

## Testimony

By the Kansas Contractors Association before the House Judiciary Committee  
regarding HB 2173—the Lien Construction Registry

March 19, 2013

Mr. Chairman and members of the Committee, I am Bob Totten, Executive Vice President for the Kansas Contractors Association. Our organization represents over 300 companies who are involved in the construction of roads, bridges, dams, highways, stand alone parking lots, work on oil and gas leases, water treatment facilities and other construction projects in Kansas and the Midwest. Our association has been representing construction interests since 1923.

Today, I come to you in opposition of HB 2173. Our members wholeheartedly agree this is an unnecessary piece of legislation and is just another example of the government intruding into an area that is not necessary.

Although this bill excludes highway construction from its requirements, I must remind you that many of our members are builders of other projects outside highway work and when the economy takes a dip, highway contractors will sometime go into

other areas of construction just to keep people employed. That's one of the reasons our members are concerned with this legislation.

When this subject was initially brought up, I got many emails from my members telling me all about the last time their company faced a problem when it came to liens. What I learned about this is that almost every contractor has a lien story but interestingly enough it is not some thing that happens that often. I mean some of the stories are 4 to 6 years old but along with this litany of stories, the basic admonition is "don't change the lien laws." We understand what the rules are now and they are there for a purpose and adding another layer of paperwork is not needed.

In the minds of our members, this proposal is really just a shift in risk. Moving the risk of a project onto a sub contractor or vendor. We don't believe that is the appropriate way to handle a construction project. It is our belief that when a company decides to manage a project, it is his/her responsibility to know what is going on in regards to that project. If necessary, a construction company should hire enough people to "birddog" the job so that there are no surprises at the end.

Our members are also concerned with the addition of employees with the Secretary of State's office. While KDOT is reducing its staffing from 3,210 people in 1990 to about 2700 now, why would the state consider adding more people in another agency. It is actions like this that cause government to grow when the problem should be corrected on the private side in the first place.

This makes our association members wonder why we need to add more costs to a construction project with another government filing fee. We thought the aim of our leaders was to reduce the size of government and to conserve the costs to the public but

this appears to go in the wrong direction to solve a problem that doesn't exist. Even Governor Brownback has indicated that he doesn't favor the ever expanding size of state government and this to us is a way of expanding government.

You are being led to believe that this a problem but I am not sure that is the case. I have attached to my testimony a graph that shows the lien filings in Shawnee county. If you look at it, the filings of liens in Shawnee county peaked in 2006 and if this was such an issue you would assume the filing of liens would have increased. This is the information from the 4<sup>th</sup> largest county in the state...I can only assume this is typical statewide. And from what I understand the bulk of these lien filings in Topeka dealt with residential contractors and not commercial builders....so if the state is so interested in rectifying a situation that is not a problem, residential builders should also be included in this legislation.

We have large members and small members...and the smallest members or sub contractors don't always pay attention to the system, as well as they should...and we are fearful that by missing the 21 day deadline, there will be many subs who won't be paid. They should have filed to reserve their lien but because they missed the deadline they won't be able to because the prime contractor will say "you didn't file so you are out of luck. That does not seem fair.

That has happened to some of our contractors in another state. In one instance...the sub contractor failed to file his lien right and when it came time to pay him, the general knew the sub had no lien right and he just said "too bad". And the sub had to eat about \$45,000 because of his mistake even though the prime knew the work had been done and in a correct fashion. The subcontractor could have filed a lawsuit on the issue but

considering the time and trouble, it was not worth the effort.

Bottom line, our members question whether the alleged benefits and reasons for this proposed registry requirement in any way justify the adverse public policy. This measure has been studied for years and was referred to the Kansas Judicial Council and the recommendation from that group after 18 months was that they couldn't find a solution.

The sponsors of this measure have indicated that the registry is being set up because some times general contractors don't always know who is providing material on a project. And our basic question is "why not"? Our members believe that if a company has a project underway, they should make sure they knew exactly what was happening on their job. That is the way our members conduct their efforts on highway work, so we are unclear why that doesn't happen with the commercial building trade.

Thank you once again for the time you have made for our concerns to be heard and I will be glad to try and answer question when the time is appropriate.