AN ACT relating to adopting the most cost-effective alternative in administrative regulations having a major economic impact on the Kentucky economy.

WHEREAS, certain types of Kentucky administrative regulations may have a substantial impact on the state's economy; and

WHEREAS, these effects on the economy may include impacts on state and local government, regulated entities, and the general public; and

WHEREAS, much of the public dissatisfaction with the regulatory process has stemmed from a public perception of large, burdensome administrative regulations that fail to correct important state problems; and

WHEREAS, more detailed economic analysis by administrative bodies and third parties relating to administrative regulations that constitute major economic actions may reduce costs, improve effectiveness, and enhance civic engagement; and

WHEREAS, growing evidence has shown that better outcomes may occur when the administrative body uses an evidence-based approach that includes detailed risk assessment and cost-benefit analysis; and

WHEREAS, recent research has shown that requirements for reviewing the fiscal impacts of new administrative regulations on state government budgets and presentation of lower-cost alternatives for achieving the same policy goals reduce the state regulatory burden; and

WHEREAS, administrative bodies should apply greater scrutiny to administrative regulations that are more costly to the state economy to ensure that the benefits outweigh the costs and that the public may openly test the accuracy of the administrative body's decisions; and

WHEREAS, many prominent organizations have lauded the benefits of a public, evidence-based approach to major administrative regulations, including the Pew Charitable Trusts, the American Bar Association, and the Administrative Conference of the United States; and

WHEREAS, this Commonwealth should adopt administrative procedures to require evidence-based economic analysis, third-party review, and public input for administrative regulations that constitute major economic actions;

NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

(1) When an administrative body plans to promulgate, amend, or certify an administrative regulation that constitutes a major economic action as defined by Section 8 of this Act, at least sixty (60) days before the administrative body files the administrative regulation with the regulations compiler, the administrative body shall, in specific documentation provided to the public and to the Regulatory Economic Analysis Advisory Group created under Section 5 of this Act:

(a) Describe the subject and objectives of, and the problem to be solved by, the action;

(b) Reference the legal authority under which the administrative regulation would be proposed;

(c) Provide economic and any other relevant data demonstrating how the action is a major economic action, and why the administrative body plans to use its chosen method to address the situation; and

(d) Discuss at least two (2) other reasonable alternative ways to address the problem, including why the administrative body did not choose any of those alternatives.

(2) When submitting this information to the public, the administrative body shall:

(a) Invite interested persons to propose alternatives and other ideas regarding how best to accomplish the objectives of the administrative body in the most effective manner; and

(b) Indicate how interested persons may submit written material to the administrative body.

(3) (a) A person who wishes to be notified when an administrative body distributes the information required under this section shall contact the administrative body in advance by written letter or a completed electronic registration form located on a centralized state government Web site developed and maintained by the Commonwealth Office of Technology.

(b) Within five (5) business days after distributing the information required under this section, the administrative body shall send the person a written or electronic copy of the notice, the administrative regulation if available, and the supporting materials required by Sections 1 to 7 of this Act.

(c) The person's notification request shall be valid for a period of four (4) years from the date the registration is submitted, or until the person submits a written or electronic request to be removed from the notification list, whichever occurs first.

(4) All information provided to the administrative body under subsection (2) of this section shall be promptly made accessible to the public.

(5) The alternatives and other ideas proposed under subsection (2) of this section are for the benefit of the administrative body and the public. The administrative body receiving the alternatives and other ideas may respond to the alternatives and other ideas.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

The requirements of Sections 1 to 7 of this Act are a supplement to, and not a replacement for, the normal administrative regulation process under this chapter. Except as otherwise specifically stated in this chapter, the administrative process for an administrative regulation that constitutes a major economic action shall be the same as

that required for any other ordinary administrative regulation or administrative regulation in contemplation of a statute.

(1) When promulgating, amending, or certifying an ordinary administrative regulation or an administrative regulation in contemplation of a statute, an administrative body shall consider at least the following if that administrative regulation qualifies as a major economic action:

(a) The statutory authority for the action;

(b) The nature and significance of the problem the administrative body intends to address with the action;

(c) Whether existing statutes or administrative regulations have created or contributed to the problem the administrative body may address with an action, including whether amendment or repeal of those statutes or administrative regulations could address some or all of the problem;

(d) Two (2) reasonable alternatives for a new action that meet the statutory objective, including substantial alternatives or other responses identified by interested persons; and

(e) The potential costs and benefits associated with potential alternative approaches and other responses considered under this section, including quantitative and qualitative analyses of:

1. The direct costs and benefits;

2. The nature and degree of risks addressed by the action and the countervailing risks that might be posed by administrative body action; and

3. The cumulative and indirect costs and benefits.

(2) (a) When filing a new or amended administrative regulation that constitutes a major economic action, the administrative body shall include a separate notation in all capital letters stating "MAJOR ECONOMIC ACTION" on a

double-spaced line just above the required location of the number and title of the administrative regulation under KRS 13A.220(4).

(b) When filing a certification letter under Section 10 of this Act for an administrative regulation that constitutes a major economic action, the administrative body shall include a separate notation in all capital letters stating "MAJOR ECONOMIC ACTION" on the first page of the certification letter.

(3) When developing and filing a major economic action, the promulgating administrative body shall:

(a) Assess community needs and identify appropriate evidence-based interventions;

(b) Create policies and processes that support effective implementation and monitoring;

(c) Support affected entities and the public through training and technical assistance; and

(d) Create systems to monitor program implementation and improve performance.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

For an administrative regulation that constitutes a major economic action, an administrative body shall simultaneously file with the regulations compiler the administrative regulation and the administrative body's analysis and explanation of the administrative regulation.

(1) (a) Except as provided in subsection (2) of this section, when taking a major economic action, an administrative body shall submit and explain the most cost-effective action that:

1. Is considered under Section 2 of this Act;

2. Meets relevant statutory objectives; and

3. Contains benefits that outweigh the costs.

(b) The action shall include a discussion of:

1. The costs and benefits of the action;

2. Other economic issues that are relevant to the action;

3. Risk assessments that are relevant to the action;

4. The costs and benefits of alternatives considered by the administrative body under Section 2 of this Act;

5. Whether the alternatives considered by the administrative body under Section 2 of this Act meet relevant statutory objectives; and

6. The reasons why the administrative body did not propose an alternative it considered under Section 2 of this Act.

(c) The rigor of the cost-benefit analysis required by this subsection shall be commensurate with the economic impact of the action.

(d) When undertaking the risk assessment described in this subsection, the administrative body shall include criteria it used to:

1. Select studies and models;

2. Evaluate and weigh evidence; and

3. Conduct peer reviews.

(2) In a major economic action, an administrative body may submit an action that is more costly than the most cost-effective alternative that would achieve the relevant statutory objectives only if the administrative body:

(a) Demonstrates that the additional benefits of the more costly action justify the additional costs of that action;

(b) Specifically identifies each additional benefit described in paragraph (a) of this subsection and the cost of each of these additional benefits; and

(c) Explains why it adopted an action that is more costly than the most cost-

effective alternative.

(3) The major economic action materials shall include a detailed explanation by the administrative body showing why:

(a) The benefits of the action advance the relevant statutory objectives and justify the costs of the action; and

(b) 1. No alternative considered would achieve the relevant statutory objectives in a more cost-effective manner than the action; or

2. The adoption by the administrative body of a more costly action complies with subsection (2) of this section.

(4) If an administrative body's major economic action rests upon scientific, technical, or economic information, the administrative body shall adopt a final action on the basis of the best reasonably available scientific, technical, or economic information.

(5) Not later than the date on which an administrative body files a major economic action, all studies, models, scientific literature, and other information developed or relied upon by the administrative body, and actions taken by the administrative body to obtain that information, in connection with the determination of the administrative body to finalize the major economic action shall be submitted to the regulations compiler and made accessible to the public.

(6) When an administrative body files with the regulations compiler the information required under Sections 1 to 7 of this Act for a major economic action, the administrative body shall:

(a) Simultaneously submit that information to the Regulatory Economic Analysis Advisory Group; and

(b) Include an executive summary of the action. This executive summary shall indicate that the administrative regulation is a major economic action and shall be published in the Administrative Register of Kentucky, but the

regulations compiler shall not be required to publish the entirety of the supplemental materials submitted for the major economic action.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

(1) When an administrative body files an administrative regulation that constitutes a major economic action, that administrative body shall publicly provide a framework for assessing the administrative regulation, which shall include:

(a) A clear statement of the regulatory objectives of the action, including a summary of the benefit and cost of the action;

(b) The methodology by which the administrative body plans to analyze the action, including metrics by which the administrative body can measure the:

1. Effectiveness and benefits of the action in producing the regulatory objectives of the action; and

2. Impacts, including any costs, of the action on regulated and other impacted entities;

(c) A plan to continuously or periodically gather data regarding the metrics described in paragraph (b) of this subsection, including a method by which the administrative body will invite the public to participate in the review process and seek input from other administrative bodies; and

(d) A specific timeframe, as appropriate to the action and not more than seven (7) years after the effective date of the administrative regulation, under which the administrative body shall conduct the assessment of the action in accordance with this section.

(2) Each administrative body shall assess the data collected under subsection (1)(c) of this section, using the methodology set forth in subsection (1)(b) of this section or any other appropriate methodology developed after the issuance of a major

economic action to:

(a) Analyze how the actual benefits and costs of the action may have varied from those anticipated at the time the action was issued; and

(b) Determine whether:

1. The action is accomplishing its regulatory objective;

2. The action has been rendered unnecessary, taking into consideration:

a. Changes in the subject area affected by the action; and

b. Whether the action overlaps, duplicates, or conflicts with other statutes or administrative regulations;

3. The action needs to be amended in order to accomplish the regulatory objective; and

4. Other alternatives to the action or amendment to the action could better achieve the regulatory objective while imposing a smaller burden on society or increase cost-effectiveness, taking into consideration any cost already incurred.

(3) If an administrative body uses a methodology other than the methodology described in subsection (1)(b) of this section to assess data under subsection (2) of this section, the administrative body shall include an explanation of the changes in circumstances that necessitated the use of that other methodology.

(4) If, after an assessment of a major economic action under subsection (2) of this section, an administrative body determines that the action will remain in effect with or without amendment, the administrative body shall:

(a) Determine a specific time, as appropriate to the action and not more than seven (7) years after the effective date of the most recent original or assessment action, under which the administrative body shall conduct another assessment of the action in accordance with subsection (2) of this section; and

(b) If the assessment conducted under paragraph (a) of this subsection does not result in a repeal of the action, periodically assess the action in accordance with subsection (2) of this section to ensure that the action continues to meet the regulatory objective.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created in state government an independent body to be known as the Regulatory Economic Analysis Advisory Group. The group shall provide third-party review of any administrative regulation that constitutes a major economic action. The group shall assess the information the promulgating administrative body provided to it under Section 1 of this Act or Section 10 of this Act and the information that the administrative body provided to the regulations compiler to comply with Sections 1 to 7 of this Act. The group shall be composed of the following seven (7) members:

(a) A member appointed by the President of the Kentucky Senate;

(b) A member appointed by the Speaker of the Kentucky House of Representatives;

(c) The Kentucky state budget director or designee;

(d) The Kentucky Attorney General or designee;

(e) Two (2) representatives of two (2) different Kentucky-based, accredited institutions of postsecondary education that award postgraduate degrees in economics or business who serve on the faculties of the respective schools, each nominated by his or her respective university president and appointed by the Governor; and

(f) One (1) citizen at large who represents a recognized group with an interest in state budget and appropriation matters, to be appointed by the Governor.

(2) (a) The state budget director and Attorney General shall serve as ex officio

voting members.

(b) Each appointed member shall serve a term of four (4) years. A member may serve two (2) consecutive terms, but after two (2) consecutive terms at least two (2) years shall intervene before the member may serve again.

(3) The group shall meet at least monthly, and may meet more frequently at the call of the chair. Each year, a member shall be elected chair by a majority vote of the other members of the group. Four (4) of the appointed members shall constitute a quorum for any business.

(4) Members shall not receive a salary or per diem, but shall be reimbursed for reasonable expenses by the Office of State Budget Director.

(5) At any time, a member shall recuse himself or herself from the review of an administrative regulation if the member believes he or she has a personal or private conflict of interest.

(6) Unless otherwise indicated by law, records and meetings of the group shall be open to the public as authorized by the Kentucky Open Records Act, KRS 61.872 to 61.884.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

(1) For its analysis of any major economic action, the Regulatory Economic Analysis Advisory Group shall consider the potential costs and benefits associated with the administrative body's chosen method and any potential alternative approaches, including analyses of the amount and quality of:

(a) The direct costs and benefits;

(b) The nature and degree of risks addressed by the action and the countervailing risks that might be posed by administrative body action; and

(c) The cumulative and indirect costs and benefits.

(2) The group shall:

(a) Submit the results of its review of a new or amended administrative regulation that constitutes a major economic action to the promulgating administrative body within the public comment period authorized by KRS 13A.270. The administrative body shall address the group's review in its subsequent statement of consideration relating to that major economic action;

(b) Provide thorough and specific reasons why it agrees or disagrees with all or part of the administrative body's analysis of its major economic action, along with the group's specific recommendations;

(c) Submit written comments regarding a major economic action that is the subject of a certification letter that was filed with the regulations compiler under Section 10 of this Act on or before the date the certification letter is filed; and

(d) Send a copy of the results of each of its reviews to the Legislative Research Commission and the Governor.

(3) The group may:

(a) In addition to its previous review submitted under subsection (2)(a) of this section, testify regarding a major economic action at the public hearing authorized by KRS 13A.270. If the group testifies, the administrative body shall address the group's concerns in its subsequent statement of consideration relating to that major economic action; and

(b) Consult with and seek advice from outside persons or entities, including institutes of higher education, affected businesses, or recognized experts in the relevant fields.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

Sections 1 to 7 of this Act shall be known and may be cited as the "Kentucky

Administrative Regulation Accountability Act of 2020."

➔Section 8. KRS 13A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Administrative body" means each state board, bureau, cabinet, commission, department, authority, officer, or other entity, except the General Assembly and the Court of Justice, authorized by law to promulgate administrative regulations;

(2) "Administrative regulation" means each statement of general applicability promulgated by an administrative body that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any administrative body. The term includes an existing administrative regulation, a new administrative regulation, an emergency administrative regulation, an administrative regulation in contemplation of a statute, and the amendment or repeal of an existing administrative regulation, but does not include:

(a) Statements concerning only the internal management of an administrative body and not affecting private rights or procedures available to the public;

(b) Declaratory rulings;

(c) Intradepartmental memoranda not in conflict with KRS 13A.130;

(d) Statements relating to acquisition of property for highway purposes and statements relating to the construction or maintenance of highways; or

(e) Rules, regulations, and policies of the governing boards of institutions that make up the postsecondary education system defined in KRS 164.001 pertaining to students attending or applicants to the institutions, to faculty and staff of the respective institutions, or to the control and maintenance of land and buildings occupied by the respective institutions;

(3) "Adopted" means that an administrative regulation has become effective in accordance with the provisions of this chapter;

(4) "Authorizing signature" means the signature of the head of the administrative body

authorized by statute to promulgate administrative regulations;

(5) "Commission" means the Legislative Research Commission;

(6) "Effective" means that an administrative regulation has completed the legislative subcommittee review established by KRS 13A.290, 13A.330, and 13A.331;

(7) "Federal mandate" means any federal constitutional, legislative, or executive law or order that requires or permits any administrative body to engage in regulatory activities that impose compliance standards, reporting requirements, recordkeeping, or similar responsibilities upon entities in the Commonwealth;

(8) "Federal mandate comparison" means a written statement containing the information required by KRS 13A.245;

(9) "Filed" or "promulgated" means that an administrative regulation, or other document required to be filed by this chapter, has been submitted to the Commission in accordance with this chapter;

(10) "Last effective date" means the latter of:

(a) The most recent date an ordinary administrative regulation became effective, without including the date a technical amendment was made pursuant to KRS 13A.040(10), 13A.2255(2), or 13A.312; or

(b) The date a certification letter was filed with the regulations compiler for that administrative regulation pursuant to KRS 13A.3104(4), if the letter stated that the administrative regulation shall remain in effect without amendment.

(11) "Local government" means and includes a city, county, urban-county, charter county, consolidated local government, special district, or a quasi-governmental body authorized by the Kentucky Revised Statutes or a local ordinance;

(12) ***"Major economic action" means an action taken by an administrative body through a new, amended, or certified administrative regulation that creates an annual economic impact of one million dollars ($1,000,000) or more on the state economy as determined by the administrative body and the Regulatory Economic***

Analysis Advisory Group. This analysis shall consider the economic impact on state and local government, entities regulated by the administrative regulation, and the state as a whole. An emergency administrative regulation shall not be deemed a major economic action;

(13) "Proposed administrative regulation" means an administrative regulation that:

(a) Has been filed by an administrative body; and

(b) Has not become effective or been withdrawn;

(14) ~~[(13)]~~ "Regulatory impact analysis" means a written statement containing the provisions required by KRS 13A.240;

(15) ~~[(14)]~~ "Small business" means a business entity, including its affiliates, that:

(a) Is independently owned and operated; and

(b) 1. Employs fewer than one hundred fifty (150) full-time employees or their equivalent; or

2. Has gross annual sales of less than six million dollars ($6,000,000);

(16) ~~[(15)]~~ "Statement of consideration" means the document required by KRS 13A.280 in which the administrative body summarizes the comments received, its responses to those comments, and the action taken, if any, as a result of those comments and responses;

(17) ~~[(16)]~~ "Subcommittee" means the Administrative Regulation Review Subcommittee, any other subcommittee of the Legislative Research Commission, an interim joint committee, or a House and Senate standing committee;

(18) ~~[(17)]~~ "Tiering" means the tailoring of regulatory requirements to fit the particular circumstances surrounding regulated entities; and

(19) ~~[(18)]~~ "Written comments" means comments submitted to the administrative body's contact person identified pursuant to KRS 13A.220(6)(d) via hand delivery, United States mail, e-mail, or facsimile and may include but is not limited to comments submitted internally from within the promulgating administrative body or from

another administrative body.

➔Section 9. KRS 13A.030 is amended to read as follows:

(1) The Administrative Regulation Review Subcommittee shall:

(a) Conduct a continuous study as to whether additional legislation or changes in legislation are needed based on various factors, including, but not limited to, review of new, emergency, and existing administrative regulations, the lack of administrative regulations, and the needs of administrative bodies;

(b) Except as provided by KRS 158.6471 and 158.6472, review and comment upon effective administrative regulations pursuant to subsections (2), (3), and (4) of this section or administrative regulations filed with the Commission;

(c) Make recommendations for changes in statutes, new statutes, repeal of statutes affecting administrative regulations or the ability of administrative bodies to promulgate them; and

(d) Conduct such other studies relating to administrative regulations as may be assigned by the Commission.

(2) The subcommittee may make a nonbinding determination:

(a) That an effective administrative regulation or an administrative regulation filed with the Commission is deficient because it:

1. Is wrongfully promulgated;

2. Appears to be in conflict with an existing statute;

3. Appears to have no statutory authority for its promulgation;

4. Appears to impose stricter or more burdensome state requirements than required by the federal mandate, without reasonable justification;

5. Fails to use tiering when tiering is applicable;

6. Is in excess of the administrative body's authority;

7. Appears to impose an unreasonable burden on government or small business, or both;~~[or]~~

8. ***Appears to constitute a major economic action without proper justification or without correct implementation of the process required by Sections 1 to 7 of this Act; or***

9. Appears to be deficient in any other manner;

(b) That an administrative regulation is needed to implement an existing statute; or

(c) That an administrative regulation should be amended or repealed.

(3) The subcommittee may review an effective administrative regulation if requested by a member of the subcommittee.

(4) The subcommittee may require any administrative body to submit data and information as required by the subcommittee in the performance of its duties under this chapter, and no administrative body shall fail to provide the information or data required.

➔Section 10. KRS 13A.3104 is amended to read as follows:

(1) If an administrative body does not want an administrative regulation to expire under KRS 13A.3102, the administrative body shall:

(a) Review the administrative regulation in its entirety for compliance with current law governing the subject matter of the administrative regulation;

(b) Prior to the expiration date, file a certification letter with the regulations compiler stating whether the administrative regulation shall be amended or remain in effect without amendment; and

(c) Not be required to consider KRS Chapter 13A drafting and formatting requirements as part of its review.

(2) The certification letter shall be on the administrative body's official letterhead, in the format prescribed by the regulations compiler, and include the following information:

(a) The name of the administrative body;

(b) The number of the administrative regulation;

(c) The title of the administrative regulation;

(d) A statement that:

1. The administrative body shall be amending the administrative regulation; or

2. The administrative regulation shall remain in effect without amendment; and

(e) A brief statement in support of the decision.

(3) (a) If the certification letter was filed pursuant to subsection (1)(b) of this section, stating that the administrative regulation shall be amended, the administrative body shall file an amendment to the administrative regulation in accordance with KRS Chapter 13A within eighteen (18) months of the date the certification letter was filed.

(b) If the amendment was filed in accordance with paragraph (a) of this subsection:

1. The administrative regulation shall not expire if it is continuing through the administrative regulations process; or

2. The administrative regulation shall expire on the date the amendment is withdrawn or otherwise ceases going through the administrative regulations process.

(c) Once the amendment is effective, the regulations compiler shall update the last effective date for that administrative regulation to reflect the amendment's effective date.

(4) If the certification letter was filed pursuant to subsection (1)(b) of this section, stating that the administrative regulation shall remain in effect without amendment, the regulations compiler shall:

(a) Update the administrative regulation's history line to state that a certification

letter was received; and

(b) Change the last effective date of the administrative regulation to the date the certification letter was received.

(5) If filed by the deadline established in KRS 13A.050(3), the regulations compiler shall publish in the Administrative Register of Kentucky each certification letter received:

(a) In summary format; or

(b) In its entirety.

(6) If the administrative regulation that is the subject of the certification letter, whether to be amended or without amendment, constitutes a major economic action, the administrative body shall:

(a) Notify and submit materials in advance to the Regulatory Economic Analysis Advisory Group and the public as required by Section 1 of this Act, except that the materials shall be submitted to the group and the public at least one hundred twenty (120) days before submission of the certification letter to the regulations compiler. This notification shall include the date on which the administrative body plans to file the certification letter, and the administrative body shall not file the certification letter any sooner than that date;

(b) Submit to the regulations compiler the analysis and explanation of the administrative regulation required by Section 3 of this Act in conjunction with its submission of the certification letter required by this section, including an executive summary for publication in the Administrative Register of Kentucky. The administrative body shall also submit the certification letter and the final version of its analysis to the Regulatory Economic Analysis Advisory Group; and

(c) Follow all other procedures required by this section and by Sections 1 to 7

of this Act, except that if any procedure in Sections 1 to 7 of this Act conflicts with those of this section, this section shall supersede the procedure.

➔Section 11. The initial members of the Regulatory Economic Analysis Advisory Group appointed under subsections (1)(a) and (1)(b) of Section 5 of this Act shall serve a first term of two (2) years. The initial members of the Regulatory Economic Analysis Advisory Group appointed under subsections (1)(e) and (1)(f) of Section 5 of this Act shall serve a first term of three (3) years.