

Amending Charters

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Amending Charters

Reference Number: MTAS-160

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Amending General Law Charters

Reference Number: MTAS-334

To amend a charter in a general law city, the legislature must pass a public act amending the statute. In order for the legislature to consider a proposed amendment, there must be general agreement (or at least no major disagreements) among most of the cities operating under that charter. If there is not agreement, the legislature is not likely to pass a general law amendment.

Amending Home Rule Charters

Reference Number: MTAS-298

Home Rule Charter Municipalities Amend Their Own Charters

Home rule charter municipalities in Tennessee are peculiar — they amend their own charters. Amendment Number 7 of the 1953 amendments to the state constitution prohibits the General Assembly power to pass general laws governing home rule municipalities and says that no charter shall be inconsistent with the general law (except with respect to employee compensation).

The Home Rule Charter Amendment Referendum

Home rule municipalities amend their charters by local referendum. Amendment Number 7 provides three ways amendments to home rule charters are proposed and formulated for submission to voters in a referendum:

- By passage of an ordinance by the governing body of the municipality;
- By a charter commission established by an act of the General Assembly and elected by the qualified voters of the home rule municipality; or
- By a charter commission of seven members chosen at large (not more than once every two years) in a municipal election held pursuant to a petition of not less than 10 percent of the voters of the home rule municipality voting in the latest general municipal election.

The 14 home rule municipalities usually use the first method, by ordinance of the municipal governing body, to propose charter amendments for referendum. The second method has never been used, and the third method apparently has been used only rarely.

The referendum on adopting the proposed charter amendment must be held during the first general state election falling at least 60 days after publication of the proposed charter amendment. T.C.A. § 6-53-105. In addition, T.C.A. § 2-3-204 requires that the election commission must be notified of a referendum between 75 and 90 days prior to the election. A general state election is apparently either the primary election in August or the following general election in November, both of which are held every even-numbered year. That definition restricts referendums on charter changes in home rule municipalities to once every two years at fixed times. To pass the proposed charter amendment, a majority vote from those voting on the question is required, not a majority of those voting in the election in which the question was presented to the voters.

Amending Private Act Charters

Reference Number: MTAS-297

1. Figure out precisely what charter provisions are to be changed. This step is important because one change may require amending more than one provision of the charter to ensure that the charter is consistent. Changing one provision may affect other provisions. This step requires reading the whole charter to make sure you have not skipped anything that needs changing.

2. Clear the proposed change with your state legislative delegation. All private act and general law charter changes require the approval of the Tennessee General Assembly, but the General Assembly will rarely interfere with amending private acts as long as they have the unanimous support of the local legislative delegation. Its attitude is usually, "Let locals take care of local business." But if you decide to sneak or ram your private act through the General Assembly in the teeth of opposition from any member of your legislative delegation, do not bet more than you can afford to lose that the act will make it.

3. Adopt a resolution containing the proposed charter change and ask a member of your legislative delegation to introduce the change in the General Assembly. The part of the resolution containing the proposed change should be in letter perfect form and should specify exactly what and where the charter should be amended.

Be sure to include in the proposed change the method of local approval of the private act. Amendment Number 6 of the 1953 amendments to the Tennessee State Constitution requires private acts to be approved in one of two ways:

- By a two-thirds vote of the entire membership of the municipal governing body, or
- By a majority vote in a referendum held on the question of approval of the private act.

4. Give the resolution to your legislative delegation within the time frame it prescribes and check from time to time on its introduction and movement through the Tennessee General Assembly.

Getting the proposed private act to your legislative delegation on time is essential. This gives the General Assembly adequate time to pass the act before it adjourns. Most legislative delegations want the proposed private act at least 30 days before the date set for adjournment of the General Assembly. That date usually can be determined (approximately) by checking with your legislators. Once the proposed private act is in the hands of the General Assembly, its journey through the legislative process is relatively certain and speedy. After passage by the General Assembly, the proposed private act goes to the governor for signature, which usually is a formality.

5. Read the private act when it comes back to you after its passage by the General Assembly and its approval by the governor. Your proposed private act goes through certain steps after it leaves your hands and before it actually goes to the General Assembly for a vote, including a check for proper language and form. Most of the time, any changes made in a proposed private act during those steps are beneficial. However, occasionally something is added or taken out of an act that substantially alters its meaning. Make sure that what came out of the General Assembly is what you thought went in.

6. Obtain approval of the proposed private act by whatever method is prescribed in the act and submit evidence of approval to the Tennessee secretary of state. As pointed out earlier, private acts requiring approval by referendum are regularly rejected by the voters. Some get exactly what they deserve from a well-informed electorate, which knows a clunker when it sees one. But a major reason good acts meet the same end is that they frequently do not receive the intense support they need from the individuals and groups interested in their passage.

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