



## DAKOTA'S LEGISLATURE.

The Press and Dakotian's Report of the Proceedings of the Council and House of Representatives.

Fourteenth Session—49th and 50th Days.

### Council.

#### AFTERNOON SESSION.

The council met at 2 p. m., with the president in the chair and all members present.

#### CORRECTLY ENROLLED.

Mr. Jolley, from the committee on engrossed and enrolled bills reported as correctly enrolled council bills 99, 122, 128, 135 and 124.

#### A QUESTION OF PRIVILEGE.

James B. Hall, enrolling clerk of the council, arose and asked the privilege of addressing the council. Permission being given, he stated that he asked the privilege for the double purpose of having the pleasure of making at least one speech during the session and of thanking the members for the honor they conferred upon him by electing him to the office whose duties he has endeavored to perform faithfully. In return for the favor extended to him, he wished all the members a safe return to their homes and a unanimous re-election two years hence, and to make his acknowledgments more substantial presented a box of cigars for the consideration and fumigation of the members.

In response Mr. Wilson and Mr. Jolley, chairman of the committee on engrossed and enrolled bills, bore testimony to the faithfulness and efficiency of the enrolling clerk.

#### INTRODUCTION OF A BILL.

Mr. Wallace, by unanimous consent introduced council bill 167, to authorize Burleigh county to fund its outstanding indebtedness, which, under a suspension of the rules, was passed.

#### MESSAGE FROM THE HOUSE.

A message was received from the house announcing the passage of the following council bills.

No. 117, concerning the right of way, easements and other necessary means for the development of mines.

No. 137, to amend section four, of chapter 50, of the political code, entitled "registration of warrants."

No. 151, to amend chapter 31, part 2, of the code of civil procedure, relating to mechanics' liens.

No. 152, for an act to amend sections 31 and 237 of the code of civil procedure.

No. 161, to vacate a certain portion of the town of Canton.

No. 163, to fund the outstanding indebtedness of the counties of Moody, Brookings, Burleigh and Grand Forks.

No. 174, amending the act incorporating the city of Bismarck.

And that the following council bills had failed to pass the house:

No. 70, allowing the commissioners of Bon Homme county to regulate the liquor license of Bon Homms county.

No. 145, to amend section 607 of the code of civil procedure.

Also the passage of house files 214 and 219, and the appointment of Messrs. Thorne, Thielman and Van Osdel as a conference committee on the disagreement of the two houses on council bill 158, regarding the removal of territorial and United States prisoners to the territorial penitentiary when completed.

#### COMMITTEE OF THE WHOLE.

The council then went into committee of the whole, Mr. Jolley in the chair, on the public school law.

#### MESSAGE FROM THE GOVERNOR.

During the session of the committee of the whole the following message was received from the governor:

TERRITORY OF DAKOTA, EXECUTIVE OFFICE, YANKTON, February 28, 1881.

To the President of the Legislative Council:—I return herewith to the council, in which body it originated, bill No. 160, entitled "an act to divide the county of Grand Forks into five commissioner districts," without my approval and signature, and with my objections thereto, viz:—

This bill, which is numbered one hundred and sixty, is substantially the same bill which was introduced into the council and passed as number 71, through both branches of the legislative assembly and was submitted to the executive for approval.

After careful consideration, I returned said bill to the house in which it originated, with the following objections:

I. This bill provides for a special and unusual division of the county of Grand Forks into commissioner districts, and provides for a separate and different mode of electing county commissioners from that provided for in the other counties.

II. It grants especial privileges to two different individuals by seeking to elect them to the offices of commissioners for Grand Forks county by the legislature in contravention to the organic act, which does not vest the power of electing officers in the legislative assembly.

The council thereupon gave the bill a passage, notwithstanding these objections, and reported their action to the house of representatives for the consideration of that body.

The house of representatives after due consideration sustained the objections which I had interposed and by that action, under the law governing the veto power, defeated said council bill No. 71, in both houses; and the bill and its objects under parliamentary law, was as effectually disposed of as if each house had separately refused its passage.

This bill numbered 160, is not only the same in substance, but all of the body of the bill except the closing paragraph on the last sheet is the identical writing and paper which I had once passed upon as bill No. 71, as is clearly proven by an examination of the writing on the second page where the word "general" has been erased and the word "annual" substituted; also where the figure "two" in the same line has been erased and the figure "one" substituted.

In fact these are the only changes attempted to be made, and neither of which remove the fundamental objections by this extraordinary attempt to enact special legislation for the county of Grand Forks, in violation of the United States laws after the same subject matter had once been disposed of and its passage refused.

It may be said that the term of some of the proposed commissioners from November 1880 to November 1881,

thus lessening the time of what I regard as their illegal service, has so changed the bill that it could be again introduced.

That this is not the case so far as my objections were concerned will be seen by reference to my former veto, the objections therein being based upon what I now regard as sound in law and public policy, viz:—

I. That the county of Grand Forks cannot be divided into more or less commissioner districts than other counties.

II. That the proposed re-districting interferes with the rights secured to the present commissioners by the votes of the people in that county at the last election.

III. That the mode of electing these commissioners by single districts in November 1881, is unwarranted special legislation.

IV. That there is no power vested in the territorial assembly by the laws of the United States to elect territorial or county officers, but they may provide by general law for the election of those officers, by the people or by appointment by the governor.

If it was advisable to increase the number of commissioner districts in the large counties their object could be attained by a general law providing that any county might determine to increase the commissioner districts by a vote from the present number to five and also provide for a special election in such counties to elect members for the new districts, but I am quite clear that this bill could not properly come before the legislature a second time after having been disposed of, and that its whole scope is fundamentally wrong and contrary to public policy.

N. G. ORDWAY,  
Governor.

#### THE COMMITTEE'S RECOMMENDATION.

After some time spent in consideration of the school bill, the committee rose, and through its chairman, reported the same back, with a recommendation that it do not pass.

On motion of Mr. Wilson the report was adopted.

The bill was then read a third time and lost—ayes, 2, noes, 10—Mr. Fisher and Mr. President voting in the affirmative.

#### THE VETO.

The governor's message, returning with his objections council bill 160, was then taken up, and passed over the veto by ayes 11, noes 1—Mr. Day voting in the negative.

#### EXECUTIVE SESSION.

On motion of Mr. Jolley, the council went into executive session.

#### MARTIN COUNTY.

At the conclusion of the executive session, Mr. Scooby, by unanimous consent, introduced a bill creating the county of Martin. Under a suspension of the rules the bill was passed.

#### HOUSE MESSAGE.

The message from the house was taken up for consideration and the house amendments to council bill 167, relating to the funding of Burleigh county's indebtedness, were concurred in.

The house amendments to council bill 158, amending chapter 31, part 2, of the code of civil procedure, relating to mechanics' liens, were not concurred in, and a conference committee, consisting of Messrs. Wilson, Gamble and Fisher, appointed.

#### RECESS.

On motion of Mr. Jolley, the council took a recess until 7 o'clock, p. m.

#### EVENING SESSION.

The council met in evening session at 7 p. m., the president in the chair and all members present.

#### REPORTS OF COMMITTEES.

Mr. Jolley, from the committee on engrossed and enrolled bills, reported the presentation to the governor of the following council bills:

No. 99, to protect fish in the territory of Dakota.

No. 122, relating to water rights.

No. 128, to vacate certain portions of Rudolph's addition to the town of Canton.

No. 135, to amend sub-division one, of section 12, of article 2, of the charter of the city of Bismarck.

Mr. Gamble, from the committee on judiciary, reported and recommended the passage of house files 126 and 203.

Mr. Day, from the committee on counties, reported house file 200, defining the boundaries of Miner county, and recommended its passage.

Mr. Wilson, from the committee on judiciary, reported and recommended the passage of house file 201.

Mr. Gamble, from the same committee moved that the printed bill of house file 189, the original being lost, be substituted for the original, which motion being adopted, the bill was then reported with amendments and its passage recommended.

#### HOUSE FILES.

The following house files were read a second time and referred as indicated:

No. 204, regulating insurance corporations and the business of insurance, to committee on insurance, banks and banking.

No. 158, to authorize Lake and Turner counties to issue bonds for the erection of public buildings, to the committee on counties.

No. 219, regulating the sale of illuminating oils, to the committee on judiciary.

No. 234, creating the county of Harding, to the committee on counties.

No. 214, providing for the erection of a court house in Stutsman county, to the committee on counties.

#### THIRD READING.

The following house files were read a third time and passed, and disposed of as indicated:

No. 125, to amend section 53 of chapter 28 of the political code. Passed.

No. 189, providing for the collection of delinquent personal taxes. Passed.

No. 200, to define the boundaries of Miner county. Laid on the table to come up in regular order to-morrow.

No. 201, to amend section 61 of chapter 20 of the political code. Passed.

No. 203, regulating costs in civil actions in special proceedings in the district court. Passed.

#### COMMITTEE OF THE WHOLE.

On motion of Mr. Gamble, the council went into committee of the whole, Mr. Wiggins in the chair, on house file 164, to establish a board of health.

At 9:30 the committee arose, reported progress and asked leave to sit again for the further consideration of the bill.

#### ADJOURNMENT.

On motion the council adjourned until ten o'clock Tuesday morning.

#### Council.

Tuesday, March 1.—The council met at 10 a. m., the president in the chair and members all present.

Prayer by the chaplain.

Minutes read and approved.

#### REPORTS OF COMMITTEES.

Mr. Gamble, from the judiciary committee, reported with amendments house file 264, to amend section 542 of the civil code and recommended its passage.

Also, house file 156, to amend section 728 of the probate code, recommending its passage.

Messrs. Gamble, Wiggin and Fisher, conference committee on house file 132, to extend the time in which taxes shall become delinquent for the year 1880, reported that the joint committee had agreed that the house should recede from its amendments to said bill.

Mr. Jolley, from the committee on printing, reported back house file 173, authorizing the publication of 500 copies of the public school laws and appropriating funds for the payment of the same, with a recommendation that the same do not pass.

The same gentleman from the committee on territorial affairs, reported house file 102, to amend section 3 chapter 20 of the session laws of 1879, relating to the fees of county treasurers, with a recommendation that it do not pass.

Also, from the committee on insurance, banks and banking, reported back house file 202, to amend section 509, of chapter 3, of the revised codes of 1877, entitled corporations, and recommending that it pass.

Mr. Shaw, from a special committee, reported back house file 43, for an act to protect fish, recommending that it do not pass.

Mr. Dav, from the committee on counties, reported back and recommended the passage of house files 158, 138, 234 and 214.

#### RE-CONSIDERED.

On motion of Mr. Wallace, the vote by which house file 205 passed yesterday, was re-considered.

#### INTRODUCTION OF BILLS.

Mr. Fisher, by unanimous consent, introduced a bill amending the school law, making the salary of the superintendent of public schools one thousand dollars a year.

Under a suspension of the rules it was given its several readings and passed.

#### HOUSE FILES.

were read a third time and disposed of as follows:

No. 43, to protect the passage of fish; re-committed to Mr. Wallace.

No. 102, relating to the fees of county treasurers. Lost.

No. 156, to amend section 128 of chapter 5 of the probate code. Passed.

No. 173, to provide for the printing of 5,000 copies of the public school law of the territory, and appropriating two hundred and fifty dollars therefor. Lost.

On motion of Mr. Scooby the vote was reconsidered.

The bill was then amended providing for the printing of 3,000 copies and appropriating one hundred and fifty dollars, in which shape it was passed.

No. 202, providing for the amendment of the insurance law. Lost.

No. 204, to amend section 542 of the civil code. Passed.

No. 138, to change a certain territorial road. Passed.

No. 158, authorizing Turner and Lake counties to issue bonds for the erection of court houses and jails. Passed.

No. 214, authorizing Stutsman county to issue bonds to build a court house and jail. Passed.

No. 234, creating the county of Harding. Passed.

No. 200, defining the boundaries of Miner county. Passed.

No. 203, regulating costs in civil actions, &c. Re-committed to judiciary committee, and made special order in committee of the whole at 3 o'clock this afternoon.

#### A REPORT.

Mr. Wallace, reported back with amendments house file 43, protecting the passage of fish, and the bill was then passed. The amendments make the provisions of the bill apply only to Goose river.

#### MESSAGE FROM THE GOVERNOR.

A message was received from the governor announcing his approval of council bills as follows:

No. 138, to fund the indebtedness of the city of Bismarck.

No. 145, amending an act providing a board of education for the city of Fargo, and regulating the management of public schools therein.

#### MESSAGE FROM THE HOUSE.

A message was received from the house announcing the passage by that body of house files 188, 207, 234, 235 and 236; a resolution providing for final adjournment; a concurrent resolution, asking the council to recall from the governor council bill 139 for correction and amendment; and that Messrs. Baynes, Boyles and Wells had been appointed a conference committee on council bill 151, to amend chapter 31, part 2, of the code of civil procedure, relating to mechanics' liens.

#### FINAL ADJOURNMENT.

The house resolution in regard to final adjournment fixes that event on Friday, March 4th.

Mr. Fisher moved to lay the resolution on the table. Lost.

Mr. Fisher moved to insert Thursday instead of Friday. Lost.

Mr. Wilson moved to fix the hour of adjournment at 9 o'clock a. m. Friday morning, and Mr. Scooby moved to fix 8 o'clock Monday morning as the time. Both motions were lost.

A vote was then taken on the resolution as it came from the house and it was lost by a tie vote.

On motion of Mr. Fisher the vote by which the resolution failed was reconsidered.

A motion to postpone further consideration of the resolution until this afternoon, was lost.

On motion of Mr. Wilson the hour of final adjournment was fixed at 8:30 a. m., on Friday next.

The resolution, thus amended, was then passed.

The consideration of the resolution in regard to recalling from the executive office council bill 139, was postponed until this afternoon.

#### MESSAGE FROM THE GOVERNOR.

The following message was received from the governor:

#### EXECUTIVE OFFICE.

Territory of Dakota,

March 1st, 1881.

To the Legislative Council of the Territory of Dakota:

I return herewith to the council, in which body it originated, bill No. 141, entitled, "an act legalizing and to make valid ordinance number fifty-three of the city of Fargo, relating to the construction of street railroads in said city," without my approval and signature and with my objections thereto:

It is sought by this bill to legalize and make valid a doubtful ordinance passed by the city council of Fargo, granting to John B. Morse, the exclusive privilege of constructing, maintaining and operating upon the streets within said city of Fargo, lines of street railway during a period of twenty years.

The bill appears upon its face to be in direct conflict with section 1880 of the organic law, which reads as follows:

"The legislative assemblies of the several territories shall not grant private charters or special privileges."

As this is clearly a private charter and "an especial privilege" granted and extended by dates to a single individual for twenty years, I cannot doubt that the proposed legislation is wholly unwarranted by the organic act and contrary to the whole theory of territorial legislation.

The congress of the United States has never allowed any of the local governments to grant street railway charters or privileges in the District of Columbia, even by general law; and I am quite sure that legislation tending to promote the building of street railways in this territory must be general in its character and applying equally to all towns and cities.

If such general enactments are desirable, I shall heartily co-operate in their passage when made and conform to the organic laws laid down for the guidance of the executive and the legislative assembly.

N. G. ORDWAY,

Governor.

The vote on the question of passing the bill over the veto stood ayes one, noes eleven—Mr. Wallace alone voting in the affirmative.

#### RECESS.

On motion of Mr. Fisher the council took a recess until 2 p. m.

#### House.

#### AFTERNOON SESSION CONTINUED.

Monday, Feb. 28—Council bill 167, authorizing the commissioners of Burleigh county to fund the outstanding indebtedness of that county, was passed by unanimous vote.

#### A HOUSE BILL.

House bill 182, to establish four wagon roads across the Big Sioux river, in Moody county, came from the council with amendments and the house concurred in the amendments.

#### MR. DONALDSON EXCUSED.

On motion of Mr. Wells, Mr. Donaldson was excused from further attendance on this session of the legislature.

Mr. Donaldson then extended his thanks to the house for the courteous manner in which he had been treated and expressed his gratitude to the people of Yankton for their hospitality.

In behalf of the people of Yankton, Mr. Boyles regretted the contemplated departure of Mr. Donaldson.

#### FINAL ADJOURNMENT.

Mr. French moved that a committee of two be appointed to confer with the council and ascertain what body will be prepared to adjourn *sine die*. The motion was adopted and Messrs. French and Baynes were appointed. They conferred with the council but nothing satisfactory resulted, except an agreement that the council might be willing to adjourn Friday.

#### ADJOURNMENT.

The house, at 5 p. m., adjourned until ten o'clock to-morrow morning.

#### House.

Tuesday, March 1.—The house convened at ten a. m., and was opened with prayer by the chaplain.

Mr. Speaker in the chair and all the members present, excepting Messrs. La Moure, Miller and Donaldson, excused, and Mr. Dickey.

The journal of the preceding session was read and approved.

#### CORRECTIONS NEEDED.

Mr. Warner introduced a concurrent resolution, asking the governor to return for correction council bill 139, and the resolution was adopted.

#### COMMITTEE REPORTS.

Mr. Boyles, from the committee on judiciary, reported back council bill 127 without recommendation.

#### ANOTHER BILL.

Mr. Thorne, from the select committee appointed to draft a bill to provide compensation for the enrolling clerk, reported back house file 234, appropriating \$100 as compensation for work done by the new enrolling clerk in writing up bills which came into his hands at the time of his election, on the twenty-second day of the session.

Under a suspension of the rules, the bill had its several readings and was passed. Mr. Van Osdel alone voting in the negative.

#### FINAL ADJOURNMENT.

Mr. French presented a joint resolution calling for the final adjournment of both branches of the legislature on Friday, the 4th inst.

The resolution was adopted by unanimous vote.

#### ONE MORE BILL.

Mr. Thorne, from the select committee appointed to draft a measure in relation thereto, by unanimous consent introduced house file 235, to provide for the removal of territorial and United States prisoners from Detroit to the territorial prison upon the completion of that institution. Under a suspension of the rules, the bill had its several readings and passed, Mr. Hale alone voting in the negative.

#### COUNCIL MESSAGE.

A message was received from the council announcing the passage of the following bills:

Council bills 168 and 169, and house files 123, 201, 189 and 130.

Also that the council had concurred in the house amendments to council bill 167.

Also, that the council had failed to concur in the house amendments to council bill 151 and had appointed a conference committee thereon.

#### MESSAGE FROM THE GOVERNOR.

The special message from the governor, vetoing council bill 160, to redistrict Grand Forks county into commissioner districts, sent to the house from the council with a message announcing its passage by that body over the veto, was taken up.

Mr. Cross moved that the bill and the message be made the special order for two o'clock this afternoon and that a committee of three be appointed to report thereon at that hour.

The motion was adopted and Messrs. French, Wells and Thorne appointed as such committee.

The governor transmitted to the house a message announcing his approval of the following house bills:

Number 52, relating to the government of the insane hospital.

Number 185, to repeal certain sections of the funding act of Lawrence county.

Number 132, legalizing the removal of the county records of Lake county to New Madison.

Number 147, relating to peddlers and auctioneers' licenses.

#### STILL ANOTHER.

Mr. Wells, from the select committee appointed to draft a bill on the subject, introduced, by unanimous consent, house file 246, appropriating \$200 or so much thereof as may be necessary, for the procurement of a block of stone from the Dell Rapids quarry for the Washington monument, the same to be polished and to be adorned with the coat of arms and the great seal of Dakota.

Under a suspension of the rules, the bill had its several readings and was passed by unanimous vote.

#### COUNCIL MESSAGES CONSIDERED.

House file 189, amended in the council, was considered and the amendments concurred in.

House file 126—amendments concurred in.

The council having appointed a conference committee on amendments to council bill 151, Messrs. Boyles, Baynes and Wells were appointed as a conference committee on the part of the house.

#### COUNCIL BILLS.

Council bill 109, fixing the salary of the superintendent of public instruction at \$1000 per annum and providing \$500 per year for his expenses, had its several readings and was passed, Messrs. Ellefson, Moore and Thompson voting in the negative.

No. 108, to create the county of Martin, had its several readings and was passed by unanimous vote. It lies between the 102d and 103d meridians and between parallels 45 and 46.

#### THE VETOED BILL.

The select committee appointed to consider council bill 160 providing for redistricting Grand Forks county, by unanimous consent made two reports, the majority, consisting of Messrs. Wells and Thorne, favoring the passage of the bill, and the minority, consisting of Mr. French, inclining to the opinion that the governor's objection upon the alleged special legislation contained within the bill was entitled to consideration.

The question being, shall the bill pass, the veto of the governor to the contrary notwithstanding, the roll was called and the bill was passed, fourteen to two. Ayes—Baynes, Boyles, Hale, Inman, Kennedy, Landman, McBratney, Rohr, Thielman, Thorne, Warner, Wells. Nays—Messrs. Cross and Thompson. Mr. Ellefson was paired with Mr. Miller, Mr. French with Mr. La Moure, Mr. Nomland with Mr. Van Osdel and Mr. Speaker with Mr. Dickey. Mr. Moore was excused from voting.

#### RECESS.

On motion, the house at 12:45 p. m., took a recess to two p. m.