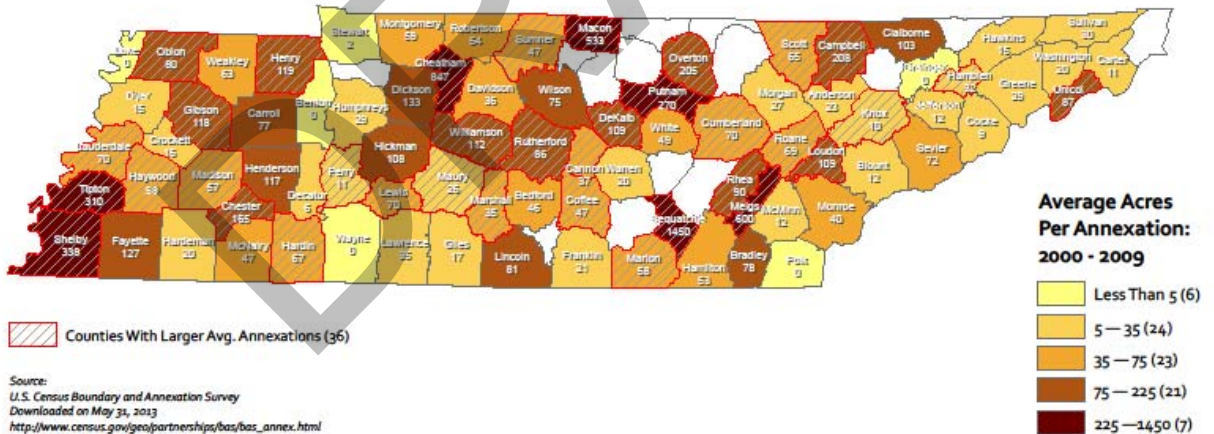
throughout east Tennessee. In all, cities in 26 counties did increase the amount of land they annexed. See map 12.

There were 36 counties, however, that saw an increase in the typical size of their annexations. Counties that have very few annexations tend to inflate some of these totals. When looking only at the top 25 counties for the entire period studied, which each had 50 or more annexations from 1990 through 2009, only 5 (Coffee, Loudon, Marion, Rutherford and Williamson) showed an increase in both the number of annexations and in average acreage. See maps 13 and 14.

Map 13. Average Acres Per Annexation: 1990-1999



Map 14. Average Acres Per Annexation: 2000-2009



Annexation Methods in Tennessee and Other States

There are three general ways that cities annex property:

- **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.

However, state laws do not always fall neatly into these categories. Some states may authorize more than one method to annex property. For example, Tennessee law authorizes the first two. States classified as hybrids below allow cities to annex with consent but also allow annexation without consent in a broad range of circumstances. States may also require a combination of methods. Forty-one states have general laws addressing annexation in unincorporated territories. There are nine states with no general annexation laws or laws that address annexation of unincorporated property.²³ 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 government.

Unilateral Annexation

Tennessee is one of three states that do not require consent for annexation, and the number of states that allow cities to unilaterally annex new territory has been dwindling as concern in Tennessee has been growing. North Carolina, in 2011, was the most recent state to change its primary method from unilateral annexation to annexation by consent. In addition to Tennessee, Indiana and Nebraska authorize cities to annex without consent. Tennessee law authorizes cities to annex without consent only within their UGBs. There are no similar restrictions in Indiana and Nebraska's laws.

Some states authorize annexation without consent in limited circumstances. A number of states allow these cities to annex areas of unincorporated property surrounded completely 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. A few states allow annexation without consent in different circumstances. See appendix B, chart 3.

²³ Connecticut, Hawaii, Maine, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, and Vermont.

Hybrid

Three states, Kansas, Idaho, and Texas, allow cities to annex with consent but also allow annexation without consent in a broad range of circumstances. Kansas law 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% and it lies mainly within the city, territory is owned by the city or held in trust for the city, territory is government owned, annexing territory would make the city boundary more harmonious (21 acre limit), or the territory is situated so that 2/3 of the territory's boundary adjoins the city (21 acre limit).²⁴ 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 land owners in the territory to be annexed must approve the annexation in a mail ballot election.²⁵

In Idaho,²⁶ cities can annex unilaterally if the territory contains less than five acres and less than 100 private owners. If the territory to be annexed contains more than 100 owners owning lots five acres or less, a majority of the landowners must approve the annexation by written consent.

In Texas, home rule cities are allowed to annex without consent if their charter provisions allow it.²⁷ General law cities, on the other hand, can only annex by consent.²⁸

Annexation by Consent

Thirty states²⁹ require consent from voters or owners in the area to be annexed. In some states, it is a multi-step process and the annexation must be approved by a third party before the issue is submitted to voters. Depending on the state, an annexation may have to be approved by a state-level³⁰ or local-level board,³¹ the county,³² or the courts³³ before the voters get a chance to vote on it.

²⁴ Kansas Statutes Annotated Section 12-520.

²⁵ Kansas Statutes Annotated Section 12-521.

²⁶ Idaho Code Section 50-222.

²⁷ Texas Local Government Code Section 43.021.

²⁸ Texas Local Government Code Chapter 43.

²⁹ 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.

³⁰ Local Boundary Commission (Alaska) and State Boundary Commission (Michigan).

³¹ Local Agency Formation Commission (California).

³² Delaware (cities over 50,000) and Kansas.

³³ Illinois, Missouri, and Wisconsin (if city initiates).

Different states use different methods for getting consent from voters. Most states require voters to vote in an election. Twenty-one states³⁴ allow only voters or owners in the territory being annexed to vote. Seven³⁵ require that the issue of annexation be submitted to voters in the annexing city. A couple³⁶ make this optional. Three states³⁷ require that the vote totals from the city and territory be counted together and the annexation is approved if a majority of those voting in election approve the annexation. Four states³⁸ require that the vote totals of the city and territory be counted separately and a majority of voters in the city must approve the annexation and a majority of voters in the territory must approve the annexation. Another four³⁹ states require cities to hold an election if enough voters petition for one. Some states authorize the cities to get consent from voters in a mail ballot⁴⁰ or petition⁴¹ rather than holding an election, and four⁴² authorize voters or owners to stop an annexation if enough voters or owners protest the annexation.

In Tennessee, a city may choose to hold a referendum on an annexation either on its own or if petitioned to do so by interested persons.⁴³ Only qualified voters who reside in the territory are required to vote in an annexation referendum; 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 both groups is required to approve.

Because current law states that only “qualified voters who reside in the territory” vote in a referendum, there is no clear process for annexing vacant land by referendum.⁴⁴ Senate Bill 731 by Watson [House Bill 230 by Carter] would not resolve the issue of how to annex vacant land by referendum. This bill would simply require that the land in the UGB be annexed according to the annexation by referendum procedures already in the law. This bill would also only affect annexations in counties with amended growth plans. Of the 30 states that require consent before annexing, only 2 address vacant land. Colorado⁴⁵ provides that if the territory is vacant then an annexation referendum must be held in the adjacent territory. Louisiana⁴⁶ allows annexation of vacant property once each nonresident property owner has consented.

³⁴ 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.

³⁵ Arkansas, Iowa, Louisiana, Missouri, Montana, South Dakota, and West Virginia.

³⁶ Alaska and Florida.

³⁷ Arkansas, South Dakota, and Iowa.

³⁸ Louisiana, Missouri, Montana, and West Virginia.

³⁹ California, Kentucky, Maryland, and Michigan.

⁴⁰ Arizona, Colorado, Georgia, Oklahoma, and Washington.

⁴¹ Alabama, Alaska, Florida, Indiana, Kansas, Louisiana, Missouri, North Dakota, Oregon, South Carolina, South Dakota, West Virginia, Wisconsin, and Wyoming.

⁴² California, Nevada, Utah, and Wyoming.

⁴³ Tennessee Code Annotated Section 6-51-104.

⁴⁴ Tennessee Code Annotated Section 6-51-105.

⁴⁵ Colorado Revised Statutes 31-12-112.

⁴⁶ Louisiana Revised Statutes 33:172.

Texas,⁴⁷ a hybrid state, 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. Texas also allows for vacant land to be annexed upon petition of the school board if the annexing municipality meets certain population requirements.

Third-Party Annexation

In five states, a third party—a court or other entity—approves the annexation. Two states, 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.

Proposed Legislation

Two bills sent to TACIR for study, House Bill 590 [Senate Bill 869] and Senate Bill 731 [House Bill 230], would have changed current annexation methods by requiring voter approval before annexations. The Senate State and Local Government Committee referred Senate Bill 731 to the Commission; House Bill 590 was referred by the House Finance, Ways and Means Subcommittee. These bills would drastically change the predominant method of annexation in Tennessee.

For the years 1990 to 2009, data from the US Census Boundary and Annexation Survey⁴⁸ 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 initiated by petition. Annexations by resolution, according to the survey data, 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.

Court Challenges

Annexations by ordinance in Tennessee can be overturned only if a lawsuit known as a quo warranto action is filed to challenge the annexation.⁴⁹ 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

⁴⁷ Texas Local Government Code 43.028 and 43.029.

⁴⁸ See footnote 21 for information on the Boundary and Annexation Survey.

⁴⁹ Tennessee Code Annotated Section 6-58-111.

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.

Twenty-seven states specifically address court appeals of annexation decisions. Eighteen of these allow for appeals after the final annexation ordinance has passed.⁵⁰ Three other states allow appeals after the final ordinance, but place additional limitations on the appeal.⁵¹ North Carolina⁵² and Illinois⁵³ allow appeals during the annexation process itself. North Dakota⁵⁴ and Washington⁵⁵ allow appeals after the final ordinance, but those appeals are referred to a third party instead of a court. Michigan's laws⁵⁶ provide only that every final decision of its boundary commission is subject to judicial review. Texas does not address the issue specifically by statute, but allows several forms of appeal.⁵⁷

Annexing Noncontiguous Property

In Tennessee, cities may annex only parcels that adjoin their corporate boundaries.⁵⁸ The rationale given for annexing by ordinance without consent is the difficulty of reaching willing owners of noncontiguous properties. Most other states simply require that property to be annexed be contiguous to the city but do not explicitly define contiguous.⁵⁹ Eleven states define contiguous.⁶⁰ Five states specify that property will be considered contiguous if it is separated by a right-of-way, river, stream, railroad right-of-way, or other features.⁶¹

Three states⁶² allow the annexation of noncontiguous property if property owners consent to it. Two of them require the property to be within two⁶³ or three⁶⁴ miles of the corporate limits of the city. Kansas requires that the board of county commissioners approve the annexation.

⁵⁰ Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Montana, Nebraska, New Mexico, South Carolina, Utah, Wisconsin, and Wyoming.

⁵¹ 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.

⁵² North Carolina General Statute Section 160A-58.60.

⁵³ 65 Illinois Compiled Statutes 5/7-1-3.

⁵⁴ North Dakota Code 40-51.2-08.

⁵⁵ Revised Code of Washington 35.10.217.

⁵⁶ Mich. Comp. Laws Section 123.1018.

⁵⁷ Houston 2012.

⁵⁸ Tennessee Code Annotated Sections 6-51-102 and 6-51-104.

⁵⁹ Alabama, Arkansas, Idaho, Illinois, Iowa, Kentucky, Maryland, Michigan, Minnesota, Montana, Nebraska, New Mexico, New York, North Dakota, North Carolina, Ohio, Oregon, South Dakota, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

⁶⁰ Arizona, California, Colorado, Georgia, Indiana, Louisiana, Missouri, Nebraska, Nevada, Oklahoma, and Texas.

⁶¹ Georgia, Nebraska, Nevada, Oregon, and Oklahoma.

⁶² Indiana, Kansas, and North Carolina.

⁶³ Indiana.

⁶⁴ North Carolina.

In Indiana, the property must be used as an industrial park. Indiana also authorizes the annexation of noncontiguous city-owned property, as does California and Wisconsin.

Some county and highway officials have argued that corridor annexation, also known as strip annexation, creates problems for local governments by causing the overlapping of services or confusion over which local government is responsible for services to the area. Tennessee law does not expressly prohibit corridor annexations. The Tennessee Court of Appeals has held that a “strip,” “shoestring,” or “corridor” annexation, although it was long and lean, was not per se improper, so long as the annexation took in people, private property, or commercial activities and rested on some reasonable and rational basis.⁶⁵ Corridor annexation is explicitly prohibited in the statutes of four states⁶⁶ and has been prohibited through case law in nine others.⁶⁷

Annexation of Agricultural 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.

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.

Right to Farm

In Tennessee, farming operations are protected under the Right to Farm Act from nuisance lawsuits regardless of how long they have been in place.⁶⁸ 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.

⁶⁵ *State ex rel. Sullivan County*, 1995 Tenn. App. LEXIS 565.

⁶⁶ Delaware, Florida, Kansas, and South Carolina.

⁶⁷ 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).

⁶⁸ Tennessee Code Annotated Section 43-26-103.

Every state has a Right to Farm Act. These acts protect the states' agricultural land from nuisance lawsuits. Sixteen⁶⁹ 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. In 2013, North Dakota became the first state to pass a constitutional amendment to protect farmland.

Restraints on Annexation

Eight states constrain annexation of agricultural land.⁷⁰ 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 that 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 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.

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.

⁶⁹ Alabama, Arkansas, California, Colorado, Florida, Idaho, Louisiana, Maine, Michigan, New Mexico, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, and Virginia.

⁷⁰ Arkansas, Florida, Kansas, Nebraska, North Carolina, Oregon, South Carolina, and Virginia.

Providing Municipal Services

Tennessee's cities are now required to have a plan of services before annexing whether by referendum or by ordinance.⁷¹ The requirement that cities provide a plan of services when annexing by ordinance was added to the law in 1961.⁷² 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.⁷³ The requirement to provide a plan of services before annexing by referendum was added in 2005 at the recommendation of this Commission.⁷⁴

Before it is adopted, the plan must be submitted to the planning commission (if the city has one). The planning commission must issue a written report on it within 90 days. The city's governing body is required to hold a public hearing on 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.⁷⁵ An aggrieved property owner in the annexed territory can file suit to enforce the plan if the city fails to provide services.

Twenty-four states⁷⁶ require a plan of services before annexing territory. Ten states⁷⁷ require the plan to be provided before the public hearing. Four states require the plan to be provided on or before the date of adopting the annexation ordinance or resolution.⁷⁸ The remaining ten states laws differ. Delaware, for example, requires a plan of service but does not specify when it must be provided.

Ten states⁷⁹ require that the annexing city to specify a timeline for implementing services. Nine states⁸⁰ set a specific timeline in statute. The timelines range from three to ten years. Kansas has the shortest timeline, requiring services to be provided immediately upon annexation.

⁷¹ Tennessee Code Annotated Sections 6-51-102 and 6-51-104.

⁷² Public Chapter 320, Acts of 1961.

⁷³ Public Chapter 753, Acts of 1974.

⁷⁴ Public Chapter 411, Acts of 2005.

⁷⁵ Tennessee Code Annotated Section 6-51-108.

⁷⁶ 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.

⁷⁷ Georgia, Indiana, Maryland, Missouri, Montana, Nevada, North Carolina, Oklahoma, West Virginia, and Wyoming.

⁷⁸ Arizona, Colorado, Kentucky, and Nebraska.

⁷⁹ Arizona, Georgia, Indiana, Iowa, Kansas, Missouri, Montana, North Carolina, Oklahoma, and Texas.

⁸⁰ Florida, Kentucky, Maryland, Nebraska, Ohio, Oregon, South Carolina, South Dakota, and Wyoming.

Fifteen states⁸¹ require that budget or financial information be provided in the plan of services. Nine states⁸² require the level of services provided to the annexed territory to match that of the current city residents.

Senate Bill 1054 by Kelsey, House Bill 1263 by Carr, D., was amended before being passed. Sections 5 and 6 were taken out of the bill before it passed. 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.

Extending Utilities Beyond Municipal Boundaries

Tennessee law authorizes every incorporated city to own and operate a water and sewer system, both inside and beyond the corporate limits of the city.⁸³ Customers outside the corporate limits are ratepayers of the city utility but not city taxpayers. The rates of all public utilities are required to be sufficient to pay all reasonable expenses of the system.⁸⁴ The law states that, “public works shall be and always remain self-supporting.”⁸⁵

City officials have expressed concern that changing annexation laws will make extending utility lines beyond their boundaries less economically feasible without the guaranteed ability to annex the property in the future. Without the certainty of being able to annex territory, cities will be hesitant to extend service into an area they may not be able to control. They consider extending services outside their corporate boundaries essential to attracting business and industry where counties are unable to meet the infrastructure needs of business and industry. They argue that requiring a referendum for annexation could slow economic development and hinder Tennessee’s competitiveness. Idaho addressed this problem 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, 2008.⁸⁶

Fiscal Impact of Annexation

The claim that expanding cities’ boundaries is essential to economic growth cannot be fully demonstrated. 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

⁸¹ Delaware, Florida, Indiana, Kansas, Kentucky, Maryland, Missouri, Montana, Nebraska, Nevada, North Carolina, Oklahoma, South Dakota, Utah, and Wyoming.

⁸² Florida, Georgia, Indiana, Kansas, Kentucky, Montana, Nevada, Texas, and Wyoming.

⁸³ Tennessee Code Annotated Section 7-35-401.

⁸⁴ Tennessee Code Annotated, Sections 7-35-414 and 9-21-308.

⁸⁵ Tennessee Code Annotated, Section 7-34-114.

⁸⁶ Idaho Code Section 50-222.

annexation results in increased efficiency, revenue, wealth, or equity. Some of these studies suffer from methodological problems, and many use old data.⁸⁷

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.⁸⁸ 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.⁸⁹ 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.

Consistent with the lack of conclusive evidence in the literature, comparing states' economic performances since 2000, finds no clear indication that the annexation methods available to cities have an effect on economic growth. Staff grouped the states by type of annexation method—consent only, unilateral, hybrid, none, and third party approval—and compared the states' performances using growth per capita since 2000 in four measures, population, gross domestic product (GDP), personal income, and employment. In hybrid states, consent is required for annexation in some circumstances but not others.

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, while the hybrid states had the largest average (median) growth rate, 24%. Tennessee had the largest population growth (13%) among the unilateral states, which averaged 8% growth. 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 hybrid states. 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. The other two unilateral annexation states, Nebraska and Indiana, were in the third and fourth quintiles.

⁸⁷ Edwards 2008.

⁸⁸ Steinbauer 2002.

⁸⁹ Rusk 2006.

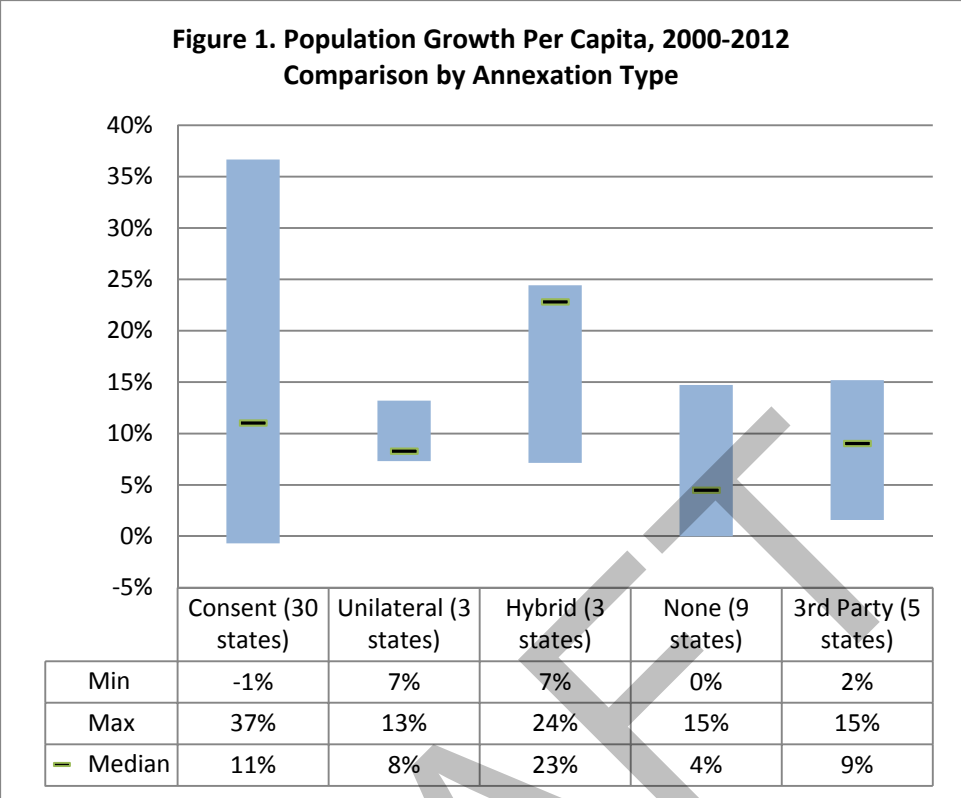
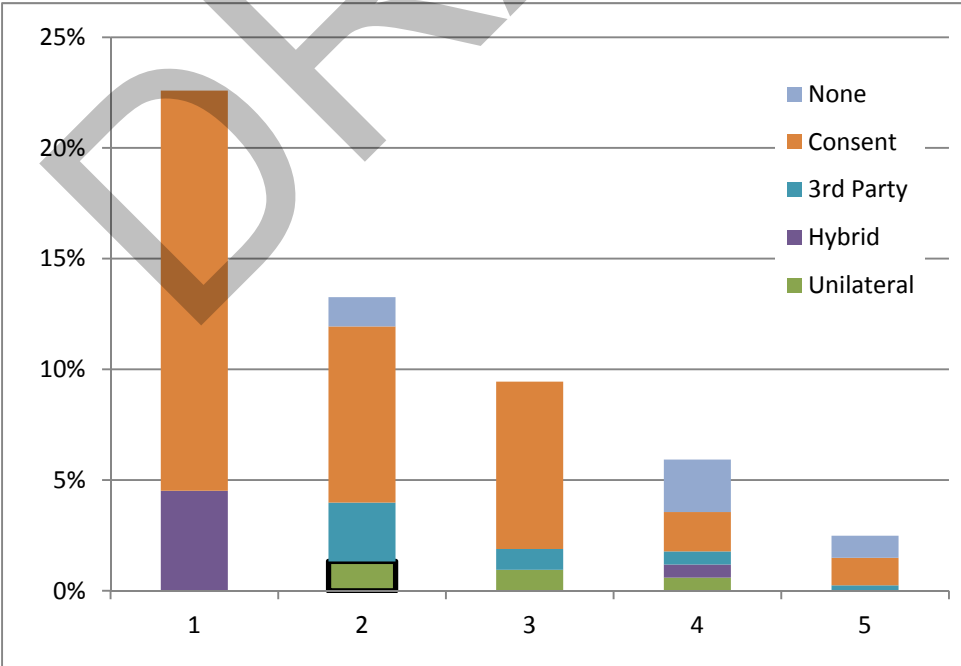
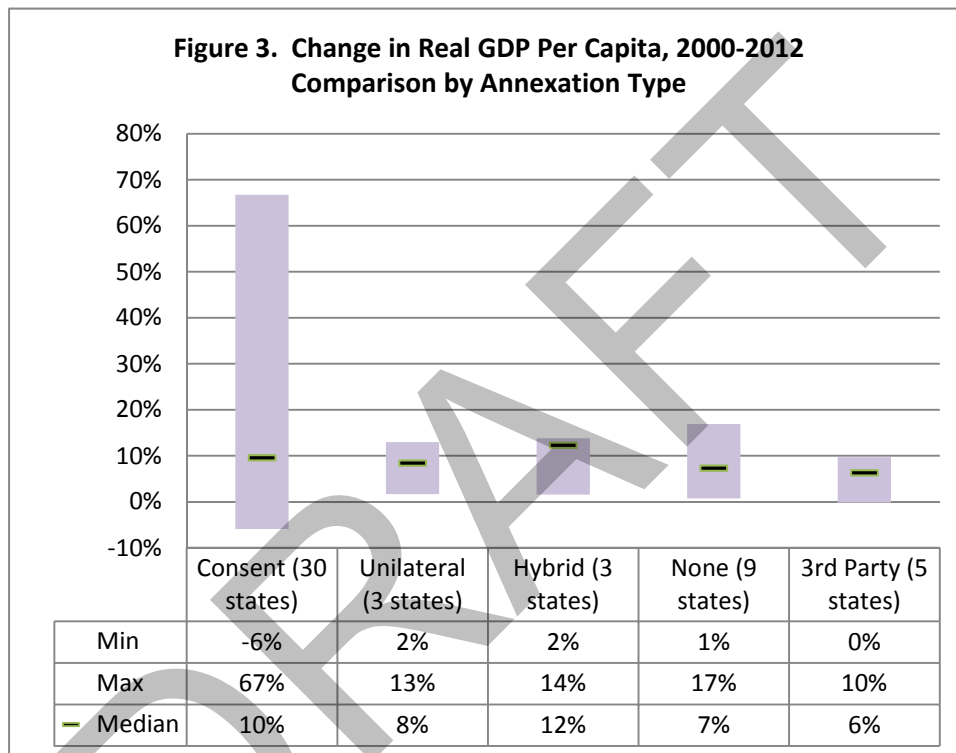


Figure 2. Population Growth per Capita, 2000-2012, by Quintile and Annexation Type

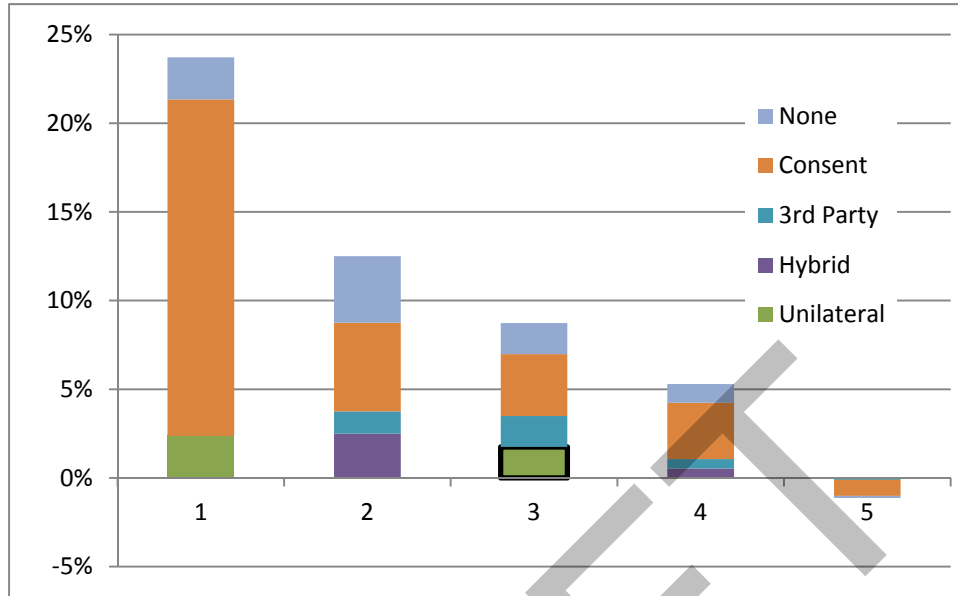


The median growth rate for real GDP per capita was similar across the annexation type groups, ranging from 6% for third party states to 12% for hybrid states.⁹⁰ North Dakota, a consent state, had the largest growth (67%). Tennessee had the smallest growth (2%) among the unilateral states, which averaged 8% growth. 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 plus Nebraska, a unilateral state, 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, the third unilateral state. See figure 4.



⁹⁰ Real GDP is the market value of the nation's goods and services, adjusted for inflation.

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 40% for third party states to 51% for hybrid states. North Dakota was again the leading state, with 103% growth in personal income per capita since 2000. Tennessee again lagged the other unilateral states, with 35% growth compared to their average of 41%. 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 hybrid states. See figure 6.

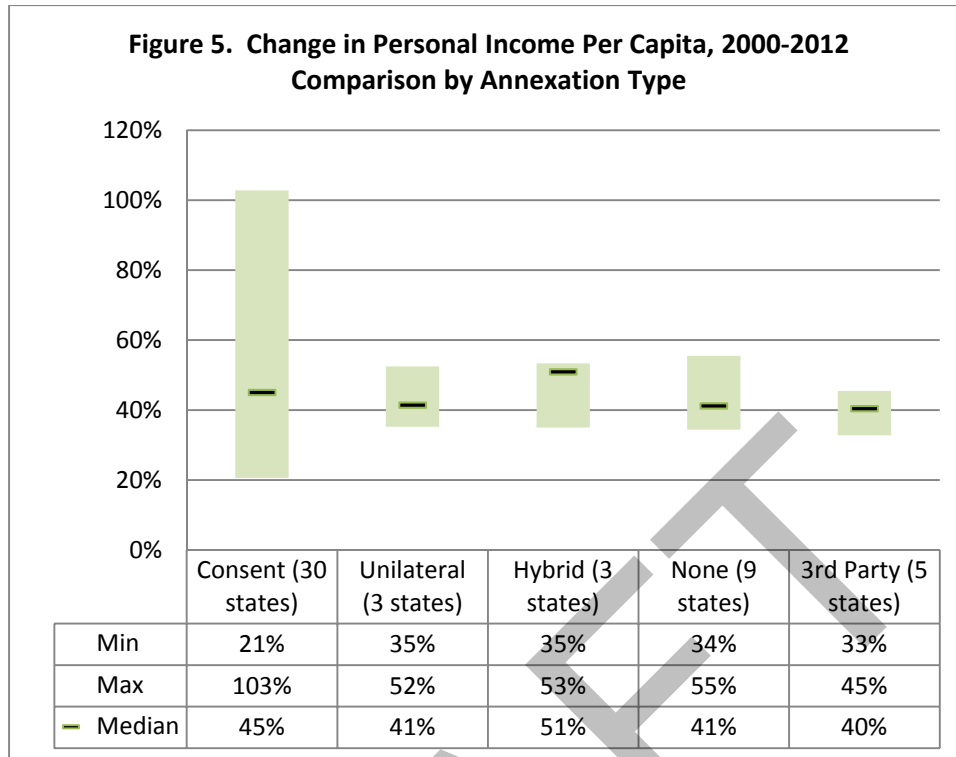
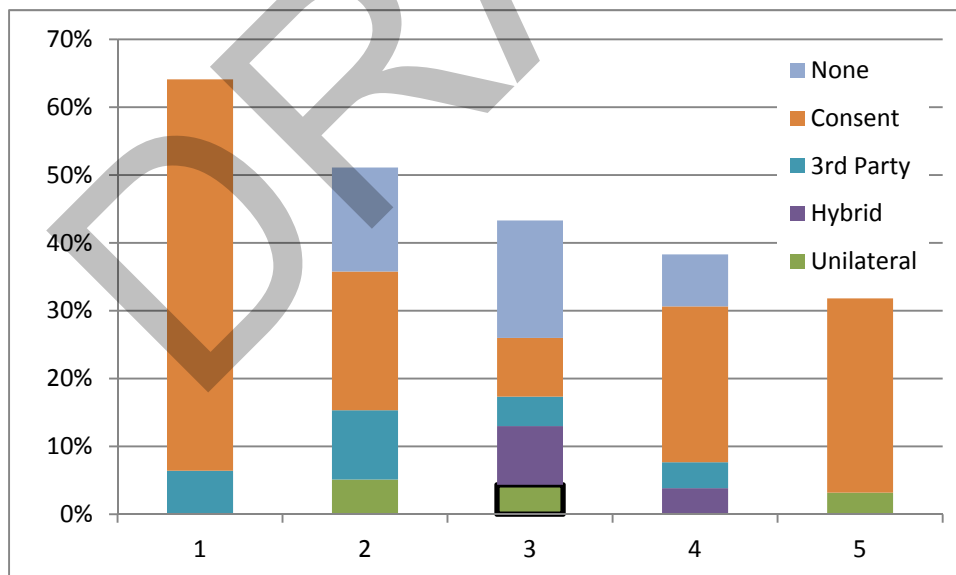
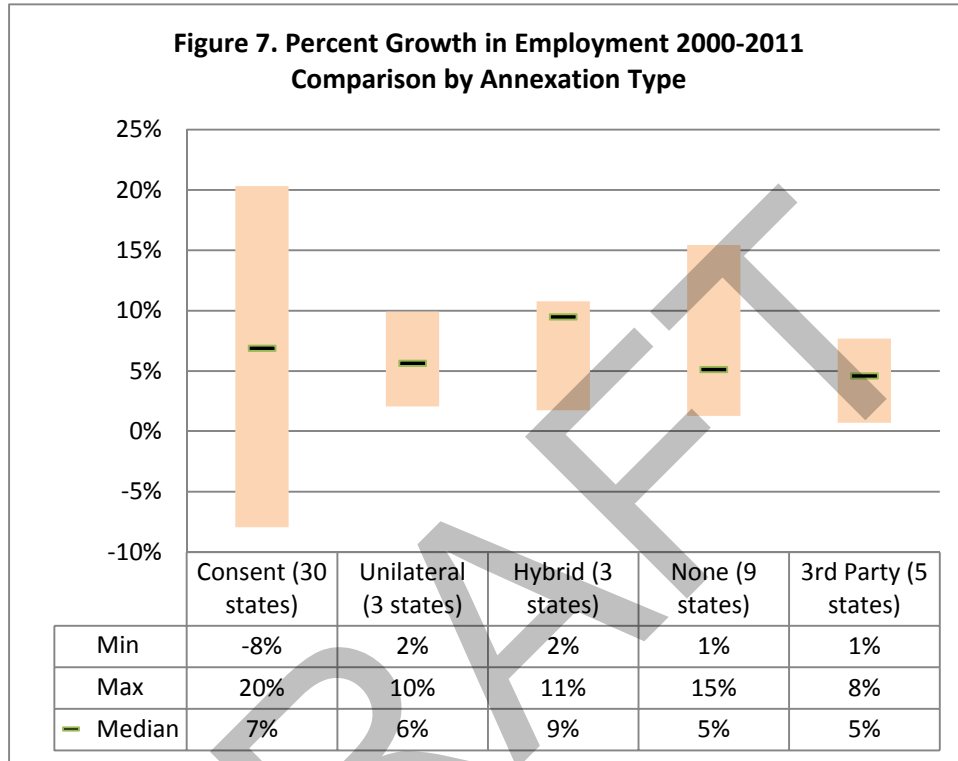


Figure 6. Personal Income Growth per Capita, 2000-2012, by Quintile and Annexation Type

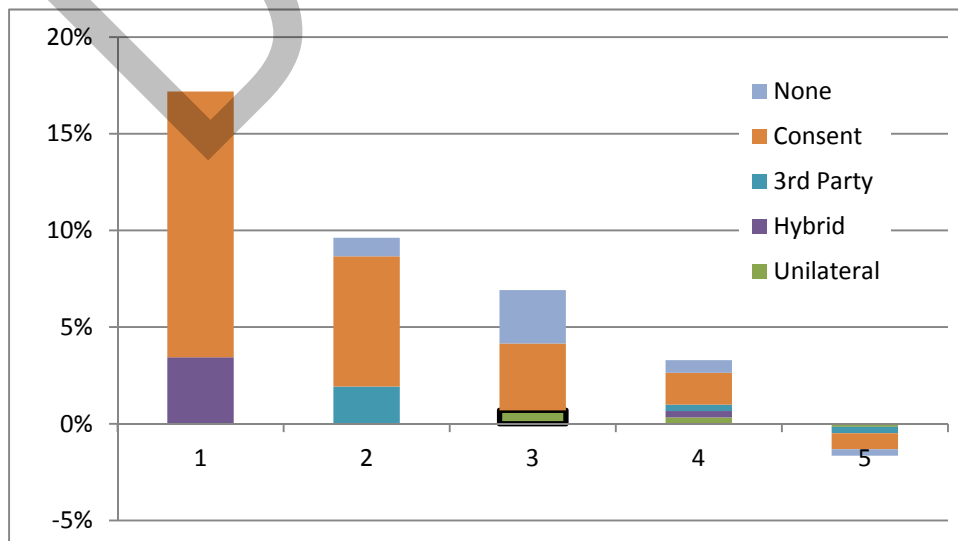


The median growth rate for employment per capita ranged from 5% for third party states and states with no annexation to 9% for hybrid states. Utah, a consent state, lead with 20% growth in full and part time employment growth per capita from 2000 to 2011, the latest year of data available. Tennessee yet again lagged the other unilateral states, with 2% growth compared to their average of 6%. See figure 7. The ten states making up the first quintile

averaged 17% growth in employment. The group included eight consent states and two hybrid states. Tennessee was yet again in the third quintile, which averaged 7% growth. The third quintile also included five consent states and four states that have no annexation. The other two unilateral annexation states, Nebraska and Indiana, were in the second and fifth quintiles. See figure 8.



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



Allocation of Tax Revenue after Annexation

One of the changes in annexation law included in the Growth Policy Act was the requirement that cities hold counties harmless for the loss of certain tax revenue when cities annex. 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.⁹¹ 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.

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 territory⁹²—in practice, it has been mostly cities that have provided the information about affected businesses to the department.⁹³ 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.⁹⁴

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.

⁹¹ Tennessee Code Annotated, Section 6-51-115.

⁹² Ibid.

⁹³ Karen Blackburn, Financial Control Director, Tennessee Department of Revenue, interview with Stan Chervin, September 18, 2013.

⁹⁴ Tennessee Code Annotated, Section 6-51-115.

**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
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 due 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. The department should be able to match this new data with the list of annexed businesses they have been tracking for local option sales tax purposes and determine the hold harmless amounts to be distributed to counties. According to the Tennessee Malt Beverage Association, 18 distributors account for most of the wholesale beer activity in the state. This small number of distributors, and the fact that they are large, sophisticated companies, should assist in calculating the hold harmless amount.

Other States

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.⁹⁵

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.⁹⁶

As in Tennessee, property tax collections are generally not affected by annexation in most states. The cities and counties have overlapping rates, and the county taxes all property, both

⁹⁵ Compiled from Sjoquist, D. and Rayna Stoycheva (2012), Gandhi, N. (2011), Due, J. and J. Mikesell (1995), US ACIR (1994), and Vermont (2008).

⁹⁶ Wyoming Statutes Annotated Section 39-15-111.

inside and outside incorporated areas.⁹⁷ Two states, Ohio and Wisconsin, hold a non-coterminous town or township harmless for property tax revenue losses.⁹⁸

Informational Meetings and Public Hearings

In Tennessee, one public hearing is required before annexation by ordinance. The hearing has to be held before the final passage of the ordinance.⁹⁹ The law does not specify that the hearing has to occur before the final vote on the ordinance; therefore, the hearing could be held on the same day as the final vote on the annexation ordinance.¹⁰⁰ A public hearing is also required before annexation by referendum.¹⁰¹ Thirty-one states¹⁰² require one public hearing, while four states¹⁰³ require two. No state requires more than two. North Carolina requires an informational hearing in addition to the public hearing before annexing territory.

Senate Bill 1381 by Bowling, House Bill 1319 by Van Huss, which was sent to the Commission for study by both the Senate Local Government Committee and the House Finance, Ways and Means Subcommittee, would require cities to hold three informational meetings in addition to the public hearing before annexing by ordinance. House Amendment 423 would reduce the number of informational meetings to one.

Notice Requirements

Notice of Unilateral Annexation

Tennessee law requires cities to publish notice of the annexation by ordinance in a newspaper of general circulation at least seven days in advance of the public hearing on the ordinance.¹⁰⁴ Before annexing unilaterally, Indiana requires property owners be notified by mail 60 days before the public hearing. Nebraska requires, only in cities of the first class, newspaper notice be sent 10 days before the public hearing.

Notice of Annexation by Referendum

Tennessee law cities to mail notice of annexation by referendum to affected property owners 14 days before the public hearing.¹⁰⁵ Notice must also be posted in at least three public places

⁹⁷ 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).

⁹⁸ Ohio Revised Code Annotated Section 709.19 and Wisconsin Statute Section 66.219(10)(a).

⁹⁹ Tennessee Code Annotated Section 6-51-102.

¹⁰⁰ *Gentry v. Bristol* Tenn. June 5, 1972 (unreported case).

¹⁰¹ Tennessee Code Annotated Section 6-51-104.

¹⁰² 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.

¹⁰³ Florida, Iowa, North Carolina, and Texas.

¹⁰⁴ Tennessee Code Annotated Section, 6-51-101.

¹⁰⁵ Tennessee Code Annotated Section 6-51-104.

in the territory to be annexed and in a like number of public places in the city. In addition, the notice must be published in a newspaper.

The minimum notice requirement for intent to annex in other states ranges from 7 to 30 days: eight states with notice of intent provisions require newspaper notice;¹⁰⁶ four states require notice by mail.¹⁰⁷ The minimum notice requirement before a public hearing ranges from 6 to 30 days: twenty-seven states require newspaper notice before the hearing;¹⁰⁸ eleven states require notice be sent by mail.¹⁰⁹ The minimum public notice requirement before an election ranges from 4 to 30 days: nine states require newspaper notice before an election;¹¹⁰ only Montana requires notice by mail.

Deannexation

In Tennessee, deannexation must be initiated by cities. There are two methods.¹¹¹ The first method requires the deannexation to be approved by three-fourths of voters voting in the election.¹¹² 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.

Thirteen states¹¹³ authorize only property owners to initiate deannexation. Nine states¹¹⁴ authorize only cities to initiate deannexation. Fourteen states¹¹⁵ authorize both property owners and cities to initiate. Thirteen states¹¹⁶ do not have deannexation laws.

¹⁰⁶ Michigan, Montana, New York, North Carolina, Oklahoma, Utah, Virginia, and Wisconsin.

¹⁰⁷ North Carolina, Oklahoma, Utah, and Wisconsin.

¹⁰⁸ Alaska, Arizona, Arkansas, California, Colorado, Georgia, Idaho, Illinois, Kansas, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, Texas, Utah, Washington, and Wyoming.

¹⁰⁹ Arizona, Florida, Indiana, Illinois, Indiana, Kansas, Kentucky, Michigan, Minnesota, North Dakota, and South Carolina.

¹¹⁰ Alabama, Arkansas, Florida, Iowa, Louisiana, Maryland, Texas, West Virginia, and Wisconsin.

¹¹¹ Tennessee Code Annotated Section 6-51-201.

¹¹² 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 election.

¹¹³ Colorado, Georgia, Illinois, Indiana, Michigan, Montana, Nebraska, Ohio, South Dakota, Utah, Washington, West Virginia, and Wisconsin.

¹¹⁴ Alabama, Alaska, Arizona, Delaware, Idaho, Kentucky, Missouri, Oregon, and Virginia.

¹¹⁵ Arkansas, California, Florida, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Nevada, North Dakota, Oklahoma, South Carolina, Texas, and Wyoming.

¹¹⁶ Connecticut, Hawaii, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, Rhode Island, and Vermont.

Eight states¹¹⁷ require a referendum before finalizing the deannexation. Nine states¹¹⁸ allow property owners to petition for a referendum. Five other states¹¹⁹ require some other method of consent before the property is deannexed. Iowa and Louisiana may require an election or written consent depending on whether the annexation was initiated by the city or the residents. In six states,¹²⁰ 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.¹²¹ The city may deannex unilaterally or the property owners may request deannexation with the city's consent in three states.¹²² 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.¹²³

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 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.¹²⁴

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.¹²⁵ Nine¹²⁶ of the thirty-five states with laws on deannexation do not have notice requirements for deannexation. Eleven states¹²⁷ require publication of notice in a newspaper before a hearing. The notice period ranges from one week to four weeks. Four states¹²⁸ require publication of notice of election. The notice period ranges from 10 days to 4 weeks. Three states¹²⁹ have notice requirements for both hearings and elections. Alabama requires 10 to 30 days mail notice before a hearing, and publication for at least seven days in a newspaper for elections. Florida requires notice once a week for two consecutive weeks of both hearings and elections; Louisiana requires 10 days' notice.

¹¹⁷ Alaska, Arkansas, Delaware, Iowa, Kentucky, Louisiana, Michigan, and West Virginia.

¹¹⁸ Alabama, California, Florida, Ohio, Oregon, South Carolina, Texas, Washington, and Wisconsin.

¹¹⁹ Arizona, Georgia, Montana, Nevada, and Wyoming.

¹²⁰ Arkansas, Delaware, South Carolina, Washington, West Virginia, and Wisconsin.

¹²¹ Colorado, Indiana, South Dakota, and Utah.

¹²² Kansas, North Dakota, and Oklahoma.

¹²³ Illinois, Minnesota, Mississippi, Nebraska, and Virginia.

¹²⁴ John Deakins, Washington County Highway Superintendent, testimony to the Commission, August 21, 2013.

¹²⁵ Tennessee Code Annotated Section 6-51-201.

¹²⁶ California, Colorado, Delaware, Iowa, Kentucky, Minnesota, Missouri, Nebraska, and Washington.

¹²⁷ Alaska, Illinois, Indiana, Kansas, Mississippi, Nevada, Ohio, Oregon, South Dakota, Utah, and Virginia.

¹²⁸ Idaho, Montana, South Carolina, and West Virginia.

¹²⁹ Alabama, Florida, and Louisiana.

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.¹³⁰ There is no provision for residents or property owners to participate in these decisions. Staff was able to find one instance in which mutual adjustment by contract has been used. In September 2007, Brentwood entered into a boundary adjustment agreement with Franklin to shift over 300 acres south of Split Log Road into Brentwood city limits.¹³¹

Ten states¹³² have laws authorizing cities to adjust their contiguous boundaries by mutual agreement. In nine of these states, cities can simultaneously annex and deannex territory to accomplish this, but it is not done by contract as is authorized in Tennessee. Iowa authorizes cities to adjust their boundaries by contract.

In six states,¹³³ only the cities’ governing bodies can initiate the adjustment. Four states allow residents to object the adjustment. In Arizona, if 51% of the property owners of the territory to be annexed protest, then the adjustment is denied by the county. A mutual adjustment can be stopped in Utah if written protests are filed by landowners of 25% of the area to be adjusted and 15% of total value of land in the territory. In Missouri, residents of the territory can object to the adjustment. An election must then be held. In Arkansas, a lawsuit can be filed in the chancery court before the adjustment becomes final.

Four other states allow residents or electors to initiate an adjustment. Illinois allows the cities or the electors and property owners to initiate; one-half of the electors and one-half of the property owners within a territory not exceeding 160 acres can petition for a mutual adjustment.¹³⁴ For territory that is at least one-half square mile in size, a petition must be signed by at least 100 electors of the territory. An adjustment can be initiated by either the cities or a petition signed by all the property owners in the territory in Minnesota. If the property owners initiate, one of the cities must pass a resolution requesting it. In Iowa, cities may adjust their boundaries by agreement if a property owner first petitions for such. Massachusetts, on the other hand, allows a person, a city, a corporation, the general court, or a state department to initiate an adjustment.

Illinois is the only state that requires an election to approve an adjustment when the property is at least one-half square mile in size. Electors of both cities are authorized to vote in the election. In Kentucky, for an adjustment to occur, 51% of the voters residing in the territory must sign a petition in support of it.

¹³⁰ Tennessee Code Annotated Section 6-51-302.

¹³¹ Roger Horner, City Attorney, City of Brentwood, interview by Bill Terry, July 19, 2013.

¹³² Arizona, Arkansas, Illinois, Iowa, Kentucky, Massachusetts, Minnesota, Missouri, Ohio, and Utah.

¹³³ Arizona, Arkansas, Kentucky, Missouri, Ohio, and Utah.

¹³⁴ 65 Illinois Compiled Statutes Annotated 5/7-1-24.

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, three¹³⁵ require notice be sent by mail two to four weeks before the public hearing. Four states¹³⁶ require notice be published in a newspaper five days to three weeks before the hearing. Three states¹³⁷ did not have notice requirements for mutual adjustment. Illinois requires that a notice of election 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.¹³⁸ 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 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 election 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 an election is required, nine states¹³⁹ only allow the process to be initiated by the city. In six states,¹⁴⁰ the process may only be initiated by voter petition. Eighteen states¹⁴¹ allow either the city or voters to initiate the merger.

Three states do not require an election 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 an election 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,¹⁴² however,

¹³⁵ Arizona, Kentucky, and Minnesota.

¹³⁶ Minnesota, Arkansas, Iowa, and Utah.

¹³⁷ Massachusetts, Missouri, and Ohio.

¹³⁸ Tennessee Code Annotated Title 6, Chapter 51, Part 4.

¹³⁹ Arizona, Colorado, Kentucky, Montana, New Mexico, South Carolina, Vermont, Wisconsin, and Wyoming.

¹⁴⁰ Arkansas, Michigan, Oregon, Pennsylvania, South Dakota, and Texas.

¹⁴¹ Alabama, Alaska, Florida, Idaho, Indiana, Illinois, Louisiana, Maryland, Missouri, Nebraska, New Jersey, New York, North Dakota, Ohio, Oklahoma, Utah, Virginia, and Washington.

¹⁴² Alaska, Idaho, Michigan, Minnesota, Mississippi, New Jersey, New York, North Dakota, Ohio, South Carolina, Utah, Vermont, Virginia, Washington, and Wyoming.

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.

Senate Bill 1381 by Bowling, House Bill 1319 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 require cities to mail notice to property owners 90 days before the date of a proposed annexation. House Bill 590 by Van Huss, Senate Bill 869 by Crowe would require notice be sent 90 days before the date of annexation. House Amendment 422 would require the notice to be sent 180 days in advance.

Comprehensive Growth Policy

The Growth Policy Act is Tennessee's first and only attempt at statewide growth planning. Local governments are charged with the responsibility of cooperatively shaping growth policy within their county through the development of a countywide growth plan. 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 Committee (LGPAC) for approval.

Each growth plan was to identify three distinct areas: UGBs, PGAs, and RAs. 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.

Current law requires that certain planning studies and land use projections be completed before proposing a UGB, PGA, or RA.¹⁴³ 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.¹⁴⁴ Even when additional material was submitted, the LGPAC approved only the map. 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.¹⁴⁵

¹⁴³ Tennessee Code Annotated Section 6-58-106.

¹⁴⁴ 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.

¹⁴⁵ Tennessee Code Annotated Title 13, Chapters 3 and 4.

In Tennessee, comprehensive planning is not mandated, but a growth plan is. What is the difference? A growth plan must include, at a minimum, UGBs, PGAs, and RAs. This means that just a map of the boundaries can suffice as a growth plan. However, a growth plan may address land-use, transportation, public infrastructure, housing, and economic development.¹⁴⁶ These elements are generally contained in a comprehensive plan. 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.

The first step in the process to prepare a growth plan is the creation of a coordinating committee in each county. It is charged with the duty of developing a growth plan that is derived from each local government in the county. 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.

Twenty states require at least some local governments to develop some form of a comprehensive plan.¹⁴⁷ These requirements go well beyond requirements in Tennessee. Four of these states—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

¹⁴⁶ Tennessee Code Annotated Section 6-58-107.

¹⁴⁷ Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Kentucky, Maryland, Nebraska, Nevada, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Virginia, and Washington.

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.¹⁴⁸ A municipal mayor or the county mayor or the county executive may, at any time after the initial period, propose an 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 Local Government Planning Advisory Committee, 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. Senate Bill 613, House Bill 135, provides a detailed step-by-step process for amending growth plans.

- A municipal mayor may propose an amendment to that municipality’s urban growth boundary or a county mayor (executive) may propose an amendment to the boundary between a planned growth area and a rural area.
- 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.
- The coordinating committee must take action on the proposal within six months of the first meeting.
- Detailed procedures in the amendment process are provided.
- Any proposed change in an approved growth plan other than the boundaries noted above is deemed a revision of the growth plan and must follow a separate process.

¹⁴⁸ Tennessee Code Annotated Section 6-58-104(d)(1).

- 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.
- The coordinating committee must develop a revised growth plan within one year after the first meeting of the committee.
- After approval of the revised growth plan by the local Government Planning Advisory Committee, the plan must be in effect for seven years before the revision process can be initiated again but amendments may be initiated after three years have elapsed.

Senate Bill 732, House Bill 231, places a limitation on the authority of a municipal mayor to propose an amendment to the growth plan by providing that until a municipality has annexed all territory within its UGB under the initial growth plan or an amended growth plan and has fully complied with all plans of services adopted for all annexed territories, the mayor of such a municipality has no authority to propose an amendment to the growth plan.

This bill also provides that the mayor, or the mayor's designee, of a municipality that has not annexed all territory within its urban grown boundaries under the initial growth plan or an amended growth plan and has not fully complied with all plans of services adopted for all annexed territories, may not serve on a coordinating committee reconvened or reestablished pursuant to a proposed amendment to the growth plan.

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.

Coordinating Committees

Coordinating committees are broad-based and complex. They are composed of representatives of the county and municipal governments, public and private utilities, education, agriculture, homeowners, and environmental interests. Reconvening the coordinating committee is required to amend growth plans.

Local officials and other interests have expressed concerns about the complex composition of these committees. They do not want to have to seek approval from other local governments before adjusting their boundaries. Further, farming interests have argued that the membership is skewed in favor of cities in counties with multiple cities and does not give adequate consideration to their concerns.

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.¹⁴⁹

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.¹⁵⁰

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.
- 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.¹⁵¹

¹⁴⁹ Tennessee Code Annotated Section 6-58-114(a).

¹⁵⁰ Tennessee Code Annotated Section 6-58-114(i).

¹⁵¹ Information submitted by the South Central Tennessee Development District.

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 function at a high level.¹⁵²

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.

DRAFT

¹⁵² Information submitted by the East Tennessee Development District.

References

- Anthony, Jerry. 2006. "State Growth Management and Housing Prices." *Social Science Quarterly*. 87 (1): 122-138.
- Babb, Bryan H. and Stephen C. Unger. 2008. "Setting the annexation record straight: the myth underlying annexation reform in Indiana." *Res Gestae Indiana Bar Journal*. 51: 65-68.
- Berri, Brett W. 1989. "Annexation and Municipal Voting Rights." *Washington University Journal of Urban and Contemporary Law*. 35:237-248.
- Bise, L. Carson II. 2010. *Fiscal Impact Analysis: Methodologies for Planners*. Chicago: American Planning Association Planners Press.
- Carruthers, John I. 2002. "Evaluating the Effectiveness of Regulatory Growth Management Programs: An Analytic Framework." *Journal of Planning Education and Research*. 21:391-404.
- Due, John F. and John L. Mikesell. 1995. *Sales Taxation: State and Local Structure and Administration*. Washington, DC: Urban Institute Press
- Edwards, Mary M. 2008. "Understanding the Complexities of Annexation." *Journal of Planning Literature*. 23(2): 119-135.
- . 2011. "Municipal Annexation: Does state policy matter?" *Land Use Policy*. 28 (1): 325-333.
- Edwards, Mary M. and Yu Xiao. 2009. "Annexation, Local Government Spending, and the Complicating Role of Density." *Urban Affairs Review*. 45 (2): 147-165.
- Gale, Dennis E. 1992. "Eight state-sponsored growth management programs." *Journal of the American Planning Association*. 58: 425-439.
- Gandhi, Natwar M. 2012. *Tax Rates and Tax Burdens in the District of Columbia: A Nationwide Comparison 2011*. Washington, DC: Government of the District of Columbia.
- Gillette, Clayton P. 2005. "Voting with Your Hands: Direct Democracy in Annexation." *Southern California Law Review*. 78: 835-867.
- Hansen, J. Mark. 1980. "Municipal Annexation in Tennessee." *Tennessee Law Review*. 47:651-679.
- Hemsley, Sidney D. 2007. *Annexation Handbook for Cities and Towns in Tennessee II*. Knoxville, Tennessee: Municipal Technical Advisory Service.

- Hobday, Victor C. 1963. *A Brief Description of Tennessee Municipal Government*. Knoxville, Tennessee: Municipal Technical Advisory Service.
- Houston, Scott. 2012. *Municipal Annexation in Texas Is it Really that Complicated?* Austin, Texas: Texas Municipal League.
- Landis, John D., Lan Deng, and Michael Reilly. 2002. "Growth Management Revisited: A Reassessment of its Efficacy, Price Effects and Impacts on Metropolitan Growth Patterns." Working Paper 2002-02. IURD Working Paper Series, Institute of Urban and Regional Planning, University of California Berkeley.
- Le Clercq, Frederic S. 1988. "Tennessee Annexation Law: History, Analysis, and Proposed Amendments." *Tennessee Law Review*. 55: 577-701.
- Lindsey, Greg. 2004. "Annexation Activity and Policy in the United States" in *Redrawing Local Government Boundaries: An International Study of Politics, Procedures, and Decisions*, edited by John Meligrana, 56-74. Vancouver: University of British Columbia Press.
- Lindsey, Greg, and Jamie Palmer. 1998. *Annexation in Indiana: Issues and Options*. Indianapolis: Indiana Advisory Commission on Intergovernmental Relations.
- Liner, Gaines H. and Rob Roy McGregor. 2002. "Optimal Annexation." *Applied Economics*. 34: 1477-1485.
- Mandelker, Daniel R. 2012. "Implementing State Growth Management Programs: Alternatives and Recommendations." *John Marshall Law Review*. 45:307-316.
- Mendelson, Wallace. 1952. *Annexation Handbook for Tennessee Municipal Officials*. Knoxville, Tennessee: Municipal Technical Advisory Service, University of Tennessee. http://trace.tennessee.edu/utk_mtashist/10.
- . 1954. "Suggestions for Improvement of Municipal Annexation Law." *Vanderbilt Law Review*. 8 (1): 1-18.
- Nelson, Arthur C., Rolf Pendall, Casey J. Dawkins, and Gerrit J. Knaap. 2002. "The Link Between Growth Management and Housing Affordability: The Academic Evidence." Discussion Paper Series, Brookings Institution Center on Urban and Metropolitan Policy. Washington DC: Brookings Institute.
- Nelson, Arthur C. and David R. Peterman. 2000. "Does Growth Management Matter? The Effect of Growth Management on Economic Performance." *Journal of Planning Education and Research*. 19: 277-285,
- O' Toole, Randal. 2007. "The Planning Tax: The Case Against Regional Growth-Management Planning." *Policy Analysis* (Cato Institute) no.606.

- Palmer, Jamie L. and Greg Lindsey. 2001. "Classifying State Approaches to Annexation." *State and Local Government Review*. 33 (1): 60-73.
- Reynolds, Laurie. 1992. "Rethinking Municipal Annexation Powers." *The Urban Lawyer*. 24 (2): 247-303.
- Rusk, David. 2006. "Annexation and the Fiscal Fate of Cities." Washington DC: Brookings Institute.
- . 2013. *Cities without Suburbs: A Census 2010 Perspective*. 4th ed. Washington DC: The Woodrow Wilson Center Press.
- Sengstock, Frank S. 1960. *Annexation: A Solution to the metropolitan area problem*. Ann Arbor, Michigan: Michigan Legal Publications.
- Sjoquist, David L. and Rayna Stoycheva. 2012. "Local Revenue Diversification: User Charges, Sales Taxes, and Income Taxes." In *The Oxford Handbook of State and Local Government Finance*, edited by Robert D. Ebel and John E. Petersen, 429-462. New York: Oxford University Press.
- Sorrell, Andrew V. and Bruce A. Vlk. 2012. "Virginia's Never-ending Moratorium on City-County Annexations." *The Virginia News Letter*, University of Virginia Weldon Cooper Center for Public Service 2012 88:1.
- State of Tennessee Legislative Council Committee. 1973. *Study of the Adjustment of Municipal Boundaries Final Report of the Legislative Council Committee*. Nashville, Tennessee: State of Tennessee.
- Steinbauer, Paula E., Betty J. Hudson, Harry W. Hayes, and Rex L. Facer II. 2002. *An assessment of municipal annexation in Georgia and the United States*. Athens, Georgia: Carl Vinson Institute of Government, University of Georgia.
- Stewart, Michael J. 2000. "Growth and its Implications: An Evaluation of Tennessee's Growth Management Plan." *Tennessee Law Review*. 67:982-1017.
- Taylor, Gary D. and Ellen M. Bassett. 2007. "Exploring Boundaries in Governance: Intergovernmental Boundary Agreements." *State and Local Government Review* 39:119-130.
- Tennessee Advisory Commission on Intergovernmental Relations. 1999. *Implementation of Tennessee's Growth Policy Act: the History of Public Chapter 1101 and the Early Stages of its Implementation*. Staff Report. Nashville, Tennessee: State of Tennessee.
- Tyson, Christopher J. 2012. "Localism and Involuntary Annexation: Reconsidering Approaches to New Regionalism." *Tulane Law Review* 87:297-352.

- US Advisory Commission on Intergovernmental Relations. 1994. *Significant Feature of Fiscal Federalism, Volume 1*. Washington, DC.
- US Census Bureau. 2012. "Individual State Descriptions: 2012." 2012 Census of Governments. Washington, DC: US Government Printing Office.
- Vermont Department of Taxes. 2008. Vermont Sales and Use Tax Rate Tables. <http://www.state.vt.us/tax/pdf.word.excel/business/streamlinedtaxratetable.pdf> (accessed September 25, 2013).
- Waldner, Leora and Kathryn Brice. 2010. "The New Cities: Why Cities Incorporate and the Implications for Urban Politics." Paper presented at the Annual Meeting of the Southern Political Science Association, Atlanta, Georgia, January 6, 2010. Accessed online at http://citation.allacademic.com/meta/p_mla_apa_research_citation/3/9/6/0/0/pages396004/p396004-1.php.
- Wegner, Judith Welch. 2012 "North Carolina's Annexation Wars: Whys, Wherefores, and What Next." *North Carolina Law Review*. 91 (1): 165-279.
- Yungmeyer, Harold. 1997. *Doing an Annexation Study A How-to Guide*. Knoxville, Tennessee: Municipal Technical Advisory Service, University of Tennessee.

DRAFT

Persons Interviewed

Randall Allen, Executive Director
Kansas Association of Counties

Rogers Anderson, Mayor
Williamson County

Mary Baer, Real Property Agent
City of Henderson, Nevada

Kathryn Baldwin, Planning Director
City of Oak Ridge

Tom Bickers, Mayor
City of Louisville

Karen Blackburn, Financial Control Director
Tennessee Department of Revenue

Janice Bowling, Senator
Tennessee Senate, District 25

Roger Campbell, Assistant City Manager
City of Maryville

Phil Carey, Senior Planner
Maine Department of Agriculture,
Conservation and Forestry

Rodney Carmical, Executive Director
Tennessee County Highway Officials
Association

Mike Carter, Representative
Tennessee House of Representatives,
District 25

Lash Chaffin, Utilities Section Director
League of Nebraska Municipalities

Virginia Collier, Planner
City of Austin, Texas

David Connor, Executive Director
Tennessee County Commissioners
Association

John Deakins, Highway Superintendent
Washington County

David Edgell, Principal Planner
Delaware Office of State Planning
Coordination

Sam Edwards, Executive Director
Greater Nashville Regional Council

Jeff Fleming, Assistant City Manager
City of Kingsport

Christopher Fletcher, Director of
Development
City of Morgantown, West Virginia

Rich Foge, Executive Director
Tennessee Malt Liquor Association

Bob Freudenthal, Executive Director
Tennessee Association of Utility Districts

Marlene Gafrick, Director
Planning and Development
City of Houston, Texas

David Gordon, Mayor
City of Covington

Bill Hammon, Assistant City Manager
City of Alcoa

Rebecca Hansen, Planning Technician
City of Elko, Nevada

Alan Hartman, Planning Director
City of Morristown

William Haupt, Founder
Tennesseans Against Forced Annexation

Dan Hawk, Planning Consultant
Former Director of Rural Development
Tennessee Department of Economic and
Development

Roger Horner, City Attorney
City of Brentwood

Dennis Huffer, Legal Counsel
Greater Nashville Regional Council

Bradley Jackson, Lobbyist
Tennessee Chamber of Commerce

Chad Jenkins, Deputy Director
Tennessee Municipal League

Cordell Johnston, Attorney
New Hampshire Municipal Association

Beth Knight, Senior Planner
Planning and Development
City of Fort Worth, Texas

Paul Latture, President
Rutherford County Chamber of Commerce

Dick Lodge, Lobbyist
Tennessee Electric Cooperative Association

Mark Luttrell, Mayor
Shelby County

Amanda McGraw, Assistant Director of
Financial Control
Tennessee Department of Revenue

Don Moler, Director
League of Kansas Municipalities

Christopher Nida, Research Analyst
North Carolina League of Municipalities

Rena Ollie, Planning Director
City of Wylie, Texas

Jennifer Ouellette, Law Clerk
Kansas Association of Counties

Ed Purcell, Staff Attorney
New Jersey State League of Municipalities

Karen Rennick, Planning Director
Chattanooga-Hamilton County Regional
Planning Commission

Nathan Ridley, Attorney
Bradley Arant Boult Cummings

Susan Ritter, Executive Vice President
Homebuilders Association of Tennessee

Tim Roach, Director of Planning
Greater Nashville Regional Council

John Robertson, Director of Legislative
Division
Massachusetts Municipal League

Rhedona Rose, Executive Vice President
Tennessee Farm Bureau

Susan Scallon, Environmental Program
Coordinator
City of Austin Planning Development
Review Department

Danny Sells, Executive Director
Tennessee Association of Conservation
Districts

Nicole Smothers, Staff Analyst
City of Houston Planning and Development

Mitzi Spann, President
Homebuilders Association of Tennessee

Amy Sturges, Director of Governmental
Affairs
Pennsylvania Municipal League

Skip Taylor, Mayor
Fayette County

Jim Thomas, Executive Director
Municipal Technical Advisory Service

Ambre Torbett, Director of Planning and
Codes
Sullivan County

Debbie Thomas, City Secretary
City of Alvarado, Texas

William Veazey, Planning Director
Tipton County

Dan Vriendt, Director
City of Charleston, West Virginia

Bo Watson, Senator
Tennessee Senate, District 31

Stephen West, City Manager
City of Winnemucca, Nevada

Ken Wilber, Mayor
City of Portland

Brent Williams, Local Government
Specialist
Alaska Local Boundary Commission

DRAFT