

NOTICE: While reasonable efforts have been made to assure the accuracy of the data herein, this is **NOT** the official version of Senate Journal. It is published to provide information in a timely manner, but has **NOT** been proofread against the events of the session for this day. All information obtained from this source should be checked against a proofed copy of the Senate Journal.

UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Wednesday, March 9, 2005.

Met at twenty-three minutes past one o'clock P.M.

The President, members, guests and employees then recited the pledge of allegiance to the flag.

Communications.

The following communications were severally placed on file:

Communication from the Joint Committee on Children and Families submitting its rules of procedure for the 2005-2006 legislative session (received Monday, March 7, 2005);
Communication from the Joint Committee on Community Development and Small Business submitting its rules of procedure for the 2005-2006 legislative session (received Monday, March 7, 2005);
Communication from the Joint Committee on the Environment, Natural Resources and Agriculture submitting its rules of procedure for the 2005-2006 legislative session (received Monday, March 7, 2005);
Communication from the Joint Committee on Higher Education submitting its rules of procedure for the 2005-2006 legislative session (received Monday, March 7, 2005); and
Communication from the Joint Committee on Transportation submitting its rules of procedure for the 2005-2006 legislative session (received Monday, March 7, 2005).

Report.

A report of the Massachusetts Capital Resource Company (under the provisions of section 20 of Chapter 816 of the Acts of 1977) submitting its twenty-eight annual report (Senate, No. 28) (received Wednesday, March 2, 2005),— **was referred to the committee on Revenue.**
Sent to the House for concurrence.

Resolutions.

The following resolutions (having been filed with the Clerk) were severally considered forthwith and adopted, as follows:—

Resolutions (filed by Ms. Creem) “congratulating Stanley and Marlene Rabinovitz on receiving the Amud Hachesed Award from Torah Academy”;
Resolutions (filed by Mr. Morrissey) “on the retirement of Bob Hanna”;
Resolutions (filed by Mr. Pacheco) “celebrating the fiftieth anniversary of the Mulcahey Middle School, Taunton”; and
Resolutions (filed by Mr. Pacheco) “on the retirement of Gerald Puccini.”

Petition.

On motion of Mr. Lees, Senate Rule 20 and Joint Rule 12 were suspended on the petition, presented by Mr. Tarr, (accompanied by bill) of Bruce E. Tarr and Bradley H. Jones, Jr. for legislation to establish a sick leave bank for James E. Vesey, an employee of the Boston Municipal Court,— **and the same was referred to the committee on Senate Ethics and Rules. Sent to the House for concurrence in the suspension of Joint Rule 12.**

Report of a Committee.

By Ms. Murray, for the committee on Ways and Means, that the House Bill establishing a sick leave bank for Sean Glennon, an employee of the Trial Court of the Commonwealth (House, No. 138),— ought to pass.

There being no objection, the rules were suspended, on motion of Mr. Pacheco, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence, its title having been changed by committee on Bills in the Third Reading to read as follows: “An Act establishing a sick leave bank for Sean Glennon, an employee of the Trial Court.”

Recess.

At twenty-four minutes before two o'clock P.M., at the request of Mr. Lees, for the purpose of a minority caucus, the President declared a recess; and, at twenty-four minutes before three o'clock P.M., the Senate reassembled, Mr. Moore in the Chair.

PAPERS FROM THE HOUSE.

Bills Returned with Recommendation of Amendment.

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill making appropriations for the fiscal year 2004 to provide for supplementing certain existing appropriations and for certain other activities and projects (House, No. 2010, amended) inasmuch as relates to Section 14A (see House, No. 43) [for message, see House, No. 42],— came from the House with endorsement that the House adopted the amendment recommended by the Governor (as approved by the House Committee on Bills in the Third Reading) and had adopted an amendment striking out all after the enacting clause and inserting in place thereof the following:—

“SECTION 1. Item 0339-1001 of section 2 of chapter 149 of the acts of 2004 is hereby further amended by striking out the words ‘tamper free’, inserted by section 70 of chapter 352 of the acts of 2004.

SECTION 2. This act shall take effect as of February 24, 2005.”; and by inserting before the enacting clause the following emergency preamble:—

“*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to clarify certain language relative to tracking certain sex offenders, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.”

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

There being no objection, the rules were suspended, on motion of Mr. Lees.

The Governor’s amendment was then adopted, in concurrence.

Sent to the House for re-enactment.

Recess.

At twenty-three minutes before three o'clock P.M., at the request of Mr. Lees, for the purpose of a minority caucus, the Chair (Mr. Moore), declared a recess; and, at sixteen minutes past three o'clock P.M., the Senate reassembled, Mr. Moore in the Chair (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties of the Chair).

PAPER FROM THE HOUSE.

Emergency Preamble Adopted.

An engrossed Bill establishing a sick leave bank for Sean Glennon, an employee of the Trial Court (see House, No. 138), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,— was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted in concurrence, by a vote of 3 to 0.

The bill was signed by the Acting President (Mr. Moore) and sent to the House for enactment.

Report of a Committee.

By Mr. Travaglini, for the committee on Ethics and Rules, on petition, a Bill establishing a sick leave bank for James E. Vesey, an employee of the Boston Municipal Court (Senate, No. 29).

There being no objection, the rules were suspended, on motion of Mr. Tarr, and the bill was read a second time.

Pending the question on ordering the bill to a third reading, the same Senator moved that the bill be amended by striking out the words "Boston Municipal Court" wherever they appear and inserting in place thereof, in each instance, the following words:—"trial court"; and by inserting before the enacting clause the following emergency preamble:—

"Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to establish a sick leave bank for a certain employee of the trial court, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience."

The amendment was adopted.

The bill (Senate, No. 29, amended) was then ordered to a third reading, read a third time and passed to be engrossed, its title having been changed by the committee on Bills in the Third Reading to read as follows: "An Act establishing a sick leave bank for James E. Vesey, an employee of the Trial Court.

PAPERS FROM THE HOUSE.

Message from the Governor — Disapproval and Reductions in General Appropriation Bill.

A message from His Excellency the Governor, returning, with his disapproval of certain items and sections and parts of certain items, and reductions in certain items contained in the engrossed Bill making appropriations for the fiscal year 2005 to provide for supplementing certain existing appropriations and for certain other activities and projects (see House No. 2010, amended), which on Wednesday, February 16, 2005, had been laid before the Governor for his approbation,— came from the House, in part, several items and sections having been passed by the House notwithstanding the reduction or disapproval of the Governor.

The message (House, No. 41) was read; and the Senate proceeded to reconsider several items, which had been reduced or disapproved in accordance with the provisions of the Constitution.

Item 1599-4123 (Higher Ed – CBA) was considered as follows:

"1599-4123

For a reserve for the payment of a portion of the salary adjustments and other economic items provided for in various collective bargaining agreements negotiated between the board of trustees of the University of Massachusetts and: the Massachusetts Society of Professors/Faculty Staff Union/MTA/NEA; the Professional Staff Union, Local 509, Service Employees' International Union, AFL-CIO/CLC; the University Staff Association/Massachusetts Teachers Association/NEA; the International Brotherhood of Police Officers, Local 432, Units A and B; the International Brotherhood of Teamsters, Local 25 (2 units); the University of Massachusetts and the International Brotherhood of Police Officers, Local 399; the American Federation of State, County and Municipal Employees, AFL-CIO, Council 93, Local 507; the National Association of Government Employees, Local 245; the American Federation of Teachers, Local 1895, AFL-CIO, Faculty Federation; the American Federation of Teachers, Local 1895, AFL-CIO, Educational Services; International Association of Police Officers, Local 399; the Massachusetts Society of Professors/Lowell; the American Federation of State, County and Municipal Employees, AFL-CIO, Council 93, Local 1776; the Graduate Employee Organization, Local 2322, UAW; the Service Employees' International Union, Local 509, Unit B; the Service Employees' International Union, Local 254, AFL-CIO, CLC, Clerical-Technical Unit; the Service Employees' International Union, Local 254, AFL-CIO, CLC, Professional/Mid-Management Unit; the National Association of Government Employees; the Graduate Employee Organization, Local 1596, UAW; and the Graduate Employee Organization Boston, Local 1596, UAW; provided, that the payments shall fund the fiscal year 2004 payments associated with salary adjustments and other economic items provided for in the collective bargaining agreements; provided further, that, not later than 30 days from the effective date of this act, employees covered by the terms of the collective bargaining agreements in this item shall be paid a lump sum amount equal to the difference between: (a) the salary specified in the relevant agreement; and (b) the salary each received for the period from July 6, 2003 to December 31, 2003; provided further, that employees covered by the collective bargaining agreements in this item shall, subject to appropriation in fiscal year 2005 and thereafter, continue to be paid salaries in effect for fiscal 2004 until the parties to the collective bargaining agreements reach agreement or lawful impasse in negotiations for successor agreements; provided further, that the president of the University of Massachusetts shall expend these funds for such salary adjustments and other economic items in accordance with this item and the terms of the collective bargaining agreements listed in this item; provided further, that funds appropriated in this item shall be transferred by the comptroller to the University based upon a schedule submitted by the president of the University of Massachusetts; provided further, that any requirement that the employer shall submit to the general court a request for an appropriation necessary to fund cost items in a collective bargaining agreement shall not apply to the funding for salary adjustments and other economic items set forth in this item for the collective bargaining agreements in this item, notwithstanding chapter 150E of the General Laws, including subsection (c) of section 7 of said chapter 150E or any other general or special law to the contrary nor the expiration of any collective bargaining agreement and any contractual requirements relative to allocation of appropriations which would interfere

with or impede the payment of salary adjustments and other economic items provided for in this item for the collective bargaining agreements listed in this item and shall not apply to the payment of such salary adjustments and other economic items, notwithstanding the expiration of any collective bargaining agreement; provided further, that notwithstanding said chapter 150E or any other general or special law to the contrary, appropriation or expenditure of funds in this item shall not constitute or create, an obligation for the commonwealth or any institution of public higher education to provide any other salary adjustments or economic benefits associated with any fiscal year prior to or other than fiscal year 2004, as otherwise provided in the collective bargaining agreements21,651,754”.

The question on passing Item 1599-4123, contained in Section 2, in concurrence, the objections of His Excellency the Governor to the contrary notwithstanding, was determined by a call of the yeas and nays, as required by Chapter I, Section I, Article II, of the Constitution, at twenty-eight minutes past three o'clock P.M., as follows, to wit (yeas 36 —nays 0) [**Yeas and Nays No. 5**]:

YEAS.

Antonioni, Robert A.	Menard, Joan M.
Augustus, Edward M., Jr.	Montigny, Mark C.
Baddour, Steven A.	Moore, Richard T.
Barrios, Jarrett T.	Morrissey, Michael W.
Berry, Frederick E.	Murray, Therese
Brewer, Stephen M.	Nuciforo, Andrea F., Jr.
Brown, Scott P.	O’Leary, Robert A.
Buoniconti, Stephen J.	Pacheco, Marc R.
Chandler, Harriette L.	Panagiotakos, Steven C.
Creedon, Robert S., Jr.	Resor, Pamela
Creem, Cynthia Stone	Spilka, Karen E.
Fargo, Susan C.	Tarr, Bruce E.
Hart, John A., Jr.	Timilty, James E.
Havern, Robert A.	Tisei, Richard R.
Hedlund, Robert L.	Tolman, Steven A.
Joyce, Brian A.	Tucker, Susan C.
Knapik, Michael R.	Walsh, Marian
Lees, Brian P.	Wilkerson, Dianne — 36.

NAYS — 0.

ABSENT OR NOT VOTING.

McGee, Thomas M.	Shannon, Charles E. — 3.
Rosenberg, Stanley C.	

Mr. Havern in the Chair (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties of the Chair), the yeas and nays having been completed at twenty-eight minutes before four o'clock P.M., Item 1599-4123, contained in Section 2, stands, in concurrence, notwithstanding the objections of His Excellency the Governor, two-thirds of the members present and voting having approved the same.

Item 1599-4124 (Higher Ed – CBA) was considered as follows:

“1599-4121

For a reserve for the payment of a portion of the salary adjustments and other economic items provided for in various collective bargaining agreements negotiated between the board of higher education and: the Association of Professional Administrators; and the American Federation of State, County and Municipal Employees, Council 93, Local 1067, AFL-CIO; provided, that the payments shall fund the fiscal year 2004 payments associated with salary adjustments and other economic items provided for in such collective bargaining agreements; provided further, that, no later than 30 days from the effective date of this act employees covered by the collective bargaining agreements listed in this item shall be paid a lump sum amount equal to the difference between: (a) the salary specified in the relevant agreement; and (b) the salary each received for the period from July 6, 2003 through December 31, 2003; provided further, that employees covered by the collective bargaining agreements in this item shall, subject to appropriation in fiscal year 2005 and thereafter, continue to be paid salaries in effect for fiscal 2004 until the parties to

the collective bargaining agreements reach agreement or lawful impasse in negotiations for successor agreements; provided further, that the chancellor of higher education shall expend these funds for such salary adjustments and other economic items in accordance with this item and the terms of the collective bargaining agreements in this item; provided further, that funds appropriated in this item shall be transferred by the comptroller to the board of higher education based upon a schedule submitted by the chancellor of higher education; provided further, that any requirement that the employer shall submit to the general court a request for an appropriation necessary to fund cost items in a collective bargaining agreement shall not apply to the funding for salary adjustments set forth in this item for the collective bargaining agreements in this item, notwithstanding chapter 150E of the General Laws, including subsection (c) of section 7 of said chapter 150E, or any other general or special law to the contrary or the expiration of any collective bargaining agreement and any contractual requirements relative to allocation of appropriations which would interfere with or impede the payment of salary adjustments and other economic items provided for in this item for the collective bargaining agreements listed in this item and shall not apply to the payment of such salary adjustments and other economic items, notwithstanding the expiration of any collective bargaining agreement; provided further, that notwithstanding said chapter 150E or any other general or special law to the contrary, appropriation or expenditure of funds in this item shall not constitute or create an obligation for the commonwealth or any institution of public higher education to provide any other salary adjustments or economic benefits associated with any fiscal year prior to or other than fiscal year 2004, as otherwise provided in such collective bargaining agreement8,291,573”.

The question on passing Item 1599-4124, contained in Section 2, in concurrence, the objections of His Excellency the Governor to the contrary notwithstanding, was determined by a call of the yeas and nays, as required by Chapter I, Section I, Article II, of the Constitution, at twenty-six minutes before four o'clock P.M., as follows, to wit (yeas 36 — nays 0) **[Yeas and Nays No. 6]:**

YEAS.

Antonioni, Robert A.
Augustus, Edward M., Jr.
Baddour, Steven A.
Barrios, Jarrett T.
Berry, Frederick E.
Brewer, Stephen M.
Brown, Scott P.
Buoniconti, Stephen J.
Chandler, Harriette L.
Creedon, Robert S., Jr.
Creem, Cynthia Stone
Fargo, Susan C.
Hart, John A., Jr.
Havern, Robert A.
Hedlund, Robert L.
Joyce, Brian A.
Knapik, Michael R.
Lees, Brian P.

Menard, Joan M.
Montigny, Mark C.
Moore, Richard T.
Morrissey, Michael W.
Murray, Therese
Nuciforo, Andrea F., Jr.
O'Leary, Robert A.
Pacheco, Marc R.
Panagiotakos, Steven C.
Resor, Pamela
Spilka, Karen E.
Tarr, Bruce E.
Timilty, James E.
Tisei, Richard R.
Tolman, Steven A.
Tucker, Susan C.
Walsh, Marian
Wilkerson, Dianne — **36.**

NAYS — 0.

ABSENT OR NOT VOTING.

McGee, Thomas M.
Rosenberg, Stanley C.

Shannon, Charles E. — **3.**

The yeas and nays having been completed at twenty-three minutes before four o'clock P.M., Item 1599-4124, contained in Section 2, stands, in concurrence, notwithstanding the objections of His Excellency the Governor, two-thirds of the members present and voting having approved the same.

Recess.

At twenty-two minutes before four o'clock P.M., at the request of Mr. Lees, for the purpose of a minority caucus, the Chair (Mr. Havern) declared a recess; and, at eight minutes past four o'clock P.M., the Senate reassembled, Mr. Havern in the Chair.

PAPERS FROM THE HOUSE.

Engrossed Bill.

An engrossed Bill establishing a sick leave bank for Sean Glennon, an employee of the Trial Court (see House, No. 138) (which originated in the House), **having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was passed to be enacted and was signed by the Acting President (Mr. Havern) and laid before the Governor for his approbation.**

Emergency Preamble Adopted.

An engrossed Bill relative to the use of tamper free ankle bracelets for the tracking of certain offenders (see House, No. 43), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,— was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted in concurrence, by a vote of 3 to 0.
The bill was signed by the Acting President (Mr. Havern) and sent to the House for enactment.

Message from the Governor — Disapproval and Reductions in General Appropriation Bill.

A message from His Excellency the Governor, returning, with his disapproval of certain items and sections and parts of certain items, and reductions in certain items contained in the engrossed Bill making appropriations for the fiscal year 2005 to provide for supplementing certain existing appropriations and for certain other activities and projects (see House, No. 2010, amended), which on Wednesday, February 16, 2005, had been laid before the Governor for his approbation,— came from the House, in part, several items and sections having been passed by the House notwithstanding the reduction or disapproval of the Governor.

The message (House, No. 41) was read; and the Senate proceeded to reconsider several items, which had been reduced or disapproved in accordance with the provisions of the Constitution.

Section 32 (Collective bargaining) was considered as follows:

“SECTION 32. Employees covered by the terms of the collective bargaining agreements in items 1599-4123 and 1599-4124 of section 2A who, after July 1, 2003, retired or otherwise terminated employment, or the beneficiary of such an employee who died after July 1, 2003, shall be paid, not later than 30 days after the effective date of this act, a lump sum amount equal to the difference between: (a) the salary specified in the relevant agreement; and (b) the salary each received for the time they were employed during the period July 6, 2003 to June 30, 2004; provided, however, that notwithstanding chapter 32, of the General Laws, the amount of the retirement allowance paid under said chapter 32 to an employee who prior to retirement was covered by the terms of the collective bargaining agreements in said items 1599-4123 and 1599-4124 of said section 2A and who retired after July 6, 2003, shall be calculated as though the employee’s regular compensation for any period of employment from July 6, 2003 to June 30, 2004 had been received by the employee in accordance with such agreement and appropriate retirement deductions withheld. Appropriate adjustments shall be made to an employee’s retirement allowance, including payments retroactive to the effective date of retirement.”

The question on passing Section 32, in concurrence, the objections of His Excellency the Governor to the contrary notwithstanding, was determined by a call of the yeas and nays, as required by Chapter I, Section I, Article II, of the Constitution, at eleven minutes past four o’clock P.M., as follows, to wit (yeas 36 — nays 0) [**Yeas and Nays No. 7**]:

YEAS.

Antonioni, Robert A.
Augustus, Edward M., Jr.
Baddour, Steven A.
Barrios, Jarrett T.
Berry, Frederick E.
Brewer, Stephen M.
Brown, Scott P.
Buoniconti, Stephen J.
Chandler, Harriette L.
Creedon, Robert S., Jr.
Creem, Cynthia Stone

Menard, Joan M.
Montigny, Mark C.
Moore, Richard T.
Morrissey, Michael W.
Murray, Therese
Nuciforo, Andrea F., Jr.
O’Leary, Robert A.
Pacheco, Marc R.
Panagiotakos, Steven C.
Resor, Pamela
Spilka, Karen E.

Fargo, Susan C.
Hart, John A., Jr.
Havern, Robert A.
Hedlund, Robert L.
Joyce, Brian A.
Knapik, Michael R.
Lees, Brian P.

Tarr, Bruce E.
Timilty, James E.
Tisei, Richard R.
Tolman, Steven A.
Tucker, Susan C.
Walsh, Marian
Wilkerson, Dianne — **36.**

NAYS — 0.

ABSENT OR NOT VOTING.

McGee, Thomas M.
Rosenberg, Stanley C.

Shannon, Charles E. — **3.**

The yeas and nays having been completed at eighteen minutes past four o'clock P.M., Section 32, stands, in concurrence, notwithstanding the objections of His Excellency the Governor, two-thirds of the members present and voting having approved the same.

Bills Returned with Recommendation of Amendment.

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill making appropriations for the fiscal year 2004 to provide for supplementing certain existing appropriations and for certain other activities and projects (House, No. 2010, amended) insomuch as relates to Section 28A (see House, No. 44) [for message, see House, No. 42],— came from the House with endorsement that the House rejected the amendment recommended by the Governor (as approved by the House Committee on Bills in the Third Reading) and had adopted an amendment striking out all after the enacting clause and inserting in place thereof the following:—

“Section 140 of chapter 352 of the acts of 2004 is hereby repealed.

SECTION 2. This act, shall take effect as of February 24, 2005.”; by striking out the title [at “B”] and inserting in place thereof the following title: “AN ACT RELATIVE TO THE ABSTINENCE EDUCATION PROJECT OF THE DEPARTMENT OF PUBLIC HEALTH.”; and by inserting before the enacting clause [at “C”] the following emergency preamble:—

“*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to direct forthwith the use of certain funds of the department of public health, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.”.

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

There being no objection, the rules were suspended, on motion of Mr. Berry.

The Governor’s amendment was then rejected.

The House amendment was then considered and it was adopted, in concurrence.

Sent to the House for re-enactment.

Order Adopted.

On motion of Mr. Berry,—

Ordered, That when the Senate adjourns today, it adjourn to meet again tomorrow at eleven o'clock A.M.

On motion of Mr. Tarr, at nineteen minutes past four o'clock P.M., the Senate adjourned to meet on the following day at eleven o'clock A.M.