

Appendix B: Clarifying Statutory Language

While Public Chapter 707 deleted from statute the method of annexation by ordinance and prohibits any annexations by ordinance after May 15, 2015, there are a number of obsolete references to annexation by ordinance in other sections of the code that need to be addressed to make annexation policy and procedures consistent going forward. Some of these are simple corrections, where the words "by ordinance" or reference to annexations under Section 6-51-102 can be deleted without changing the meaning of the statute. Other types of clarification need more careful discussion.

Inapplicable sections, references to deleted sections or "ordinance", and clarification in general:

Acts 2014 ch. 707, § 2(b) prohibits any annexation by ordinance that is not both operative and effective prior to May 16, 2015.

1. § 6-51-101. Part definitions and definitions for § 6-51-301.
 - (3): ""Notice" means publication . . . The notice, whether by ordinance as stipulated in § 6-51-102(a)(1) and (b) or by referendum as stipulated in § 6-51-104(b) shall be satisfied by inclusion of a map... "
 - Note that 6-51-301 is about utility service and has nothing to do with notice of annexation.
2. § 6-51-103. Quo warranto to contest annexation ordinance -- Appellate review.
 - Review under T.C.A. § 6-51-103 applies only to annexation by ordinance cases and was inapplicable to annexation by referendum case. *State ex rel. Vicars v. Kingsport*, 659 S.W.2d 367, 1983 Tenn. App. LEXIS 707 (Tenn. Ct. App. 1983).
 - (a)(1)(A): "Any aggrieved owner of property that borders or lies within territory that is the subject of an annexation ordinance prior to the operative date thereof, may file a suit in the nature of a quo warranto proceeding . . . to contest the validity thereof on the ground that it reasonably may not be deemed necessary for the welfare of the residents and property owners of the affected territory and the municipality as a whole and so constitutes an exercise of power not conferred by law."
 - This entire section could be repealed. In annexation cases (by resolution / referendum) there is no equal protection or due process argument that can properly be made when the statutes are properly followed.
3. § 6-51-105. Referendum on annexation.
 - (b): "The legislative body of the municipality affected may also at its option submit the questions involved to a referendum of the people residing within the municipality."

- (e): "If a majority of all the qualified voters voting thereon in the territory proposed to be annexed, or in the event of two (2) elections as provided for in subsections (a) and (b), a majority of the voters voting thereon in the territory to be annexed and a majority of the voters voting thereon in the municipality approve the resolution, annexation as provided therein shall become effective thirty (30) days after the certification of the election or elections."
- To clarify that both a majority of voters in the territory AND a majority of voters in the municipality each have to approve for the annexation to become effective, the subsection could be reorganized:
 - (e)(1) If a majority of all the qualified voters voting thereon in the territory proposed to be annexed approve the resolution, annexation as provided therein shall become effective thirty (30) days after the certification of the election or elections.

(e)(2) In the event of two (2) elections as provided for in subsections (a) and (b), if both a majority of the voters voting thereon in the territory to be annexed and a majority of the voters voting thereon in the municipality approve the resolution, annexation as provided therein shall become effective thirty (30) days after the certification of the election or elections.

- (f): "The mode of annexation provided in this section is in addition to the mode provided in § 6-51-102."
 - This subsection could be deleted entirely, as 6-51-102 will not provide a mode of annexation after May 15, 2015.

4. § 6-51-106. Abandonment of proceedings.

- "Any annexation proceeding initiated under § 6-51-102 or § 6-51-104 may be abandoned and discontinued at any time by resolution of the governing body of the municipality."

5. § 6-51-109. Annexation of smaller municipality by larger municipality.

- "...larger municipality may by ordinance annex such portion of the territory of the smaller municipality described in the petition or the totality of such smaller municipality if so described in the petition only after a majority of the qualified voters voting in an election in such smaller municipality vote in favor of the annexation.
 - This section requires at least 20% of the voters in a smaller municipality to petition to a larger municipality for an election on the question of getting annexed into the larger city. Only voters in the smaller city vote on it.
 - Larger municipality "may" annex; it can choose not to pass ordinance.

- Although the action is by ordinance, this annexation is still subject to voter approval. However, it varies from other requests for annexation:
 - The larger city has no option to put the annexation to a vote of its current residents.
 - Plan of services requirements would not apply unless other changes were made to 6-51-102.
 - Other notice and hearing requirements do not seem applicable.
 - Changing “by ordinance” to “by resolution” alone does not address the peculiarities of this section.
6. § 6-51-111. Municipal property and services.
- (a): “Upon adoption of an annexation ordinance or upon referendum approval of an annexation resolution as provided in this part, **or upon adoption of an annexation resolution having written owner consent**, an annexing municipality and any affected instrumentality of the state . . . shall attempt to reach agreement in writing for allocation and conveyance to the annexing municipality of any or all public functions, rights, etc.”
 - Something would have to be added to extend provisions to annexations by resolution without referendum approval when there is written consent.
7. § 6-51-119. Provision of copy of annexation ordinance, the plan for emergency services and map designating the annexed area to emergency communications district.
- (a): “The legislative body of an annexing municipality or its designee shall provide a copy of the annexation ordinance **resolution**, along with a copy of the portion of the plan of services dealing with emergency services and a detailed map designating the annexed area, to any affected emergency communications district upon final passage of the ordinance. **adoption of a resolution with written consent or upon certification of an annexation referendum.**”
8. § 6-51-121. Recording of annexation ordinance of resolution by annexing municipality.
- Upon adoption of an annexation ordinance or upon referendum approval of an annexation resolution as provided in this part, **or adoption of an annexation resolution without a referendum when all owners have given written consent**, an annexing municipality shall record the ordinance or resolution with the register of deeds in the county or counties where the annexation was adopted or approved. The ordinance or resolution shall

describe the territory that was annexed by the municipality. A copy of the ordinance or resolution shall also be sent to the comptroller of the treasury and the assessor of property for each county affected by the annexation.

9. § 6-58-111. Annexation procedure -- Quo warranto action to challenge annexation.
 - (a): "A municipality possesses exclusive authority to annex territory located within its approved urban growth boundaries; therefore, no municipality may annex by ordinance or by referendum any territory located within another municipality's approved urban growth boundaries. Within a municipality's approved urban growth boundaries, a municipality may use any of the methods in chapter 51 of this title to annex territory..."
 - This would also mean that annexation with written consent (not by referendum) cannot take place in another municipality's UGB.
 - If an owner in one UGB wanted to be annexed into an adjacent municipality instead, it would have to go through growth plan amendment (subsection revised to apply to any annexation, not only by ordinance):
 - (c)(1) Prior to a municipality annexing by ordinance territory outside its existing urban growth boundary, whether the territory desired for annexation is within another municipality's urban growth boundary or a county's planned growth area or rural area, it must first amend the growth plan by having its desired change to the urban growth boundary submitted to the coordinating committee...
 - (c)(2) allows annexation outside a UGB in a PGA or RA by referendum "as provided for in §§ 6-51-104 and 6-51-105."
 - "...the annexation must be by referendum only and not by ordinance. The municipality must follow the referendum process as provided for in §§ 6-51-104 and 6-51-105."
 - (c): "The municipality shall have the burden of proving that an annexation ordinance is reasonable for the overall well-being of the communities involved."
 - This part of 6-58-111 should be removed.

Statutes Applying to Plans of Services:

1. § 6-51-102. Annexation by ordinance. *[This should be re-named.]*
 - (b)(1): "Before any territory may be annexed under this section, the governing body of the municipality shall adopt a plan of services establishing

at least the services to be delivered and the projected timing of the services.”

2. § 6-51-104. Resolution for annexation by referendum -- Notice.
 - (b)(1)(A): “A copy of the resolution, describing the territory proposed for annexation, shall be promptly sent by the municipality to the last known address listed in the office of the property assessor for each property owner of record within the territory proposed for annexation . . . The resolution shall also include a plan of services for the area proposed for annexation. ***The plan of services shall address the same services and timing of services as required in § 6-51-102.*** Upon adoption of the plan of services, the municipality shall cause a copy of the resolution to be forwarded to the county mayor in whose county the territory being annexed is located.”
 - **“Same services”—6-51-102(b)(2):** “The plan of services shall include, but not be limited to: police protection, fire protection, water service, etc.”
 - **“Timing of services”—6-51-102(b)(3):** “The plan of services shall include a reasonable implementation schedule for the delivery of comparable services...”
 - Question has been asked: Do other parts of 102 not specific to “services and timing of services” apply to annexations under 104 and 105? Rules of statutory construction seem to indicate that the intent of the legislature was to have all plan of service provisions of 102 apply equally.
 - (b)(4): “Before a plan of services may be adopted, the municipality shall submit the plan of services to the local planning commission, if there is one, for study and a written report . . . Before the adoption of the plan of services, a municipality shall hold a public hearing. Notice of the time, place, and purpose of the public hearing shall be published in a newspaper of general circulation...”
 - (b)(5): “A municipality may not annex any other territory if the municipality is in default on any prior plan of services.”
 - § 6-51-104(b)(1)(A) could be amended to make the intent clearer:
 - The resolution shall also include a plan of services for the area proposed for annexation. The plan of services shall address the same services and timing of services **adhere to all provisions** as required in § 6-51-102.
3. § 6-51-108. Rights of residents of annexed territory -- Plan of service and progress report.

- (b)(1): “This subsection (b) shall apply to any municipality whose annexation ordinance becomes effective by court order pursuant to § 6-51-103(d).”
 - 6-51-103(d)(1): “...order shall be issued sustaining the validity of such ordinance, which shall then become operative thirty-one (31) days after judgment is entered, or (2) order that the effective date of the ordinance be fixed as December 31 following the date of entry of the judgment or determination of appeal.”
 - When a court upholds a city’s annexation ordinance, this section then requires the city to provide notice that the order has been upheld and that the annexation will take effect. This subsection should remain as-is until there are no more ordinances being challenged in court, and then it could be repealed along with 6-51-103.
- 6-51-108(e): An aggrieved property owner in the annexed territory may bring an action in the appropriate court of equity jurisdiction to enforce the plan of services at any time after one hundred eighty (180) days after an annexation by ordinance takes effect, and until the plan of services is fulfilled...

Changes to Annexation by Resolution with Written Consent:

1. § 6-51-104. Resolution for annexation by referendum -- Notice.
 - (a): “Notwithstanding any provision of this part or any other law to the contrary, property being used primarily for agricultural purposes shall be annexed only with the written consent of the property owner or owners. A resolution to effectuate annexation of any property, with written consent of the property owner or owners, shall not require a referendum, **nor shall it require the hearing or publication of notices required for referendums.**”
 - Because this is part of 6-51-104, all other provisions of this section apply: public hearing on the annexation, mailing copies of the resolution to owners, publishing notice in newspapers and public places, and including a copy of the plan of services.
 - The plan of services for a consensual annexation must also go through planning commission review and public hearing on its own, which includes more notice requirements.
 - Section could be amended as above to exempt annexations with owner consent from certain requirements.
 - Alternatively, removing this type of annexation by consent to a new part of section 102 could allow more flexibility in how these annexations are carried out compared to those that go through the referendum process.

Annexation by Ordinance in another County:

1. § 6-51-116. Annexation of territory in a county in a different time zone.

- “Notwithstanding any provision of law to the contrary, after December 31, 1992, it is unlawful for any municipality to annex, by ordinance upon its own initiative, territory in any county other than the county in which the city hall of the annexing municipality is located, if the two (2) counties involved are located in different time zones.”
 - Should this section be amended to prohibit a municipality from initiating an annexation by referendum in another time zone, or just deleted entirely?
2. § 6-58-108. Annexation by ordinance -- Growth plan required for incorporation of new city.
- (a)(1): “After May 19, 1998, a municipality may not annex by ordinance upon its own initiative territory in any county other than...” This statute established limits on when a city could annex by ordinance of its own initiative in a county other than where city hall is located.
 - (A) At least 7% of the city’s population has to be in the second county; (B) the city can get county commission approval in the second county; or (C) the city has to serve at least 100 customers with sanitary sewer service.
 - Example: City hall and 95% of the population of Cityville are in one county; 5% of the population is in another county. Cityville does not provide sewer service to at least 100 customers in the other county. Under § 6-58-108, Cityville could not annex by ordinance of its own initiative in the other county without getting approval from that county legislature [6-58-108(a)(1)(B)].
 - No such limits exist on annexation by resolution and referendum in other statutes. A city in multiple counties can adopt an annexation resolution in the secondary county and hold a referendum under 6-51-104 and 105.
 - Would the Commission want to consider placing these limitations on annexations by resolution and referendum, or would it be best to delete this language entirely?
 - Subsection (b) of 6-58-108 could also be deleted:
 - “After January 1, 1999, a new municipality may only be incorporated in accordance with this section and with an adopted growth plan.”
 - Municipalities are not incorporated under 6-58-108. They are generally incorporated under one of the forms in chapters 1-4 of Title 6.
 - This is not the only section that says a new municipality is required to adopt a growth plan. § 6-58-112(d)(1) says that:

"If the residents of a planned growth area petition to have an election of incorporation, the county legislative body shall approve the corporate limits and the urban growth boundary of the proposed municipality before the election to incorporate may be held."

Same Territory Annexed by Multiple Municipalities:

1. § 6-51-110. Priority of municipalities in annexation.
 - (b): "If two (2) municipalities that were incorporated in the *same county* shall initiate annexation proceedings with respect to the same territory, the proceedings of the *municipality having the larger population shall have precedence* and the smaller municipality's proceedings shall be held in abeyance pending the outcome of the proceedings of such larger municipality."
 - (c): "If two (2) municipalities that were incorporated in *different counties* shall initiate annexation proceedings with respect to the same territory, the proceedings of the *municipality that was incorporated in the same county in which the territory to be annexed is located shall have precedence* and the other municipality's proceedings shall be held in abeyance pending the outcome of the proceedings of the municipality that was incorporated in the same county as the territory to be annexed."
 - (e): "If the ordinance of annexation of the larger municipality does not receive final approval within one hundred eighty (180) days after having passed its first reading **a resolution calling for annexation by referendum is adopted by the larger municipality, and the majority of voters voting in the referendum as provided in §6-51-105 do not approve**, the proceeding shall be void and a smaller municipality shall have priority with respect to annexation of the territory; provided, that its annexation ordinance shall likewise be adopted upon final passage within one hundred eighty (180) days after having passed its first reading **a resolution for annexation by referendum is adopted by the legislative body of the smaller municipality and a referendum is held in accordance with §6-51-105.**"
 - When two cities both adopt resolutions calling for annexation of the same territory by referendum, this would give priority for the larger municipality to hold its election first.
 - This could only take place outside of the cities' urban growth boundaries in accordance with § 6-58-111(c).
 - Subsection (f) allows the smaller municipality to challenge the larger city's annexation in court.
 - (g): "A smaller municipality may, by ordinance, extend its corporate limits by annexation of any contiguous territory, when such territory within the corporate limits of a larger municipality is less than seventy-five (75) acres in area, is not populated, is separated from the larger municipality by a limited

access express highway, its access ramps or service roads, and is not the site of industrial plant development. The provisions of this chapter relative to the adoption of a plan of service and the submission of same to a local planning commission, if there be such, shall not be required of the smaller municipality for such annexation.”

- This subsection allows a small city—by ordinance and without consent—to annex up to 75 acres of territory (not an industrial plant) already in the limits of a larger city when the land in question is separated from the rest of the larger city by a limited-access highway.
- This should be repealed, or at least require an owner’s written consent.