

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/24/13

Date

Honorable David Dewhurst
President of the Senate

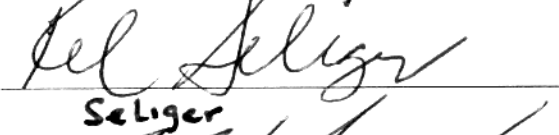
Honorable Joe Straus
Speaker of the House of Representatives

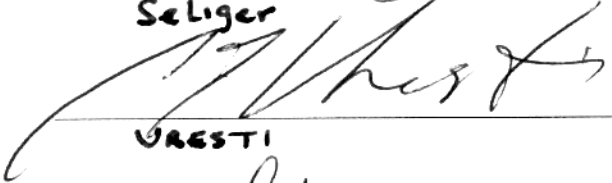
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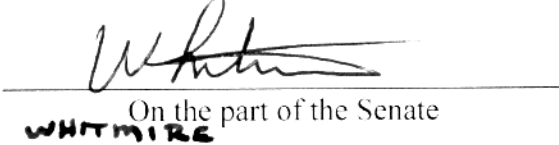
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 1768 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

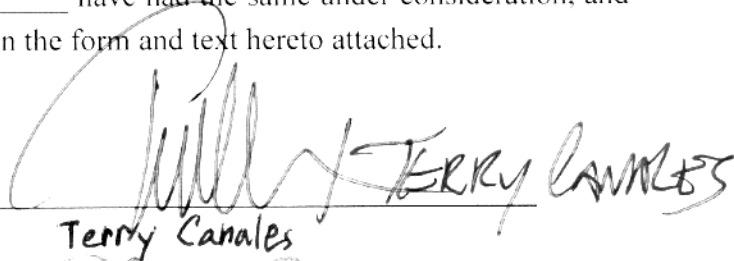

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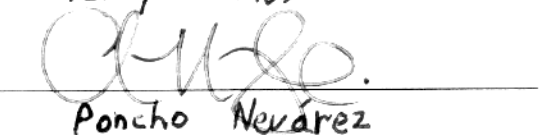

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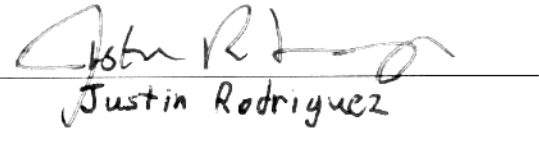

VRESTI


On the part of the Senate
WHITMIRE


Terry Canales


Poncho Nevarez


Eddie Lucio III


Justin Rodriguez

On the part of the House
Lyle Larson

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 1768

A BILL TO BE ENTITLED

AN ACT

relating to identification requirements for certain fire hydrants
and flush valves.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 341.0357, Health and Safety Code, is
amended by adding Subsection (d) to read as follows:

(d) This section does not apply within the jurisdiction of a
governmental entity described by Section 341.03571(b).

SECTION 2. Subchapter C, Chapter 341, Health and Safety
Code, is amended by adding Section 341.03571 to read as follows:

Sec. 341.03571. IDENTIFICATION REQUIREMENT FOR CERTAIN
FIRE HYDRANTS AND FLUSH VALVES IN CERTAIN MUNICIPALITIES. (a) In
this section, "hydrant" means:

(1) a fire hydrant; or

(2) a metal flush valve that:

(A) has the appearance of a fire hydrant; and

(B) 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

1 population of at least 20,000 and is adjacent to a county that has a
2 population of at least 400,000; and

3 (3) is within 200 miles of the Gulf of Mexico.

4 (c) Each public water system responsible for any hydrant
5 shall:

6 (1) paint all or the cap of the hydrant white if the
7 hydrant is available to be used only to fill a water tank on a fire
8 truck used for fire suppression services; and

9 (2) paint all or the cap of the hydrant black if the
10 hydrant is unavailable for use by the entity providing fire
11 suppression services in a fire emergency.

12 (d) For purposes of Subsection (c)(2), a hydrant is
13 unavailable for use in a fire emergency if it is unavailable for
14 pumping directly from the hydrant or is unavailable for use in
15 filling a water tank on a fire truck used for fire suppression
16 services.

17 (e) A public water system may place a black tarp over the
18 hydrant or use another means to conceal the hydrant instead of
19 painting all or the cap of the hydrant black as required under
20 Subsection (c)(2) if the hydrant is temporarily unavailable for use
21 in a fire emergency for a period not to exceed 45 days. Not later
22 than the 45th day after the date a hydrant is concealed as provided
23 by this subsection, the public water system responsible for the
24 hydrant shall:

25 (1) if the hydrant is available for the provision of
26 fire suppression services, remove the tarp or other means of
27 concealment; or

1 (2) if the hydrant continues to be unavailable for use
2 in a fire emergency, paint all or the cap of the hydrant black as
3 required by Subsection (c)(2).

4 (f) A public water system that paints all or the cap of a
5 hydrant black as required by Subsection (c)(2) may also ensure by
6 any reasonable means that the hydrant is identifiable in low-light
7 conditions, including by installing reflectors.

8 (g) This section does not apply:

9 (1) within the jurisdiction of a governmental entity
10 that maintains its own system for labeling or color coding its
11 hydrants; or

12 (2) to any public water system that has entered into a
13 contract with a municipality or volunteer fire department to
14 provide a water supply for fire suppression services if the
15 contract specifies a different system for labeling or color coding
16 hydrants.

17 (h) For purposes of Subsection (g), a system for labeling or
18 color coding hydrants may include the assignment of different
19 colors to identify hydrants that are available for direct pumping,
20 hydrants that are available for filling a water tank on a fire truck
21 used for fire suppression services, and hydrants that are
22 unavailable for use by an entity providing fire suppression
23 services in a fire emergency.

24 (i) The fact that all or the cap of a hydrant for which a
25 public water system is responsible under this section is not
26 painted black as described by Subsection (c)(2) or concealed in the
27 manner described by Subsection (e) does not constitute a guarantee

1 by the public water system that the hydrant will deliver a certain
2 amount of water flow at all times. Notwithstanding any provision of
3 Chapter 101, Civil Practice and Remedies Code, to the contrary, a
4 public water system is not liable for a hydrant's inability to
5 provide adequate water supply in a fire emergency.

6 SECTION 3. Not later than January 1, 2014, each public water
7 system responsible for hydrants under Section 341.03571, Health and
8 Safety Code, as added by this Act, shall ensure that its hydrants
9 comply with the requirements imposed by that section.

10 SECTION 4. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2013.

House Bill 1768
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

No equivalent provision.

No equivalent provision.

SECTION 1. Section 341.0357, Health and Safety Code, is amended by adding Subsection (d) to read as follows:
(d) This section does not apply within the jurisdiction of a governmental entity described by Section 341.03571(b).

[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]

SECTION 1. Section 341.0357, Health and Safety Code, is amended to read as follows:

SECTION 1. Same as House version except 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:

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

(1) a fire hydrant; or

(2) a metal flush valve that:

(2) a metal flush valve that:

(A) has ~~[The owner of any device having]~~ the appearance of a fire hydrant; and

(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) ~~[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:

(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;

(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

(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.

(3) is within 200 miles of the Gulf of Mexico.

(c) Each water utility responsible for any hydrant shall:

(c) Each public water system responsible for any hydrant shall; [FA1(1)]

(See SECTION 2 below.)

House Bill 1768
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HOUSE VERSION

(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.

SENATE VERSION (IE)

(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)]

CONFERENCE

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(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) [(e)] 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

SENATE VERSION (IE)

(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) [(e)] 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

CONFERENCE

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HOUSE VERSION

contrary, a **water utility** is not liable for a hydrant's inability to provide adequate water supply in a fire emergency.

(See SECTION 1 above.)

SENATE VERSION (IE)

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)]

(See SECTION 1 above.)

CONFERENCE

SECTION 2. Subchapter C, Chapter 341, Health and Safety Code, is amended by adding Section 341.03571 to read as follows:

Sec. 341.03571. IDENTIFICATION REQUIREMENT FOR CERTAIN FIRE HYDRANTS AND FLUSH VALVES IN CERTAIN MUNICIPALITIES. (a) In this section, "hydrant" means:

(1) a fire hydrant; or

(2) a metal flush valve that:

(A) has the appearance of a fire hydrant; and

(B) 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:

(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 black if the hydrant is unavailable for use by the entity providing fire suppression services in a fire emergency.

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HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(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** may place a black tarp over the hydrant or use another means to conceal the hydrant instead of painting all or the cap of the hydrant black as required under Subsection (c)(2) if the hydrant is temporarily unavailable for use in a fire emergency for a period not to exceed 45 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:

(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.

(g) 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.

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CONFERENCE

(h) For purposes of Subsection (g), 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.

(i) 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.

[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]

SECTION 2. Transition provision applicable to each **water utility** responsible for hydrants under Section 341.0357, Health and Safety Code, as amended by this Act.

SECTION 2. Same as House version, except applicable to each **public water system**. [FA1(2)]

SECTION 2. Substantially the same as Senate version.

SECTION 3. Effective date.

SECTION 3. Same as House version.

SECTION 4. Same as House version.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 24, 2013

TO: Honorable David Dewhurst, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1768 by Canales (Relating to identification requirements for certain fire hydrants and flush valves.), **Conference Committee Report**

No fiscal implication to the State is anticipated.

Local Government Impact

Because the bill would not have statewide impact on units of local government of the same type or class, no comment from this office is required by the rules of the House/Senate as to its probable fiscal implication on units of local government.

Source Agencies:

LBB Staff: UP, SZ, KJo, TP

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 1768 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.

Terry Canales
(name)

5/24/13
(date)