| **House Bill 1768**  Senate Amendments  Section-by-Section Analysis | | |
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| HOUSE VERSION | SENATE VERSION (IE) | CONFERENCE |
| SECTION 1. Section 341.0357, Health and Safety Code, is amended to read as follows:  Sec. 341.0357. IDENTIFICATION REQUIREMENT FOR CERTAIN [~~DEVICE WITH APPEARANCE OF~~] FIRE HYDRANTS AND FLUSH VALVES [~~HYDRANT THAT IS NONFUNCTIONING OR UNAVAILABLE FOR USE IN FIRE EMERGENCY~~]. (a) In this section, "hydrant" means:  (1) a fire hydrant; or  (2) a metal flush valve that:  (A) has [~~The owner of any device having~~] the appearance of a fire hydrant; and  (B) [~~that~~] is located in a place that an entity responsible for providing fire suppression services in a fire emergency would expect a fire hydrant to typically be located.  (b) This section applies only to a county, or a municipality in a county, that:  (1) borders the United Mexican States or is adjacent to a county that borders the United Mexican States;  (2) has a population of at least 400,000 or has a population of at least 20,000 and is adjacent to a county that has a population of at least 400,000; and  (3) is within 200 miles of the Gulf of Mexico.  (c) Each water utility responsible for any hydrant shall:  (1) paint all or the cap of the hydrant white if the hydrant is available to be used only to fill a water tank on a fire truck used for fire suppression services; and  (2) paint all or the cap of the hydrant [~~device~~] black if the hydrant [~~device~~] is [~~nonfunctioning or otherwise~~] unavailable for use by the entity providing fire suppression services in a fire emergency.  (d) For purposes of Subsection (c)(2), a hydrant is unavailable for use in a fire emergency if it is unavailable for pumping directly from the hydrant or is unavailable for use in filling a water tank on a fire truck used for fire suppression services.  (e) A water utility [~~The owner~~] may place a black tarp over the hydrant or use another means to conceal the hydrant [~~device~~] instead of painting all or the cap of the hydrant [~~device~~] black as required under Subsection (c)(2) [~~this section~~] if the hydrant [~~device~~] is temporarily [~~nonfunctioning, or temporarily~~] unavailable for use in a fire emergency[~~,~~] for a period not to exceed 45 [~~seven~~] days. Not later than the 45th day after the date a hydrant is concealed as provided by this subsection, the water utility responsible for the hydrant shall:  (1) if the hydrant is available for the provision of fire suppression services, remove the tarp or other means of concealment; or  (2) if the hydrant continues to be unavailable for use in a fire emergency, paint all or the cap of the hydrant black as required by Subsection (c)(2).  (f) A water utility that paints all or the cap of a hydrant black as required by Subsection (c)(2) may also ensure by any reasonable means that the hydrant is identifiable in low-light conditions, including by installing reflectors.  (g) [~~(b)~~] For purposes of this section, a hydrant [~~device~~] is considered to be unavailable for use by an entity responsible for providing fire suppression services in a fire emergency if the water utility is not obligated by ordinance, regulation, or contract to provide water for fire suppression services and elects not to provide water for those services [~~nonfunctioning if the device pumps less than 250 gallons of water per minute~~].  (h) [~~(c)~~] This section does not apply:  (1) within the jurisdiction of a governmental entity that maintains its own system for labeling or color coding its hydrants; or  (2) to any water utility that has entered into a contract with a municipality or volunteer fire department to provide a water supply for fire suppression services if the contract specifies a different system for labeling or color coding hydrants [~~a device having the appearance of a fire hydrant that is nonfunctioning or otherwise unavailable for use in a fire emergency~~].  (i) For purposes of Subsection (h), a system for labeling or color coding hydrants may include the assignment of different colors to identify hydrants that are available for direct pumping, hydrants that are available for filling a water tank on a fire truck used for fire suppression services, and hydrants that are unavailable for use by an entity providing fire suppression services in a fire emergency.  (j) The fact that all or the cap of a hydrant for which a water utility is responsible under this section is not painted black as described by Subsection (c)(2) or concealed in the manner described by Subsection (e) does not constitute a guarantee by the water utility that the hydrant will deliver a certain amount of water flow at all times. Notwithstanding any provision of Chapter 101, Civil Practice and Remedies Code, to the contrary, a water utility is not liable for a hydrant's inability to provide adequate water supply in a fire emergency. | SECTION 1. Section 341.0357, Health and Safety Code, is amended to read as follows:  Sec. 341.0357. IDENTIFICATION REQUIREMENT FOR CERTAIN [~~DEVICE WITH APPEARANCE OF~~] FIRE HYDRANTS AND FLUSH VALVES [~~HYDRANT THAT IS NONFUNCTIONING OR UNAVAILABLE FOR USE IN FIRE EMERGENCY~~]. (a) In this section, "hydrant" means:  (1) a fire hydrant; or  (2) a metal flush valve that:  (A) has [~~The owner of any device having~~] the appearance of a fire hydrant; and  (B) [~~that~~] is located in a place that an entity responsible for providing fire suppression services in a fire emergency would expect a fire hydrant to typically be located.  (b) This section applies only to a county, or a municipality in a county, that:  (1) borders the United Mexican States or is adjacent to a county that borders the United Mexican States;  (2) has a population of at least 400,000 or has a population of at least 20,000 and is adjacent to a county that has a population of at least 400,000; and  (3) is within 200 miles of the Gulf of Mexico.  (c) Each public water system responsible for any hydrant shall: [FA1(1)]  (1) paint all or the cap of the hydrant white if the hydrant is available to be used only to fill a water tank on a fire truck used for fire suppression services; and  (2) paint all or the cap of the hydrant [~~device~~] black if the hydrant [~~device~~] is [~~nonfunctioning or otherwise~~] unavailable for use by the entity providing fire suppression services in a fire emergency.  (d) For purposes of Subsection (c)(2), a hydrant is unavailable for use in a fire emergency if it is unavailable for pumping directly from the hydrant or is unavailable for use in filling a water tank on a fire truck used for fire suppression services.  (e) A public water system [~~The owner~~] may place a black tarp over the hydrant or use another means to conceal the hydrant [~~device~~] instead of painting all or the cap of the hydrant [~~device~~] black as required under Subsection (c)(2) [~~this section~~] if the hydrant [~~device~~] is temporarily [~~nonfunctioning, or temporarily~~] unavailable for use in a fire emergency[~~,~~] for a period not to exceed 45 [~~seven~~] days. Not later than the 45th day after the date a hydrant is concealed as provided by this subsection, the public water system responsible for the hydrant shall: [FA1(1)]  (1) if the hydrant is available for the provision of fire suppression services, remove the tarp or other means of concealment; or  (2) if the hydrant continues to be unavailable for use in a fire emergency, paint all or the cap of the hydrant black as required by Subsection (c)(2).  (f) A public water system that paints all or the cap of a hydrant black as required by Subsection (c)(2) may also ensure by any reasonable means that the hydrant is identifiable in low-light conditions, including by installing reflectors. [FA1(1)]  (g) [~~(b)~~] For purposes of this section, a hydrant [~~device~~] is considered to be unavailable for use by an entity responsible for providing fire suppression services in a fire emergency if the public water system is not obligated by ordinance, regulation, or contract to provide water for fire suppression services and elects not to provide water for those services [~~nonfunctioning if the device pumps less than 250 gallons of water per minute~~]. [FA1(1)]  (h) [~~(c)~~] This section does not apply:  (1) within the jurisdiction of a governmental entity that maintains its own system for labeling or color coding its hydrants; or  (2) to any public water system that has entered into a contract with a municipality or volunteer fire department to provide a water supply for fire suppression services if the contract specifies a different system for labeling or color coding hydrants [~~a device having the appearance of a fire hydrant that is nonfunctioning or otherwise unavailable for use in a fire emergency~~]. [FA1(1)]  (i) For purposes of Subsection (h), a system for labeling or color coding hydrants may include the assignment of different colors to identify hydrants that are available for direct pumping, hydrants that are available for filling a water tank on a fire truck used for fire suppression services, and hydrants that are unavailable for use by an entity providing fire suppression services in a fire emergency.  (j) The fact that all or the cap of a hydrant for which a public water system is responsible under this section is not painted black as described by Subsection (c)(2) or concealed in the manner described by Subsection (e) does not constitute a guarantee by the public water system that the hydrant will deliver a certain amount of water flow at all times. Notwithstanding any provision of Chapter 101, Civil Practice and Remedies Code, to the contrary, a public water system is not liable for a hydrant's inability to provide adequate water supply in a fire emergency. [FA1(1)] |  |
| SECTION 2. Not later than January 1, 2014, each water utility responsible for hydrants under Section 341.0357, Health and Safety Code, as amended by this Act, shall ensure that its hydrants comply with the requirements imposed by that section. | SECTION 2. Not later than January 1, 2014, each public water system responsible for hydrants under Section 341.0357, Health and Safety Code, as amended by this Act, shall ensure that its hydrants comply with the requirements imposed by that section. [FA1(2)] |  |
| 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 3. Same as House version. |  |