

# FIFTY-FIFTH DAY

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MONDAY, APRIL 25, 2005

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## PROCEEDINGS

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The Senate met at 1:30 p.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Averitt, Barrientos, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Staples, Wentworth, West, Whitmire, Williams, Zaffirini.

Absent-excused: Van de Putte.

The President announced that a quorum of the Senate was present.

The Reverend José Villalón, Saint Cecilia Catholic Church, Los Fresnos, offered the invocation as follows:

Let us place ourselves in the presence of our creator. Father, from the beginning of time, You have placed in each one of us a desire for peace, love, happiness, justice, and a deeper desire to better understand ourselves. This desire has grown through time as we have evolved. We believe that in the moment of our birth, we have been given a reason, a purpose why we are here. As we gather this afternoon, we call upon Your great love and guidance as we continue to explore the many ways that our elected positions can better our communities, our state, our country, and our world. Give us Your wisdom, help us remember we are here to serve and not to be served. Help us to realize that the desire for peace, justice, and happiness always begins with You. As You have blessed us to exist in this world, we pray that we may use all our God-given talents and resources to change this world, so that when we leave, breathe our last breath and depart this world, we may leave it a much better place than when we first arrived. Bless our Governor, Lieutenant Governor, Speaker of the House, and all our legislators as they come together to resolve the issues for the people of our great state. Thank You, almighty God, for answering our prayers. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of Friday, April 22, 2005, be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

### LEAVE OF ABSENCE

On motion of Senator Whitmire, Senator Van de Putte was granted leave of absence for today on account of a death in the family.

#### CO-AUTHOR OF SENATE BILL 309

On motion of Senator Lucio, Senator Shapleigh will be shown as Co-author of **SB 309**.

#### CO-AUTHORS OF SENATE BILL 964

On motion of Senator Lucio, Senators Hinojosa and Zaffirini will be shown as Co-authors of **SB 964**.

#### CO-AUTHOR OF SENATE BILL 1100

On motion of Senator Deuell, Senator Ellis will be shown as Co-author of **SB 1100**.

#### CO-AUTHOR OF SENATE BILL 1228

On motion of Senator Shapiro, Senator Shapleigh will be shown as Co-author of **SB 1228**.

#### CO-AUTHORS OF SENATE BILL 1239

On motion of Senator Lucio, Senators Gallegos and Zaffirini will be shown as Co-authors of **SB 1239**.

#### CO-AUTHOR OF SENATE BILL 1733

On motion of Senator Shapleigh, Senator Hinojosa will be shown as Co-author of **SB 1733**.

#### CO-AUTHOR OF SENATE BILL 1818

On motion of Senator Janek, Senator Hinojosa will be shown as Co-author of **SB 1818**.

#### CO-AUTHOR OF SENATE BILL 1845

On motion of Senator Deuell, Senator Carona will be shown as Co-author of **SB 1845**.

#### CO-AUTHORS OF SENATE JOINT RESOLUTION 27

On motion of Senator Lucio, Senators Hinojosa and Zaffirini will be shown as Co-authors of **SJR 27**.

### PHYSICIAN OF THE DAY

Senator Staples was recognized and presented Dr. Gregg Hallbauer of Conroe as the Physician of the Day.

The Senate welcomed Dr. Hallbauer and thanked him for his participation in the Physician of the Day program sponsored by the Texas Academy of Family Physicians.

**(Senator Armbrister in Chair)****GUEST PRESENTED**

Senator Ogden was recognized and introduced to the Senate Shangqun Chi of Shandong Province, People's Republic of China, the sister state of Texas.

The Senate welcomed its guest.

**BILLS SIGNED**

The Presiding Officer announced the signing of the following enrolled bills in the presence of the Senate after the captions had been read:

**SB 101, SB 235, SB 348, SB 523, SB 524.**

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

April 25, 2005

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

**HB 64**, Relating to the automatic admission to public institutions of higher education of certain undergraduate transfer students.

**HB 126**, Relating to the penalty for tampering with a governmental record establishing residency for enrollment in a public school and to residency requirements for public school enrollment.

**HB 148**, Relating to the probationary period of persons appointed to beginning positions in certain fire or police departments.

**HB 214**, Relating to the authority of certain counties to impose a hotel occupancy tax.

**HB 252**, Relating to the use of parenting plans and parenting coordinators in suits affecting the parent-child relationship.

**HB 360**, Relating to the punishment for the offense of aggravated assault.

**HB 370**, Relating to deferred disposition of certain traffic offenses by certain holders of out-of-state driver's licenses.

**HB 410**, Relating to the property interests of spouses in connection with certain separate and community property.

**HB 412**, Relating to the use of credit scoring and credit history by certain telecommunications and electric service providers.

**HB 468**, Relating to driver and traffic safety education courses.

- HB 495**, Relating to the student enrollment required for the operation of Texas A&M University–Central Texas as an independent general academic teaching institution.
- HB 504**, Relating to an offense involving a motor vehicle with an altered or obscured license plate.
- HB 526**, Relating to limits placed on coverage amounts of certain group life insurance policies or certificates.
- HB 546**, Relating to certain medical examination requirements in connection with an allegation of sexual assault of a child.
- HB 585**, Relating to the requirements for the incorporation of a municipality in the extraterritorial jurisdiction of certain existing municipalities.
- HB 614**, Relating to foster care payments for certain children.
- HB 629**, Relating to notice required for a mechanic's, contractor's, or materialman's lien in certain circumstances.
- HB 632**, Relating to the historical advisory board of the San Jacinto Battleground.
- HB 698**, Relating to the disposal of certain business records that contain personal identifying information; providing a civil penalty.
- HB 720**, Relating to the members of a local workforce development board.
- HB 805**, Relating to allowing certain emergency and hospital personnel to take the thumbprint of certain people who receive emergency prehospital care.
- HB 808**, Relating to exempting an accountant from regulation as a private investigator.
- HB 858**, Relating to the issuance of a marriage license to applicants who are unable to personally appear before the county clerk.
- HB 881**, Relating to the dissolution of the Aransas County Conservation and Reclamation District.
- HB 907**, Relating to the membership of the Critical Infrastructure Protection Council.
- HB 943**, Relating to evidence establishing ownership of a vessel for a certificate of title issued by the Parks and Wildlife Department.
- HB 952**, Relating to a pilot program to provide health services to state employees in state office complexes.
- HB 956**, Relating to the composition of the juvenile board of Leon County.
- HB 1011**, Relating to the removal of the dedication for certain cemeteries.
- HB 1018**, Relating to the amount of liability insurance required to be maintained on certain school buses owned by a motor carrier.
- HB 1179**, Relating to the authority of an associate judge in certain family law cases.
- HB 1186**, Relating to testamentary and nontestamentary transfers of property and other benefits and to jurisdiction of courts over certain probate matters.

**HB 1188**, Relating to the criteria for designation of a reinvestment zone for purposes of tax increment financing and to the powers of a municipality that has created a reinvestment zone.

**HB 1191**, Relating to guardianship matters and proceedings.

**HB 1480**, Relating to the issuance of special license plates to benefit certain programs.

**HB 1531**, Relating to telematics services excepted from private security regulation.

**HB 1534**, Relating to the appointment of a sheriff, municipal police officer, and firefighter to the Critical Infrastructure Protection Council.

**HB 1558**, Relating to an alternative method of satisfying certain licensing and program participation requirements for assisted living facilities.

**HB 1586**, Relating to the transaction of business by the Court of Appeals for the Eleventh Court of Appeals District.

**HB 1630**, Relating to an excused absence from a public institution of higher education for a person called to active military service.

**HB 1646**, Relating to the definition of all-terrain vehicle in the certificate of title and the motor vehicle registration laws.

**HB 1673**, Relating to the procedure for conversion and creation of a special utility district.

**HB 1690**, Relating to common nuisance.

**HB 1695**, Relating to the appointment and jurisdiction of cattle rangers.

**HB 1745**, Relating to the disqualification of certain temporary employees for unemployment compensation benefits.

**HB 1759**, Relating to the eligibility for jury-recommended community supervision and to the conditions of community supervision for certain defendants convicted of state jail felonies.

**HB 1807**, Relating to the offense of attack on an assistance animal.

**HB 1813**, Relating to historical reenactments on premises permitted or licensed under the Alcoholic Beverage Code.

**HB 1820**, Relating to the requirements for reporting certain information to the attorney general or the legislature.

**HB 1901**, Relating to the maximum reservation for certain individual projects of a portion of the state ceiling for private activity bonds.

**HB 1935**, Relating to the acceptance of credit cards by a water district for the payment of fees and charges imposed by the district.

**HB 1937**, Relating to the authority of certain counties to create county assistance districts for certain purposes.

**HB 1951**, Relating to the creation of a judicial district composed of Brazoria County.

- HB 1958**, Relating to the authority of certain persons to bring suit to require an appraisal district or an appraisal review board to comply with the property tax laws.
- HB 1959**, Relating to the hunting of deer with dogs and the taking of wildlife resources without the consent of the landowner; providing penalties.
- HB 1981**, Relating to the amount of the fee that the Pineywoods Groundwater Conservation District may impose on a well.
- HB 1987**, Relating to the regulation of underground and aboveground storage tanks.
- HB 1996**, Relating to the election of directors of the Wes-Tex Groundwater Conservation District.
- HB 2024**, Relating to hunter education.
- HB 2025**, Relating to the transfer of jurisdiction over the National Museum of the Pacific War and other historical sites from the Parks and Wildlife Department to the Texas Historical Commission.
- HB 2032**, Relating to the expansion of the operation game thief program to include certain other violations of law.
- HB 2046**, Relating to the applicability of the open meetings law to actions taken by certain directors of a water district; providing a criminal penalty.
- HB 2096**, Relating to the removal and disposal of certain vessels and structures in certain locations; providing penalties.
- HB 2172**, Relating to eligibility for a license or registration for an exemption to engage in liquefied petroleum gas-related activities and to disciplinary action against licensees and registrants.
- HB 2174**, Relating to the terms of court of the 15th, 59th, and 336th District Courts.
- HB 2195**, Relating to the disclosure of certain confidential health information to the Texas Department of Criminal Justice.
- HB 2196**, Relating to the transfer of surplus data processing equipment to the Texas Department of Criminal Justice.
- HB 2256**, Relating to the terms of court of the 112th Judicial District.
- HB 2267**, Relating to the powers of the Coastal Water Authority; providing the authority to impose a tax; affecting the authority to issue bonds.
- HB 2298**, Relating to elimination of certain rate rollbacks for insurance premium rates for windstorm insurance.
- HB 2331**, Relating to the emergency possession of certain abandoned children; providing a penalty.
- HB 2336**, Relating to reimbursement of certain expenses for members of the Texas Military Facilities Commission.
- HB 2384**, Relating to the composition of the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments.
- HB 2428**, Relating to water and energy saving performance standards for commercial prerinse spray valves.

- HB 2430**, Relating to the establishment of a rainwater harvesting evaluation committee.
- HB 2440**, Relating to the regulation by the Railroad Commission of Texas of activities associated with multiple accumulations of hydrocarbons from which production by commingling of hydrocarbons is authorized.
- HB 2555**, Relating to the humane dispatch of certain game animals and game birds.
- HB 2584**, Relating to the Kimble County Hospital District of Kimble County, Texas.
- HB 2587**, Relating to the Schleicher County Hospital District.
- HB 2614**, Relating to the applicability of certain insurance laws to Lloyd's plans and reciprocal and interinsurance exchanges.
- HB 2626**, Relating to the penalties and fees imposed by municipalities and counties in relation to certain false alarms.
- HB 2760**, Relating to regulation of rates for personal automobile and fire and allied lines insurance policies issued by a county mutual insurance company.
- HB 2885**, Relating to an arrest warrant or complaint for the issuance of a bad check.
- HB 2892**, Relating to conditions of employment for firefighters employed by certain municipalities.
- HB 2926**, Relating to the procedure for listing property in the appraisal records following certain ad valorem tax sales.
- HB 2961**, Relating to the repeal of certain requirements for the Texas Workforce Commission's administration of federally established day-care programs.
- HB 2962**, Relating to the abolition of the work and family policies advisory committee and the work and family policies fund.
- HB 3199**, Relating to the terms of court of the 410th District Court.
- HB 3265**, Relating to the declaration of a mistrial in the punishment phase of a criminal proceeding.
- HB 3340**, Relating to surveys accepted for filing in the official records of the General Land Office.
- HB 3353**, Relating to the continuation of certain offenses and certain statutes involving the interception of certain communications.
- HB 3481**, Relating to the appointment of magistrates in the district courts and statutory county courts in Montgomery County.
- HB 3489**, Relating to the creation of an additional statutory county court in Brazoria County.
- HCR 13**, Memorializing Congress to allow Mexican visitors the same six-month length of stay afforded to Canadian travelers.
- HCR 71**, Designating Texas purple sage (*Leucophyllum frutescens*) as the official State Native Shrub of Texas.

**HCR 93**, Designating Schulenburg the Official Home of the Painted Churches of Texas.

**SCR 31**, Recognizing Amarillo and the Texas Panhandle for their observance of the National Day of Prayer.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### **INTRODUCTION OF BILLS AND RESOLUTIONS POSTPONED**

The Presiding Officer announced that the introduction of bills and resolutions on first reading would be postponed until the end of today's session.

There was no objection.

### **GUESTS PRESENTED**

Senator Wentworth was recognized and introduced to the Senate delegates from the Arab Republic of Egypt: Sherif Hassan Amin Waly, member of the Shura Council; Hany Labib, Head of Authentication Unit, Save the Children; Salah Mohamed Hasab Alla, National Secretary of Youth; Shaimaa Hassan El Bana, Head of Media Unit, Association for Development and Enhancement of Women; and Ranya Mike; accompanied by Ahmed Saleh Ibrahim El Ayedi, Hussein Eid Abdel Hamid, Ahmed Mohamed Elfateh Aboutaleb Mohamed, Ahmed Hassan Aly Osman, Mona Shawky Rady, and Ahmed Mohamed Tawfik Rostom.

The Senate welcomed its guests.

### **SENATE BILL 217 WITH HOUSE AMENDMENT**

Senator Shapiro called **SB 217** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer, Senator Armbrister in Chair, laid the bill and the House amendment before the Senate.

#### **Amendment**

Amend **SB 217** by substituting in lieu thereof the following:

#### **A BILL TO BE ENTITLED AN ACT**

relating to reporting the outcome of alcohol and drug tests of holders of commercial driver's licenses.

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

SECTION 1. Section 521.053(d), Transportation Code, is amended to read as follows:

(d) The department may provide information maintained under Section ~~643.064~~ 644.252 that relates to a holder of a commercial driver's license under Chapter 522 to the holder, the holder's current employer, or a person acting on behalf of the employer if the department receives the holder's specific written consent to the release of information.



SECTION 2. Chapter 644, Transportation Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. REPORT ON ALCOHOL AND DRUG TESTING

Sec. 644.251. DEFINITIONS. In this subchapter:

(1) "Employee" has the meaning assigned by 49 C.F.R. Section 40.3.

(2) "Valid positive result" means:

(A) an alcohol concentration of 0.04 or greater on an alcohol confirmation test; or

(B) a result at or above the cutoff concentration levels listed in 49 C.F.R. Section 40.87 on a confirmation drug test.

Sec. 644.252. REPORT OF REFUSAL AND CERTAIN RESULTS. (a) An employer required to conduct alcohol and drug testing of an employee who holds a commercial driver's license under Chapter 522 under federal safety regulations as part of the employer's drug testing program or consortium, as defined by 49 C.F.R. Part 382, shall report to the department:

(1) a valid positive result on an alcohol or drug test performed;

(2) a refusal to provide a specimen for an alcohol or drug test; or

(3) an adulterated specimen, dilute specimen, or substituted specimen, as those terms are defined by 49 C.F.R. Section 40.3, on an alcohol or drug test performed.

(b) The department shall maintain the information provided under this section.

(c) Information maintained under this section is confidential and only subject to release as provided by Section 521.053.

SECTION 3. Section 643.064, Transportation Code, is repealed.

SECTION 4. This Act takes effect September 1, 2005.

The amendment was read.

Senator Shapiro moved to concur in the House amendment to **SB 217**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Van de Putte.

**SENATE BILL 734 WITH HOUSE AMENDMENTS**

Senator Williams called **SB 734** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 734** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to municipal regulation of the discharge of firearms and certain other weapons.

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

SECTION 1. Section 251.005, Agriculture Code, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

(c) A governmental requirement of a city does not apply to any agricultural operation situated outside the corporate boundaries of the city on the effective date of this chapter. If an agricultural operation so situated is subsequently annexed or otherwise brought within the corporate boundaries of the city, the governmental requirements of the city do not apply to the agricultural operation unless the requirement is reasonably necessary to protect persons who reside in the immediate vicinity or persons on public property in the immediate vicinity of the agricultural operation from the danger of:

(1) explosion, flooding, vermin, insects, physical injury, contagious disease, removal of lateral or subjacent support, contamination of water supplies, radiation, storage of toxic materials, ~~[discharge of firearms,]~~ or traffic hazards; or

(2) discharge of firearms or other weapons, subject to the restrictions in Section 229.002, Local Government Code.

(c-1) A governmental requirement may be imposed under Subsection (c) ~~[this subsection]~~ only after the governing body of the city makes findings by resolution that the requirement is necessary to protect public health. Before making findings as to the necessity of the requirement, the governing body of the city must use the services of the city health officer or employ a consultant to prepare a report to identify the health hazards related to agricultural operations and determine the necessity of regulation and manner in which agricultural operations should be regulated.

SECTION 2. Section 43.002, Local Government Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) This section does not prohibit a municipality from imposing:

(1) a regulation relating to the location of sexually oriented businesses, as that term is defined by Section 243.002;

(2) a municipal ordinance, regulation, or other requirement affecting colonias, as that term is defined by Section 2306.581, Government Code;

(3) a regulation relating to preventing imminent destruction of property or injury to persons;

(4) a regulation relating to public nuisances;

(5) a regulation relating to flood control;

(6) a regulation relating to the storage and use of hazardous substances; or

(7) a regulation relating to the sale and use of fireworks; ~~or~~

~~[(8) a regulation relating to the discharge of firearms].~~

(d) A regulation relating to the discharge of firearms or other weapons is subject to the restrictions in Section 229.002.

SECTION 3. Chapter 229, Local Government Code, is amended by adding Section 229.002 to read as follows:

Sec. 229.002. REGULATION OF DISCHARGE OF WEAPON. A municipality may not apply a regulation relating to the discharge of firearms or other weapons in the extraterritorial jurisdiction of the municipality or in an area annexed by the municipality after September 1, 1981, if the firearm or other weapon is:

(1) a shotgun, air rifle or pistol, BB gun, or bow and arrow discharged:

(A) on a tract of land of 10 acres or more and more than 150 feet from a residence or occupied building located on another property; and

(B) in a manner not reasonably expected to cause a projectile to cross the boundary of the tract; or

(2) a center fire or rim fire rifle or pistol of any caliber discharged:

(A) on a tract of land of 50 acres or more and more than 300 feet from a residence or occupied building located on another property; and

(B) in a manner not reasonably expected to cause a projectile to cross the boundary of the tract.

SECTION 4. 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, 2005.

### **Floor Amendment No. 1**

Amend **CSSB 734** as follows:

(1) On page 1 by inserting a new SECTION 1 between lines \_\_\_ and \_\_\_ to read as follows:

"SECTION 1. Section 251.002 (1), Agriculture Code, is amended to read as follows:

(1) "Agricultural operation" includes [~~but it is not limited to~~] the following activities:

(A) cultivating the soil;

(B) producing crops for human food, animal feed, planting seed, or fiber;

(C) floriculture;

(D) viticulture;

(E) horticulture;

(F) silviculture;

(G) ; wildlife management

(H) raising or keeping livestock or poultry; and

(I) planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure."; and

(2) Renumber subsequent SECTIONS accordingly.

The amendments were read.

Senator Williams moved to concur in the House amendments to **SB 734**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Van de Putte.

### **PERMISSION TO INTRODUCE BILLS**

Senator Whitmire moved to suspend Senate Rule 7.07(b) and Section 5, Article III, of the Texas Constitution to permit the introduction of the following bills:

**SB 1878, SB 1879.**

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Van de Putte.

**SENATE BILL 848 WITH HOUSE AMENDMENTS**

Senator Shapiro called **SB 848** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 848** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the approval of certain permit applications by local governments.

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

SECTION 1. Subdivision (1), Section 245.001, Local Government Code, is amended to read as follows:

(1) "Permit" means a license, certificate, approval, registration, consent, permit, contract or other agreement for construction related to, or provision of, service from a utility owned, operated, or controlled by a regulatory agency, or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought.

SECTION 2. Section 245.002, Local Government Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (e)-(g) to read as follows:

(a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time:

(1) the original application for the permit is filed for review for any purpose, including review for administrative completeness; or

(2) a plan for development of real property is filed with a regulatory agency.

(a-1) Rights to which a permit applicant is entitled under this chapter accrue on the filing of an original application or plan for development that gives the regulatory agency fair notice of the project and the nature of the permit sought. An application or plan is considered filed on the date the applicant delivers the application or plan to the regulatory agency or deposits the application or plan with the United States Postal Service by certified mail addressed to the regulatory agency. A certified mail receipt obtained by the applicant at the time of deposit is prima facie evidence of the date the application or plan was deposited with the United States Postal Service.

(e) A regulatory agency may provide that a permit application expires on or after the 45th day after the date the application is filed if:

(1) the applicant fails to provide documents or other information necessary to comply with the agency's technical requirements relating to the form and content of the permit application;

(2) the agency provides to the applicant not later than the 10th business day after the date the application is filed written notice of the failure that specifies the necessary documents or other information and the date the application will expire if the documents or other information is not provided; and

(3) the applicant fails to provide the specified documents or other information within the time provided in the notice.

(f) This chapter does not prohibit a regulatory agency from requiring compliance with technical requirements relating to the form and content of an application in effect at the time the application was filed even though the application is filed after the date an applicant accrues rights under Subsection (a-1).

(g) Notwithstanding Section 245.003, the change in law made to Subsection (a) and the addition of Subsections (a-1), (e), and (f) by S.B. No. 848, Acts of the 79th Legislature, Regular Session, 2005, apply only to a project commenced on or after the effective date of that Act.

SECTION 3. The change in law made by this Act to Section 245.001(1), Local Government Code, is subject to the applicability provision of Section 245.003, Local Government Code.

SECTION 4. 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, 2005.

#### **Floor Amendment No. 1**

Amend **CSSB 848** by the striking SECTION 1 and substituting the following:

"SECTION 1. Subdivision (1), Section 245.001, Local Government Code, is amended to read as follows:

(1) "Permit" means a license, certificate, approval, registration, consent, permit, contract or other agreement for construction related to, or provision of, service from a water or wastewater utility owned, operated, or controlled by a regulatory agency, or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought."

#### **Floor Amendment No. 1 on Third Reading**

Amend **CSSB 848** on third reading as follows:

On page 2, line 2, between "property" and "is" insert "or plat application"

On page 2, line 6, between "development" and "that", insert "or plat application".

The amendments were read.

Senator Shapiro moved to concur in the House amendments to **SB 848**.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Zaffirini.

Absent-excused: Van de Putte.

#### **CONCLUSION OF MORNING CALL**

The Presiding Officer, Senator Armbrister in Chair, at 1:59 p.m. announced the conclusion of morning call.

**SENATE BILL 1193 ON THIRD READING**

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 1193** at this time on its third reading and final passage:

**SB 1193**, Relating to the service areas of the Alamo Community College District and the Austin Community College District.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Van de Putte.

**COMMITTEE SUBSTITUTE  
SENATE BILL 788 ON THIRD READING**

Senator Williams moved to suspend the regular order of business to take up for consideration **CSSB 788** at this time on its third reading and final passage:

**CSSB 788**, Relating to eligibility for certain unemployment compensation benefits.

The motion prevailed by the following vote: Yeas 20, Nays 10.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Nelson, Ogden, Seliger, Shapiro, Staples, Wentworth, Williams.

Nays: Barrientos, Ellis, Gallegos, Hinojosa, Lucio, Madla, Shapleigh, West, Whitmire, Zaffirini.

Absent-excused: Van de Putte.

The bill was read third time and was passed by the following vote: Yeas 20, Nays 10. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
SENATE BILL 142 ON SECOND READING**

Senator Wentworth moved to suspend the regular order of business to take up for consideration **CSSB 142** at this time on its second reading:

**CSSB 142**, Relating to the authority of a county to regulate land development after a local option election.

The motion prevailed.

Senators Eltife, Staples, and Williams asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 142** by striking all below the enacting clause and substituting the following:

SECTION 1. Chapter 232, Local Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. REGULATION OF LAND DEVELOPMENT

Sec. 232.151. DEFINITIONS. In this subchapter:

(1) "Agriculture" means:

(A) cultivating the soil to produce crops for human food, animal feed, seed for planting, or the production of fibers;

(B) practicing floriculture, viticulture, silviculture, or horticulture;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food, fiber, leather, pelts, or other tangible products having commercial value;

(D) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in a governmental program or normal crop or livestock rotation procedure; or

(E) wildlife management.

(2) "Agricultural use" means use or activity involving agriculture.

Sec. 232.152. SCOPE OF REGULATORY AUTHORITY. (a) The commissioners court of a county that is granted authority in accordance with this subchapter may regulate, by order, land development in the unincorporated area of the county by:

(1) requiring a limited fire suppression system that requires a developer to construct:

(A) for a subdivision of fewer than 50 houses, 2,500 gallons of storage;

or

(B) for a subdivision of 50 or more houses, 2,500 gallons of storage with a centralized water system or 5,000 gallons of storage;

(2) requiring a buffer zone between the land used for a purpose specified by this subdivision and residential areas as follows:

(A) at least 1,000 feet for heavy industrial or quarry use;

(B) at least 750 feet for light industrial use; and

(C) at least 500 feet for commercial or other business use; or

(3) requiring a developer, before the county approves a plat filed by the developer, to:

(A) contract with an engineer licensed under Chapter 1001, Occupations Code, and specializing in civil engineering to determine the off-site roadway needs of the subdivision or other development and the costs of providing the necessary off-site roadway improvements attributable to the subdivision or other development; and

(B) provide for the necessary off-site roadway improvements attributable to the subdivision or other development, as determined by the engineer under Paragraph (A).

(b) Any contribution from a developer required to be provided for necessary off-site roadway improvements must be limited to the developer's portion of the costs required for the off-site roadway improvements that are roughly proportionate to the attributable increased off-site roadway needs of the county as a result of the proposed development, as determined by the engineer under Subsection (a)(3)(A).

(c) Subsection (a)(2) does not authorize a county to adopt zoning regulations.

(d) A county regulation under this subchapter does not apply to land used for an activity described by Section 81.051, Natural Resources Code, or to an interstate gas pipeline facility as defined by 49 U.S.C. Section 60101.

(e) A county regulation under this subchapter, other than a regulation requiring a buffer zone under Subsection (a)(2), does not apply to a tract of land used for a single-family residence that is located outside the boundaries of a platted subdivision.

(f) A county regulation under this subchapter does not apply to:

(1) a platted residential subdivision in existence on the date the regulation takes effect;

(2) a tract of land devoted to agricultural use; or

(3) an activity or a structure or appurtenance on a tract of land devoted to agricultural use.

Sec. 232.153. ELECTION TO GRANT REGULATORY AUTHORITY. The commissioners court of a county may order and hold an election in the county on the question of granting the commissioners court the authority to regulate land development in the unincorporated area of the county.

Sec. 232.154. BALLOT PROPOSITION. For an election under this subchapter, the ballot shall be prepared to permit voting for or against the proposition: "Granting (name of county) the authority to regulate land development in the unincorporated area of the county."

Sec. 232.155. EFFECT OF ELECTION. If a majority of the votes received on the question at the election approve the grant of authority, the commissioners court of the county may adopt a regulation under this subchapter.

SECTION 2. The heading to Chapter 232, Local Government Code, is amended to read as follows:

CHAPTER 232. COUNTY REGULATION OF SUBDIVISIONS  
AND PROPERTY DEVELOPMENT

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, 2005.

The amendment was read.

On motion of Senator Wentworth, further consideration of **CSSB 142** was postponed to a time certain of 11:00 a.m. Wednesday, April 27, 2005.

Question — Shall Floor Amendment No. 1 to **CSSB 142** be adopted?

**SENATE BILL 100 ON SECOND READING**

Senator Ellis moved to suspend the regular order of business to take up for consideration **SB 100** at this time on its second reading:



**SB 100**, Relating to a request for placement of a security freeze on a consumer file maintained by a consumer reporting agency.

The motion prevailed.

Senators Averitt, Carona, Fraser, Janek, Nelson, and Wentworth asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time and was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to engrossment except as follows:

Nays: Averitt, Carona, Fraser, Janek, Nelson, Wentworth.

Absent-excused: Van de Putte.

### **SENATE BILL 100 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 100** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 6.

Yeas: Armbrister, Barrientos, Brimer, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Harris, Hinojosa, Jackson, Lindsay, Lucio, Madla, Ogden, Seliger, Shapiro, Shapleigh, Staples, West, Whitmire, Williams, Zaffirini.

Nays: Averitt, Carona, Fraser, Janek, Nelson, Wentworth.

Absent-excused: Van de Putte.

### **Reason for Vote**

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **SB 100**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **SB 100** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth  
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 24, Nays 6. (Same as previous roll call)

**SENATE BILL 449 ON SECOND READING**

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 449** at this time on its second reading:

**SB 449**, Relating the conversion of certain mutual life insurance companies to insurance holding companies and stock life insurance companies.

The bill was read second time and was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to engrossment except as follows:

Absent-excused: Van de Putte.

**(President in Chair)**

**COMMITTEE SUBSTITUTE**

**SENATE BILL 785 ON SECOND READING**

Senator Fraser moved to suspend the regular order of business to take up for consideration **CSSB 785** at this time on its second reading:

**CSSB 785**, Relating to the regulation of quarries; providing penalties.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Armbrister, Averitt, Barrientos, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Janek, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Staples, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Jackson, Lindsay.

Absent-excused: Van de Putte.

The bill was read second time and was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to engrossment except as follows:

Nays: Jackson, Lindsay.

Absent-excused: Van de Putte.

**COMMITTEE SUBSTITUTE**

**SENATE BILL 785 ON THIRD READING**

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 785** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 3.

Yeas: Armbrister, Averitt, Barrientos, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Janek, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Staples, West, Whitmire, Williams, Zaffirini.

Nays: Jackson, Lindsay, Wentworth.

Absent-excused: Van de Putte.

### **Reason for Vote**

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 785**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **CSSB 785** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth  
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 28, Nays 2.

Yeas: Armbrister, Averitt, Barrientos, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Janek, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Staples, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Jackson, Lindsay.

Absent-excused: Van de Putte.

### **NOTICE GIVEN FOR LOCAL AND UNCONTESTED CALENDAR**

Senator Harris announced that a Local and Uncontested Calendar had been furnished to each Member of the Senate. He then gave notice that the Local and Uncontested Calendar Session would be held at 8:00 a.m. tomorrow and that all bills and resolutions would be considered on second and third reading in the order in which they were listed.

**SENATE RULE 11.13 SUSPENDED**  
**(Consideration of Bills in Committees)**

On motion of Senator Harris and by unanimous consent, Senate Rule 11.13 was suspended to grant all committees permission to meet while the Senate is meeting tomorrow during the Local and Uncontested Calendar Session.

**SENATE RULES SUSPENDED**  
**(Posting Rules)**

On motion of Senator Madla and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Intergovernmental Relations might meet and consider **SB 1828** today.

**SENATE RULE 11.13 SUSPENDED**  
**(Consideration of Bills in Committees)**

On motion of Senator Madla and by unanimous consent, Senate Rule 11.13 was suspended to grant all committees permission to meet while the Senate is meeting today.

**MOTION TO RECESS AND ADJOURN**

On motion of Senator Whitmire and by unanimous consent, the Senate at 3:18 p.m. agreed to recess, upon completion of the introduction of bills and resolutions on first reading, until 8:00 a.m. tomorrow for the Local and Uncontested Calendar Session.

The Senate further agreed to adjourn, upon conclusion of the Local and Uncontested Calendar Session, until 11:00 a.m. tomorrow.

**(Senator Wentworth in Chair)**

**SENATE BILLS ON FIRST READING**

The following bills were introduced, read first time, and referred to the committees indicated:

**SB 1878** by Deuell

Relating to validating actions of and amending assessments imposed by the Falcon's Lair Utility and Reclamation District, of Dallas County, Texas.

To Committee on Intergovernmental Relations.

**SB 1879** by Wentworth

Relating to the creation of special districts for improvements in certain counties, including authority to acquire, construct, and improve water, wastewater, and drainage improvements; providing authority to impose a tax and issue bonds.

To Committee on Intergovernmental Relations.

**SB 1880** by Ellis

Relating to the Buffalo Bayou Management District and the creation of the East Montrose Management District and the Fourth Ward Management District out of part of the territory of the Buffalo Bayou Management District; authorizing taxes and bonds. (Local Bill)

To Committee on Intergovernmental Relations.

**SB 1881** by Deuell

Relating to the validation, annexation, powers, and duties of the Parker Creek Municipal Utility District of Rockwall County; providing authority to impose a tax and issue bonds; granting the power of eminent domain. (Local Bill)

To Committee on Intergovernmental Relations.

**SB 1882** by Jackson

Relating to the creation of the Galveston County Municipal Utility District No. 67; providing authority to impose a tax and issue bonds; granting the power of eminent domain. (Local Bill)

To Committee on Intergovernmental Relations.

**HOUSE BILLS ON FIRST READING**

The following bills received from the House were read first time and referred to the committees indicated:

**HB 4** to Committee on Education.

**HB 167** to Committee on Intergovernmental Relations.

**HB 168** to Committee on Business and Commerce.

**HB 240** to Committee on Jurisprudence.

**HB 308** to Committee on Education.

**HB 384** to Committee on Health and Human Services.

**HB 492** to Committee on Education.

**HB 599** to Committee on Transportation and Homeland Security.

**HB 600** to Committee on Transportation and Homeland Security.

**HB 657** to Committee on Jurisprudence.

**HB 695** to Committee on State Affairs.

**HB 880** to Committee on Finance.

**HB 883** to Committee on Natural Resources.

**HB 968** to Committee on Jurisprudence.

**HB 1174** to Committee on Jurisprudence.

**HB 1182** to Committee on Jurisprudence.

**HB 1215** to Subcommittee on Higher Education.

**HB 1253** to Subcommittee on Emerging Technologies and Economic Development.

**HB 1287** to Committee on Intergovernmental Relations.

**HB 1567** to Committee on Business and Commerce.

**HB 1601** to Committee on Criminal Justice.

**HB 1677** to Committee on Health and Human Services.

**HB 1734** to Subcommittee on Emerging Technologies and Economic Development.

**HB 1752** to Committee on Health and Human Services.

**HB 1855** to Committee on Business and Commerce.

**HB 1912** to Committee on Health and Human Services.

**HB 1970** to Committee on Health and Human Services.

**HB 2021** to Committee on Transportation and Homeland Security.

**HB 2039** to Committee on State Affairs.

**HB 2217** to Committee on Finance.

**HB 2297** to Committee on Criminal Justice.

**HB 2475** to Committee on Health and Human Services.

**HB 2510** to Committee on Natural Resources.

**HB 2553** to Committee on Business and Commerce.

**HB 2604** to Committee on Veteran Affairs and Military Installations.

**HB 3017** to Committee on State Affairs.

### **RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

#### **Memorial Resolutions**

**SR 681** by Ogden, In memory of Tex Leo "Doc" Kassen.

**SR 691** by Barrientos, In memory of Rudolph P. Castañon, Jr., of Austin.

#### **Congratulatory Resolutions**

**SR 677** by Barrientos, Recognizing Ethel Washington on the occasion of her retirement.

**SR 678** by Barrientos, Recognizing Kevin W. Flegal on the occasion of his retirement.

**SR 679** by Whitmire, Recognizing Robert Christopher Napier on the occasion of his retirement from the United States Army Reserve.

**SR 680** by Ellis, Recognizing Joe Samuel Ratliff on the occasion of the 35th anniversary of his ordination.

**SR 683** by Whitmire, Recognizing the Leadership Officers Training Corps at Alice Johnson Junior High School in Channelview for its work in preparing students to be leaders.

**SR 684** by Lucio, Recognizing the Regional Academic Health Center Medical Library in Harlingen for receiving the 2004 National Award for Museum and Library Service.

**SR 685** by Lucio, Recognizing Elizabeth Garza Maldonado on the occasion of her retirement.

**SR 686** by Lucio, Recognizing members of the dance team of Lopez High School in Brownsville for their success at the 2005 Showmakers and Starmakers Contest.

**SR 687** by Lucio, Recognizing Ralph Morales for founding the End of the Road Ministry in Harlingen.

**SR 689** by Barrientos, Congratulating the recipients of the 2005 Best of Texas Communities In Schools Awards.

**SR 690** by Barrientos, Recognizing Karen Kay Hale on the occasion of her retirement.

**SR 693** by Barrientos, Recognizing Eduardo Molina on the occasion of his retirement.

**HCR 110** (Eltife), Commemorating the 75th anniversary of the discovery of the East Texas Oil Field on October 3, 1930.

**Official Designation Resolution**

**SR 688** by Lucio, Recognizing April 29, 2005, as El Dia de los Niños in Brownsville and across the state.

**RECESS**

Pursuant to a previously adopted motion, the Senate at 3:22 p.m. recessed until 8:00 a.m. tomorrow for the Local and Uncontested Calendar Session.

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**APPENDIX**

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**COMMITTEE REPORTS**

The following committee reports were received by the Secretary of the Senate in the order listed:

April 25, 2005

TRANSPORTATION AND HOMELAND SECURITY — **CSSB 642, CSSB 1089, SB 1713, SCR 10, CSHB 364, CSHB 372, CSHB 747**

ADMINISTRATION — **CSSB 1010**

NATURAL RESOURCES — **CSSB 272**

EDUCATION — **CSSB 31, CSSB 1227, CSSB 1529, CSSB 1716**

GOVERNMENT ORGANIZATION — **SB 409**

FINANCE — **CSSB 1617**

TRANSPORTATION AND HOMELAND SECURITY — **CSSB 433**

STATE AFFAIRS — **CSSB 15, CSSB 49, CSSB 121, CSSB 698, SB 1284**

JURISPRUDENCE — **CSSB 1071**

INTERGOVERNMENTAL RELATIONS — **CSSB 54, SB 771 (Amended), SB 861 (Amended), SB 1104 (Amended), CSSB 1107, CSSB 1108, CSSB 1174, CSSB 1372, CSSB 1631, CSSB 1660, CSSB 1751, CSSB 1795**

EDUCATION — **CSSB 1778**

CRIMINAL JUSTICE — **CSSB 881, CSSB 1033, CSSB 1295, CSSB 1503, CSSB 1507**

GOVERNMENT ORGANIZATION — **CSSB 408, CSSB 422, CSSB 1382, CSHB 773**

BUSINESS AND COMMERCE — **SB 1056, SB 1697, CSSB 1748, CSSB 1764, HB 1154, HB 1236, HB 1286, HB 1319, HB 1507**

STATE AFFAIRS — **CSSB 520, CSSB 1149**

INTERGOVERNMENTAL RELATIONS — **SB 799, SB 1204, SB 1206, SB 1302, SB 1677, SB 1827, HB 918, HB 2814**

EDUCATION — **CSSCR 17**

**SENT TO GOVERNOR**

April 25, 2005

**SB 101, SB 235, SB 348, SB 523, SB 524**