

Price, Phil

From: Thayer, Jill E.
Sent: Tuesday, October 5, 2021 6:07 PM
To: Bledsoe, Cecile
Cc: Price, Phil; Garrity, Marty
Subject: Review of Presidential Executive Order -- Public Health Committees
Attachments: Act 608 Review of Exec Order Request.pdf; ACT608.docx

Senator Bledsoe,

Pursuant to Act 608, and at the request of Sen. Garner (letter attached), the Joint Budget Committee at its meeting on September 30, referred President Biden's Executive Order concerning COVID-19 vaccines for federal employees for consideration by the Senate and House Public Health Committees. Per your request, below is a bullet point listing of the duties of the Public Health Committees under Act 608:

- **House and Senate Public Health Committees Meet Jointly:**
 - There is no timeframe in the Act for when this meeting must take place.
 - At this first meeting, ***the committees may request that the Attorney General review the executive order*** and prepare an opinion to be delivered back to the Public Health Committees.
- **Attorney General Review of the Executive Order:** The AG's opinion shall include an opinion on:
 - Whether the executive order is constitutional under the United States Constitution or in conflict with the Arkansas Constitution;
 - If the state should seek an exemption from the executive order; and
 - If the state should have the order declared unconstitutional.
- **Return of the AG's Opinion to the Public Health Committees:** When the AG's opinion is complete, it will be provided to the House and Senate Public Health Committees. ***The committees will meet again to make a recommendation*** to either the Joint Budget Committee (if you are in session) or the Legislative Council (if during the interim), to include:
 - Whether state resources and personnel are required to implement the executive order; and
 - Other action necessary to protect the state's interest in litigation regarding the executive order.

Please let me know if there is anything else that you need from us regarding this issue.

Sincerely,

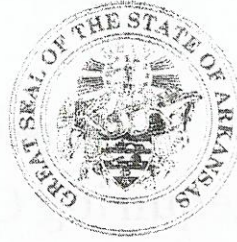
Jill.

Jillian E. Thayer

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THE SENATE
STATE OF ARKANSAS

VICE-CHAIR:
STATE AGENCIES AND
GOVERNMENTAL AFFAIRS

MEMBER:
JOINT AUDIT
JOINT ENERGY
JUDICIARY
RULES, RESOLUTIONS & MEMORIALS
TRANSPORTATION, TECHNOLOGY &
LEGISLATIVE AFFAIRS

September 17, 2021

The Honorable Jonathan Dismang - Senate Chairman
The Honorable Lane Jean - House Chairman
Joint Budget Committee
State Capitol Building
500 Woodlane Street
Little Rock, Arkansas 72201

Dear Chairman Dismang and Chairman Jean:

In accordance with Act 608 of 2021 (House Bill 1637 of 2021), this letter is to respectfully request the Joint Budget Committee consider conducting a review of President Biden's Executive Order for Federal Employees on COVID-19. I have enclosed a copy of the information available currently through the White House Briefing Room website as of September 9, 2021. Thank you for your consideration in this matter. If I can answer any questions, please feel free to contact me.

Sincerely,

Trent Garner
State Senator
District 27

cc: Kevin Anderson, Assistant Director – Fiscal Division

ENCLOSURE **Executive Order on Requiring Coronavirus Disease 2019 Vaccination
for Federal Employees**

BRIEFING ROOM

Executive Order on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees

SEPTEMBER 09, 2021 • PRESIDENTIAL ACTIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301, 3302, and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Policy. It is the policy of my Administration to halt the spread of coronavirus disease 2019 (COVID-19), including the B.1.617.2 (Delta) variant, by relying on the best available data and science-based public health measures. The Delta variant, currently the predominant variant of the virus in the United States, is highly contagious and has led to a rapid rise in cases and hospitalizations. The nationwide public health emergency, first declared by the Secretary of Health and Human Services on January 31, 2020, remains in effect, as does the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) declared pursuant to the National Emergencies Act in Proclamation 9994 of March 13, 2020 (Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak). The Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services has determined that the best way to slow the spread of COVID-19 and to prevent infection by the Delta variant or other variants is to be vaccinated.

COVID-19 vaccines are widely available in the United States. They protect people from getting infected and severely ill, and they significantly reduce the likelihood of hospitalization and death. As of the date of this order, one of the COVID-19 vaccines, the Pfizer-BioNTech COVID-19 Vaccine, also known as Comirnaty, has received approval from the Food and Drug Administration (FDA), and two others, the Moderna COVID-19 Vaccine and the Janssen COVID-19 Vaccine, have been authorized by the FDA for emergency use. The FDA has determined that all three vaccines meet its rigorous standards for safety, effectiveness, and manufacturing quality.

The health and safety of the Federal workforce, and the health and safety of members of the public with whom they interact, are foundational to the efficiency of the civil service. I have determined that ensuring the health and safety of the Federal workforce and the efficiency of

the civil service requires immediate action to protect the Federal workforce and individuals interacting with the Federal workforce. It is essential that Federal employees take all available steps to protect themselves and avoid spreading COVID-19 to their co-workers and members of the public. The CDC has found that the best way to do so is to be vaccinated.

The Safer Federal Workforce Task Force (Task Force), established by Executive Order 13991 of January 20, 2021 (Protecting the Federal Workforce and Requiring Mask-Wearing), has issued important guidance to protect the Federal workforce and individuals interacting with the Federal workforce. Agencies have also taken important actions, including in some cases requiring COVID-19 vaccination for members of their workforce.

Accordingly, building on these actions, and in light of the public health guidance regarding the most effective and necessary defenses against COVID-19, I have determined that to promote the health and safety of the Federal workforce and the efficiency of the civil service, it is necessary to require COVID-19 vaccination for all Federal employees, subject to such exceptions as required by law.

Sec. 2. Mandatory Coronavirus Disease 2019 Vaccination for Federal Employees. Each agency shall implement, to the extent consistent with applicable law, a program to require COVID-19 vaccination for all of its Federal employees, with exceptions only as required by law. The Task Force shall issue guidance within 7 days of the date of this order on agency implementation of this requirement for all agencies covered by this order.

Sec. 3. Definitions. For the purposes of this order:

(a) The term “agency” means an Executive agency as defined in 5 U.S.C. 105 (excluding the Government Accountability Office).

(b) The term “employee” means an employee as defined in 5 U.S.C. 2105 (including an employee paid from nonappropriated funds as referenced in 5 U.S.C. 2105(c)).

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) If any provision of this order, or the application of any provision to any person or

circumstance, is held to be invalid, the remainder of this order and the application of any of its other provisions to any other persons or circumstances shall not be affected thereby.

JOSEPH R. BIDEN JR.

THE WHITE HOUSE,
September 9

Stricken language would be deleted from and underlined language would be added to present law.
Act 608 of the Regular Session

1 State of Arkansas

As Engrossed: H3/15/21

2 93rd General Assembly

A Bill

3 Regular Session, 2021

HOUSE BILL 1637

4

5 By: Representatives Vaught, Barker, Beaty Jr., Bentley, M. Berry, Brooks, Brown, Bryant, Carr,
6 Cavanaugh, C. Cooper, Cozart, Dotson, Evans, Gonzales, M. Gray, Haak, Hollowell, Lowery,
7 Lundstrum, McCollum, McNair, Miller, Milligan, Payton, Ray, Richmond, B. Smith, Speaks, Wardlaw,
8 Wing, Womack, *Underwood*

9 By: Senators T. Garner, B. Ballinger, Beckham, Bledsoe, B. Davis, Flippo, Irvin, M. Johnson, D.
10 Sullivan, *Rapert, Hill*

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For An Act To Be Entitled

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AN ACT TO ALLOW REVIEW OF PRESIDENTIAL EXECUTIVE
14 ORDERS; TO ALLOW THE ATTORNEY GENERAL TO REVIEW
15 PRESIDENTIAL EXECUTIVE ORDERS; TO ADDRESS
16 IMPLEMENTATION OF A PRESIDENTIAL EXECUTIVE ORDER
17 UNDER REVIEW; AND FOR OTHER PURPOSES.

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Subtitle

21

TO ALLOW REVIEW OF PRESIDENTIAL EXECUTIVE
22 ORDERS; TO ALLOW THE ATTORNEY GENERAL
23 TO REVIEW PRESIDENTIAL EXECUTIVE ORDERS;
24 AND TO ADDRESS IMPLEMENTATION OF A
25 PRESIDENTIAL EXECUTIVE ORDER UNDER
26 REVIEW.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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SECTION 1. DO NOT CODIFY. Scope.

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(a)(1) The Tenth Amendment to the United States Constitution guarantees to the states and their
33 people all powers not granted to the United States Government elsewhere in the United States
34 Constitution and reserves to the State of Arkansas and its people certain powers as those powers were
35 understood at the time that Arkansas was admitted into statehood in 1836.

36

(2) The guaranty of those powers is a matter of contract between the State of Arkansas

1 and its people and the United States as of the time that the compact with the United States was agreed
2 upon and adopted by Arkansas and the United States in 1836.

3 (b)(1) The Ninth Amendment to the United States Constitution guarantees to the people rights
4 not granted in the United States Constitution and reserves to the people of Arkansas certain rights as
5 they were understood at the time that Arkansas was admitted into statehood in 1836.

6 (2) The guaranty of those rights is a matter of contract between the State of Arkansas
7 and its people and the United States as of the time that the compact with the United States was agreed
8 upon and adopted by Arkansas and the United States in 1836.

9 (c) The regulation of intrastate commerce is vested in the states under the Ninth and Tenth
10 Amendments to the United States Constitution.

11 (d) The Second Amendment to the United States Constitution reserves the right to keep and
12 bear arms to the people as that right was understood at the time that Arkansas was admitted into
13 statehood in 1836, and the guaranty of the right is a matter of contract between the State of Arkansas and
14 its people and the United States as of the time that the compact with the United States was agreed upon
15 and adopted by Arkansas and the United States in 1836.

16 (e)(1) Arkansas Constitution, Article 2, § 5, clearly secures to Arkansas citizens and prohibits
17 government interference with the right of individual Arkansas citizens to keep and bear arms.

18 (2) This constitutional protection is unchanged from the 1836 Arkansas Constitution,
19 which was approved by the United States Congress and the people of Arkansas, and the right exists as it
20 was understood at the time that the compact with the United States was agreed upon and adopted by
21 Arkansas and the United States in 1836.

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23 SECTION 2. Arkansas Code Title 25, Chapter 1, is amended to add an additional subchapter to
24 read as follows:

25 Subchapter 6 – Review of Presidential Executive Orders

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27 25-1-601. Legislative intent.

28 The General Assembly finds that:

29 (1) It is the duty of the General Assembly to make determinations regarding the use of
30 state personnel and state resources;

31 (2) Making determinations about how state personnel and state resources shall be used
32 is a function of the General Assembly;

33 (3) The citizens of Arkansas have elected the members of the General Assembly to
34 exercise the ability to make political determinations regarding the resources of the state; and

35 (4) A determination or action taken under this subchapter is not a judicial determination
36 or action.

1
2 25-1-602. Review of presidential executive orders.

3 (a)(1) The General Assembly may take whatever actions it deems necessary concerning
4 presidential executive orders that may affect the State of Arkansas, its officials, or its financial resources.

5 (2)(A) During the interim between legislative sessions, the Legislative Council may
6 schedule a meeting to review an executive order issued by the President of the United States that has not
7 been affirmed by a vote of the United States Congress and signed into law as prescribed by the United
8 States Constitution.

9 (B) During legislative sessions, the Joint Budget Committee may schedule a
10 meeting to review an executive order issued by the President of the United States that has not been
11 affirmed by a vote of the United States Congress and signed into law as prescribed by the United States
12 Constitution.

13 (3)(A) The Legislative Council or Joint Budget Committee shall refer an executive order
14 issued by the President of the United States that has not been affirmed by a vote of the United States
15 Congress and signed into law as prescribed by the United States Constitution that is under review by the
16 General Assembly to the appropriate standing committees of the General Assembly that would address
17 the subject matter of the executive order under review.

18 (B) The standing committees of the General Assembly meeting jointly may
19 request the Attorney General to review the presidential executive order under review by the standing
20 committees and prepare an opinion to be delivered to the designated standing committees stating:

21 (i) A brief description of the issues involved;
22 (ii) The Attorney General's opinion of whether the presidential executive
23 order is:

24 (a) Constitutional under the United States Constitution; or

25 (b) In conflict with the Arkansas Constitution;

26 (iii) The Attorney General's opinion of whether the state should seek an
27 exemption from the application of the presidential executive order;

28 (iv) The Attorney General's opinion of whether the state should seek to
29 have the order declared to be an unconstitutional exercise of legislative authority by the President of the
30 United States; and

31 (v) Other information that will enable the designated standing committee
32 to determine the action that may be deemed necessary to protect the interests of the General Assembly
33 and the State of Arkansas.

34 (4) The standing committees shall make a recommendation to the Legislative Council
35 during the interim between legislative sessions, or the Joint Budget Committee during legislative
36 sessions, including:

1 (A) Whether state resources and personnel are required to implement the
2 presidential executive order; and

3 (B) Identifying other action deemed necessary to protect the General Assembly's
4 and the state's interests in litigation regarding the presidential executive order.

5 (5)(A) During the interim between legislative sessions, the Legislative Council shall, and
6 during legislative sessions, the Joint Budget Committee shall:

7 (i) Call a meeting to discuss the report of the standing committees'
8 review of a presidential executive order; and

9 (ii) Determine:

10 (a) Whether state resources and personnel are required to
11 implement the presidential executive order; and

12 (b) Whether to take other action deemed necessary to protect
13 the General Assembly's and the state's interests in litigation regarding the presidential executive order.

14 (B) All determinations of action shall be made by motion and must receive a
15 majority vote.

16 (b) Notwithstanding any other provision of law, the state, a political subdivision, or any entity that
17 receives an appropriation of funds from the General Assembly shall not implement a presidential
18 executive order using state resources and personnel if:

19 (1) The Legislative Council or the Joint Budget Committee issues a political
20 determination that the presidential executive order is unconstitutional and the presidential executive order
21 restricts a person's rights and relates to:

22 (A) Pandemics or other health emergencies;

23 (B) The regulation of natural resources, including coal and oil;

24 (C) The regulation of the agriculture industry;

25 (D) The use of land;

26 (E) The regulation of the financial sector as it relates to environmental, social, or
27 governance standards; or

28 (F) The regulation of the constitutional right to bear arms;

29 (2) The Legislative Council, or the Joint Budget Committee if the General Assembly is in
30 regular, fiscal, or special session, affirmatively votes to report the determination to the Governor; and

31 (3) The Governor directs the state, the political subdivision, or the entity that receives an
32 appropriation of funds from the General Assembly to not implement the presidential executive order.

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34 /s/Vaught

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APPROVED: BECAME LAW ON 4/8/21 WITHOUT THE GOVERNOR'S SIGNATURE.

Presidential Documents

Executive Order 14043 of September 9, 2021

Requiring Coronavirus Disease 2019 Vaccination for Federal Employees

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301, 3302, and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Policy. It is the policy of my Administration to halt the spread of coronavirus disease 2019 (COVID-19), including the B.1.617.2 (Delta) variant, by relying on the best available data and science-based public health measures. The Delta variant, currently the predominant variant of the virus in the United States, is highly contagious and has led to a rapid rise in cases and hospitalizations. The nationwide public health emergency, first declared by the Secretary of Health and Human Services on January 31, 2020, remains in effect, as does the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) declared pursuant to the National Emergencies Act in Proclamation 9994 of March 13, 2020 (Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak). The Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services has determined that the best way to slow the spread of COVID-19 and to prevent infection by the Delta variant or other variants is to be vaccinated.

COVID-19 vaccines are widely available in the United States. They protect people from getting infected and severely ill, and they significantly reduce the likelihood of hospitalization and death. As of the date of this order, one of the COVID-19 vaccines, the Pfizer-BioNTech COVID-19 Vaccine, also known as Comirnaty, has received approval from the Food and Drug Administration (FDA), and two others, the Moderna COVID-19 Vaccine and the Janssen COVID-19 Vaccine, have been authorized by the FDA for emergency use. The FDA has determined that all three vaccines meet its rigorous standards for safety, effectiveness, and manufacturing quality.

The health and safety of the Federal workforce, and the health and safety of members of the public with whom they interact, are foundational to the efficiency of the civil service. I have determined that ensuring the health and safety of the Federal workforce and the efficiency of the civil service requires immediate action to protect the Federal workforce and individuals interacting with the Federal workforce. It is essential that Federal employees take all available steps to protect themselves and avoid spreading COVID-19 to their co-workers and members of the public. The CDC has found that the best way to do so is to be vaccinated.

The Safer Federal Workforce Task Force (Task Force), established by Executive Order 13991 of January 20, 2021 (Protecting the Federal Workforce and Requiring Mask-Wearing), has issued important guidance to protect the Federal workforce and individuals interacting with the Federal workforce. Agencies have also taken important actions, including in some cases requiring COVID-19 vaccination for members of their workforce.

Accordingly, building on these actions, and in light of the public health guidance regarding the most effective and necessary defenses against COVID-19, I have determined that to promote the health and safety of the Federal workforce and the efficiency of the civil service, it is necessary to require COVID-19 vaccination for all Federal employees, subject to such exceptions as required by law.

Sec. 2. Mandatory Coronavirus Disease 2019 Vaccination for Federal Employees. Each agency shall implement, to the extent consistent with applicable law, a program to require COVID-19 vaccination for all of its Federal employees, with exceptions only as required by law. The Task Force shall issue guidance within 7 days of the date of this order on agency implementation of this requirement for all agencies covered by this order.

Sec. 3. Definitions. For the purposes of this order:

(a) The term “agency” means an Executive agency as defined in 5 U.S.C. 105 (excluding the Government Accountability Office).

(b) The term “employee” means an employee as defined in 5 U.S.C. 2105 (including an employee paid from nonappropriated funds as referenced in 5 U.S.C. 2105(c)).

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) If any provision of this order, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of any of its other provisions to any other persons or circumstances shall not be affected thereby.



THE WHITE HOUSE,
September 9, 2021.