

## A Policymaker's Guide to Legislative Analysis

This guide provides an overview of legislative analysis, examples of how to approach a piece of legislation, and a list of additional resources.

### Background

Pieces of legislation, or “statutes,” are the textual basis for the law. If society were a house, legislation would be the foundational structure. Policy builds off that structure; it is the walls, the rooms, the roof of society. As social architects, policymakers should have a basic understanding of the structure set by legislation so that they can most effectively build policy. They may analyze legislation to understand how it will affect their work and certain communities, or to think creatively about spaces where effective policy may function.

### How to Analyze a Piece of Legislation

#### *Start With Secondary Sources*

Because most major legislation has already been explained or interpreted, the first and most useful legislative analysis tool is Google. A quick search will often yield governmental agency guidance on interpreting the statute, primers on the statute written by stakeholders who regularly work with it, or scholarly articles that examine the statute in depth. Any and all of these resources will thoroughly examine the context in which the legislation fits and explain the commonly accepted interpretation of the legislative language. Whether the goal is to understand the legislation as a whole or to build policy around it, secondary sources are the best way to begin legislative analysis.

#### *Identify the Legislative Context*

As with any type of reading comprehension, context is important in legislative analysis. Before diving into the details of the text, situate yourself in the context. Here are some questions that may guide you:

- What is the title of the legislation? What sector of society does it address? Education? Housing? Employment?
- What, if any, are the facts and findings listed in the legislation's preamble? Does it state the legislation's purpose or intent?
- How is the legislation structured? Take a look at its table of contents— what topics does it include? What topics does it exclude? What are the names of the policies or programs that the legislation creates? Is there a definitions section?
- What governmental agency administers/enforces/supports this piece of legislation?
- What non-governmental agencies frequently interpret and apply this legislation? In what subject matter are these non-governmental agencies usually involved?

#### *Read the Legislation Very Closely*

Like poetry, legislative writing is structured so that every word and punctuation mark is meaningful and purposeful. The key to strong legislative analysis is obsessive attention to detail. Generally, you will not need a legal dictionary or a social science article to decipher legislative text; common sense and the

“definitions” section included in each statute should suffice. There are a few standard rules of legislative construction to keep in mind:

- Legislators will sometimes include special definitions of words or phrases within the statute. These definitions are usually listed in a later section of the law, so be sure to check that list when interpreting a piece of legislation.
- Sometimes words or phrases have already been defined by similar or related pieces of legislation. Secondary sources may be useful in helping you identify these definitions.
- Words do not change meaning throughout legislative text. If there is a word used throughout the legislation, it will have the same definition every time. Conversely, if there is a different word used where the first word may have sufficed, that was also purposeful. This new word will mean something different from the first word.
- The difference between active and passive voice is important. Lawmakers take care to identify actors when they can. If the legislation is written in the passive voice without ever identifying an actor, that provides space for a policymaker to build out policies. For example, a policymaker may create an entirely new entity to serve as the missing actor.
- Some words are particularly significant. Watch out for these common ones:
  - “Shall” versus “May.” When a piece of legislation states that a person or entity “shall” do something, this is a legal mandate; the prescribed action is required by law and cannot be avoided. However, when a statute states that a person or entity “may” do something, it leaves discretion to the actor as to whether or not s/he will do it. Therefore, “may” clauses leave space for policy.
  - “And” versus “Or.” When there is a list of requirements or definitions in a statute the difference between “and” and “or” becomes very meaningful. “And” suggests that the list is exhaustive and to be taken as a whole. “Or” suggests that the list could be incomplete or that there is a choice among options. “Or” leaves space for policy, too.

### *Preliminary questions*

Here are some questions you should ask as you read the legislation for the first time:

- Who passed this legislation— the city? The state? The federal government?
- Does this legislation interact with any other legislation?
- What is the stated intent of this piece of legislation? Does this legislation create a program or policy? Who would the program or policy primarily affect?
- Who is the expected actor throughout this legislation? If there is no actor, who may or should be the actor?
- What is the expected outcome of the implementation of this legislation? Are there any enforcement mechanisms (i.e. will a program lose funding, will an entity be liable to a lawsuit, etc.)?

### *Consult a Lawyer*

In addition to the plain text of the statute and its accompanying regulations, some court cases further clarify pieces of legislation. Therefore, depending on available resources, you should hire a lawyer to thoroughly interpret a piece of legislation. A lawyer may be able to offer a comprehensive interpretation and add invaluable perspective on what spaces for policy may exist.

## Examples

The following examples are drawn from Title II of the [No Child Left Behind Act](#) (NCLB). Before examining any of this legislative text, you should have first explored the US Department of Education's page on NCLB and determined that this is a piece of legislation governing the federal hand in K-12 public education. You would note that the legislation's [table of contents](#) lists multiple definitions sections for each subpart and frequently reference those definitions.

### [NCLB Title II, Sec. 2101- Purpose](#)

"The purpose of this part is to provide grants to **State educational agencies**, **local educational agencies**, State agencies for higher education, and **eligible partnerships** in order to —  
(1) increase **student academic achievement** through strategies such as improving teacher and principal quality and increasing the number of **highly qualified teachers** in the classroom and **highly qualified** principals and assistant principals in schools; and  
(2) hold **local educational agencies** and schools accountable for improvements in **student academic achievement**."

This excerpt describes the purpose of the Teacher and Principal Training and Recruiting Fund established under Title II—"Preparing, Training and Recruiting High Quality Teachers and Principals." The highlighted phrases are terms of art—they have specific definitions that run throughout this legislation and others. Here, a thorough examination of the legislation's table of contents and the definitions section would help you decipher each term.

### [NCLB Title II, Section 2102- Definitions](#)

"In this part... (6) PRINCIPAL- The term principal' **includes** an assistant principal."

This excerpt defines "principal" for the purposes of the word's use throughout the section. Note that the definition is not exhaustive; instead of giving a dictionary definition of the word that has a common meaning in an education context, it clarifies any additional meaning that may not have been immediately apparent. Also, it states that the term "includes" another, suggesting that it is possible for other definitions to apply to the term "principal." This type of opening in interpretation is the kind of space where you could build your own policy to fill in the blank.

### [NCLB Title II, Section 2123- Local Use of Funds](#)

"(a) IN GENERAL- A local educational agency that receives a subgrant under section 2121 **shall** use the funds made available through the subgrant to carry out **one or more** of the following activities, including carrying out the activities through a grant or contract with a for-profit or nonprofit entity: ...  
(7) Hiring **highly qualified teachers**, including teachers who become highly qualified through State and local alternative routes to certification, and special education teachers, in order to reduce class size, particularly in the early grades."

This excerpt highlights the use of "shall." Here the legislation lists a number of possible activities that the local educational agency ("LEA") can do. Even though the "shall" indicates a mandate, the later language of "one or more" suggests that the LEA may use its discretion to choose which of the listed activities it will execute. Also note that the legislation specifically states who is meant to act. Here it is the LEA, not the state or the school, that has the authority to hire highly qualified teachers using the subgrant funding.

## Additional Resources

The agencies that implement legislation often have webpages dedicated to each piece of legislation. For federal laws related to education, check the website for the [US Department of Education](#). You may also find relevant federal regulations published in the [Federal Register](#). States and localities usually have an equivalent website that provides the relevant state or local regulations.

Finally, you may look to resources published by well-respected non-governmental organizations, such as foundations or think tanks. Take care to consider their stakeholders and mission when referencing their materials.