

Big Picture Questions Regarding Carter/Watson Deannexation Bill – HB779

1. As the concept of voter/owner initiated deannexation is new to this state and to the members of the General Assembly, would it not be prudent to carefully consider the laws of these 26 states as we craft our law? Shouldn't we attempt to learn from these other states so as to avoid making the same mistakes their laws were amended to avoid?

- 26 states permit voter/owner initiated deannexation in some form.
- Under Carter/Watson legislation, a petition of just 10% of the registered in the territory proposed for deannexation results in a referendum. If enacted, Tennessee law would include the lowest petition threshold in the country – most easily accomplished.
- The laws of 21 of the 26 states that allow for voter/owner initiated deannexation in some form provide either the city, the county, the courts or some combination thereof to make the final determination as to whether a petition for deannexation succeeds.
- If enacted, Tennessee would be the only state in the nation to allow only those voters residing within the proposed area of annexation to vote in a referendum and be the sole and final determinant in all questions of deannexation. Only 5 states allow voter/owner any petitions for referendum to proceed directly to a binding referendum. 3 of these states require that **all voters in the city** vote in the referendum. Just two states allow only those voters within the proposed area of deannexation to vote in the referendum and even then it is only in very limited circumstances.

2. Unlike the General Assembly, which is considering the issue of voter/owner initiated deannexation for the first time, TACIR studied this issue as part of its comprehensive review of the annexation laws and Public Chapter 1101. TACIR's report recommends permitting resident/owner initiated deannexations provided four conditions are satisfied: 1) The city has failed to provide the promised services; 2) The property or properties delineated must be the same as included in the original annexation ordinance ["go out as you came in"]; 3) The county commission approves the deannexation; and, 4) The deannexation does not create a donut hole. Yet, the Carter/Watson bill includes only one of TACIR's recommendations – the "go out as you came in" provision.

- Why did the sponsors not include TACIR's recommendation that the voters/owners of the territory must demonstrate that the city has failed to provide promised services as a condition for initiating deannexation?

During the debate on referendum, the failure of a city to provide promised services was the most frequent justification offered in support of eliminating annexation by ordinance or "forced annexation." The overwhelming majority of states that permit voter/owner initiated

deannexation include some restrictions, limits or conditions upon the eligibility of properties for deannexation under their laws.

For example, states' laws require minimum time to have elapsed since annexation or only permit deannexation of undeveloped and unplatted land. Other states' laws only permit qualifying agricultural land to be deannexed. And six states expressly provide that deannexation of territory must be based on the city's failure to provide services.

- Why did the sponsors not include TACIR's recommendation requiring approval of the county commission as a condition for initiating deannexation?

Twenty-one of the twenty-six states that allow voter/owner to initiate deannexation proceedings provide that the final determination regarding the question of deannexation is to be made by the city, the county, the courts or some combination thereof. However, the Carter/Watson bill allows questions of deannexation to be solely determined by the voters residing in the territory proposed for annexation, independent of any consultation or determination of the city, the county or the courts.

If voters are successful in securing deannexation through referendum, then all obligations, jurisdiction and services provided by the city to the affected area will cease. Consequently, the affected territory as well as its inhabitants and establishments will become the responsibility of the county. Thus, the county will have to provide police, fire and other emergency services in the area. The county will also have to maintain all streets, street lights and other infrastructure in the affected area. In addition, in those areas that were served by a city school system, the county will be responsible for educating children in the territory. The county will also have to implement planning, zoning and other land use requirements in this area. As such, it seems reasonable that the county should have an opportunity to determine whether it is willing and able to assume these responsibilities and all costs that are necessarily inherent in these additional responsibilities related to the affected territory. Therefore, it seems the bill should afford an affected county the opportunity to either approve or reject the receipt of the territory.

Moreover, the bill already provides that a city must secure the approval of the county commission in order to deannex as little as 10 feet of a street or a 25-foot bridge. The reason cited for this provision is the need to give the county approval because of the potential for new costs. Yet, this same bill allows residents of entire subdivisions to remove themselves from the city and become the responsibility of the county without any input from the county commission. Would the county's concerns not be greater with respect to deannexation of entire subdivisions and/or numerous tracts of land that include multiple streets, street lights, and other public improvements than the deannexation of a portion of a single road? Therefore, if the potential burden associated with the deannexation of a portion of a street warrants county commission approval, then surely deannexation of entire neighborhoods warrants county commission approval.

- Why did the sponsors not include TACIR's recommendation that provides that any deannexation may not result in the creation of a donut hole?

Should the method of deannexation proposed under this legislation be permitted if it results in the creation of donut holes that leave some incorporated areas disconnected from the incorporated limits? Or, conversely, should this method of deannexation be available only to those properties contiguous to the incorporated boundary of the city?

The problems associated with donut holes is well documented as frustrations regarding the confusion among the residents as well as the inefficiencies and ineffectiveness with respect to the provision of public services in donut holes, especially with regard to the provision of emergency services and road and infrastructure maintenance.

It should be noted the potential for problems and frustrations associated with donut holes has led twelve of the twenty-six states to expressly prohibit any deannexation unless the territory either comprises the boundary of a municipality or does not result in the creation of a donut hole. It is also undoubtedly a factor in another eight states choosing to permit deannexation only of properties that are undeveloped, unplatted or agricultural and meet certain minimum acreage requirements.

Moreover, what happens if territory proposed for deannexation includes one or more of the following city facilities or buildings:

- Fire station
- Police station
- City school
- City park, bike path or greenway
- City library
- City recreational facility
- Other city building or facility

One may deannex territory but how does one propose to deannex city taxpayer's ownership interest in property located within the territory?

If the city owns property and it is rendered irrelevant, ineffective or its value to city residents is otherwise harmed by the mere fact that it is no longer located within the incorporated limits or in a location from which it is logical to continue to efficiently and effectively serve the city residents, then how are the city taxpayers to be compensated? Should the city taxpayers be compelled to build a new facility to replace the one that is no longer within the incorporated limits and no longer in a location in which it is efficient and cost effective to serve the city residents that remain in the incorporated limits?

Should the city be expected to simply abandon the property? Should the county be required to purchase the building or facility from the city? Should the city taxpayers be required to donate the building or facility to the county?