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To: House Committee on Commerce, Labor and Economic Development

From: R.E. "Tuck" Duncan

RE: HB2526 — Adding a ranking minority member to the joint committee on administrative rules and regulations and the state rules and regulations board and requiring agencies to report on the impact regulations will have on business.

I am here as Tuck Duncan, lawyer, and my comments are my own and may not reflect the opinions of any organization.

I support the addition of this language:

*(E) a description of businesses that would be directly affected by the proposed rules and regulations, the benefits of the proposed rules and regulations and measures taken to minimize the impact of the proposed rules and regulations on business and economic development within the state of Kansas.*

**But candidly it does not go far enough.**

Thus, I support the testimony of the Kansas Chamber which is suggesting language from Wisconsin's law which directs the agency to reach out to trade associations, businesses, local government units and individuals for input on their proposed changes. The chamber's proposed amendment is a positive step toward protecting Kansas businesses against burdensome rules and regulations by strengthening legislative oversight.

Currently there are detailed instructions for the preparation of the economic impact statement. I have attached those instructions as developed by the Kansas Department of Administration and set out in the Policy and Procedure Manual for the Filing of Kansas Administrative Regulations. <http://admin.ks.gov/docs/default-source/Chief-Counsel/reg-manual-february-2018-final-draft.pdf?sfvrsn=4> Were state agencies to have followed these guidelines, legislation might not have been necessary.

Here are a few examples.

On January 4, 2018 the Kansas Real Estate Appraisal Board published a Notice for a new regulation to adopt by reference 2018-2019 edition of the "uniform standards of professional appraisal practice," as published by the appraisal standards board of the appraisal foundation and effective January 1, 2016 2018. In the Notice they state: "There will be no economic impact to this agency, other state agencies, or to the public."

The policy manual provides that the agency state:

(3) a description of the cost, the persons who will bear the cost, and those who will be affected by the proposed regulation, including the following:

(A) The agency proposing the regulation;

(B) other governmental agencies or units;

(C) "small employers" (see K.S.A. 77-415 and 77-416);

(D) private citizens; and

(E) consumers of the products or services that are the subject of the regulation or its enforcement; ...

**There is a cost** -- everyone who must comply with the manual, real estate appraisers licensed by this Board should buy the manual. It costs \$75.00. While there is a version online, it does not include the FAQs or the Advisory Opinions.

Sometime the statement is just vague.

Currently K.A.R. 16-17-1 is proposed a new regulation which implements the requirement in K.S.A. 2017 Supp. 8-2,157 (2017 House Sub. for SB 40, §4) that rules and regulations be promulgated to establish requirements for training course approval for providers of a human trafficking identification and prevention training course. On or after July 1, 2018, successful completion of the training course is required before an applicant for issuance or renewal of a commercial driver's license (CDL) may obtain such license.

Here is what the statement says about costs:

*The OAG anticipates costs associated with administering the human trafficking identification and prevention training course to be borne solely by the approved providers. The OAG anticipates an economic impact on the Kansas Department of Revenue, Division of Motor Vehicles (KDOR DMV) but not other governmental agencies. The OAG anticipates an economic impact on private business or individuals who are affected by the requirement that a certificate of successful completion of a human trafficking identification and prevention training must be obtained before issuance or renewal of a CDL may obtain such license. We are consulting with the League of Kansas Municipalities, the Kansas Association of Counties and the Kansas Association of School Boards to assess anticipated economic impact on their constituencies.*

The criteria state: "While it is preferable to develop dollar estimates of the economic impact, agencies may not always have adequate data to do so. In those instances, be sure to describe the nature and anticipated extent of the economic impact." There is no such detail.

This is not unusual, and many times the Notice as published in the Kansas Register merely states: "*Economic Impact Statement: The proposed amendments are not anticipated to have any appreciable negative economic impact on the agency, other agencies, small businesses, or the public.*"

Further, proposed regulations are no longer required to be published in the Register. The Notice refers interested parties to the agency website, and then you have to hunt for the regulation. At a minimum there ought to be a specific link to the proposed regulations and impact statement.

*Thank you for your attention to and consideration of these matters.*

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120 SW 10th Avenue  
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If approved, each page of a regulation will be stamped and dated, first by the Secretary of Administration and then by the Attorney General. If a page is approved by the Secretary of Administration but is not approved by the Attorney General and then the regulation is revised as required by the Attorney General, the agency must resubmit that particular page, along with a copy of the previously approved page showing the prior approval stamp, to the Secretary of Administration for review and approval. The Attorney General will stamp only regulations that have already been stamped by the Department of Administration.

#### ECONOMIC IMPACT STATEMENT

(a) At the time of drafting a proposed regulation or amendment to a regulation, prepare a statement of the economic impact of the proposed regulation on all governmental agencies, all persons subject to the regulation, and the general public. An economic impact statement is required for new regulations, amended regulations, and revoked regulations. An economic impact statement is required for each proposed regulation unless it is part of a set of related regulations. In this case, a single economic impact statement may be developed for each set of related regulations. The economic impact statement must include the following items:

- (1) A brief description of the proposed regulation and its intended effect,
- (2)(A) Whether or not the proposed regulation is mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program; and
- (B) whether or not the proposed regulation exceeds the requirements of applicable federal law;

(3) a description of the cost, the persons who will bear the cost, and those who will be affected by the proposed regulation, including the following:

- (A) The agency proposing the regulation;
- (B) other governmental agencies or units;
- (C) "small employers" (see K.S.A. 77-415 and 77-416);
- (D) private citizens; and
- (E) consumers of the products or services that are the subject of the regulation or its enforcement; and

(4) a description of any less costly or less intrusive methods that were considered by the state agency for achieving the stated purpose of the regulation and the reason that those methods were rejected in favor of the proposed regulation. See K.S.A. 77-416.

The economic impact statement for "environmental rules and regulations" must also contain several additional items. (See page 13.)

- The economic impact statement is often of great interest to parties affected by the regulation, as well as to the Joint Committee on Administrative Rules and Regulations. Moreover, the process of evaluating the economic impact of a proposed regulation may reveal significant policy issues that agencies need to consider before the regulations are in final form. Therefore, agencies should take care in developing economic impact statements so that they are as comprehensive and informative as possible, given data that is available to the agency.
- Think broadly when trying to identify potential economic impacts of proposed regulations. Consider whether or not there are less obvious, indirect economic impacts or hidden costs. For example, the economic impact of an increase in the number of continuing education units required for renewal of a license would clearly involve registration costs for the additional training. However, the increase in required continuing education is likely to have a number of other less obvious costs, including travel costs and lost productivity due to time away from work.
- While it is preferable to develop dollar estimates of the economic impact, agencies may not always have adequate data to do so. In those instances, be sure to describe the nature and anticipated extent of the economic impact.

(b)(1) When preparing the economic impact statement for a proposed regulation, determine whether or not the regulation would have any of the following effects:

- (A) Increases or decreases revenues of cities, counties, or school districts; or
- (B) Imposes functions or responsibilities on cities, counties, or school districts that will increase their expenditures or fiscal liability.

If the regulation will have either of these effects, consult with the League of Kansas Municipalities, the Kansas Association of Counties, and the Kansas Association of School Boards, as appropriate, when preparing the economic impact statement. See K.S.A. 77-416.

- (2) Consider maintaining some documentation of the consultation, along with the other documents related to adoption of the regulations. K.S.A. 77-416 does not set out a particular method or procedure for the required consultation. It appears that, as long as advice or information from the appropriate entity is sought, reasonable time is afforded for response, and the response is considered by the agency, the agency has discretion in determining the procedure for meeting statutory requirements. One method for complying with this requirement may be to mail or fax a copy of the proposed economic impact statement, the proposed regulations, or both to the League of Kansas Municipalities, Kansas Association of Counties, or Kansas Association of School Boards, as appropriate, along with a request for an oral or written response by a certain date. In this way, a record will be made of the consultation. The addresses of these organizations follow:

League of Kansas Municipalities  
300 SW 8th Ave., Suite 100  
Topeka, Kansas 66603  
Phone #: (785) 354-9565  
Fax #: (785) 354-4186

Kansas Association of Counties  
300 SW 8th Ave., Suite 300  
Topeka, Kansas 66603  
Phone #: (785) 272-2585  
Fax #: (785) 272-3585

Kansas Association of School Boards  
1420 SW Arrowhead Rd.  
Topeka, Kansas 66604  
Phone #: (785) 273-5600  
Fax #: (785) 273-7580

(c) In preparing the economic impact statement for any regulation, agencies may consult with other state agencies.

(d) Following the public hearing, revise the economic impact statement to include a statement specifying the time and place at which the public hearing was held and the number of persons attending the hearing. A list of those attending the public hearing should not be attached to the economic impact statement but should be retained by the agency.

The State Rules and Regulations Board, Joint Committee on Administrative Rules and Regulations, or the chairperson of either the Committee or the Board may request the Director of the Budget to review the economic impact statement of any regulation and to submit a revised or supplemental statement.

Each statement prepared by the Director is to include, if possible, the following estimates:

(1) Dollar estimates of anticipated changes in revenues and expenditures of the state that are attributable to implementation of the regulation; and

(2) an estimate of the immediate and the long-range economic impact of the regulation on persons subject to the regulation and the general public. If no dollar estimate is possible, the statement must include the reasons why a dollar estimate is not provided.