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## Report of State Committee for Recompilation of the Code

Arthur S. Beardsley  
*University of Washington School of Law*

Alfred J. Schweppe  
*University of Washington School of Law*

Mark H. Wight

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# REPORT OF STATE COMMITTEE FOR RECOMPILATION OF THE CODE

The code committee authorized by express legislative action in the sessions of 1941 and 1943 to prepare a new code for the state of Washington appreciates your request to once more advise you on the status of that project in which we all have a deep personal interest.

## I

As an introduction to the report, and for your information, it will perhaps be well to speak briefly of the organization of the code committee. After the granting of the budget by the last legislative session, the code committee was at once faced by two serious problems—quarters and staff. After a survey had been made of available capitol grounds space, the committee came to the conclusion that the work of recompilation and revision could best be performed if quarters could be procured in the Temple of Justice, which it was felt was the appropriate place to undertake this important work. Here was the excellent law library which is so essential to the committee's work, and here also the committee was convenient to the counsel and advice of the committee chairman.

With the cooperation of Chief Justice George Simpson, and the cooperation of the Honorable David Lockwood, of the Department of Finance, Budget and Business, two spacious rooms were prepared in the basement of this building—one to be used by the legal staff and the other by the clerical staff.

The next problem—and it was not an easy one to solve—was to find a qualified and agreeable staff. After much search the committee employed the following members: Messrs. Peter Balkema, as the reviser for the county code, L. A. Dwinell, a former member of the legislature, Edwin Ewing, for many years in the employ of the King County prosecuting attorney, and the speaker, as the staff supervisor. At the same time the committee employed Mary Lou Kojancik, a lawyer from North Dakota, who had had personal experience with the recompilation of the North Dakota statutes. While she is no longer in the state's employ, it is nevertheless appropriate to remark that her assistance proved to be very profitable to the Code Committee in connection with the task of initiating the methods of recompilation and revision.

One of the final tasks which faced the committee was to compile a reviser's manual setting forth the rules and methods of procedure and the style of the work to be accomplished. This was a big job; but an excellent manual has been prepared. Next in importance was the preparation of master charts showing when every Remington section—and Pierce sections if not in the Remington code—were being placed in the classification of the statutes then in the process of preparation. This involved a reading of all the sections of the Remington code, and was a task of no small magnitude. Such tasks as these were long and tedious ones, all of which had to be done before any effort could be expended in the work of recompilation and revision of the law.

## II

The committee has been earnestly engaged in the recompilation and revision of the statutes, and is making definite progress. The new code will be a state code; the compilation and revision of which has

been authorized and directed, as well as paid for by the state. All work is being done by the committee under the authority of law. Thus the new code will be an official, and not a private code. It will be uniform in statutory arrangement and content, whether privately or publically published. It is important to point out specially that the numbering of the code sections will be done by the committee. This numbering will be permanent and uniform in nature, and will be the same in all state codes published for this state, whether there be one, two or many. All code publishers must use this section numbering. From now on there should be no further confusion in the printed expression of the law as it exists, even though there be separate editions by different publishers with their separate annotations. All code publishers must accept the codified expression of the law as it is made by the code committee.

### III

The 1941 statute on recompilation provided only that the committee should recompile and renumber the statutes. No appropriation was made for the work and the committee was required to complete its task in six months. The conditions thus imposed made it completely impossible to do any constructive service. The committee, after giving careful consideration to the matter concluded that recompilation without revision would be a mistake, and revision would cost money. The committee therefore asked the 1943 legislature for an appropriation, and with the cooperation and support of the state bar association, a budget of \$40,000 was made with which to undertake the work. This \$40,000 has been spent; and the committee will be in a position to present to the 1945 legislature, at its coming session, a completed compilation of the laws of the state with brief and conservative correction and revision of them, if it appears desirable to do so. The work accomplished is all that has been possible to do with the funds granted. That it is far from a complete and thorough job of revision is of course certain. If it is your desire that this work go forward and that a more comprehensive plan of revision be followed, the committee asks that you support the budget which the committee has submitted to the legislature and urge its passage and approval. The committee feels that it could profitably spend another two years in this work.

### IV

Some idea of what has been done in the line of revision might be of interest to you. The word "revision" may mean a brief and limited change, or it might include an extensive and thorough overhauling—even to a complete rewriting of the statutes. The committee has felt from the beginning that it was not its duty to rewrite the laws, but that its duty was restricted, by popular opinion at least, to a regrouping and rearrangement and renumbering of them according to the plan approved by it, together with some simplification and modernization of their language.

In effecting this simplification and modernization of the language of the statutes the committee has undertaken the deletion of unnecessary words and phrases, the clarification of ambiguous expressions, and an improvement of the language and punctuation. In doing this, much unconstitutional, obsolete, and superseded material has been deleted in an effort to remove from the statutes vagueness and doubt. It has been

the constant aim of the committee to make this recompilation and revision without any changing of the actual meaning of the laws.

All in all, the program above described has included five separate and distinct functions, each of which is essentially vital to the success of the task. These functions include:

1. Reading all of the statutes, and therefrom collecting and separating all live law;
2. Adopting a plan for classifying the statutes;
3. Clarifying and revising this mass of statute law without changing the meaning of it;
4. Recompiling the statutes, and
5. Renumbering of the sections of the new code in a permanent form.

## V

The present plan of recompilation and revision calls for the division of the statutes into eighty-three separate titles. The appropriate chapters have been assigned to these many titles, and the sixteen thousand sections classified and arranged thereunder. Many sections have been dropped in whole or in part as being inconsistent, obsolete, unconstitutional, or redundant. This has worked out, as it was expected that it would, and justifies the efforts of those who for a long time have sought improvement of the statutes by recompilation and revision.

The plan of numeration which has been adopted by the committee calls for giving to each section of the new code a section number comprising three segments, namely: the title, the chapter, and the section, as, for example, the following section from the title of *DIKING AND DRAINAGE*, 23:14:16, in which the 23 is the number of the title, 14 is the number of the chapter, and 16 the section in that chapter. The bar will find that this combination of numbers with the use of the "colon" will simplify the method of citation of section numbers. Lawyers will within a very short time become familiar with the use of this type of citation, and will find it practical and easily usable. It is hoped that they will come to like it.

This system of numeration is the same as is now used in Oklahoma, and, while it is not patterned on the so-called Yetter system, closely resembles it. Systems of statute numeration similarly patterned and used with satisfaction have been adopted in the states of Kansas, Oregon, Idaho, Arizona, and New Mexico. The plan is capable of almost indefinite expansion and as against our earlier code history with its frequent changes in numbering, should last indefinitely.

Under this system, any number of new sections may be added at the end of the chapter without resorting to the use of letters of the alphabet, or to use of other methods of supplementation.

New chapters may be inserted between any two existing chapters in any title by the addition to the given chapter number of a small alphabetic letter, as, for example, after chapter 14 in title 22, there would follow, if added chapters have been inserted, title 22, chapter 14d, 14e, etc. To these added chapters the same rules of subdivision apply so that a title, chapter and section relationship for an added chapter might be something as follows: 22:14d:21, or 22:14e:01.

The same principle is also to be found in the addition of new titles. Such new titles could be indicated by use of an upper or lower case letter following the title number, as, for example, 27c:13:06.

In case it becomes necessary to add new sections to the inside of a title in order to take care of new legislation, rather than at the end thereof, the use of the hyphen becomes helpful. So if a new section is added to follow after title 4, chapter 3, section 6, and before section 7, the added reference might then read, 4:05:06-4.

Granting that no perfect numbering system has yet been devised, and that no code will endure for all time, it would appear that this planned system of numeration outlined herein will prove more satisfactory and will endure longer than any other system. It is far more elastic in its makeup, and avoids those elements of rigidity which proved so fateful to the many federal and state codes of the recent past.

## VI

Realizing that much work will have to be done in code revision after the present biennium is over, and having in mind the future changes by amendment, and the insertion into the code of the legislation of the future, the legislature in 1943 provided that the code committee shall be a "*continuing committee*," and shall have the responsibility for making the changes in the new code necessitated by current legislation and revision.

In view of this nature of the code committee, it becomes essentially important that the legislature now make preparation for a permanent bill-drafting program. In the past, the bills have been drafted by numerous individuals and agencies and in non-uniform, irregular, and conflicting language. Often times little thought has been given to what might have been previously enacted by the legislature upon a given title; slight attention has been given to the form of the bills; careless language has been used in setting them up for passage; the same section has even been enacted twice in the same bill; laws have been repealed and several years later amended, and, in general in numerous instances an inconsistent and confusing plan for legislation has been and still is being employed. Consider for a moment the language and form of REM REV. STAT. §§ 5559, 5560, 5561, and dealing with the Game Code . . .

§ 5559. *Terms—Hunting and trapping.* The words "to hunt" and their derivatives, "hunting" and "hunted," etc., wherever used in this act, shall be held to mean and include shooting, killing, catching, capturing, trapping, injuring and crippling wild animals, fowl or birds, and the pursuing, tracking, calling, baiting and decoying of wild animals, fowl or birds with the intent to shoot, kill, catch, capture, trap, injure or cripple the same, and the disturbing or worrying of wild animals, fowl or birds, whether the same result in the shooting, killing, catching, capturing, trapping, injuring or crippling or not, and every attempt to shoot, kill, catch, capture, trap, injure, cripple, pursue, track, call or decoy wild animals, fowl or birds, and every act of assistance to any other person in shooting, killing, catching, capturing, trapping, injuring, crippling, pursuing, tracking, calling or decoying wild animals, fowl or birds.

(L. '25, Ex. Sess., p. 49, §5; 1927 Sup. §5931-5.)

The two other sections employ language equally as bad and as useless. These are extreme examples of poor draftsmanship which should

never have been enacted in that form. A bill-drafting committee would have caught them and might have changed their form to something as follows:

"Hunting means any effort made to catch or kill an animal or a bird." or

"Fishing means any effort made to catch or kill a fish."

As surely as a long list of types or classes are enumerated in a statute, some additional new types or classes will be discovered later, the use of which will defeat the operation of the statute previously enacted.

## VII

The work of the code committee, you will recall, has been complicated by the addition thereto of a statutory requirement to compile a county code for the use of the county officials. This law was in the nature of a last minute legislative enactment, and was, as we are advised, merged with the bar association's program during the closing hours of the legislative session. The statute has been implicitly followed, and the county code will be well on its way toward completion when the legislative session convenes. It has been worked out in cooperation with the county code advisory committee appointed pursuant to the provisions of the 1943 legislative act. The county code will, of course, be built up from work done on the recompilation and revision of the state statutes. The report of this special committee will also include many references for legislative reform and correction, which, if made, will be duly incorporated into the county code.

## VIII

A new, carefully prepared code cannot continue on a satisfactory plane unless proper future bill-drafting has been carried out. For many years numerous plans have been proposed for legislative and bill-drafting committees. Many bills have been introduced into the legislature in an effort to create an agency of government invested with these duties. Thus far all such attempts have failed. One thing is certain in this connection, that if we do not have a bill drafting agency, the proposed legislation of the future will in all probability be not prepared so as to fit into the code. To keep the code useful and flexible, legislation should be prepared in a manner which will permit its incorporation into the code without a lot of change in form and language.

The chairman of the code committee in the committee's last year's report emphasized the significance of this proposal in his well formulated address. His remarks of the plan are worthy of repetition.

"Supervision over the form and contents of legislative bills should be placed in a non-partisan agency consisting of at least one attorney who is well grounded in the art and science of bill-drafting. Heretofore, no particular importance has been given in this state to the qualifications for bill-drafting, and yet it is a very specialized work and involves many phases. A bill-drafter must decide many questions of constitutionality, many phases of statutory construction, whether an idea should be expressed in negative or affirmative language, in mandatory or directory phrases, in general or particular terms. He should know grammatical construction. He should know all phases of this subject so he could prepare

and carry out instructions and suggestions dealing with the style, arrangement and sectioning of bills. He should know when to amend and when to repeal. He should know when and how to abbreviate and when and what to capitalize; how to accomplish proper legislative action by bill, resolution or memorial. He should know when to paragraph, make subsections, and how and when to use a proviso. He should develop definite rules from that knowledge for the guidance of others to insure accuracy and uniformity. Brevity, with care in the use of plain and definite language with appropriate words, makes for clarity and stronger law. The use of ineffectual or redundant words and phrases weakens a law. In later years the subject matter of our laws has become more complex and hence unnecessary words should be omitted. . . ."

From the above mention of the qualifications helpful to a good bill-drafter, you can readily see, and, we hope, agree that these characteristics are not possessed by all who may be members of the legislature. Neither do all lawyers possess this ability. In fact, good bill-drafters are but infrequently found. You may be a good lawyer, but it does not follow that you are a good bill-drafter. The great faults of verbosity and repetition are doubtless the work of the lawyer. This conclusion is borne out by the fact that most bills have been drawn by lawyers, who have not exercised this function well.

It is appropriate to point out that many states now have a legislative reference and bill-drafting department in their state government. Washington, with many more legislative bills introduced in session after session, than are introduced in some of these states, still lacks the benefit of this service.

Following the rendition of the above mentioned report, a portion of which has just been quoted, the bar association adopted appropriate resolutions favoring the creation of a legislative reference and bill-drafting committee. A bill to carry out this plan has been drafted for submission to the next session of the legislature. The responsibility for success in its passage must of necessity fall upon the bar association. It is greatly to your interest that this bill be enacted into law; and it is to be hoped that you will press the matter before the legislature with vigor and strength.

If such an agency be not established, the work of recompilation and revision which thus far has been accomplished, will suffer damage, because the efforts exerted by the code committee for simplicity, regularity, and consistency in the statutes will have been substantially ignored. This is not a pleasant thought to leave with you, but it is a definite possibility.

It may be expecting too much to ask the legislature to require that all bills be drafted by a legislative reference or bill-drafting committee. The legislature may not wish to require that this committee be the sole agency to be employed for this purpose. It could, however, require that all bills pass the committee for style. However, if the legislative and bill-drafting committee be initiated, such committee could, without doubt, very quickly obtain the confidence of the legislature, and before long be able to do all that it could have done, even if it had been constituted the sole agency to be thus employed. This

is the exact experience that had been employed in the state of Wisconsin where bill-drafting by experts has reached the desired status.

### IX

The plan proposed to be followed in the adoption of the code by the legislature is an important one. The probable method to be employed calls for the introduction in the legislature of a bill to adopt the code submitted by the code committee, and to file the code with the legislature without requiring that it be engrossed or enrolled. The original bill would be enrolled, but the code would not. This provision is within the legislative powers, as it can determine whether or not any bill need be enrolled. There is no constitutional requirement that it be so enrolled. The original compilation of the code will be filed with the secretary of state, and copies used in the legislative procedure.

It will be obvious to you in this procedure, or in any alternative method that might be substituted therefor, that the proposed code must be adopted as law in total without change or amendment. If this is not done, the entire plan and procedure will be wrecked. After it has been adopted, the code can then be amended in any manner so desired and by direct citation to the sections of the code. To amend it substantially while in the legislature will defeat the entire plan, and will destroy the work that the code committee has been striving to accomplish. Such a procedure does not deny nor prevent amendment, if such be the legislative will, but it does require that such changes be made after the code has been adopted, and only by reference to the section of the code itself. You should be familiar with the future practice and policy of amendment, once the code has been adopted. All changes in the language of the code in the future will be by reference to the sections of the code which the legislator proposes to amend, as, for example, "An act relating to the duties of osteopaths, and amending Washington Code, Section 42:08:17 thereof."

In conclusion, may we repeat our belief that this association ought to do two things of essential interest to the success of this code recompilation and revision progress. They have been discussed herein, but in summation they are:

1. To decide whether you will advocate and support the program for further and intensive revision of the titles of the code of the state and, if so, to unite behind and to support the budget, which will be submitted to the legislature for the continuation of the work of the code committee; and
2. To support the proposed legislation, authorized by you at your last session, for the creation of an agency empowered to serve as a legislative and bill-drafting body to preserve the work which is now being done in code revision—keeping in mind that Washington is one of the few states which does not now have a comparable agency empowered to render such service.

\*ARTHUR S. BEARDSLEY,  
ALFRED J. SCHWEPPE,  
MARK H. WIGHT, *Chairman.*

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\*Dr. Beardsley as of June 1, 1944 resigned as member of the committee, and is now full-time supervisor of the recompilation and revision staff.

The association passed the following resolution relative to the work of the recompilation committee:

BE IT HEREBY RESOLVED, that the Washington State Bar Association recommends to the Governor and the legislature that a suitable appropriation be made by the 1945 legislature for the purpose of continuing the work of the Statutory Code Recompilation Committee, and that the committee report its recommendations to the 1947 legislature.

## Committees of The Washington State Bar Association for 1944-45

### Committee on Administrative Law

H. B. Jones, 610 Colman Bldg., Seattle, Chairman

Patrick A. Geraghty, Seattle,  
820 White Building

Drayton F. Howe, Seattle  
977 Dexter Horton Building

Cyrus Happy, Tacoma  
1118 Rust Building

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711 Old National Bank Building

B. E. Lutterman, Seattle  
609 White Building

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1710 Hoge Building

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