AIA Kansas

To: Senator Olson and members of the Senate Committee on Commerce
From: American Institute of Architects Kansas Chapter, David L. Hoffman, FAIA, Senior Vice President at LK Architecture
Re: Opposition to SB 10, Appearing Virtually
Date: January 27, 2021

Good Morning Members of the Committee:

My name is David Hoffman, testifying in opposition to SB 10 in several capacities: First, I am a practicing Kansas architect in Wichita, KS, licensed for 46 years and licensed in 28 other jurisdictions including the District of Columbia. Second, I have served on the Kansas State Board of Technical Professions being reappointed for three four-year terms and served in all elected Board positions including Chair of the Board, Chair of the Architect/Landscape Architect/Geologist's Committee, and Chair of the Disciplinary Committee. Third, I have been a member of the American Institute of Architects, Kansas Chapter (AIA Kansas), a professional organization representing over 740 architects, for 43 years and served in several capacities including State Chapter President as well as on the national Board of Directors. Fourth, and probably most cogent to the consideration of SB 10, I recently completed volunteering 8 years on the National Council of Architectural Registration Boards (NCARB) Board of Directors, serving as its national President in 2019. I've been immersed in the regulation of the architectural profession in multiple ways for the past several decades.

Speaking from an architect's perspective, I have the following observations concerning SB 10:

1. The terms "occupation" and "profession" are used interchangeably throughout the bill, however, there is a significant difference. Professionals must satisfy a recognized regimen of university education, satisfactory mentored experience, and they must qualify for and pass a jurisdictionally recognized, psychometrically valid examination, or series of examinations, to confirm competence. The potential for catastrophic harm to the public's health, safety, and welfare serves as the clear and rational motivation for licensing architects. Architectural practice is not merely an "occupation".

2. Simply put, the general intent of this bill is to remove or lower perceived regulatory barriers to entry for all vocations, occupations, professions, jobs, or any other term you care to use. This bill is aspirational in nature. Section 1(c)(4) is a prioritized list, modified somewhat from the Institute for Justice's upside-down pyramid, showing the Institute's recommended levels of regulation, from "least" to "most regulated". As you are aware, the Institute for Justice is a law firm based in Arlington, VA attempting to promote the restriction of state regulatory legislation on a national scale. There is no doubt where this list came from, it is not original to the bill's sponsors. The intent of the list is clear, and could be a basis for policy, but is not sufficiently defined to be able to be written into law as a "standard". It is too vague and does not serve as a rigorous benchmark against which the Board of Technical Professions can realistically comply with requirements listed later in the Bill.

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3. Section 2(a) limits all rules and regulations to those "demonstrably necessary and carefully promulgated to fulfill legitimate public health, safety or welfare objectives". Conceptually it sounds good, but functionally and pragmatically, it will be a nightmare to respond to, and certainly is not a clear "standard" that can be met as required by the next section 2(b)(4). For the architectural profession, this process of "careful promulgation" of "demonstrably necessary" regulation has been underway since 1919 when NCARB was founded. It continues today with cyclical, predictable confirmation of professional educational curricula, the structure and duration of the experiential requirements, and the structure and delivery of the professional examination. Our profession already implicitly complies with the requirements of the proposed SB 10 Section 2. As a testament, all 55 jurisdictions in the United States, including Kansas, as well as Canada, New Zealand, Australia, and Mexico internationally, recognize the NCARB experiential and examination requirements.

4. Sections 2(b), 2(c), and 2(d) on page 3 are, in essence, "sunset" requirements which require all agencies to prove their value, and not just every few years, but EVERY year as outlined in line 30. Generally, the metrics and analysis required to be reported by 2(b)(3) and 2(b)(4) do not make pragmatic sense. Currently, the Board of Technical Professions does not have the funds or staff to continuously revisit the enabling statutes, rules, and regulations every year, seeking each year "newly obsolete" or inapplicable regulations. Functionally, regulation of the architectural profession simply has not had the need to annually change the entire licensing process. A requirement for redundant yearly reporting of the same information, which has already been well-vetted, will be a constant, 12-month cycle of wasted resources - resources that are not available.

5. Section 3 takes the normal, accepted process of updating enabling statutes, rules, and regulations (drafts, reviews, rewrites, public hearings, etc.) and now places it in the hands of disgruntled plaintiffs and their lawyers. Further, this Section requires the courts to evaluate and then categorize the statutes, rules, and regulations against the policy "hierarchy" of regulatory levels listed in 1(c)(4), which is, as noted above, indeterminate and vague at best. The Board will be required to respond to any petition in the prescribed manner, and to defend current enabling legislation in court. There will be a cost to the State to defend these challenges; the costs for which will either need to come out of the general fund or from the Board's own budget. Additionally, if the State's Administration legal counsel is assigned to these cases, there will be issues of manpower or time allotment. If the Board of Technical Professions assumes these costs, the licensee's fees will need to be increased (adding a further barrier to practitioners).

6. Section 3 also provides a licensee, or other individual involved in a disciplinary action brought by the Board, an immediate path for claiming the applicable statutes, rules, and regulations are too restrictive and therefore shouldn't be enforced against them. With cases normally carrying over from year to year, it will be very difficult to enforce compliance when there are constant challenges to the statutes, rules, and regulations which are themselves being challenged yearly.

7. Section 3 requires the Board, should they lose due to a "preponderance of the evidence" (another vague, flexible standard), to pay the plaintiff's attorney's fees. The result is that not only is the State paying

for the Board of Technical Professions' representation, the State of Kansas will also be paying the plaintiff's attorney's fees. This does not make sense on either the premise or the result.

In conclusion, this bill is aspirational at best, vague in its standards and requirements, and will be difficult, wasteful, and costly to comply with. The financial and operational impact to the Board of Technical Professions, the architect's renewal fees that pay the Board's bills, and to the State itself result in a counterproductive, expensive, unfunded, and duplicative effort. The current statutes, rules, and regulations on the books, which are updated when reasonably necessary, are and have been successful. SB 10 simply piles on more expensive governmental requirements in the effort to "reduce regulation". The profession of architecture is a mature profession, critical to the protection of the life, safety, and welfare of the public, a profession that is vigilant in the effective maintenance and updating of a sound regulatory process. SB 10 provides nothing of additional value to the regulation of our profession.

Sincerely

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