

CREATING A COMMISSION TO CODIFY, REVISE, DOUBLE INDEX, AND ANNOTATE ALL THE LAWS OF THE UNITED STATES OF A PERMANENT AND GENERAL CHARACTER—NEW EDITION OF THE REVISED STATUTES.

JANUARY 13, 1919.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. WATKINS, from the Committee on Revision of the Laws, submitted the following

REPORT.

[To accompany H. R. 13304.]

The Committee on the Revision of the Laws, to whom was referred the bill (H. R. 13304) authorizing the appointment of a commission to codify, revise, double index, and annotate all the laws of the United States of a permanent and general character, having given the same most serious consideration, report thereon with the recommendation that the bill do pass with the following amendments:

“Two” is inserted in line 1 on page 2 to correct a typographical error.

In line 23, after the word “possible,” add a new sentence “Five thousand copies of such report shall be printed as a public document.”

To follow section 4, on page 3, insert a new section to be known as section No. 5, reading as follows:

That the said revision commission shall from time to time submit to the Committee of the House of Representatives on the Revision of Laws, and such committee of the Senate having jurisdiction of the revision of laws, drafts on revision of laws of the United States so far as the same shall be completed by subjects as the work progresses.

Section 5, in line 10 on page 3, to be renumbered section 6.

Section 6, in line 20 on page 3, to be renumbered section 7.

Section 7, in line 7 on page 4, to be renumbered section 8.

Section 8 is stricken from the bill.

The amendment to section 3 in line 23 on page 2 provides for the printing as a public document of 5,000 copies of the report analyzing the work done on each section by the commission, for the reason that it is thought that this analysis of the work will prove very beneficial to the court officials throughout the United States and to the members of the legal profession having to deal with our Federal statutes.

The new section 5, inserted in the bill, is intended as a means of keeping the Congress, through the proper committee channel, posted

on the various titles of the revision as they are from time to time completed.

Section 8 is stricken from the bill for the reason that in the judgment of your committee it is thought that the provisions of the Penal Code and the Judicial Code should be made a part of the Revised Statutes. This amendment is also in line with the recommendation of the Attorney General, whose judgment it is that the proposed work would be more useful and complete if it included as separate titles these codes.

The purpose of H. R. 13304 is to bring up to date all the permanent and general laws of the United States. The need for this has been long known and has been urged from time to time for the past several years upon the Congress and especially upon the Committee on Revision of the Laws of the House, which, under section 35 of rule 11, is charged with the consideration of all subjects relating to the revision and codification of the statutes of the United States.

On June 27, 1866, an act providing for the revision and consolidation of the statute laws of the United States was approved. This act authorized the appointment of three commissioners to revise, simplify, arrange, and consolidate all the general and permanent statutes of the United States. The commissioners were required to provide by a temporary index or other expedient means for an easy reference to every portion of their report, and to advise the Congress from time to time of their progress. No time limit was fixed in this act for the completion of the revision, although the three commissioners were appointed for three years at an annual salary of \$5,000 each. On May 4, 1870, this commission was revived by act of Congress for a term of three years, making a total of six years in which to codify and revise the general and permanent laws of the United States. We find that no general and complete index to the Revised Statutes was required to be furnished in connection with the general revision and that separate appropriations were made for this work to be done.

On March 3, 1873, an act of Congress was approved providing for the appointment of a joint committee of the Senate and House of Representatives to accept on the part of Congress the draft on the revision of the laws prepared by the commissioners appointed under the act of June 27, 1866, and reappointed under the act of May 4, 1870, and to discharge these commissioners from further duty under said acts. This joint committee served and the final draft of the revision was accepted. On June 22, 1874, the first edition of the Revised Statutes was approved by the President as passed by Congress, and on the 22d day of February, 1875, the Secretary of State authenticated the same as required by acts of Congress to do. It appears that from the date of the promulgation of the first edition of the Revised Statutes until March 2, 1877, no effort was made to issue a corrected edition of this work. On that date, however, an act was approved providing for the preparation and publication of a new edition of the Revised Statutes. This was apparently made necessary by reason of the fact that some imperfections needed curing as well as on account of the need for a thorough index to the volume. Under this last-mentioned act, one commissioner was appointed who was authorized to present the same by the 1st day of January, 1878, to the Secretary of State for his examination and

approval, to be certified as the Revised Statutes of the United States. This certification was made on the 18th day of February, 1878, by the Secretary of State, which is the volume of the Revised Statutes we now have. From the date of the approval of the act creating the commission which prepared our Revised Statutes (June 27, 1866) to the date of the authentication of the volume now in use, being the second edition (Feb. 18, 1878), 11 years, 7 months and 22 days elapsed. Your committee has called attention to the history of the preparation and publication of the Revised Statutes not in a spirit of criticism but for the express purpose of laying stress on the magnitude of the task of accurate codification and revision. It is difficult to convey an adequate conception of what real law revision is. It is more than a mere compilation of laws. The Committee on Revision of Laws in recent years has submitted many titles of the Revised Statutes in code form, among the most important being the Criminal Code of 1909, the Judicial Code of 1911, the proposed Judicial Code, part 2, 1914, the Common Carriers and Antitrust Code, 1916, the annotated edition of the Bankruptcy Laws of 1916, the Indian Laws of 1917, the Revised Criminal Code of 1918, and is now in the midst of the preparation of a code of laws governing commerce, navigation, and merchant seamen.

It has been the experience of the Committee on Revision of the Laws that in order to creditably perform the duties required of it, a sweeping revision of our general and permanent laws must be made, after which time the task of keeping these laws up to date would not be so difficult.

Special attention is directed to section 3 of H. R. 13304 which this report accompanies wherein is prescribed a limit in accomplishing the purpose of the bill by providing that in addition to the omission of redundant and obsolete enactments only such alterations may be made in the existing law as may be necessary to conform to the decisions of the Supreme Court of the United States in such cases where a construction has been placed on the law by that tribunal. This limit is intended to rectify the mistakes which the Congress has previously made in delegating to such a commission almost unlimited powers in revising the laws. For example, on June 4, 1897, in the sundry civil act (30 Stat. L., p. 58) three commissioners were authorized to be appointed to revise and codify the criminal and penal laws. From time to time their duties were extended to finally include all the general and permanent laws. They were permitted to make such changes as in their judgment they saw fit, but were required to briefly and clearly state their reason for any proposed change in an accompanying report. This commission was composed of most able and efficient men. Their work was universally commended. A most exhaustive and thorough report was made to Congress on December 15, 1906, which was the final report. This report was in two volumes and contained many valuable suggestions which have since been carried out. But the proposed changes were so numerous, and the work so voluminous, that Congress refused to adopt the revision without due consideration. Consequently, the work was not accepted to supersede all the laws which it aimed to reenact and repeal. This was due solely to the fact that the changes, although no doubt commendatory, were too numerous and too risky in the judgment of Congress. The life of this commission was nine years six months

and nine days, and the good accomplished by it was duly appreciated. The value of the work done by this commission is evidenced by the appointment of a joint special committee of Congress under Public Resolution No. 19, of March 2, 1907, to examine and submit to Congress recommendations upon the revision and codification of laws as reported by the commission, and a similar joint resolution in succeeding Congresses up to March, 1911. It was the excellent work of the joint committee, with most able expert assistants, which resulted in the adoption by Congress of the Criminal Code of 1909 and the Judicial Code of 1911. But still the mistake was made in not having a new edition of the Revised Statutes to supersede the antiquated edition of 1878.

Your committee has not undertaken to even approximate the enormous amount of money which has heretofore been expended without the accomplishment of the desired results; but it has clearly been convinced that the plan proposed in this bill is the most feasible one and by far the most economical.

A time limit of four years is set in which to complete this work. Attention is invited to the fact that the bill here reported does not merely contemplate a codification and revision, but it imposes upon the members of the commission the duty of double indexing and annotating such codification and revision. This in itself is a task of great magnitude, and which in the past has been provided for by separate appropriations commensurate with the work it required. The proposed commission will consist of four members, not more than two of whom shall be members of the same political party. The subject of revision of laws is entirely without politics. It has been suggested that perhaps by increasing the personnel of the commission to six or eight members and limiting the time for the completion of the work to two years might be feasible; but after carefully considering this phase of the question it was concluded that such a plan would certainly not be an economical one or one to accomplish just what this bill is aimed at—a new set of Revised Statutes at the earliest possible date—and this can be realized, in the judgment of your committee, if this bill is adopted by Congress.

From year to year since the 1878 edition of the Revised Statutes our laws have become more numerous and complicated. Especially is this true in recent years, to which attention will be later called in this report by way of citation to numerous communications received by your committee urging the passage of this bill. It may be well, however, to refer to the condition in which our laws have grown since the beginning of the European war, laying stress on those enacted as precautionary measures as well as those for the actual prosecution of the war. Due largely to this existing condition, various officials of the Government have sought the aid of your committee in their efforts to ascertain just what laws were actually extant. From frequent examinations the Committee on Revision of the Laws would find that in many instances laws which had been placed upon the statute books a great many years ago, while not actually in operation, were still existing laws and were the means of entailing upon various Government officials an almost impossible task. Some investigations of this character disclosed the fact that some such laws had been entirely overlooked and some to have been repealed. In numerous cases, as some Members of Congress will perhaps recall, new legislation was made necessary to overcome such

obstacles, the presence of which was due solely to the condition of our statutes. During the past two years your committee has received a number of requests from Government officials for a revision of the laws affecting some particular department of the Government. It was a physical impossibility to comply with such requests. However, for the purpose of ascertaining the opinion of the heads of the various Government departments, your committee referred H. R. 13304 to these officials with the request for an expression of their views, and the liberty is here taken to incorporate in this report a few excerpts from the communications received in reply.

[From the Attorney General.]

I acknowledge receipt of yours of the 10th, inclosing copy of H. R. 13304, providing for the creation of a commission to codify, etc., the laws of the United States. You ask for my views in regard to the proposed legislation. The revision would be valuable and is needed.

[From Acting Secretary of State Polk.]

\* \* \* In reply, I have the honor to say that in view of the length of time which has elapsed since the last revision of the United States Statutes, as embodied in the Revised Statutes of 1878 and the two supplemental volumes of laws from 1874 to 1891, and 1892 to 1901, and the vast mass of new or amendatory legislation since enacted, there would appear to be need at this time for a complete revision of the laws of the United States, and I am of the opinion that the compilation and publication of an up-to-date edition of the Revised Statutes is much to be desired.

[From the Secretary of the Navy.]

\* \* \* It gives me pleasure to advise you that I look with great favor upon the proposed work, and I can not but feel that its accomplishment will result in a material economy of time and labor in this department. The Navy Department will be happy to cooperate in every practicable way with your committee in such revision.

[From Acting Secretary of the Interior Vogelsang.]

\* \* \* In reply, I have to advise you that in my opinion such a codification is desirable and would be, when completed, of great value to this department and to the general public. \* \* \* I can assure you that this department will be glad to aid in any way the proposed compilation should the commission be authorized

[From the Secretary of Agriculture.]

\* \* \* A revision of the Federal statutes is highly desirable, and I am altogether in sympathy with the plan of your committee and with the purpose of the pending bill. Such revision as is contemplated by the bill should result in a most valuable work. \* \* \* I fully appreciate the magnitude and arduous character of the task and shall be pleased to afford your committee all feasible assistance in the matter.

[From the Secretary of Commerce.]

\* \* \* I have to advise you that the creation of the commission referred to meets with the approval of this department and that it is believed that the bill submitted will be sufficient for the purpose.

[From the Secretary of Labor.]

\* \* \* Careful consideration has been given to the contents of your letter and to the bill therewith inclosed. This department is fully in accord with the proposition covered by your bill. There is great necessity that the numerous laws passed since the statutes of the United States were revised in 1874-1878 shall be revised \* \* \* and properly indexed and annotated. It is always a source of inconvenience, and often a cause of annoyance, or even of the taking of ill-advised action, to have the United States statutes in their present situation, \* \* \* without any absolute means of determining to what extent prior laws have been modified or superseded by subsequent statutes except through research of a painstaking and time-consuming character. The necessity is not only great but pressing, and the work to be done is of paramount importance and difficulty. This work should be completed, in this department's judgment, as soon as possible after it is commenced; but, at the same time, it had better not be done at all than to be performed otherwise than in a thorough and absolutely correct manner. \* \* \*

Your committee also includes herewith excerpts from letters of other officials of the Government.

[From Col. John H. Wigmore, Office of the Provost Marshal General, dean of the Northwestern University Law School, Chicago, Ill.]

\* \* \* I heartily commend the project and trust that Congress will take early action. The present condition of the accumulative legislation of the last 40 years increases a hundredfold the labor of our profession, and thus derogates from the doing of justice by enormous increase in the expense of litigation. \* \* \* It is also to be hoped that a larger authority may be granted in section 2 for the use of clerical assistance. Modern methods of statutory compilation could not possibly be used under the limitation of two stenographic clerks. The number should not be specified. \* \* \* The foregoing suggestions are based upon considerable experience in committee work of legislative drafting and are solid convictions born of that experience. A great benefit can be conferred upon the legal profession and upon the Nation if this commission is so authorized in its legislative creation as to be enabled to adopt modern methods. \* \* \* It would be a pity if the Congress of the United States should not take cognizance of modern methods in this one of the most important of its tasks.

[From Hon. Kimbrough Stone, United States circuit judge.]

\* \* \* I thoroughly approve the measure and shall be pleased to aid you in any way in its passage.

[From Hon. Charles A. Woods, United States circuit judge.]

\* \* \* I quite agree with you as to the vital importance of the revision for which the bill provides.

[From Hon. Walter I. Smith, United States circuit judge.]

\* \* \* There can be no doubt that such an official publication would be desirable. \* \* \* I have in my library here not only the Revised Statutes of the United States of 1878 and the supplements thereto but a complete set of the Statutes at Large and two sets of privately prepared Annotated Statutes of the United States, one in 14 volumes and one in 13 volumes. In the aggregate they require four bookcases of spacious character in my office. I can have no doubt of the desirability of an authoritative revision.

[From Hon. J. W. Thompson, United States District Judge, Philadelphia, Pa.]

\* \* \* The purposes of this bill are very important to every Federal judge and practitioner and its plan of carrying on the work through a commission seems to be the only practicable method of accomplishing a task of such magnitude.

[From Hon. Thomas G. Haight, United States District Judge, Newark, N. J.]

\* \* \* I quite agree with you that there is very great need for a revision of the Federal Statutes.

[From Hon. John E. Sater, United States District Judge, Columbus, Ohio.]

\* \* \* I shall be glad to see a good revision of the United States laws. It would greatly facilitate the work of lawyers and judges. From personal observation I can say that the index of the Statutes at Large and of the Revised Statutes is such that the average lawyer often has difficulty in determining what the United States laws are. Notwithstanding my constant use of them I have had a like experience \* \* \* and trust they may be so collated and so indexed as greatly to relieve the embarrassment which the legal profession now finds in their use.

[From Hon. Learned Hand, United States District Judge, New York, N. Y.]

\* \* \* I am heartily in sympathy with this bill \* \* \*. I could have wished, if it were possible, a more thoroughgoing revision than this, a revision, that is, which would give the commissioners more latitude to modify the law as seemed to them best. There are a great many instances of Federal procedure at the present time which are in confusion and need a systematic statement. I regretfully assume, however, that such a commission would under no circumstances be authorized. The fear that some of the important changes in their work might escape scrutiny in Congress would, I suppose, be insurmountable. While I do not share this fear myself and believe that the result would be of immense service to suitors in the Federal court—a constantly increasing class—I accept the inevitable. The bill that you propose is certainly needed, though it goes no further. Indeed, I am pleased to see that the commissioners are given latitude to make the existing statutes correspond with the decisions of the Supreme Court.

[From Hon. Charles F. Amidon, United States district judge, Fargo, N. Dak.]

\* \* \* This is needed legislation \* \* \*. I am thoroughly in sympathy with the general purpose of the bill.

[From Hon. Walter Evans, United States district judge, Louisville, Ky.]

\* \* \* The subject to which H. R. 13304 relates is one which all Federal judges will no doubt regard as very important, and it seems to me to be well worthy of the prompt attention of the legislative department.

[From Hon. Arthur L. Sanborn, United States district judge, Madison, Wis.]

\* \* \* I take great interest in the plan for revising the Federal General Statutes.

[From Hon. John Rellstab, United States district judge, Trenton, N. J.]

\* \* \* The Federal judges of this district recognize the need of a new revision of the general and permanent statutes of the United States. The plan of the revision embodied in H. R. 13304 has my approval \* \* \*.

[From Hon. Rhydon M. Call, United States district judge, Jacksonville, Fla.]

\* \* \* I have taken the matter up with the president of the bar association with the view of enlisting the aid of the members of the bar of this State in writing members of the Senate and House.

[From Hon. Howard C. Hollister, United States district judge, Cincinnati, Ohio.]

\* \* \* I beg to say that the purpose of the bill seems to me excellent, and that I shall further its passage in any way in which I properly can.

[From Hon. James M. Morton, jr., United States district judge, Boston, Mass.]

\* \* \* There is no doubt that an official revision of the statutes is needed \* \* \*.

[From Hon. John C. Rose, United States district judge, Baltimore, Md.]

\* \* \* A new edition of the Revised Statutes brought down to date is greatly needed. So far as I can see, the provisions of the bill proposed are sensible.

[From Hon. Frank S. Dietrich, United States district judge, Boise, Idaho.]

\* \* \* Generally speaking, the terms of the proposed measure seem to be fair. \* \* \* I think it would be better to endeavor to incorporate therein all penal provisions. Such a course is not unattended with difficulties, I appreciate, but I think they are surmountable.

[From Hon. Harland B. Howe, United States district judge, Burlington, Vt.]

I am very much in hopes that H. R. 13304, a bill to revise and annotate the general and permanent laws of the United States, may be passed. It has been so long since we have had a revision of the United States Statutes that it requires great patience and much effort to look up our statute law. \* \* \* The United States Statutes have not been revised since 1878. During all these years there have been so many amendments and new laws passed that I believe every member of the bar will agree that a revision should be made as soon as possible.

[From Hon. Page Morris, United States district judge, Duluth, Minn.]

\* \* \* I fully appreciate the urgent necessity of having the general and permanent laws of the United States brought up to date in a new edition of the Revised Statutes, and will be glad to cooperate in any way that I can in securing the appointment of a commission for that purpose.

[From Hon. Charles E. Wolverton, United States district judge, Portland, Oreg.]

\* \* \* Permit me to say that I think the bill is one of great merit. It has been so long since there has been a complete revision that the laws have gotten into considerable confusion, and a revision would be of immense assistance to the bench and bar.

[From Hon. George W. Ring, United States district judge, Norwich, N. Y.]

\* \* \* Such a work is much needed and I think your bill is a good one.

[From Hon. J. Wm. Thurmond, United States district attorney, Greenville, S. C.]

\* \* \* Your plan for a new edition of the Revised Statutes of the United States meets with my hearty approval.

[From Hon. S. Burkhart, United States district attorney, Albuquerque, N. Mex.]

\* \* \* This revision is an absolute necessity.

[From Hon. Melvin A. Hildreth, United States district attorney, Fargo, N. Dak.]

\* \* \* I will be glad indeed to make suggestions and assist in what I consider a very important effort to consolidate and revise the statutes of the United States.

[From Hon. Thomas A. Flynn, United States district attorney, Phoenix, Ariz.]

\* \* \* I have had the substance of the bill published in the leading newspapers of the State, and I am sure this method has brought it to the attention of every lawyer of note within the State. I will take pleasure in writing to our Senators and Congressman urging their support of your very meritorious measure.

[From Hon. W. T. Kennerly, United States district attorney, Knoxville, Tenn.]

\* \* \* I approve your bill for a revision of the statutes of the United States and think the matter is imperatively necessary at this time.

[From Hon. Jos. H. Chitwood, United States district attorney, Roanoke, Va.]

I shall be glad to support the bill.

[From Hon. Hooper Alexander, United States attorney, Atlanta, Ga.]

\* \* \* I think it is much needed. \* \* \*

[From Hon. Hugh R. Robertson, United States attorney, San Antonio, Tex.]

\* \* \* I do not know of anything that is more urgently needed than an authoritative compilation and revision of the acts of Congress.

[From Hon. Thomas A. Scott, assistant United States attorney, Spokane, Wash.]

\* \* \* It is badly needed \* \* \*. My only wish is that such a revision as you propose be consummated as early as possible consistent with thorough and high-class production.

[From Hon. Julius W. Warring, assistant United States attorney, Charleston, S. C.]

\* \* \* I am thoroughly in sympathy with a movement of this kind, and think it is a great necessity, since in the present condition of the Revised Statutes it is extremely difficult to find what laws are in effect. I believe that the system suggested, namely, the appointment of a revision commission, is the proper one.

[From Hon. P. H. Johnson, assistant United States attorney, Sacramento, Cal.]

\* \* \* I heartily concur with you in regard to this matter as the present statutes are certainly in a bad shape. It is almost an impossibility to find the laws as they are now jumbled in the books that are in print. I have been directly connected with the Federal laws in the United States attorney's office in San Francisco for the last two years, and therefore can testify to the grief I have had in all such matters.

[From Hon. L. M. Erwin, clerk United States District Court, Macon, Ga.]

\* \* \* I appreciate the importance and necessity of this legislation, and will take great pleasure in aiding you.

[From George Brodbeck, clerk United States District Court, Philadelphia, Pa.]

\* \* \* I thoroughly agree with the need for a revision of the Federal Statutes and the compilation thereof in a new set of the Revised Statutes, and think the bill introduced should be supported by every lawyer in the country.

In conclusion your committee desires to call to the attention of Congress the fact that communications urging a general codification and revision of the Federal laws are received daily, both prior to the introduction of H. R. 13304 and subsequent thereto. Your committee is earnest in its recommendation that this bill become a law at the earliest possible date so that real results may be accomplished, thereby saving an enormous expenditure of the Government's funds at a later date.