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DAKOTA LEGISLATURE.

Thirteenth Session—Daily Report of the Proceedings of the Council and House of Representatives.

THIRTY-EIGHTH DAY.

THE COUNCIL.

Thursday, Feb. 20.—The council met at 10 o'clock, and was called to order by the president.

Prayer by Chaplain Potter.
Roll call; members all present.
The minutes of yesterday's proceedings were read and approved.

MESSAGE FROM THE HOUSE.

A message from the house announced the passage by that body without change, of council bills 85, 64, 66, 82, 84, 87, 88 and 91, and the defeat of council bill 81; also passage of house files 10, 92 and 97, and concurrence in the amendments of the council to house files 43 and 68.

REPORTS OF COMMITTEES.

Mr. Miner, from the committee on agriculture, reported back council bill 118, providing for the education of deaf, dumb and blind persons, with amendments, and recommended its passage as amended.

Mr. MacNider reported a number of council bills correctly enrolled.

Mr. Ellis, from the committee on counties, reported council bill 112 without recommendation.

Mr. Edmunds, from the committee on finance and expenditures, reported council bill 102, legalizing the acts of the territorial treasurer in paying 10 per cent. interest and recommended its passage; also reported a substitute for council bill 110, to reimburse Cass county for money expended in support of insane, making the law a general one, and recommended its passage.

Mr. Day, from the committee on highways, bridges and ferries, reported in favor of the passage of council bill 67, and that council bills 108 and 124 do not pass.

Mr. Roberts, from the committee on judiciary, reported back a large number of bills which had been referred to that committee.

MOTIONS.

On motion of Mr. Edmunds the council concurred in house amendments to the territorial library bill. The amendment reduces the amount for insurance from \$150 to \$75.

On motion of Mr. Kuykendall, the council concurred in house amendments to the apportionment bill. The amendment throws the three Hills counties into one council and representative district.

SENT TO THE GOVERNOR.

Mr. Valentine, from the joint committee on enrollment, reported that he had delivered to the governor for his action thereon, council bills 34, 52, 58, 60, 92 and 106, and that he had deposited in the office of the secretary of the territory council bills 15 and 44, which bills were passed over the governor's veto.

REFERENCE OF BILLS.

Council bills 119 and 120 were read a second time and referred to the judiciary committee.

THIRD READING.

Council bill No. 101, to amend section 6 of chapter 21 of the political code. Passed.
Council bill No. 107, amending the act incorporating the village of Sioux Falls. Passed.

Council bill No. 114, for the better protection of young timber. Passed.

INTRODUCTION OF A BILL.

Mr. Kuykendall, by consent, introduced a bill defining the boundaries and fixing the terms of court in the 1st judicial district, and on motion the rules were suspended, the bill had its several readings, and passed.

REGULAR ORDER RESUMED.

Council bill 115, amending the law in regard to change of venue in justices' courts. Passed.

Council bill No. 116, amending the act establishing the hospital for the insane. Passed.

Council bill No. 122, amending sections 90, 91 and 101 of the justices code. Passed.

Council bill No. 125, fixing the jurisdiction of justices of the peace in Grand Forks. Passed.

Council bill 127, to repeal sections 1, 2, 3, 4, 5, 6 and 7 of chapter 40 of the political code. Passed. The sections repealed are those which created and provided for the compensation of territorial superintendent of public instruction. The vote on the passage of the bill was:

Ayes—Messrs. Cuppert, Day, Kuykendall, Miner, Pettigrew, Roberts, Rohr and Mr. President—8.

Noes—Messrs. Edmunds, Ellis, MacNider, Valentine and Wynn—5.

Council bill No. 104, to legalizing the acts of the territorial treasurer in paying 10 per cent. interest and other purposes. Passed.

Council bill No. 108, to amend the law in relation to ferry charters. Passed.

Council bill No. 109, to amend section 54 of chapter 21 of the political code, in relation to the publication of the proceedings of county commissioners. Lost.

Council bill No. 110, appropriating out of the territorial treasury \$312 to reimburse Cass county for expenses incurred in the care of the insane. The committee on finance and expenditures reported a substitute appropriating \$2,000 to reimburse all counties for expense incurred in the care of insane persons. The substitute passed.

Council bill No. 112, to retrace and renew the east, west and north lines of Yankton county, was on motion of Mr. Roberts, indefinitely postponed.

Council bill No. 113, to amend section 728 of chapter 47 of the penal code. The amendment makes it unlawful to sell liquor on Sunday between the hours of 9 a. m. and 5 p. m. The bill was defeated, Mr. Miner

being the only one voting in the affirmative.

Council bill No. 119, to provide for the education of deaf, dumb and blind persons. The amendments reported by the committee were adopted and the bill passed.

Council bill 124, relating to toll roads. Passed.

HOUSE BILLS.

The following house files were read and disposed of as indicated:

No. 10, amending chapter 10 of the political code, to the judiciary committee.

No. 92, to fund the outstanding indebtedness of Hutchinson county—judiciary committee.

No. 97, to amend chapter 13 of the political code, relating to sub-divisions of judicial districts—judiciary committee.

No. 98, authorizing Clay county to require the payment of license and the giving of a bond for the sale of liquor—judiciary committee.

THIRD READING OF BILLS.

House file No. 25—To amend section 26 of the code of civil procedure. Passed.

House file No. 61—Providing for the purchase of 100 volumes of the reports of the supreme court, was amended by the council, making the number of books to be purchased 150 instead of 100, and reducing the price from \$7 to \$5 per volume. These amendments were adopted, and the bill passed—Messrs. Miner and Wynn voting in the negative.

House file No. 67—Providing for the changing, continuing and discontinuing public highways, was read a third time, and on motion was made a special order at 11 o'clock to-morrow.

INTRODUCTION OF A BILL.

Mr. Roberts, by consent, introduced a bill to establish the boundaries and fix the terms of court in the second judicial district, which had its first and second reading, and referred to the judiciary committee.

THIRD READING RESUMED.

House file 73—To amend section 640 of the code of criminal procedure. Passed.

A MOTION TO RECONSIDER.

Mr. Ellis moved that the vote by which house bill No. 71, in relation to the fees of the clerk of the district court of Yankton county, was lost yesterday, be reconsidered, but the motion did not prevail, the vote being 6 and 6.

ADJOURNMENT.

On motion of Mr. Miner the council adjourned until 10 o'clock to-morrow morning.

THE HOUSE.

The house convened, pursuant to adjournment, at ten o'clock a. m.

Mr. Speaker in the chair.
Prayer by the chaplain, Rev. J. P. Coffman.

Roll call showed all members present except Messrs. Flick and Gray.

The journal of yesterday's session was read and approved.

MESSAGES FROM THE COUNCIL.

were received as follows: Transmitting the following council bills passed:

No. 62—To repeal chapter 39 of the code of civil procedure.

No. 94—A bill for an act to provide for the care of the territorial library.

No. 98—To provide for the sale of unclaimed property by common carriers.

No. 99—A bill for an act to incorporate the city of Sheridan.

No. 100—A bill for an act to amend certain sections of the code of civil procedure.

No. 103—Relating to the compensation of county commissioners.

Also transmitting house file 2, an act in relation to corporation, banks and banking; and

House file 81, to regulate the compensation of officers in the first judicial district, both of which were amended and passed.

Transmitting house file 63, creating the office of court reporter.

House file 96, authorizing certain counties to pay their representative.

House file 86, to incorporate the village of Dell Rapids.

House file 82, memorial in relation to coal mines on the Ft. Lincoln reservation, all passed by the council unchanged.

Also announcing the concurrence of the council in the house amendments to council bill 16, in relation to the herding of stock, and in the house amendments to council bill 39; and

The adoption of the committee report on house file 43.

Announcing concurrence in the amendments to house file 43, providing for the territorial library.

Transmitting council bill 118, defining the boundaries of the first judicial district, and fixing the term of court therein; 116, an insane hospital bill; and 124, for the repeal of sections 1 to 7, chapter 40, of the political code of 1877; all of which had passed that body.

REPORTS OF COMMITTEES.

House file 29 was reported from its committee with amendments, and a recommendation that it pass.

House file 95 was reported without amendment, and its passage recommended.

House file 100, was reported with amendments, and a recommendation that it pass.

House file 93, was reported back with a recommendation that it pass without amendment.

House file 56 was reported back with amendment, and its passage recommended.

Council bill 90 reported back without amendment and its passage recommended.

House file 72 was reported adversely.

House file 90, was reported back and its passage recommended, with amendments.

House file 76, was reported back with amendments and a recommendation that it pass.

Council bill 96 was reported back without amendment and its passage recommended.

Council bill 71 was reported back and its passage recommended without amendments.

House file 101 was reported back without recommendation.

The special committee on house file 88 recommended its passage with amendment.

The select committee on council bill 93 reported the same favorably.

The select committee on house file 41 recommended its passage with some amendments.

House file 88 was reported back with amendments, and its passage recommended.

BILLS INTRODUCED.

House file 103, a bill in relation to insurance. On motion rules suspended and referred to committee on insurance, banks and banking.

House file 104—introduced from the judiciary committee. Reporter unable to catch the title.

A CHANGE.

On motion of Mr. Stephens, called forth by a remark from Mr. Gray, the latter gentleman was made chairman of the committee on insurance, banks and banking and the name of Stephens stricken from the committee.

CONSIDERATION OF MESSAGES FROM THE COUNCIL.

The amendment of the council to house file 50 were concurred in by the house. As also those to house file 81.

FIRST READING OF COUNCIL BILLS.

Council bill No. 100—Amending the political code of 1877.

Council bill No. 99—Incorporating the village of Sheridan. The rules were suspended the bill read a second time and referred to the delegation from Burleigh county.

Council bill No. 98—Providing for the sale of unclaimed property by common carriers.

ON MOTION.

Council bill No. 62—For the repeal of chapter 39 of the code of criminal procedure, was indefinitely postponed.

THIRD READING OF COUNCIL BILLS.

Council bill 95—To fund the indebtedness of the board of education of Sioux Falls, reported favorably from the Minnehaha county delegation. Report adopted, and the bill passed.

Council bill 71—Reported from the judiciary committee with amendments. On motion it was made a special order for two o'clock.

Council bill 36—To amend section 665 of the code of criminal procedure. The favorable report from the judiciary committee was adopted, and the bill passed.

Council bill 69—From the judiciary committee, with an adverse report. On motion, referred to the committee of the whole at two o'clock.

THE RULES WERE SUSPENDED

and council bill 118 was taken up. On motion, the rules were suspended, the bill read a second and third time and passed.

Council bill 116—One of the insane hospital bills—was referred to the committee on charitable and benevolent institutions.

THIRD READING RESUMED.

Council bill 90—The report of the committee was adopted and the bill passed.

Council bill 56—For the establishment of a school law for the territory, reported from the committee on education with amendments, was laid on the table until to-morrow.

A MESSAGE FROM THE GOVERNOR was received, returning house file 70 with out his approval, and with his objections thereto. A motion was made to pass the bill over the veto, which was lost. This bill reduces the number of justices of the peace in the Black Hills.

BILLS SIGNED BY THE SPEAKER are house file 43, and council bills 39, 50, 65, 75, 86, 96.

SECOND READING OF HOUSE BILL.

House file 102—To fund the indebtedness of Lawrence and Pennington counties. On motion, the rules were suspended, the bill read a third time and passed.

THIRD READING OF HOUSE BILLS

House file 84, came up with a favorable recommendation, and was passed.

House file 90—Providing compensation for attorneys in certain cases. Reported from the judiciary committee with amendments. Report adopted and the bill passed.

House file 10—In relation to garnishee process. Reported adversely from the judiciary committee. The bill was lost.

House file 76—concerning the salary of the territorial auditor. Reported from the judiciary committee with amendments, and its passage recommended. Report indefinitely postponed.

House file 72, relating to liens. Reported from the judiciary committee without recommendation. Referred to the committee of the whole.

House file 100, from the committee on counties and townships. Report adopted and the bill passed.

House file 93, report of the committee to which it was referred, adopted and the bill passed.

House file 88, relating to the Yankton county indebtedness. Report of the committee adopted and bill passed.

House file 29, reported from the judiciary committee and its passage recommended. Report adopted and the bill passed.

House file 83, reported adversely from the committee on territorial affairs. Report adopted.

House file 99—To amend section 647 of the civil code. Reported favorably from the judiciary committee. Report adopted and the bill passed.

House file 79—Amending section 667, code of civil procedure. Reported favorably. The bill was lost.

A MESSAGE FROM THE COUNCIL

was received announcing the passage of council bills 108, 101, 107, 114, 115 and 118. Also, concurrence in the house amendments to council bill 78, amending chapter 48 of the political code.

RECESS.

At half past twelve a motion was made to the effect that the members proceed to deposit themselves outside of their respective diaries, which was quickly adopted, and the house adjourned until 2 o'clock.

AFTER RECESS.

The house was called to order at 2 o'clock by the speaker, who announced the special order, council bill 71, providing appropriations of money for the asylum for the insane and for the territorial penitentiary and council bill 69, providing for bonds for the same. Upon these measures, the house went into

COMMITTEE OF THE WHOLE.

Mr. Gray in the chair, by election of the house, Mr. Burbank and Mr. Stephens having declined to serve.

The report of the judiciary committee was read in committee. It recommended that all that portion of the bill which had reference to appropriations for penitentiary purposes be stricken from the bill.

Mr. Stephens moved that the committee rise and recommend the adoption of the report on council bill 71 and the passage of the bill as amended; also that the committee report progress on council bill 69.

Mr. Gamble spoke at length upon the joint provisions of council bill 71. His position was that if the passage of the insane asylum appropriation depended upon the passage of the penitentiary appropriation he was in favor of voting down the whole measure. Both should fall or each should stand upon its own merits. He did not stand upon the floor of the house as the advocate of the insane asylum portion of the bill as a local measure. It had been sadden upon the Yankton delegation as such, but he, as a member of that delegation, would not father it. He did not propose that, with his consent, the insane asylum should be made a pack mule for the penitentiary measure. He had voted for the location of the penitentiary at Sioux Falls, but the appropriation of money for that institution was an entirely different matter and he would never favor the scheme if he stood alone against it. It was not economy to build a penitentiary just now, as it would cost, in addition to the expense of the building, as much for the cost of the transportation of prisoners from northern and western Dakota to Sioux Falls, as to Detroit. It was too early to go into this matter, and if any member thought the same argument would apply to the insane asylum, let him vote against the whole bill, and kill both propositions.

Mr. Stephens opposed the sadding of one bill upon the other for the purpose of getting them both through. He thought there was a pressing demand that the territory care for its insane, but there was no such necessity for providing for its prisoners, as they were already well cared for. He did not think the territory could afford to expend \$45,000 for these measures. If however, the case of the insane hinged upon the passage of the penitentiary measure he would vote against both.

Mr. Jackson, spoke in favor of the penitentiary appropriation and was of the opinion that the insane asylum appropriation should also go through. Mr. Jackson is a member from a Minnehaha county, and is interested in the penitentiary as a local institution. His advocacy of the insane measure was complete and open, but the fact that the fate of the penitentiary depended upon the success of the other neutralized his arguments in the judgment of those who comprehended the entire subject. Mr. Burbank opposed the bill as it stood. He recognized a difference between the situation of the insane and of the convicts. We now had no place for our insane, while our convicts were well provided for in the present and future. An appropriation of \$45,000 was asked for, which was about five dollars per head against every tax payer. The friends of the penitentiary said that if the insane appropriation went through the penitentiary must also be con-

ceded. As that was the shape of affairs, he was in favor of killing them both. He would not cast his vote to bankrupt this new territory. All these things tended towards the disgrace of repudiation which he, as a citizen of Dakota, desired to avoid. The proposition was—give Sioux Falls a penitentiary or you lose your asylum at Yankton. Northern Dakota was not interested in this fight. It could care for its own insane.

Mr. Gamble rose to refute some figures advanced by Mr. Jackson and laid down the present cost of keeping prisoners and demonstrated that they could not be so cheaply kept at home.

Mr. Jackson resumed, in reply to Mr. Burbank, and argued that \$45,000 was a mere bagatelle to this great territory.

Mr. Burbank and Mr. Stephens spoke again in opposition to the penitentiary measure.

Mr. Stephens withdrew his motion and moved that the committee rise, report progress and ask leave to sit again.

Mr. Huseboe moved that Mr. Pettigrew have permission to speak before the committee.

Mr. Huseboe's motion was given preference by the chair and adopted, and the boss of the prison scheme put in his talk. He asserted that he was working in the interest of economy, and had the house never heard of Uriah Heep it might have taken some stock in the hypocritical assertion. Mr. Pettigrew didn't say much else, though he kept on talking while the hands of the clock went half way round the dial.

Mr. Gamble followed up his opposition to the bill with a ten minutes speech.

On motion of Mr. Burbank, Captain Hughes, of Elk Point, was given permission to speak upon the subject. Captain Hughes thanked the committee for the courtesy extended, but declined to talk, for reason that he was a member of the board of trustees of the asylum.

Mr. Stephens repeated his motion that the committee rise, report progress and ask leave to sit again.

[At the hour of going to press the house was still contending with the subject.]