Legislative Drafting Step-by-Step. By Arthur J. Rynearson. Washington, D.C.: International Law Institute, and Durham, N.C.: Carolina Academic Press, 2013. Pp. xxi, 235. ISBN 978-1-61163-380-1. US \$45.00.

The reader of a statute readily stumbles across language like “notwithstanding subsection (b), a registered agent must file the report mandated under chapter 3 of title 25 not later than 30 days after making an application.” You may justifiably wonder why anyone would choose to write such verbiage. In *Legislative Drafting Step-by-Step*, Arthur J. Rynearson explains why proposed legislation and enacted statutes are written the way they are. Rynearson is a former deputy legislative counsel of the U.S. Senate and spent much of his career immersed in legislative drafting. While the book is designed as a handbook and training manual for legislative drafters, it is also a valuable resource for better understanding statutory construction and the U.S. federal legislative process.

True to the book’s title, Rynearson breaks the process of drafting legislation into five steps. The first step is to “legalize”—determining the precise, desired legal effect of the legislation. This chapter shows that when the words one selects have binding legal effect, one has to be very careful. For instance, when prescribing a duty for an executive branch official, Rynearson recommends naming the head of an agency. Such a position is unlikely to be abolished (thus eliminating the official who has the duty) and the agency head can always delegate the duty to subordinates. Rynearson explains in sparse, clear prose how to write binding language (use “shall” instead of “must” or “will”) and hortatory language. The abundance of examples will help novice drafters select the appropriate words and assemble them for the desired legal effect while avoiding exceeding the limits placed by federalism and the separation of powers.

Once the desired legal effect has been reduced to words, you should “formalize” it—select the appropriate legislative vehicle. Here Rynearson discusses the various types of legislation—bills, resolutions (joint, concurrent, and simple), and amendments. Each of these vehicles has specific functions and forms that should be followed. Rynearson also describes budget scoring, the legislative veto and how to avoid that constitutional stumbling block, and expedited procedures (“fast track”) to speed congressional deliberations.

The next step is to “integrate” the legislation—determine how the legislation will fit into the codified statutes if it is enacted. Given the complexity of many statutory codes and other laws that are enacted but not codified (like appropriations acts), this can be a challenge. Just as it is important to carefully select the words that best capture the legal effect, it is crucial to specify exactly what provisions are to be changed. At this point, you must understand the difference between titles in the U.S. Code that are

positive law (the actual law) and titles that are *prima facie* evidence of the law. You can directly amend the positive law titles, but to amend the law in a *prima facie* title, one must find original enacted law and all later amendments to determine the text to amend. For example, you cannot amend 29 U.S.C. § 206(d) (1) because Title 29 is not positive law. Instead, one must draft a bill to amend Section 6(d) (1) of the Fair Labor Standards Act of 1938. Rynearson also discusses how to write clean-up amendments, effective dates, transition provisions, and proper cross-references.

Next one should “organize” the legislation. Rynearson lays out the standard forms for bills and resolutions. This chapter covers how drafters handle the colossal tasks of compiling massive omnibus legislation—it is helpful to think of each division or title as a separate, simpler bill. Along with explaining legislative organization on the macro level, Rynearson also covers the micro-level task of splitting a legislative section into subsections, paragraphs, subparagraphs, clauses, and subclauses. This chapter helps any reader of statutes use the organizational scheme to better understand what the statute means.

Finally, one should “clarify” the legislation and eradicate ambiguity, imprecision, and vagueness. Such statutory ills may not only prevent effective implementation of a law’s legal effect, some statutes may be found void for vagueness and thus invalid under the Due Process Clause of the U.S. Constitution. Rynearson applies well-known rules of good writing but with tweaks for the special task of drafting. For instance, you should write in the active voice, avoid overly long sentences, use words consistently, and use gender-neutral expressions. Legislative language is often dull because the same words are used repeatedly. While varying sentence structure and using synonyms make for more enjoyable reading, they also introduce ambiguity and imprecision that can later hamper consistent and fair interpretation.

An appendix describing the U.S. federal legislative process from the drafter’s perspective is one of the most complete and clear explanations I have read. Rynearson notes when new drafts of bills are printed and what other documents are generated as a bill progresses toward enactment. The next time I compile a legislative history, I will turn to this appendix as a checklist to ensure I do not miss a step in the process.

In addition to the examples throughout the text, each chapter has drafting exercises (with answers at the end of the book). Rynearson’s concise writing and logical organization reflect his prescriptions for good drafting. Rynearson focuses almost exclusively on U.S. federal law, but much of his advice is applicable to legislation in the states, as well as other nations. This book is a worthwhile purchase for academic, government, and private law

libraries, and valuable reading for researchers studying legislative drafting, statutory construction, and the legislative process.

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