

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, October 12, 2005.

Met at nine minutes past one o'clock P.M.

The following prayer was offered by Father Bernard McLaughlin of St. Gerard's Parish in Canton:

Once again we gather to pray and to provide for the needy in our midst. Too many are painfully poor amidst the unconscionably rich. Help us to recognize that we are meant to be the hope of the helpless. Unless we stand by and with the sick, the afflicted and the lonely we fail. And we fail the people's mandate and more significantly we fail God's mandate. Amen.

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

Reports.

The following reports were severally read and placed on file:

A report of the University of Massachusetts Medical School (under the provisions of Section 43F of Chapter 75 of the General Laws) submitting the annual report of the Massachusetts Biologic Laboratories for fiscal year 2005 (received Friday, September 30, 2005); and

A report of the Economic Stabilization Trust (under the provisions of Section 14 of Chapter 23D of the General Laws) submitting its annual report for fiscal year 2005 (received Monday, October 3, 2005).

A report of the Massachusetts Turnpike Authority (under the provisions of Section 20 of Chapter 81A of the General Laws) submitting its annual report for fiscal year 2004 (received Friday, September 30, 2005),— **was read and sent to the House for its information.**

Petition.

Mr. Hart presented a petition (subject to Joint Rule 12) of John A. Hart, Jr. for legislation relative to the South Boston power station,— **and the same was referred, under Senate Rule 20, to the committees on Rules of the two branches, acting concurrently.**

Reports of a Committee.

By Ms. Chandler, for the committee on Community Development and Small Business, on petition, a Bill relative to working capital and contract based loans (Senate, No. 155); and

By the same Senator, for the same committee, on petition, a Bill banning the sale of tobacco through the use of vending machines (Senate, No. 178);

Severally read and, under Senate Rule 27, referred to the committee on Ways and Means.

By Ms. Chandler, for the committee on Community Development and Small Business, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 162) of Andrea F. Nuciforo, Jr. and Robert A. Antonioni for legislation relative to a more equitable distribution of the Community Preservation Trust Fund;

Referred, under Senate Rule 36, to the committee on Ethics and Rules.

PAPER FROM THE HOUSE.

Bill relative to economic investments to promote job creation, economic stability, and competitiveness in the Massachusetts economy (House, No. 4429, printed as amended,— on House, No. 4324),— **was read and, under Senate Rule 27, referred to the committee on Ways and Means.**

Order Adopted.

On motion of Mr. Berry,—

Ordered, That a committee of the Senate be appointed to wait upon His Excellency the Governor, Mitt Romney, Her Honor the Lieutenant-Governor, Kerry Healey, and the Honorable Council and inform them that the Senate is in session and awaits their presence for the swearing in of Patricia D. Jehlen as Senator from the Second Middlesex district.

Senators Rosenberg, Walsh, Spilka and Knapik were appointed to the committee.

Subsequently, Mr. Rosenberg, for the committee reported that His Excellency the Governor, Mitt Romney, and the Honorable Council would immediately attend upon the Senate. The committee was discharged.

Soon after Mitt Romney, the Governor, and the Honorable Council came into the Senate Chamber under the escort of the Sergeant-at-Arms.

The Honorable Patricia D. Jehlen, at twenty-one minutes past one o'clock P.M., on Wednesday, October 12, 2005, before the Governor and Council, did take and subscribe the oath of office as State Senator from the Second Middlesex district.

After taking the oath of office, Senator Jehlen briefly addressed the Senate.

Communication.

The Clerk read the following communication from the Secretary of the Commonwealth, to wit:

THE COMMONWEALTH OF MASSACHUSETTS
SECRETARY OF THE COMMONWEALTH
STATE HOUSE, BOSTON, MASSACHUSETTS

October 12, 2005

To the Honorable Senate:

I have the honor to lay before you the return of votes cast at the special election held in this Commonwealth on the twenty-seventh day of September, 2005, for Senator in General Court, 2nd Middlesex District, together with the schedules showing the number of ballots which appear to have been cast for each person voted for.

These returns have been duly canvassed by the Governor and Council, and are now transmitted for examination by the Senate, as required by the Constitution.

Very truly yours,
WILLIAM FRANCIS GALVIN,
Secretary of the Commonwealth.

FOR STATE SENATOR IN GENERAL COURT 2ND MIDDLESEX SENATORIAL DISTRICT (to fill vacancy)

Patricia D. Jehlen	of	(Democrat)	has 7,502 votes
	Somerville		
William A. "Bill"	of	(Republican)	has 5,786 votes

White, Jr.	Somerville	
All others		93 "
Blanks		16 "
Total Votes Cast		13,397

Order Adopted.

On motion of Mr. Havern,—

Ordered, That the returns of votes for Senator to fill a vacancy in the Second Middlesex district be referred to a special committee to consist of three members of the Senate.

Senators Fargo, Baddour and Brown were appointed the committee.

Subsequently, Ms. Fargo, for the committee, reported, that from an examination of the returns, it appears the Honorable Patricia D. Jehlen of Somerville had been duly elected to said district.

The report was read and accepted.

Seat Assignment.

The President announced the assignment of Senator Patricia D. Jehlen to seat number 11 on the President's Left and that Senator Brian A. Joyce had been re-assigned to seat number 10 on the President's Left.

PAPERS FROM THE HOUSE.

Message from the Governor — Disapproval and Reductions in Supplemental Appropriations 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. 4370), which on Wednesday, September 21, 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. 4405) 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 (Umass salary adjustments) 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;
 the 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 2003 payments associated with salary adjustments and other economic items provided for in the collective bargaining agreements; provided further, that, not later than 70 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 7, 2002 through July 5, 2003; provided further, that employees covered by the collective bargaining agreements in this item shall, subject to appropriation in fiscal year 2006 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 a 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 2003, as otherwise provided in the collective bargaining agreements \$30,266,534

The question on passing item 1599-4123, contained in section 2A, in concurrence, the disapproval 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-five minutes before two o'clock P.M., as follows, to wit (yeas 35 — nays 0) **[Yeas and Nays No. 158]**:

YEAS.

Antonioni, Robert A.	Lees, Brian P.
Augustus, Edward M., Jr.	McGee, Thomas M.
Baddour, Steven A.	Montigny, Mark C.
Barrios, Jarrett T.	Moore, Richard T.
Berry, Frederick E.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Brown, Scott P.	Nuciforo, Andrea F., Jr.
Buoniconti, Stephen J.	Pacheco, Marc R.
Chandler, Harriette L.	Panagiotakos, Steven C.
Creedon, Robert S., Jr.	Rosenberg, Stanley C.
Creem, Cynthia Stone	Spilka, Karen E.
Fargo, Susan C.	Tarr, Bruce E.
Hart, John A., Jr.	Timilty, James E.
Havern, Robert A.	Tolman, Steven A.
Hedlund, Robert L.	Tucker, Susan C.
Jehlen, Patricia D.	Walsh, Marian
Joyce, Brian A.	Wilkerson, Dianne —
Knapik, Michael R.	35.

NAYS — 0.

ANSWERED “PRESENT”.

O’Leary, Robert A. —

1.

ABSENT OR NOT VOTING.

Menard, Joan M. Tisei, Richard R. — 3.
Resor, Pamela

The yeas and nays having been completed at a twenty-two minutes before two o'clock P.M., item 1599-4123, contained in section 2A, stands, in concurrence, notwithstanding the disapproval of His Excellency the Governor, two-thirds of the members present having approved the same.

Item 1599-4124 (State and Community College retro for FY03) was considered as follows:

1599-4124

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 2003 payments associated with salary adjustments and other economic items provided for in such collective bargaining agreements; provided further, that, not 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 1, 2002 through June 30, 2003; provided further, that employees covered by the collective bargaining agreements in this item shall, subject to appropriation in fiscal year 2006 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 a 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 a 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 2003, as otherwise provided in such collective bargaining agreement\$11,909,284

The question on passing item 1599-4124, contained in section 2A, in concurrence, the disapproval 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-one minutes before two o'clock P.M., as follows, to wit (yeas 34 — nays 0) **[Yeas and Nays No. 159]:**

YEAS.

Antonioni, Robert A.	Lees, Brian P.
Augustus, Edward M., Jr.	McGee, Thomas M.
Baddour, Steven A.	Montigny, Mark C.
Berry, Frederick E.	Moore, Richard T.
Brewer, Stephen M.	Morrissey, Michael W.
Brown, Scott P.	Murray, Therese
Buoniconti, Stephen J.	Nuciforo, Andrea F., Jr.
Chandler, Harriette L.	Pacheco, Marc R.
Creedon, Robert S., Jr.	Panagiotakos, Steven C.
Creem, Cynthia Stone	Rosenberg, Stanley C.
Fargo, Susan C.	Spilka, Karen E.

Hart, John A., Jr.	Tarr, Bruce E.
Havern, Robert A.	Timilty, James E.
Hedlund, Robert L.	Tolman, Steven A.
Jehlen, Patricia D.	Tucker, Susan C.
Joyce, Brian A.	Walsh, Marian
Knapik, Michael R.	Wilkerson, Dianne —

34.

NAYS — 0.

ANSWERED “PRESENT”.

O’Leary, Robert A. —

1.

ABSENT OR NOT VOTING.

Barrios, Jarrett T.	Resor, Pamela
Menard, Joan M.	Tisei, Richard R. —

4.

The yeas and nays having been completed at eighteen minutes before two o’clock P.M., item 1599-4124, contained in section 2A, stands, in concurrence, notwithstanding the disapproval of His Excellency the Governor, two-thirds of the members present having approved the same.

Section 19 (Retro payments) was considered as follows:

SECTION 19. Employees covered by the terms of the collective bargaining agreements in item 1599-4123 of section 2A who, after July 5, 2003, retired or otherwise terminated employment, or the beneficiary of such an employee who died after July 5, 2003, shall be paid, not later than December 2, 2005, 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 7, 2002 to July 5, 2003; 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 item 1599-4123 of said section 2A and who retired after July 5, 2003, shall be calculated as though the employee’s regular compensation for any period of employment from July 7, 2002 to July 5, 2003 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.

Employees covered by the terms of the collective bargaining agreements in item 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 December 2, 2005, 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 1, 2002 to June 30, 2003; 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 1, 2003, shall be calculated as though the employee’s regular compensation for any period of employment from July 1, 2002 to June 30, 2003 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 19 in concurrence, the disapproval 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 seventeen minutes before two o’clock P.M., as follows, to wit (yeas 35 — nays 0) **[Yeas and Nays No. 160]:**

YEAS.

Antonioni, Robert A.	Lees, Brian P.
Augustus, Edward M., Jr.	McGee, Thomas M.
Baddour, Steven A.	Montigny, Mark C.
Barrios, Jarrett T.	Moore, Richard T.
Berry, Frederick E.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese

Brown, Scott P.	Nuciforo, Andrea F., Jr.
Buoniconti, Stephen J.	Pacheco, Marc R.
Chandler, Harriette L.	Panagiotakos, Steven C.
Creedon, Robert S., Jr.	Rosenberg, Stanley C.
Creem, Cynthia Stone	Spilka, Karen E.
Fargo, Susan C.	Tarr, Bruce E.
Hart, John A., Jr.	Timilty, James E.
Havern, Robert A.	Tolman, Steven A.
Hedlund, Robert L.	Tucker, Susan C.
Jehlen, Patricia D.	Walsh, Marian
Joyce, Brian A.	Wilkerson, Dianne —
	35.
Knapik, Michael R.	

NAYS — 0.

ANSWERED “PRESENT”.

O’Leary, Robert A. —
1.

ABSENT OR NOT VOTING.

Menard, Joan M.	Tisei, Richard R. — 3.
Resor, Pamela	

The yeas and nays having been completed at a quarter before two o’clock P.M., Section 19 stands, in concurrence, notwithstanding the disapproval of His Excellency the Governor, two-thirds of the members present having approved the same.

Communications.

The Clerk read the following communication:

OFFICE OF THE MAJORITY WHIP
MASSACHUSETTS SENATE
STATE HOUSE, ROOM 215, BOSTON 02133

October 12, 2005.

William F. Welch, *Clerk*
Massachusetts State Senate
State House
Boston, MA 02133

Dear Mr. Clerk:

Due to an unavoidable scheduling conflict, I will be unable to attend the Senate session on October 12, 2005. Had I been present, I would have voted in the affirmative to override the Governor’s veto of the following line items and sections of House Bill 4370:

- Line Item 1599-4123
- Line Item 1599-4124
- Section 19

I respectfully request that this letter be entered in the Senate Journal. Thank you for your attention in this matter.

Sincerely,
JOAN M. MENARD,
State Senator,
1st Bristol and Plymouth District.

On motion of Mr. Havern, the above communication was ordered printed in the Journal of the Senate.

The Clerk read the following communication:

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS SENATE
STATE HOUSE, BOSTON 02133-1053

October 12, 2004

Mr. William F. Welch
Clerk of the Massachusetts Senate
State House, Room 335
Boston, MA 02133

Dear Mr. Clerk:

On Thursday October 6th, I was out of the country on official business. Therefore, I was unable to be present in the Senate Chamber for the roll call votes on the following matters:

The first matter was on engrossment of Senate Bill 2215, An Act Extending the Simulcast expiration date for the Horse and Greyhound Industry (Roll Call #156). Had I been present, I would have voted in the affirmative.

The second matter was on enacting House Bill 4178, An Act Authorizing the City of Lowell to Grant a Permanent Easement of Certain Parkland to Abutters (Roll Call #157). Had I been present, I would have voted in the affirmative.

I would appreciate your assistance with the printing of this communication in today's Senate Journal. Thank you for your attention to this matter.

Sincerely,
SCOTT P. BROWN,
State Senator,
Norfolk, Bristol and Middlesex District.

On motion of Mr. Berry, the above communication was ordered printed in the Journal of the Senate.

Order Adopted.

On motion of Mr. Havern,—

Ordered, That when the Senate adjourns today, it adjourn to meet again tomorrow at eleven o'clock A.M., and that the Clerk be directed to dispense with the printing of a calendar.

Adjournment in Memory of Lance Corporal Shayne Cabino of Canton.

The Senator from Norfolk, Bristol and Plymouth, Mr. Joyce, moved that when the Senate adjourns today, it do so as a mark of respect to the memory of Lance Corporal Shayne Cabino of Canton.

Shayne Cabino was among four U.S. Marines killed while serving our country last Thursday near Karmah, Iraq. The son of William and Jodi, Shayne was a recent graduate of Canton High School who enlisted in the Marine Corps last year. Described by friends and family as dedicated, loving, caring and devoted, he was extremely proud of his uniform and the fact that he was serving his country. Shayne served his country with honor and bravery. We mourn his loss and extend our deepest condolences to Shayne's parents and family, and to all the lives that he touched.

Accordingly, as a mark of respect to the memory of Lance Corporal Shayne Cabino, at eleven minutes before two o'clock P.M. on motion of Mr. Havern, the Senate adjourned to meet again tomorrow at eleven o'clock A.M.