An Introduction to Drafting Skills of Chinese Local Legislation

Yanhui Ma*

School of International Relations, Sichuan University, Chengdu, China

*Corresponding author e-mail: tgzyma@163.com

Keywords: Chinese Local Legislation; Legal Draft; Local Legislative Works

Abstract: Local legislative works of the city with the district in China have been in full swing since the amendment of The Legislation Law of Republic of China in 2015. But local legislations still face the problem of too general, duplication of high-level law, form outweighing content, and so on. Taking an example of colleges and universities, we study the local legislation from the perspective of a third party who participated in the legislative work to focus on the drafting process of local legislation, which includes three phases. Introducing the participants, drafting process, and a brief combing of each stage, we try to explain the situation and put forward suggestions for Chinese local legislation.

1. Introduction

Focusing on the drafting process of local legislation, this paper, taking an example of colleges and universities, study the local legislation from the perspective of a third party who participated in the legislative work. The process of local legislation includes research plan designing, legislative research in and around the city, article drafting, publicizing and working on the draft law, etc. The period of local legislation can be divided into three stages, early-stage, formal stage, and late stage of legislation drafting.

2. An Overview of Local Legislation

The process of local legislation in a timed sequence can be divided into three parts. Firstly, the early stage is the prophase of legislative drafting. An available schedule is needed with a preliminary report about the general content of the legislation, including the survey program and research outline. Secondly, the formal drafting stage includes to form a framework of local legislation, compose the first draft, organize discussions of each government department and related experts for a further revision, publicize draft for public consultation, send the revised draft to the local National People’s Congress (NPC). Thirdly, the late-stage mainly includes the modification and deliberation of the local NPC [1].

2.1. The Early Drafting Stage

The prophase of legislative drafting mainly conducted by large numbers of practice investigations to get to know the content and scope of local legislation rapidly and understand the issues in practice, especially from the views of practitioners. The foundation of the practice is investigating sufficiently and listening to the opinions of all parties. The survey takes place mainly in and out of the city with the district. The targets of the investigation include related government departments, non-government institutions, enterprises, and other social groups in the city. Meanwhile, targets out of the city mainly for the legal affairs office and the commission for legal work who have successful practices in local legislation in all of the cities of China, which can avoid detours by sharing lessons and knowledge among different districts. Analysis of cause and effect is needed to reconcile different relationships and needs of legislation, balance respective interests. At present, the information getting from the practice survey is sufficient, the third parties, especially colleges and universities with the advantage of team members and higher research skills, can collect a wealth of complaints and questions from every target.

DOI: 10.38007/Proceedings.0000792

2.2. The Formal Drafting Stage

The formal drafting stage of this paper mainly refers to the specific drafting phase of local legislation, which require higher legislative knowledge and certain legislative skills. In general, participants might be able to master the present situation that needs to be strengthened and have the ability to determine the content of the legislation roughly. In the drafting phase, team members split up the workload and coordinate with related sections of the local government. After forming the first draft, it is the countless revisions to listen to the suggestions of the local government and the local NPC.

2.3. The Late Drafting Stage

The late drafting stage is usually confronted with the deliberations of the local NPC and the problems of public participation. The deliberations showed a ritualizing phenomenon, and it is not enough for the involvement of local NPC standing committee mainly because of late intervention. So that the local NPC and its standing committee cannot function. Besides, the interruption of deliberation was also a reality of local legislation, which contribute to the waste of legislative resources and the lower efficiency of local legislation. For example, due to the insufficient argument of necessity and feasibility in the early stage of drafting, or a positioning deviation, the local legislative program was interrupted or suspended instead. What’s more, public participation, public expression, and their knowledge of the legislation will all impact the operation and practical application of local legislation.

3. The Main Questions of Local Legislation

This part is mainly illustrated and demonstrated according to the main questions of local legislation to show the practical conditions of it. Figuring out the problems and analyzing the reasons to see a promotion of legislative quality and efficiency.

3.1. The Drafting Subjects

The participants of local legislation include proposal subject, determining, drafting, and deliberating subject. In China, the plan of local legislation can be proposed by the municipal government and entrusted a third party to draft after the determination of the local NPC. The draft will be deliberated by the municipal congress and shall be implemented after approval by the provincial congress. The drafting work of local legislation conduct by the subjects generally including the commission for legal work, government department, and the third party (need the authorization). As for the specific drafter, they are required to have the ability of expertise, guaranteed time, drafting skills, and a clear understanding of legislative authority, which is needed through scientific guidance and training for practice to guarantee the quality of local legislation.

3.2. Investigation Phase

The main problems of investigation of local legislation in China are the inadequate response for the survey. As a neutral third party, it is easier to get information and find practical problems with an objective attitude. However, without the legal responsibility, they cannot change things, especially administrative stuff, such as negative administration or the buck-passing. Meanwhile, the absence of attention from the government and enterprise lead to unevenness of quality of public participation. Some interviews go off-topic, and some departments are unwilling to investigate.

3.3. Formal Drafting Phase

The specifically states here for the reason of focusing on legislative drafting. It is an incredibly delicate work to draft a law, which will determine the quality of legislation, and the quality is about the legal enforcement and the stability of a legal system [2]. Paying attention to the drafting work behind the legal text can make a higher quality draft and make a visualization, quantitative assessment in a drafting phase. Although it is a small topic of drafting skills, domestic research is still insufficient for practice. The studies of the drafting process and the technical specifications of
Legal drafting skills are needed to guide for drafters to solve the practical problems by the promotion of operability. There are two questions of drafters.

First, it is easily distracted for drafters falling into the confusing practical problems so that beyond the power of local legislation. Actually, legislation cannot solve all the problems in practice, and not all responses are needed through an act. Here requires to sort the legal problems out from the other things. The legal problems can be solved and rose to local legislation, and for the problems about the improvement of management level or the departmental collaboration should respond in time to the authorities to solve it as soon as possible. For a thorny issue, it is suggested to submit the feedback to the related department for an analysis separately, which cannot settle everything and all at once.

Second, the absence of the guidance of local legislative, technical specifications. For the third parties who participate in the local legislation for the first time without any drafting experience, it is a long-term training to have an ability of drafting. It is also useful to communicate with the workers of the local congress. It should be recognized that suitable, effective training and the guidance of the legislative technology benefit the legislation quality a lot. In addition, at present, there are only three technical bases for drafting regulations in China, the “People's Republic of China national general language law” adopted by the Standing Committee of the National People's Congress in 2000, the “legislative technical specification (Trial)(1)” and “the legislative technical specification (Trial)(2)” issued by the Legislative Committee of the Standing Committee of the National People's Congress in 2009 and 2011. But they mainly regulate some commonly used words, phrases, and languages, and are not instructive to drafting practice. When drafted the article, I only searched an essay on the web page “When drafting the regulations of the major city, how to clarify problems, write the laws and ask for advice?” The author puts forward some suggestions for drafting the law but does not mention specific normative guidance documents. The article mentioned that the legislation is like weaving straw sandals, “Sandals have no shape, but slowly form a shape when weaving.” from which we can see it is necessary to pay attention to the legislative, technical norms [3].

3.4. Deliberation of the Local Legislation

In the phase of deliberation, the main problem was still the ritualizing participants. The answer was the absence of attention and little active participation for this legislative work. Lacking flexibility and innovations, the local congress was conservative compared with the third parties so that there will be a major conflict between drafters as a consequence of repeated revision and big changes, which are likely to drift from the original legislative purpose.

4. Suggestions for Local Legislation

The local legislation requires a leaner and finer content rather than big but comprehensive, which has no essential help. Through it to guarantee no duplications of high-level law, the matters in practice can be addressed. In addition, it needs to pay attention to solve practical problems in improving social security. Solving the outstanding issues, considering the work of government departments, and the efficiency at the same time to develop the local construction.

Firstly, consider the problem persisting on the whole base. The local legislation is not only regulation on the management of local affairs but also the chance to figure out the inherent conflict existing in government departments. The process can be used to improve the effectiveness and efficiency of the corporation in local government, otherwise just a formulaic burden. There are many problems involved in the legislation, but not all of them can be settled with a draft. We cannot put everything on local legislation. But a successful legislative work with substance can address those priorities and urgent need of local development, and through which local government can solve the non-legislative and collective problems to implement the responsibility.

Secondly, refine the research of local legislation and enrich the meaning of the local legislative authority. Without violating the upper law, legislators should be engaged with the scope and authority of local legislation to make full use of administrative management. The local legislative
authority should be expanded and maturity constantly with the legal interpretation to realize an appropriate local autonomy [4, 5]. Hence the research of local legislation should be delicate. Taking an example of local legislative scope, it can include the management, local autonomy under the guidance of Chinese law.

Thirdly, learn from the experience of others and improve the local legislation practice. For the research of local legislation, it is still focused on the macro comparison between the domestic districts in China and lacking the attention of the specific drafting stages. A comparative study can be used to have a deeper understanding and promotion of local legislation [6, 7]. The analyses of legislative subjects, legislative scope, the legislative process, public participation, and drafting skills could provide reference and prediction for it.

References


