

Legislative and Campaign Law Section
State Bar of Texas

Legislative Drafting and Procedure Course

Best Practices in Legislative Drafting

Texas Legislative Council Panel:

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Texas Legislative Council

Anne Peters is a Senior Counsel with the Texas Legislative Council, where she has worked since 2000. Her primary duties include working on legislation and providing legal advice to legislators and staff in the areas of finance, elections, and ethics. She headed a project for the no substantive revision of the guardianship-related provisions Texas Probate Code. Ms. Peters has spoken at the National Conference of State Legislatures on the subjects of drafting legislation and using plain language in drafting voter propositions. Ms. Peters graduated from the University of Texas School Of Law with honors, and was an associate editor of the Texas Law Review. She has a Bachelor of Arts in Political Science from Texas A&M University.

Stacy Bergendahl is legislative counsel with ten years of experience with the Texas Legislative Council. Ms. Bergendahl specializes in legislation concerning environmental and water issues. Ms. Bergendahl has participated in presentations to legislative staff about the legislative drafting process. Ms. Bergendahl has J.D. from the University of North Carolina at Chapel Hill School of Law, and a B.A. in Classical Studies from Georgetown University.

Taheera Randolph is an attorney in the legal division of the Texas Legislative Council in Austin, Texas. Her practice focuses on the development, drafting, and analysis of legislation relating to business law, state agency regulation and purchasing, occupational regulation, agriculture, retirement, and water districts. She also drafts and reviews procurement contracts for the Council's administrative division.

Taheera has given various presentations at conferences and meetings of professional associations on the impact of recently passed legislation and the role of the legislative counsel in the legislative process. Taheera is a member of the Austin Young Lawyers Association, Austin Black Lawyers Association, and Alpha Kappa Alpha Sorority, Incorporated. She has served as a member in the Lloyd Lochridge American Inn of Court and is a graduate of the Leadership Austin Emerge Program class of 2016.

Taheera earned her J.D. and D.C.L. in 2014 from Louisiana State University and graduated with honors from Southern Illinois University Carbondale with a B.S. in Journalism in 2008.

What the H*%# Does That Mean?

Which of the following sentences is easier to understand?

1. "If the location of the land is in a state other than the state in which the agency's jurisdiction is located, the agency's justification of anticipated benefits from the acquisition will be subject to greater scrutiny."
2. "When an agency wants to buy land in a different state, its reasons for the purchase will be studied very thoroughly."

Most people prefer the second one because it's clearer, more concise, and written in plain language, which the Plain Language Action and Information Network defines as any communication that can be understood the first time it is read or heard.

Some think legal and legislative writing has veered too far from plain language. A recent study, "Ballot Readability and Roll-Off," looked at 1,112 ballot measures from states between 1997 and 2007 to see whether their readability affected voters' behavior. Researchers scored each one using the Flesch-Kincaid scale, which assigns the grade level required to understand it. (For example, the first sentence above scores at 19.7 grade level; the rewrite is at 9.4.)

The authors found that, regardless of the topic, the more difficult a measure was to understand, the less likely citizens were to vote on it.

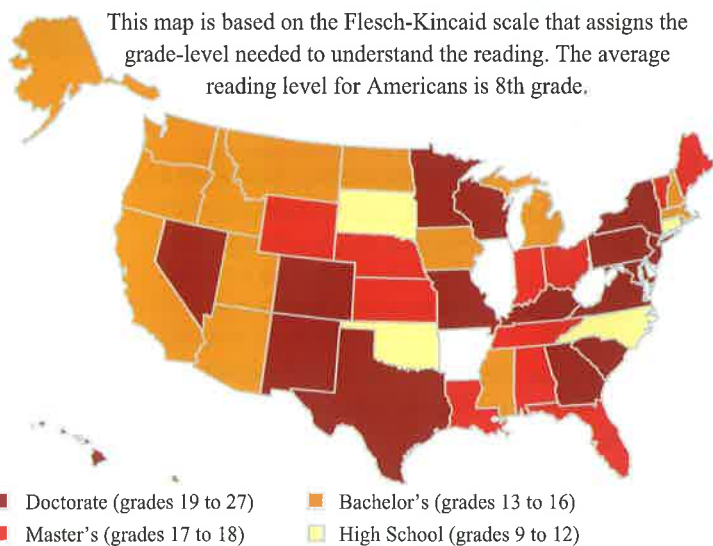
Most popular reading is written at the eighth to 10th grade level, which studies have shown is best for the average American. The authors found, however, that all ballot questions included in their survey contained language that exceeded that level of reading proficiency, and well over half fell into the graduate-school level or higher on the Flesch-Kincaid scale.

Ballot measures, especially, require voters to tackle complex, nuanced issues, yet "complex ballot language can confuse voters," says Shauna Reilly, one of the authors. And confused voters may end up casting a vote for the policy they don't want—or opting not to vote at all—she warns.

Lawmakers in Colorado, Indiana, Missouri, New York and Pennsylvania are considering various requirements for plain language on ballots.

"We want the average voter to be able to plainly understand the issues on the ballot," says House Speaker Pro Tem Shane Schoeller (R), who recently introduced the Missouri Fair Elections Act. The Colorado legislation would require titles of statewide ballot measures to be written in "plain, nontechnical language and in a clear and coherent manner using words with common and everyday meaning that are understandable to the average reader."

Average Reading Level of Ballot Measures, 1997 - 2007



Note: Arkansas, Delaware, Illinois and West Virginia either did not have statewide ballot initiatives in the last decade or not enough information is known.

Source: Pew Center on the States, 2011.

Check Your Own Writing

Microsoft Word users can apply the Flesch-Kincaid scale to their own documents.

1. Click the Microsoft Office button, and then click "word options" at the bottom right.
2. Click "proofing."
3. Check "check grammar with spelling."
4. Check "show readability statistics" Then click "OK."
5. To check a document, click on the "review" tab, then "spelling & grammar" check the spelling. When done, it displays the reading level of the document.

The Voting and Usability Project offers guidance on plain language for all elections-related materials, and the U.S. Election Assistance Commission provides polling place and ballot design guidelines and templates for use at the state and local levels.

The plain language movement is wider than the ballot box, of course. According to the Center for Plain Language, 32 states have a plain language program in at least one governmental agency. Texas, for example, has a plain language project for contracts, Oregon has a plain language standard under the Department of Administrative Services, and Washington's plain talk initiative is run from the governor's office.

The Plain Writing Act of 2010 requires the federal government to write all new publications, forms and publicly distributed documents in a "clear, concise, well-organized" manner. Iowa Congressman Bruce Braley (D) sponsored the legislation and now wants to apply the rules to federal regulations.

"Whether you like or loathe government regulations, I think everyone can agree that when one exists, it should be written as clearly as possible," Braley said in a press release. "Sadly, gobbledegook dominates the regulations issued by government agencies."

—Shannon McNamara

Editor's Note: This article is written at a 13.4 grade level on the Flesch-Kincaid scale.

Best Practices in Legislative Drafting

Examples of Transitions

Excerpted from bills filed during the 82nd and 83rd Legislative Sessions

December 19, 2014

<p>A simple transition directing an agency to make rules by a certain date</p> <p>H.B. 1615, 83R</p>	<p>SECTION 2. The Parks and Wildlife Commission shall adopt rules not later than September 1, 2014, to implement Section 43.352, Parks and Wildlife Code, as amended by this Act.</p>
<p>A savings transition addressing a change in law applicable to the collection of taxes</p> <p>H.B. 3, 83S3</p>	<p>SECTION 4. The changes in law made by this Act do not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection and allocation of the revenue from those taxes.</p>
<p>Subsection (b) is very common transition language used for criminal offenses.</p> <p>H.B. 8, 83R</p>	<p>SECTION 22. (a) The changes in law made by this Act in amending Chapter 7A, Code of Criminal Procedure, and repealing Chapter 7B, Code of Criminal Procedure, apply only to a protective order issued on or after the effective date of this Act. A protective order issued before the effective date of this Act is governed by the law in effect on the date the order is issued, and the former law is continued in effect for that purpose.</p> <p>(b) The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.</p>
<p>This is a complicated transition governing the expiration of the terms of a board, the selection of new board members, and the establishment of staggered terms by drawing lots.</p> <p>H.B. 1, 82S1</p>	<p>SECTION 56.17. (a) The terms of the members of the Texas Emerging Technology Advisory Committee serving immediately before the effective date of this article expire on the 91st day after the last day of the legislative session.</p> <p>(b) As soon as practicable after this article takes effect, the governor, lieutenant governor, and speaker of the house of representatives shall appoint members to the Texas Emerging Technology Advisory Committee established under Subchapter B, Chapter 490, Government Code, in a manner that complies with that subchapter, as amended by this article.</p> <p>(c) At the first meeting of members of the Texas Emerging Technology Advisory Committee established under Subchapter B, Chapter 490, Government Code, as amended by this article, occurring on or after the 91st day after the last day of the legislative session, the members appointed by the governor shall draw lots to determine which six members will serve a term expiring September 1, 2012, and which seven members will serve a term expiring September 1, 2013.</p>
<p>Directing agencies to work it out amongst themselves</p> <p>H.B. 1, 82S1</p>	<p>SECTION 28.03. The comptroller of public accounts and the Texas Historical Commission shall enter into a memorandum of understanding to facilitate the conversion of assets of the Texas preservation trust fund account into cash for deposit into the state treasury using a method that provides for the lowest amount of revenue loss to the state.</p>
<p>Transferring functions from one agency to another</p> <p>H.B. 71, 82S1</p>	<p>SECTION 2.78. (a) On June 1, 2012, the following are transferred from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas:</p> <p>(1) the powers, duties, functions, programs, and activities of the Texas Commission on Environmental Quality relating to the</p>

economic regulation of water and sewer utilities, including the issuance and transfer of certificates of convenience and necessity, the determination of rates, and the administration of hearings and proceedings involving those matters, under Chapter 13, Water Code, as provided by this article;

(2) any obligations and contracts of the Texas Commission on Environmental Quality that are directly related to implementing a power, duty, function, program, or activity transferred under this article; and

(3) all property and records in the custody of the Texas Commission on Environmental Quality that are related to a power, duty, function, program, or activity transferred under this article and all funds appropriated by the legislature for that power, duty, function, program, or activity.

(b) The Texas Commission on Environmental Quality and the Public Utility Commission of Texas shall enter into a memorandum of understanding that:

(1) identifies in detail the applicable powers and duties that are transferred by this article;

(2) establishes a plan for the identification and transfer of the records, personnel, property, and unspent appropriations of the Texas Commission on Environmental Quality that are used for purposes of the commission's powers and duties directly related to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article; and

(3) establishes a plan for the transfer of all pending applications, hearings, rulemaking proceedings, and orders relating to the economic regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article, from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas.

(c) The memorandum of understanding described by this section is not required to be adopted by rule under Section 5.104, Water Code.

(d) The executive directors of the Texas Commission on Environmental Quality and the Public Utility Commission of Texas may agree in the memorandum of understanding under this section to transfer to the Public Utility Commission of Texas any personnel of the Texas Commission on Environmental Quality whose functions predominantly involve powers, duties, obligations, functions, and activities related to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article.

(e) The Texas Commission on Environmental Quality and the Public Utility Commission of Texas shall appoint a transition team to accomplish the purposes of this section. The transition team shall establish guidelines on how the two agencies will cooperate regarding:

(1) meeting federal drinking water standards;

(2) maintaining adequate supplies of water;

(3) meeting established design criteria for wastewater treatment plants;

(4) demonstrating the economic feasibility of regionalization; and

(5) serving the needs of economically distressed areas.

(f) A rule, form, policy, procedure, or decision of the Texas Commission on Environmental Quality related to a power, duty, function, program, or activity transferred under this article continues

	<p>in effect as a rule, form, policy, procedure, or decision of the Public Utility Commission of Texas and remains in effect until amended or replaced by that agency.</p> <p>(g) The memorandum required by this section must be completed by April 1, 2012.</p> <p>(h) The Public Utility Commission of Texas and the Texas Commission on Environmental Quality shall adopt rules to implement the changes in law made by this article to Chapter 13, Water Code, not later than November 1, 2012.</p>
<p>A new regulatory scheme for an occupation requires a detailed transition, particularly if it creates a board that requires a member to have a license that is being created in the same bill.</p> <p style="text-align: right;">H.B. 414, 82R</p>	<p>SECTION 29. (a) Not later than October 1, 2011, the presiding officer of the State Board of Veterinary Medical Examiners shall appoint the initial members of the equine dental provider advisory committee established under Subchapter L, Chapter 801, Occupations Code, as added by this Act, with the term of one member expiring February 1, 2013, the term of one member expiring February 1, 2015, and the term of one member expiring February 1, 2017.</p> <p>(b) Not later than June 1, 2012, the State Board of Veterinary Medical Examiners, in consultation with the equine dental provider advisory committee established under Subchapter L, Chapter 801, Occupations Code, as added by this Act, shall adopt the rules, procedures, and jurisprudence examination required to implement the licensure of equine dental providers under Chapter 801, Occupations Code, as amended by this Act.</p> <p>(c) Notwithstanding Section 801.260, Occupations Code, as added by this Act, a person employed as an equine dental provider is not required to hold a license under Chapter 801, Occupations Code, and is not subject to the imposition of a penalty for not holding a license under that chapter before September 1, 2012.</p> <p>SECTION 30. (a) Before September 1, 2012, the State Board of Veterinary Medical Examiners shall issue an equine dental provider license required by Section 801.260, Occupations Code, as added by this Act, to a person who is not certified by the International Association of Equine Dentistry or another board-approved entity or organization if the person:</p> <ol style="list-style-type: none"> (1) presents proof of graduation from and completion of 280 hours of course work at a board-approved equine dental school or another board-approved entity or organization; and (2) submits, with the application and other information required under Section 801.261(b), Occupations Code, as added by this Act, two notarized affidavits in which veterinarians who are licensed to practice in this state and are in good standing with the board state that they know the person and that the person is competent in the practice of smoothing or filing teeth by floating. <p>(b) A license issued under this section may be renewed in the same manner as a license issued to a person under Section 801.261, Occupations Code, as added by this Act.</p> <p>(c) The State Board of Veterinary Medical Examiners may waive the requirement of Subsection (a)(1) if an applicant demonstrates proficiency by submitting:</p> <ol style="list-style-type: none"> (1) financial records that show the applicant has earned the majority of the applicant's income for the two years preceding the effective date of this Act by performing equine dental services; or (2) sworn affidavits from at least two clients who certify that the applicant has

	performed satisfactorily in addressing the dental needs of the client's animal. (d) This section expires September 1, 2012.
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