

BILL ANALYSIS

C.S.H.B. 1973
By: Lucio III
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that certain investor-owned utilities and water supply corporations servicing cities or extraterritorial jurisdictions currently are not required to provide fire flow service to their customers. The parties contend that this poses emergency response concerns for fire departments and residents who are served by such utilities and corporations. The parties also note that recent legislation established fire flow standards for certain larger municipalities and contend that similar standards should apply to more areas. C.S.H.B. 1973 seeks to address these issues by establishing provisions relating to the provision of water by a public utility or water supply or sewer service corporation for use in fire suppression.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 1973 amends the Health and Safety Code to authorize the governing body of a municipality by ordinance to adopt standards set by the Texas Commission on Environmental Quality (TCEQ) requiring a utility to maintain a minimum sufficient water flow and pressure to fire hydrants in a residential area located in the municipality or the municipality's extraterritorial jurisdiction. The bill requires TCEQ by rule to establish such standards and sets out provisions relating to requirements for the standards. The bill specifies that for its purposes "utility" includes a public utility and water supply or sewer service corporation and defines "residential area" and "municipal utility."

C.S.H.B. 1973 prohibits an ordinance under the bill's provisions from requiring a utility to build, retrofit, or improve infrastructure in existence at the time the ordinance is adopted. The bill requires a municipality that adopts standards under such provisions or that seeks to use a utility's water for fire suppression to enter into a written memorandum of understanding with the utility to provide for the necessary testing of fire hydrants and for other relevant issues pertaining to the use of the water and maintenance of the fire hydrants to ensure compliance with the bill's provisions. The bill authorizes a municipality to notify TCEQ of a utility's failure to comply with an adopted standard. The bill requires TCEQ on receiving such notice to require a utility in violation of an adopted standard to comply within a reasonable time established by TCEQ. The bill authorizes TCEQ to approve infrastructure improvements and make corresponding changes to the tariff or rate schedule of a utility that is a public utility as needed to permit compliance with the bill's provisions.

C.S.H.B. 1973 exempts a utility from liability for a hydrant's or metal flush valve's inability to provide adequate water supply in a fire emergency but establishes that such exemption does not waive a municipality's immunity under other law and does not create any liability on the part of a municipality under a joint enterprise theory of liability.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1973 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 341.0358, Health and Safety Code, is amended to read as follows:
Sec. 341.0358. PUBLIC SAFETY STANDARDS.

No equivalent provision.

(a) In this section:

No equivalent provision.

(1) "Public utility" and "water supply or sewer service corporation" have ~~has~~ the meanings ~~meaning~~ assigned by Section 13.002, Water Code.

No equivalent provision.

(2) "Regulatory authority" has the meaning assigned by Section 13.002, Water Code.

~~[(3) "Residential area" means:~~

~~[(A) an area designated as a residential zoning district by a governing ordinance or code or an area in which the principal land use is for private residences;~~

~~[(B) a subdivision for which a plat is recorded in the real property records of the county and that contains or is bounded by public streets or parts of public streets that are abutted by residential property occupying at least 75 percent of the front footage along the block face; or~~

~~[(C) a subdivision a majority of the lots of which are subject to deed restrictions limiting the lots to residential use.]~~

No equivalent provision.

(b) The regulatory authority for a public utility or a water supply or sewer service corporation may ~~shall~~ by rule or ordinance adopt standards for installing fire hydrants and maintaining sufficient water pressure for service to fire hydrants adequate to protect public safety ~~in residential areas~~ in a municipality and the municipality's extraterritorial jurisdiction ~~[with a population of 1,000,000 or more].~~

No equivalent provision.

(c) The commission shall assess ~~residential~~ areas in a municipality and the municipality's extraterritorial jurisdiction that are subject to a rule or ordinance under this section to ensure that ~~[with a population of 1,000,000 or more to ensure that:~~

~~[(1) the regulatory authority for the area has~~

~~adopted the standards required by this section; and~~

~~[(2)] all public utilities and water supply or sewer service corporations serving the municipal ~~[residential]~~ area are complying with the standards adopted under ~~[required by]~~ this section.~~

~~(d) The commission shall require a municipality ~~[with a population of 1,000,000 or more and]~~ acting as a regulatory authority to make appropriate revisions to standards the commission considers to be inadequate within a reasonable time established by the commission.~~

~~(e) The commission shall require a public utility or a water supply or sewer service corporation in violation of a standard adopted ~~[required]~~ under this section and established by the commission or by a municipality ~~[with a population of 1,000,000 or more and]~~ acting as a regulatory authority to comply with the standard within a reasonable time established by the commission.~~

~~(f) This section does not limit the authority of a municipality ~~[with a population of 1,000,000 or more and]~~ acting as a regulatory authority to prohibit a public utility or a water supply or sewer service corporation in violation of a standard established by the municipality from recovering through the public utility's or the water supply or sewer service corporation's rates a penalty or fine incurred for a violation of a standard.~~

~~[(g) This section also applies to a municipality with a population of more than 36,000 and less than 41,000 located in two counties, one of which is a county with a population of more than 1.8 million.]~~

No equivalent provision.

No equivalent provision.

No equivalent provision.

No equivalent provision.

No equivalent provision.

No equivalent provision.

No equivalent provision.

SECTION 1. Subchapter C, Chapter 341, Health and Safety Code, is amended by adding Section 341.0359 to read as follows:
Sec. 341.0359. FIRE HYDRANT FLOW STANDARDS.

(a) In this section:

(1) "Municipal utility" means a retail public utility, as defined by Section 13.002, Water Code, that is owned by a municipality.

(2) "Residential area" means an area used principally for private residences that is improved with at least 100 single-family homes and has an average density of one

No equivalent provision.

home per half acre.

(3) "Utility" includes a "public utility" and "water supply or sewer service corporation" as defined by Section 13.002, Water Code.

(b) The governing body of a municipality by ordinance may adopt standards set by the commission under Subsection (c) requiring a utility to maintain a minimum sufficient water flow and pressure to fire hydrants in a residential area located in the municipality or the municipality's extraterritorial jurisdiction.

No equivalent provision.

(c) The commission by rule shall establish standards for adoption by a municipality under Subsection (b). The standards:

(1) in addition to a utility's maximum daily demand, must provide, for purposes of emergency fire suppression, for:

(A) a minimum sufficient water flow of at least 250 gallons per minute for at least two hours; and

(B) a minimum sufficient water pressure of at least 20 pounds per square inch;

(2) must require a utility to maintain at least the minimum sufficient water flow and pressure described by Subdivision (1) in fire hydrants in a residential area located within the municipality or the municipality's extraterritorial jurisdiction;

(3) must be based on the density of connections, service demands, and other relevant factors;

(4) notwithstanding Subdivisions (1) and (2), if the municipality owns a municipal utility, may not require another utility located in the municipality or the municipality's extraterritorial jurisdiction to provide water flow and pressure in a fire hydrant greater than that provided by the municipal utility as determined by the commission; and

(5) if the municipality does not own a municipal utility, may not require a utility located in the municipality or the municipality's extraterritorial jurisdiction to provide a minimum sufficient water flow and pressure greater than the standard established under Subdivision (1).

No equivalent provision.

(d) An ordinance under Subsection (b) may not require a utility to build, retrofit, or improve infrastructure in existence at the time the ordinance is adopted.

No equivalent provision.

(e) A municipality that adopts standards under Subsection (b) or that seeks to use a utility's water for fire suppression shall enter into a written memorandum of

No equivalent provision.

No equivalent provision.

No equivalent provision.

understanding with the utility to provide for:
(1) the necessary testing of fire hydrants;
and

(2) other relevant issues pertaining to the use of the water and maintenance of the fire hydrants to ensure compliance with this section.

(f) A municipality may notify the commission of a utility's failure to comply with a standard adopted under Subsection (b).

(g) On receiving the notice described by Subsection (f), the commission shall require a utility in violation of a standard adopted under this section to comply within a reasonable time established by the commission. The commission may approve infrastructure improvements and make corresponding changes to the tariff or rate schedule of a utility that is a public utility as needed to permit compliance with this section.

(h) Notwithstanding any provision of Chapter 101, Civil Practice and Remedies Code, to the contrary, a utility is not liable for a hydrant's or metal flush valve's inability to provide adequate water supply in a fire emergency. This subsection does not waive a municipality's immunity under Subchapter I, Chapter 271, Local Government Code, or any other law and does not create any liability on the part of a municipality under a joint enterprise theory of liability.

No equivalent provision.

SECTION 2. The change in law made by this Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 2. This Act takes effect September 1, 2013.