

CHAP. XCVI.—*An Act to divide the Territory of Wisconsin and to establish the Territorial Government of Iowa.* (a)

STATUTE II.

June 12, 1838.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the third day of July next, all that part of the present Territory of Wisconsin which lies west of the Mississippi river, and west of a line drawn due north from the head waters or sources of the Mississippi to the Territorial line, shall, for the purposes of temporary government, be and constitute a separate Territorial Government by the name of Iowa; and that from and after the said third day of July next, the present Territorial Government of Wisconsin shall extend only to that part of the present Territory of Wisconsin which lies east of the Mississippi river. And after the said third day of July next, all power and authority of the Government of Wisconsin in and over the Territory hereby constituted shall cease: *Provided*, That nothing in this act contained shall be construed to impair the rights of person or property now appertaining to any Indians within the said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to impair the obligations of any treaty now existing between the United States and such Indians, or to impair or otherwise to affect the authority of the Government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty or law, or otherwise, which it would have been competent to the Government to make if this act had never been passed: *Provided*, That nothing in this act contained shall be construed to inhibit the Government of the United States from dividing the Territory hereby esta-

What part of the present territory of Wisconsin shall constitute the territory of Iowa.

The authority of Wisconsin over the territory thus constituted, to cease. Proviso.

Proviso.

- (a) Acts relating to the territory of Iowa:
- An act to divide the territory of Wisconsin, and to establish the territorial government of Iowa, June 12, 1838, chap. 96.
- An act to authorize the President of the United States to cause the southern boundary line of the territory of Iowa to be ascertained and marked, June 18, 1838, chap. 116.
- Appropriation for erecting public buildings in the territory of Iowa; act of July 7, 1838, chap. 169, sec. 5.
- Post-routes in Iowa; act of July 7, 1838, chap. 172.
- An act making a donation of land to the territory of Iowa for the purpose of erecting public buildings thereon, March 3, 1839, chap. 77.
- An act granting to the Judges of the Supreme Court of Iowa, the same compensation as by law is given to the Judges of the Supreme Court of Wisconsin; March 3, 1839, chap. 79.
- Appropriation for the survey of the southern boundary of Iowa; act of March 3, 1839, chap. 81.
- An act to alter and amend the organic law of the territories of Wisconsin and Iowa, March 3, 1839, chap. 90.
- An act granting two townships of land for the use of a university in the territory of Iowa; July 20, 1840, chap. 90.
- Appropriations for the Iowa Territory. Proviso that the Legislative Assembly of the territory shall exceed the amount appropriated by Congress for its annual expenses; act of May 18, 1842, chap. 29.
- An act to authorize the county commissioners of Linn county, in the territory of Iowa, to enter, by legal subdivisions, a quarter section of land, upon which the county seat has been located; July 27, 1842, chap. 104.
- An act regulating the services of the several judges of the territory of Iowa; Aug. 11, 1842, ch. 129, § 117.
- An act to grant pre-emption rights to settlers on the "Dubuque claim," so called, in the territory of Iowa; August 16, 1842, chap. 182.
- An act to authorize the selection of school lands in lieu of those granted to the half-breed of the Sac and Fox Indians; August 23, 1842, chap. 194.
- An act giving the assent of Congress to the holding of an extra session of the Legislative Assembly of the territory of Iowa; April 30, 1844, chap. 16.
- An act making appropriations for certain improvements in the territory of Iowa; June 15, 1844, chap. 66.
- An act respecting the northern boundary of the state of Missouri; June 17, 1844, chap. 97.
- An act to authorize the selection of certain school lands in the territories of Florida, Iowa, and Wisconsin; June 15, 1844, chap. 55.
- An act granting to the county of Dubuque certain lots of ground in the town of Dubuque; June 15, 1844, chap. 56.
- An act for the admission of the states of Iowa and Florida into the Union; March 3, 1845, chap. 48.
- An act supplemental to the act for the admission of Florida and Iowa into the Union, and for other purposes; March 3, 1845, chap. 75.
- An act supplemental to the act for the admission of the states of Iowa and Florida into the Union; March 3, 1845, chap. 76.

blished into one or more other Territories, in such manner and at such times as Congress shall, in its discretion, deem convenient and proper, or from attaching any portion of said Territory to any other state or Territory of the United States.

Executive power vested in a governor; his powers and duties.

SEC. 2. *And be it further enacted,* That the executive power and authority in and over the said Territory of Iowa shall be vested in a Governor, who shall hold his office for three years, unless sooner removed by the President of the United States. The Governor shall reside within the said Territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve of all laws passed by the Legislative Assembly before they shall take effect; he may grant pardons for offences against the laws of the said Territory, and reprieves for offences against the laws of the United States, until the decision of the President can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said Territory, and shall take care that the laws be faithfully executed.

A Secretary of the Territory to be appointed. His duties.

SEC. 3. *And be it further enacted,* That there shall be a Secretary of the said Territory, who shall reside therein, and hold his office for four years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and proceedings of the Legislative Assembly hereinafter constituted, and all the acts and proceedings of the Governor in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings, on or before the first Monday in December in each year, to the President of the United States, and, at the same time, two copies of the laws to the Speaker of the House of Representatives, for the use of Congress. And in case of the death, removal, resignation, or necessary absence of the Governor from the Territory, the Secretary shall have, and he is hereby authorized and required to execute and perform all the powers and duties of the Governor during such vacancy or necessary absence, or until another Governor shall be duly appointed to fill such vacancy.

Secretary to act as governor in case of a vacancy.

Legislative power, how vested.

SEC. 4. *And be it further enacted,* That the legislative power shall be vested in the Governor and a Legislative Assembly. The Legislative Assembly shall consist of a Council and House of Representatives. The Council shall consist of thirteen members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The House of Representatives shall consist of twenty-six members possessing the same qualifications as prescribed for the members of the Council, and whose term of service shall continue one year. An apportionment shall be made as nearly equal as practicable, among the several counties, for the election of the Council and Representatives, giving to each section of the Territory representation in the ratio of its population, Indians excepted, as nearly as may be. And the said members of the council and House of Representatives shall reside in and be inhabitants of the district for which they may be elected. Previous to the first election, the Governor of the Territory shall cause the census or enumeration of the inhabitants of the several counties in the Territory to be taken, and made by the sheriffs of the said counties, respectively, unless the same shall have been taken within three months previous to the third day of July next, and returns thereof made by said sheriffs to the Governor. The first election shall be held at such time and place, and be conducted in such manner as the Governor shall appoint and direct; and he shall at the same time, declare the number of members of the Council and House of Representatives to which each of the counties or districts are entitled under this act. The number of persons authorized to be elected having the greatest number of votes in each of the said counties or districts for the Council, shall be declared by the said Governor to be duly elected to the said Council;

Apportionment of representation.

Members to be inhabitants of the district for which elected.

First election.

Gov'r to declare the persons having the greatest number of votes to be elected.

and the person or persons having the greatest number of votes for the House of Representatives, equal to the number to which each county may be entitled, shall also be declared by the Governor to be duly elected: *Provided*, The Governor shall order a new election when there is a tie between two or more persons voted for, to supply the vacancy made by such tie. And the persons thus elected to the Legislative Assembly shall meet at such place, and on such day as he shall appoint; but thereafter the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties to the Council and House of Representatives, according to population, shall be prescribed by law, as well as the day of the annual commencement of the session of the said Legislative Assembly; but no session in any year shall exceed the term of seventy-five days.

Proviso.

SEC. 5. *And be it further enacted*, That every free white male citizen of the United States, above the age of twenty-one years, who shall have been an inhabitant of said Territory at the time of its organization, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters at all subsequent elections, shall be such as shall be determined by the Legislative Assembly: *Provided*, That the right of suffrage shall be exercised only by citizens of the United States.

Qualifications of voters.

SEC. 6. *And be it further enacted*, That the legislative power of the Territory shall extend to all rightful subjects of legislation; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws of the Governor and Legislative Assembly shall be submitted to, and if disapproved by, the Congress of the United States, the same shall be null and of no effect.

Proviso.

Powers of the Legislature. Restrictions.

SEC. 7. *And be it further enacted*, That all township officers, and all county officers, except judicial officers, justices of the peace, sheriffs, and clerks of courts, shall be elected by the people, in such manner as is now prescribed by the laws of the Territory of Wisconsin, or as may, after the first election, be provided by the Governor and Legislative Assembly of Iowa Territory. The Governor shall nominate and by and with the advice and consent of the Legislative Council, shall appoint all judicial officers, justices of the peace, sheriffs, and all militia officers, except those of the staff, and all civil officers not herein provided for. Vacancies occurring in the recess of the Council, shall be filled by appointments from the Governor, which shall expire at the end of the next session of the Legislative Assembly; but the said Governor may appoint, in the first instance, the aforesaid officers, who shall hold their offices until the end of the next session of the said Legislative Assembly.

Laws to be submitted to Congress for approval.

Officers to be elected by the people.

Officers, how appointed.

Vacancies.

SEC. 8. *And be it further enacted*, That no member of the Legislative Assembly shall hold, or be appointed to, any office created, or the salary and emoluments of which shall have been increased, whilst he was a member, during the term for which he shall have been elected, and for one year after the expiration of such term; and no person holding a commission or appointment under the United States, or any of its officers, except as a militia officer, shall be a member of the said Council or House of Representatives, or shall hold any office under the Government of the said Territory.

Disqualifications for office.

SEC. 9. *And be it further enacted*, That the judicial power of the said Territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice, and two associate judges, any two of whom shall be a quorum, and who shall hold a term at the seat of Government of the

Judicial power, how vested. Supreme court.

District courts.

Jurisdiction  
of the several  
courts.

Proviso.

said Territory annually, and they shall hold their offices during the term of four years. The said Territory shall be divided into three judicial districts; and a district court or courts shall be held in each of the three districts, by one of the judges of the supreme court, at such times and places as may be prescribed by law; and the said judges shall, after their appointment, respectively, reside in the districts which shall be assigned to them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts, and of the justices of the peace, shall be as limited by law: *Provided, however,* That justices of the peace shall not have jurisdiction of any matter of controversy, when the title or boundaries of land may be in dispute, or where the debt or sum claimed exceeds fifty dollars. And the said supreme and district courts, respectively, shall possess a chancery as well as common law jurisdiction. Each district court shall appoint its clerk, who shall keep his office at the place where the court may be held, and the said clerks shall also be registers in chancery; and any vacancy in said office of clerk happening in the vacation of said court, may be filled by the judge of said district, which appointment shall continue until the next term of said court. And writs of error, bills of exception, and appeals in chancery causes, shall be allowed in all cases, from the final decisions of the said district courts to the supreme court under such regulations as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court may appoint its own clerk, and every clerk shall hold his office at the pleasure of the court by which he shall have been appointed. And writs of error and appeals from the final decision of the said supreme court shall be allowed and taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, shall exceed one thousand dollars. And each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States. And the first six days of every term of the said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws. And writs of error and appeals from the final decisions of the said courts, in all such cases, shall be made to the supreme court of the Territory, in the same manner as in other cases. The said clerks shall receive in all such cases, the same fees which the clerk of the district courts of Wisconsin Territory now receives for similar services.

An attorney to  
be appointed for  
four years; his  
fees, &c.

A marshal to  
be appointed for  
four years; his  
duties, fees, &c.

SEC. 10. *And be it further enacted,* That there shall be an attorney for the said Territory appointed, who shall continue in office four years, unless sooner removed by the President, and who shall receive the same fees and salary as the attorney of the United States, for the present Territory of Wisconsin. There shall also be a marshal for the Territory appointed, who shall hold his office for four years, unless sooner removed by the President, who shall execute all process issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States. He shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the marshal of the district court of the United States for the present Territory of Wisconsin; and shall, in addition, be paid the sum of two hundred dollars annually, as a compensation for extra services.

Officers to be  
appointed by  
the President,  
with the advice

SEC. 11. *And be it further enacted,* That the Governor, secretary, chief justice, and associate judges, attorney and marshal, shall be nominated, and by and with the advice and consent of the senate, appointed by the President of the United States. The Governor and

secretary to be appointed as aforesaid, shall, before they act as such, respectively, take an oath or affirmation, before some judge or justice of the peace, in the existing Territory of Wisconsin, duly commissioned and qualified to administer an oath or affirmation, [or] before the chief justice, or some associate justice of the Supreme Court of the United States, to support the constitution of the United States, and for the faithful discharge of the duties of their respective offices, which said oaths when so taken, shall be certified by the person before whom the same shall have been taken, and such certificate shall be received and recorded by the said Secretary among the executive proceedings. And, afterwards, the chief justice and associate judges, and all other civil officers in said Territory, before they act as such, shall take a like oath or affirmation before the said Governor or secretary, or some judge or justice of the Territory who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the Secretary, to be by him recorded as aforesaid; and, afterwards, the like oath or affirmation, shall be taken, certified, and recorded, in such manner and form as may be prescribed by law. The Governor shall receive an annual salary of fifteen hundred dollars as Governor, and one thousand dollars as superintendent of Indian affairs. The said chief justice and associate judges shall each receive an annual salary of fifteen hundred dollars. The secretary shall receive an annual salary of twelve hundred dollars. The said salaries shall be paid quarter-yearly at the Treasury of the United States. The members of the Legislative Assembly shall be entitled to receive three dollars each per day, during their attendance at the sessions thereof; and three dollars each for every twenty miles travel in going to and returning from, the said sessions, estimated according to the nearest usually travelled route. There shall be appropriated, annually, the sum of three hundred and fifty dollars, to be expended by the Governor to defray the contingent expenses of the Territory; and there shall also be appropriated, annually, a sufficient sum, to be expended by the Secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the Legislative Assembly, the printing of the laws, and other incidental expenses; and the Secretary of the Territory shall annually account to the Secretary of the Treasury of the United States, for the manner in which the aforesaid sum shall have been expended.

SEC. 12. *And be it further enacted*, That the inhabitants of the said Territory shall be entitled to all the rights, privileges and immunities heretofore granted and secured to the Territory of Wisconsin and to its inhabitants; and the existing laws of the Territory of Wisconsin shall be extended over said Territory, so far as the same be not incompatible with the provisions of this act, subject, nevertheless, to be altered, modified, or repealed, by the Governor and Legislative Assembly of the said Territory of Iowa; and further, the laws of the United States are hereby extended over, and shall be in force in said Territory, so far as the same, or any provisions thereof, may be applicable.

SEC. 13. *And be it further enacted*, That the Legislative Assembly of the Territory of Iowa shall hold its first session at such time and place in said Territory as the Governor thereof shall appoint and direct; and at said session, or as soon thereafter as may by them be deemed expedient, the said Governor and Legislative Assembly shall proceed to locate and establish the seat of Government for said Territory, at such place as they may deem eligible, which place, however, shall thereafter be subject to be changed by the said Governor and Legislative Assembly. And the sum of twenty thousand dollars, out of any money in the Treasury not otherwise appropriated, is hereby granted to the said Territory of Iowa, which shall be applied by the Governor and Legislative

and consent of the Senate.

Governor and Secretary to take an oath, &c.

Chief justice and associate judges, &c. to take an oath, &c.

Salary of the Governor.

Salary of the chief judge and associate justices.

Salary of the secretary.

Salaries how paid.

Pay of members of Legislative Assembly.

Contingent expenses of the Territory, &c.

Rights, &c. same as granted to Wisconsin.

Existing laws of Wisconsin extended over Iowa, &c.

Laws U.S. extended over Iowa.

First session of Legislative Assembly held where Governor shall direct.

Seat of Gov't.

\$20,000 appropriated for erection of public buildings at seat of government.

Assembly thereof to defray the expenses of erecting public buildings at the seat of Government.

Delegates to House of Representatives U. S. how elected, &c.

SEC. 14. *And be it further enacted*, That a delegate to the House of Representatives of the United States to serve for the term of two years, may be elected by the voters qualified to elect members of the Legislative Assembly, who shall be entitled to the same rights and privileges as have been granted to the delegates from the several Territories of the United States, to the said House of Representatives. The first election shall be held at such time and place or places, and be conducted in such manner as the Governor shall appoint and direct. The person having the greatest number of votes shall be declared by the Governor to be duly elected, and a certificate thereof shall be given to the person so elected.

Suits, &c. undetermined on 3d July next in dist. courts of Wisconsin, west of the Mississippi, shall be transferred, &c.

SEC. 15. *And be it further enacted*, That all suits, process, and proceedings, and all indictments and informations, which shall be undetermined on the third day of July next, in the district courts of Wisconsin Territory, west of the Mississippi river, shall be transferred to be heard, tried, prosecuted and determined in the district courts hereby established, which may include the said counties.

Judicial officers in office on 3d July next, shall act temporarily until their places are filled by Gov't of Iowa.

SEC. 16. *And be it further enacted*, That all justices of the peace, constables, sheriffs, and all other executive and judicial officers, who shall be in office on the third day of July next, in that portion of the present Territory of Wisconsin which will then, by this act, become the Territory of Iowa, shall be, and are hereby authorized and required to continue to exercise and perform the duties of their respective offices, as officers of the Territory of Iowa, temporarily and until they, or others, shall be duly appointed to fill their places by the Territorial Government of Iowa, in the manner herein directed: *Provided*, That no officer shall hold or continue in office by virtue of this provision, over twelve months from the said third day of July next.

Proviso.

Causes removed from the courts of Wisconsin, west of the Mississippi, into supreme court of Wisconsin.

SEC. 17. *And be it further enacted*, That all causes which shall have been or may be removed from the courts held by the present Territory of Wisconsin, in the counties west of the Mississippi river, by appeal or otherwise, into the supreme court for the Territory of Wisconsin, and which shall be undetermined therein on the third day of July next, shall be certified by the clerk of the said supreme court, and transferred to the supreme court of said Territory of Iowa, there to be proceeded in to final determination, in the same manner that they might have been in the said supreme court of the Territory of Wisconsin.

Library to be kept at seat of government.

SEC. 18. *And be it further enacted*, That the sum of five thousand dollars be, and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated, to be expended by, and under the direction of, the Governor of said Territory of Iowa, in the purchase of a library, to be kept at the seat of Government, for the accommodation of the Governor, Legislative Assembly, judges, secretary, marshal, and attorney of said Territory, and such other persons as the Governor and Legislative Assembly shall direct.

Term of members of council and House of Reps. of Wisconsin to expire, &c.

SEC. 19. *And be it further enacted*, That from and after the day named in this act for the organization of the Territory of Iowa, the term of the members of the Council and House of Representatives of the Territory of Wisconsin shall be deemed to have expired, and an entirely new organization of the Council and House of Representatives of the Territory of Wisconsin as constituted by this act shall take place as follows: As soon as practicable after the passage of this act, the Governor of the Territory of Wisconsin shall apportion the thirteen members of the Council and twenty-six members of the House of Representatives among the several counties or districts comprised within said Territory, according to their population, as nearly as may be (Indians excepted). The first election shall be held at such time as the Go-

Apportionment of members of Council and Ho. Reps.

vornor shall appoint and direct; and shall be conducted, and returns thereof made, in all respects, according to the provisions of the laws of said Territory, and the Governor shall declare the persons having the greatest number of votes to be elected, and shall order a new election when there is a tie between two or more persons voted for, to supply the vacancy made by such tie. The persons thus elected shall meet at Madison, the seat of Government, on such day as he shall appoint, but thereafter the apportioning of the representation in the several counties to the Council and House of Representatives according to population, the day of their election, and the day for the commencement of the session of the Legislative Assembly, shall be prescribed by law.

First election, when held, how conducted, &c.

Time and place of meeting.

SEC. 20. *And be it further enacted*, That temporarily, and until otherwise provided by law of the Legislative Assembly, the Governor of the Territory of Iowa may define the judicial districts of said Territory, and assign the judges who may be appointed for said Territory to the several districts, and also appoint the times for holding courts in the several counties in each district, by proclamation to be issued by him; but the Legislative Assembly, at their first, or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges and alter the times of holding the courts or any of them.

Gov. of Iowa may temporarily define the judicial districts, assign the judges, and appoint the times of holding the courts.

APPROVED, June 12, 1838.

STATUTE II.

June 12, 1838.

[Obsolete.]

CHAP. XCVII.—*An Act making appropriations for preventing and suppressing Indian hostilities for the year eighteen hundred and thirty-eight, and for arrearages for the year eighteen hundred and thirty-seven.*

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the following sums be, and the same are hereby appropriated, out of any money in the Treasury not otherwise appropriated, to defray the expenses which have been, or may be, incurred, in preventing or suppressing the hostilities of any Indians, in the year eighteen hundred and thirty-eight; to be expended under the direction of the Secretary of War, conformably to the acts of Congress of the nineteenth of March and the second of July, eighteen hundred and thirty-six, and of the acts therein referred to; and for arrearages of the same for the year eighteen hundred and thirty-seven:

1836, ch. 44.

1836, ch. 254.

To be expended under direction of Sec'y. War, conformably, &c.

For forage for the horses of the dragoons, volunteers, officers, and in the service of the trains, four hundred thousand dollars;

Forage for horses.

For freight or transportation of military supplies sent into Florida and the Cherokee country, three hundred and fifty thousand dollars;

Freight, &c. of military supplies.

For wagons, carts, ambulances, and harness, and for boats and lighters, one hundred and fifty thousand dollars;

Wagons, carts, &c.

For the transportation of supplies from the principal depots to the points of consumption, including the hire of steamboats and other vessels, and the expense of public steamers and transport schooners, seven hundred thousand dollars;

Transportation of supplies from principal depots, &c.

For the hire of a corps of mechanics, laborers, mule-drivers, teamsters, wagon-masters, and other assistants, two hundred and fifty thousand dollars;

Hire of mechanics, &c.

For transportation and other expenses of four thousand volunteers, one hundred thousand dollars;

Transportation, &c. of volunteers.

For miscellaneous and contingent charges of all kinds, not embraced under the foregoing heads, seven hundred and fifty thousand dollars;

Miscellaneous and contingent expenses.

For drafts lying over, and arrearages for services and supplies in Florida and the Cherokee country, one million forty-eight thousand six hundred dollars;

Drafts lying over, and arrearages.

For pay of four thousand volunteers, for the year eighteen hundred and thirty-eight, including one hundred and fifty-three thousand four

Pay of volunteers for 1838,