

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE.

The meeting was called to order by Chairman Donald Dahl at 9:00 a.m. on February 5, 2003 in Room 243-N of the Capitol.

All members were present

Committee staff present: Jerry Ann Donaldson, Kansas Legislative Research Department
Renaë Jefferies, Revisor of Statutes
June Evans, Secretary

Conferees appearing before the committee: Thomas M. Moore, Moore, Hennessy and Freeman, P.C.
Rich Jones, Branch Manager, Lawrence/Topeka, Western Extralite, Co.
Donald B. Dawson, Kansas City Chapter Manager, NECA
W. R. Miller, President, Building Erection Services Co.
Kathy Tolle, National Association of Credit Management
Kenneth Keller, Controller, Western Extralite Company
Wendy Harms, Associate Director, Kansas Ready Mixed Concrete Association
Corey D. Peterson, Executive Vice President, Associated General Contractors of Kansas, Inc.
Dean Ferrell, Farrell Construction of Topeka, Inc.
Roy Worthington, Chairman, Legislative Committee Kansas Land Title Association
Chris Wilson, Director of Governmental Affairs of the Kansas Building Industry Association (KBIA)
Kathleen Taylor Olsen, Kansas Bankers Association

Others attending: See attached sheet

The Chairman called the meeting to order and announced the committee would be meeting permanently in Room 243-N.

The Chairman opened the hearing on **HB 2064 - Filing times on certain liens extended for property other than residential property.**

Staff gave a briefing on **HB 2064**. Any person claiming a lien on real property, under the provisions of K.S.A. 60-1101, and amendments thereto, shall file with the clerk of the district court of the county in which property is located, within four months when such property is residential property, and within 6 months when such property is other than residential property, after the date material, equipment or supplies, used or consumed was last furnished or last labor performed under the contract a verified statement showing: (1) name of owner (2) name and address sufficient for service of process of the claimant (3) description of real property and (4) itemized statement.

Thomas A. Moore, Attorney at Law, Moore, Hennessy & Freeman, P.C., testified as a proponent to **HB 2064**, stating the present mechanic's lien law is much too restrictive time-wise to allow the construction industry to function in what has become a generally accepted manner. A subcontractor or a supplier is required to file a mechanic's lien against the real estate and the improvements thereon within three (3) months of the last day worked on or the last material delivered to the project to be able to avail itself of the mechanic's lien remedy. The three month period of time is much too short and has resulted in many more liens being filed by a contractor or a supplier (as well as the original contractor) within six months of the last day worked on or the last materials delivered to the project. This longer period of time to file a lien has, based upon experience, allowed the owner and the contractors to resolve their differences without the real estate and improvements being encumbered. The shorter period of time results in proportionately a higher percentage of liens being filed in Kansas than in Missouri and much more rapid voluntary resolutions of disputes between the owner and contractors in Missouri than in Kansas.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE at 9:00 a.m. on February 5, 2003 in Room 243-N of the Capitol.

It is believed that extending the time in which any contractor or supplier may file a lien benefits all parties involved in the construction project - owners, banks, contractors, subcontractors and suppliers. It also allows an attorney for an aggrieved contractor or supplier to utilize the mechanic's lien remedy as a last resort rather than as a first resort. As a result this would be beneficial for all parties to the construction project including lenders and owners.

Given the benefits which flow overall to all of the parties, the proposed six month time limitation should be enacted to replace the present three month mechanic's lien law time limitations in Kansas (See Attachment 1).

Rich Jones, Branch Manager, Lawrence/Topeka, Western Extralite Company, testified in support of **HB 2064**, stating the issue of lien time has been a problem for the people in the contracting industry. Relationships of years can flat get destroyed when owners, contractors, sub-contractors work together and a payment isn't made and down the line and a lien is needed. As a business operator in Kansas he has been looking at what other parts of the country are doing. Some states have liens at the beginning of the project.

Don Dawson, Chapter Manager, Kansas City Chapter, National Electrical Contractors Association (NECA), testified as a proponent to **HB 2064**. By extending the time period to six months the contractors of all types would have more time to reconcile construction contract issues prior to having to file a mechanics lien, thereby helping to preserve business relationships that might otherwise be jeopardized. Keeping valuable business relationships is important to all contractors. The current time period is three months, which, in many instances limits the ability of contractors to get issues resolved, and forces the filing of a mechanics lien. NECA believes extending the time period to file a mechanics lien would reduce the actual number of liens filed because more time would enable contractors the opportunity to resolve outstanding issues (Attachment 2).

W. R. Miller, President, Building Erection Services Company, Olathe, testified in support of **HB 2064**. Due to the ninety day requirement the company is forced to file numerous liens in Kansas in order to protect their payment rights. This is costly and burdensome and upsets many customers and owners (Attachment 3).

Kathy Tolle, National Association of Credit Management, Kansas City Division, Inc. testified as a proponent to **HB 2064**. This bill would allow those companies selling materials or providing services to commercial builders and commercial construction sites more time to resolve disputes before having to file liens to protect their interest. This enables companies to build better customer relationships and save on the expense of filing mechanics liens which are costly (Attachment 4).

Kenneth R. Keller, Controller, Western Extralite Company, Kansas City, MO, testified as a proponent to **HB 2064**. Western Extralite is a wholesale electrical distributor with business locations in Kansas and Missouri. A large portion of sales is to electrical contractors working in the construction industry and is sold on credit. Mechanics liens are one of the primary remedies available to those in the construction industry to collect payments on unpaid sales. This should be used only as a last resort.

The mechanic's lien itself is similar in Kansas and Missouri. However, the time for filing a lien is quite different. The suppliers and subcontractors in Kansas, whether they are plumbers, electricians, concrete workers, etc., have three months to file a mechanic's lien from the last day worked or material is delivered to a project. Those same suppliers and subcontractors in Missouri have a 6-month filing period. The time differential is extremely important. The time frame is entirely unreasonable, unworkable and too short. Western Extralite Company urges passage of **HB 2064** extending the time for mechanic's lien filing from 3 months to 6 months for non-residential properties (Attachment 5).

Wendy Harms, Associate Director, Kansas Ready Mixed Concrete Association (KRMCA), testified in support of **HB 2064**. KRMCA is a statewide trade association comprised of over 75 producer members and one of the few industries to be represented in every county of the state.

The industry has observed an increasing trend in lengthened payments over the years. Due to the many certifications, tests, sign-offs and other requirements, architects and engineers tend to withhold payments until

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE at 9:00 a.m. on February 5, 2003 in Room 243-N of the Capitol.

the paperwork is done. This has often led to situations where the industry is forced to file lien notices in 75 days and actual liens by 90 days even when they know the money is forthcoming. Approval of **HB 2064** would allow for a more orderly payment period on commercial projects (Attachment 6).

Dean Ferrell, President, Ferrell Construction of Topeka, Inc., testified in opposition to **HB 2064**. The bill extends the lien filing deadline for subcontractors and suppliers on non-residential construction projects from ninety (90) days to one hundred eighty (180) days. This change places general contractors in a "no win" situation and it has to do with who actually has the lien rights. Not only does a general contractor's subcontractors have lien rights, but the suppliers and subcontractors of the first tier subcontractor has lien rights as well. A general contractor keeps track of making certain first tier subcontractors are paid and tries to make certain they are paying their subcontractors and suppliers.

If the second tier subs and suppliers would keep the owner and/or general contractor informed of the slow paying first tier subcontractor, money could be withheld from the subcontractor or joint checks could be issued to assure all parties are paid in full; however, many rely on their right to file a lien. Many wait until the first tier subcontractor is paid in full before they file a lien, which, in essence, forces the general contractor, in order to keep the project lien free, to pay for the same work twice. Extending the deadline would not solve any problems. It would only make matters worse for general contractors and property owners and, at the same time, allow second tier vendors and subcontractors to become even more relaxed in their bill collecting practices (Attachment 7).

Corey D. Peterson, Executive Vice President, Associated General Contractors (AGC) of Kansas, Inc., testified as an opponent to **HB 2064**. The AGC opposes for the following reasons: (1) Current law has served Kansas well for decades. Outside the few proponents from one small geographical area, this proposed change has received little support and much opposition from constituents in the majority of Kansas. (2) The period of six months is too long and unnecessarily puts owners and contractors at risk to pay for materials twice, particularly to suppliers not paid by subcontractors who were paid. (3) Extension would unnecessarily protract close-out jobs. (4) Owners will withhold final payment until lien filing period has ended to insure all bills have been paid. (5) Since renovation and new construction is affected, real estate transactions may be delayed or cancelled due to additional title insurance expenses. Economic activity should be promoted, not discouraged. (6) Change would encourage companies with poor accounts receivable management to delay inevitable collection and management decisions for up to 6 months. The AGC would support a change that would extend the lien filing time for subcontractors and suppliers to 120 days; the same that is currently afforded general contractors (Attachment 8).

Roy Worthington, Chairman, Legislative Committee Kansas Land Title Association, testified opposing **HB 2064**. The current law is a fair balance between the rights of property owners to protect their titles to real estate and the rights of contractors and subcontractors to file liens if their bills for material and/or labor are unpaid (i.e. currently 4 months for contractors and 3 months for subcontractors). It would be unfair to property owners to extend the time period for filing liens to 6 months after work is completed.

The suggested amendment is proposed: Amend 60-1103b - Subcontractors' liens; new residential property; *property other than residential property*. Add c. *A lien for the furnishing of labor, equipment, materials or supplies for property other than residential property; may be claimed pursuant to K.S.A. 60-1103 and amendments thereto only if the claimant has filed a notice of intent to perform work at the job site within thirty (30) days after commencement of furnishing labor, equipment, materials or supplies to the job site. Such notice shall be filed in the office of the clerk of the district court of the county where the property is located.*

Renumber the existing paragraphs. "Residential property" needs to be defined (Attachment 9).

Chris Wilson, Director of Governmental Affairs of the Kansas Building Industry Association (KBIA), opposed **HB 2064** and stated this only dealt with commercial projects. It would be very confusing to the Association to have two different time periods for filing liens. The current law is working well. It is felt if the lien filing period was extended, it would create a false sense of security for companies knowing they have the extended time period. They might, therefore, delay evaluation of whether a lien is needed (Attachment 10).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE at 9:00 a.m. on February 5, 2003 in Room 243-N of the Capitol.

Kathleen Taylor Olsen, Kansas Bankers Association (KBA), testified their concern was that by extending the time in which a lien could be filed, the legislature would also be extending the time in which the title to that property would be clouded. This may end up delaying the closing of the transaction between lender and borrower. This has the potential of creating a hardship on the business property owner who is trying to finalize the transaction.

KBA suggests the committee consider requiring contractors and subcontractors on commercial property to file a Notice of Intent to Perform in order to establish their potential lien on the property (Attachment 11).

The following submitted written testimony in support of **HB 2064**: George R. McGrew, General Counsel, Shawnee Rock Company (Attachment 12), Alan F. Alderson, Southwestern Association and Electric League (Attachment 13) and in opposition of **HB 2064**: Phil Sewell, Central Mechanical Wichita (Attachment 14).

The meeting adjourned at 10:55. The next meeting will be February 6.

COMMERCE AND LABOR

DATE February 5, 2003

NAME	REPRESENTING
Tom Burgess	WACM
Tom Slattery	
Wendy Williams	KRMCA
Kathy Olsen	KS Bankers Assn
Ken Keller	NACM
Don Dawson	KC Chapter NECA/IBEW
Tom Moore	Moore Hennessey & Freeman, PC
Guthy Zell	NACM
P. Jones	NACM
Gene Calahan	Cargill
Kurt Borremann	NACM
Rose V. Skelton	NACM
RICHARD JONES	NACM
Will CARSON	IABC
DEAN F. FERRELL	FERRELL CONST.
Corey Peterson	AGC of KS
Steve Mohan	Mohan Construction
Kevin Kelley	Kelley Construction Co., Inc.
Wayne Maubius	KS AFL-CIO
Jim McHaff	KS AFL-CIO
Chuck Stones	KBA

PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW

Thomas M. Moore, Attorney at Law
Moore, Hennessy & Freeman, P.C.
Kansas City, MO

February 2003

Commerce &
Labor
2-5-03
Atch # 1

MHF

MOORE HENNESSY & FREEMAN, P.C.

ATTORNEYS AT LAW

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January 24, 2003

KANSAS OFFICE:

11903 WEST 119TH STREET
OVERLAND PARK, KANSAS 66223

The Honorable Don Dahl
Chairman House Commerce & Labor Committee
Kansas State Capital Building - Room 156-E
300 SW 10th
Topeka, Kansas 66612

Re: Mechanic's Lien Law Revisions

Dear Chairman Dahl:

I have been practicing law in the Kansas City Metropolitan Area for 31 years with my primary field of expertise in construction contract matters, construction claims and government contract claims. My firm and I have represented general contractors, subcontractors and material suppliers, as well as owners and surety companies. Our representation, while focused primarily in Missouri and Kansas, has extended nationally in resolving disputes through many available remedies and in many various jurisdictions. One of the primary remedies utilized for our clients, especially subcontractors and suppliers, for collection of contract sums due, is through various mechanic's lien laws. These laws vary from state to state with respect to notices, time for filing liens and the availability of the remedy for use by various sub-tiers of contractors and suppliers on and to a construction project. We have filed liens in a number of different jurisdictions to accomplish payment to our clients.

Specifically, the present Kansas mechanic's lien law, in our opinion, is much too restrictive time-wise to allow the construction industry to function in what has become a generally accepted manner. A subcontractor or a supplier is required to file a mechanic's lien against the real estate and the improvements thereon within three (3) months of the last day worked on or the last material delivered to the Project to be able to avail itself of the mechanic's lien remedy. The three (3) month period of time, in our opinion, is much too short and has resulted in many more liens being filed than should be necessary. In contrast, the Missouri mechanic's lien law allows a lien to be filed by a contractor or a supplier (as well as an original contractor) within six (6) months of the last day worked on or the last materials delivered to the project. This longer period of time to file a lien has, based upon our experience, allowed the owner and the contractors to resolve their differences without the real estate and improvements being encumbered. This shorter period of time in Kansas, in our opinion, results in proportionately a higher percentage of liens being filed in Kansas than in Missouri and much more rapid voluntary resolutions of disputes between the owner and contractors

in Missouri than in Kansas. Voluntary resolution is obviously the most preferential manner, from our point of view, to remedy disputes.

Based upon our experience, the most prevalent reaction to the filing of a mechanic's lien is a polarization between the owner and contractors or between the contractors and the subcontractors (suppliers). This is obviously to be expected because a mechanic's lien does, in fact, constitute an encumbrance on the real estate. Relationships between the owner and its lender can become immediately strained which results in even more strained relationships among the owner and its general contractor as well as among the contractors and suppliers running down the line of subcontracts and purchase orders. For that reason alone, we view a mechanic's lien as a remedy of last resort; certainly not one of first resort which, because of the very short Kansas lien law time frames (3 months and 4 months) has become necessary. The six (6) month period for filing a lien certainly allows a much greater opportunity for voluntary resolution of disputes. It is not unusual that we represent suppliers who supplied materials on projects owned by the same entity, in Kansas and in Missouri. It is normal that we are to file liens against the project in Kansas rather than lose our lien rights. The mere filing of the liens, in our opinion, creates much hardship and many more difficulties in reaching a voluntary resolution of all issues. On the Missouri projects, on the other hand, we are able to wait another 2 to 3 months because of the longer lien time and it is not unusual that those are resolved first without action.

Furthermore, in our representation of subcontractors and material suppliers, it is clear that on many construction projects, our clients do not even become aware of any payment problem until seventy-five (75) days or so have run from the last day worked on, or the last day materials were delivered to, the project. Under those circumstances, it is necessary immediately to commence preparation and filing of a mechanic's lien. Equally a problem, and certainly now generally accepted in the construction industry, is the fact that retainage due at the end of a project probably will not even become due until three (3) months or so after a subcontractor has worked on, or a material supplier has provided material to a project. In those instances, the subcontractor or supplier has absolutely no option other than to file a mechanic's lien or lose a very valuable remedy, which may later develop to be the only viable manner in which monies due are to be collected, to collect retainage. In the circumstances where sums may not even be contractually due before it becomes necessary to file a mechanic's lien in Kansas, business relationships among all parties are certainly adversely affected and collection of the sums due then becomes much more protracted and expensive. Additionally, of course, court dockets, which are full enough anyway, become even fuller and more bogged down.


Extending the time in which any contractor or supplier may file a lien, in our opinion, benefits all parties involved in the construction project - owners, banks, contractors, subcontractors and suppliers. It also allows an attorney for an aggrieved contractor or supplier to utilize the mechanic's lien remedy as a last resort rather than as a first resort. The six (6) month time limitation, based upon our experience, gives an attorney an opportunity to write a demand letter or for the attorney's client to notify everyone involved that money is still due and owing to it. The longer time limitation for the filing of a lien, based upon our experience, has certainly resulted in fewer liens being filed in slow payment situations in Missouri than in Kansas which has the very short three (3) month and four (4) month time limitations. Again, that result, in our opinion, is beneficial for all parties to the construction project including lenders and owners. It also merely

acknowledges what have become presently accepted construction payment cycles.

Given the benefits which flow overall to all of the parties, the proposed six (6) month time limitation, in our opinion, ought to be enacted to replace the present four (4) month and three (3) mechanic's lien law time limitations in Kansas.

Yours very truly,

MOORE HENNESSY & FREEMAN, P.C.

By: 
Thomas M. Moore

TMM:smb

cc: Ken Keller

PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW

Donald B Dawson, Chapter Manager
Kansas City Chapter, NECA
Kansas City Missouri

February 2003

Commerced
Labor
2-5-03
Atch #2

APSC

Alliance of Professional Specialty Contractors
P.O. Box 32255
Kansas City, Missouri 64171
Phone (816) 753-7154
Fax (816) 931-2314

February 3, 2003

TO: Kansas House of Representatives – Commerce and Labor Committee

RE: House Bill No. 2064 – Relating to the Filing of Mechanics Liens – Extending Time for Filing Mechanics Liens on Non-Residential Properties

Ladies and Gentlemen:

The Alliance of Professional Specialty Contractors is very supportive of House Bill No. 2064. This bill, if approved, would extend the time allowed to file mechanics liens to a period of six months on non-residential property.

By extending this time period, contractors of all types would have more time to reconcile construction contract issues prior to having to file a mechanics lien, thereby helping to preserve business relationships that might otherwise be jeopardized. Keeping valuable business relationships is important to all contractors. The current time period is three months, which, in many instances limits the ability of contractors to get issues resolved, and forcing the filing of a mechanics lien. In addition, extending the time period to file a mechanics lien would, in our estimation, reduce the actual number of liens filed because, again, more time would enable contractors the opportunity to resolve outstanding issues.

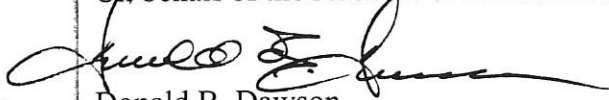
We believe the provisions of House Bill No. 2064 would be beneficial to contractors and customers doing business in the State of Kansas. We respectfully request your support for House Bill No. 2064.

The Alliance of Professional Specialty Contractors (APSC) is a trade association representing several chapters of local specialty construction trade associations, including the Fire Sprinkler Association of Kansas City (FSA); Kansas City Insulation Contractors (KCIC); Mechanical Contractors Association of Kansas City (MCA); Kansas City Chapter, National Electrical Contractors Association (NECA); and the Sheet Metal Contractors National Association-Kansas City (SMACNA). These trade associations represent over two hundred specialty contractors working in the State of Kansas.

Thank you.

Sincerely,

On behalf of the Alliance of Professional Specialty Contractors



Donald B. Dawson
Chapter Manager, Kansas City Chapter, NECA



PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW

W. R. Miller, President
Building Erection Services Company
Olathe, Kansas

February 2003

Commerced
Labor
2-5-03
Atch #3

BUILDING ERECTION SERVICES COMPANY

15585 S. KEELER • P.O. BOX 970 • OLATHE, KANSAS 66051-0970
(913) 764-5560 • FAX (913) 764-2317

February 3, 2003

The Honorable Donald Dahl
Kansas State Capital Building
Room 156 E.
300 SW 10th
Topeka, KS 66612

Re: Extending time for Filing Mechanics Liens on Non-Residential Property

Dear Mr. Mays:

I am writing this letter to urge your support for the pending bill to extend the time allowed to file Mechanics Liens on Non-Residential Properties.

Due to the ninety (90) day requirement, we are forced to file numerous liens in Kansas in order to protect our payment rights. This is costly and burdensome for us and upsets many customers and owners.

We want the Kansas Lien filing time to parallel Missouri's six (6) months from the last date worked on the project.

In the last six (6) months, we have filed twenty (20) liens in Kansas and one (1) in Missouri.

Sincerely,

W. R. Miller
President
BESCO



PROPOSED CHANGE

IN THE

MECHANIC LIEN LAW

H. Patrick Tolle, President
NACM – Kansas City Division, Inc.
National Association Of Credit Management

February 2003

Commerce &
Labor
2-5-03
Atch # 4



NATIONAL ASSOCIATION OF CREDIT MANAGEMENT

KANSAS CITY DIVISION, INC.

GENERAL OFFICE 913-383-9300

10670 BARKLEY
P. O. BOX 12370
OVERLAND PARK, KS 66212

January 31, 2003

The Honorable Donald Dahl
Chairman House Commerce & Labor Committee
Kansas State Capitol Building Room 156-E
300 SW 10th Street
Topeka, KS 66612

Dear Chairman Dahl:

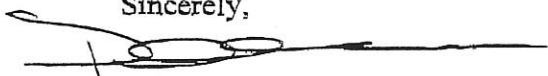
The National Association of Credit Management has been in the business of supporting the needs of commercial credit grantors for over 100 years. Part of our responsibility is to help members with local, state and national legislative efforts.

Mr. Ken Keller, Chairman of our Legislative Committee has reported that HB 2064 has been assigned by Speaker Mays to your committee. This bill extends the time for the filing of mechanics liens from three months to six months. This allows those companies selling materials or providing services to commercial builders and commercial construction sites more time to resolve disputes before having to file liens to protect their interest. Companies are then allowed to build better customer relationships and most importantly, save on the expenses of filing mechanics liens.

The N.A.C.M. Kansas City Division supports this legislation through our membership. It is our hope that your committee will pass this bill on to the House without delay for passage.

Thank you for your consideration.

Sincerely,


H. Patrick Tolle
President

PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW

Kenneth Keller, Controller
Western Extralite Co.
Kansas City MO

February 2003

Commerce &
Labor
2-5-03
Atch # 5

WESTERN EXTRALITE COMPANY

DISTRIBUTORS OF QUALITY ELECTRICAL & VOICE/DATA PRODUCTS

1470 Liberty Street • Kansas City, MO 64102-1018

www.westernextralite.com

January 23, 2003

Kansas City, MO

1470 Liberty Street
Kansas City, MO 64102
816-421-8404

St. Louis, MO

2444 Northline Industrial Blvd.
Maryland Heights, MO 63043
314-432-4560

Lee's Summit, MO

105 N.W. Victoria Drive
Lee's Summit, MO 64086
816-246-8300

N. Kansas City, MO

1124 Howell Street
N.K.C., MO 64116
816-421-5888

St. Joseph, MO

1302 Frederick Ave.
St. Joseph, MO 64501
816-364-4500

Sedalia, MO

301 Thompson Blvd.
Sedalia, MO 65301
660-827-3880

Warrensburg, MO

608 N. Ridgeview Drive
Warrensburg, MO 64093
660-429-6900

Lawrence, KS

1811 West 31st Street
Lawrence, KS 66046
785-843-4174

Leavenworth, KS

4601 Brewer Place
Leavenworth, KS 66048
913-727-2941

Lenexa, KS

14903 W. 99th Street
Lenexa, KS 66215
913-768-1777

Manhattan, KS

221 Colorado Street
Manhattan, KS 66502
785-539-5665

Topeka, KS

4024 S. Topeka Blvd.
Topeka, KS 66609
785-266-3541

The Honorable Don Dahl
Chairman of the House Commerce & Labor Committee
Kansas State Capitol Building
Room 156-E
300 SW 10th
Topeka, KS 66612

Dear Representative Dahl:

RE: EXTENSION OF TIME FOR FILING MECHANIC'S LIENS – NON-RESIDENTIAL PROPERTIES

My name is Ken Keller and I am the controller at Western Extralite Company, a wholesale electrical distributor with business locations in Kansas and Missouri. In Kansas, we have facilities in Topeka, Lawrence, Lenexa, Leavenworth, and Manhattan. A large portion of our sales is to electrical contractors working in the construction industry. A very large portion of our sales is sold on credit.

For the last three years we have gathered considerable support and made an effort to get our bill passed. We have successfully passed it with an over-whelming majority in both Houses, but only in one House per session. This time, with your support, we will be successful.

The issue being discussed is the extension of time for filing mechanic's liens in the State of Kansas. First, we need to identify what is a mechanic's lien. It is an encumbrance that attaches to real property and improvement thereon and remain until satisfied. Mechanic's liens are one of the primary remedies available to those in the construction industry to collect payments on unpaid sales. This should, for reasons outlined later, be used only as a last resort.

The mechanic's lien itself is similar in Kansas and Missouri. However, the time for filing a lien is quite different. Attached you will find a comparison of the time for filing liens between Missouri and Kansas and its affect on the general contractor, subcontractor, and the supplier.

The suppliers and subcontractors in Kansas, whether they are plumbers, electricians, concrete workers, etc., have three months to file a mechanic's lien

5-2

January 23, 2003

Page 2

from the last day worked or material is delivered to a project. Those same suppliers and subcontractors in Missouri have a 6-month filing period. The time differential is extremely important. A commonly used billing term in our industry is payment due 10th prox. This is defined as follows:

1. The billing cycle runs from the 26th day of month 1 to the 25th day of month 2. See the time line enclosed.
2. Payment is due if no cash discount is offered 30 days after the close of the billing cycle. In reality, this is 35 days, which runs through the end of the month. Merchandise invoices dated through the 25th of the month are normally discountable on the following 10th. It would be due without discount at the end of that month. However, invoices dated on the 26th are not due until the 10th of the second month following the end of the billing cycle and would still be subject to cash discount. These would be due and payable net, without discount, at the end of the second month. Thus, an invoice dated January 26 could be 65 days old and still be paid within the terms. This leaves approximately 25 days for the issuer of the invoice to determine there is a problem, try to work with their customer and get paid, or make a determination that they need to prepare for and file a mechanic's lien. This time frame is entirely unreasonable, unworkable, and too short.

Our customer frequently pay invoices from payments they receive from the general contractor. There are a variety of reasons why they may wait 60 to 90 days before they get paid. Payments made by a construction contractor are made monthly and delays frequently occur. The supplier, or the subcontractor, on the other hand, has to file their liens within three months from the date material or work was last delivered or incurred to avoid losing their lien rights. The determining factors for filing a lien are complex. The items to consider are:

1. It is expensive to file and release liens when payments are received a little late.
2. The profit margins in our industry are very close and do not provide for these additional costs.
3. The administrative costs of copying invoices and supporting paperwork to support the liens, as well as the monitoring of those liens, is extremely time-consuming and expensive.

January 23, 2003

Page 3

4. But most importantly, all of us in the industry spend considerable time, effort, and money developing relationships with our customers. These relationships are shattered and destroyed when a lien must be filed.

We believe the Kansas laws should be changed to allow a filing time of 6 months. This is currently being used and working quite well in Missouri. This would result in fewer liens being filed, because you would have a greater time to resolve issues without involving attorneys and legal action, or the threat thereof, thereby preserving the business relationships referred to above. Our attorney tells us that they file three times the liens in Kansas that they do in Missouri. This is a result of the time differential. Our proposed change in the filing time from 3 months to 6 months would benefit the owner, the general contractor, the subcontractor, as well as the suppliers. A longer filing period would not only lighten the back load of law suites in our judicial system, but would reduce the costs to businesses, thus, generating taxable income at a time when Kansas needs all the tax revenues it can find. The fiscal note of our bill is zero.

We urge that the House Commerce and Labor Committee recommend passage of a bill extending the time for mechanic's lien filing from 3 months to 6 months as outlined above. Please bear in mind our proposed bill covers non-residential properties only. The construction industry is critical to the well being of our economy and everything possible should be done to help those that finance the construction activity.

Thank you for your attention and cooperation.

Sincerely,



Kenneth R. Keller
Controller

/bb

5-4

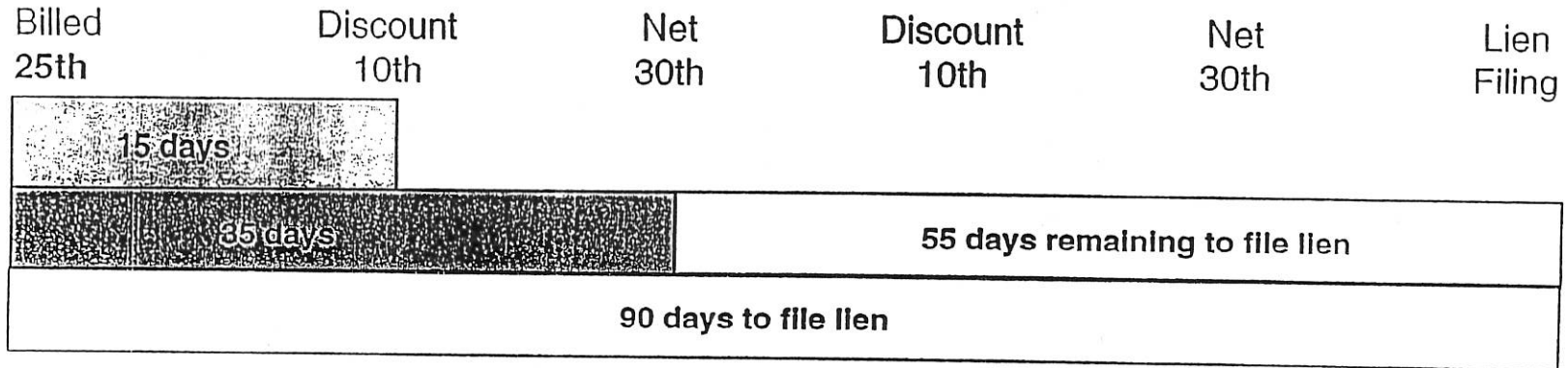
LIEN LAWS - KANSAS AND MISSOURI

<u>Nonresidential Property</u>	<u>Time for Filing Lien *</u>	
	KS	MO
Tier I General Contractor	4 months	6 months
Tier II Subcontractor or supplier to general contractor	3 months	6 months - Must give 10 days notice before filing lien
Tier III Subcontractor to a subcontractor or a supplier to a subcontractor	3 months	6 months - Must give 10 days notice before filing lien

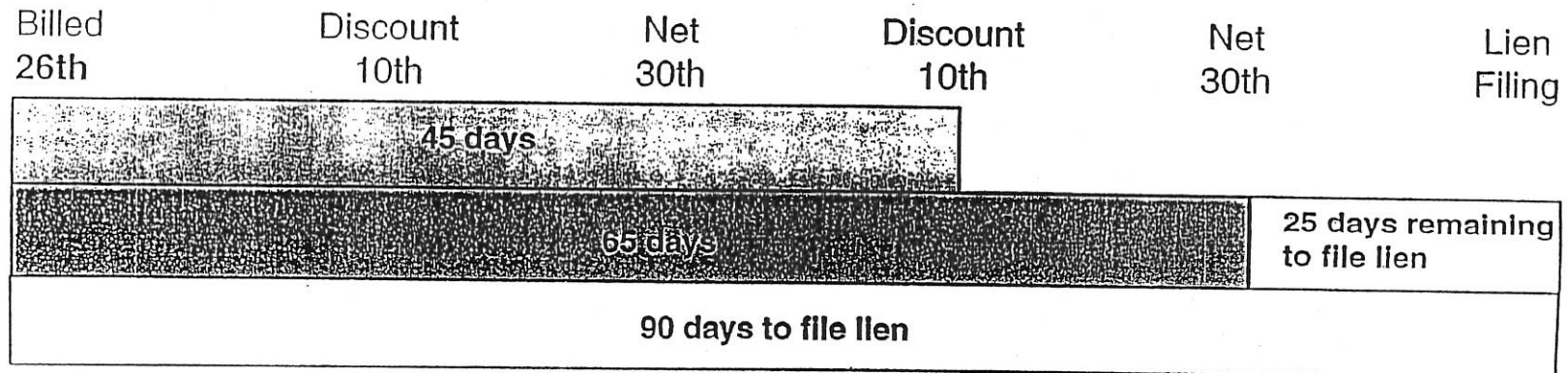
* From date of last material delivered or labor performed.

Time Line — 10th Prox. Payment Term

Example 1:



Example 2:



1-5

Mechanic Liens Filed Summary for 2002

State	County	Population**	Liens Filed	Liens/1000	Est Cost of Filing at 1,500
Kansas	Sedwick	451,684	491	1.0870	736,500
	Johnson	440,198	616	1.3994	924,000
	Shawnee	170,773	244	1.4288	366,000
	Reno	63,702	68	1.0675	102,000
	Total	<u><u>1,126,357</u></u>	<u><u>1,419</u></u>	<u><u>1.2598</u></u>	<u><u>2,128,500</u></u>
				Using Missouri rate Kansas Adjusted Estimated Savings	<u><u>34.68%</u></u> <u><u>738,164</u></u> <u><u>1,390,336</u></u>
Missouri	St. Louis	996,181	469	0.4708	
	St Charles	280,448	98	0.3494	
	Jackson	Not Available			
	Green	227,002	90	0.3965	
		<u><u>1,503,631 *</u></u>	<u><u>657</u></u>	<u><u>0.4369</u></u>	
		Missouri as a % of Kansas		34.68%	

* Excludes Jackson County, Figures Not Available

** Based on 2000 census



January 27, 2003

The Honorable Donald Dahl
Chairperson
Kansas State Capitol Building
300 SW 10th, Room 156-E
Topeka, KS 66612

Dear Representative Dahl:

RE: H.B. 2064 Extension Time For Filing Mechanic's Liens

As a Small Business Owner, I am writing to request your support of H.B. 2064. This proposed change would lengthen the allotted time for filing mechanic's liens.

We currently allow a 30-day grace period after our billing date, which is frequently 30 days after work has been completed. Filing a lien within the 90-day period is often overlooked, because 60 days have passed before the account is noticeably past due.

If the time were extended to 6 months, payment arrangements could be negotiated or other collection attempts put into place. Once these fail, a lien could be filed as a final remedy. Currently, efforts on our part to work with the customer, occasionally allow them to default with no final recourse available.

For example, we completed a tenant finish for a small business owner. She then presented three post-dated checks with a letter assuring us they would be financially caught up in the next two months. Reluctantly, we accepted her agreement. The first and third check cleared, the second was stopped payment for lack of funds. In addition to the unpaid balance, our expenses include legal costs and other filing fees. The bad check has now been filed with the District Attorney's Office. Had the filing time for a lien been extended, one more course of action would have been available to us.

I urge you and the House Federal and State Affairs Committee to support passage. Your consideration is appreciated.

Sincerely,

A handwritten signature in black ink that reads 'Darrell Norris'. The signature is written in a cursive style and is positioned above the printed name and title.

Darrell Norris
President

Dn/cj



KANSAS CITY ELECTRICAL SUPPLY CO.

4451 Troost Avenue
Kansas City, MO 64110-1791
Telephone (816) 924-7000
Fax (816) 931-2918

10900 Mid America Avenue
Lenexa, KS 66219-1235
Telephone (913) 541-1717
Fax (913) 541-1112

January 28, 2003

The Honorable Doug Mays
Kansas State Capital Building Room 380-W
300 SW 10th
Topeka, KS 66612

Dear Representative Mays:


I am asking for your support in passing Bill HB2064 which would extend the filing time of liens. This would considerably reduce the amount of unnecessary liens filed in the State of Kansas, while saving the companies involved thousands of dollars in legal fees.

Kansas City Electrical Supply Co. is a member of the following organizations, which also support the passage of Bill HB 2064:

National Association of Credit Management (NACM)
Electric League of Missouri and Kansas
Greater K.C. Chamber of Commerce

Thank you again for your support.

Sincerely,


John M. Owens
Treasurer

Honorable Burgess:

Jan. 29, 2002

Re: HB 2064

I am writing to ask for your support on House Bill 2064. Contractors and suppliers need the additional time to work out problems and settle any remaining disputes prior to filing a lien.

The additional time allows for all parties to be satisfied without having to resort to legal matters for settlement.

Please vote for HB 2064 and the extension of the lien law.

Gratefully,

**Otto J. Buche
Vice-President
Stanion Wholesale Electric Co. Inc.**

(Locations in 17 Kansas Cities)



Executive Electric

EXECUTIVE ELECTRIC

P. O. Box 12136 • Parkville, Missouri 64152 • Office (816) 880-0575 • Fax (816) 880-0183

The Honorable Donald Dahl, Chairperson
Kansas State Capitol Building, Room 158-E
300 SW 10th
Topeka, Kansas 66612

Dear Mr. Dahl,

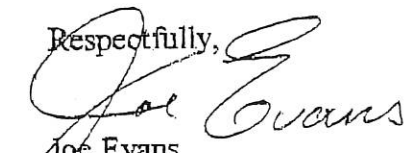
I am writing this note with regard to HB2064; it is imperative that you give all of your support and your constituents support in the passage of this important piece of legislation.

In the years past this important piece of legislation has never seen the light of day let alone stand a chance of becoming law. However, I believe with your support the extension of the lien period, from the present 90 days to the much needed 180 days will become law.

With the tough economic times that all contractors are faced with, we need every feasible means with in which to collect our monies owed. Many times with the filing of liens, we sub-contractors risk our relationships with our general contractors, suppliers and owners. With the extension of time, it will allow us to seek other avenues to collect these monies owed without risking future business opportunities.

Thank you for your time and consideration, I look forward to seeing HB2064 become law.

Respectfully,


Joe Evans
President, IEC of KC
Executive Electric

-BERNIE*

TELEPHONE 913-236-69

FAX 913-236-8524

Electric Wholesale, Inc.

2316 SO. 5TH STREET
KANSAS CITY, KANSAS 66103

January 31, 2003

The Honorable, Doug Mays
Kansas State Capitol Building, Room 380-W
300 S. W. 10th
Topeka, KS 66612

Dear Mr. Dahl,

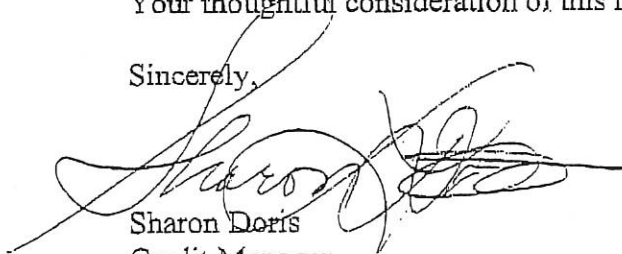
I am writing to ask you to support bill HB2064.

The lien law, as they now exist, are an obstacle for suppliers and contractors who earnestly desire to maintain good relations with their customers but are forced to take legal action to protect their businesses by placing liens.

Extending the time period to 6 months would allow most issues to be resolved long before lien rights must be exercised.

Your thoughtful consideration of this matter is greatly appreciated.

Sincerely,


Sharon Doris
Credit Manager

5-12



Commerce Bank

Post Office Box 419248
Kansas City, Missouri 64141-6248
(816) 234-2000

February 3, 2003

The Honorable Donald Dahl
House Commerce & Labor Committee
Kansas State Capitol Building, Room 156-E
300 SW 10th
Topeka, KS 66612

Dear Congressman Dahl:

As a bank doing business in multiple states, including Kansas, I wanted to pass on some concerns we have as it relates to Kansas Mechanic's Lien Laws.

The present Kansas Mechanic's Lien Law is too restrictive time-wise to allow the construction industry and its suppliers to conduct business in a normal and reasonable manner. Under the current law, a subcontractor or supplier is required to file a mechanic's lien against real estate and improvement thereon within 90 days of the last day worked or material is delivered.

The law has these adverse consequences:

- It inadvertently reflects on the reputation of the owner on whose property the lien has been placed.
- Liens increase costs, particularly when attorneys are required to file the liens and afterwards release the property.
- When liens do occur, business relationships are destroyed; consequently the natural inclination of owners is to avoid lien-filing contractors and suppliers in the future.

To alleviate these negatives, we want the legislature to extend the lien-filing time on **non-residential property** to 180 days from 90 days for subcontractors and suppliers and from 120 days for general contractors. The fiscal note for the filing extension is zero.

February 3, 2003

Page 2

The extended lien filing time will provide these benefits:

- It will allow adequate time for **all** contractors and suppliers to resolve differences amicably and, thus, retain important business relationships.
- It will avoid expensive legal and administrative costs as well as court actions.
- It leaves the owner and lender out of the process until it becomes absolutely necessary that a mechanic's lien be filed.

The 180-day filing period is being very successfully used in Missouri, resulting in:

- Significantly fewer lien filings
- Lower administrative and legal costs
- Sustained relationships

Therefore, all parties in the chain of construction—the owner, the lender, the contractors, and the material suppliers will benefit.

We urge that the House Commerce and Labor Committee recommend passage of a bill extending the time for mechanic's lien filing from 3 months to 6 months, for non-residential properties. The construction industry is critical to the well being of our economy and everything possible should be done to help those that finance the construction activity.

Thank you for your attention and cooperation.

Sincerely,

Edward J. Reardon, II
Vice Chairman

5-14



638 West 39th Street • P.O. Box 419264 • Kansas City, Missouri 64141-6264 • Phone: 816-561-5323 • Fax: 816-561-1249 • www.southwesternassn.com
Services and Solutions for Successful Equipment and Hardware Retailers.

February 3, 2003

The Honorable Donald Dahl
Room 156-E
Kansas State Capital Building
300 SW 10th
Topeka KS 66612

Dear Representative Dahl:

The SouthWestern Association is a retail trade association representing hardware, home center and lumber retailers, as well as equipment dealers located in eight midwestern states, including Kansas.

We enthusiastically support the passage of House Bill 2064 which would extend the time for filing mechanics' liens on non-residential properties from three to six months.

Please give strong consideration to this bill as this would certainly help our members who work with contractors on non-residential building projects.

Sincerely,

Jeffrey H. Flora, CAE
Chief Executive Officer

JHF/dh

5-15



February 3, 2003

The Honorable Donald Dahl
Room 156-E
Kansas State Capital Building
300 SW 10th
Topeka KS 66612

Dear Representative Dahl:

The Electric League of Missouri and Kansas is an association of electrical supply wholesalers, electric utilities, contractors, manufacturer's agents, manufacturers, engineers and architects.

We enthusiastically support the passage of House Bill 2064 which would extend the time for filing mechanics' liens on non-residential properties from three to six months.

Please give strong consideration to this bill as this would certainly help our members who work with contractors on non-residential building projects.

Sincerely,

Jeffrey H. Flora, CAE
Executive Officer

JHF/dh

SUPPORTERS OF THE EXTENSION OF TIME
TO FILE MECHANIC'S LIEN

Western Extralite Company, 1470 Liberty Street, Kansas City, MO 64102-1018

Carter-Waters Corporation, P O Box 412676, Kansas City, MO 64141

Shaw Electric Supply, 1066 E. 16th Street, Kansas City, MO 64108

Golden Star, Inc., P O Box 12539, North Kansas City, MO 64116

Associated River Terminal, P O Box 148, Marceilles, IL 61341

Harcros Chemicals, Inc., 5200 Speaker Road, Kansas City, KS 66106

Kansas City Electrical Supply, 10900 Mid America Ave., Lenexa, KS 66219

Heating & Cooling Distr., 4303 Merriam Dr., Overland Park, KS 66203

Alber Electric Company, 8601 Prospect, Kansas City, MO 64132

Missouri Valley Electric, P O Box 419640, Kansas City, MO 64141

Teague Electric Construction, 11325 Strangline Road, Lenexa, KS 66215

Stanion Wholesale Electric, P O Drawer P, Pratt, Kansas 67124

Commerce Bank of Kansas City, 1000 Walnut, Kansas City, MO 64141

Bernie Electric, 2316 S. 5th Street, Kansas City, KS 66103

Greater KC Chamber of Commerce, 911 Main, Kansas City, .MO 64105-2049

SouthWestern Association, 638 West 39th Street, P O Box 419264, Kansas City, MO 64141-6264

Electric League of Missouri & Kansas, 638 W. 39th, Kansas City, MO 64111

IBEW & NECA Labor Management Corporation Trust

NECA Kansas City Chapter, P O Box 32255, Kansas City, MO 64171

SMACNA Kansas City Chapter, 777 Admiral Blvd., Kansas City, MO 64106

Builders Association, 632 W. 39th Street, Kansas City, MO 64111

National Association of Credit Management, 10670 Barkley, Overland Park, KS 66212

Mechanical Contractors Association, 9229 Ward Parkway, Suite 270, K.C., MO 64114

The Sheet Metal & Air Conditioning Contractors National Association of Kansas City

Fire Sprinklers Association of Kansas City

Kansas City Insulation Contractors

Thomas M. Moore, Attorney, Moore, Hennessy & Freeman, P.C., Kansas City, MO

Jim Lacy, President, Electrical Corporation of America, Raytown, MO – Mr. Lacy is the former president of the Electric League of Missouri & Kansas.

Robert Doran, President, Capital Electric Construction Company, Leavenworth, KS

Jerry Root, President, Broadway Electric Construction Company, Kansas City, KS

W.R. Miller, President, Building Erection Services Co., Olathe, KS

Dan Haake, Owner, Haake Foundations, Raytown, MO

Bill Penney – Penney's Concrete, Inc. Shawnee Mission, KS

Jamile Yameen – President of Electrical Contractors, Inc. Raytown, MO

Robert B. Fisher, President of Heartland Electric Corporation, Belton, MO

Scott L. Bond – Project Manager of Bond Electric, Inc., Lawrence, KS

James A. Fowler – Branch Manager of Shelley Electric, Inc., Emporia, KS

Dan Fuhrman, Board Chairman – Schutte Lumber Company, Kansas City, MO

Darrell Norris, President – Quality Electric Lawrence, KS

Rosana Privitera Biondo, President, Mark One Electric Company, Inc. Kansas City, MO

Don Dawson – Chapter Management of the Kansas City Chapter of National Electrical Contractors Assoc.

Joe Evans, President, IEC of Kansas City, Executive Electric, Parkville, MO

02/03

5-12



Kansas Ready Mixed
Concrete Association

Testimony

Edward R. Mosès
Managing Director

By The
Kansas Ready Mixed Concrete Association

Before the
House Committee on Commerce and Labor

Regarding HB 2064

February 5, 2003

Good Morning, Mr. Chairman and members of the committee. My name is Wendy Harms, Associate Director of the Kansas Ready Mixed Concrete Association. Thank you for the opportunity to come before you today with our comments regarding proposed changes in Kansas' lien laws. The Kansas Ready Mixed Concrete Association (KRMCA) is a statewide trade association comprised of over 75 producer members and one of the few industries to be represented in every county of this state.

A periodic review of our laws including, lien law, is a healthy exercise. We routinely deliver concrete to job sites usually at the very beginning of most construction projects. Our producers are very familiar with current lien laws.

Our industry has observed an increasing trend in lengthened "payments" over the years. In other words, due to the many certifications, tests, sign-offs and other requirements, architects and engineers tend to withhold payments until the paperwork is done. This has often lead to situations where our industry is forced to file lien notices in 75 days and actual liens by 90 days even when we know the money is coming. Approval of HB 2064 would allow for a more orderly payment period on commercial projects.

Also many of our producers routinely operate in Missouri. As proposed, HB 2064 would make us uniform with Missouri law and thus would create greater efficiencies for these producers.

The KRMCA Board of Directors has met on several occasions to review and discuss the current lien law and the proposed changes as embodied in HB 2064. In addition, several other members have been surveyed on this issue. Our membership is supportive of the filing time extension for commercial liens. Our support for HB 2064 is conditioned on the maintenance of priority and uniformity. As an Association, we are committed to maintaining a uniform lien law both in terms of filing times, priority and geography. Any amendments to change these provisions may cause us to withdraw our support.

We urge this committee to recommend HB 2064 unamended favorable for passage. Once again, thank you for allowing me the time to appear before you today. At this time, I am willing to respond to any questions you may have.

Commerce &
Labor
2-5-03
Atch # 6

FERRELL
CONSTRUCTION
OF TOPEKA, INC.

TESTIMONY PRESENTED TO THE HOUSE
COMMITTEE ON COMMERCE AND LABOR

FEBRUARY 5, 2003

BY

DEAN F. FERRELL

Mr. Chairman and members of the Committee

My name is Dean Ferrell. I am President and Owner of Ferrell Construction of Topeka, Inc., and I am a past president of the Associated General Contractors of Kansas. My company specializes in commercial building construction and, through the years, we have completed several State of Kansas projects.

I am here to speak against House Bill No. 2064, regarding lien law modifications.

Commerce
Labor
2-5-03
Atch # 7



This bill extends the lien filing deadline for subcontractors and suppliers on non-residential construction projects from ninety (90) days to one hundred eighty (180) days. This change places general contractors in a "no win" situation and it has to do with who actually has the lien rights.

Not only does a general contractor's subcontractors have lien rights, but the suppliers and subcontractors of the first tier subcontractor have lien rights as well. We, as general contractors, can, and do, keep track of making certain our first tier subcontractors are paid, and we try to make certain that they are paying their subcontractors and suppliers. However we can only monitor those sources we actually know our subcontractor is purchasing goods and services from. Keeping track of "all" second tier subcontractors and suppliers is virtually impossible.

If the second tier subs and suppliers would keep the Owner and/or General Contractor informed of the slow paying first tier subcontractor, money could be withheld from the subcontractor or joint checks could be issued to assure all parties are paid in full; however many will rely only on their right to file a lien. Many will wait until the first tier subcontractor is paid in full before they file a lien, which, in essence, forces the general contractor - in order to keep the project lien free - to pay for the same work twice.

Extending the filing deadline an additional ninety (90) days only exaggerates the problem. By the time a vendor files a lien, a project could be 100% complete, and the general contractor and its subcontractors could have been paid in full for 90 days.

Why does it take 180 days for a second tier vendor to determine he will have difficulty in collecting payment? Why can't he, or she, determine a slow pay customer within the present 90 day period? Extending the deadline will not solve any problems; it will only make matters worse for general contractors and property owners, while at the same time allowing second tier vendors and subcontractors to become even more relaxed in their bill collecting practices.

I urge you to vote against House Bill No. 2064.

TESTIMONY OF
ASSOCIATED GENERAL CONTRACTORS OF KANSAS
BEFORE HOUSE COMMITTEE ON COMMERCE AND LABOR
ON HB 2064

February 5, 2003

By Corey D Peterson, Associated General Contractors of Kansas, Inc.

Mr. Chairman and members of the committee, my name is Corey D Peterson, Executive Vice President of the Associated General Contractors of Kansas, Inc. The AGC of Kansas is a trade association representing the commercial building construction industry, including general contractors, subcontractors and suppliers throughout Kansas (with the exception of Johnson and Wyandotte counties).

The AGC of Kansas strongly opposes HB 2064 for a number of reasons, including the following:

- Current law has served Kansas well for decades – outside the few proponents from one small geographical area, **this proposed change has received little support and much opposition from constituents in the majority of Kansas.**
- The period of six months is too long and unnecessarily puts owners and contractors at risk to pay for materials twice – particularly to suppliers not paid by subcontractors (who were paid).
- Extension would unnecessarily protract close-out of jobs.
- Owners will withhold final payment until lien filing period has ended to insure all bills have been paid.
- Since renovation and new construction is affected, real estate transactions may be delayed or cancelled due to additional title insurance expenses. **Economic activity should be promoted, not discouraged.**
- Change would encourage companies with poor accounts receivable management to delay inevitable collection and management decisions for up to 6 months.

While many owners and construction industry companies would like to see the law remain unchanged, the AGC would support a change that would extend the lien filing time for subcontractors and suppliers to 120 days, the same as that is currently afforded general contractors. This compromise was agreed to following an industry meeting which had several industry groups in attendance, as well as the individuals supporting the change to 180 days. The compromise was agreed to by all industry representatives, with the exception being the few original proponents of the bill. The Kansas Chapter of the National Electrical Contractors Association originally supported the 180 day proposal, but is now opposing the bill and is suggesting the industry compromise of 120 days. This compromise would remedy most all concerns expressed by the proponents of the original bill, while the additional risk to the owner and contractor would be limited.

The members of AGC of Kansas appreciate the unique right to file mechanic's liens that other industries are not afforded, but respectfully requests that you vote unfavorably on HB 2064. Thank you for your consideration.

Commerce &
Labor
2-5-03
Atch # 8

KANSAS LAND TITLE ASSOCIATION
8621 E. 21ST NORTH
SUITE 150
WICHITA, KS 67206

Date: February 5, 2003

TO: House Committee on Commerce and Labor

FROM: Roy Worthington, Chairman, Legislative Committee Kansas Land Title Association

RE: House Bill 2064

The Kansas Land Title Association is OPPOSED to extending the time period for filing mechanics' liens on property for the following reasons:

1. The current law is a fair balance between the rights of property owners to protect their titles to real estate and the rights of contractors and subcontractors to file liens if their bills for material and/or labor are unpaid (i.e. currently 4 months for contractors and 3 months for subcontractors). It would be unfair to property owners to extend the time period for filing liens to 6 months after work is completed;
2. Under the current law, contractors and subcontractors are already "privileged" and have the "extraordinary right" to file liens after the date supplies, material, equipment or labor are last furnished to the job, and gaining a lien priority which dates back to the commencement of the furnishing of such labor, equipment, material or supplies to the job site. No other business enjoys such a privilege to assist in obtaining payment for material/labor/services rendered;
3. Extending the time period for filing liens encourages contractors and subcontractors to make faulty credit decisions. It is not the function of the legislature to assist businesses in receiving payment for services;
4. The existing law has been in effect for decades; recent changes to the law have been to reduce the harshness of the law to consumers. Extending the time for filing liens will increase the sometimes-harsh effect of the law.
5. Extending the time period will also make titles to real estate that much more uncertain to the prospective buyers and mortgage lenders. The buyer of newly constructed commercial property will be exposed twice as long to mechanics' liens;
6. Most mortgage lenders in Kansas require title insurance with mechanics' lien coverage when making a mortgage on commercial real estate; extending the time period for filing mechanics' liens will only slow the process of mortgage lending while title insurance companies determine the risk of providing such coverage and in many cases prevent title insurance companies from providing mechanic's lien coverage.

7. Extending the time period for filing liens will require more performance bonds to be filed and extend the time period for obtaining end loan financing. A typical sequence of events in commercial lending is as follows:

- a. mortgage lender files construction mortgage prior to start of work to gain priority over liens;
- b. job completed and occupancy permit issued;
- c. title insurance underwriter will require 3 months (time for filing of subcontractor liens) to run from issuance of occupancy permit prior to agreeing to insure new end loan mortgage with mechanic's lien coverage.

8. Extending the time period for filing subcontractor liens to 6 months could double the time period before end loan financing is obtained. Agreeing to insure a mortgage that has not gained priority over mechanic's liens is a credit decision on the part of the title insurance underwriter and not a function of title insurance.

9. A possible compromise for House Bill 2064 would allow subcontractors the right to file their liens 6 months after they last furnished supplies, work, etc., on non-residential properties, but would require them to give a notice that they are on the project as a subcontractor. That way a title company, bank, new owner, etc. would have a chance to know the status of potential lien claimants. This appears to me to be reasonable given the fact that the proposed change doubles the time in which to file liens. The subs would only need to file the notice of intent if they were worried about getting paid and wanted to preserve their right to file a lien. The proposal would give them 30 days from the date they commenced work to file the notice.

Proposed change to House Bill 2064:

Amend 60-1103b. as follows:

60-1103b. Subcontractors' liens; new residential property; *property other than residential property.*

Add the following as (c)

A lien for the furnishing of labor, equipment, materials or supplies for property other than residential property may be claimed pursuant to K.S.A. 60-1103 and amendments thereto only if the claimant has filed a notice of intent to perform work at the job site within thirty (30) days after commencement of furnishing labor, equipment, materials or supplies to the job site. Such notice shall be filed in the office of the clerk of the district court of the county where the property is located.

Renumber existing (c), (d), (e) and (f) to (d), (e), (f) and (g).

10. Also, the term "residential property" needs to be defined.



STATEMENT OF THE KANSAS BUILDING INDUSTRY ASSOCIATION
TO THE HOUSE COMMERCE AND LABOR COMMITTEE

REPRESENTATIVE DON DAHL, CHAIR

REGARDING H.B. 2064

FEBRUARY 5, 2003

Mr. Chairman and Members of the Committee, I am Chris Wilson, Director of Governmental Affairs of the Kansas Building Industry Association (KBIA). KBIA is the statewide trade and professional organization of the home building industry, with approximately 1800 members. KBIA strongly opposes H.B. 2064, which would extend the time period for filing of a materialman's lien. Reasons why we oppose this bill include:

1. While this bill affects commercial and not residential property, many of our members are involved in both commercial and residential projects. Our Association believes it would be very confusing to have two different time periods for filing of the liens. And our members definitely don't want to have the time extended for filing of liens in residential construction. While Missouri has a different time period, we believe Kansas should be consistent as a state and not change our law to be consistent with Missouri.
2. Our members believe the current law is working well and is well understood. Those who have concerns should be able to work within the parameters of the current law. Our Association believes that if a company is following good business practices, they should be able to effectively use the current law.
3. Our members are concerned that if the lien filing period is extended, that will create a false sense of security for companies, knowing they have the extended time period, and they might therefore delay evaluation of whether a lien is needed. This is something the contractor needs to be on top of before six months runs. They need to complete the job, file the lien if needed in a timely manner and get the transaction completed.
4. Further delay will only cloud titles, and drag out finalization of transactions.

KBIA respectfully requests that you do not recommend H.B. 2064 favorably.

Commerce &
Labor
2-5-03
Atch #10



February 5, 2003

TO: House Committee on Commerce

FROM: Kathleen Taylor Olsen, Kansas Bankers Association

RE: HB 2064: Materialman's Lien

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you regarding **HB 2064**. This bill would effectively extend the period of time to 6 months, that a contractor or subcontractor would have for filing a materialman's lien on property other than residential property.

We understand that some contractors may feel that the time periods granted by statute are not enough time to evaluate whether they need to file a lien on the property, however, there are many other businesses that are also suppliers of material or labor of another sort that do not even have the privilege of having a statutory lien granted to them.

Our concern is that by extending the time in which a lien could be filed, the legislature would also be extending the time in which the title to that property would be clouded, which may end up delaying the closing of the transaction between lender and borrower. This has the potential of creating a hardship on the business property owner who is trying to finalize the transaction.

Practically speaking, commercial borrowers seeking permanent financing after construction has begun could have to wait six months (now only three or four months) before the title company will issue coverage. We believe that waiting up to half a year for clear title is a lot to ask of a property owner.

If the Committee decides that lengthening the period of time for filing these statutory liens is in the best interest for all parties involved, we would like to suggest an amendment to the statute that would help dissipate the uncertainty of the title during this time period. We would like to suggest that the Committee consider requiring contractors and subcontractors on commercial property to file a Notice of Intent to Perform in order to establish their potential lien on the property.

Kansas law already provides that subcontractors on "new residential property" file such a notice (K.S.A. 60-1103b). The requirement of a filing of a Notice of Intent to Perform puts all interested parties on notice of everyone who may have a potential claim on that particular piece of property, as failure to file the Notice prevents subcontractors in these situations from claiming a lien on the property. (Although the subcontractor would still have a civil cause of action to force payment for services rendered.) All parties can now see who and how many potential claims are out there and it is much easier and quicker to check off whose potential claim has been satisfied on the way to a clear title for the commercial property owner.

We would also like to suggest that if a distinction is going to be made between residential property and "other than residential property" that the statute define these terms. We believe the Committee could look to K.S.A. 60-1103b(a) for guidance.

In conclusion, the KBA urges the Committee to consider our suggestions as the merits of this bill are being debated. Thank you, once again, for allowing us to present our concerns.

Kansas Bankers Association

Proposed Amendments to HB 2064

60-1101. Liens of contractors; priority. Any person furnishing labor, equipment, material, or supplies used or consumed for the improvement of real property, under a contract with the owner or with the trustee, agent or spouse of the owner, shall have a lien upon the property for the labor, equipment, material or supplies furnished, and for the cost of transporting the same, ***except that when the property is other than residential property, a notice of intent to perform must have been filed as provided by K.S.A. 60-1103b, and amendments thereto.*** The lien shall be preferred to all other liens or encumbrances which are subsequent to the commencement of the furnishing of such labor, equipment, material or supplies at the site of the property subject to the lien. When two or more such contracts are entered into applicable to the same improvement, the liens of all claimants shall be similarly preferred to the date of the earliest unsatisfied lien of any of them.

60-1103b. Subcontractors' liens; new residential property. (a) ~~As used in this section, "new residential property" means a new structure which is constructed for use as a residence and which is not used or intended for use as a residence for more than two families or for commercial purposes. "New residential property" does not include any improvement of a preexisting structure or construction of any addition, garage or outbuilding appurtenant to a preexisting structure.~~

(b) ~~A lien for the furnishing of labor, equipment, materials or supplies for the construction of new residential property may be claimed pursuant to **K.S.A. 60-1101 and amendments thereto or to** K.S.A. 60-1103 and amendments thereto after the passage of title to such new residential property to a good faith purchaser for value only if the claimant has filed a notice of intent to perform prior to the recording of the deed effecting passage of title to such new residential property. Such notice shall be filed in the office of the clerk of the district court of the county where the property is located.~~

(c) The notice of intent to perform and release thereof provided for in this section, to be effective, shall contain substantially the following statement, whichever is applicable:

NOTICE OF INTENT TO PERFORM

" I

(name of supplier, subcontractor or contractor)

(address of supplier, subcontractor or contractor)

KSA 60-1103b

do hereby give public notice that I am a supplier, subcontractor or contractor or other person providing materials or labor on property owned by

(name of property owner)

and having the legal description as follows:

"
RELEASE OF NOTICE OF INTENT TO PERFORM NO. _____ AND WAIVER OF
LIEN

"I

(name of supplier, subcontractor or contractor)

of

(address of supplier, subcontractor or contractor)

do hereby acknowledge that I filed notice of intent to perform no. _____ covering property owned by

(name of property owner)

and having the legal description as follows:

In consideration of the sum of \$ _____, the receipt of which is hereby acknowledged, I hereby direct the clerk of the district court of _____, Kansas to release the subject notice of intent to perform and do hereby waive and relinquish any statutory right to a lien for the furnishing of labor, equipment, materials or supplies to the above-described real estate under the statutes of the state of Kansas."

KSA 60-1103b

(d) When any claimant who has filed a notice of intent to perform has been paid in full, such claimant shall be required to file in the office in which the notice of intent to perform was filed, and to pay any requisite filing fee, a release of such notice and waiver of lien which shall be executed by the claimant, shall identify the property as set forth in the notice of intent to perform, and state that it is the intention of the claimant to waive or relinquish any statutory right to a lien for the furnishing of labor or material to the property. Upon such filing, the notice of intent to perform previously filed by such claimant shall be of no further force or effect, and such claimant's right to a lien under K.S.A. 60-1101 and 60-1103, and amendments thereto, shall be extinguished.

(e) Any owner of the real estate upon which a notice of intent to perform has been filed, or any owner's heirs or assigns, or anyone acting for such owner, heirs or assigns, and after payment in full to the claimant, may make demand upon the claimant filing the notice of intent to perform, for the filing of a release of the notice and waiver of lien as provided for in subsection (d), unless the same has expired by virtue of the provisions set forth in subsection (f).

(f) Notwithstanding the requirements of subsections (d) and (e), a notice of intent to perform shall be of no further force or effect after the expiration of 18 months from the date of filing the same, unless within such time the claimant has filed a lien pursuant to K.S.A. 60-1101 and 60-1103, and amendments thereto.

History: L. 1986, ch. 217, § 3; L. 1996, ch. 233, § 1; July 1.

MEMO

To: House Committee on Commerce and Labor
Attn: Donald Dahl, Chairperson

From: Shawnee Rock Company
George R. McGrew, General Counsel

Date: February 4, 2003

Re: House Bill No. 2064

Shawnee Rock Company supports the proposed legislation and amendments to K.S.A. 60-1102 and K.S.A. 2002 Supp. 60-1103 contained in House Bill No. 2064 (Session of 2003). This bill proposes, among other things, to change the time period for filing a lien on *non-residential* real property from four months to *six months* (K.S.A. 60-1102) and from three months to *six months* (K.S.A. 2002 Supp. 60-1103).

Given the state of the economy and other various reasons, many of our valued customers (and their customers) are requesting or requiring extended payment terms. The present lien law forces us to begin the lien process against our valued customers despite the fact that payment will ultimately be made and received.

Filing of a lien negatively impacts our business relationship with such customers and, ultimately, our business. Even in the best economy, the present lien law still presents similar problems with valued customers. We believe H.B. 2064 will resolve these issues and provide the opportunity for improved customer relations and business opportunities.

Respectfully submitted,

Shawnee Rock Company
George R. McGrew
General Counsel

Commerce &
Labor
2-5-03
Atch # 12

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MEMORANDUM

TO: The Honorable Donald Dahl, Chairperson
House Committee on Commerce and Labor

FROM: Alan F. Alderson
Southwestern Association and Electric League

DATE: February 5, 2003

RE: House Bill 2064

Thank you for the opportunity to state the Southwestern Association's support for House Bill 2064. The Southwestern Association represents farm equipment dealers, hardware dealers, lumber dealers, electrical equipment wholesalers, and lawn and garden equipment dealers in Kansas and other Midwestern states. House Bill 2064 would extend the time period within which mechanic's liens may be filed on commercial construction projects in the state of Kansas. The time period for filing such liens would be extended to 180 days. This issue has been studied over the years with the most recent interim study occurring during the summer of 1999.

The current statutory provisions are too restrictive and do not allow sufficient time for contractors and suppliers to work out any problems that might exist on the commercial project. Extending the period for filing liens to 180 days would allow more time to resolve issues. Missouri has recently extended its period for filing mechanic's liens to 180 days. The Association urges the House Committee to favorably consider House Bill 2064 and recommend it for passage.

Commerce
Labor
2-5-03
Atch # 13



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**TESTIMONY
BEFORE HOUSE COMMITTEE ON COMMERCE AND LABOR
ON HB 2064**

February 5, 2003

By Phil Sewell, Central Mechanical Wichita

Mr. Chairman and members of the committee, my name is Phil A. Sewell, owner of Central Mechanical Wichita, with 80 employees and Dynamic Control Systems with 8 employees, also of Wichita. I reside in District #99. I strongly oppose HB #2064.

Both companies I own often serve as a subcontractor and a material supplier to the commercial construction industry. I consider 90 days to file a lien as adequate and 180 days as totally inappropriate and ripe for abuse by unscrupulous owners, developers and contractors.

In addition to owning the above mentioned companies, I serve as Vice Chairman of the **Specialty Contractors Council**, a council within the Associated General Contractors of Kansas formed to represent the subcontractors in the state. In addition to me, officers of the Specialty Contractors Council include: D.L. Smith, D.L. Smith Electrical Construction Company, Topeka and Mark Conway, Remediation Contractors, Wichita. The Council met with subcontractor and supplier companies this past week at the AGC convention and unanimously agreed 180 days is too long a period to allow for liens to be filed. A compromise to allow for a filing time extension to no more than 120 days was approved.

Changing this law could affect the possible sale/no sale of properties due to the extended time (180 days) liens could be filed on an owner's property. It also puts owners and contractors at risk to pay for goods & services twice. It currently takes long enough to be paid on projects; we are a contracting firm, not a bank, not a law firm. This change will cause owners to withhold payment even longer due to the risk of liens being filed months after construction is completed.

I believe providing 120 days to file a lien would be a fair law. Any effort to make it match Missouri's Lien Law should be resisted.

I hope this information is useful and again ask you to oppose HB 2064. Thank you.

Commerce & Labor
2-5-03
Atch # 14