



TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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MEMORANDUM

TO: TACIR Commission Members

FROM: Harry A. Green *Harry*
Executive Director

DATE: September 17, 2008

SUBJECT: Summary Report: PC 1101 Working Group

During the summer of 2007, I appointed a working group to study details of the implementation of Public Chapter 1101 in order to determine whether the intent and goals of the General Assembly had been fulfilled. Additionally, the group was charged with the responsibility of identifying those parts of the act that needed strengthening, clarifying or otherwise amending based upon the experiences of those entities that raised questions about the act.

The product of the working group is a report entitled *Public Chapter 1101, An Analysis of its Strengths and Weaknesses*, a summary of which was presented at the June meeting of the Commission. The full report is 21 pages in length. The summary will not be rehashed here, but some conclusions can be drawn from the analysis. The report also includes recommendations for improvements to the act and possible legislation that might arise from the report if the Commission chooses to pursue that course of action, and these two sections are included below.

It should be noted that the report and this short summary is the responsibility of the PC 1101 Working Group. At this time no other organizations or groups have reviewed or endorsed the report or any conclusions.

Conclusions

After ten years of experience with the act, some basic conclusions can be drawn.

1. The initial phase of implementation of the statute, which involved getting growth plans approved in the counties, can be characterized as highly successful.

2. The flexibility built into the act allowed cities and counties to develop their own local plans. However, this was also a weakness.
3. The almost annual exercise of the submission of bills in the legislature has been reduced significantly since passage of PC 1101.
4. Annexation battles between cities seem to have ended or at least are in sharp remission.
5. Some of the purposes of the act as embedded therein have been met; some have not.
6. The purpose to “minimize urban sprawl” has been the most difficult to achieve and little evidence exists that the reduction of sprawl is a major issue with most local governments.
7. The required growth plans need to be integrated much closer with existing legislation covering local planning.
8. The goal of having local governments look into the future and engage in long-range planning was compromised by the required approval of a growth plan map if all governments agree.
9. The provision of urban services by municipalities that is encouraged by Tennessee Code Annotated § 6-58-106(a) is difficult if not impossible without the ability to plan and adopt policies and regulations within the urban growth boundary.
10. The required approval by the Local Government Planning Advisory Committee if all governmental entities in a county agree on a map actually creates a barrier to effective planning since it is all too easy to just agree on a map.
11. Cities and counties were required to prepare growth plans and to base those plans on information and reports unique to each community but also on sound planning principles. The opportunity was present for all entities to develop a quality plan to guide growth and development into the future. Some did, some did not.

Recommendations

The recommendations are the result of a one year effort by the working group to identify problems experienced in the implementation of Public Chapter 1101 and opportunities to improve the act and public policy related to growth issues. These type changes are needed in order to carry out the full intent of the act.

1. Growth plans should be restudied and amended on some kind of a regular basis to determine if the original plans are still valid and if circumstances have changed to the extent that amendments are needed. For fast growing areas, every five years would be a feasible time frame; for slow or no growth areas, every ten years would be justified.
2. All areas submitting amendments to their growth plans should be required to update and report the items as originally required in TCA § 6-58-106 and submit those reports and studies to LGPAC as a part of the submission for growth plan

approval. All approvals of amended growth plans must be contingent upon the content analysis and projections contained in the reports. The automatic approval of just a growth plan map if all governmental entities agree on the map should be repealed. Approval by LGPAC could only be given if the reports and documents justified the map.

3. The studies and reports required by TCA § 6-58-106 should be connected to the comprehensive planning authorized by Title 13. All growth plan elements for each governmental entity in a county should be prepared by and approved by the local planning commission, if one exists in the entity. If a city or county has adopted a general plan according to PC 1150, then any amended growth plan is required to be consistent with the adopted plan.
4. Municipalities should have the power to adopt plans and regulatory ordinances within their UGBs under the provisions for municipal-regional planning in Title 13 without obtaining county approval.
5. Utility provision and extension should be consistent with growth plans where such plans contain sufficient detail and projections to affect utility determination and planning for future growth. Utility planning among municipalities and rural utility districts should be coordinated. The largest water utility district in a county should be considered for membership on the coordinating committee.
6. The membership of the JECDBs should be reconstituted to more closely reflect the make-up of the coordinating committees. The JECDBs should then replace the coordinating committee as the entity to convene and prepare amendments to the existing growth plan in the same way that the coordinating committees have done since initial passage of the act. The requirement for an executive committee should be optional with the jurisdictions in the county.
7. Each county should have a place to publicly display the approved growth plan so that the public has ample opportunity to examine it. Internet posting should also be considered, and adequate legends and details should be included so that the general public can interpret the maps and plans.
8. Existing growth plans and all new amendments should be converted to the appropriate digital format. One noted advantage of this is to allow localities the ability to overlay parcel information, which will enable more accurate population and growth data for the next census and future assessments of the effectiveness of the PC 1101.
9. The burden of proof in contested annexation cases and other annexation procedures should be eased for those cities that have an adopted a long-range general plan that contains a plan for annexation, as appropriate, and a detailed plan of services with a timetable for implementation. Any such annexation would have to be in agreement with the plan.
10. In the event that a municipality or county adopts a plan under the authority granted by PC 1150 as discussed above and incorporates such plan into the growth plan required by PC 1101, then no action should be required of the other jurisdictions as long as the plan or an amendment only addresses the areas inside a city and its UGB or county authority over PGAs and RAs.

11. Extreme slopes, wetlands, floodplains and other sensitive areas should be excluded from any planned growth area proposed by a county and placed in a rural area designation.

Possible Legislation

There are several pieces of legislation that could be generated from this report. Some may be easy to pass, others not so easy. In fact, some possible legislation could result in considerable disagreement between city and county officials as well as other groups. This statement rises out of a general reluctance on the part of all groups to mandate that such actions have to occur, whether or not there is any cost associated with the mandate. The list below is divided into two groups based on judgments of difficulty to pass in the general assembly.

Easier to Pass

1. Clarify the composition of the coordinating committee to spell out details of the largest non-municipal utility and the two members appointed by the county mayor and the mayor of the largest municipality.
2. When land use plans, development policies or capital budgets and similar information have been included in a growth plan, allow amendments to those locally adopted plans without considering the amendments to be a change in the county growth plan as long as growth boundaries are unaffected and all entities are notified.
3. Clarify if, when or where a city can annex across a county boundary.
4. Strengthen the provision of JECDB certification to be eligible for state grants to make it clear that without participation, the grants are not available.

Harder to Pass

1. Remove the provision requiring approval of the county in order for a municipality to obtain authority for planning and zoning in its planning region, if so established.
2. Require that growth plans be updated every five years in counties with growth rates above a determined level and every ten years in the other counties.
3. Clarify that all amended growth plans must comply with the requirements of TCA § 6-58-106 and that those planning elements be included in the plan as submitted to LGPAC.
4. Require that locally adopted plans as specified in 6-58-107 be included in a growth plan.
5. Require state agencies to consider local growth plans in implementing state projects when the growth plan contains sufficient detail or details of local plans.

6. Change the responsibilities and membership of the JECDBs to closely resemble the coordinating committees and delete provisions requiring a coordinating committee.
7. Require all cities that have an urban growth boundary to have a planning region under Title 13 with full planning and zoning authority within the boundary.
8. Delete the existing procedures for quo warranto challenges and substitute a requirement that annexations have to be pre-planned as a part of an overall plan for future development, including an annexation plan, with timing of the annexation to be firmly connected to a plan for extension of all services provided by the city. Any challenge would be based on the failure of the annexing city to follow the plan and provide the required services.
9. Require that all amendments or revisions to growth plans must contain a plan and schedule to provide the basic municipal services and have a property tax to support the services at a level at least equal to amount of state shared revenues received by the city.