

STATE CAPITOL.

CHAPTER 166.

[S. B. No. 21—Little.]

CAPITOL BUILDING.

AN ACT Providing for the Reconstruction of the Capitol Building of the State of North Dakota and the Erection of an Executive Mansion, and for That Purpose Creating a Board of Capitol Commissioners, Defining Its Powers and Duties, Providing for and Appropriating the Proceeds of Sales of the Capitol Building Lands and Authorizing the Issuance of Interest-bearing Certificates Against Said Fund.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. BOARD OF STATE CAPITOL COMMISSIONERS CREATED. APPOINTED BY GOVERNOR. VACANCIES HOW FILLED.] The governor of the state shall forthwith appoint, by and with the advice and consent of the senate, three suitable persons, no two of whom shall be residents of the same judicial district, who shall act as state capitol commissioners, and who shall constitute a board to be known as the "Board of State Capitol Commissioners," and whose duty it shall be to remodel and reconstruct upon its present site, the capitol building of the state of North Dakota at Bismarck, and erect a suitable residence for the governor on the lots now owned by the state, according to the provisions of this act. The governor may remove any member of the board for misconduct, but only after a public hearing upon written charges, at which the member shall have the right to be present and adduce testimony, and to be attended by counsel, and the governor, by and with the advice and consent of the senate, shall fill all vacancies occurring at any time. And in case a vacancy occurs between the sessions of the legislative assembly, the person appointed by the governor to fill it shall exercise the duties of such office until the session of the legislative assembly, at which time such appointment shall be rejected or confirmed by the senate.

§ 2. SALARY OF MEMBERS.] The chairman of said board shall receive an annual salary of two thousand five hundred dollars, payable quarterly, and each other member of the board shall receive ten dollars per day while in the actual performance of his duties as a member of said board.

§ 3. COMMISSIONERS TO FILE BOND WITH SECRETARY OF STATE.] Each of said commissioners, before entering upon the duties of his office, shall enter into and file with the secretary of state, a bond payable to the state of North Dakota, in the penal sum of twenty-

five thousand dollars, with two or more good sureties (except where a surety company licensed to do business in this state acts as surety, in which case one such surety shall be sufficient), each justifying to the full amount of the bond, to be approved by the governor, which bond shall be conditioned for the faithful performance of his duties as such commissioner, and shall also subscribe and file with the secretary of state an oath in substance as follows:

"I, A. B., do solemnly swear that I will support the constitution of the United States and the constitution of the state of North Dakota, and that I will well and faithfully discharge the duties of state capitol commissioner; that I will not directly or indirectly be interested or [or] concerned in any manner whatever in the purchase from the state of any personal property to be sold under this act; and I will not directly or indirectly be interested or concerned in any manner with any contractor or any person whatsoever in the reconstruction of the state capitol or construction of the residence of the governor, or in the proceeds or profits growing out of the same, or in any work or labor done or material furnished in the construction of the same. So help me God."

In case of a violation of any of the conditions of said bond an action thereon may be maintained by the state in the district court of Burleigh county.

§ 4. MEETINGS OF BOARD. SHALL APPOINT SECRETARY WHO SHALL FILE BOND WITH SECRETARY OF STATE.] Within ten days after qualification the members of said board shall meet at the call of the governor, at the seat of government for the completion of their organization, and shall elect of their number a president, and vice president, and may provide for the manner of calling subsequent meetings of the board. The members of the board shall at the first or some subsequent meeting appoint a secretary, not of their number, whose duties shall be by them prescribed, and who shall receive for his services a reasonable compensation to be fixed by the board, and who, before entering upon the discharge of his duties, shall subscribe and file with the secretary of state, an oath of office similar in form to that prescribed for the commissioners, and a bond in the penal sum of ten thousand dollars, with a surety or sureties approved by the board, each justifying to the full amount of the bond, conditioned for the faithful performance of his duties. The board may remove its secretary and make a new appointment at any time. The meetings of said board shall be conducted according to the usual parliamentary rules.

§ 5. UNLAWFUL FOR MEMBER OF BOARD OR SECRETARY TO BE INTERESTED IN CONTRACTS. PENALTY FOR VIOLATION.] It shall be unlawful for either of the said commissioners, or for the secretary of the said board, to be interested, either directly or indirectly, in any manner whatsoever, in the purchase of any personal property sold by the state under this act, or in any contract for the construction of said capitol building or governor's residence, or for

any work connected therewith, or for the furnishing of any supplies or material therefor so as to receive any benefit therefrom or for the promise of any benefit therefrom of any kind whatsoever, and any of said persons who shall violate this section of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to imprisonment not exceeding one year, or to a fine not exceeding ten thousand dollars, or both, and in addition thereto shall thereafter be incapacitated from holding any office of trust or profit in this state.

It shall be unlawful for said board to employ or continue in its employment in the supervision or superintendence of the building of said capitol, or of any work connected therewith, any person who is in any manner connected with or interested in, directly or indirectly, any contract for the erection of said capitol building or governor's residence, or for the furnishing of any supplies or material therefor; and the said commissioners are hereby charged with the rigid enforcement of this provision of this act.

§ 6. BOARD TO PROCURE AND SELECT PLANS AND SPECIFICATIONS FOR REMODELING CAPITOL AND ERECTION OF RESIDENCE FOR GOVERNOR.] The board of state capitol commissioners as soon as practicable after the passage of this act shall proceed, in such manner as it deems best, to procure and select plans and specifications for the remodeling and reconstruction of the capitol building of the state of North Dakota and the erection of a suitable residence for the governor, and to receive bids for the performance of the work thereunder. No plan and specifications shall be adopted nor bid accepted unless a majority of all members of the board shall vote in favor thereof.

In the plans and specifications for the reconstruction the board shall utilize the newly constructed north wing of the present capitol building, and so much of the other portions of the present building and its materials as, in the opinion of the said board, can be used to advantage, with due regard to the appearance and serviceableness of the building. The plan selected shall be so far as practicable for a fire proof building, and the plans and specifications adopted for such alterations and reconstruction shall be such as will not make necessary an expenditure in excess of the amount which can be realized from the sale of all the capitol building lands hereinafter mentioned.

No plans for alterations and reconstruction shall be adopted until careful estimate has been made of the cost of supervision, labor, material and other expenditures necessary to complete the same, it being the object of this act to restrict the aggregate and entire cost of all expenditures to be made under this act, to the amount which can be realized from said lands, and all contracts awarded and plans adopted shall be awarded and adopted only after the board shall be satisfied that the cost of carrying out the provisions of this act shall not exceed this amount.

§ 7. ALL LABOR, MATERIAL, CONSTRUCTION, JOB PRINTING, ADVERTISING, ETC., TO BE DONE BY CONTRACT.] All labor, material, transportation, (excepting transportation by rail) or construction, required by the provisions of this act, as well as all job printing, advertising or other work which can be so done under this act, shall be done or furnished by contract. The board is authorized to contract for the performance of the entire work by a contractor who may undertake the whole work, or it may divide the work into appropriate classes and make separate contracts as to either of them as may seem to it to be for the best interests of the state. All lettings of work exceeding in amount the sum of one thousand dollars shall be advertised in two daily newspapers of general circulation in this state, for not less than fifteen days, and shall call for sealed bids accompanied by such security as said board shall prescribe. Any or all bids received by the board may be by it rejected, and whether accepted or rejected shall within thirty days after decision thereon by the board be deposited in the office of the state auditor. All contracts for labor and material shall be in writing, and shall be signed by the contractor and by the president or vice president of the board. The plans and specifications of the work shall be executed by skilled and reputable architects, contractors, artists, mechanics and laborers.

No contract shall be made which shall bind the state to make payment of any sum before the same shall be by law made applicable thereto.

§ 8. CONTRACTOR TO GIVE BOND. ACTION AGAINST BY SUB-CONTRACTORS OR OTHERS, HOW COMMENCED.] Before any contract for the doing of any work or labor, or furnishing any skill or material in the reconstruction of said capitol building or erection of said governor's residence, shall be entered into by the board, the contractor shall be required to furnish to the board a bond for the use of the state of North Dakota, and also for the use of all persons who may perform any work or labor or furnish any skill or material in the execution of said contract, to be approved by the board, which bond shall have two or more sureties (except that where a surety company licensed to do business in this state acts as surety, no other surety will be required), which bond shall be in an amount fixed by the board, but in no case less than one-half of the contract price, and which shall be conditioned to complete such contract according to the terms thereof, and to pay as they become due all just claims for all work and labor performed and all skill and material furnished in the execution of such contract.

If personal sureties are furnished each shall make oath that he is a resident of the state of North Dakota, and that he is seized in fee of real estate situated in said state and not exempt from sale on execution of the value, over and above all incumbrances thereon, of the sum for which he is to justify on said bond. Each surety shall justify in the full amount of the bond. No subletting of such contract, or any part thereof, and no modification of the structure or work

covered thereby, and no payments to the contractor prior to the time specified in the contract, and no extension of time in the performance of the work shall operate to release the surety or sureties on said bond.

Whoever shall perform or cause to be performed any work or labor or furnish or cause to be furnished any skill or material, including any work, labor, skill or material necessary in the repair of any tool or machine, and including the use of any tool or machine or material, furnished particularly for such contract and used therefor in the execution of such contract at the request of the contractor, or his agents, or at the request of any subcontractor, or his agents, shall be considered a party in interest in said bond, and may bring an action thereon for the reasonable value or agreed price, as the case may be, of the work or labor performed, or skill or material furnished in the performance of such contract, whenever his claims are not paid when due. At the time of bringing of such suit the plaintiff shall cause a copy of his complaint to be filed with the secretary of the board. Any party having a cause of action on such bond may intervene or be impleaded in any action which may be brought thereon, and in such case the court shall determine the rights of all parties, and if the amount realized on such bond shall be insufficient to discharge all claims in full, all claims of the state of North Dakota shall be first paid, and claims for labor not exceeding \$300 for any one claimant shall next be paid, and the balance, if any, of the proceeds of the bond shall be distributed pro rata among the remaining claims.

A subcontractor, within the meaning of this section, is a person who enters into a specific contract to perform all or some part of the work required to be done under the original contract.

No action shall be maintained on any such bond, nor intervention be allowed in any action pending thereon, by any person, firm or corporation other than the state of North Dakota, unless the plaintiff or intervenor, as the case may be, within ninety days after performing the last item of work or furnishing the last item of skill or material, shall have served upon the principal in said bond, and upon one of the officers of said board, a written notice, specifying the nature and amount of his claim and the date of furnishing the last item of work, skill or material. No action on such bond shall be commenced nor intervention allowed in any pending action thereon by any claimant, except the state of North Dakota, after one year from the time such claim became due.

The provisions of sections 4802, 4803 and 4804 of chapter 78, revised codes of North Dakota, 1899, and the provisions of chapter 133 of the laws of 1901, approved February 27, 1901, shall not apply to contracts provided for by this act.

§ 9. UNAVAILABLE PARTS OF PRESENT BUILDING OR MATERIALS TO BE SOLD AND PROCEEDS PAID TO STATE TREASURER.] Such parts of or materials in the present state capitol building as shall be determined

by the board to be unavailable for use in the work of reconstruction shall be disposed of by the board, either by sale, in which case bids shall be advertised for and received in the manner hereinabove provided for letting contracts, or by agreement with the person contracting to remove the same, by some appropriate provision in the contract. The proceeds of all such sales shall be paid to the state treasurer by the vendees, before the title to such property sold shall pass, and shall be credited to the capitol building fund, to be used in carrying out the provisions of this act.

§ 10. BOARD OF UNIVERSITY AND SCHOOL LANDS DIRECTED TO SELL SUFFICIENT LAND BELONGING TO THE STATE TO PROVIDE NECESSARY FUNDS TO ERECT BUILDINGS.] To the end that funds may be provided for carrying out the provisions of this act, it is hereby made the duty of the board of university and school lands to proceed with as much dispatch as can be used without sacrificing the lands, to sell and dispose of all lands remaining to the state, of those granted to the state for the purpose of erecting public buildings at the capitol of the state, by the provisions of sections 12 and 17 of the act of congress approved February 22, 1889, known as the enabling act, under which this state was admitted to the union. Such sales shall be conducted in the manner and upon the terms provided by the existing law of this state. The proceeds of such sales, together with the proceeds of sales of such lands heretofore made, shall be credited to and form a part of the capitol building fund, to be used for the purpose of carrying out the provisions of this act. It is hereby made the duty of said board of university and school lands, in the manner and upon the terms provided by existing law, to offer for sale, from time to time, a sufficient quantity of said lands to produce the funds necessary to pay when due the principal and interest of the capitol land grant certificates hereinafter authorized to be issued.

§ 11. BOARD OF COMMISSIONERS AUTHORIZED TO ISSUE CERTIFICATES OF INDEBTEDNESS.] In addition to the other powers granted them by this act, the board of capitol commissioners is hereby authorized for the purpose of anticipating the receipt of the proceeds of the sales of the lands referred to in section 10 of this act, to issue certificates of indebtedness bearing interest at a rate not to exceed five per cent per annum payable annually or semi-annually, which shall be known as capitol land grant certificates, and which shall be exempt from taxation.

1st. The aggregate amount of the par value for such certificates issued shall not exceed the sum of six hundred thousand dollars, and the aggregate of such certificates at any time outstanding, including interest to maturity, shall at no time exceed the amount in the capitol building fund realized from the sale of such lands and available for the payment of such certificates, added to the value of the unsold remainder of said lands and the amount of unpaid installments of principal and interest on outstanding contracts for the sale of said lands. Said certificates shall mature at such time or times as the

board of capitol commissioners and state auditor shall determine, but care shall be used that no more of the principal and interest of said certificates shall fall due in any year than can be paid when due out of the capitol building fund, and in any event no more than seventy-five thousand dollars of the principal of such certificates shall mature in any year, but every such certificate shall mature in not to exceed fifteen years from the date of its issue.

2nd. The said certificates shall be in such denominations and shall be in such form as the said board and state auditor shall determine, but shall plainly show upon their face the purpose for which they are issued, the time of maturity, and shall contain a proper reference to this section of this act, and shall be made payable at the office of the state treasurer.

3rd. The said certificates shall only be issued from time to time as the work of reconstruction of the capitol progresses, and only in such sums as the board may deem necessary to provide the necessary funds to pay for material and labor and carry out the provisions of this act. The said certificates shall be signed by the president or vice president of said board and the state auditor, who shall keep a proper register thereof and who shall deliver them to the state treasurer.

4th. The board shall advertise each proposed sale of such certificates for not less than fifteen days in two daily newspapers of general circulation, and shall call for sealed proposals of purchase, and shall sell the certificates to the highest bidder, but no bid for less than par value shall be accepted, and the certificates shall be delivered by the treasurer to purchasers only on payment into the state treasury of the amount for which they are sold. The proceeds of the sales of such certificates shall be placed in the capitol building fund, and shall be used for carrying out the provisions of this act.

5th. In lieu of selling all or any part of the certificates as above provided, the said board may, if it deems best, at the time of employing any person, or of making or letting any contract, or at any time thereafter, offer all or any part of such certificates to the person, firm or corporation employed or contracted with, in payment of the work, labor, skill or material performed or furnished by such person, firm or corporation. But in such case the certificates shall not be offered or received in payment for less than the par value thereof, and shall only be delivered by the state treasurer to such person, firm or corporation, upon full and complete statements or accounts, certified and audited as provided in section 13 of this act. Nothing herein contained shall be construed to compel any such person, firm or corporation to receive such certificates in payment for work, labor, skill or material unless it is so provided in the contract under which such work, labor, skill or material is performed or furnished.

6th. The principal and interest of said certificates when due shall be paid by the state treasurer on the warrant of the state auditor,

out of any funds in the capitol building fund, derived from sales or said lands, or from the issuance of certificates under this section, and sufficient of such funds shall be set apart to meet the maturing certificates in each and every year that such certificates shall mature. Said certificates shall constitute a first charge upon the proceeds of said lands, and the liability of the state shall be limited to the faithful and ratable application to the payment thereof of the proceeds of the sales of said lands.

§ 12. PREVIOUS OBLIGATIONS OF STATE PAYABLE OUT OF SALES OF LANDS RECOGNIZED.] Nothing in this act shall be construed to repeal or affect any existing law directly or indirectly providing for the payment out of the proceeds of the lands referred to in section 10 of this act of any obligations of this state heretofore issued. But all obligations of this state heretofore issued, payable directly or indirectly under the provisions of the existing law out of the proceeds of the sales of said lands shall be paid or provided for before any part of the proceeds of said lands shall be used as in this act provided.

§ 13. BOARD AUTHORIZED TO EMPLOY ARCHITECTS AND OTHERS WHEN DEEMED NECESSARY. PAYMENTS, HOW MADE.] For the due prosecution of the work hereby committed to their charge, the said board are hereby authorized to employ such architects, mechanics and laborers as may be deemed necessary, and payment of all expenditures made in or connected with the reconstruction of the capitol building or erection of said governor's residence and the carrying out of the provisions of this act shall be made upon full and complete statements of accounts, which shall be made and certified to by a majority of the members of said board, and shall be laid before the state auditor for examination, and if found correct and in compliance with this act, shall be audited and paid by the state treasurer, upon the warrant of the state auditor, out of any money in the capitol building fund available for that purpose, such warrant to be drawn in favor of and to the order of the person or persons entitled to receive the amount therein named.

§ 14. ATTORNEY GENERAL.] The attorney general shall be the legal adviser of the said board.

§ 15. EMERGENCY.] Whereas the present capitol building is inadequate, and unsafe for public records on account of the absence of fire proofing, now, therefore, an emergency exists and this act shall take effect and be in full force from and after its passage and approval.

Approved February 3, 1905.

CHAPTER 167.

[S. B. No. 139—LaMoure.]

CAPITOL BUILDING.

AN ACT Authorizing the Board of Capitol Commissioners Created for the Reconstruction of the Capitol Building, and the Erection of an Executive Mansion for the State of North Dakota, to Utilize Such Labor of the Convicts in the State Penitentiary as Can Be Used Profitably in Erecting Said Capitol and Executive Mansion, or in the Manufacture of Material to be Used Therein.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. BOARD OF CAPITOL COMMISSIONERS AUTHORIZED AND EMPOWERED TO UTILIZE CONVICT LABOR IN ERECTION OF NEW CAPITOL BUILDING. DUTY OF WARDEN TO FURNISH SAME.] The board of capitol commissioners, appointed under the provisions of an act "providing for the reconstruction of the capitol building of the state of North Dakota, and the erection of an executive mansion, and for that purpose creating a board of capitol commissioners, defining its powers and duties, providing for and appropriating the proceeds of sales of the capitol building lands, and authorizing the issuance of interest-bearing certificates against said fund," approved February 3, 1905, are hereby authorized and empowered and shall, so far as the same can reasonably and profitably be done, utilize such labor of the convicts in the state penitentiary, not otherwise employed in the necessary maintenance of said penitentiary and twine plant connected therewith, and it is hereby made the duty of the warden of said penitentiary, whenever requested by the said board of capitol commissioners, referred to herein, to place any or all available convicts of proper character and condition that he may have in his charge, with proper guards and attendants therefor, at the disposal of said board of capitol commissioners, to be used in performing such labor required in erecting said capitol and executive mansion, or in the manufacture of material to be used therein.

§ 2. EMERGENCY.] Whereas, in the opinion of the legislative assembly an emergency exists; therefore, this act shall take effect and be in force from and after its passage and approval.

Approved March 1, 1905.