

Testimony on HB 2173
Before the House Judiciary Committee on Tuesday, March 19th, 2013
By Mark Hutton of Hutton Construction Corporation

Mr. Chair and members of the Judiciary Committee. My name is Mark Hutton. I am the CEO of Hutton Construction Corporation in Wichita, a past president of the Associated General Contractors of Kansas, and I currently serve as a Board Member of the Associated General Contractors of America.

Today I am asking for your consideration and support on HB 2173. HB 2173 creates a path by which general contractors can track who is working on their projects, thereby enabling them to more effectively manage the payment process for work performed.

This may seem like a strange request to some but in today's market place it is not uncommon for subcontractors to subcontract portions of their work out on multiple levels. An example would be an electrical contractor subcontracting the trenching work or a mechanical contractor subcontracting out the site utilities portion of their work. Some Earthwork contractors no longer own all of their equipment, choosing instead to rent equipment as they need it. All of these, and many more common instances, result in a risk to the general contractor that this bill refers to as a "Remote Claimant". Unfortunately, these companies sometimes have to resort to legal action such as lawsuits and liens in order to get paid the money they are rightfully owed. Apart from the burden and hardship it places in these companies it also results in general contractors incurring legal expenses and paying twice for the work.

HB 2173 creates a registry so these "Remote Claimants" can make themselves known to the general contractor. This way the general contractor can take the necessary steps to insure that these companies are being paid promptly and correctly. It also protects the general contractor from the practice of a few unscrupulous subcontractors that choose to work the system by not paying their subcontractors, forcing them to resort to legal action and eventually leaving it up to the general contractor to pay again once they are long gone. With this bill there would be no cost to register since the general contractor pays all of the fees. The one time per project process to register will be quick and simple taking only a few minutes.

For those of you who have been around a while you know that we have been working to get this bill passed for quite some time. Opponents to the bill have sited the labor cost to register and the regulatory imposition it places on companies so we made the one time per project process free and simple. The Kansas Contractors Association opposed this bill "on principle" even though bridge, road and highway construction is exempt from it. The Aggregate Producers oppose it as cumbersome so we set a dollar threshold that they would rarely exceed. We supported them when they wanted prompt pay legislation that placed a higher burden on the general contractor. None of that was enough. It is evident that what they are really saying is they don't have to do anything today so why change? I guess if I was in their shoes I would feel the same way but I ask you to consider the fairness of this to the general contractors. Our current law holds us responsible for payment to companies we don't even know exist. I challenge you to name me one other instance where this burden is placed on a business. How would you feel if 3 months after you paid for something a person you have never met came to your door and said you had to pay them, again? That is our situation today and that is why we respectfully request that you pass HB 2173 out of committee favorable for passage.