

## **Tennessee's Growth Policy Act: Purposes, Implementation, and Effects on Development**

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Tennessee's General Assembly in 1998 enacted Public Chapter 1101, the Growth Policy Act, that requires local governments to develop and coordinate plans for growth. One intent of the legislation was to correct out-of-control annexations and municipal incorporations that were creating conflicts among Tennessee cities and counties. But the second major goal was to prompt local governments to manage growth more effectively – or, as the act states: to “more closely match the timing of development to the provision of public services” and to minimize urban sprawl. The Act required counties and their cities to collaborate in defining growth boundaries and designating areas of future growth – an approach similar to growth management acts in other states. The objective of this paper is to describe the extent to which Tennessee state and local governments have been successful in achieving the growth policy goal and the Act's apparent effects, if any, on the development process in Tennessee.

The research conducted for this report demonstrates that Tennessee's local governments by and large have complied with the *letter* of the Act. But many counties and cities have eluded compliance with the *spirit* of the Act by staking out “growth areas” unrelated to probable rates of growth and heedless of the potential costs of providing infrastructure within the territory proposed for development. The rather tepid responses of local governments to the Act have been prompted in part by the Act's loose definitions of

terms and its failure to lay out processes for promoting adherence to the Act's goals. Indeed, the Act provides far less state guidance for local community development policies and practices than do most of the other 11 or 12 recognized state growth management acts. Nevertheless, state officials are satisfied that the Act provides a useful first step toward improving local management of growth. The development community appears divided on the issue, claiming on the one hand that it created needless tensions between local governments and on the other hand that the state would have better served by demanding consistency among local plans for growth, as some other states have done.

### **Tennessee's Growth Conditions**

Tennessee is the 14<sup>th</sup> fastest-growing state in the Union. The state's population expanded by more than 12 percent in the 1990s, compared to an 8 percent increase for the United States as a whole. But growth is concentrated in a few places, chiefly the metropolitan areas of Memphis, Nashville, and Knoxville. Two-thirds of Tennessee's citizens reside in 20 counties. (Tennessee has 95 counties.) The top 10 counties in terms of population account for 60 percent of the state's population and 50 percent of the state's growth. The population in Rutherford and Williamson counties near Nashville increased at a rate higher than 50 percent from 1990 to 2000. But most counties are experiencing slow growth or decline, due in part to the large land areas occupied by national parks and recreation areas such as the Cherokee National Forest and Smoky Mountain National Park.

Tennessee also has the 4<sup>th</sup> fastest rate of land development in the U.S. according to the *1997 National Resources Inventory*. In the decade between 1982 and 1992 about four percent of the state's farmland was converted to urban uses.

In terms of economic development, Tennessee only slightly lags growth in the Southeast region but per capita income was only 88 percent of the average in the United States. And like the disparities in growth rates, incomes vary greatly from one county and region to another.

It is unsurprising, therefore, to find intense competition among local jurisdictions for growth that might improve local economic conditions, and to observe annexation conflicts among growing cities. In fact, the genesis of the growth policy act was only in part a concern over the rate and quality of growth; just as significant were worries over competition among jurisdictions over where and how much to grow.

The fractious and competitive nature of annexations was reflected in common practices such as "corridor" annexations that stretched out along highways to reach a specific property and annexations initiated by municipalities primarily to guard against perceived territorial intrusions by other municipalities. The first two statements of legislative intent in the Act speak to those concerns: (1) "To eliminate annexation or incorporation out of fear" (presumably to defend against other cities' annexation actions) and (2) "To establish incentives to annex or incorporate where appropriate." Thus the growth policy act could be viewed as an attempt to have cities establish, through state-mandated

interlocal cooperation, recognized areas of influence in which they could control future annexation to accommodate growth.

### **The Act's Requirements**

The act now referenced as Public Chapter 1101 (PC 1101) provides that all counties except three “metropolitan government” counties (unified city-county jurisdictions) are to establish coordinating committees to develop a recommended growth plan for the county and its municipalities. The committees are to be made up of representatives of the county, its municipalities, the largest utility systems, the county soil conservation district (to represent agricultural interests), the largest school system, the largest chamber of commerce, two members appointed by the county executive and two additional members appointed by the mayor of the largest municipality (to represent environmental, construction, and homeowner interests).

The committees are charged with identifying urban growth boundaries, planned growth areas, and rural areas for each municipality, taking into account proposals or advice submitted by municipal and county legislative bodies, planning commissions, and state, county, and local technical assistance services. The recommended growth plans, after two public hearings, were to be submitted for ratification by the county and municipal legislative bodies by January 1, 2000. Once ratified, the growth plans were to be submitted to the state’s Local Government Planning Advisory Committee, which, if it determines that the plan was locally ratified as required, “shall grant its approval” and forward a copy to the county executive.

Once a growth plan is approved, the Act provides that “all land use decisions made by the legislative body and the municipality’s or county’s planning commissions shall be consistent with the plan.” The plan is effective for three years, after which amendments can be proposed by municipalities or the county and the plan adoption process is repeated. The Act contains provisions for dispute resolution and judicial review in the event of plan rejection by any municipality or county.

The Act also requires establishment by interlocal agreement in each county of a joint economic and community development board. The board’s purpose is “to foster communication relative to economic and community development between and among governmental entities, industry, and private citizens.” The board’s activities are funded through a pro-rated assessment of each of the governments involved. Applications for state grants must be accompanied by a certification of compliance with this requirement.

**The Growth Plan:** PC1101 describes the purpose of a growth plan as directing the “coordinated, efficient, and orderly development of the local government and its environs that will ... best promote the public health, safety, morals and general welfare.” The goals of a growth plan are to:

- provide a unified physical design for community development;
- encourage compact and contiguous high-density development in urban and planned growth areas;

- establish an acceptable, consistent level of public services and community facilities;
- promote employment opportunities and regional economic health’
- conserve features of significant statewide or regional architectural, cultural, historical, or archaeological interest;
- protect life and property from effects of natural hazards;
- consider other matters that relate to or form an integral part of a plan for coordinated, efficient, and orderly community development;
- provide for a variety of housing choices, including affordable housing.

The Act requires a growth plan to at least include descriptions of municipal corporate limits, urban growth boundaries, planned growth areas, if any, and designated rural areas, if any, all approved as described in the previous section.

**Urban Growth Boundaries:** Every municipality must establish an urban growth boundary that identifies territory contiguous to the municipality, large enough and well-located to accommodate projected “high-density” growth for 20 years, within which the municipality is better able to provide urban services than other municipalities, considering the municipality’s duties to (1) facilitate full development of resources within the current municipal boundaries and (2) manage urban expansion outside of such boundaries while taking into account impacts on agricultural lands, forests, recreational areas, and wildlife management areas.

**Planned Growth Areas:** Counties may designate planned growth areas that meet the standards outlined above for municipal growth boundaries (except for contiguity with municipal boundaries). The county must consider and report on the likelihood that one or more planned growth areas will eventually incorporate as a new municipality or be annexed by a municipality.

**Rural Areas:** Counties may designate rural areas that are not within municipal urban growth boundaries or planned growth areas that, over the next 20 years, are to be preserved as agricultural lands, forests, recreational areas, wildlife management areas, or for uses other than high-density development, and that reflect the county's duty to manage growth and natural resources so as to minimize detrimental impacts to such areas.

**Incentives and Sanctions:** Upon approval of a growth plan by the Local Government Planning Advisory Committee, the county and the municipalities within it shall receive a five percent increase in any evaluation formula for distribution of grants for the Industrial Infrastructure and Industrial Training Service programs, Community Development Block Grants, state revolving fund loans for water and sewer systems, HOUSE or HOME grants, or low income tax credits and private activity bond authority. Counties and municipalities lacking approved growth plans after the due date will not receive grants and loans from Tennessee Housing Development Agency programs, Community Development Block Grants, Industrial Infrastructure and Industrial Training Service

programs, Intermodal Surface Transportation Efficient Act funds, or Tourism Development programs.

**Annexations and Incorporations:** Although the provisions relative to annexations and incorporations are complex, in general municipalities may not annex land outside an urban growth boundary except by amendment of the boundary or by referendum. New municipalities may only be incorporated within a planned growth area. Municipalities intending to annex territory must adopt a plan of services defining the services to be delivered and the timing of such services. Upon a petition by property owners, a county can contest the reasonableness of a plan of services and file suit in court to halt annexation.

### **Outcomes of the Act**

Most local governments acted with alacrity to the Act's requirement for submission of a growth plan. Of the 92 counties affected by the act, all but three have done so, many of them before the target date of July 2001. One of the three counties was given a one-year extension as it attempted to form a metropolitan government but is now expected to submit the required plan. The other two, Fayette and Polk counties, were unable to agree on growth plans and are engaged in the state mediation and court-arbitration process provided for in the Act.

The Tennessee Advisory Commission on Intergovernmental Relations (TACIR) was given responsibility for tracking implementation of PC1101. According to Kenneth Belliveau, Senior Research Associate at the Commission, some counties have done a “reasonable job” of responding to the Act’s provisions for planned growth. Generally, the counties experiencing strong growth pressures (which also have more staff resources and familiarity with planning processes) adopted good plans. But many of the counties submitted plans that reflected municipal fears that growth boundaries might stifle future growth. Their boundaries reached as far as possible in a virtual “land grab” that ignored the Act’s intent to designate areas reasonably needed and serviceable for urban-density development.

About a dozen counties in the rural Southeast section of the state laid out massive growth areas, even including large sections of state and national parks and forests in which development is extremely unlikely. Monroe County, for example, with a population of about 35,000 and four small towns, was projected to add no more than 5,000 residents by 2020, but chose to designate as rural areas only land within the Cherokee National Forest. The towns, occupying about five percent of the County’s land and projecting growth of about seven percent, drew growth boundaries encompassing large areas representing in all about a third of the county. The county designated the remaining land outside the National Forest as a planned growth area. This type of response by a number of counties, says Belliveau, was prompted in part by the pronouncements of an attorney who told anyone who asked that counties would be unable to approve subdivisions in areas not identified for growth.

However, even urban counties and cities with sizeable staff capacities and planning histories were inclined to designate planned growth areas and growth boundaries considerably larger than needed for a 20-year supply of developable land. In addition, the Act's call for compact, "high-density" development has mostly gone unrecognized. For example, in Rutherford County, an affluent, fast-growing suburban county outside Nashville, two cities drew very large growth areas that will promote further sprawl. In Shelby County around Memphis, the cities essentially carved up the county's territory among themselves. Lacking any power to examine the quality of growth plans, the Local Government Advisory Commission could only ascertain that the plans were legally adopted and then approve them.

Fundamentally, the Act has forced cities and counties to agree on the areas in which specific jurisdictions will control future development and annexation – not an insignificant achievement. In fact, Sam Edwards, Director of Regional Planning for the Greater Nashville Regional Council and active in formulating the Act, says the most important consequence of the Act was to make cities and counties work together, many for the first time. He claims that this experience widened their views and gave them a taste for local cooperation in addressing growth issues. In contrast, George Kangles, a Chattanooga REALTOR®, and Russ Farrar, Government Affairs Director for the Tennessee Association of REALTORS®, believe that the Act stimulated greater conflicts among jurisdictions that have increased rather than decreased interjurisdictional tensions. In addition, neither Farrar nor Kangles are prepared to say that the annexation goals of

the Act have been achieved, although the public officials interviewed for this report believe that the Act has significantly improved the annexation process.

It appears that the Act has not made much headway in encouraging cities and counties to plan more effectively for growth. Despite the Act's list of growth goals, it established no state control over the quality of planning and no process for evaluating plans. Edwards says that the Act was not intended to put the state in a position to force local plans to address consistent goals – essentially an unreachable objective in that legislature -- but rather provided a tool for cities and counties to use in grappling with growth. He says that leaving decisions on growth areas to the local governments “is both the blessing and damnation of the process.” Farrar says that the Act promoted “an inconsistent hodge-podge” of local policies for managing growth.

Still, Dan Hawk, Director of Planning Assistance for the Department of Economic and Community Development, views the Act as a first step in managing growth, what he calls “a work in progress.” Recognizing that the Act has no specific requirements for managing growth – in fact “growth” is undefined – Hawk points out that the majority of Tennessee is quite rural and that the requirements in the growth policy act were the most that could be done at the time. He believes that the mere existence of the Act has stirred local government officials to think more about managing growth. And clearing up the annexation process, he reminds us, is an important step toward growth management.

## Looking Ahead

PC 1101 provided for a three-year period before counties could request amendments of approved growth plans and the General Assembly has indicated a reluctance to entertain further growth management measures until that period elapses. Nevertheless, recognizing that that date is drawing near (before the end of 2002 for some counties), the TACIR published an assessment of the Act's implementation in June 2002, that draws attention to several areas of concern.<sup>1</sup> Chief among the concerns is the "adequacy of the growth plans in the context of the goals of minimizing sprawl." The report also raises questions about realizing the planning goals articulated in the Act and the extent to which growth plans will be viewed as expressions of local growth policy as local governments make planning and zoning decisions. Many of the officials interviewed for this report also cite the need for clarifying terms in the Act's provisions, such as "high-density development," and for counties and cities to buttress their plans with better data and analyses of potential growth needs.

Dan Hawk also indicates that some municipalities and interest groups may resort to court actions to enforce closer adherence to growth policy goals, although to date there has been no visible groundswell of support for broadening the Act, nor any hint of establishing a supportive entity such as the "1000 Friends" organizations in other states. However, Sam Edwards, on the public side, and Russ Farrar, on the real estate side, both believe that some cities and counties will propose amendments to their growth plans, re-starting the collaborative process to reach agreement on new growth plans. Edwards sees

that as a good thing, promoting further collaboration and consensus building among cities and counties. Farrar is less certain that re-opening discussions on city and county growth areas will be a positive step. He suggests that with lines already drawn on the map, changing them will be difficult and time-consuming, especially since the law calls for unanimous consent to a growth plan among the local jurisdictions.

There have been some hints that certain interest groups may press either for broadening the law, putting the state more in a leadership role to promote better local planning, or for scuttling the growth policy parts of the act. Farrar expects that a variety of bills will be introduced, pushing either side of the issue. He himself would like to see state mandates for more consistency among local plans. In any case, says Farrar, he will ensure that the Tennessee Association of REALTORS® will be prepared to take a role in formulating any legislative changes in the Act.

## **Conclusion**

Tennessee's growth policy act was seen by many followers of state growth management programs as a dramatic, unexpected event that appeared to place Tennessee firmly on the list of states mandating local attention to growth issues. Tennessee's borrowing of the ideas of growth boundaries and growth areas from states such as Oregon and Washington, respectively, suggested rather vigorous state promotion of local planning in the service of state goals. This report finds otherwise. While Tennessee has taken an

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<sup>1</sup> The Tennessee Advisory Commission on Intergovernmental Relations, *Tennessee's Growth Policy in 2001: Promises and Progress*. A Commission Report to the 102<sup>nd</sup> General Assembly, June, 2002, p. 1.

important step in defining a state interest in local planning, and has induced useful discussions and actions among local governments to plan for growth, its version of state leadership in improving the quality of local planning appears to be an almost toothless tiger.

Still, less than four years into implementation of the Act, the test will be how the state can build on this beginning. As the first act of Tennessee's growth policy drama is coming to a close, plenty of players are prepared to play a part in the second act, and the conclusion, if any, is years away.

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References:

The Tennessee Advisory Commission on Intergovernmental Relations website:

[www.utk.edu/~pc1101/](http://www.utk.edu/~pc1101/).

Senate Bill No. 3278, now Public Chapter 1101, commonly known as the "Growth Policy Act," enacted on May 1, 1998.

Telephone interviews with:

Kenneth Belliveau, Senior Research Associate, Tennessee Advisory Commission  
on Intergovernmental Relations (7/9/02)

Sam Edwards, Director of Regional Planning, Greater Nashville Regional Council  
(7/15/02 and 7/18/02)

Russ Farrar, Government Affairs Director, Tennessee Association of Realtors,  
Nashville (7/18/02)

Lee Ferguson, President, Corker Group (a development company), Chattanooga,  
(7/15/02)

Dan Hawk, Local Planning Assistant, Department of Economic and Community  
Development, Nashville and Knoxville (7/11/02)

George Kangles, Walldorf Property Management, Chattanooga, TN (7/15/02)