



# Legislative UPDATE

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Number 33

## **Special Session Update: Quorum Achieved & Governor Adds Preemption of COVID-19 Vaccine Mandate to Call**

A quorum in the Texas House was achieved late last week ending a six-week hiatus. This opened the door for legislation that had previously passed the Senate and other House bills to move forward in the legislative process. With only two weeks left of the second-called special session, House committees met immediately, and the first House floor calendar was set for Thursday, a week after a quorum was established.

On Wednesday, Governor Abbott issued [GA-39](#), prohibiting governmental entities from compelling an individual to receive a COVID-19 vaccine regardless of full FDA approval, among other things. More information on the executive order can be found in the COVID-19 Update, below. In the executive order, the governor stated his intention to add this topic to the special session. In a [message](#) to the legislature, the governor added the following to the call:

Legislation regarding whether any state or local governmental entities in Texas can mandate that an individual receive a COVID-19 vaccine and, if so, what exemptions should apply to such mandate.

It is important to note that only legislation included on the [governor's call](#) can be considered by the legislature during a special session. However, this does not prevent legislators from filing bills on other topics. The League continues to summarize all city-related bills filed each week, and you can find the full list of those summaries [here](#).

## **Bills on the Move**

[2S.B. 1 \(Hughes\)](#), relating to election integrity and security. Passed to third reading.

[2S.B. 8 \(Bettencourt\)](#), relating to homestead exemptions. Passed to third reading.

[2S.B. 14 \(Creighton\)](#), relating to employment practices. Voted from House State Affairs.

## **Texas Joins \$21 Billion Opioid Settlement**

Attorney General Ken Paxton recently [announced](#) that Texas joined the \$21 billion distributor opioid settlement. Texas, along with a broad coalition of states and subdivisions, reached final agreements with four companies to resolve legal claims for their role in the opioid crisis. One agreement is with opioid manufacturer Johnson & Johnson. The other is with three major pharmaceutical distributors: AmerisourceBergen, Cardinal Health, and McKesson. The settlement includes up to \$1.1 billion awarded to Texas and its political subdivisions, including cities.

Local governments need to join the settlement by **January 2, 2022**, in order to maximize the benefits of the settlement. Funding received under the settlement will be used to support opioid abatement strategies. More information, including the steps necessary to formally join the settlement, can be found [here](#).

## **Stay Engaged: Grassroots Involvement Program**

During the special session, Texas cities will face many challenges and opportunities. TML will need to mobilize our membership at key points during special session. The Grassroots Involvement Program (GRIP) is one way to do so. Our GRIP survey focuses on a variety of items including your areas of expertise and involvement with other professional organizations. Most importantly, the GRIP survey asks how well you know various state legislators and if you are willing to communicate with those legislators during the session.

If you have a relationship with your legislator(s) or want to be more involved during session, please take the time to complete the [GRIP survey](#). Past efforts have proven that such participation is a highly effective tool.

We ask that you complete the survey as soon as possible.

## **COVID-19 Update (No. 200)**

The COVID-19 Update turns 200. No one is excited about this. Let's try not to reach 300. All pandemic-related updates continue to be found in the [Legislative Update Newsletter](#).

- **Pfizer-BioNTech Vaccine Receives Full FDA Approval:** On Monday, August 23, the [U.S. Food and Drug Administration approved the Pfizer-BioNTech COVID-19 vaccine](#) for prevention of COVID-19 in individuals 16 years of age and older. The Pfizer-BioNTech Vaccine had been previously available under an [emergency use authorization](#) (“EUA”) and remains approved under an EUA for individuals between 12 and 15 years of age.

At the time of its announcement, this development was significant for Texas cities, considering the language in Section 2 of GA-38 which states that, “No governmental entity can compel any individual to receive a COVID-19 vaccine *administered under an emergency use authorization*.” When GA-38 was issued on July 29, the three COVID-19 vaccines available in the United States were being administered under EUAs. With the full approval of Pfizer-BioNTech’s vaccine, there was then at least one COVID-19 vaccine which fell outside the prohibitions of the governor’s order. (The COVID-19 vaccines from [Moderna](#) and [Janssen Biotech/Johnson & Johnson](#) remain authorized under EUAs.)

But not so fast, my friends! As with everything COVID-related, the landscape shifted quickly, as discussed immediately below.

- **Governor Abbott Issues New Executive Order:** Partly in response to the FDA’s full approval of the Pfizer-BioNTech COVID-19 vaccine, on August 25, Governor Abbott issued [Executive Order No. GA-39](#). This Order is a restatement of Section 2 of GA-38 (discussed above), with the phrase “administered under an emergency use authorization” removed. Ultimately, GA-39 negates the effect that full FDA approval of a COVID-19 vaccine would have on a city’s ability to mandate vaccines as a prerequisite to receiving services or entering city facilities.

**Mask Mandate Update: Legal Battle Continues:** The fight over masking requirements took a predictable turn this week. [Recall](#) that last Monday a district court in Bexar County [granted a temporary injunction](#) blocking the enforcement of certain sections Governor Abbott’s [Executive Order No. GA-38](#) (“GA-38”). The Attorney General (“AG”) appealed to the 4<sup>th</sup> Court of Appeals in San Antonio, requesting a stay of the temporary injunction.\* Ultimately, the court did not grant the AG his requested relief and [instead reinstated the temporary injunction](#), blocking enforcement of certain sections of GA-38. This decision has been appealed to the Texas Supreme Court, which has yet to make a ruling.

Similar cases over mask mandates are also being litigated in district courts in Dallas and Travis Counties, and those cases are at stages slightly behind the Bexar County case detailed above. This past Tuesday, the trial court in [Dallas held a five-hour hearing](#)

concerning the Dallas County’s request for a temporary injunction prohibiting the enforcement of portions of GA-38. The judge in that case has yet to rule, but a decision is expected any day. In the case of the three Travis County temporary restraining orders being challenged by the AG, on August 19, the [Texas Supreme Court rejected an appeal](#) on a procedural technicality, and no further appellate rulings have been issued in those cases.

\*On a procedural note, under the applicable rules of procedure, the filing of the Notice of Appeal by the AG automatically suspended the temporary injunction, which is why the appellate court had to “reinstate” it.

- **Open Meetings Act Reminder:** In March 2020, as Texans worked to mitigate the spread of COVID-19, Governor Abbott’s office granted the attorney general’s request to suspend certain open-meeting statutes in an effort to reduce in-person meetings that assemble large groups of people. [These suspensions will lift at 12:01 a.m. on September 1, 2021](#), and all provisions of the Open Meetings Act will be, once again, effective. Therefore, all Texas governmental bodies subject to the Open Meetings Act must conduct their meetings in full compliance with the Open Meetings Act as written in state law. TML will continue to monitor this situation and will update this space as needed.

TML maintains a webpage of OMA-related information that can be found [here](#). Additionally, the Texas Attorney General has an [Open Meetings Act training page](#), which has a useful video overview of Texas open meetings requirements.

- **American Rescue Plan Act Funds:** The state of Texas received the first tranche of ARPA funds from the U.S. Treasury, and TML is hearing from cities that are beginning to receive the first half of their allotted ARPA/CLFRF funds.

Keep in mind that “non-entitlement units of local government” (NEUs are generally cities under 50,000 population) must register with the [Texas Division of Emergency Management](#) (“TDEM”) to receive ARPA funds. TDEM maintains its [Coronavirus Local Fiscal Recovery Fund FAQ](#) which includes a link to the [CLFRF Timeline Check-in document](#) and step-by-step instructions on registering your city with the [TDEM Grant Management System](#). Cities serving a population over 50,000 need to [apply for funding directly to the U.S. Treasury](#). If your city has not yet registered but wants to participate in the ARPA funding opportunities, register now. TDEM has also [updated its CLFRF page](#) with allocation information, spreadsheets and maps that could be useful.

- **ARPA FAQs:** The U.S. Treasury Department’s Coronavirus State and Local Fiscal Recovery Funds FAQ contains a number of questions and answers related to eligibility for recovery funds and eligible uses of recovery funds. The entire FAQ can be accessed [here](#).

The National League of Cities also maintains an ARPA-related FAQ which can be found [here](#).

**Reminder:** TML Coronavirus materials are archived by date [here](#) and by subject [here](#).

## **City-Related Bills Filed**

### **Public Safety**

**2H.B. 222 (Holland)** – **Border Operations Training Program**: would, among other things, provide that the Department of Public Safety, in coordination with local law enforcement agencies, shall establish and administer a border operations training program for peace officers employed by local law enforcement agencies that will prepare the officers to: (1) collaborate and cooperate with and assist any law enforcement agency in the interdiction, investigation, and prosecution of criminal activity in the Texas-Mexico border region; and (2) collaborate and cooperate with and assist district attorneys, county attorneys, the border prosecution unit, and other prosecutors in the investigation and prosecution of allegations of criminal activity in the Texas-Mexico border region.

### **Elections**

**2H.B. 185 (Hefner)** – **Voting Systems**: would: (1) define “embedded software” as programmable instructions provided on software that is delivered with voting system equipment or with a replacement part for that equipment for the purpose of equipment operation, including all relevant patches and fixes made by the original equipment manufacturer of the voting system equipment or replacement part for that purpose; and (2) require, beginning September 1, 2021, a voting system to have all software used in the voting system be developed and operated entirely within the United States and all hardware used in the voting system, if manufactured outside the United States, be delivered to the United States without any embedded software installed.

**2H.B. 211 (Swanson)** – **Home-Rule City Ballot Propositions**: would:

1. require a proposition proposing an amendment to a city charter or a voter-initiated initiative or referendum as requested by a petition to use wording identical to the caption of any corresponding petition;
2. authorize a qualified voter of a home-rule city to seek from the court a writ of mandamus to compel the governing body of the city to comply with Number 1, above;
3. authorize a court to award a petitioner who substantially prevails in an action described by Number 2, above, the party’s reasonable attorney’s fees, expenses, and court costs, and waive and abolish governmental immunity to suit and liability to the extent liability is created;
4. establish a procedure by which the governing body of a home-rule city or a qualified voter of the home-rule city may file a complaint with the secretary of state alleging that a caption is invalid because it does not identify the proposed measure by its chief features, describing its character and purpose with such definiteness and certainly that voters are not misled;
5. require the secretary of state to review a caption alleged to be invalid not later than the seventh day after the date the secretary receives the complaint, and, if the secretary of state

- determines the caption is invalid, the secretary of state shall modify the caption and provide the modified caption to the home-rule city for use as a ballot proposition;
6. provide that in modifying a caption under Number 5, above, the secretary of state must seek input from persons who signed or circulated the petition;
  7. with regard to a petition filed in connection with an election: (a) require the petition to contain or have attached a caption for the proposed measure; (b) require the caption to identify the proposed measure by its chief features, describing its character and purpose with such definiteness and certainty that voters are not misled; and (c) provide that unless the caption is modified under the procedure described in Number 4, above, the governing body of a home-rule city shall proceed with an election requested by a petition despite a complaint that the petition violates (b), above, and in doing so shall comply with all ordinary timelines and requirements for such an election;
  8. provide that the illegibility of a signature on a petition submitted to a home-rule city is not a valid basis for invalidating the signature if the information provided with the signature legibly provides enough information to demonstrate that the signer is eligible to sign the petition and signed the petition on or after the 180th day before the date the petition was filed;
  9. require the SOS to: (a) adopt a standard petition form for petition-initiated elections; and (b) publish the form and instructions for using the form on the secretary's Internet website;
  10. provide that, notwithstanding any other law, including a city charter, a city may not require the submission of information on or with a petition that the standard petition form published by the secretary of state does not provide for or require to be provided;
  11. provide that a person who circulates or submits a petition is not required to use a petition form prescribed by the SOS or a home-rule city, but that a petition that does not use an officially prescribed form must contain the substantial elements required to be provided on the officially prescribed form;
  12. without regard to charter provisions to the contrary: (a) require that the city secretary determine the validity of a petition, including verifying the petition signatures, not later than the 30th day after the date the city receives the petition; and (b) prohibit a city from restricting who may collect petition signatures;
  13. provide that a home-rule city may repeal a charter amendment adopted by a petition-initiated election only by a petition-initiated election held for the specific purpose of repealing the amendment; and
  14. prohibit a city from repealing a charter amendment adopted by a petition-initiated election by adopting a new or revised city charter; and
  15. clarify that the governing body of a city must submit a proposed charter amendment to the voters for their approval at an election if the submission is supported by a petition signed by a number of qualified voters of the city equal to at least five percent of the number of qualified voters of the city on the date of the most recent election held throughout the city, or 20,000, whichever number is smaller.

**2H.B. 213 (Bucy)** – **Voter Identification**: would provide that the following documents are acceptable forms of photo identification for purposes of voting: (1) an official Native American identification card or tribal document that contains the voter's photograph and address; (2) an

identification card issued by a public or private institution of higher education in Texas that contains the voter's photograph; and (3) an identification card issued by a state agency that contains the voter's photograph.

**2H.B. 214 (Bucy)** – **Early Voting**: would, among other things, provide that: (1) the authority ordering an election may order early voting by personal appearance to be conducted during an early voting period extended from the fourth day before election day for any number of consecutive days up to and including the day before election day; and (2) an authority that extends early voting under (1), above, shall order personal appearance voting at the main early voting polling place to be conducted for at least 12 hours on any weekday or Saturday and for at least five hours on any Sunday of the extended early voting period.

**2H.B. 215 (Bucy)** – **Early Voting by Mail**: would, among many other things, authorize early voting by mail for any qualified voter and provide for implementing procedures. (Companion bill is **2S.B. 40** by **Menéndez**.)

**2H.B. 216 (Bucy)** – **Changing Residence**: would, among other things: (1) provide that an election officer serving a polling place shall be a deputy voter registrar and shall have the same authority as a regular deputy registrar; (2) provide that, after changing residence to another county, a person must be accepted for provisional voting if: (a) the person would have been eligible to vote in the county the person formerly resided in on election day if the person was still residing in that county; (b) the person is registered to vote in the county the person formerly resided in at the time the person offers to vote in the county the person currently resides in or submitted a voter registration application in the county the person currently resides in; (c) the person's voter registration for the county the person currently resides in is not effective on or before election day; and (d) in the county the person currently resides in, the person offers to vote: (i) at any polling place during the early voting period; (ii) at any polling place on election day if the county participates in the countywide polling place program; or (iii) at the polling place of the precinct in which the person resides on election day if the county does not participate in the countywide polling place program; and (3) require the form for a provisional voting affidavit to include a space for entering the precinct number of the precinct in which the voter voted and the name of the county in which the voter is registered to vote. (Companion bill is **2S.B. 73** by **West**.)

**2H.B. 217 (Bucy)** – **Election Database**: would, among other things: (1) require the secretary of state to post on the secretary of state's public Internet website a database containing election information provided by each authority responsible for giving notice of an election, (2) require a city that gives notice of an election to deliver to the county, in January of each year, information for the secretary of state's database of election information in an electronic format; (3) provide that the secretary of state's database include the following information about the office of mayor or a position on the city council: (a) name; (b) office title, including any district, place, or position and a notation that the person is an incumbent; (c) if the office is elected at large or by district; (d) date of the previous and next election for the office; (e) public mailing address; (f) public telephone number, if available; and (g) public email address, if available; (4) provide that the secretary of state's database include the following information about a candidate for the office of mayor or a position on the city council: (a) name; (b) office sought, including any district, place, or position; (c) if the office is elected at large or by district; (d) date of the election; (e) public mailing address;

(f) public telephone number, if available; (g) public email address, if available; and (h) if the candidate has filed as a write-in candidate; and (5) require a political subdivision to provide information about a candidate or officeholder to the county in which the political subdivision is located and the county shall forward that information to the secretary of state.

**2H.B. 219 (Bucy)** – **Voter Registration**: would, among other things: (1) require the voter registrar to appoint at least one election officer serving each polling place as a regular deputy registrar; and (2) provide that a person may register to vote at a polling place at which the person would be allowed to vote if the person submits a voter registration application, presents adequate proof of identification, and submits an affidavit stating the person is eligible to vote and voting only once in the election on the day the person offers to vote.

**2H.B. 220 (Bucy)** – **Early Voting by Mail**: would, among other things, provide that a voter voting by mail based on the ground of absence from the county of residence may elect to receive the balloting materials by electronic transmission on the voter’s application for an early voting ballot to be voted by mail.

**2H.B. 221 (Bucy)** – **Accommodating Disabled Voters**: would, among other things: (1) require an election officer to give voting order priority to individuals with a mobility problem that substantially impairs the person’s ability to move around; (2) require the posting, in an accessible manner, of all procedures and accommodations related to voting available for voters with disabilities on the county clerk’s Internet website; (3) require that a polling place have two parking spaces reserved for the use of a voter with disabilities; (4) require that each parking space must be clearly marked with a sign indicating that the space is reserved for use by a voter who is unable to enter the polling place and displaying, in large font, a telephone number that a voter may call or text to request assistance from an election official at the polling place; (5) define “tactile marking” as a method of identifying certain materials based on touch, and includes a hole punch, a cut corner, or a tactile sticker; (6) require the secretary of state to implement a program to allow a voter eligible for early voting on the ground of disability to remotely receive and mark an early voting ballot to be voted by mail using assistive technology equipment; (7) require a voter receiving and marking a ballot using tactile marking to print the marked ballot and return it in a manner provided by the Election Code; (8) require the early voting clerk to provide an official ballot envelope and carrier envelope to the voter by mail, which must include tactile markings to help the voter identify and distinguish between the envelopes; and (9) provide that a ballot may not be rejected under on the sole basis that: (a) the marked ballot is printed on regular paper; or (b) the voter’s signature is not in the correct location on the carrier envelope, if the voter’s signature is clearly visible and determined to be the signature of the voter.

**2H.B. 224 (Bucy)** – **Election Day Holiday**: would designate the first Tuesday after the first Monday in November of an even-numbered year as a state holiday. (Companion bill is **2S.B. 75** by West.)

**2S.B. 82 (Hall)** – **Inapplicability of Federal Law to State and Local Elections**: would, among other things, provide that a federal election is a separate election from any other election in Texas, and that, to the extent feasible, a federal election and a state or local election shall be held separately and concurrently using the same precincts and polling locations.



## **Other Finance and Administration**

**2H.B. 187 (Cain)** – **Universal Basic Income:** would: (1) provide that “guaranteed universal basic income” means unconditional cash grants of equal amounts issued on a regular basis to individual residents of a political subdivision, and includes a basic income, monthly income, or minimum income paid to each individual resident of the political subdivision without regard to the individual’s circumstances; and (2) prohibit a political subdivision from adopting or enforcing an ordinance, order, or other measure providing for a guaranteed universal basic income.

**2H.B. 191 (Noble)** – **Abortion:** would: (1) provide that a governmental entity may not enter into a taxpayer resource transaction, appropriate money, or spend money to provide to any person logistical support for the express purpose of assisting a woman with procuring an abortion or the services of an abortion provider; and (2) authorize the attorney general to enjoin a violation of the prohibition in (1).

**2H.B. 194 (Dominguez)** – **Emergency Notices:** would provide that a governmental entity, including a city, shall post in a prominent location on the home page of the entity’s Internet website: (1) each emergency notification issued by the entity; and (2) any other official notice issued by the entity, including notices regarding the entity’s ability or inability to provide services the entity normally provides to the public.

**2H.B. 207 (Oliverson)** – **Land Development Applications:** would provide that, unless specifically authorized by state law, a city planning commission or the governing body of the city may not: (1) require a person to fulfill any prerequisites or conditions or obtain any approvals before the person files a copy of a plan or plat with the city planning commission or governing body; (2) delay the starting date for calculating any applicable timeframe to approve or disapprove a plan or plat by not considering the date the plan or plat was filed as the starting date; or (3) refuse to accept, acknowledge, process, or act on a filed copy of the plan or plat. (Companion bill is **2S.B. 84** by **Hughes**.)

**2H.B. 209 (White)** – **Value Added Tax:** would, among other things, repeal local sales and use taxes and authorize a political subdivision that was authorized to impose a sales and use tax to impose a value added tax not to exceed two percent.

**2S.B. 84 (Hughes)** – **Land Development Applications:** would provide that, unless specifically authorized by state law, a city planning commission or the governing body of the city may not: (1) require a person to fulfill any prerequisites or conditions or obtain any approvals before the person files a copy of a plan or plat with the city planning commission or governing body; (2) delay the starting date for calculating any applicable timeframe to approve or disapprove a plan or plat by not considering the date the plan or plat was filed as the starting date; or (3) refuse to accept, acknowledge, process, or act on a filed copy of the plan or plat. (Companion bill is **2H.B. 207** by **Oliverson**.)

## **Utilities and Environment**

**2H.J.R. 25 (Huberty)** – **Utility Reliability Funding**: would amend the Texas Constitution to, among other things: (1) establish the State Utilities Reliability Fund to be administered by the Texas Water Development Board and used only to support projects to enhance the reliability and resiliency of water, electric, and natural gas utilities, broadband providers, and power generation companies in this state, including projects to weatherize facilities and reduce demand; (2) establish the State Utilities Reliability Revenue Fund to be administered by the Texas Water Development Board and used only for the purpose of providing financing for projects that enhance the reliability and resiliency of water, electric, and natural gas utilities, broadband providers, and power generation companies, including by supporting projects to weatherize facilities and reduce demand. (See **2H.B. 181**).

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