

March 19, 2013

The Honorable Representative Lance Kinzer, Chairman
House Judiciary Committee
RE HB 2173

Mister Chairman

Thank you for allowing me to address you and your committee today in opposition to HB 2173. I'm Ken Keller retired controller of Western Extralite Company. Western Extralite Company is a supplier of electrical material to the construction industry. They have multiple locations with eight located in Kansas.

This proposed legislation would be extremely expensive to implement and administrate with little or no benefit to them. I am also on the Board of Directors of the Kansas City Chapter of the American Subcontractors Association.

An important element contained in this bill is the mechanics lien. The mechanic liens have been put in place to assist those in the construction trade in getting paid. The mechanics lien has been in place for many years. The lien is filed in the office of the Recorder of Deeds in the county where the project is located. Once filed it often promotes payment. However if the filing of a lien doesn't get you paid then you can perfect your lien by going to court and getting a judgement. The lien becomes an encumbrance on the title of the property. This normally prevents sale of the property due to an encumbered title. The lien is released once the debt is paid. The feeling is, the person receiving the economic benefit from the project should be responsible to see everyone is paid for work performed or material or services supplied. That of course is the owner. In recent years many of the owners have transferred that responsibility to the general contractor.

This bill is an attempt by the general contractors to remove themselves from that responsibility by pushing it down to the suppliers. The maximum the general contractors could pay under the proposed bill would be the amount due under the sub contract. But the supplier could, if he fails to register, lose some or all the monies due him even if he files a lien.

The wrong person is being penalized. The subcontractor has failed to pay the supplier. The supplier, once he delivers material has no control as to when his product is used, by whom it is used, and when he gets paid. Yet this law could keep him from getting paid, either in part or in its entirety. This is grossly unfair and should not be allowed to happen.

For those of you who are not familiar with the construction industry, the pecking order goes like this: the owner initiates the project and receives the economic benefit from the project. He hires a general contractor who is responsible to see the contract is completed as specified and on time. The general contractor hires subcontractors to do the work. These are the plumbers, electricians, heating and air-condition people etc. They in turn purchase material from the suppliers to be installed in the project. The billing and payment cycle goes like this: the supplier bills the subcontractor on an ongoing basis. The subcontractor accumulates the supplier invoices, adds for his services, and bills the general contractor monthly, who in turn approves the bills and submits an invoice to the owner. The payment process is in reverse. The owner pays the general contractor, who in turn pays the subcontractors, who pays the suppliers.

There are other considerations, such as retainage but this is a general description of how it works. As you can see the last person in the food chain is the supplier yet this legislation could take away his right to get paid.

An additional consideration is the enormous overhead cost this would create. When I retired from Western Extralite Company we were issuing 269,000 invoices in a year. Let's say that's 10,000 jobs.. They would have to monitor all jobs for which they are supplying material so when they exceed \$5,000 they could file a notice of furnishing to protect their lien rights. All that cost and effort with little or no benefit. Why?

In addition how big is the problem. I talked to the credit manager at Western Extralite and they filed less than 5 liens in Kansas all last year. Does this justify all the additional cost and overhead. These costs would be passed on to the subcontractors and would just increase the cost of construction.

In closing, two years ago this very committee turned down HB 2072 which was virtually the same as this bill as bad legislation. I ask you do the same to HB2173 for the same reason.

Ken Keller

Controller, Retired
Western Extralite Company.