

BILL ANALYSIS

C.S.S.B. 1086
By: Campbell
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Investor-owned water utilities (IOU) and water supply corporations (WSC) sometimes serve areas in a city or the city's extraterritorial jurisdiction. Some of those utilities have what many would consider less than optimal service quality, including the fact that their facilities are not adequate to provide fire hydrants with sufficient flow.

Rather than deal with local citizens' concerns about its lack of service, some utilities simply paint their fire hydrants black and do not provide the service. Firefighters are left to guess which fire hydrants work during emergencies when every second counts. This results in greater risk of suffering loss of life and destruction of property for homeowners and businesses alike. In addition, black hydrants make a subdivision less desirable to home buyers than a subdivision where all the fire hydrants are red. Insurance rates for homeowners and businesses are driven higher by the fact that none of the fire hydrants are "operable" because they are painted black.

As urban areas grow, conflicts between cities and IOUs or WSCs holding a certificate of convenience and necessity inside a city or its extraterritorial jurisdiction have escalated. A city that jumps the hurdles necessary to annex and/or provide service to an area that was formerly in the certificated area of such a provider must often spend large amounts of money to upgrade infrastructure to provide basic fire protection capability. In addition, an IOU or WSC that is already inside a city's limits cannot be forced to provide adequate service for fire protection.

C.S.S.B. 1086 authorizes a city to impose fire flow requirements on an IOU or WSC, subject to Texas Commission on Environmental Quality monitoring, in and around Buda, Cibolo, and Kyle.

C.S.S.B. 1086 amends current law relating to the authority to regulate certain water and sewage utilities to ensure public safety in and around certain municipalities.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Section 341.0358(a), Health and Safety Code, by amending Subdivision (1) and adding Subdivision (1-a) as follows:

(1) Defines "industrial district" to have the meaning assigned by Section 42.044, Local Government Code, and includes an area that is designated by the governing body of a municipality as a zoned industrial area.

(1-a) Defines "public utility" to have the meaning assigned by Section 13.002, Water Code.

SECTION 2. Amends Section 341.0358(g), Health and Safety Code, as follows:

(g) Provides that this section also applies to:

(1) 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;

(2) a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction, with a population of more than 7,000 and less than 30,000 located in a county with a population of more than 155,000 and less than 180,000; and

(3) a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction, with a population of more than 11,000 and less than 18,000 located in a county with a population of more than 125,000 and less than 230,000.

Makes nonsubstantive changes.

SECTION 3. Amends Subchapter C, Chapter 341, Health and Safety Code, by adding Section 341.03585 as follows:

Sec. 341.03585. FIRE HYDRANT FLOW AND PRESSURE STANDARDS IN CERTAIN MUNICIPALITIES. (a) Provides that in this section:

(1) Defines "industrial district" to have the meaning assigned by Section 42.044, Local Government Code, and includes an area that is designated by the governing body of a municipality as a zoned industrial area.

(2) Defines "municipal utility" to mean a retail public utility, as defined by Section 13.002, Water Code, that is owned by a municipality.

(3) Defines "residential area" to have the meaning assigned by Section 341.0358.

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

(b) Provides that this section applies only to:

(1) a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction, with a population of more than 7,000 and less than 30,000 located in a county with a population of more than 155,000 and less than 180,000; and

(2) a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction, with a population of more than 11,000 and less than 18,000 located in a county with a population of more than 125,000 and less than 230,000.

(c) Authorizes the governing body of a municipality by ordinance to adopt standards requiring a utility to maintain a sufficient water flow and pressure to fire hydrants in a residential area or an industrial district located in the municipality or the municipality's extraterritorial jurisdiction. Provides that the standards:

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

(A) a sufficient water flow not in excess of 250 gallons per minute for at least two hours; and

(B) a sufficient water pressure not in excess of 20 pounds per square inch;

(2) are required to require a utility to maintain at least the sufficient water flow and pressure described by Subdivision (1) in fire hydrants in a residential area or an industrial district located within the municipality or the municipality's

extraterritorial jurisdiction; and

(3) notwithstanding Subdivisions (1) and (2), if the municipality owns a municipal utility, are prohibited from requiring 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.

(d) Prohibits an ordinance under Subsection (c), except as provided by this subsection, from requiring a utility to build, retrofit, or improve fire hydrants and related infrastructure in existence at the time the ordinance is adopted. Authorizes an ordinance under Subsection (c) to apply to a utility's fire hydrants and related infrastructure that the utility:

(1) installs after the effective date of the ordinance; or

(2) acquires after the effective date of the ordinance if the hydrants and infrastructure comply with the standards adopted by the ordinance at the time the hydrants and infrastructure are acquired.

(e) Requires a municipality that adopts standards under Subsection (c) to encourage any responsible emergency services district, as described by Chapter 775, to enter into a written memorandum of 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) Requires the utility, after adoption of an ordinance under Subsection (c), to paint all fire hydrants in accordance with the ordinance or a memorandum of understanding under Subsection (e) that are located in a residential area or an industrial district within the municipality or the municipality's extraterritorial jurisdiction.

(g) Provides that, 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. Provides that 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 or utility under a joint enterprise theory of liability.

SECTION 4. Provides for the effective date of this Act.

EFFECTIVE DATE

This Act takes effect September 1, 2013.

COMPARISON OF ORIGINAL TO SUBSTITUTE

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subsection (a), Section 341.0358, Health and Safety Code, is amended by amending Subdivision (1) and adding Subdivision (1-a) to read as follows:

(1) "Industrial district" has the meaning assigned by Section 42.044, Local Government Code, and includes an area that is designated by the governing body of a municipality as a zoned industrial area.

(1-a) "Public utility" has the meaning assigned by Section 13.002, Water Code.

SECTION 1. Same as introduced version.

SECTION 2. Subsection(g), Section 341.0358, Health and Safety Code, is amended to read as follows:

(g) This section also applies to:

(1) 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;

(2) a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction, with a population of more than 7,000 and less than 30,000 located in a county with a population of more than 155,000 and less than 180,000; and

(3) a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction, with a population of more than 11,000 and less than 18,000 located in a county with a population of more than 125,000 and less than 230,000.

No equivalent provision.

SECTION 2. Same as introduced version.

SECTION 3. Subchapter C, Chapter 341, Health and Safety Code, is amended by adding Section 341.03585 to read as follows:

Sec. 341.03585. FIRE HYDRANT FLOW AND PRESSURE STANDARDS IN CERTAIN MUNICIPALITIES. (a) In this section:

(1) "Industrial district" has the meaning assigned by Section 42.044, Local Government Code, and includes an area that is designated by the governing body of a municipality as a zoned industrial area.

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

(3) "Residential area" has the meaning assigned by Section 341.0358.

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

(b) This section applies only to:

(1) a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction, with a population of more than 7,000 and less than 30,000 located in a county with a population of more than 155,000 and less than 180,000; and

(2) a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction, with a population of more than 11,000 and less than 18,000 located in a county with a population of more than 125,000 and less than 230,000.

(c) The governing body of a municipality by ordinance may adopt standards requiring a utility to maintain a sufficient water flow and pressure to fire hydrants in a residential area or an industrial district located in the municipality

or the municipality's extraterritorial jurisdiction. The standards:

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

(A) a sufficient water flow not in excess of 250 gallons per minute for at least two hours; and

(B) a sufficient water pressure not in excess of 20 pounds per square inch;

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

(3) 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.

(d) Except as provided by this subsection, an ordinance under Subsection (c) may not require a utility to build, retrofit, or improve fire hydrants and related infrastructure in existence at the time the ordinance is adopted. An ordinance under Subsection (c) may apply to a utility's fire hydrants and related infrastructure that the utility:

(1) installs after the effective date of the ordinance; or

(2) acquires after the effective date of the ordinance if the hydrants and infrastructure comply with the standards adopted by the ordinance at the time the hydrants and infrastructure are acquired.

(e) A municipality that adopts standards under Subsection (c) shall encourage any responsible emergency services district, as described by Chapter 775, to enter into a written memorandum of 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) After adoption of an ordinance under Subsection (c), the utility shall paint all fire hydrants in accordance with the ordinance or a memorandum of understanding under Subsection (e) that are located in a residential area or an industrial district within the municipality or the municipality's extraterritorial jurisdiction.

(g) 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 or utility under a joint enterprise theory of liability.

SECTION 3. This Act takes effect September 1, 2013.

SECTION 4. Same as introduced version.