



Legislative UPDATE

September 3, 2021
Number 34

Bills Effective September 1

Hundreds of new Texas laws that passed the 87th Legislature went into effect on September 1, including more than 200 city-related bills. Several require some city action. The League has prepared articles (some including papers or Q&As) on city-related bills that went into effect immediately upon passage, or on September 1. Links to those articles are listed below.

[S.B. 2](#): Public Utility Commission and ERCOT Reform

[S.B. 3](#): Utility Preparedness

[S.B. 6](#): Pandemic-Related Liability Protections

[S.B. 22](#): Workers' Compensation "Disease Presumption" to Include COVID-19

[S.B. 24](#): New Pre-Employment Screening Procedures for Law Enforcement Agencies

[S.B. 157](#): Eminent Domain Reporting

[S.B. 374](#): Contiguity of Roads for Annexation

[S.B. 475](#): Regional Cybersecurity Working Groups

[S.B. 877](#): Building Inspections

[S.B. 968](#): Responding to Disasters

[S.B. 1090](#): Building Materials, Revisited

[S.B. 1359](#): Mental Health Leave for Police Officers

[S.B. 1438](#): Property Tax Rate Calculation Following a Disaster

[H.B. 5](#): Statewide Broadband Office
[H.B. 692](#): Public Works Contracts
[H.B. 872](#): Utility Customer Information May Not Be Disclosed
[H.B. 1082](#): Personal Information of Elected Officers Is Confidential
[H.B. 1118](#): Mandated Cybersecurity Training
[H.B. 1281](#): Golf Carts
[H.B. 1475](#): Grounds for Zoning Variances Expanded
[H.B. 1925](#): Statewide Public Camping Ban
[H.B. 1927](#): Constitutional or Permitless Carry
[H.B. 1929](#): ETJ Development Agreements
[H.B. 2073](#): Paid Quarantine Leave for First Responders
[H.B. 2404](#): Chapter 380 Agreement Reporting
[H.B. 3853](#): Middle Mile Broadband Service
[H.B. 4492](#): Financing for the Electric Market

All city-related bills that passed are summarized by category in the June 11 [wrap-up edition](#) of the Legislative Update.

Additional Post-Session Update: “Constitutional” or “Permitless Carry in Meetings”

City officials should be aware that some now argue that H.B. 1927, the so-called “constitutional” or “permitless” carry bill that became law on September 1, 2021, no longer allows a city to prohibit licensed carry during an open meeting. The bill, known formally as the “Firearm Carry Act of 2021,” authorizes most Texans over 21 years of age to carry a handgun in a concealed manner or openly in a holster, without the requirement to first obtain a handgun license.

H.B. 1927 does not repeal licensed carry, and the argument heard by League staff relates to licensed handgun carry in the room where a body subject to the Open Meetings Act is taking place. For unlicensed carriers, this is an outright ban; for license holders only, the League maintains that this is an optional prohibition. An unlicensed carrier is prohibited from carrying a handgun into the room or rooms where a meeting of a governmental entity is held, if the meeting is an open meeting subject to the Open Meetings Act, and if the entity provided notice as required by the Open Meetings Act. A license holder isn’t prohibited from carrying into a meeting described above, unless the entity provides notice that doing so is prohibited using a Penal Code 30.06 and/or 30.07 sign. Id. § 46.03(a)(14); 46.15(b)(6); 30.06; & 30.07.

Some now argue that the legislation allows license holders to carry into a local government’s meeting by right. In other words, they argue that the local government no longer has the option to provide notice that doing so is prohibited using a Penal Code 30.06 (concealed carry) and/or 30.07 (open carry) sign. That interpretation has not yet been tested through the attorney general’s investigatory process, a formal attorney general opinion, or in court.

For a full description of the new law, including a discussion of local government facilities where carrying of a handgun is authorized or prohibited, city officials can access the [Cities and Firearms](#) paper on the TML website, along with the [cheat sheet version](#) of the larger paper.

ERCOT Requests Order from PUC for Winter Storm Financing

The Electric Reliability Council of Texas (ERCOT) is requesting an [order](#) from the Public Utility Commission (PUC) under H.B. 4492 for financing to address extraordinary costs incurred by ERCOT and market participants because of Winter Storm Uri. The League [previously reported](#) on H.B. 4492.

There is another proceeding before the PUC for entities to opt out of the financing order [here](#). Entities interested in participating in the proceedings should speak with their city attorney to determine the best way to proceed.

TCEQ Sends Letter to Water Utilities for Preparedness Plan

If your city has a municipally owned water utility (MOU), the MOU probably received a letter from the Texas Commission on Environmental Quality (TCEQ) informing the MOU it must adopt an emergency preparedness plan (EPP) required by S.B. 3. The League [previously reported](#) on S.B. 3.

S.B. 3 codified section 13.1394 of the Texas Water Code. It requires all water systems located outside of Harris and Fort Bend Counties with residential customers or that provide overnight accommodations at their facility to provide water service with a minimum of 20 psi during an extended power outage lasting 24 hours or more.

TCEQ has created an [Emergency Preparedness Plan Homepage](#) that includes [a template](#) for MOUs to use in developing their EPPs. MOUs have fourteen options in the form to ensure compliance with the requirements of section 13.1394. An MOU must submit its EPP to TCEQ for review by **March 1, 2022** and implement the plan by **July 1, 2022**.

An MOU can apply for an extension of the deadlines and/or a waiver of the EPP requirement. An MOU seeking a waiver of the EPP requirement should review the [Emergency Preparedness Plan Homepage](#) as well as [this TCEQ guidance](#) on the waiver. Requesting a waiver will not extend the deadline to submit an EPP.

Post-Session Update: Public Works Contracts

[H.B. 692](#) became effective June 15, 2021. The bill addresses retainage used in contracts for public works projects. “Retainage” is defined to mean the part of a public works contract payment

withheld by a city to secure performance of the contract. The bill limits the amount of retainage for certain public works projects and governs when retainage may be withheld and how it must be handled in case of a dispute. A more detailed summary of the bill is available [here](#). The League's [Procurement Made Easy](#) publication will soon be updated to reflect this and other purchasing bills.

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](#).

Bills on the Move

[2S.B.1 \(Hughes\)](#), relating to election integrity and security. Sent to Governor.

[2S.B. 8 \(Bettencourt\)](#), relating to homestead exemptions. Sent to Governor.

City-Related Bills

Elections

[2H.B. 235 \(Burrows\)](#) – **Charter Amendments**: would require the ordinance ordering a charter election to provide for the election to be held on the earlier of the first authorized uniform election date prescribed by the Election Code, the date of the next municipal general election, or the date of the next presidential general election.

[2H.B. 241 \(Klick\)](#) – **Voting Systems**: would, among other things, prohibit a voting system from being used in an election unless the voting system requires a person seeking to vote by personal appearance, before the person may access the ballot, to confirm that the person: (1) is a United States citizen; (2) is a resident of the county in which the person seeks to vote; (3) has not been determined by a final judgment of a court exercising probate jurisdiction to be partially or totally mentally incapacitated; and (4) has not been finally convicted of a felony, or, if so convicted, has: (a) fully discharged the person's sentence, including any term of incarceration, parole, or

supervision, or completed a period of probation ordered by any court; or (b) been pardoned or otherwise released from the resulting disability to vote.

Personnel

2H.B. 243 (Cason) – **Workers’ Compensation**: would provide that an employee who suffers an injury caused by an adverse reaction to a COVID-19 vaccine resulting in disability or death is presumed to have suffered the injury during the course and scope of employment if the employee was required to receive the vaccine as a condition of employment. (Companion is **2S.B. 96** by **Hall**.)

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Utilities and Environment

2H.B. 228 (Rosenthal) – **Electricity Supply Chain**: would, among other things, require: (1) the Railroad Commission to adopt rules to require an operator of certain gas supply chain facilities to provide to the RRC: (a) a summary report of a criticality analysis of the facility; (b) a plan to mitigate risk factors identified in the criticality analysis; and (c) proof that the operator has implemented the plan described by (1)(b) over a reasonable period, in a form satisfactory to the RRC, which may be in the form of inspections or documents; (2) the Public Utility Commission adopt rules to require a provider of electric generation service to provide to the PUC: (a) a summary report of a criticality analysis of the provider’s generation assets; (b) a plan to mitigate risk factors identified in the criticality analysis; and (c) proof that the provider has implemented the plan described by (2)(b) over a reasonable period, in a form satisfactory to the PUC, which may be in the form of inspections or documents; (3) the Public Utility Commission adopt rules to require each electric cooperative, municipally owned utility, and transmission and distribution utility providing transmission service in the ERCOT power region to provide to the PUC: (a) a summary report of a criticality analysis of the cooperative’s or utility’s facilities; (b) a plan to mitigate risk factors identified in the criticality analysis; and (c) proof that the cooperative or utility has implemented the plan described by (3)(b) over a reasonable period, in a form satisfactory to the PUC, which may be in the form of inspections or documents; and (4) the RRC to adopt rules to require an operator of certain gas pipeline facilities to provide to the RRC: (a) a summary report of a criticality analysis of the facility; (b) a plan to mitigate risk factors identified in the criticality analysis; and (c) proof that the operator has implemented the plan described by (4)(b) over a reasonable period, in a form satisfactory to the RRC, which may be in the form of inspections or documents.

2H.B. 230 (Rosenthal) – **Electricity**: would provide that a transmission and distribution utility, municipally owned utility, or electric cooperative that transmits or distributes power purchased at wholesale in the ERCOT power region may construct, own, and operate facilities as necessary to:

(1) access transmission service from outside of the ERCOT power region; and (2) purchase power at wholesale from outside of the ERCOT power region.

COVID-19 Update (No. 201)

All pandemic-related updates continue to be found in the [Legislative Update Newsletter](#).

Mask Mandate Update: Legal Battle Continues

Please see the last several [COVID-19 Updates](#) for a more complete background on the various cases filed by cities and school districts related to mask mandates. While there has been judicial action by the Texas Supreme Court, including a decision to [stay a temporary injunction](#) issued by a Bexar County District Court, some movement has shifted to the Texas Legislature.

Recall that the Texas Legislature is in the midst of its second special session of the year, which was [called by Governor Abbott on August 7th](#). Procedurally, the legislature can only consider bills which relate to the governor's call. Last week, [Governor Abbott added an additional item](#) for possible consideration by the legislature, which allows the legislature to consider whether any state or local governmental entity can mandate a COVID-19 vaccine. The initial call contained some room for consideration of mask mandates in schools, and a couple school-specific bills were filed. [H.B. 141](#) and [H.B. 164](#) are still pending in committee and may never reach the floor. Bills have also been filed to both [mandate](#) and [prohibit the mandating of](#) COVID-19 vaccines for students. Again, these bills are school-specific, but any legislative movement on the COVID-19 front is worth watching.

Additionally, some cities and city officials have received letters from local county or district attorneys discussing or threatening criminal prosecution for violation of Governor Abbott's executive orders. Please consult your local attorney for guidance and assistance related to potential criminal liability analysis.

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 ended at 12:01 a.m. on September 1, 2021](#), and all provisions of the Open Meetings Act are, 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.

In case you need a rules refresher, 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](#). [Looking at the spreadsheet](#), it appears that 51 cities have not applied for the funds. 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](#).

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