Planning for Growth and Paying for It:

TACIR Recommendations on 2005 Growth-Related Bills

Tennessee Advisory Commission
on Intergovernmental Relations

Staff Report on Commission Recommendations

February 2006

Planning for Growth and Paying for It: TACIR Recommendations on 2005 Growth-Related Bills

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Executive Summary

Tax and Impact Fee Bills

The General Assembly referred fourteen tax and impact fee bills to the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) for study in 2005. These bills included adequate facilities/development taxes, impact fees, and local real estate transfer taxes. The Commission adopted several recommendations concerning these bills at its December 2005 meeting.

Adequate Facilities/Development Taxes and Impact Fee Bills

In order to provide more flexibility to local governments, and allow them to shape and better plan for growth, TACIR recommends general enabling adequate facilities tax legislation and general enabling impact fee legislation.

Local Real Estate Transfer Tax Bills

The real estate transfer tax affects all real estate sales rather than just new homes and/or new business development. It is, therefore, a general tax rather than a growth impact tax. Nonetheless, because it gives local governments the freedom to use a more broad-based tax that will still provide increased revenues with increased growth, TACIR recommends general enabling legislation authorizing a local real estate transfer tax.

Additional Recommendations

In addition to the above recommendations on the specific bills which were referred to TACIR for study, the Commission also recommends:

- Cities be included in any local fiscal flexibility legislation;

- A simple majority vote (or as provided in the city charter) of the local legislative body as a requirement for passage of any local taxes authorized by general enabling legislation; and

- The removal of the referendum requirement for local option sales tax rate increases.

Public Chapter 1101 Bills

The General Assembly referred twelve bills and two questions or issues related to Public Chapter 1101 (PC 1101) to TACIR for study.

Planning and Consistency Requirements Bills

SB 1586 (Norris)/HB 1798 (Rinks, Bone) TACIR does not recommend this bill. Instead, TACIR recommends that this bill be retained by the Commission for future study as part of its monitoring activities as these issues resurface.

SB 1588 (Norris)/HB 1799 (Rinks, Bone) TACIR does not recommend this bill. Instead, TACIR recommends that this bill be retained by the Commission for future study as part of its monitoring activities as these issues resurface.

Growth Plan Amendment Bills

Proposed Amendment to SB 1583 (Norris)/HB 403 (Sargent, Gresham, Bowers) TACIR recommends that in cases where a municipality loses or surrenders its incorporated status, that the county coordinating committee should reconvene for the purpose of amending the existing growth plan subject to the requirements and guidelines in TCA § 6-58-104.

SB 2229 (Finney)/HB 2180 (McCord) TACIR does not recommend this bill.

General Annexation Bills

SB 0288 (Finney)/HB 0237 (Campfield, Niceley, Strader) TACIR recommends this bill be amended to specify that the written notice:

- Be sent to the property owners of the property to be annexed;
- Be sent to the last known address listed for the property owners;
- Be sent by first class mail;
- Be dated and post marked a minimum of fourteen calendar days prior to the scheduled date of the hearing; and
- Verification of the mailing of the notice should also be considered as proof that the notice was sent in a timely fashion in the event of a subsequent legal challenge to the annexation.

SB 2005 (McLeary)/HB 2080 (Maddox) TACIR does not recommend this bill. TACIR recommends as an alternative that these types of lands be added to the category of lands listed in PC 1101 already given special consideration in the designation of Urban Growth Boundaries (UGBs), Planned Growth Areas (PGAs) and Rural Areas (RAs) within a county growth plan pursuant to TCA § 6-58-106. These currently include: agricultural lands, forests, recreational areas and wildlife management areas.

SB 0764 (Burchett)/HB 2042 (Armstrong, Tindell) TACIR does not recommend this bill.

SB 1585 (Norris)/HB 0407 (Sargent) An amendment to this bill directed TACIR to examine annexation activity by municipalities that do not have a property tax, as well as those municipalities that provide five or fewer municipal services; study

quo warranto judicial proceedings to challenge annexation issues; and study the frequency of local governments reconvening their coordinating committees to consider amendments to their growth plans. TACIR addresses the issue of quo warranto actions elsewhere in this report.

Research indicates that eight municipalities currently providing five or fewer municipal services have reported annexing territory since their growth plans were approved. Seven of these municipalities also do not collect a property tax. There were a total of twenty-seven counties that have reconvened their coordinating committee, have reportedly scheduled a meeting of the coordinating committee, or are considering reconvening their coordinating committee. Three counties have already successfully amended their growth plans, Coffee, Decatur and Hamblen Counties.

TACIR presents and forwards this information on annexation activity by low-service, no property tax municipalities and reconvenings of the coordinating committees to the General Assembly as directed.

Quo Warranto Bills

SB 0765 (Burchett)/HB 1913 (Tindell) and SB 1236 (Burchett)/HB 1915 (Tindell) TACIR recommends that the Commission retain the bills dealing with this issue and revisit them when the lawsuit in Knoxville concerning the burden of proof in annexations has been resolved.

SB 1558 (Burchett)/HB 1914 (Tindell) TACIR does not recommend this bill.

Joint Economic and Community Development Board (JECDB) Bill

SB 2228 (Finney)/HB 2179 (McCord) TACIR recommends that the date referenced in TCA § 6-58-114(j) be removed to

allow the Local Government Planning Advisory Committee (LGPAC) to consider any existing board for "sufficiently similar" status regardless of when it was created.

Annexation and Public Utilities

SB 2031 (Burchett)/HB 2041 (Armstrong, Brooks [Knox], Dunn, Tindell, Niceley, Campfield, Strader) TACIR recommends that this bill be retained for further study.

SB 2130 (Beavers)/HB 1995 (R. Johnson) TACIR recommends that the Commission retain this bill for further study and revisit these issues at a later date.

Actions Taken by TACIR on Referred Bills

BILLS/ISSUES RECOMMENDED WITH REVISIONS	
Tax and Fee Bills	
Bill Number	**Bill Description**
SB1056/HB608	Authorizes counties "experiencing rapid growth" to impose a local transfer tax of up to .25% (25 cents per $100) on real property transfers. TACIR recommended general enabling legislation.
SB1067/HB324	Authorizes Rutherford County to impose an adequate facilities tax. TACIR recommended general enabling legislation.
SB1068/HB975	Identical to SB 1056/HB 608. TACIR recommended general enabling legislation.
SB1170/HB2133	Authorizes any county "experiencing rapid growth" to impose a local transfer tax not to exceed the rate imposed by the state (currently 37 cents per $100). TACIR recommended general enabling legislation.
SB1951/HB1397	Authorizes Blount County to impose an adequate facilities tax on new development within the county outside of Maryville and Alcoa. TACIR recommended general enabling legislation.
SB2195/HB2405	Amends an existing private act authorizing Williamson County to impose an adequate school facilities tax on new development. TACIR recommended general enabling legislation.
SB2343/HB2395	Authorizes Jefferson County to levy an adequate facilities tax on new development. TACIR recommended general enabling legislation.
SB2344/HB2396	Authorizes Jefferson County to levy a development tax on new residential development. TACIR recommended general enabling legislation.
SB2352/HB2367	Authorizes the city of Columbia (Maury County) to impose an impact fee on new development. TACIR recommended general enabling legislation.
SB2353/HB2366	Authorizes the city of Columbia to impose an adequate facilities tax on new development. TACIR recommended general enabling legislation.
SB2368/HB2388	Amends a private act to authorize the city of Oakland (Fayette County) to impose a tax on new development. TACIR recommended general enabling legislation.
SB2388/HB2404	Authorizes Bedford County to impose a development tax on new residential development of up to $1 per square foot. TACIR recommended general enabling legislation.

BILLS/ISSUES RECOMMENDED WITH REVISIONS *(continued)*	
PC 1101 Bills	
Bill Number	**Bill Description**
SB288/HB237	This bill would require municipalities to notify the owners of the property being considered for annexation directly by mail. The bill does not specify a minimum number of days prior to the annexation hearing within which the notification must be received. TACIR recommends this bill be amended to specify that the written notice: be sent to the property owners of the property to be annexed; be sent to the last known address listed for the property owners; be sent by first class mail; be dated and post marked a minimum of fourteen calendar days prior to the scheduled date of the hearing; and verification of the mailing of the notice should also be considered as proof that the notice was sent in a timely fashion in the event of a subsequent legal challenge to the annexation.
Proposed Amendment to SB1583/HB403	The proposed amendment to this bill would have required any territory that had been part of a municipality that lost its incorporated status in a county whose growth plan was approved on 4/25/2001 be designated as a PGA. The provisions would only have applied to Roane County. TACIR recommends that in cases where a municipality loses or surrenders its incorporated status, that the county coordinating committee should reconvene for the purpose of amending the existing growth plan subject to the requirements and guidelines in TCA § 6-58-104.
SB2228/HB2179	This bill amends TCA § 6-58-114(j) by proposing to change the date by which a board would have had to have been in existence in order to be eligible for designation as a "sufficiently similar" JECDB by LGPAC. Currently, the law provides that an existing board could be considered as "sufficiently similar" if it existed by May 19, 1998. This bill would change this date to January 1, 2000. TACIR recommends that the date referenced in TCA § 6-58-114(j) be removed to allow LGPAC to consider any existing board for "sufficiently similar" status regardless of when it was created.

BILLS/ISSUES NOT RECOMMENDED	
PC 1101 Bills	
Bill No.	**Bill Description**
SB764/HB2042	Allows annexation of property located outside of a municipality's urban growth boundary by petition of the property owner, if the property must be contiguous to other property currently owned by the petitioner that is already located within the municipality's UGB.

BILLS/ISSUES NOT RECOMMENDED *(continued)*	
PC 1101 Bills	
Bill No.	**Bill Description**
SB1558/HB1914	Authorizes certain methods of annexation for parcels bordered on all sides by a municipality.
SB2005/HB2080	This bill would prohibit the annexation of land by a municipality that is subject to a permanent conservation easement. TACIR does not recommend this bill. TACIR recommends as an alternative that these types of lands be added to the category of lands listed in PC 1101 already given special consideration in the designation of UGBs, PGAs and RAs within a county growth plan pursuant to TCA § 6-58-106. These currently include: agricultural lands, forests, recreational areas and wildlife management areas.
SB2229/HB2180	Judicial review of comprehensive plans in the chancery court of the county in question or in Davidson County.
BILLS/ISSUES REQUIRING ADDITIONAL STUDY	
PC 1101 Bills	
Bill Number	**Bill Description**
SB765/HB1913	Increases the burden of proof for quo warranto appeals of annexations.
SB1586/HB1798	Further defining and expanding consistency provisions.
SB1588/HB1799	Growth plan amendments for creating comprehensive plans without altering growth plan boundaries.
SB2031/HB2041	Defines time allowed for parties to agree on purchase price following notice of annexation; prohibits local governments from providing for any payment in lieu of taxes from electric revenues or electric system facilities from a municipally-owned electric utility.
SB2130/HB1995	Municipality may exercise right to provide municipal and utility services in area annexed.
SB1236/HB1915	Increases the burden of proof for quo warranto appeals of annexations.
BILLS/ISSUES WITH NO ACTION TAKEN BY THE COMMISSION	
Tax and Fee Bills	
Bill Number	**Bill Description**
SB1539/HB1230	Amends TCA § 67-4-212 by requiring the Commissioner of Revenue to report to county mayors or city executive officers any taxes collected in any area of new development. This bill appears to be a caption bill designed for later amendment.
SB1540/HB1229	The state recordation tax is currently 11.5 cents per $100. Current law places the incidence of this tax on the borrower. This bill authorizes the parties, in counties having a population in excess of 100,000 (currently eleven counties), to affix, by contract, the incidence of the tax on the creditor.

Introduction

In 2005, the General Assembly referred twenty-six bills to TACIR for study and recommendations. These bills reflect local governments' struggle to deal with growth issues.

Twelve of the bills would grant local governments authority to implement development taxes, impact fees or local real estate transfer taxes. Growth puts pressure on local governments for additional public services and infrastructure. Often, these can not be adequately funded through traditional means such as the local option sales tax or property tax. Some counties and cities have begun to look for alternate means of raising revenue such as development taxes and impact fees to fund these rising costs.

Twelve of the bills address issues related to Public Chapter 1101 (PC 1101). In addition to these bills, two issues or questions related to PC 1101 were sent to TACIR for study. PC 1101 provided a broad framework within which local governments could plan for local growth and resolve potential problems at the local level. However, many of the bills referred to TACIR sprung from local growth disputes and have the potential of involving the General Assembly in local growth conflicts.

This report examines the issues related to these bills and outlines the recommendations that were approved by the Commission at its December 14-15, 2005 meeting.

Tax and Impact Fee Bills

The General Assembly referred fourteen tax and impact fee bills to TACIR for study in 2005. Most of these bills are authorizations for new local development taxes:

- 8 bills would authorize counties or cities to implement or increase adequate facilities/development taxes;
- 1 bill would authorize a city to implement impact fees; and

- 3 bills would authorize counties to levy local real estate transfer taxes.

The two remaining bills are not specifically growth-related. They are broadly captioned and may be designed for later amendment. SB 1540/HB 1229 provides that transfer taxes in counties with populations of more than 100,000 may be the responsibility of the mortgagee, creditor, or grantee by contract. SB 1539/HB 1230 requires the Commissioner of Revenue to report to the county mayor or city's chief executive when the state collects local taxes in the area of new development under certain circumstances.

As the Commission has considered these bills, the questions asked have not been if the particular local governments named in the bills should be granted authorization for the taxes and fees in question, but rather if the General Assembly should pass legislation enabling all local governments to choose these taxes if they wish. The usual cost/benefit questions answered for bills before the legislature do not apply. There are no costs to the state associated with local fiscal flexibility. The state will not receive any revenue from these taxes if adopted by local governments. The question before the Commission was, instead, how much autonomy should local governments have in taxation, especially in taxation on growth?

The development tax and impact fee bills sent to TACIR for study generally mirror language in previously passed private acts that already authorize such taxes and/or fees.[1] Development taxes and fees in Tennessee have been the subject of two recent TACIR publications.[2] These research briefs focused on the following areas of development taxes and fees:

- A detailed description of the various types of development taxes in use in Tennessee;

[1] As of 2005, no local government has been authorized to impose a local transfer tax.

[2] See Green, Harry A. and Ed Young. 2002. "Paying for Growth: General Assembly Authorizations for Development Taxes and Impact Fees." *TACIR Staff Research Brief*, Number 9, April 2002. Nashville, Tennessee and Green, Harry A. and Leah Eldridge. 2004. "Financing Growth in Tennessee Local Development Taxes and Impact Fees." *TACIR Staff Research Brief*, Number 11, August 2004. Nashville, Tennessee.

- A description of the various methods used in Tennessee to authorize local governments to implement such taxes and fees;
- A complete history and detail of the authorizations granted to counties and cities in Tennessee (through 2004);
- A detailed description of the processes involved in passage of such local authorizations in the Tennessee House and Senate; and
- A summary of the experience of development bills introduced during the 2004 Legislative Session.

In summarizing the experience of the various development tax bills introduced during the 2004 Legislative session, it was noted in one brief that while most were ultimately passed into law, two private bills that would have authorized development taxes were not. The failure to pass these two bills in contrast to the passage of all similar bills since 1987 was described as "unusual." It was noted in the brief that it may be time for Tennessee to consider passage of some general enabling legislation for local development taxes.

Adequate Facilities/Development Tax Bills

Eight adequate facilities/development tax bills were referred to TACIR for study.

- **SB 1067 (Ketron)/HB 0324 (Hood)** Authorizes Rutherford County to impose an adequate facilities tax.
- **SB 1951 (Finney)/HB 1397 (McCord, Overbey)** Authorizes Blount County to impose an adequate facilities tax on new development within the county outside of Maryville and Alcoa.
- **SB 2195 (Bryson)/HB 2405 (Sargent, Casada, P. Johnson)** Amends an existing private act (Chapter 113 of the Private Acts of 1987) authorizing Williamson County to impose an adequate school facilities tax on new development.

- **SB 2343 (Mike R. Williams)/HB 2396 (Niceley, Roach)** Authorizes Jefferson County to levy an adequate facilities tax on new development.

- **SB 2344 (Mike R. Williams)/HB 2395 (Roach)** Authorizes Jefferson County to levy a development tax on new residential development.

- **SB 2353 (Ketron)/HB 2366 (Tidwell)** Authorizes the city of Columbia to impose an adequate facilities tax on new development.

- **SB 2368 (Wilder)/HB 2388 (Gresham)** Amends a private act (Chapter 167 of the Private Acts of 1994) to authorize the city of Oakland (Fayette County) to impose a tax on new development.

- **SB 2388 (Tracy)/HB 2404 (Cobb)** Authorizes Bedford County to impose a development tax on new residential development of up to $1 per square foot.

Development taxes, also known as adequate facilities taxes, are privilege taxes on the development industry that are intended to raise revenue for general government purposes. Some of the characteristics of development taxes are:

- They are primarily a tool for raising revenue, not financing infrastructure for specific developments;

- Revenues do not have to be earmarked or accounted for separately;

- Revenues can be used for pre-existing deficiencies or for operation and maintenance;

- The fee schedule does not have be based upon studies to document burdens and benefits; and

- Legal authority for development taxes comes from general municipal taxing powers.

Development/adequate facilities taxes are simpler to enact, administer, and update than impact fees. They are not usually subject to legal challenge.

Thirteen counties and six cities currently levy adequate facilities/development taxes. In addition, three cities, Ashland City, Brentwood and Piperton, have received authorization to implement development taxes, and have approved the private act locally where applicable, but have not levied the tax.[3] These local governments retain the ability to levy the tax at any time. Two cities, Brentwood and Fairview, and one county, Macon, received authorization from the state legislature to levy both taxes and fees but levied only one type.[4]

Recommendation: In order to provide more flexibility to local governments, and allow them to shape and better plan for growth, TACIR recommends general enabling adequate facilities tax legislation.

Impact Fee Bill

- **SB 2352 (Ketron)/HB 2367 (Tidwell)** Authorizes the city of Columbia (Maury County) to impose an impact fee on new development.

Impact fees are user charges. They derive their authority from the police power to regulate health, safety and public welfare. They must be reasonably related to the actual additional costs of serving a new development. They are based upon a standard formula and a pre-determined fee schedule. Standards for

[3] Tenn. Code Ann. § 8-3-202 stipulates that if a private act is not approved by the local legislature by December 1 of the year it is authorized, the authorization is no longer valid. The December 1 date applies unless a deadline is set in the act.

[4] Rutherford County received authorization for a development tax and an adequate facilities tax, not for an impact fee. The county adopted the development tax but not the adequate facilities tax.

evaluating the legality of impact fees have developed out of case law:

- The need for new facilities must be generated by new development;
- The fees should be proportionate to the costs of the capital improvements attributable to the new development;
- Development subject to the fees should also directly benefit from the infrastructure spending that occurs;
- Revenues should only be used for capital improvements and cannot be used for operating costs or for pre-existing deficiencies; and
- Credits must be applied to account for other revenues generated by the new development and for the value of land dedications and other developer improvements or contributions.

Impact fees are typically phased in over a one to two-year period. Determining the maximum justifiable fee is a complex process involving meticulous empirical data collection and the application of nationwide service standards. Virtually every local impact fee ordinance is preceded by a study to determine, and to document, the actual additional costs of providing services to new residents. In addition to impact fees that are generally imposed for road, water, sewer, storm water and park facilities, impact fees are less frequently imposed by local governments for infrastructure needs related to fire, police, library, solid waste and school services. The actual rate of the fee is set by the local governing body, often at a level that is less than the maximum that could be supported.

Impact fees are often, but not always, calculated as net amounts after credits for various types of other payments or exertions made by developers and home buyers. This would include on-

site and off-site improvements by developers that are allowed as credits against impact fees, but also subtle items such as credits for future property tax payments by new homeowners for interest and principal payments on new infrastructure built with funds raised from new general obligation bonds. Without providing some credit for such future property tax payments, new residents and/or builders/developers would be subjected to double payments for the same facilities.

Across the country, impact fees vary significantly by type of development and by location. A 2005 survey showed non-utility impact fees on a single-family home varied from a low of $1,101 in Arkansas to a high of $6,386 in Maryland. Development fees also vary by type of development. The same survey showed the following variation in average, non-utility impact fees by type of development: single-family home-$3,675; multi-family housing (per unit)-$2,441; retail space per 1,000 square feet-$3,121; office space per 1,000 square feet-$1,938, and industry space per 1,000 square feet-$1,259.

At least twenty-six states have passed general enabling legislation for impact fees.[5] A map showing the states that have general enabling legislation is provided in Appendix G. In some states, such as North Carolina, impact fees are authorized for specific local governments by private acts. In other states such as Florida, Ohio, Wyoming, Missouri and Kansas, the authority of cities and counties to adopt impact fees pursuant to home rule authority is sufficiently broad to include the adoption of proportionate share impact fees. States with general enabling legislation provide some guidance and limitations on the types and levels of fees that can be imposed as "impact fees."[6]

[5] While Florida does not have a general impact fee enabling act, most local governments impose such fees in a manner that is supported by case law.

[6] A summary description of the status of state enabling acts (along with a copy of each act) can be found at website: http://www.impactfees.com/publications%20pdf/summary%20of%20state%20acts.pdf.

One county and seven cities in Tennessee currently impose impact fees. One county, Davidson, and four cities, Portland, Fairview, Gatlinburg, and Columbia, have been authorized by legislative acts to impose impact fees but they do not currently impose such fees. Cities with a mayor-aldermanic charter have authorization to levy an impact fee. Two cities, La Vergne and White House, have imposed impact fees using this authority.[7] Cities with a modified city manager-council charter also have this power.[8]

Recommendation: TACIR recommends general enabling impact fee legislation.

Local Real Estate Transfer Tax Bills

- **SB 1056 (Ketron)/HB 608 (Hood)** Authorizes counties "experiencing rapid growth" to impose a local transfer tax of up to .25 percent (25 cents per $100) on real property transfers.

- **SB 1068 (Ketron)/HB 975 (Hood)** Identical to SB 1056/ HB 608.

- **SB 1170 (Kyle, Ford, Chism)/HB 2133 (L. Miller, Kernell, J. DeBerry, Towns, B. Cooper)** Authorizes any county "experiencing rapid growth" to impose a local transfer tax not to exceed the rate imposed by the state (currently 37 cents per $100).

Real estate transfer taxes are not necessarily development-related, as they are assessed on the transfer of both new property and existing property. They can provide a method of taxation that uses part of the property tax base, but that does not tax

[7] Tenn. Code Ann. § 6-2-201.
[8] Tenn. Code Ann. § 6-33-101.

people remaining on the same property. In some states, complex laws are passed which exempt existing property owners from assessment increases or property tax increases. A real estate transfer tax accomplishes a similar aim more simply.

In Tennessee, counties and cities do not have the authority to tax real estate transfers, though the state levies such a tax at a rate of .37 percent of the selling price. Thirteen states have general enabling legislation allowing local governments to tax real estate transfers.

Three of the bills referred to TACIR would enable counties to assess real estate transfer taxes with a 2/3 vote of the county legislative body. Two of the bills would set a maximum rate of .25 percent while the third would allow the rate to match that of the state, currently .37 percent. The two .25 percent bills require the county to be experiencing "rapid growth" in order to adopt such a tax, while the third extends the ability to all counties, regardless of their growth rates. "Rapid growth" was not defined in the bills, though the requirement was included that

> the resolution imposing such tax shall contain sufficient information and data demonstrating the need for this tax due to rapid growth patterns necessitating the need for the construction of infrastructure improvements and other expenditures related to such growth and there is insufficient revenue derived from real property and other county taxes to provide such needed infrastructure improvements and other expenditures.[9]

Recommendation: The real estate transfer tax affects all real estate sales rather than just new homes and/or new business development. It is, therefore, a general tax rather than a growth impact tax. Nonetheless, because it gives local governments the

[9] SB 1056 (Ketron)/HB 608 (Hood), Section 3; SB 1068 (Ketron)/HB 975 (Hood), Section 3.

freedom to use a more broad-based tax that will still provide increased revenues with increased growth, TACIR recommends general enabling legislation authorizing a local real estate transfer tax.

Miscellaneous Tax Related Bills

- **SB 1539 (Herron)/HB 1230 (Hood)** Amends TCA § 67-4-212 by requiring the Commissioner of Revenue to report to county mayors or city executive officers any taxes collected in any area of new development. This bill appears to be a caption bill designed for later amendment.

- **SB 1540 (Herron)/HB 1229 (Hood)** The state recordation tax is currently 11.5 cents per $100. Current law places the incidence of this tax on the borrower. This bill authorizes the parties, in counties having a population in excess of 100,000 (currently eleven counties), to affix, by contract, the incidence of the tax on the creditor.

Recommendation: No Commission action.

Additional Recommendations

In addition to recommendations on the tax and fee bills which were referred for study, the Commission also made several additional recommendations.

Recommendation: TACIR recommends that cities be included in any local fiscal flexibility legislation.

Recommendation: TACIR recommends a simple majority vote (or as provided in the city charter) of the local legislative body as a requirement for passage of any local taxes authorized by general enabling legislation.

Recommendation: TACIR recommends the removal of the referendum requirement for local option sales tax rate increases.

Public Chapter 1101 Bills

In 2005, the General Assembly referred twelve bills and two questions or issues related to Public Chapter 1101 (PC 1101) to TACIR for study with the expectation that TACIR would report back to the General Assembly with its findings and recommendations.

The referral of these bills and issues marked the second year in a row that the General Assembly has sent PC 1101 related legislation to TACIR for consideration prior to taking any action on them in the legislature. This pattern seems to reflect the generally agreed upon stance of the General Assembly that any legislation related to PC 1101 will in all likelihood first be sent to TACIR for study prior to being voted on in the legislature.

For the purposes of this report, these bills have been grouped into six topical headings reflecting their general area of impact:

- Planning and Consistency Requirements Bills;
- Growth Plan Amendment Bills;
- General Annexation Bills;
- Quo Warranto Bills;
- Joint Economic and Community Development Boards (JECDBs) Bill; and
- Annexation and Public Utilities Bills.

The evaluation of the overall effects that any or all of these pending bills might have on the goals and objectives of the existing statute included:

- Insuring that no harm would be done to the statute in terms of it achieving its stated objectives;
- Recognition that PC 1101 provided a framework for local governments to address important local issues concerning growth

and development and a mechanism for resolving potential conflicts and differences;

- Review of previous TACIR discussions of issues and areas of concern and recommendations to the Commission based on TACIR's cumulative monitoring activities; and
- Assessment of any potential impacts on and consensus among interest groups such as local governments, property owners and citizens.

Table 1. PC 1101 Related Legislation and Issues Referred to TACIR for Study

Bills and Issues	Proposed Changes to the Existing Statute
SB 0288 (Finney) **HB 0237 (Campfield, Niceley, Strader)**	Municipalities required to notify property owners of proposed annexations.
SB 0764 (Burchett) **HB 2042 (Armstrong, Tindell)**	Allows annexation of property located outside of a municipality's urban growth boundary by petition of the property owner; the property must be contiguous to other property currently owned by the petitioner that is already located within the municipality's UGB.
SB 0765 (Burchett) **HB 1913 (Tindell)**	Increases the burden of proof for quo warranto appeals of annexations.
SB 1236 (Burchett) **HB 1915 (Tindell)**	Modifies the burden of proof for successful quo warranto challenge of annexation.
SB 1558 (Burchett) **HB 1914 (Tindell)**	Authorizes certain methods of annexation for parcels bordered on all sides by a municipality.
Proposed amendment to SB 1583 (Norris) **HB 403 (Sargent, Gresham, Bowers)**	Any territory that had been part of a municipality that lost its incorporated status in a county whose growth plan was approved on 4/25/2001 be designated as a PGA, applying only to Roane County. The question referred to TACIR was broadly worded and called for TACIR to study the process of amending growth plans.
Amendment to SB 1585 (Norris) **HB 407 (Sargent)**	An amendment to SB 1585/HB 407 directs TACIR to examine annexation activity by municipalities that do not have a property tax, as well as those municipalities that provide five or fewer municipal services. It also requires TACIR to study quo warranto issues and reconvenings of coordinating committees.
SB 1586 (Norris) **HB 1798 (Rinks, Bone)**	Further defining and expanding consistency provisions.

Table 1. PC 1101 Related Legislation and Issues Referred to TACIR for Study *(cont.)*

Bills and Issues	Proposed Changes to the Existing Statute
SB 1588 (Norris) **HB 1799 (Rinks, Bone)**	Growth plan amendments for creating comprehensive plans without altering growth plan boundaries.
SB 2005 (McLeary) **HB 2080 (Maddox)**	Prohibits annexation of land that is subject to a permanent conservation easement.
SB 2031 (Burchett) **HB 2041 (Armstrong, Brooks [Knox], Dunn, Tindell, Niceley, Campfield, Strader)**	Defines time allowed for parties to agree on purchase price following notice of annexation; prohibits local governments from providing for any payment in lieu of taxes from electric revenues or electric system facilities from a municipally-owned electric utility.
SB 2130 (Beavers) **HB 1995 (Johnson)**	Municipality may exercise right to provide municipal and utility services in area annexed.
SB 2228 (Finney) **HB 2179 (McCord)**	Greater latitude in certifying existing boards for JECDBs. An existing community development board could be considered as "sufficiently similar" if it existed by 01/01/2000 rather than the current date of 05/19/1998.
SB 2229 (Finney) **HB 2180 (McCord)**	Judicial review of comprehensive plans in the chancery court of the county in question or in Davidson County.

Planning and Consistency Requirements Bills

These two bills were referred back to TACIR during this past legislative session after stalling in committee in both houses. Both of these bills had previously been referred to TACIR in 2004, and TACIR endorsed both bills.

- **SB 1586 (Norris)/HB 1798 (Rinks, Bone)** This bill seeks to amend TCA § 6-58-107 by clarifying and expanding certain provisions pertaining to land use decisions and their consistency with an approved county growth plan. The bill would require that:
  - Local land use decisions must be consistent with the approved growth plan;
  - State actions must be consistent with the approved growth plan;

- State actions shall have a minimum impact upon rural areas and not foster premature development; and
- Future growth plans must address land use and infrastructure issues.

This bill also:

- Expands the list of goals and objectives of a growth plan, and
- Defines what constitutes land use decisions.

When this bill was heard in the Senate State and Local Government Committee, legislators expressed concerns that the bill would:

- Give a local government veto power over state projects;
- Create an impediment to agricultural land owners seeking to develop their land; and
- Create a mandate for local governments to adopt zoning and other land use controls.

Should this same bill be considered again in the General Assembly, it will likely encounter the same level of resistance that it did in 2005.

Recommendation: TACIR does not recommend this bill. Instead, TACIR recommends that this bill be retained by the Commission for future study as part of its monitoring activities as these issues resurface.

- **SB 1588 (Norris)/HB 1799 (Rinks, Bone)** This bill would allow a county or municipality to amend an approved growth plan without reconvening the coordinating committee subject to the following conditions:

  - The amendment is contained within the proposing municipality's corporate boundaries or within its approved urban growth boundary (UGB); or is contained within the proposing county's approved planned growth area (PGA) or rural area (RA); and

  - The amendment involves only a change to or addition of a land use policy, land use, transportation, public infrastructure, housing, or economic development element or addresses the goals or objectives of the comprehensive growth plan or the addition to the growth plan of the county or municipal planning commission's general regional plan or the general plan.

  Once the local governing body has adopted the amendment to the growth plan, the mayor would submit a copy of the amendment to the Local Government Planning Advisory Committee (LGPAC). LGPAC shall then grant its approval to the amendment and send it back for filing in the county register's office. This bill would require that the mayor of the affected municipality or county forward a copy of the plan to all other mayors within the area encompassing the growth plan. After approval by the LGPAC and filing it with the register, the amended growth plan would be regarded and viewed as the county-wide growth plan.

  This bill originated from requests by planners to examine whether the land use policy provisions of a growth plan could be amended under the procedure specified in Title 13. Some jurisdictions across the state included elements of a land use plan in their report and documentation for the growth plan. Many planners believe

that the only way to fully comply with the planning requirements of the Act as spelled out in TCA § 6-58-106(a)(2) is to incorporate land use policies and a land use plan within the report.

The question has then arisen that if such planning policies are included in the growth plan report and the municipality or county subsequently needs to amend the land use plan, does such an amendment, when totally within the current boundary of the municipality or county, have to be approved by the coordinating committee and all other governmental entities within the county? In order to clarify that a municipality (or a county in the case of PGAs and RAs) could, in fact, amend its land use plan and subsequently its zoning ordinances, this bill was drafted.

After the bill began to move through the legislative committees, it became apparent that some opposition existed. The argument against the bill was that allowing a municipality (or county) to amend its growth plan without following the full amendment procedure specified in TCA § 6-58-104 would subvert the coordination and cooperation established in the original approval of the plan. It is unlikely that there will be enough legislative support and/or interest in pursuing this legislation at the current time.

Recommendation: TACIR does not recommend this bill. Instead, TACIR recommends that this bill be retained by the Commission for future study as part of its monitoring activities as these issues resurface.

Growth Plan Amendment Bills

- **Proposed Amendment to SB 1583 (Norris)/HB 403 (Sargent, Gresham, Bowers)** The House State and Local Committee directed TACIR to study the process of amending growth plans. This directive grew out of a proposed amendment to SB 1583/HB 403 that was

ultimately withdrawn. The amendment called for the territory of a municipality that lost its incorporated status to be designated as a PGA within the county's growth plan.

Because the amendment specified that only growth plans approved on April 25, 2001 would be affected, the amendment would have applied only to Roane County and would have dealt with the territory that had previously been part of the city of Midtown. Midtown was one of the five "tiny towns" whose incorporation was made possible by PC 1101, however that provision of the statute has been found to be unconstitutional. This issue goes directly to the heart of PC 1101. It raises several questions:

- What should happen in cases where a municipality loses its incorporated status?
- How should the territory that had previously been within the corporate limits of the municipality be designated in the county-wide growth plan?

Recommendation: TACIR recommends that in cases where a municipality loses or surrenders its incorporated status, that the county coordinating committee should reconvene for the purpose of amending the existing growth plan subject to the requirements and guidelines in TCA § 6-58-104.

- **SB 2229 (Finney)/HB 2180 (McCord)** TCA § 6-58-105 allows for either the county, any of the municipalities within the county, county residents or property owners to challenge an approved growth plan within sixty days after the date of its approval by petition to the chancery court of the affected county. The proposed amendment would allow a legal challenge to an approved growth plan to be filed either in
  - the chancery court of the affected county or
  - the chancery court of Davidson County.

Advocates for this change might argue that shifting the site of judicial review of a growth plan might be necessary in some cases to insure an impartial review by a judge. However, the overall intent of the legislature in crafting PC 1101 was to create a statutory framework enabling local government officials and citizens to address and resolve their issues locally rather than through outside intervention.

The only county where a growth plan has been challenged in court is Blount County. The Blount County growth plan is somewhat unique and has had a long history. It is the only growth plan where LGPAC imposed an alteration of the growth plan independent of the plan negotiated and agreed to by the local officials and residents of the county.

In this case, the Blount County growth plan was submitted to LGPAC for approval after having worked its way through the mediation process administered by the Secretary of State's office. PC 1101 stipulates that LGPAC is required to approve the content of any growth plan as submitted unless the growth plan had been subject to either the mediation or arbitration dispute resolution processes. At issue in the Blount County plan was how the Knox County Airport (McGhee-Tyson Airport), located in Blount County, would be designated in the growth plan. The specific issue with the Knox County airport has been how an airport with regularly scheduled commercial service located outside of the county that created it would be designated in an annexation free zone. The lawsuit on this issue was dismissed by the judge.

There are some instances within state law that provides for judicial review in more than one county, oftentimes with Davidson County named as the alternative venue. In many cases, this is because Davidson County is the location of the state capitol and the seat of state government where state agencies with regulatory or oversight powers over enforceable programs and policies are based.

It is also worth noting, however, that while Davidson County is identified as the alternate venue, Davidson County is one of only three counties in the state that is exempt from the provisions of PC 1101 by virtue of its having a metropolitan form of government.

An additional consideration would be the court costs that might be generated by the appeal proceedings. It might be considered to be unfair to have the citizens of Davidson County bear any financial responsibility for the consideration of matters that are beyond its control and from which it would not likely receive any benefit. When cases are transferred to chancery court from another county, the chancery court only bills for general administrative filing fees and does not bill for personnel time and overhead costs.

Recommendation: TACIR does not recommend this bill.

General Annexation Bills

- **SB 0288 (Finney)/HB 0237 (Campfield, Niceley, Strader)** Currently, Tennessee law requires a municipality to publish notice of annexation in a paper of general circulation published within the community at least fourteen days prior to the public hearing when an annexation ordinance would be considered. This bill would require municipalities to also notify the owners of the property being considered for annexation directly by mail. The bill does not specify a minimum number of days prior to the annexation hearing within which the notification must be received.

  When annexing territory, municipalities may either choose to annex by ordinance or referendum. In contrast to the referendum method where property owners participate directly in the decision to become part of the city or not, annexation by ordinance does not require the consent of

the property owners, thus their participation in the public hearing process is essential for any concerns or issues they might have about the annexation to be heard.

Direct notification by mail of affected property owners is commonly used in other states and is essential to ensure that all affected parties have an opportunity to participate in the public hearing process. This bill would not change any of the substantive requirements for annexation or the criteria for challenging an annexation in court. It simply requires direct notification of the property owners by mail prior to the public hearing for the annexation ordinance.

Recommendation: TACIR recommends this bill be amended to specify that the written notice:

- Be sent to the property owners of the property to be annexed;
- Be sent to the last known address listed for the property owners;
- Be sent by first class mail;
- Be dated and post marked a minimum of fourteen calendar days prior to the scheduled date of the hearing; and
- Verification of the mailing of the notice should also be considered as proof that the notice was sent in a timely fashion in the event of a subsequent legal challenge to the annexation.

- **SB 2005 (McLeary)/HB 2080 (Maddox)** This bill would prohibit the annexation of land by a municipality that is subject to a permanent conservation easement. This bill stems from an annexation of a property in Carroll County by the city of McKenzie that had a conservation easement placed upon it.

Conservation Easements

Conservation easements provide economic incentives to private property owners to voluntarily restrict the development rights of their property. Conservation easements are:

- Permanent and are tied to the land by deed and are binding on both the current and any future owners of the property; and
- Typically held by a land trust which would have the responsibility of monitoring the easement and insuring its ongoing preservation.

Under the U.S. tax code, a property owner who agrees to have a conservation easement placed on their property may be able to enjoy tax savings against their income and against the value of their estate. The property owner may reduce their adjusted gross income by up to thirty percent per year for as long as six years until they reach the value of the conservation easement. There may also be an estate tax benefit if the value of the estate is sufficiently large to cross the threshold for triggering estate taxes, although the threshold for triggering estate taxes has risen significantly in recent years thereby lessening the cash value of this benefit. Ultimately, the financial rewards and benefits that any given land owner will accrue will be based on their income and the value of their estate.

A property assessor must take a conservation easement into consideration when assessing property. Assuming that the land in question was sufficiently large (fifteen acres or greater) and could meet other criteria, the property could be eligible for "greenbelt" designation, which would diminish its taxable value whether in a city or not. Many states offer their own financial incentives to property owners who make these donations (conservation easements)

including income tax benefits. Since Tennessee does not currently have an income tax, there are no such incentives.

The state benefits by having valuable forested and agricultural lands preserved without having to bear the full costs of purchasing the property. Property owners interested in preserving their lands in their long standing use patterns but looking for some type of economic return on their investment for estate or retirement purposes are also able to retain the ownership of their land but still enjoy some economic benefit from their lands without surrendering the land to development. Having placed a conservation easement on their property, the owners would still be able maintain a residence and use the property up to the limits of the easement. In Tennessee, lands subject to a conservation easement are typically found in rural areas and not usually adjacent to incorporated cities. According to a spokesperson from the Land Trust for Tennessee, they were unaware of the existence of any properties with conservation easements under their stewardship that were located within municipalities.

Implications for PC 1101

While the preservation of open space, agricultural and forested lands is supposed to be addressed within a growth plan, conservation easements are not specifically addressed. This bill proposes to create a special exemption for one category of land within the context of a growth plan. This should be carefully considered against the overall intent and objectives of the original legislation lest a precedent be set that might generate a flood of special exception requests that might work against the overall intent of the legislation.

There may be instances where a municipality may have a valid interest in annexing property with a conservation easement. PC 1101 does state that the growth plans are

intended to preserve areas that are either forested or used for agricultural purposes. Thus, it could be argued that land designated with a conservation easement should be given some type of priority status for preservation and designation within the growth plan.

This is also a case where it would have been much easier to address many of these issues if the Carroll County growth plan had both a genuine land use plan with special areas designated on it and/or a set of policies for articulating special plans and purposes for designated areas within the growth plan. Perhaps one measure that could be incorporated into the statute would be to have land encumbered by conservation easements be identified within the growth plans and have policies articulated for dealing with them when the growth plans are developed.

This bill proposes a legislative solution to a local dispute. Given the turbulent history concerning local annexation matters across the state that prompted the passage of PC 1101 in 1998, any possible intervention in these types of disputes by outside entities that are not part of the bargaining process used to develop a growth plan should be considered with caution.

TACIR received two letters of support for this bill, one from the Farm Bureau and one from the Council on Greenways and Trails.

Recommendation: TACIR does not recommend this bill. TACIR recommends as an alternative that these types of lands be added to the category of lands listed in PC 1101 already given special consideration in the designation of UGBs, PGAs and RAs within a county growth plan pursuant to TCA § 6-58-106. These currently include: agricultural lands, forests, recreational areas and wildlife management areas.

- **SB 0764 (Burchett)/HB 2042 (Armstrong, Tindell)** This bill would allow a municipality to annex by ordinance property located outside of the municipalities' UGB if:

  - The owner petitions for such annexation; and
  - The property is contiguous to property currently owned by the petitioner that is already located within the UGB of the municipality.

  Under the current statute, municipalities may annex territory located within their designated UGB by either ordinance or by referendum. Territory located outside of the municipality's UGB may still be annexed by referendum. In addition, other municipalities are restricted from annexing territory in other municipality's UGBs.[10]

  This bill could potentially weaken the stated goals and objectives of PC 1101 by creating the belief that some of the elements and agreements included in the growth plan could be disregarded when implementation decisions were being made at a later date. Annexation matters have produced significant controversy across the state in the past, and efforts should be made to not begin creating special exemptions and categories within the structure of the existing statute that might either weaken its force and direction or that might create greater complexity or confusion.

  Recommendation: TACIR does not recommend this bill.

Quo Warranto Bills

- **SB 0765 (Burchett)/HB 1913 (Tindell) and SB 1236 (Burchett)/HB 1915 (Tindell)** These two bills will be addressed together since they are virtually identical. They

[10] See Chapter 246 of the Public Acts of 2005.

would increase the burden of proof for quo warranto appeals of annexations. Under present law, a party challenging an annexation ordinance has to prove that either:

- An 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 municipality and territory will not be harmed in the absence of the annexation.

These bills would require that a challenger prove both of these elements.

Knoxville is particularly concerned about this issue. The outcome of a pending annexation case in the Tennessee Court of Appeals could affect the status of over 150 other Knoxville annexations which have been challenged in court. These other cases have been held by the Chancery Court pending the outcome of the current appeal. The challengers argued that the health, welfare, and safety of both the city and the annexed territory would not be materially retarded if the territory was not annexed. The property is currently surrounded by territory that is within the city. The street providing access to the property in question has been improved and is serviced by Knoxville, thus giving the property the benefit of city services and improvements.

The issue of quo warranto appeals of annexations is not a new one for the Commission, and has been a source of controversy in the past. A similar bill dealing with quo warranto actions was referred to TACIR by the legislature in 2004. The bill was retained by the Commission for further study.

This dispute centers on whether or not it was the explicit intention of the General Assembly to change the standard of proof for quo warranto actions to the way it is currently

written, or to keep it the way it was written prior to PC 1101 when both elements had to be proven. It is also unclear to what extent this is an issue by statewide import or confined to the particular situation in Knoxville.

Recommendation: TACIR recommends that the Commission retain the bills dealing with this issue and revisit them when the lawsuit in Knoxville concerning the burden of proof in annexations has been resolved.

- **SB 1558 (Burchett)/HB 1914 (Tindell)** This bill would amend the law to allow a municipality to use any annexation method to annex a bound parcel or bound parcels, but if a quo warranto action is filed to challenge the annexation, the party filing the action would have the burden of proving that the annexation is unreasonable for the overall well-being of the bound parcel or bound parcels involved. This bill would only apply to parcels of land or any two parcels of land, that, when considered together, are bordered on all sides by the corporate limits of a municipality as such boundaries existed on January 1, 2005.

  The primary beneficiary of this bill would be the city of Knoxville which has large numbers of these holes in its corporate boundaries. In recent years, many of Knoxville's annexations have been challenged in court.

  There is a stated preference within PC 1101 that areas within a municipality's UGB should have the greatest priority in future annexation activity. However, even within the UGB, a municipality is under no requirement to annex any or all of the territory designated within the confines of the UGB. Municipalities can annex strips of land along the rights-of-way of roads without taking in any of the adjoining parcels of land. Under current state law, municipalities are not prevented from leaving unincorporated islands, i.e. areas that are surrounded by

the city but that have not been annexed into the municipality.

Having easily understood and rational local governmental boundaries is desirable from a service delivery standpoint since both service providers, and citizenry would have a shared understanding of whether they are within one government jurisdiction or another. The process, rationale and justification for any annexation, however, must also be taken into consideration in creating a legally authorized method for annexing territory and for specifying what the basis and limits of any potential legal challenge to the annexation might be. TACIR has concerns that this particular bill is narrowly construed and could run the risk of limiting or otherwise constraining the rights of individual property owners that currently exist within state law.

Recommendation: TACIR does not recommend this bill.

- **SB 1585 (Norris)/HB 0407 (Sargent)**

  An amendment to SB1585/HB0407 directed TACIR to:

  - Examine annexation activity by municipalities that do not have a property tax, as well as those municipalities that provide five or fewer municipal services;
  - Study quo warranto judicial proceedings to challenge annexation issues; and
  - Study the frequency local governments reconvening their coordinating committees to consider amendments to their growth plans.

  TACIR was directed to report back to the General Assembly by February 1, 2006. TACIR addressed the issue of quo warranto actions previously in this report.

In order to obtain information on annexation by no property tax, low-service municipalities and reconvenings of coordinating committees, staff:

- Surveyed local government officials,
- Examined census data for recent changes in population, and
- Spoke with officials from the State Office of Local Planning.

Annexation by No Property Tax, Low-Service Municipalities

The results of surveys conducted at the Tennessee Municipal League (TML) and the Tennessee County Services Association (TCSA) 2005 annual meetings indicate that eight municipalities that currently provide five or fewer municipal services have reported annexing territory since their growth plans were approved. Seven of these municipalities also do not collect a property tax.

Table 2. Municipal Annexations Reported for Tennessee Municipalities Without a Property Tax or Providing Five or Fewer Municipal Services

City	County	Population 1990	Population 2003	Property Tax	Municipal Services
Farragut	Knox	17,720	17,720	No	2
Lakeland	Shelby	6,862	7,464	No	4
Louisville	Blount	2,001	2,146	No	1
Mosheim	Greene	1,749	1,761	No	4
Mt. Juliet	Wilson	12,366	15,610	No	4
Nolensville	Williamson	2,404	2,520	Yes*	3
Rockford	Blount	798	816	No	1
Three Way	Madison	1,349	1,349	Yes	1

*Nolensville's property tax is below the current state minimum for incorporation.

Source: U.S. Census, TACIR 2005 survey of local government officials, ECD Local Planning Assistance Office.

Reconvenings of Coordinating Committees

Three counties have already successfully amended their growth plans, Coffee, Decatur and Hamblen Counties. These are listed in Table 3. In addition, Hamblen County has amended their growth plan twice and has been reported to be considering additional amendments.

Table 3. Counties That Have Amended Their Growth Plans

County	Status
Coffee	Amendments completed
Decatur	Two amendments completed
Hamblen	Two amendments completed, others being considered

Source: ECD Local Planning Assistance Office.

In addition to those counties that have actually amended their growth plans, staff has also gathered data on those counties that have taken steps to reconvene their coordinating committee for the purpose of considering an amendment to the growth plan.

Based on the responses staff received to surveys of local officials distributed at the 2005 TML and TCSA meetings and information provided by the State Office of Local Planning, there were a total of twenty-seven counties that have:

- Reconvened their coordinating committee,
- Have reportedly scheduled a meeting of the coordinating committee, or
- Are considering reconvening their coordinating committee.

This information is listed in Table 4. These results can be summarized as follows:

- 13 counties report having reconvened their coordinating committee;
- 14 counties report either discussing or planning to reconvene their coordinating committee.

Table 4. Reported Reconvening of County Coordinating Committee

County	Committee Reconvened
Anderson	Yes
Bedford	Under discussion
Bledsoe	Under discussion
Carroll	Yes
Cheatham	Scheduled
Clay	Scheduled
Coffee	Yes
Crockett	Under discussion
Dickson	Open
Greene	Under discussion
Grundy	Under discussion
Hamblen	Yes
Hardeman	Under discussion
Jefferson	Yes
Johnson	Under discussion
Lake	Yes
Marion	Yes
Marshall	Scheduled
McMinn	Plan to
Maury	Yes
Perry	Yes
Roane	Yes
Rutherford	Yes
Sullivan	Under discussion
Washington	Under discussion
Weakley	Yes
Williamson	Under discussion

Source: TACIR survey of local government officials and ECD Local Planning Assistance Office.

This seems to reflect staff's previous observations that while there have been many reports on counties considering amending their growth plans, the number of counties that have actually taken formal steps in that process is much less.

Recommendation: TACIR presents and forwards this information on annexation activity by low-service, no property tax municipalities and reconvenings of the coordinating committees to the General Assembly as directed.

Joint Economic and Community Development Boards (JECDB) Bill

- **SB 2228 (Finney)/HB 2179 (McCord)** This bill amends TCA § 6-58-114(j) by proposing to change the date by which a board would have had to have been in existence in order to be eligible for designation as a "sufficiently similar" JECDB by LGPAC. Currently, the law provides that an existing board could be considered as "sufficiently similar" if it existed by May 19, 1998. This bill would change this date to January 1, 2000.

  For an existing board to be designated as sufficiently similar, a request would have to be submitted to the LGPAC for its review and approval according to adopted guidelines. Whether a county utilizes a new board or an existing board as its JECDB is a matter of small consequence from the perspective of the state since each should be equally as effective in meeting the objectives of the statute.

  Recommendation: TACIR recommends that the date referenced in TCA 6-58-114(j) be removed to allow LGPAC to consider any existing board for "sufficiently similar" status regardless of when it was created.

Annexation and Public Utilities Bills

- **SB 2031 (Burchett)/HB 2041 (Armstrong, Brooks [Knox], Dunn, Tindell, Niceley, Campfield, Strader)** This bill addresses the rights of a municipality to purchase entities providing utility services in territories that it annexes. Under present law, when a municipality annexes territory which is already being provided utility services, the annexing municipality has the right, upon delivering written notice of its election, to purchase the entity providing the services. If the parties cannot agree on a purchase price, then a final determination of the fair market value of the properties being acquired and related issues will be made by arbitration. This bill would require arbitration if the parties cannot agree within sixty days of delivery of the municipality's written notice.

  This bill also amends the law relating to payments in lieu of taxes. Present law specifies how a municipality may spend revenue derived from public works. One such authorized expenditure is payments to the municipality in lieu of ad valorem tax on the property of the public works within the corporate limits of the municipality not to exceed the amount of taxes payable on privately owned property of similar nature, if the governing body of the municipality so requests by resolution.

  This bill would specify that no metropolitan charter, unified government, or municipal resolution may require any payments in lieu of taxes on or from electric revenues or electric system facilities from any municipally-owned electric utility supported by its own revenue, except as provided in the present law provisions under the Municipal Electric System Tax Equivalent Law of 1987.

  The Municipal Electric System Tax Equivalent Law of 1987 repealed the specific provisions of any private act or home rule charter or metropolitan government charter relating

to payments in lieu of taxes, including certain provisions relating to the distribution of any such payments. This bill would specify that this provision does not affect payments to taxing jurisdictions. Under present law, property and revenue of a system owned by a utility district is exempt from all state, county and municipal tax. Bonds and income from bonds are exempt from all state, county and municipal tax, except inheritance, transfer and estate taxes. This bill would prohibit a district from paying any payments in lieu of taxes to any state, county, or municipality.

Recommendation: TACIR recommends that this bill be retained for further study.

- **SB 2130 (Beavers)/HB 1995 (Johnson)** This bill would allow a municipality to exercise the right to provide municipal and utility services in annexed areas when the municipality annexes any part of the service area of an authority, and the annexing municipality and the authority must attempt to reach an agreement in writing for the conveyance of all public functions, rights, duties, property, assets and liability to the annexing municipality. This bill attempts to resolve a conflict that exists between TCA § 5-6-120 and TCA § 6-51-111 when a city annexes territory that is being served by a water and wastewater authority.

    - TCA § 5-6-120 gives a water and wastewater authority the exclusive right to provide services in its service area. A city wishing to provide services in the service area of an authority may do so only by filing a petition and receiving a cession from the authority. The statute specifically provides that "**authority granted in this section shall prevail over any other provision of the law to the contrary** for all water and wastewater service providers proposing to provide services in the service area of the authority."

- TCA § 6-51-111 gives to a municipality "if and to the extent it may choose, **the exclusive right to provide municipal and utility services in any territory which it annexes, notwithstanding Section 7-82-301 or any other statute**, subject, however, to the provisions of this section with respect to electric cooperatives." The statute also outlines the procedures by which the entity currently providing services in the annexed territory may transfer its public functions, rights, duties, property, assets and liabilities to the annexing city. The statute does not specifically mention water and wastewater authorities.

This bill would give a city the exclusive right to perform or provide municipal and utility services in the territory annexed into the city.

A similar controversy arose in 2002 in Hamilton County. Territorial disputes between the city of Collegedale and the Hamilton County Water and Wastewater Authority led to a Tennessee Court of Appeals case, *City of Collegedale v. Hamilton County Water and Wastewater Authority*. The City of Collegedale argued that TCA § 6-51-111 applied while the Authority argued that TCA § 5-6-120 was the controlling statute.

The Court of Appeals held that TCA § 5-6-120 did not apply in that case due to the fact that the Authority had not defined its service area by the date of the annexation as required by the statute. The Court did not discuss which statute would control if the Authority had properly defined its service area prior to the date of the annexation. As a result of the case and the lack of clarity in the statutes, TML at the request of Collegedale offered a bill in 2004 (SB 3227/HB 3328) that was virtually identical to the SB 2130/HB 1995 which did not pass.

Currently, there is a similar territorial dispute being waged between the Wilson County Water and Wastewater Authority and the cities of Lebanon and Mt. Juliet. The Authority has established its service area as being all territory of the county outside of corporate boundaries as they existed on January 18, 2001. The two respective cities want to exercise the authority provided by TCA § 6-51-111 in order to provide sewer service in any area to be annexed into the cities. However, the Authority considers the unincorporated territory of the county as something of a "piggy bank" that will allow borrowing capacity for future expenditures to provide wastewater systems for all residential areas that do not now have sewer. The Authority is, therefore, protective of the territory and reluctant to give it up to the cities so that they (the cities) can provide the sewer service.

There currently does not seem to be any consensus for this bill. The cities and TML support the bill. Opposition will come from the Wilson County Water and Wastewater Authority and the Tennessee Association of Utility Districts. The TCSA may side with the authorities.

Recommendation: TACIR recommends that the Commission retain this bill for further study and revisit these issues at a later date.

Appendices

Appendix A

Recent Related TACIR Reports on Development Taxes and Impact Fees

Green, Harry A. and Leah Eldridge. 2004. "Financing Growth in Tennessee: Local Development Taxes and Impact Fees." *TACIR Staff Research Brief,* Number 11, August 2004. Nashville, Tennessee.

Green, Harry A., Danielle Gros, and Lynnisse Roehrich-Patrick. 2002. "Local Financing Techniques for Capital Projects," *TACIR Staff Research Brief*, Number 10, August 2002. Nashville, Tennessee.

Green, Harry A. and Ed Young. 2002. "Paying for Growth: General Assembly Authorizations for Development Taxes and Impact Fees." *TACIR Staff Research Brief,* Number 9, April 2002. Nashville, Tennessee.

Green, Harry A., Stan Chervin and Cliff Lippard. 2002. *The Local Property Tax in Tennessee: The Local Government Finance Series, Volume I*. Tennessee Advisory Commission on Intergovernmental Relations, February, 2002, Nashville, Tennessee.

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Appendix B
Other References on Development Taxes and Impact Fees

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Table of Authorizations for Local Adequate Facilities/Development Taxes and Impact Fees

Local Government	Authorizations	Tax/Fee Type	Amount/Basis	Disposition of Revenues	Status
Ashland City (Cheatham County)	Private Chapter 52 (1997)	Adequate Facilities Tax	Left up to governing body.	Capital Projects Fund	Adopted 6/26/1997, but never levied. Authorization still effective
Brentwood (Williamson County)	Private Chapter 86 (1987)	Construction Privilege Tax	Not to exceed .50 per gross sq. ft. residential; Not to exceed $1.50 per gross sq. ft. non-residential	Public Transportation Facilities	Adopted 7/13/1987, but never levied. Authorization still effective
Brentwood (Williamson County)	Private Chapter 115 (1987)	Construction Impact Fee	$598 per single family dwelling; commercial rate varies	Capital Improvements Fund	Adopted and Levied
Brentwood (Williamson County)	Private Chapter 119 (1987)	Adequate Facilities Tax	Not to exceed $1 per gross sq. ft. residential; Not to exceed $2 per gross sq. ft. non-residntial	Public Facilities Related to New Development	Adopted 7/13/1987, but never levied. Authorization still effective
Cheatham County	Private Chapter 28 (1997) [Amended by Private Chapter 145 (2000)]	Development Tax	Left up to governing body. Currently $3,750 per lot/unit	$3,125 schools; $250 parks/rec; $375 general fund	Adopted and Levied
Cheatham County	Private Chapter 68 (1997)	Adequate Facilities Tax	Not to exceed .50 per gross sq. ft. commercial	Education Debt Service	Adopted 6/30/1997, but never levied. Authorization still effective

Appendix C *(continued)*

Table of Authorizations for Local Adequate Facilities/Development Taxes and Impact Fees

Local Government	Authorizations	Tax/Fee Type	Amount/Basis	Disposition of Revenues	Status
Cheatham County	Private Chapter 69 (1997)	Adequate Facilities Tax	Not to exceed .50 per gross sq. ft. industrial	Education Debt Service	Adopted 6/30/1997, but never levied. Authorization still effective
Cheatham County	Private Chapter 89 (1997)	Development Tax	Not to exceed 1.00 per gross sq. ft. residential	Education Debt Service	Adopted and Levied
Columbia (Maury County)	Private Chapter 194 (1994)	Impact Fee	Left up to governing body.	Capital Projects Fund	Adopted 10/25/1994, but never levied. Authorization still effective
Davidson County	TN Cooperative Public Facilities Financing Act (1988)	Impact Fee	Left up to governing body.	Public Facilities	Never enacted. Authorization still effective.
Dickson County	Private Chapter 158 (2000) [Amended by Private Chapter 162 (2002)]	Adequate Facilities Tax	Left up to governing body. Currently .50 per gross sq. ft. residential; .25 per gross sq. ft. commercial; .15 per gross sq. ft. industrial	Public Facilities Related to New Development	Adopted and Levied
Fairview (Williamson County)	Private Chapter 116 (1987)	Construction Impact Fee	Left up to governing body.	Capital Improvements	Adopted 8/6/1987, but never levied. Authorization still effective

Appendix C *(continued)*

Table of Authorizations for Local Adequate Facilities/Development Taxes and Impact Fees

Local Government	Authorizations	Tax/Fee Type	Amount/Basis	Disposition of Revenues	Status
Fairview (Williamson County)	Private Chapter 121 (1987)	Adequate Facilities Tax	Not to exceed $1 per gross sq. ft. residential; Not to exceed $2 per gross sq. ft. non-residential	Public Facilities Related to New Development	Adopted 8/6/1987, but never levied. Authorization still effective
Fairview (Williamson County)	Private Chapter 150 (1998)	Adequate Facilities Tax	.25 per gross sq. ft. residential with a $500 base; .50 per gross sq. ft. commercial with a $500 base	Public Facilities Related to New Development	Adopted and Levied
Fayette County	Private Chapter 69 (2001) [Amended by Private Chapter 38 (2003)]	Adequate Facilities Tax	Left up to governing body. Currently .20 per gross sq. ft. residential; .15 per gross sq. ft. commercial and industrial	Public Facilities Related to New Development	Adopted and Levied
Franklin (Williamson County)	Private Chapter 114 (1987)	Adequate Facilities Tax	.46 per gross sq. ft. residential; .77 per gross sq. ft. non-residential development	Public Facilities Related to New Development	Adopted and Levied
Franklin (Williamson County)	Private Chapter 117 (1987)	Construction Impact Fee	Left up to governing body. Varies according to formula outlined in Municipal Code	Roads	Adopted and Levied
Gatlinburg (Sevier County)	Private Chapter 56 (1989)	Construction Impact Fee	Left up to governing body.	Capital Improvements Fund	Not adopted before deadline. Authorization no longer effective.

Appendix C *(continued)*

Table of Authorizations for Local Adequate Facilities/Development Taxes and Impact Fees

Local Government	Authorizations	Tax/Fee Type	Amount/Basis	Disposition of Revenues	Status
Gatlinburg (Sevier County)	Private Chapter 167 (1990)	Development Impact Fee	Left up to governing body.	Special Benefit Account	Adopted 11/6/1990, but never levied. Authorization still effective
Hickman County	Private Chapter 97 (2000)	Development Privilege Tax	Not to exceed $1 per gross sq. ft. residential ; Not to exceed .25 per gross sq. ft. commercial and industrial	Public Facilities Related to New Development	Failed 7/1/2000
Hickman County	Private Chapter 21 (2003)	Development Privilege Tax	$1 per sq. ft. residential with $1,500 minimum; .25 per sq. ft. commercial	Public Facilities Related to New Development	Adopted and Levied
Kingston Springs (Cheatham County)	Private Chapter 54 (1997)	Adequate Facilities Tax	Left up to governing body. Currently .40 per gross sq. ft. residential construction	Capital Projects Fund	Adopted and Levied
La Vergne (Rutherford County)	TCA 6-2-201 (Mayor-Aldermanic Charter)	Impact Fee	Set by governing body. Currently Single Family Dwellings - $1,307; Multi-Family Dwellings per gross family - $902; Fees on Commercial Property vary	Single Family - $884 roads; $311 parks; $112 police. Multi-Family - $543 roads; $246 parks; $113 police.	Levied at will of local government.
Macon County	Private Chapter 172 (2002)	Adequate Facilities Tax	Left up to governing body.	Capital Projects	Not adopted before deadline. Authorization no longer effective.

Appendix C *(continued)*

Table of Authorizations for Local Adequate Facilities/Development Taxes and Impact Fees

Local Government	Authorizations	Tax/Fee Type	Amount/Basis	Disposition of Revenues	Status
Macon County	Private Chapter 138 (2004)	Development Impact Fee	$1 per gross sq. ft. residential property; .25 per gross sq. ft. on commerical property	Capital Projects	Adopted and Levied
Marshall County	Private Chapter 211 (1996)	Adequate Facilities Tax	Not to exceed $2 per gross sq. ft.	Capital Projects Fund	Failed 11/5/1996
Marshall County	Private Chapter 157 (2000)	Adequate Facilities Tax	Not to exceed $1 per gross sq. ft.	Public Facilities Related to New Development	Not adopted before deadline. Authorization no longer effective.
Marshall County	Private Chapter 22 (2001)	Adequate Facilities Tax	Not to exceed $1 per gross sq. ft. residential and commercial	Public Facilities Related to New Development	Adopted and Levied
Maury County	Private Chapter 118 (1991) [Amended by Private Chapter 123 (2000)]	Adequate Facilities Tax	.50 per gross sq. ft. residential; 30 per gross sq. ft. non-residential	Public Facilities Related to New Development	Adopted and Levied
Montgomery County	Private Chapter 90 (2004)	Adequate Facilities Tax	$250 on each new residential lot and $250 on each single or multi-family dwelling unit. Fee rises 6% annually until it reaches a combined maximum of $1000.	Capital Projects and School Services	Adopted and Levied
Mount Juliet (Wilson County)	Private Chapter 965 (1998)	Residential Construction Impact Fee	.50 per sq. ft.	Public Transportation	Adopted and Levied

Appendix C *(continued)*

Table of Authorizations for Local Adequate Facilities/Development Taxes and Impact Fees

Local Government	Authorizations	Tax/Fee Type	Amount/Basis	Disposition of Revenues	Status
Nolensville (Williamson County)	Private Chapter 100 (1997)	Adequate Facilities Tax	Not to exceed $1 sq. ft. residential; Not to exceed $2 sq. ft. non-residential	Public Facilities Related to New Development	Adopted and Levied
Pegram (Cheatham County)	Private Chapter 53 (1997)	Adequate Facilities Tax	.75 per gross sq. ft. residential; .40 per gross sq. ft. commercial	Capital Projects Fund	Adopted and Levied
Piperton (Fayette County)	Private Chapter 146 (2000)	Adequate Facilities Tax	Left up to governing body.	Public Facilities Related to New Development	Adopted 6/20/2000, but never levied. Authorization still effective
Portland (Sumner County)	Private Chapter 31 (2003)	Impact Fee	Left up to governing body.	Public Facilities Related to New Development	Adopted 6/20/2003, but never levied. Authorization still effective
Robertson County	Private Chapter 213 (1996)	Adequate Facilities Tax	Left up to governing body. Currently $1.50 per gross sq. ft. residential; .30 per gross sq. ft. commercial	Schools	Adopted and Levied
Rutherford County	Private Chapter 212 (1996)	Adequate Facilities Tax	Not to exceed .40 per gross sq. ft. residential	.25 school projects; .10 law enforcement; .05 roads and bridges	Not adopted before deadline. Authorization no longer effective.

Appendix C *(continued)*

Table of Authorizations for Local Adequate Facilities/Development Taxes and Impact Fees

Local Government	Authorizations	Tax/Fee Type	Amount/Basis	Disposition of Revenues	Status
Rutherford County	Private Chapter 215 (1996)	Development Tax	$750 upon plat approval and $750 on issuance of building permit residential	General Fund	Adopted and Levied
Rutherford County	Private Chapter 216 (1996)	Adequate Facilities Tax	.40 per gross sq. ft. residential and non-residential	.25 school projects; .10 law enforcement; .05 roads and bridges	Not adopted before deadline. Authorization no longer effective.
Spring Hill (Maury County and Williamson County)	Private Chapter 173 (1988)	Construction Impact Fee	Not to exceed $1 per gross sq. ft. residential; Not to exceed $2 per gross sq. ft. non-residential	Public Facilities Related to New Development	Adopted and Levied on Williamson County side; Spring Hill does not levy an impact fee on the Maury County side of the City.
Spring Hill (Maury County and Williamson County)	Private Chapter 176 (1988)	Adequate Facilities Tax	Left up to governing body. Currently .75 per gross sq. ft. plus $500 residential	Public Facilities Related to New Development	Adopted and Levied

Appendix C *(continued)*

Table of Authorizations for Local Adequate Facilities/Development Taxes and Impact Fees

Local Government	Authorizations	Tax/Fee Type	Amount/Basis	Disposition of Revenues	Status
Smyrna (Rutherford County)	Private Chapter 42 (1999) Private Chapter 68 (2000)	Impact Fee	$1,827 per single family dwelling; $1187 per unit for multi-family dwelling; $1172 for mobile homes; commercial/industrial rates vary On Jan. 28, 2006, the Council passed an ordinance to charge 100 percent of impact fees allowed for road improvements and parks, bumping the total impact fee to $4,205 from $1,827.	Unspecified	Adopted and Levied
Sumner County	Private Chapter 57 (1999)	Adequate Facilities Tax	.70 per gross sq. ft. residential; .40 per gross sq. ft. industrial	Projects in high growth areas / schools	Adopted and Levied
Trousdale County	Private Chapter 71 (2000)	Adequate Facilities Tax	Left up to governing body. Currently $1000 per dwelling residential	Capital Projects or Debt Service	Adopted and Levied
White House (Robertson County)	TCA 6-2-201 (Mayor-Aldermanic Charter)	Impact Fee	$1,250 flat fee residential; fee on commercial property varies based on type of business	Public Facilities Related to New Development	Levied at will of local government.

Appendix C *(continued)*

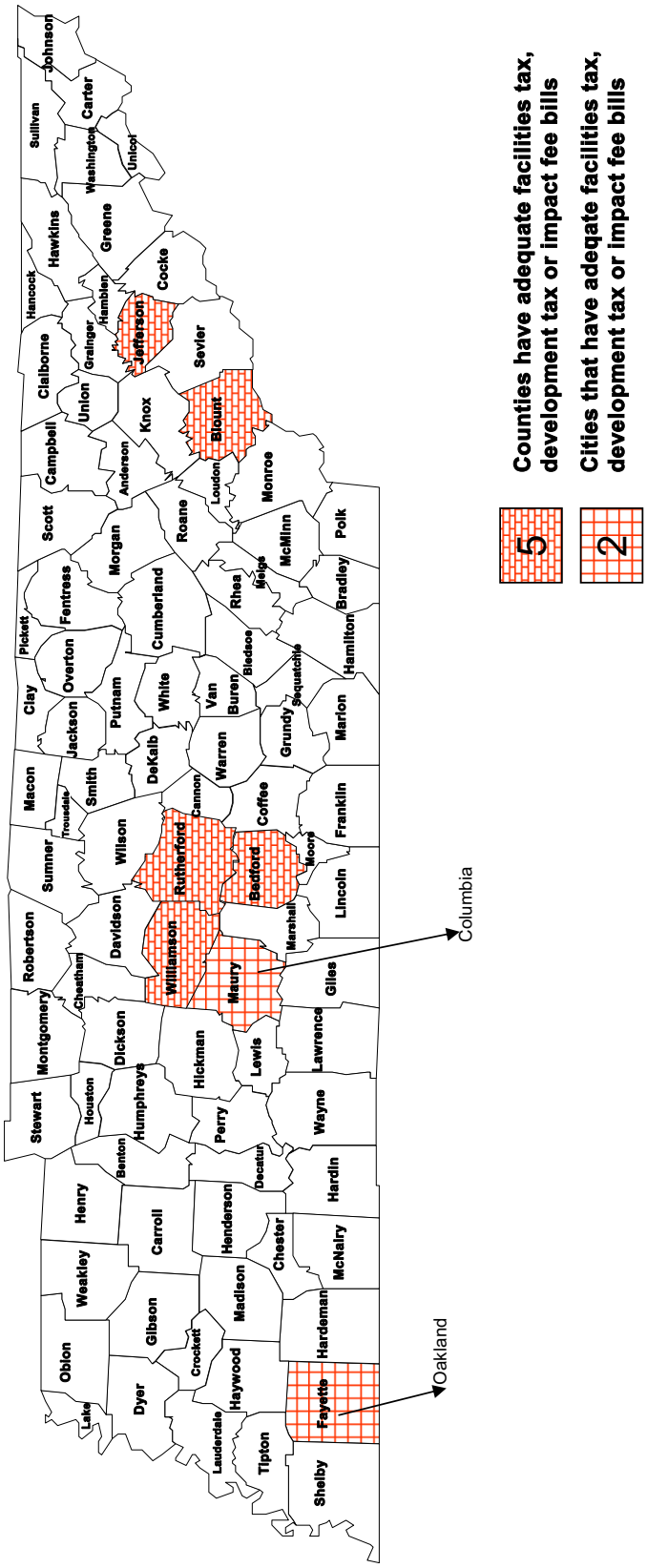
Table of Authorizations for Local Adequate Facilities/Development Taxes and Impact Fees

Local Government	Authorizations	Tax/Fee Type	Amount/Basis	Disposition of Revenues	Status
Williamson County	Private Chapter 113 (1987)	Adequate School Facilities Tax	Not to exceed $1 per gross sq. ft.	County Schools	Not adopted before deadline. Authorization no longer effective.
Williamson County	Private Chapter 118 (1987) [amended by Private Chapters 173 (1990) and 121 (1991)]	Adequate Facilities Tax	Not to exceed $1 per gross sq. ft. residential; Not to exceed $2 per gross sq. ft. non-residential	Public Facilities Related to New Development	Adopted and Levied
Williamson County	Private Chapter 120 (1987)	Adequate Facilities Tax	.90 per gross sq. ft. residential outside cities; .68 per gross sq. ft. residential in cities; .34 per gross sq. ft. commercial	.60 schools; .20 roads; .08 parks/rec; .02 fire protection	Not adopted before deadline. Authorization no longer effective.
Wilson County	Private Chapter 60 (2003)	Adequate Facilities Tax	Equal amount per gross residential unit, specific amount left up to governing body (started at $1000). Currently $3000 per residential unit.	Capital Projects	Adopted and Levied

Appendix D

Counties and Cities with Adequate Facilities/Development Tax or Impact Fee Bills

2005



Appendix E
States with General Enabling Impact Fee Legislation

State	Year Passed	Citation
Arizona	1988	Ariz. Rev. Stat. Ann., § 9-463.05 (cities), § 11-1102 et seq. (counties)
Arkansas	2003	Arkansas Code, § 14-56-103 (cities only)
California	1989	Cal. Gov't Code, § 66000 et seq. (mitigation fee act); § 66477 (Quimby Act for park dedication/fee-in-lieu); § 17620 et. seq. (school fees)
Colorado	2001	Colo. Rev. Stat., § 29-20-104.5; § 29-1-801804 (earmarking requirements); § 22-54-102 (school fee prohibition)
Georgia	1990	Ga. Code Ann., § 36-71-1 et seq.
Hawaii	1992	Haw. Rev. Stat., § 46-141 et seq.
Idaho	1992	Idaho Code, § 67-8201 et seq.
Illinois	1987	605 Ill. Comp. Stat. Ann., § 5/5-901 et seq.
Indiana	1991	Ind. Code Ann., § 36-7-4-1300 et seq.
Maine	1988	Me. Rev. State. Ann., Title 30-A, § 4354
Montana	2005	Montana Code Annotated, Title 7, Chapter 6, Part 16
Nevada	1989	Nev. Rev. Stat., § 278B
New Hampshire	1991	N.H. Rev. Stat. Ann., § 674:21
New Jersey	1989	N.J. Perm. Stat., § 27:1C-1 et seq.; § 40:55D-42
New Mexico	1993	New Mexico Stat. Ann., § 5-8-1 et seq.
Oregon	1991	Or. Rev. State, § 223.297 et seq.
Pennsylvania	1990	Pa. Stat. Ann., Title 53, § 10502-A et seq.
Rhode Island	2000	General Laws of Rhode Island, §45-22.4
South Carolina	1999	Code of Laws of S.C., § 6-1-910 et seq.
Texas	1987	Tex. Local Gov't Code Ann., Title 12, § 395.001 et seq.
Utah	1995	Utah Code, § 11-36-101 et. seq.
Vermont	1989	Vt. Stat. Ann., Title 24, § 5200 et seq.
Virginia	1990	Va. Code Ann., § 15.2-2317 et seq.
Washington	1991	Wash. Rev. Code Ann., § 82.02.050 et seq.
West Virginia	1990	W. Va. Code, § 7-20-1 et seq.
Wisconsin	1993	Wis. Stats., § 66.0617

Appendix F
States with General Local Real Estate Transfer Tax Legislation

State	Citation	Summary
California	Cal. Rev. & Tax Code § 11911	A county or city may impose a tax on each deed, Instrument or writing by which realty within the county is conveyed, provided the consideration or value of the property (excluding any liens) is greater than $100. The tax rate is .55 for each $500. A city within a county that has imposed the above tax may impose a tax on each deed, instrument, or writing by which any realty within the city is conveyed, provided that the consideration or value of the property (excluding any liens) is greater than the $100. The tax rate is one-half the amount specified above, and a credit is allowed against the tax imposed by county for the amount of any tax due to any city.
Florida	Fla. Stat. Ann §§ 201.02, .0205. .031, Fla. Admin. Code Ann. § 201.01	Subject to § 125.0167, each county may levy a discretionary surtax on documents taxable under § 201.02, except that no surtax is permitted on a document conveying an interest involving only a single-family residence. All provisions of chapter 201, except § 201.15 (involving allocation) apply to the surtax. As mentioned above, the 10 cent tax increase in the documentary stamp tax does not apply to " deeds and other taxable instruments relating to real property located in any county that has implemented the provisions of chapter 83-220." Those counties may not participate in programs funded pursuant to § 201.15(6), but may participate in programs funded pursuant to § 201.15(17).
Illinois	35 Ill. Comp. Stat. Ann. 200/31-10 and 31-65	The city of Chicago imposes a transfer tax equal to $3.75 for each $500 of the purchase price; Cook County imposes a tax of $500 of the selling price.
Maryland	Md. Code Ann. Tax-Prop. §§ 13-101 -202 - 203 - 402.1 and -502	The governing body of a county that has adopted home rule powers may impose a transfer tax on an instrument that conveys title to or a leasehold interest in real property. The transfer tax may not be greater than .5 percent. Also with the local Agricultural Preservation Advisory Board's consent, Washington County may impose a county agricultural land transfer tax for property located within the county, provided the instrument is subject to the state agricultural land transfer tax under Subtitle 3 of Title 13. The tax may be no greater than 2 percent, and is payable in addition to any other transfer tax imposed by law. The proceeds are deposited in a special fund that may be used only to purchase development rights on agricultural land under the agricultural preservation program.

Appendix F *(continued)*

States with General Local Real Estate Transfer Tax Legislation

State	Citation	Summary
Massachusetts	Mass. Gen. Laws Ann ch 64D § 1 ch. 262 § 38 ch. 44B § 8	In Barnstable County, the excise tax is $1.50 for each $500 (or part thereof) excluding a consideration of between zero and one hundred dollars.
Michigan	Mich. Comp. Laws Ann. §§ 207.502	Section 207.52 imposes a recordation tax on contracts for the sale or the exchange of real estate or deeds or instruments conveying real property for consideration. The tax rate on each $ 500 (or fraction thereof) of the total value is as follows: $.55 in a county with a population of less than 2,000,000 and no more than $.75, as authorized by the county board of commissioners, in a county with a population of 2,000,000 or more. The seller or grantor is liable for the tax. Revenue goes to the general fund.
New York	NY Cons. Laws Art. 31-b, 31-c, 31-d, 31-e	Peconic Bay, Broome County, Nassau County, and Brookhaven have transfer taxes. Revenues from the Peconic Bay tax are deposited in the town's community preservation fund. Broome County's tax revenues are used to fund veteran's service programs in the county.
Ohio	Ohio Rev. Code Ann. §§ 319.54(F) 322.02, .07	A county may levy a real property transfer tax on each deed conveying real property located within the county's boundaries. The tax rate may not exceed .30 per $100 (or fraction thereof) on the value of the real property. The funds collected are used to pay costs incurred by the county in administering the tax and the balance to the county general fund. The grantor pays the transfer tax.
Pennsylvania	Pa. Stat. Ann. Tit. 72, §§ 8101-C, -D: 61 Pa. Code § 91.111	Authorities of certain political subdivisions may levy a tax on a real property transfer to the extent that such transactions are subject to the tax imposed by Article XI-C. In addition, a political subdivision may impose a local real estate transfer tax on additional transaction types if the subdivision imposed a tax under the prior "Local Tax Enabling Act."
South Carolina	S.C. Code Ann §§ 12-24-10, 20, - 90	The fee imposed by chapter 12-24 includes a county fee of .55 for each $500 of the realty's value. The transfer fee is the grantor's liability. In a few specially defined circumstances, the grantee is responsible.
Virginia	Va. Code Ann. §§ 58.1-801 - 802, -814	Any city council and county governing body may impose a city or county recordation tax equal to one-third of the state recordation tax amount. Revenues go to the county general fund.

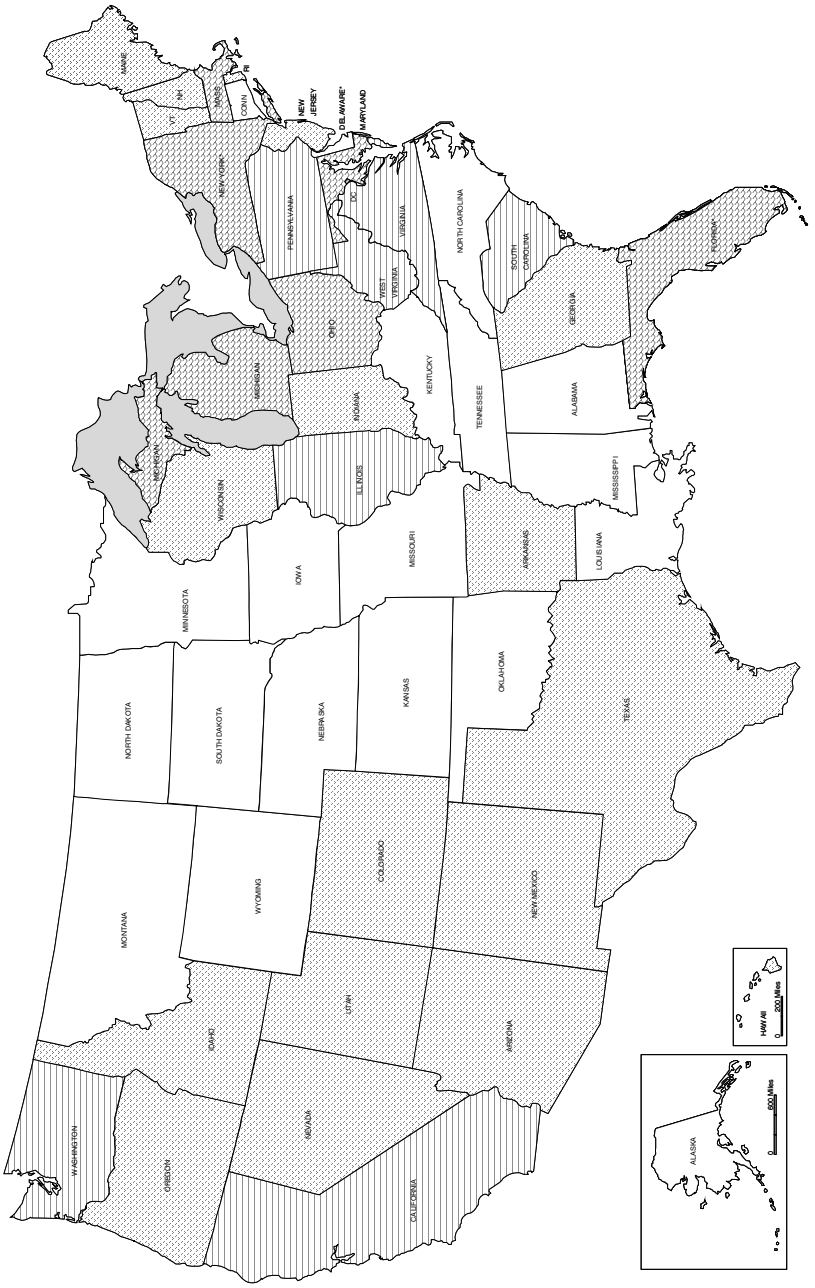
Appendix F *(continued)*
States with General Local Real Estate Transfer Tax Legislation

State	Citation	Summary
Washington	Wash. Rev. Code Ann. §§ 82-45.060 .900; 82.46.900	The county may impose a transfer tax. The ordinance imposing a tax under chapter 82.46 applies to all sales taxable under chapter 82.46 at the rate specified in the ordinance. The proceeds go into the state local real estate excise tax account which may only be distributed to counties, cities, and towns imposing a tax under chapter 82-46. Revenues are to be used for county purposes. The grantor must pay the tax.
West Virginia	W. Va. Code Ann. § 11-22-1 W. Va. Code St. R. § 110-22-3	The law allows for an additional county excise tax for the privilege of transferring title to real estate. The rate is .55 per $500. After July 1, 1989, the county may increase its excise tax to an amount equal to the state excise tax, but the county excise tax must be either .55 or $ 1.10 for each $500 of value.

Source: Transfer Taxes Annual Report Grid National Association of Realtors (2003).

Appendix G

States with Legislation Enabling City and/or County Governments to Levy Impact Fees and Real Estate Transfer Taxes



* Florida and Delaware do not have enabling impact fee legislation, but local governments still levy them, without legislative permission. A Florida task force is currently considering statewide impact fee legislation. New York's real estate transfer tax enabling legislation is on an individual local government basis, with two counties and two cities currently authorized.

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Other Local Officials

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