

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eighth
Legislature***

OF THE

STATE OF MAINE

Volume I

January 5, 1977 to May 25, 1977

KJ PRINTING
AUGUSTA, MAINE

Mr. CONLEY: Mr. President, I move the Senate adhere.

The PRESIDENT: The Senator from Cumberland, Senator Conley, now moves the Senate adhere.

The Chair recognizes the Senator from Androscoggin, Senator Minkowsky.

Mr. MINKOWSKY: Mr. President, I move the Senate recede and concur and ask for a Division.

The PRESIDENT: Is the Senate ready for question. The pending question before the Senate is the Motion by the Senator from Androscoggin, Senator Minkowsky, that the Senate recede and concur with the House.

Will all those Senators opposed to the Motion to recede and concur, please rise in their places to be counted.

Will all those Senators opposed to the Motion to recede and concur, please rise in their places to be counted.

The Chair recognizes the Senator from Oxford, Senator O'Leary.

Mr. O'LEARY: Mr. President, I request a Roll Call.

The PRESIDENT: A Roll Call has been requested. In order for the Chair to order a Roll Call, it must be the expressed desire of one-fifth of those Senators present and voting. Will all those Senators in favor of a Roll Call please rise in their places to be counted.

Obviously, more than one-fifth having arisen, a Roll Call is ordered.

The pending question before the Senate is the Motion by the Senator from Androscoggin, Senator Minkowsky, that the Senate recede and concur with the House.

A yes vote will be in favor of receding and concurring. A no vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEA — Carpenter, Danton, Farley, Greeley, Hewes, Hichens, Jackson, Levine, Martin, Minkowsky, O'Leary, Pierce, Pray, Redmond, Snowe, Usher.

NAY — Chapman, Collins, D.; Collins, S.; Conley, Cummings, Curtis, Huber, Katz, Lovell, McNally, Merrill, Morrell, Speers, Trozky.

ABSENT — Mangan, Wyman.

16 Senators having voted in the affirmative, and 14 Senators in the negative, with 2 Senators being absent, the Motion to recede and concur does prevail.

(See action later today)

Non-concurrent Matter

Bill, An Act to Revise the Measure of Damages Under the Unfair Trade Practices Act. (H. P. 277) (L. D. 341)

In the House, May 12, 1977 Passed to be Enacted.

In the Senate, May 13, 1977 Failed of Enactment.

Comes from the House, that Body having Insisted and Asked for a Committee of Conference.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Pierce.

Mr. PIERCE: Mr. President, I move we insist and join in a Committee of Conference.

The PRESIDENT: The Senator from Kennebec, Senator Pierce, now moves that the Senate insist and join in a Committee of Conference with the House.

The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, I request a Division.

The PRESIDENT: A Division has been requested on the Motion of the Senator from Kennebec, Senator Pierce, that the Senate insist and join in a Committee of Conference.

Will all those Senators in favor of the Motion to insist and join in a Committee of Conference,

please rise in their places to be counted.

Will all those Senators opposing the Motion to insist and join in a Committee of Conference, please rise in their places to be counted.

15 Senators having voted in the affirmative, and 12 Senators in the negative, the Motion to insist and join in a Committee of Conference with the House prevails.

Joint Resolution

A Joint Resolution In Memoriam

WHEREAS, the Legislature has learned with deep regret of the death of the Honorable Carl Stilphen of Rockland, who served in the 97th, 98th, 99, 100th and 101st Legislatures, (H. P. 1568)

Comes from the House, Read and Adopted. Which was Read and Adopted, in concurrence.

House Papers

Bill, An Act to Revise the Application and Effective Date of the Administrative Court Law. (Emergency) (H. P. 1567) (L. D. 1783)

Comes from the House referred to the Committee on Judiciary and Ordered Printed.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Curtis.

Mr. CURTIS: Mr. President, I would like to inquire of anyone who may have reviewed this piece of legislation more carefully than I have, why it is necessary since it is emergency piece of legislation to refer it to the Committee on Judiciary, since, as I understand it, it simply changes the effective date of the law that will go into effect, otherwise a little bit later.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President, I move that the rules be suspended and that this Bill be given its First and Second Readings, and that further under suspension of the rules it be passed to be engrossed without reference to the Committee at this time.

The PRESIDENT: The Senator from Kennebec Senator Speers, now moves that the Senate suspend its rules in order that this Bill may be given First Reading by title only at this time.

The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, I support the pending Motion. This matter was discussed yesterday in the Judiciary —

The PRESIDENT: The Chair will advise the Senator at the moment he is out of order, since the pending Motion is suspension of the rules.

Is it the pleasure of the Senate that the rules be suspended? It is a vote.

The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, I support the pending Motion. This matter was discussed yesterday in the Judiciary Committee, and the Committee agreed that it was not necessary to have a public hearing.

This law that appoints a new Associate Administrative Court Judge is already on the books, and the appointment is effective as of July 1, 1977. In the meantime the sole Judge of that Court has suffered a heart attack and is unable to function, and if the Governor is permitted to make an appointment promptly, it will fill an important gap in our procedure. He will be doing it July 1st anyway, and this moving it up a matter of 30 days, more or less, will help and the issue is really not one that has not been well faced before.

Under suspension of the rules, the Bill Read a second Time, and Passed to be Engrossed without reference to Committee, in non-concurrence.

Sent down forthwith for concurrence.

Communications Committee on Judiciary

May 17, 1977

The Honorable Joseph Sewall
President of the Senate of Maine
State House
Augusta, Maine 04333

Dear President Sewall:

In accordance with 3 M.R.S.A., Chapter 6, section 151, and with Joint Rule 37 of the 108th Maine Legislature, the Joint Standing Committee on Judiciary has had under consideration the nomination of David A. Nicholas to the position of Justice of the Maine Supreme Judicial Court.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate of the 108th Maine Legislature that this nomination be confirmed. The vote was taken by the yeas and nays. The Committee Assistant called the roll with the following result:

YEAS: Senators 2; Representatives 10.

NAYS: Senators 0; Representatives 0.

ABSENT : 1 (Senator Mangan)

Twelve members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of David A. Nichols to the position of Justice of the Maine Supreme Judicial Court be confirmed.

Sincerely,

(Signed) SAMUEL W. COLLINS, JR.

Senate Chairman

RICHARD A. SPENCER

House Chairman

Which was Read and Ordered placed on file.

The PRESIDENT: The Joint Standing Committee on Judiciary has recommended that the nomination of David A. Nichols be confirmed.

The pending question before the Senate is: Shall the recommendation of the Committee on Judiciary be overridden? In accordance with 3 M.R.S.A., Chapter 6, section 151, and with Joint Rule 37 of the 108th Legislature, the vote will be taken by the yeas and nays.

A vote of YES will be in favor of overriding the recommendation of the Committee. A vote of NO will be in favor of sustaining the recommendation of the Committee.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Curtis.

Mr. CURTIS: Mr. President, I urge the Senate to sustain the unanimous recommendations of the Judiciary Committee on this matter.

This is, indeed, a historical occasion. We have before us the name of a gentleman who has been nominated by the Governor to fill the newly created position of the seventh Justice of the Maine Supreme Judicial Court, the highest Court in the State, and, of course, a co-equal branch of government with the Legislature and with the Executive.

In its analysis of the nomination, the Judiciary Committee took a great deal of care, because this was precedent setting for us, as well as for the Legislature, and we examined the judicial philosophy, the background, the legal knowledge, the capacity for judicial temperament, the health of the nominee as it might affect his career on the Law Court, and a number of other areas that were of interest to the Judiciary Committee.

Judge Nichols is a man who is dedicated to Justice, and he is dedicated to the law. I happen to know him fairly well, I believe, because as ten years ago as his law clerk I learned a great deal working in his office in Camden. One of the things that he told me was that, Ted, you do not have to be a brilliant student of the law to be a successful attorney in a small Maine town, but