

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Karin Brownlee at 8:15 a.m. on March 13, 2003 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: April Holman, Legislative Research
Deb Hollon, Legislative Research
Mitch Rice, Revisor of Statutes
Jodie Anspaugh, Secretary

Conferees appearing before the committee: Ken Keller, National Association of Credit Management
John Peterson, Kansas Land Title Association
Woody Moses, Kansas Ready Mixed Concrete Association
Don Greenwell, KC Chapter Assoc. General Contractors,
and the Builders Association
Corey Peterson, Associated General Contractors of Kansas
Kathy Olsen, Kansas Bankers Association

Others attending: See attached list.

Chairperson Brownlee opened the meeting and announced that the committee will finish working SB 222 first. Senator Barone moved to amend the bill per the balloon amendment from Mitch Rice on page 11. Senator Jordan seconded. The motion carried. (See Attachment 4, March 12, 2003)

Senator Buntun distributed an amendment proposal. (Attachment 1) Senator Buntun moved to adopt his amendment. Senator Emler seconded. The motion failed. Chairperson Brownlee said she would be happy to continue discussion on this amendment and could possibly amend it on the floor.

Senator Jordan moved to add two board members with housing expertise to the KDFA board. Senator Buntun seconded. The motion carried.

Senator Steineger moved to pass the bill out of committee favorably for passage. Senator Emler seconded. The motion carried. Senator Buntun requested that his vote be recorded as a no because he is not sure that this bill is necessary. Senator Brownlee announced that Senator Barone will carry this bill to the floor.

Chairperson Brownlee opened the hearing on Sub HB 2064.

Ken Keller from the National Association of Credit Management testified in support of Sub HB 2064, regarding mechanics liens. Mr. Keller distributed a large packet of information to each senator consisting of support letters for the bill. (Attachment 2)

John Peterson, Kansas Land Title Association, testified in support of Sub HB 2064, and offered an amendment proposal. (Attachment 3)

Woody Moses, Kansas Ready Mixed Concrete Association, testified in support of Sub HB 2064. (Attachment 4) Approval of this bill would allow for a more orderly payment period on commercial projects.

Don Greenwell, representing the Kansas City Chapter of Associated General Contractors and the Builders Association briefly stood up to say he supports the bill.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMERCE COMMITTEE at 8:15 a.m. on March 13, 2003 in Room 123-S of the Capitol.

Corey Peterson, Associated General Contractors of Kansas, testified in support of the bill. (Attachment 5) This substitute bill is the result of years of debate with the construction industry.

Kathy Olsen, Kansas Bankers Association, testified in support of Sub HB 2064. (Attachment 6) This bill represents a resolution of both parties from discussion in the House. KBA is pleased with the result.

Bill Miller, American Subcontractors Association of Kansas City, briefly voiced his support for the bill.

Dean Ferrell from Ferrell Construction and Alan Alderson from Southwestern Association offered written testimony in support of the bill. (Attachments 7 and 8)

Senator Jordan moved to amend the bill reflecting all of the changes suggested in attachment 3. Senator Emler seconded. The motion carried. Senator Jordan moved to move the bill out favorable for passage. Senator Wagle seconded. The motion carried.

The meeting was adjourned at 9:30 a.m.

The next meeting is scheduled for 8:30 a.m. on March 14 in Room 123-S.

**SENATE COMMERCE COMMITTEE
GUEST LIST**

DATE: Thursday, March 13, 2003

NAME	REPRESENTING
Doug Smith	Pinegar, Smith & Associates
John Frederic	KCUA
Martin Hawver	Hawver's Capitol Report
Stephanie Buchanan	Budget
Martha Jean Smith	KMHA
John Peterson	Ks Land Title Assn
Don Greenwell	KC-AGC & Builders Assoc
Bill Miller	BUILDING BUDGET SERVICES CO
Tom Burger	NACM
Amber Kjelskus	Sen. Brungardt
TRAVIS LEMKNER	DAMPSON & ASSOCIATES
George Barber	KAFS
Woody Meas	Ks. App. Prof. Assn.
Chuck Stokes	KBA
Kathy Olsen	KBA
Caren Peterson	AGC of Kansas
Tom Slattery	AGC/KS
Kevin Kelley	Kelley Construction, Topeka
At Seth Kelley	Silver Lake Junior High
Matthew Goddard	Heartland Community Bankers Assoc.
Don Seifert	City of Olathe
Brad Snapp	Sedgewick County
Bob Vanerum	Greater KC Chamber, Dunn Construction

Commerce
3/12/03

Senate Commerce Committee
3-13-03
Attachment 1

- 1 (1) to acquire, and to contract and enter into advance commitments
- 2 to acquire, home mortgage loans owned by lending institutions at such
- 3 prices and upon such other terms and conditions determined by the au-
- 4 thority or such other person as it may designate as its agent;
- 5 (2) to make and execute contracts with lending institutions for the
- 6 origination and servicing of home mortgage loans on behalf of the au-
- 7 thority and to pay the reasonable value of services rendered in accordance
- 8 with such contracts;
- 9 (3) to establish, by rules and regulations, by resolution relating to any
- 10 issuance of bonds or in any financing documents relating to such issuance,
- 11 such standards and requirements applicable to the purchase of home
- 12 mortgage loans or the origination of home mortgage loans as the authority
- 13 deems necessary or desirable to effectuate the public purposes of this act;
- 14 (4) to authorize the sale or other disposition of any home mortgage
- 15 loan, in whole or in part, upon such terms, at such prices and times, and
- 16 from time to time, as may be deemed appropriate and necessary;
- 17 (5) to pledge any revenues and receipts to be received from or in
- 18 connection with any home mortgage loans to the punctual payment of
- 19 bonds therefore, and the interest and redemption premiums, if any,
- 20 thereon; and
- 21 (6) to pledge or grant security interests in any home mortgage loans,
- 22 notes, revenues therefrom or other property in favor of the holder or
- 23 holders of bonds issued therefore.

24 Sec. 3. K.S.A. 74-8905 is hereby amended to read as follows: 74-

25 8905. (a) The authority may issue bonds, either for a specific activity or

26 on a pooled basis for a series of related or unrelated activities or projects

27 duly authorized by a political subdivision or group of political subdivisions

28 of the state in amounts determined by the authority for the purpose of

29 financing projects of statewide as well as local importance as defined

30 pursuant to K.S.A. ~~12-1744~~ 74-8902, and amendments thereto, capital

31 improvement facilities, educational facilities, health care facilities and

32 housing developments. Nothing in this act shall be construed to authorize

33 the authority to issue bonds or use the proceeds thereof to:

- 34 (1) Purchase, condemn or otherwise acquire a utility plant or distri-
- 35 bution system owned or operated by a regulated public utility;
- 36 (2) finance any capital improvement facilities, educational facilities or
- 37 health care facilities which may be financed by the issuance of general
- 38 obligation or utility revenue bonds of a political subdivision, except that
- 39 the acquisition by the authority of general obligation or utility revenue
- 40 bonds issued by political subdivisions with the proceeds of pooled bonds
- 41 shall not violate the provisions of the foregoing; or
- 42 (3) purchase, acquire, construct, reconstruct, improve, equip, fur-
- 4 h, repair, enlarge or remodel property for any swine production facility

. Each lending institution making home mortgage loans on behalf of or with the involvement of the authority shall have the right to retain the mortgage servicing rights for those home mortgage loans made on the behalf of or with the involvement of the authority

PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW

March 2003

PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW

Kenneth Keller, Controller
Western Extralite Co.
Kansas City MO

March 2003

WESTERN EXTRALITE COMPANY

DISTRIBUTORS OF QUALITY ELECTRICAL & VOICE/DATA PRODUCTS

1470 Liberty Street • Kansas City, MO 64102-1018

www.westernextralite.com

March 7, 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
501 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 Karin Brownlee
Chairman of the Commerce & Labor Committee
Kansas State Capitol Building, Room 136-N
300 SW 10th
Topeka, KS 66612

Dear Senator Brownlee:

RE: REQUEST FOR YOUR SUPPORT OF SUBSTITUE HOUSE BILL 2064,
EXTENDING THE TIME FOR FILING MECHANIC'S LIENS ON 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

March 7, 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 lien laws are antiquated as it relates to what is happening in the market. Twenty-five years ago requests for draws were made and monies exchanged hands within thirty to forty-five days. Unfortunately, because of the poor economy and circumstances, this is no longer true. It is not unusual for subcontractors to be paid 60-90 days after making their request. Under current law the supplier or subcontractor has to file liens within three months of the date material or work is last delivered or incurred to avoid losing their lien rights. There are several factors to consider before a lien is actually filed:

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, as well as monitoring the results, is time-consuming and expensive.
4. Most importantly, all of us in the industry spend considerable time, effort, and money developing relationships with our customers. These relationships are shattered when liens must be filed.

March 7, 2003

Page 3

Enclosed you will find a survey run in four counties in Missouri and Kansas. The results reflected are:

1. There are about a third of the liens filed in Missouri than in Kansas, because they have additional time to work out their problems.
2. We have heard that this is a Johnson County issue and this clearly reflects that liens are being filed in every county in Kansas and is a statewide problem.
3. It is very costly to file liens and the business owner in Kansas could substantially reduce his operating costs, should the time for filing liens be extended, so the problems could be work out without going through the lien process.

For the past two years the Senate has overwhelmingly endorsed our suggestion of extending the time for filing mechanic's liens from 3 months to 6 months. It was for this reason that we presented our bill first in the House. After much discussion we reached a very workable compromise with the opponents of our bill, which is reflected in substitute House Bill 2064. The compromise is to extend the time for filing to five months, provided you have filed a notice before 3 months expire. The purpose of this notice is to make the general contractor and owner aware of non-payment. The notice itself is very informal, providing the necessary information to allow the owner and subcontractor to get involved. The notice does not require ordering of an owner and encumbrance report, which can be quite costly and would become necessary should the lien have to be filed later.

Substitute House Bill 2064, as mentioned above, is a very workable compromise and it is now supported by all the proponents and opponents of the original bill. We urge your consideration and support in passing the substitute House Bill 2064 as presented.

Thank you for attention and cooperation.

Sincerely,



Kenneth R. Keller
Controller

/bb
Enclosure

LIEN LAWS – KANSAS AND MISSOURI

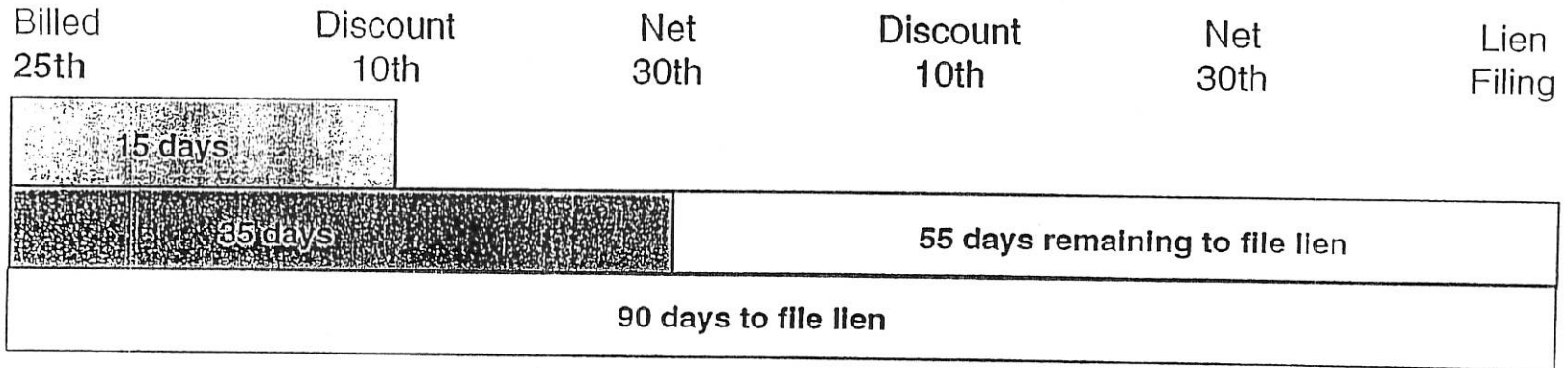
<u>Nonresidential Property</u>	<u>Time for Filing Lien *</u>	
	KS	MO
Tier I General Contractor	4 months	6 months
Tier II Subcontractor or supplier to general contractor	3 months	6 months – Must give 10 days notice before filing lien
Tier III Subcontractor to a subcontractor or a supplier to a subcontractor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

* From date of last material delivered or labor performed.

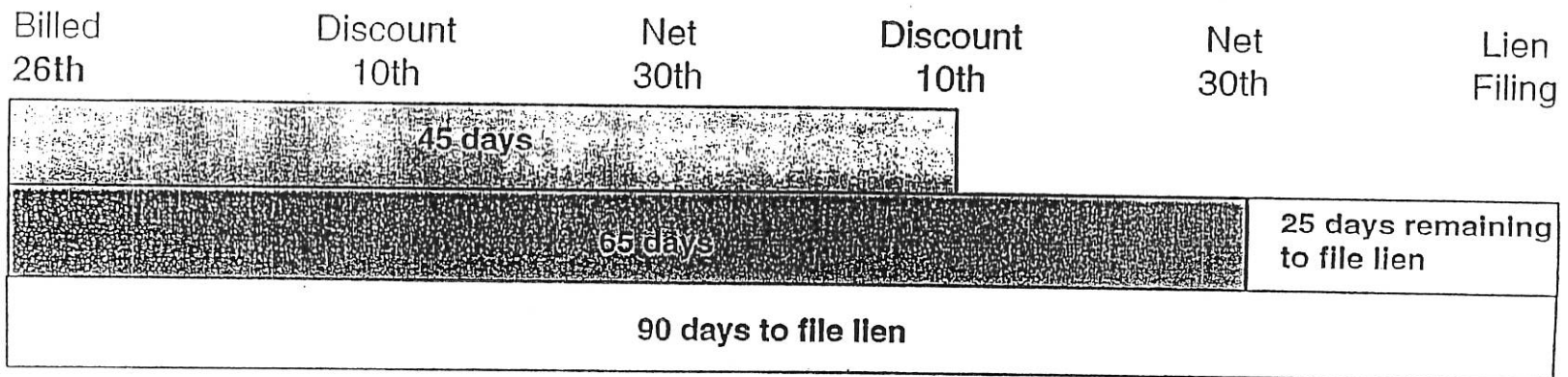
Time Line — 10th Prox. Payment Term

L-28

Example 1:



Example 2:



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

8-2

PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW

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

February 2003

MHF

MOORE HENNESSY & FREEMAN, P.C.
ATTORNEYS AT LAW

One Main Plaza
4435 MAIN STREET, SUITE 900
KANSAS CITY, MISSOURI 64111

Thomas M. Moore
E-mail address: tmmoore@mhfp.com

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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

2-10

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

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

March 2003

BUILDING ERECTION SERVICES COM

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

March 11, 2003

The Honorable Karen Brownlee
Kansas State Capital Bldg. Room 136N
300 S W 10th Street
Topeka, Ks 66612

RE: Substitute for HB 2064

Dear Senator Brownlee,

This letter is to speak in favor of the substitute HB 2064. This bill will help prevent the unnecessary filing of liens that we now must file due to the existing 90 day time limit from the last day worked on or the last day that material is delivered to a project.

Our accounts receivable are collateral for our bank and bonding company. We are required to protect this collateral by filing liens, which in some cases further delays the payment cycle when owners require bonding to be put in place to protect their interests.

We believe that by extending the time to file by the 60 additional days that this bill provides, we can reduce our lien filing by 90% or more. This will be a significant cost savings for us and reduce costs for others, including general contractors, and owners,

This bill is endorsed by The American Subcontractors Association, The Builders Association, The Alliance of Professional Specialty Contractors, The Kansas Ready Mixed Concrete Association, and others not listed. There will be no cost to the state of Kansas when this bill is passed.

Respectfully Submitted



W R Miller
President
Building Erection Services Co., Inc.
Midwest Crane & Rigging



PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW

John M. Owens, Treasurer
Kansas City Electrical Supply Co.
Lenexa, Kansas

March 2003



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

February 11, 2003

The Honorable Karin Brownlee
Kansas State Capitol Building, Room 136-N
300 SW 10th
Topeka, KS 66612

Dear Senator Brownlee:

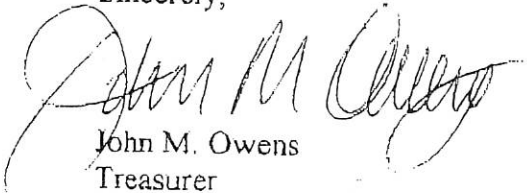
I am asking for your support in passing the "Substitute for House Bill No. 2064" which would extend the filing time of liens from 3 month to 5 months as agreed to by all parties. This would considerably reduce the amount of unnecessary liens filed in the State of Kansas, while saving the companies involved 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

PROPOSED CHANGE

IN THE

MECHANIC LIEN LAW

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

February 2003



NATIONAL ASSOCIATION OF CREDIT MANAGEMENT

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

KANSAS CITY DIVISION, INC.
GENERAL OFFICE 913-383-9300

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:

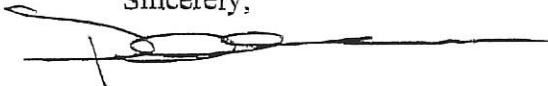
The National Association of Credit Management has been in the business of supporting the needs of commercial credit grantors for over 100 years. Part of our responsibility is to help members with local, state and national legislative efforts.

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**

**Darrell Norris , President
Quality Electric Inc.
Lawrence, Kansas**

February 2003



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,

Darrell Norris
President

Dn/cj

PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW

Otto J. Buche, Vice-President
Stanion Wholesale Electric Co., Inc
Lawrence, Kansas

February 2003

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)

PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW

Joe Evans, President IEC of KC
Executive Electric
Parkville, Missouri

February 2003



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,

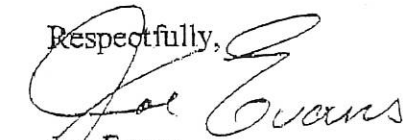
I am writing this note with regard to HB2064; it is imperative that you give all of your support and your constituents support in the passage of this important piece of legislation.

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

PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW

Sharon Doris, Credit Manager
Bernie Electric Wholesale, Inc.
Kansas City, Kansas

February 2003

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,

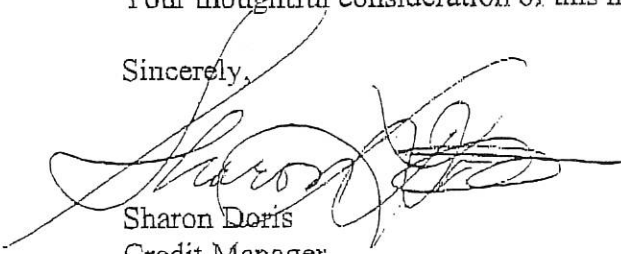
I am writing to ask you to support bill HB2064.

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

PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW

Edward J. Reardon, II, Vice Chairman
Commerce Bank
Kansas City Missouri

February 2003



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

PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW

Jeffrey H Flora, CAE, Chief Executive Officer
SouthWestern Association
Kansas City Missouri

February 2003



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,

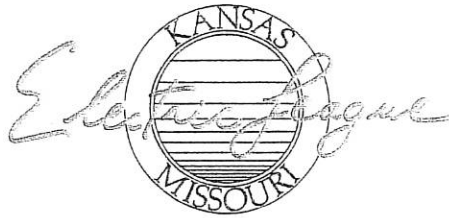
Jeffrey H. Flora, CAE
Chief Executive Officer

JHF/dh

PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW

Jeffrey H Flora, CAE, Chief Executive Officer
Electric League of Missouri and Kansas
Kansas City Missouri

February 2003



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

PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW

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

February 2003

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.

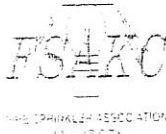
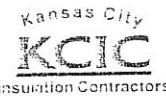
The Alliance of Professional Specialty Contractors (APSC) is a trade association representing several chapters of local specialty construction trade associations, including the Fire Sprinkler Association of Kansas City (FSA); Kansas City Insulation Contractors (KCIC); Mechanical Contractors Association 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



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, KS66103

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

SouthWestern Association, 638 West 39th Street, PO 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, 402 E. Bannister Rd Suite E, Kansas City MO

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, 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

Cargill, Inc., North American Grain, 8700 Indian Creek Parkway, Suite 250, Overland Park, KS 66210

I B T, PO Box 2982, Shawnee Mission, KS 66201

Dean Machinery Company, 1201 W. 31st Street, Box 419176, Kansas City, MO 64141-6176

Mid-AM Building Supply, Inc., PO Box 645, Moberly, MO 65270

Carpet Cushions & Supplies, Inc., 1001 Arthur Avenue, Elk Grove Village, IL 60007

Masco Contractor Services Central Division, 2339 Belville Road, Daytona Beach, FL., 32119
(Williams Insulation Company)

Broken Arrow Electric Supply, Inc., 2350 W. Vancouver, Broken Arrow, OK 74012

Wichita Sheet Metal Supply, 1601 S. Sheridan, Wichita, KS 67213-1339

Southland Carpet Supplies of K.C., 3020 South 44th, Kansas City, KS 66106

Beverly Lumber Company, PO Box 9038, Riverside, MO 64168

Lafarge Construction Materials, PO Box 6620, Lee's Summit, MO 64064

Southwestern Wire, Inc., PO Box CC, Norman, OK 73070

Gold Bank, 11301 Nall, Leawood, KS 66211

Case Supply, 507 N. Montgall, Kansas City, MO 64120

Morgan Wightman Supply Co., 6010 Equitable, Kansas City, MO 64120

Electrical Materials Company, 3007 E. 85th Street, Kansas City, MO 64132

O'Connor Company, PO Box 2253, Wichita, KS 67201

O'Connor Company, 14851 W. 99th Street, Lenexa, KS 66215

Huhtamaki Packaging Inc., 9201 Packaging Drive, DeSoto, KS 66018

Paxton The Wood Source, 6311 St. John, Kansas City, MO 64123

3/03

Senate Commerce Committee
3-13-03
Attachment 3-1

Substitute for HOUSE BILL No. 2064

By Committee on Commerce and Labor

2-25

PROPOSED
TECHNICAL AMENDMENTS

National Association of Credit Management
Tom Burgess

Associated General Contractors
Corey Peterson

Kansas Land Title Companies
John Peterson

Kansas Bankers Association
Kathy Olsen

Kansas Homebuilders Association
Chris Wilson

AN ACT concerning civil procedure; relating to filing time; amending K.S.A. 60-1102 and K.S.A. 2002 Supp. 60-1103 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 60-1102 is hereby amended to read as follows: 60-1102. (a) Filing. 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 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) The name of the owner,
- (2) the name and address sufficient for service of process of the claimant,
- (3) a description of the real property,
- (4) a reasonably itemized statement and the amount of the claim, but if the amount of the claim is evidenced by a written instrument, or if a promissory note has been given for the same, a copy thereof may be attached to the claim in lieu of the itemized statement.

(b) Recording. Immediately upon the receipt of such statement the clerk of the court shall index the lien in the general index by party names and file number.

(c) Notwithstanding subsection (a), a lien for the furnishing of labor, equipment, materials or supplies of property other than residential property may be claimed pursuant to this section within five months only if the claimant has filed a notice of extension within four months since last furnishing labor, equipment, materials or supplies to the job site. Such notice shall be filed in the office of the district court of the county where such property is located and shall be mailed by certified and regular mail to the owner. The notice of extension shall contain substantially the following statement:

Notice of Extension to File Contractor Lien

Name of Contractor

32

1 _____
 2 *Address of Contractor*
 3 _____
 4 *Telephone Number of Contractor*
 5 _____
 6 *Name and/or Number of Job*
 7 _____
 8 *Address of Job Site*

9 *Filing of such notice extends the time for filing a lien to five months for [a] _____ the above*
 10 *contractor [supplier or other person] providing materials or labor on prop-*
 11 *erty owned by:*

12 _____
 13 Sec. 2. K.S.A. 2002 Supp. 60-1103 is hereby amended to read as
 14 follows: 60-1103. (a) *Procedure.* Any supplier, subcontractor or other per-
 15 son furnishing labor, equipment, material or supplies, used or consumed
 16 at the site of the property subject to the lien, under an agreement with
 17 the contractor, subcontractor or owner contractor may obtain a lien for
 18 the amount due in the same manner and to the same extent as the original
 19 contractor except that:

20 (1) The lien statement must state the name of the contractor and be
 21 filed within three months after the date supplies, material or equipment
 22 was last furnished or labor performed by the claimant;

23 (2) if a warning statement is required to be given pursuant to K.S.A.
 24 60-1103a, and amendments thereto, there shall be attached to the lien
 25 statement the affidavit of the supplier or subcontractor that such warning
 26 statement was properly given; and

27 (3) a notice of intent to perform, if required pursuant to K.S.A. 60-
 28 1103b, and amendments thereto, must have been filed as provided by
 29 that section.

30 (b) Owner contractor is defined as any person, firm or corporation
 31 who:

32 (1) Is the fee title owner of the real estate subject to the lien; and

33 (2) enters into contracts with more than one person, firm or corpo-
 34 ration for labor, equipment, material or supplies used or consumed for
 35 the improvement of such real property.

36 (c) *Recording and notice.* When a lien is filed pursuant to this section,
 37 the clerk of the district court shall enter the filing in the general index.
 38 The claimant shall (1) cause a copy of the lien statement to be served
 39 personally upon any one owner, any holder of a recorded equitable in-
 40 terest and any party obligated to pay the lien in the manner provided by
 41 K.S.A. 60-304, and amendments thereto, for the service of summons
 42 within the state, or by K.S.A. 60-308, and amendments thereto, for service
 43 outside of the state, (2) mail a copy of the lien statement to any one owner

(d) Residential property is defined as a 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.

1 of the property, any holder of a recorded equitable interest and to any
 2 party obligated to pay the same by restricted mail or (3) if the address of
 3 any one owner or such party is unknown and cannot be ascertained with
 4 reasonable diligence, post a copy of the lien statement in a conspicuous
 5 place on the premises. The provisions of this subsection requiring that
 6 the claimant serve a copy of the lien statement shall be deemed to have
 7 been complied with, if it is proven that the person to be served actually
 8 received a copy of the lien statement. No action to foreclose any lien may
 9 proceed or be entered against residential real property in this state unless
 10 the holder of a recorded equitable interest was served with notice in
 11 accordance with the provisions of this subsection.

12 (d) *Rights and liability of owner.* The owner of the real property shall
 13 not become liable for a greater amount than the owner has contracted to
 14 pay the original contractor, except for any payments to the contractor
 15 made:

16 (1) Prior to the expiration of the three-month period for filing lien
 17 claims, if no warning statement is required by K.S.A. 60-1103a, and
 18 amendments thereto; or

19 (2) subsequent to the date the owner received the warning statement,
 20 if a warning statement is required by K.S.A. 60-1103a, and amendments
 21 thereto.

22 The owner may discharge any lien filed under this section which the
 23 contractor fails to discharge and credit such payment against the amount
 24 due the contractor.

25 (e) *Notwithstanding subsection (a)(1), a lien for the furnishing of la-*
 26 *bor, equipment, materials or supplies*~~of~~ *property other than residential* on
 27 *property may be claimed pursuant to this section, and amendments*
 28 *thereto, within five months only if the claimant has filed a notice of ex-*
 29 *ension within three months since last furnishing labor, equipment, ma-*
 30 *terials or supplies to the job site. Such notice shall be filed in the office of*
 31 *the clerk of the district court of the county where such property is located*
 32 *and shall be mailed by certified and regular mail to the general contractor*
 33 *or construction manager and a copy to the owner by regular mail, if*
 34 *known. The notice of extension shall contain substantially the following*
 35 *statement:*

36 *Notice of Extension to File Lien*

37 _____
 38 *Subcontractor or Supplier*

Name of

39 _____
 40 *Address of Subcontractor or Supplier*

41 _____
 42 *Telephone Number of Subcontractor or Supplier*
 43

3-4

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Name and/or Number of Job

Address of Job Site

Filing of such notice extends the time for filing a lien to five months for [a] subcontractor, supplier, or other providing materials and labor on property owned by:

_____ the above
_____ person

Owner's Name (if known)

Owner's Address (if known)

Sec. 3. K.S.A. 60-1102 and K.S.A. 2002 Supp. 60-1103 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

KRMCA

Kansas Ready Mixed
Concrete Association

Testimony

Edward R. Moses
Managing Director

By The
Kansas Ready Mixed Concrete Association

Before the
Senate Committee on Commerce
Regarding HB 2064

March 13, 2003

Good Morning, Madam Chair and members of the committee. My name is Woody Moses, Managing Director of the Kansas Ready Mixed Concrete Association. Thank you for the opportunity to come before you today with our comments in support of the 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 (residential) 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.

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 and notice 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 an 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, as amended, 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.

Senate Commerce Committee
3-13-03
Attachment 4

**TESTIMONY OF
ASSOCIATED GENERAL CONTRACTORS OF KANSAS
BEFORE SENAT COMMITTEE ON COMMERCE
ON SUBSTITUTE FOR HB 2064**

March 13, 2003

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

Madam 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 supports the House Substitute for HB 2064 and respectfully asks that you pass it out of committee favorably.

The House Substitute for HB 2064 before you is a compromise that was agreed to by both proponents of a change in the lien law and the large portion of the construction industry that strongly preferred there be no change. This compromise was accomplished following years of debate. This substitute for HB 2064 will allow suppliers and contractors additional time to file a lien, but will require owners and general contractors be notified of payment issues within a reasonable time (90 days after last completed work or delivery for suppliers and subcontractors, 120 days by general contractors). Without this notification deadline, the extended lien filing period would unnecessarily put owners and general contractors at financial risk.

The AGC of Kansas is pleased to support this compromise and **respectfully requests that you vote favorably on the House Substitute for HB 2064.** Thank you for your consideration.



March 13, 2003

To: Senate Committee on Commerce

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: Substitute for HB 2064: Materialman's Liens

Madam Chair and Members of the Committee:

Thank you for the opportunity to appear before you today regarding Substitute for **HB 2064**. This bill represents a resolution of the issues and concerns of interested parties as they were presented to the House.

The bill now addresses our main concern in extending the time period for filing liens. Our 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 could be clouded, possibly delaying the closing of a transaction between lender and borrower. This had the potential of creating a hardship on the business property owner who is trying to finalize a transaction by a certain deadline.

Substitute for **HB 2064** addresses this concern by providing that a contractor or subcontractor who wants an extended period of time (from the time period already granted by current law) to file a lien on property other than residential property, must file a "Notice of Extension to File Lien" with the clerk of the District Court in the county where the property is located.

This filing puts all interested parties on notice that there are issues unresolved – beyond the current statutory time period for filing a lien. An interested party, including a lender, may now determine who and how many potential claims against the property still exist. This makes it much easier and faster to clear title by checking off those potential claims that have been satisfied, and determining who still needs to be paid.

We also would like the Committee to know that we concur with the proposed amendments that are before you for consideration as being clarifying in nature.

Thank you.

Senate Commerce Committee

3-13-03

Attachment 6

FERRELL

**CONSTRUCTION
OF TOPEKA, INC.**

TESTIMONY PRESENTED TO THE SENATE
COMMITTEE ON COMMERCE AND LABOR

MARCH 13, 2003

BY

DEAN F. FERRELL

Madam Chair 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 in favor of House Substitute for House Bill No. 2064, regarding lien law modifications.

Senate Commerce Committee

3-13-03

Attachment 7-1



This bill extends the lien filing deadline for subcontractors and suppliers on non-residential construction projects from ninety (90) days to one hundred fifty (150) days, and increases the filing deadline for general contractors from one hundred twenty (120) days to one hundred fifty (150) days. It also stipulates that, to protect their lien filing rights, subcontractors and suppliers must file a Notice of Extension to File a Lien within ninety (90) days; general contractors will be required to file this same notice within one hundred twenty (120) days.

Although I am not overly excited about the extensions of the lien filing deadlines, I am extremely happy to see the language requiring the Notice of Extension to File a Lien.

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.

In my opinion House Substitute for HB 2064 solves the problem of subcontractors and suppliers not having ample time to determine if a lien should actually be filed. By the same token, the early notification requirements should provide adequate protection to owners and general contractors. In its present form, I feel it is a very good bill.

I urge you to vote in favor of House Substitute for House Bill No. 2064.

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MEMORANDUM

TO: Members of Senate Commerce Committee
FROM: Alan F. Alderson, Legislative Counsel, Southwestern
Association
RE: Substitute for House Bill No. 2064
DATE: March 14, 2003

Southwestern Association is one of the industry's largest dealer trade organizations, covering an eight-state territory and representing more than 1,500 farm, construction, industrial and outdoor power equipment dealers, and more than 2,000 hardware, lumber and home center retailers. Southwestern Association presented written testimony in support of House Bill No. 2064 in its original form in the House Committee on Commerce and Labor. We believe the substitute bill represents a good compromise which would allow suppliers the option of extending the lien filing period on commercial property without leaving the filing period open for an extended period for all suppliers of labor, equipment, material or supplies.

It is believed that this compromised proposal will relieve some of the concerns expressed by contractors, title companies and others who have previously opposed the bill.

On behalf of Southwestern Association, I urge the members of the Committee to give favorable support to Substitute for House No. 2064.

Senate Commerce Committee
3-13-03
Attachment 8