

# MAINE STATE LEGISLATURE

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*Wm. F. Hill*  
DOCUMENTS

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# THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1856.

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**PART SECOND.**

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Augusta:

FULLER & FULLER, PRINTERS TO THE STATE.

1856.

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# THIRTY-FIFTH LEGISLATURE.

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SENATE.

No. 26.

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## REPORT.

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IN SENATE, March 12, 1856.

THE Joint Standing Committee on the Judiciary, to whom were referred the several communications of the commissioners appointed under resolves of the last Legislature, to revise the public laws, have had the same under consideration, together with the official printed copy of the new revision, submitted by the commissioners, and ask leave to report.

The commissions, Messrs. John B. Hill, Joseph Baker and James Bell, were directed by the resolve of March 12, 1855, under which they were appointed, "faithfully to revise, collate and arrange all the public laws of this state," and, "carefully [to] collect the different acts and parts of acts relating to the same subject matter, and collate and arrange the same under appropriate titles, chapters and sections, and in all respects execute and complete said revision in such a manner as in their opinion will render said laws most plain, concise and intelligible."

These terms may appear to admit of the interpretation that only a *compilation* of the laws was required, without any change of substance in the code, and, in such a manner that the revision would not require to be enacted into law, but only "adopted" as a convenient arrangement of the general statutes of the state.

Alterations and amendments are provided for by another part of the resolves, where the commissioners are required, "in the report of their doings, to *indicate* such contradictions, omissions or imperfections, as may appear in the laws so to be revised, and the mode in which the same *may be* reconciled, supplied or amended," and the last of the resolves contemplated that the present legislature might adopt the revision, "*whether with or without* amendments."

This appears to require that all amendatory matter should be submitted to the legislature in such a separate form, apart from the re-arranged body of the existing law, that the legislature could most directly see and conveniently judge for itself, whether the *new* matter should be enacted or not.

The commissioners, however, appear to have adopted a different view of the resolves, and have, accordingly, not only made a new arrangement of the laws, but have adopted a considerable amount of amendatory provisions, and have otherwise made a good many changes in the substance and form of the statutes, all of which are adopted into the body of their new code, under the several proper heads.

The committee do not intend to find fault with the interpretation of their duty assumed by the commissioners. It may have been a highly expedient interpretation. After the lapse of fifteen years, since the last revision of the laws, it may be that the body of the statute law required substantial changes and alterations, and to be re-enacted as an amended code. But it is necessary to state specifically, that which has been done by the commissioners, in order that the people may know under what circumstances and in what form their work has come before the present legislature, and that the members of the two branches may distinctly appreciate the present state of the question upon this work.

The resolves contemplated that the present legislature would act definitely upon the "adoption" of this revision. Accordingly it was provided that the commissioners should report to this legislature "on or before the tenth day of the session."

On that day, January 12th, the commissioners laid before the legislature, a brief written communication, in which they gave some account of the progress of the work, and stated that they had caused their revision to be printed, in separate titles; that eight of the twelve titles had been printed; that a large part of the remaining titles was then in the hands of the printers, and that the balance would be ready for printing in a few days, and that as soon as printed, they would be prepared to make their final report to the legislature.

No provision was made by the resolves of last year, for *printing* the report of the commissioners. It was probably for the convenience, however, of all concerned, that this should be done, and if the printing had been seasonably accomplished, it would very much have facilitated the action of the present legislature.

Upon the reference of the above communication to the Committee on the Judiciary, as the committee had no means of determining when the balance of the printing would be completed, and had not before them any statement of the principles or methods, which the commissioners had observed in making the revision, and therefore could form no judgment or make any recommendation with reference to the course, which it might be necessary to pursue, in acting upon the subject, they were obliged to wait the further report of the commissioners.

Their final report, with the complete printed copy, was laid before the legislature on the 13th of February, and the printed titles were then distributed to the members. The full report of the commissioners then made known the character of the revision presented, and it appeared that, under several heads, they had stricken out many parts of the former statutes, and added new matter, and that the style and phraseology of the laws, as well as the arrangement of subjects, were very materially changed throughout the whole code.

The extent of the changes made, in the way of striking out and dropping parts of former laws, as well as in reducing the phraseology to fewer words, is exhibited by their statement in

their written communication of February 13th, that "the work, containing the whole of the revised statutes and all subsequent laws, will make only one volume of a hundred pages *less* than the present revised statutes."

Condensation, carried to this extent, over the legislation of fifteen years, and including also the former revised code, necessarily implies very great changes. It may have been very skillfully and adequately done, but, of course, alterations of such amount would require very careful and deliberate scrutiny of the legislature, before it would be safe to *repeal* all the former laws and enact this new code into law.

The new matter is generally indicated in the printed copies, by the method of printing, or by the word "new"; but the actual amount and kind of the matter left out and dropped, could, of course, only be ascertained by a specific comparison of all the former laws with the new revision.

The commissioners state that on a review of the whole work, after it was printed, they discovered "a few omissions, and supplied them with the pen."

These omissions are not more numerous than might have been expected in a work of this character. On examination of the official copy referred to the committee, it is found that these corrections, consisting in some cases of whole sections and parts of sections, but more frequently of references to the former statutes, are upwards of one hundred and sixty in number, not including any errors which are merely verbal. This number of corrections would cause no special embarrassment to a single individual, having possession of the official copy in which they are noted. But the members of the legislature having in their hands uncorrected copies, would, on this account, require a far greater amount of time to ascertain and determine upon the character and extent of the corrections. Without such knowledge, they could not safely rely upon the copies in their hands.

Having thus received the final report of the commissioners, and ascertained the character and condition of their work, at

so late a date as the middle of February, when the members of the legislature were actively engaged in the specific and ordinary duties of the session, the committee felt constrained to come to the conclusion that it was impracticable to complete this revision, and enact it as new law, repealing the whole body of the former law, at the present session. To abrogate all the existing general laws of the State, and pass an entire new code, would be a measure of most serious responsibility, under any circumstances; and the committee could not recommend it to the legislature in the present case. To do the work properly, at the present session, would require a delay of a month at least; and the committee had no evidence, in any thing appearing before the last legislature, or the present one, or in the state of the public sentiment upon this matter, that the object was worth a cost so very heavy.

To complete the work by holding an extra session, as in 1840, was, on every account, deemed undesirable; and there were no considerations of public utility, which appeared to create an exigency for such a trouble and expenditure.

The best alternative arrangement to secure a thorough and economical completion of the work, and one which would finally be most satisfactory, both to the law-making power and to the community, appeared to be, to commit the work, in its present form, to a further revision, by the most competent hands that could be engaged for the service, and have it laid in the most mature shape, and after undergoing a new and independent scrutiny, before the next legislature, for final action.

Any other method would either require action without adequate deliberation, or involve expenditure quite beyond the immediate exigency of the case.

Since the work has now assumed the form of a substantive revision and amendment, and not of a mere compilation, the committee recommend that it be carried forward upon that basis. For this purpose, the labors of the late commissioners will be available to a large extent, while it will be quite practicable to embrace in the further revision, all desirable improve-

ments; and specific instructions may very properly be given to that effect.

Such a postponement and fresh deliberation is the more necessary, from the circumstance that the distinctive character of this year's legislation may demand material changes in the code prepared by the late commissioners. Before the reception of their report, the legislature had already repealed or essentially modified several statutes, which are embraced in their revision.

The committee are of opinion, that this work, if entrusted to a new commission, with specific directions to have the results printed and distributed to the elected members of the next legislature, before the commencement of their session, will then be in a condition, which will enable that legislature to act upon it seasonably and satisfactorily.

For this purpose, the committee recommend the passage of the resolves which are herewith submitted; in framing which, it has been deemed advisable to provide for the appointment of a specific commissioner, in whose ability for such a service, an entire confidence will be reposed.

In behalf of the committee,

P. BARNES, *Chairman.*



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## STATE OF MAINE.

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RESOLVES to provide for the further revision of the  
public laws.

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*Resolved,* That the further revision of the public and  
2 general laws of this state, commenced under resolves  
3 approved March twelfth, eighteen hundred fifty-five,  
4 be committed to Ether Shepley, late chief justice of  
5 this state, whose duty it shall be to compare the  
6 revision, made under said resolves, with the existing  
7 laws, and make such further revision and new arrange-  
8 ment thereof, including the public laws passed at the  
9 present session, as may be necessary to present the  
10 same, in the most complete form, for the consideration  
11 of the legislature; and that he be instructed to con-  
12 sider and recommend such alterations and amend-  
13 ments in the general laws, as he may deem suitable  
14 and necessary, and to incorporate the same, with  
15 proper distinguishing marks, or notes, into the revised  
16 code to be by him reported.

*Resolved,* That the said commissioner be also instructed to consider and report, whether any chapters, or parts of the existing general laws of the state, have become obsolete, or are now unnecessary, and whether it is expedient to adopt any additional chapters, upon any subjects not hitherto embraced in the general statutes of the state ; and in such case, to report specifically thereon, with suitable drafts of such additional chapters.

*Resolved,* That the said commissioner cause his report to be completed and printed in separate titles, by the printer to the state, on or before the fifteenth day of November next ; and that the secretary of state thereupon cause one copy of the same to be forwarded, forthwith, to each one of the members elected to the next legislature, and to each one of the persons, if any, appearing to be constitutional candidates for election to the senate.

*Resolved,* That the governor and council be authorized to audit and allow the accounts of the commissioner appointed under these resolves, for his services and expenses, and to draw their warrant upon the state treasurer for the payment of the same.

S T A T E   O F   M A I N E .

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IN SENATE, March 12, 1856.

ORDERED, That 700 copies of this Report and the accompanying Resolves, be printed for the use of the Legislature.

WM. G. CLARK, *Secretary.*