

Held in Room 526, at the Statehouse at 3:30 a. m./p. m., on February 28, 19 79.

All members were present except:

The next meeting of the Committee will be held at 3:30 a. m./p. m., on March 1, 19 79.

These minutes of the meeting held on February 27, 19 79 were considered, corrected and approved.

JOSEPH J. HOAGLAND

Chairman

The conferees appearing before the Committee were:

Frank Gentry, Kansas Hospital Association
Charlie Hamm, Attorney, SRS
Donald Amrein, Johnson County Court Trustee
Representative Gus Bogina
George Barbee, Kansas Consulting Engineers
Bob Hartsook, Kansas Engineering Society
Richard Bassett, Topeka, Kansas

The meeting was called to order at 3:30 p.m. and Chairman Hoagland explained HB 2610 to the committee. He then introduced Frank Gentry with the Kansas Hospital Association who indicated they would like to see some wording placed in the bill for services not covered by Title XIX. The Revisor's staff member was asked to write this in the form of an amendment.

Charlie Hamm, Attorney for SRS gave a brief statement describing to the committee the Title XIX Program which is now in effect.

HB 2608, relating to court trustees act, was then explained by Donald Amrein, Johnson County Court Trustee. He testified that the bill would be to place "alimony" back in the act to be considered as "support."

Representative Bogina, major sponsor of HB 2392 then explained the bill to committee. This bill would provide for allowing liens for professional services for improvement of real property. This would be a new lien law and not a modification of the existing law.

Rep. Bogina then introduced George Barbee, Kansas Consulting Engineers, who testified in favor of HB 2392. (SEE ATTACHMENT # 1). He also handed out to the committee testimony from the Kansas Savings and Loan League, which favors HB 2392 also. (SEE ATTACHMENT # 2).

Bob Hartsook, Kansas Engineering Society testified their endorsement of HB 2392.

Chairman Hoagland passed out a copy of a letter from Ross Martin, Executive Director of the Kansas Society of Architects, which stated their favorable position on HB 2392. (SEE ATTACHMENT # 3).

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

minutes of the HOUSE Committee on JUDICIARY February 28 19 79

Richard Bassett, a home builder in Topeka, testified against HB 2392. He said he was against the concept of a lien being placed on the real estate rather than the owner. He is concerned with the 120 day period before the lien becomes a lien of record.

Following a brief discussion by committee members, the meeting adjourned at 4:35 p.m.

KANSAS CONSULTING ENGINEERS

GEORGE BARBEE, EXECUTIVE DIRECTOR — 803 MERCHANTS NATIONAL BANK — 8TH & JACKSON, TOPEKA, KANSAS 66612 — PHONE (913) 357-1824

STATEMENT TO
HOUSE JUDICIARY COMMITTEE
REGARD HB-2392

Mr. Chairman and members of the committee, my name is George Barbee and I am the Executive Director for the Kansas Consulting Engineers representing Kansas consulting engineering firms in Kansas and the metropolitan area of Kansas City.

In addition to federal, state and municipal clients, the consulting engineer also services clients in private enterprise. We experience problems with governmental clients for slow pay, but with some private enterprise, the problem is "no pay". Most often, this occurs when a developer has an idea to build a new shopping center, subdivision, mobile home park, or a similar project. The financial success of the project is dependent upon generation of income by selling lots, leasing lots, or leasing space in shopping centers.

The developer all too often abandons the project because of unanticipated problems with regulations dealing with floodplain, zoning or Environmental Protection Agency. Consequently, the project never reaches the income-producing stage and the engineer has difficulty getting paid for his services for designing the roads, storm sewers, plat preparation, zoning information, etc. These services are performed even though there may not be any improvement to the property because the project is abandoned or delayed.

HB-2392 would give lien rights to engineers, architects, landsurveyors and landscape architects for services performed under contract with the owner, trustee or agent of the owners. The lien filed by any person performing the designated services does not take precedence over another lien filed on an earlier date. The bill requires that the lien be filed four months from the time the services are performed. The date that the lien was filed would be the effective date of the lien, not the date that the services were performed. The bill calls for filing information requirements with the clerk of the county court, listing the name of the

AFFILIATED WITH:
KANSAS ENGINEERING SOCIETY
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS
PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
AMERICAN CONSULTING ENGINEERS COUNCIL



Atch. 1

owner, the name of the claimant, a description of the property, a copy of the contract and the amount of the claim. After the date of filing, the professional would have one year to bring action to foreclose a lien.

This bill is not an amendment to the mechanics lien law, but a separate statute to fill a void in the law. In 1975, the Attorney General's office rendered an opinion regarding the question of lien rights for professional services. The opinion addresses itself to the various methods of filing liens such as mechanics liens and artisans liens and then summarizes that it is by no means clear that design services are lienable under KSA 60-1101. So, it appears that there is a void in this area of the law.

It is my understanding that the Kansas Savings & Loan League distributed a statement to you going on record as supporting HB-2392. It is my understanding that a lending institution, as a prerequisite to a loan approval, sends someone to the site of the property to determine if any improvements have been made. Many times, services have been rendered by professionals even though they are not visually apparent at the site. This bill would clear up any misunderstandings because of the lien being recorded on the docket with the clerk of the district court, providing a convenient source to determine if there are outstanding debts.

HB-2392 would provide a tool to protect the scrupulous from the unscrupulous by applying some leverage to procure payment for services rendered. I thank you for the opportunity to appear before the committee and ask that you act favorably on this bill. I would be glad to attempt to answer any questions that you might have now or after other conferees have made their presentation.

February 28, 1979

TO: HOUSE COMMITTEE ON JUDICIARY
FROM: JIM TURNER, KANSAS SAVINGS AND LOAN LEAGUE
RE: H.B. 2392 (PROFESSIONAL LIEN LAW)

The Kansas Savings and Loan League appreciates the opportunity to file a statement with the Judiciary Committee regarding House Bill No. 2392 relating to granting lien rights to certain professional persons.

The League sincerely appreciates the cooperation and efforts of the Kansas Consulting Engineers to work with us in their drafting of this proposal. We sympathize with their problems in this area and feel that the requirements for the filing of notice with the district court is sufficient to protect first mortgage lien rights required of lenders. Accordingly, we have no objection to the passage of H.B. 2392.

James R. Turner
President

JRT:bw

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THE KANSAS SOCIETY OF ARCHITECTS, AIA

724 Kansas Avenue Topeka Kansas 66603 913-357-5308 A Chapter of the American Institute of Architects

February 27, 1979

Representative Joseph J. Hoagland
Statehouse
Topeka, Kansas 66612

Dear Representative Hoagland:

On February 28, your House Judiciary Committee will hear testimony on House Bill No. 2392 - a bill which is of considerable consequence to members of The Kansas Society of Architects. Unfortunately, I must meet an out-of-town commitment that day and cannot appear, but I want you to know our organization urges passage of the bill.

As we understand it, the bill permits architects and others to file a lien when they have not been compensated for professional services in connection with projects such as subdivisions and shopping center developments. The bill gives an architect an opportunity to file a lien within 120 days after services are last performed. Such a lien does not have priority over previously filed liens.

This legislation, we believe, is urgently needed since there is a void in the law presently and it is not clear whether a mechanic's lien could be applied.

Far too often, development projects never reach completion. Sometimes an owner simply fails to pay for professional services though his project is successful. The problem architects have is they cannot ascertain prior to performing services that a project will succeed. Their dilemma is that they must accept work on good faith without absolute assurance of the owner's capacity to finance - or his intention to fully compensate them. The plans, specifications, drawings, and other services must be prepared or provided at the project's inception. If a project is cancelled or an owner balks at paying for services, the architect has no expedient means to recoup hundreds - even thousands of dollars of expenses he has incurred. House Bill No. 2392, by allowing the design professional to file a lien, puts him on the same footing as a contractor or materialsman who already enjoys lien rights.

We commend Representatives Bogina, Brewster, Rosenau, and Stites for their authorship and trust the Committee will recognize the merit of House Bill No. 2392 by passing it.

Thank you, Mr. Chairman. We will appreciate your informing the Committee of our position.

Yours truly,



J. Ross Martin
Executive Director



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