



Legislative UPDATE

September 10, 2021
Number 35

Second Special Session Ends and Third Announced

The legislature adjourned Thursday, September 2, ending a two-month stretch of special sessions. Once a quorum was re-established in the Texas House, both chambers worked swiftly to pass a majority of Governor Abbott's priorities, including election integrity legislation. Funding for the legislative branch was also restored after the governor's line-item veto of Article X of the state budget following the regular session.

The League has summarized all city-related bills that passed during the second-called special session in the "City-Related Bills Passed" article, below.

On Tuesday, the governor [announced](#) a third special session to begin on September 20. The following items are on the call:

Redistricting: Legislation relating to the apportionment of the State of Texas into districts used to elect members of the Texas House of Representatives, the Texas Senate, the State Board of Education, and the United State House of Representatives.

American Rescue Plan Act: Legislation providing appropriations from the American Rescue Plan Act of 2021 (ARPA), Pub. L. No. 117-2.

Youth Sports: Legislation identical to Senate Bill 29 as passed by the Texas Senate in the 87th Legislature, Regular Session, disallowing a student from competing in University Interscholastic League athletic competitions designated for the sex opposite to the student's sex at birth.

COVID-19 Vaccines: 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.

Unlawful Restraint of Dog: Legislation similar to Senate Bill 474 as passed by 87th Legislature, Regular Session, but that addresses the concerns expressed in the governor's veto statement.

Other: Such other subject as may be submitted by the governor from time to time after the session convenes.

Like all special sessions, only legislation included on the governor's call can be considered by the legislature and the governor has the prerogative to add any other topic to the call.

Effective Date of Comptroller's Sales Tax Sourcing Rule on Internet Orders Delayed

Updating a recent [Legislative Update article](#), the comptroller and plaintiffs in two lawsuits have agreed to a temporary injunction delaying the effective date of the rule impacting the sourcing of local sales taxes on orders not received by sales personnel, including orders received by a shopping website or shopping software application. The court orders can be read [here](#) and [here](#).

Instead of going into effect on October 1, 2021, as originally planned, the effective date of the rule is delayed until there is a final hearing on the merits of the cases or further order from the court. The trial dates have been set for May 22, 2022 and June 13, 2022, respectively.

Note also that the delayed implementation only applies to [34 Texas Administrative Code Sec. 3.334\(b\)\(5\)](#) ("Orders not received by sales personnel, including orders received by a shopping website or shopping software application. Effective October 1, 2021, these orders are received at locations that are not places of business of the seller"). The other [amendments to Rule 3.334](#) adopted in May 2020 remain in effect.

Governor and Attorney General Send Letter on Public Camping Ban

On Thursday, Governor Abbott and Attorney General Paxton [sent a letter](#) to the League for the purpose of reminding cities across the state that [H.B. 1925](#) went into effect on September 1 and

must now be enforced. H.B. 1925 generally makes it a Class C misdemeanor if a person intentionally or knowingly camps in a public place without the effective consent of the officer or agency having the legal duty or authority manage the public place.

Interested city officials can read more about H.B. 1925 in [this post-session update article](#) on the bill from the August 13 edition of the *Legislative Update*.

TSLAC Adopts New Rules for Local Governments

The Texas State Library and Archives Commission (TSLAC) recently [adopted rules](#) regarding management of electronic records for local governments. The rules went into effect on August 31, 2021.

The rules: (1) impose additional requirements on local governments for electronic records management and the policies associated with that management; and (2) repeal some provisions of the old rules. The most notable repeal of the old rules is the repeal of the section requiring an electronic storage authorization request certifying that the rules for all existing electronic storage will be followed to be submitted to and approved by the chief executive and administrative officer of TSLAC.

The rules impose requirements for a local government's policies and procedures to: (1) establish a component of the local government's active and continuing records management program to address the management of electronic records created, received, retained, used, transmitted, or disposed of electronically, including electronic records maintained or managed by third-party custodians or other external entities; (2) integrate the management of electronic records into existing records and information resources management programs; (3) incorporate electronic records management objectives, responsibilities, and authorities; (4) address electronic records management requirements, including retention requirements and final disposition; (5) address the use of new technologies through regular media and format conversion, recopying, reformatting, and other necessary maintenance to ensure the retention and usability of electronic records until the expiration of their retention periods and final disposition; and (6) ensure transparency by documenting, in an open and verifiable manner, the processes and activities carried out in the management of electronic records.

Additionally, the rules now require that each local government must: (1) manage electronic records according to the local government's records management program and records retention schedule regardless of format, system, or storage location; (2) maintain ownership and responsibility for electronic records regardless of where the record originates or resides, including, but not limited to, external electronic records systems, third-party custodians, and social media platforms; (3) ensure that electronic records remain readily retrievable and readable for as long as they are maintained by the local government through migration or by maintaining any software, hardware, and documentation required to retrieve and read the electronic records; (4) ensure that system backups that are required for disaster recovery are not used to satisfy records retention requirements unless indexed to ensure usability and are tested on a regular basis; and (5) require all third-party custodians of records to provide the local government with descriptions of their

business continuity and/or disaster recovery plans pertaining to the protection of the local government's essential records.

Cities should review the new electronic records management rules with their city attorney to ensure compliance.

Resolutions for the 2021 Annual Conference and Your City Delegate

At the 2021 TML Annual Conference and Exhibition in Houston on October 6-8, resolutions submitted to the membership will be considered at the TML Business meeting on October 7 at 3:30 p.m.

The full resolutions packet is available [here](#).

Each city is entitled to one voting delegate at the business meeting. The delegate isn't required to have any special expertise, and an elected official is encouraged but not required. Cities are encouraged to sign up their delegate [electronically](#) prior to the meeting. Cities are also able to sign up in person at a table outside of the meeting room. All city officials are welcome to attend the meeting, whether or not they are a voting delegate.

City-Related Bills Passed

Property Tax

[2S.B. 8 \(Bettencourt/Meyer\)](#) – Homestead Exemption: this bill, among other things, provides that a person who acquires property after January 1 of a tax year may receive certain homestead exemptions for the applicable portion of that tax year immediately on qualification for the exemption if the preceding owner did not receive the same exemption for that year. (Effective January 1, 2022.)

Public Safety

[2S.B. 6 \(Huffman/Smith\)](#) – Bail: this bill, known as the Damon Allen Act, makes several changes to the process for setting the amount of bail and the release of certain defendants on monetary bond or personal bond. Of particular significance to cities, the bill provides, among other things, that:

1. the Office of Court Administration of the Texas Judicial System (OCA) shall develop and maintain a public safety report system that is available for use for purposes of setting the amount of bail;
2. the OCA shall provide access to the public safety report system to the appropriate officials in each county and each city at no cost;

3. as soon as practicable but not later than the next business day after the date a magistrate issues an order imposing a condition of release on bond for a defendant or modifying or removing a condition previously imposed, the clerk of the court shall send a copy of the order to: (a) the appropriate attorney representing the state; and (b) the sheriff of the county where the defendant resides;
4. a clerk of the court may delay sending a copy of the order under Section 3, above, only if the clerk lacks information necessary to ensure service and enforcement;
5. if an order described by Section 3, above, prohibits a defendant from going to or near a child care facility or school, the clerk of the court shall send a copy of the order to the child care facility or school;
6. a copy of the order described in Section 3, above, and any related information may be sent electronically or in another manner that can be accessed by the recipient;
7. a chief of police or sheriff who receives a copy of an order described by Section 3, above, or the chief's or sheriff's designee, shall, as soon as practicable but not later than the 10th day after the date the copy is received, enter information relating to the condition of release into the appropriate database of the statewide law enforcement information system maintained by the Department of Public Safety or modify or remove information, as appropriate; and
8. the clerk of each court setting bail in criminal cases shall report: (a) the number of defendants for whom bail was set, including: (i) the number for each category of offense; (ii) the number of personal bonds; and (iii) the number of surety or cash bonds; (b) the number of defendants released on bail who subsequently failed to appear; (c) the number of defendants released on bail who subsequently violated a condition of release; and (d) the number of defendants who committed an offense while released on bail or community supervision.

(Effective January 1, 2022, with certain exceptions.)

Elections

2S.B. 1 (Hughes/Murr) – **Election Integrity**: this bill, known as the Election Integrity Protection Act of 2021, makes numerous changes to state election laws. Of particular significance to cities and city elections, the bill, among other things:

1. establishes the intent of the legislature that the application of the Texas Election Code and the conduct of elections be uniform and consistent throughout the state to reduce the likelihood of fraud in the conduct of elections, protect the secrecy of the ballot, promote voter access, and ensure that all legally cast ballots are counted;
2. requires the governing body of a political subdivision to declare each unopposed candidate elected to office upon receipt of the certification of unopposed status;
3. prohibits a voter from casting a vote from inside a motor vehicle unless the voter is physically unable to enter a polling place;
4. requires, immediately before opening the polls for voting on the first day of early voting and on election day, the presiding election judge or alternate judge to confirm that each voting machine has any public counter reset to zero and must print the tape that shows the counter was set to zero for each candidate and measure on the ballot;

5. requires, immediately after closing the polls for voting on the last day of the election period, the presiding election judge or alternate judge to print the tape to show the number of votes cast for each candidate or ballot measure for each voting machine;
6. provides that, for elections in which the city secretary is the early voting clerk, early voting by personal appearance at the main early voting polling place shall be conducted at least nine hours each weekday of the early voting period that is not a legal state holiday, unless the territory covered by the election has fewer than 1,000 registered voters, in which case the voting shall be conducted at least four hours each day;
7. provides that a voter who has not voted before the scheduled time for closing a polling place is entitled to vote after that time if the voter is in line at the polling place by closing time;
8. provides that, for elections in which the city secretary is the early voting clerk, the authority ordering an election may order early voting by personal appearance at the main early voting polling place to be conducted on one or more Saturdays or Sundays during the early voting period;
9. provides that a temporary branch polling place may be located at any place in the territory served by the early voting clerk and may be located inside any building as directed by the authority establishing the branch office, but the polling place may not be located in a movable structure in the general election for state and county officers, general primary election, or runoff primary election;
10. provides that the early voting ballot board consists of a presiding judge, an alternate presiding judge, and at least one other member;
11. requires the general custodian of election records in a county with a population of 100,000 or more to implement a video surveillance system that retains a record of all areas containing voted ballots and is made available to the public by a livestream;
12. prohibits a presiding judge from having an election watcher removed from the polling place for violating an election law, other than a violation of the Penal Code and certain other exceptions, unless the violation was observed by an election judge or clerk;
13. provides that an election officer commits a Class A misdemeanor if the officer intentionally or knowingly refuses to accept a watcher for service when acceptance of the watcher is required by the Election Code;
14. authorizes an election watcher to observe all election activities relating to closing the polling place, including the sealing and transfer of a memory card, flash drive, hard drive, data storage device, or other medium now existing or later developed used by the voting system equipment;
15. entitles an election watcher to follow the transfer of election materials from the polling place at which the watcher was accepted to a regional tabulating center, central counting station, or any other location designated to process election materials;
16. generally provides that a written letter, e-mail, or other communication, including a communication made confidential by other law, between a public official and a voting systems vendor, is not confidential or subject to an exception to disclosure under the Public Information Act;
17. generally prohibits an officer or employee of a political subdivision from: (a) distributing an application form for an early voting ballot to a person who did not request an application; and (b) using public funds to facilitate the distribution by another person of an application form for an early voting ballot to a person who did not request an application;

18. imposes requirements on the signature verification committee and early voting ballot board to give would-be voters an opportunity to cure certain defects regarding an early voting mail ballot;
19. provides that an election judge commits a state jail felony if the judge knowingly provides a voter with a form for an affidavit stating that the voter is the person on the list of registered voters if the form contains information that the judge entered on the form knowing it was false;
20. provides that a public official or election official commits a state jail felony if the official, while acting in an official capacity, knowingly: (a) solicits the submission of an application to vote by mail from a person who did not request an application; (b) distributes an application to vote by mail to a person who did not request the application unless the distribution is expressly authorized by another Election Code provision; (c) authorizes or approves the expenditure of public funds to facilitate third-party distribution of an application to vote by mail to a person who did not request the application; or (d) completes any portion of an application to vote by mail and distributes the application to an applicant;
21. prohibits a public official from creating, altering, modifying, waiving, or suspending any election standard, practice, or procedure in a manner not expressly authorized by the Election Code;
22. prohibits a person from serving as an election official if the person has been finally convicted under an offense under the Election Code; and
23. provides that an election official who violates the Election Code may be liable to the state for a civil penalty, which may include termination of the person's employment and loss of the person's employment benefits.

(Effective December 3, 2021.)

2S.B. 13 (Huffman/Hunter) – **2022 Primary Election Dates**: provides that, among other things: (1) if a redistricting plan adopted following the 2020 federal census by the legislature that includes a State Board of Education, state legislative, or federal congressional district becomes law: (a) on or before November 15, 2021, the following dates related to the primary election for the election of officers for the district shall apply: (i) the general primary election date is March 1, 2022; and (ii) the runoff primary election date is May 24, 2022; (b) after November 15, 2021 and before December 28, 2021, the following dates related to the primary election for the election of officers for the district shall apply: (i) the general primary election date is April 5, 2022; and (ii) the runoff primary election date is June 21, 2022; and (c) after December 28, 2021 and on or before February 7, 2022, the following dates related to the primary election for the election of officers for the district shall apply: (i) the general primary election date is May 24, 2022; and (ii) the runoff primary election date is July 26, 2022; (2) if a redistricting plan has not become law on or before February 7, 2022, the secretary of state shall set the dates of the filing period and the general and runoff primary elections. (Effective immediately.)

COVID-19 Update (No. 202)

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

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 NEU spreadsheet](#), it appears that 50 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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