

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on February 10, 2011, in Room 346-S of the Capitol.

All members were present.

Representative Colloton

Committee staff present:

Jill Wolters, Office of the Revisor of Statutes  
Matt Sterling, Office of the Revisor of Statutes  
Tamera Lawrence, Office of the Revisor of Statutes  
Lauren Douglass, Kansas Legislative Research Department  
Robert Allison-Gallimore, Kansas Legislative Research Department  
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

Will Larson, Larson and Brumrich on behalf of AGC of Kansas, Topeka, Kansas  
Dean Ferrell, Ferrell Construction, Topeka, Kansas  
Mark Porter, The Law Company, Wichita, Kansas  
Jeff Griffith, Kelley Construction, Topeka, Kansas  
Corey Peterson, Associated General Contractors of Kansas, Topeka, Kansas  
Gary Oborny, CEO/Chairman, Occidental Management, Inc.  
Augie Huber, Kansas City Chapter of Association General Contractors  
Trudy Aron, American Institute of Architects  
Woody Moses, Kansas Aggregate & Kansas Ready-Mix Concrete Association  
Bob Totten, Public Affairs Director, Kansas Contractors Association  
Clint Patty, Frieden Unrein Forbes & Biggs Law Firm  
Nadine Stannard, Associated Material and Supplies  
Blain Weeks, Geiger Ready Mix  
Ramon Gonzalez, The Hamm Companies  
Ken Keller, Controller (Retired), Western Extralite Company  
Bill Miller, American Subcontractors Association, Greater Kansas City Chapter  
Jim Gray, Broken Arrow Electric, Kansas City  
Tim Carpenter, Western Extralite Company  
Joe Steele, Western Extralite Co.

Others attending:

See attached list.

The Hearing on **HB 2072 - Civil procedure, commercial property liens; state construction registry, notice of commencement and notice of furnishings** was opened.

Matt Sterling, Assistant Revisor of Statutes, provided an overview of the bill to the committee, which provides that prior to the commencement of physical construction at a project site, any original contractor shall file a notice of commencement with the state construction registry created by the Secretary of State. The purpose of the notice of commencement is to notify other persons who are working on the project that the project has started and to give information concerning the name and address of the owner, the original contractor, and the description of the project. The bill directs the Secretary of State to create and maintain the state construction registry and gives the Secretary authority to adopt rules and regulations for the form and manner of filing any notice, as well as setting of fees to be charged for the registry. The bill would also amend K.S.A. 60-1103, 60-1110 and 60-1111 to provide, with respect to supplier and contractor liens and bonds, that if a notice of furnishing has not been filed by a remote claimant, that the aggregate amount of any liens or bonds filed by a remote claimant shall not exceed the net amount due from the original contractor under the terms of the subcontract with the subcontractor to whom the remote claimant has supplied labor, equipment, materials or supplies. (Attachment 1)

The following proponents appeared before the committee in support of the bill and provided individual testimony explaining how this bill would support their business and or industry:

Will Larson, Larson and Brumrich, on behalf of AGC of Kansas, Topeka (Attachment 2)  
Dean Ferrell, Ferrell Construction, Topeka, Kansas (Attachment 3)

## CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on February 10, 2011 in Room 346-S.

Mark Porter, The Law Company, Wichita, Kansas ([Attachment 4](#))  
Jeff Griffith, Kelley Construction, Topeka, Kansas ([Attachment 5](#))  
Corey Peterson, Associated General Contractors of Kansas, Topeka, Kansas also advised the committee he has been working with the Secretary of State and the Revisors in preparation of a balloon to add some amendments to the bill. ([Attachment 6](#))  
Gary Oborny, CEO/Chairman, Occidental Management, Inc. ([Attachment 7](#))  
Augie Huber, Kansas City Chapter of Association General Contractors ([Attachment 8](#))  
Trudy Aron, American Institute of Architects ([Attachment 9](#))

The following proponents provided written only testimony in support of the bill.

Kathy Olson, Kansas Bankers Association ([Attachment 10](#))  
Dennis Kerschen, The Law Company Inc., Wichita, Kansas ([Attachment 11](#))  
Bob Simpson, Simpson & Associates, Wichita, Kansas ([Attachment 12](#))  
Benny Crossland, Crossland Construction, Columbus, Kansas ([Attachment 13](#))  
Ben Hutton, Hutton Construction, Wichita, Kansas ([Attachment 14](#))  
Gib Compton, Compton Construction Corporation ([Attachment 15](#))  
Tim Sinclair, Pal's Glass/Sinclair Masonry, Wichita, Kansas ([Attachment 16](#))  
Sid Wiens, Weins & Company Construction, Hutchinson, Kansas ([Attachment 17](#))  
Steve Mohan, Mohan Construction, Topeka, Kansas ([Attachment 18](#))  
Rick McCafferty, Executive Vice-President, Key Construction, Inc. ([Attachment 19](#))  
Robert P. Burns, Partner, Stinson Morrison Heckler LLP ([Attachment 20](#))

The following opponents appeared before the committee and testified in opposition of the bill, providing the committee with individual testimony, giving various examples and reasons why this bill is unnecessary and burdensome.

Woody Moses, Kansas Aggregate & Kansas Ready-Mix Concrete Assoc. ( [Attachment 21](#))  
Bob Totten, Public Affairs Director, Kansas Contractors Association ([Attachment 22](#))  
Clint Patty, Frieden Unrein Forbes & Biggs Law Firm ([Attachment 23](#))  
Nadine Stannard, Associated Material and Supplies ([Attachment 24](#))  
Blain Weeks, Geiger Ready Mix ([Attachment 25](#))  
Ramon Gonzalez, The Hamm Companies ([Attachment 26](#))  
Ken Keller, Controller (Retired), Western Extralite Company ([Attachment 27](#))  
Bill Miller, American Subcontractors Association, Greater Kansas City Chapter ([Attachment 28](#))  
Jim Gray, Broken Arrow Electric, Kansas City ( [Attachment 29](#))  
Tim Carpenter, Western Extralite Company ([Attachment 30](#))  
Joe Steele, Western Extralite Co. ([Attachment 31](#))

The following opponents provided written only testimony in opposition of the bill.

Ken Daniel, Midway Wholesale ([Attachment 32](#))  
John M. Owens, Kansas City Electrical Supply Company ([Attachment 33](#))  
Jim Kistler, Associated Builders & Contractors-Heart of America Chapter ([Attachment 34](#))

The hearing on **HB 2072** was closed.

The next meeting is scheduled for February 11, 2011.

The meeting was adjourned at 6:08 p.m.

# JUDICIARY COMMITTEE GUEST LIST

DATE: 8-10-11

RT Wilson

ICSAJ

| NAME             | REPRESENTING                 |
|------------------|------------------------------|
| Corey Peterson   | AGC of Kansas                |
| Will Larson      | " " "                        |
| Mike Gibson      | " "                          |
| Dean F. Ferrell  | FERRELL CONST.               |
| Jeff Griffith    | KELLEY CONST. CO. INC.       |
| MARC PORTER      | THE LAW COMPANY, INC.        |
| Garry Okorny     | OCCIDENTAL MANAGEMENT INC    |
| Macline Stannard | Associated Material & Supply |
| Blaine Weeks     | Gerger Ready Mix             |
| Ramon Gonzalez   | HAMM, INC.                   |
| Clint Patty      | KAPA                         |
| Tim Carpenter    | Western Extralite Company    |
| Joe Steele       | Western Extralite Co.        |
| Jim Gray         | BA ELASTIC Supply            |
| Allen Dillingham | Kansas City Chapter, AGC     |
| DAN MORGAN       | KC Chapter, AGC              |
| Augie Huber      | A.L. Huber Const. / A.G.C.   |
| Darin Meese      | Water One                    |
| STEVE KARNER     | AAC                          |

Ron Seiber  
 Martha Lee Smith  
 Stephanie Mickelsen

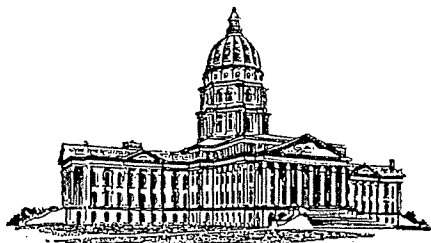
KGFA  
 KMHA  
 KSOS

Sandy Brader Gades Brader  
 Wendy Harris - KAPA  
 Woody Mow - KAPCA

MARY ANN TORRENCE, ATTORNEY  
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY  
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY  
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES  
KANSAS LEGISLATURE

Legal Consultation—  
Legislative Committees and Legislators  
Legislative Bill Drafting  
Legislative Committee Staff  
Secretary—  
Legislative Coordinating Council  
Kansas Commission on  
Interstate Cooperation  
Kansas Statutes Annotated  
Editing and Publication  
Legislative Information System

MEMORANDUM

To: Chairman Kinzer and members of the House Judiciary Committee  
From: Matt Sterling, Assistant Revisor of Statutes  
Date: February 10, 2011  
Subject: House Bill 2072

HB 2072 provides that prior to the commencement of physical construction at a project site, any original contractor shall file a notice of commencement with the state construction registry created by the secretary of state. The purpose of the notice of commencement is to notify other persons who are working on the project that the project has started and to give information concerning the name and address of the owner, the original contractor and the description of the project.

“Notice of commencement” is defined as a notice filed by an original contractor with the state construction registry providing the information required to be given pursuant to section 2.

The notice of commencement would include: The name and address of the owner of the project, the name and address of any original contractor, a legal description of the property on which the construction or improvement is to be made, a brief description of the construction or improvement to be performed on the property, the date of the contract between an owner and an original contractor for the construction or improvement, the name and address of the person preparing the notice of commencement and a statement of notice.

The bill also provides that if any original contractor had filed a notice of commencement concerning a project for which a subcontractor or remote claimant had furnished labor, equipment, materials or supplies, the subcontractor or remote claimant could file a notice of furnishing. The amount of the aggregate liens filed by a remote claimant could not exceed the net amount due by the original contractor to the subcontractor for whom the remote claimant worked unless the remote claimant had filed a notice of furnishing.



"Notice of furnishing" is defined as a notice from a subcontractor or remote claimant that is filed within 21 days of the furnishing of labor, materials, equipment or supplies pursuant to section 3.

The notice of furnishing would include: The name and address of persons with whom the subcontractor or remote claimant has contracted concerning the project, the name and contact information of the subcontractor or remote claimant, a brief description of the construction or improvement to be performed or the equipment being provided by the subcontractor or remote claimant on the project and the unique project number assigned by the state construction registry.

The bill directs the secretary of state to create and maintain the state construction registry and gives the secretary authority to adopt rules and regulations for the form and manner of filing any notice as well as the setting of fees to be charged for the registry.

The bill would also amend K.S.A. 60-1103, 60-1110 and 60-1111 to provide, with respect to supplier and contractor liens and bonds, that if a notice of furnishing has not been filed by a remote claimant the aggregate amount of any liens or bonds filed by a remote claimant shall not exceed the net amount due from the original contractor under the terms of the subcontract with the subcontractor to whom the remote claimant has supplied labor, equipment, materials or supplies.

# LARSON & BLUMREICH, CHARTERED

WILLIAM A. LARSON\*  
CRAIG C. BLUMREICH  
MATTHEW S. CROWLEY  
JOEL W. RIGGS  
ALAN E. STREIT

\*Admitted in Kansas and Missouri

(FORMERLY GEHRT & ROBERTS, CHARTERED)

ATTORNEYS AT LAW  
5601 SW BARRINGTON COURT SOUTH  
P.O. BOX 4306  
TOPEKA, KANSAS 66604-0306  
(785) 273-7722  
FAX # 785-273-8560

ROBERT L. ROBERTS  
1933 — 2004

FLOYD E. GEHRT  
Retired

ID # 48-0992424

January 31, 2011

## TESTIMONY ON HB 2072

BY

WILLIAM A. LARSON, COUNSEL, AGC OF KANSAS

### A. What is a mechanic's lien?

A mechanic's lien is an encumbrance, roughly similar to a mortgage, on real property ( land or buildings on land) that can be created by a contractor, subcontractor or supplier to a contractor or subcontractor, for the cost of the construction performed or materials supplied for construction on the real property. The construction must be authorized by the owner and may include new construction, repair work or renovations. The lien is on the real property itself and is enforced by foreclosing the lien, similar to the way a mortgage is foreclosed. The amount of the lien is determined by the amount due to a contractor, subcontractor or supplier that has not been paid. A mechanic's lien is created by a contractor, subcontractor or supplier ("lien claimant") by filing a lien statement with the Kansas District Court in the county in which the real property is located and in serving (sending notice of filing the statement) in accordance with the statutory requirements for filing a mechanic's liens. A lien claimant has one year to foreclose on a mechanic's lien. If the lien claimant does not do so the lien is lost.

House Judiciary  
Date 2-10-11  
Attachment # 2

## **B. A mechanic's lien is a unique remedy.**

A mechanic's lien is a unique and powerful remedy because it allows a claimant to create a lien on the property of an owner without first suing the owner. In almost all other contractual settings a party to a contract must sue the other party for breach of contract before a lien, in that case a judgment lien, is created. The mechanic's lien right is particularly unique and powerful in the case of a subcontractor or supplier filing a lien. A subcontractor or supplier has no direct contract with the owner. Never-the-less a subcontractor or supplier can still file a lien against property of the owner even if the owner has fully paid the contractor. In other word the owner may have to pay twice for the work performed by the subcontractor or the materials supplied by the supplier.

The right of a subcontractor or supplier to recover from an owner even though the owner has already paid for the work or materials is extremely unique. The best way to explain this is to use an example. Suppose a customer buys a car from an automobile dealer, but the dealer did not pay the manufacturer for the car. It would be similar to the right of a subcontractor or supplier to file a mechanic's lien if the manufacturer had the right to file a lien on the car the customer bought and force the customer to pay the manufacturer for the car even though the customer had already paid the dealer for the car.

In the commercial construction context there is certainly a risk an owner may have to pay twice because a mechanic's lien is filed, but more typically the general contractor is contractually bound to satisfy any liens filed by a subcontractor or supplier. The general contractor has already contracted directly with the subcontractors, knows who they are and is contractually bound to pay them. In the case of a supplier to a subcontractor, however, the contractor may

have already paid the subcontractor for the materials supplied by the supplier and may not even know or have any way of knowing who all the suppliers of the subcontractors are so it can check to make sure the suppliers have been paid. Thus in the commercial construction context if a subcontractor fails to pay a supplier and the supplier files a mechanic's lien it is typically the general contractor who will have to pay twice.

### **C. The purpose of HB 2072**

The basic purpose of HB 2072 is to address a glaring inequity in the Kansas lien laws. It is to create a procedure to allow owners and general contractors to find out who are potential lien claimants on a project. It is a matter of simple fairness that if owners and general contractors are expected to incur the risk of having to pay twice for the work of a subcontractor or the materials supplied by a supplier, they should at least have a mechanism by which they can determine who the potential lien claimants are on any given project. HB 2072 is not an attempt to shift responsibility or risk away from owners and general contractors as some opponents would argue. Under HB 2072 as long as a subcontractor or supplier (referred to as remote claimants in the bill) electronically file a notice they will be performing work or supplying materials on a project they have the same lien rights they have always had. Owners and general contractors need to know who the potential lien claimants are so they can take steps to make sure the potential lien claimants are paid. This not only benefits owners and general contractors it also benefits potential lien claimants.

### **D. Lien laws in other states**

The AGC has put together a summary of the lien laws in all 50 states. The association will be glad to provide this to any legislators that are interested. In

general, however, the lien laws of the various states vary tremendously so a comparison is not particularly useful except in one respect. The following states all have some provision for a preliminary notice by a potential lien claimant:

Alabama, Arizona, California, Connecticut, Florida, Georgia, Iowa, Louisiana, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Washington, West Virginia and Wyoming

In supporting HB 2072 the AGC is asking similar legislation be enacted in Kansas.

# FERRELL

CONSTRUCTION  
OF TOPEKA, INC.

## WRITTEN TESTIMONY PRESENTED TO THE HOUSE COMMITTEE

### ON JUDICIARY

RE: HB 2072

FEBRUARY 1, 2011

BY

DEAN F. FERRELL

Mr. Chairman and Members of the Committee

My name is Dean Ferrell, President and Owner of Ferrell Construction of Topeka, Inc. I am also a past President of the AGC of Kansas. My company specializes in commercial building construction.

I am writing to express my support of HB 2072, regarding electronic lien notification requirements for second tier subcontractors and suppliers. Through the years, much effort has been exerted to assure that laws are in place to protect vendors and subcontractors, even general contractors, when the entity they are doing business with fails to pay them, or is slow in making payment.

These laws have served us well, but there has always been an inherent gap that, in some cases, leaves the general contractor ("original" contractor, as defined by HB 2072) at risk. That gap occurs when a general contractor has paid his subcontractor for services rendered without the knowledge that the subcontractor is failing to pay its subcontractors or suppliers (referred, to as remote, or second tier, claimants). Since the remote claimants are allowed, by law, to take an extended period of time before they actually file a lien, the offending first tier subcontractor may have already been paid in full by the time the lien is filed. In order to keep a project "lien free", more often than not, the original contractor is left "holding the bag". By this, I mean paying for the same work twice, without a sound means to recoup the loss.

This problem can be eliminated, or at least improved, if the original contractor could just know who all the "potential" remote claimants are – ahead of time. There is no way to police who is not being paid unless the subcontractor informs us who all its vendors are. Unfortunately, as you can imagine, "financially strapped" subcontractors will never provide us with a complete list.



It would help immensely if the second tier vendors would keep us informed that one of our subcontractors is struggling to pay them, or not paying them at all. If we only knew, we could work out "joint check" arrangements, or something similar. Some do alert us to potential problems, but quite honestly, most don't. Most will wait until the end of their statutory time period is nearing to contact us, or they just simply file the lien – at the last moment – without advanced notice to us. In some cases, it may be too late for us to take action to protect our interests. We may have already paid the subcontractor too much.

I understand the dilemma that a second tier subcontractor or supplier faces. They are very hesitant to "make waves" for their customer (our subcontractor). Many subcontractors take great offense if their supplier makes direct contact with the original contractor about slow payments. They are hesitant to do anything to jeopardize their relationship with the struggling subcontractor, and there is always hope that it is only a temporary problem. And, I'm sure that it is always in the backs of their minds that the lien laws will protect them. I'm sure that many don't realize that in some cases, the general contractor is the one that ends up being penalized.

In the past year, our company has experienced two subcontractor failures. In one instance, an excavating contractor had been receiving payments from us for work completed; however he was not, in turn, reimbursing his vendors. By the time we realized this, it was too late. The excavator had "bolted" from the jobsite leaving us "holding the bag" – to pay those vendors and to complete the work he had been responsible for. It appears that our losses will be in the \$25,000 to \$30,000 range.

On another project, our electrical contractor defaulted when his work was approximately 25% complete. Our losses will exceed \$200,000. Quite honestly, in this case, a large portion of these losses can be attributed to costs associated with lining out a replacement subcontractor; however, we can probably safely say that a fourth of our losses are the result of paying for the same material and labor "twice".

For reasons stated above, HB 2072 makes sense. The establishment of an electronic, web-based registry, as established in this bill, is an efficient solution to the stated problem.

In closing, I feel this is a fair bill to all involved parties. I urge you to support passage of HB 2072. Thank you.

THE LAW COMPANY INC.  
CONTRACTORS | CONSTRUCTION MANAGERS  
*Building Excellence Since 1959*



TESTIMONY OF  
MARC PORTER, SENIOR VICE PRESIDENT-CFO,  
THE LAW COMPANY  
BEFORE HOUSE COMMITTEE ON JUDICIARY  
HB 2072

Mister Chairman and members of the committee, my name is Marc Porter. I am the Senior Vice President – Chief Financial Officer for The Law Company, a general contracting company headquartered in Wichita, KS.

I am writing you today to express my strong support of House Bill 2072 which creates the State Construction Registry under the supervision of the Secretary of State's office. This website would serve as a much needed tool giving the general contractor access to vital information on a construction project.

As a general contractor in Kansas, we are facing a severe problem caused by a loophole in the lien laws that exposes the contractor to unfair risk. Today, subcontractors are failing at an alarming rate leaving unpaid balances to their suppliers on construction projects. Many times these failing subcontractors HAVE been paid but they are NOT paying their subcontractors or suppliers below them. These third-tier subcontractors and suppliers then either file liens on the property or file a claim on our bond. Due to contractual obligations with the owner, it is our responsibility to clear that lien by paying a party, with which we have no contractual relationship, from our own pocket.

Our company along with the AGC of Kansas, is simply asking for any party to a construction contract to file a brief Notice of Furnishing to the contractor within 21 days of first providing services or materials to a jobsite. With this information, we can then take proactive and PROTECTIVE measures to ensure those suppliers get paid the first time and the contractor does not have to pay money out of their own pocket for something that has already rightfully been paid.

The company I represent has performed work in Ohio, Arizona, Florida, California and Iowa- five of the 27 states which require some form of preliminary notice to the owner or contractor by subcontractors and suppliers in order for those parties to preserve their liens rights. I can say having this requirement in place in those states provides essential information for us, the contractor, to properly and efficiently manage payment to all parties of a project. The end goal of this legislation is not to harm suppliers. The goal is to help those individuals get paid.

I urge you to support HB 2072 as this legislation is long overdue in Kansas.



345 Riverview | Wichita, Kansas 67203 | P.O. Box 1139, 67201-1139 | p. 316.268.0200 | f. 316.268.0210 |

House Judiciary  
Date 2-10-11  
Attachment # 4





**TESTIMONY OF  
JEFF GRIFFITH, KELLEY CONSTRUCTION CO., INC.  
BEFORE HOUSE COMMITTEE ON JUDICIARY  
HB 2072**

February 1, 2011

Good afternoon. Mr. Chairman and members of the committee, my name is Jeff Griffith, president of Kelley Construction Co., Inc., located in Topeka. I would like to express our support for House Bill No. 2072.

We are a small commercial general contractor working in northeast Kansas. We have been in business for 19 years and perform projects up to three million dollars. The majority of our work is for private owners such as churches, financial institutions and developers. We also perform considerable work for school districts and the State of Kansas. Over half of our work is competitively bid.

The competitively bid market has become increasingly difficult over the last 30 months. We are seeing smaller profit margins and more contractors competing for fewer projects. We are also seeing many subcontractors entering the market that are either unknown to us or that are pursuing work they may lack experience doing. In a competitive bid situation, we are routinely required to evaluate the risks associated with working with low bid subcontractors. To not use the low subcontractor's bid in our proposal almost guarantees that we will not submit the lowest proposal. To use the low subcontractor's bid leaves the risk of whether they have the resources and capacity to perform the project. Most of these bids are received within the last hour of the bidding process, leaving little time to evaluate a contractor's abilities. Without previously working with a subcontractor, it is nearly impossible to know.



P.O. Box 750256  
Topeka, KS 66675  
Tel (785) 235 6040  
Fax (785) 235 3305  
kelley-construction.com

House Judiciary  
Date 2-10-11  
Attachment # 5

Small general contractors perform only a few projects a year. We do not have the ability to spread a subcontractor's failure to make payment over several projects. One subcontractor who fails to make good on their payments to their suppliers and remote claimant, even on a relatively small amount, has the capability to put a small general contractor's business in jeopardy. We must be right every time on knowing subcontractors are paying their bills.

Finding the suppliers and remote claimants for all subcontractors on a project is a time consuming and often difficult process. A state construction registry would provide a resource to the small general contractor to take the measures required to protect ourselves from subcontractors who either intentionally or unintentionally do not meet their commitments. It also makes an easier path for suppliers and sub-subcontractors to make sure they can receive payment without time consuming liens or in the extreme, the costly recovery from a general contractor without resources to make a double payment on material and services.

For these reasons, we request you join us in support of House Bill No. 2072 and the establishment of the state construction registry.

Sincerely Yours.

**KELLEY CONSTRUCTION CO., INC.**

A handwritten signature in black ink, appearing to read 'J. Griffith', with a large, stylized initial 'J'.

Jeff Griffith  
President



*Building a Better Kansas Since 1934*  
200 SW 33<sup>rd</sup> St. Topeka, KS 66611 785-266-4015

**TESTIMONY OF  
ASSOCIATED GENERAL CONTRACTORS OF KANSAS  
BEFORE HOUSE COMMITTEE ON JUDICIARY**

**HB 2072**

February 1, 2011

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

Mister Chairman and members of the committee, my name is Corey Peterson. I am 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 in Kansas (with the exception of Johnson and Wyandotte counties).

**AGC of Kansas supports House Bill 2072 and asks that you report it favorably for passage.**

HB 2072 attempts to correct existing lien laws by simply providing a means for an owner and general contractor to have knowledge of all parties on a construction project having lien rights or the ability to file against a bond.

This is accomplished with the formation of the State Construction Registry. The underlying lien laws remain unchanged if the Registry is used.

This is a matter of fairness, making all parties responsible for their own business and protecting those that have already made payment. It is not a big company versus small company issue. It is not an assault on lien rights. HB 2072 is an attempt to insure all parties on a commercial construction project are paid, in a timely manner and in full, therefore, avoiding the need to file a lien.

This bill has been worked on for over four years and the end result considers many compromises and considerations. In speaking with suppliers from Utah, the law in which this is modeled, they indicated that our bill improves upon their system, which is already being embraced by the commercial construction industry.

**Again, AGC of Kansas supports House Bill 2072 and asks that you report it favorably for passage.**  
Thank you for your consideration.

House Judiciary  
Date 2-10-11  
Attachment # 6

**APPENDUM TO COREY PETERSON TESTIMONY**  
**February 10, 2011**

**HB 2072**  
**Mechanics Liens and Bond Claims**  
**Formation of a State Construction Registry**



785-266-4015 (Office)  
785-554-5210 (Corey Cell)  
cpeterson@agcks.org

**GOAL OF BILL**

Amend mechanic's lien law to correct a loophole in order to protect owners and general contractors from paying for goods and services twice and to insure timely and full payment to all parties on a commercial building construction project.

**HIGHLIGHTS OF BILL**

- Creation of a State Construction Registry (SCR) to allow an owner and general contractor knowledge of all parties providing goods, materials, or services to a project that have rights to file a mechanic's lien on the property or file against a general contractors bond.
- Registry will be hosted and administered by the Secretary of State.
- General contractor is required to start the process by filing a Notice of Commencement and make the assigned SCR number readily available.
- Subcontractors and remote claimants required to register only one time per project, but within 21 days of first supplying services or materials.
- Lien laws (and all privileges) will not be changed if Registry is utilized.
- Bill is specifically for Commercial Building Construction projects. **Highways, roads, bridges and residential construction are not impacted.**

## **E V WILL WEBSITE BE FUNDED?**

The SCR website will be funded through fees charged when filing a Notice of Commencement or Notice of Furnishing. Although not officially set, the construction industry has expressed that the Notice of Furnishing should remain as affordable as possible to help subcontractors and suppliers, since those parties work on more projects than a general contractor. General contractors in the industry have agreed to increase their cost of the Notice of Commencement significantly over the cost in Utah (\$7.50 per notice) to ensure the system remains affordable for subcontractors and suppliers.

### **Estimated Cost (when filing online)**

Notice of Commencement- \$30.00 (General Contractor)

Notice of Furnishing- \$2.00 (Subcontractors & Suppliers)

## **REASONS BILL IS NECESSARY**

Currently, some parties (remote claimants) with no direct contractual relationship with the general contractor or owner may file a lien on the owner's property or against a bond, should they not be paid.

On a typical construction project there are dozens of subcontractors, all being supplied by companies with lien rights. Tracking all of these remote claimants is difficult, if not impossible. See page 7.

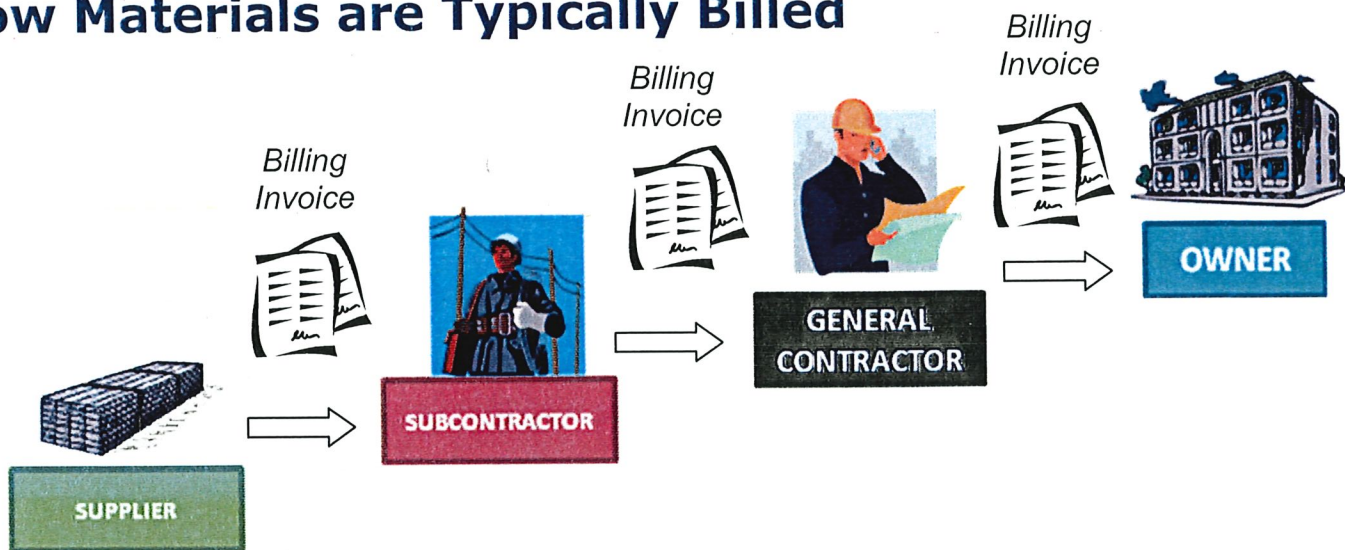
Under the current system, general contractors may pay their subcontractors, who then, beyond the control of the general contractor, fail to pay their subcontractors or suppliers. Although, the owner and general contractor has paid for services, materials or supplies rendered, remote claimants may file a lien if not paid, thus in the end requiring payment for a second time.

The State Construction Registry will provide transparency on a project, allowing those responsible for payment the ability to see all those on a project that seek payment.

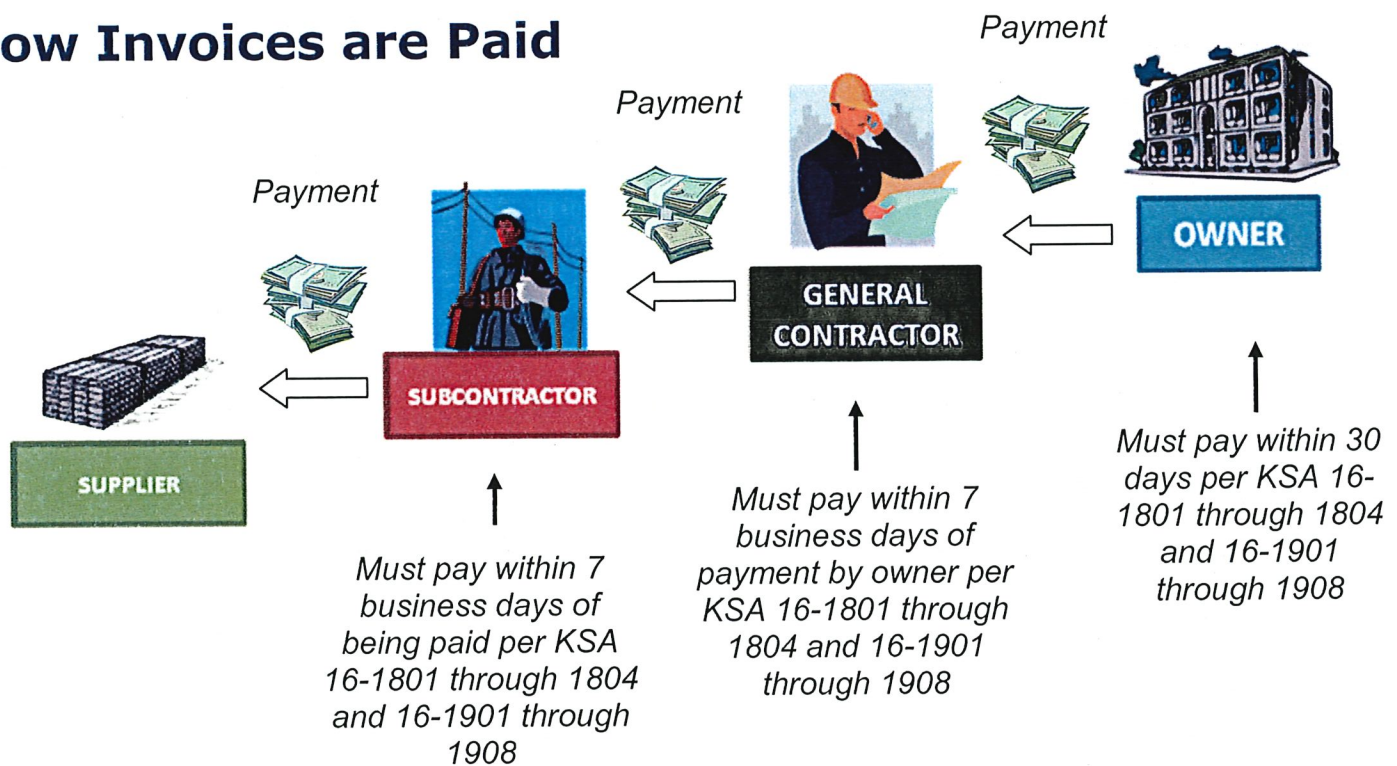


## B BACKGROUND OF TYPICAL PAYMENT PROCESS ON A CONSTRUCTION PROJECT

### How Materials are Typically Billed

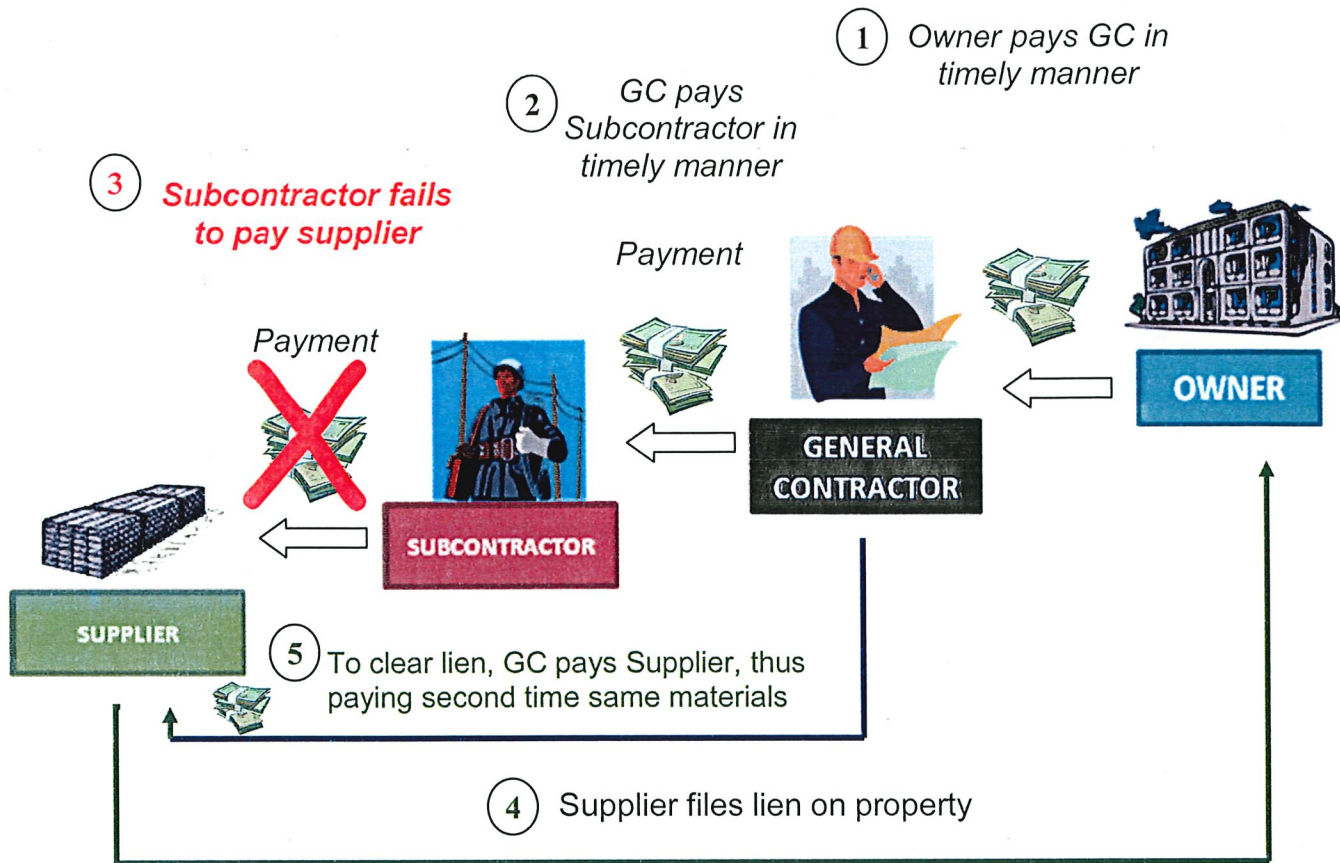


### How Invoices are Paid



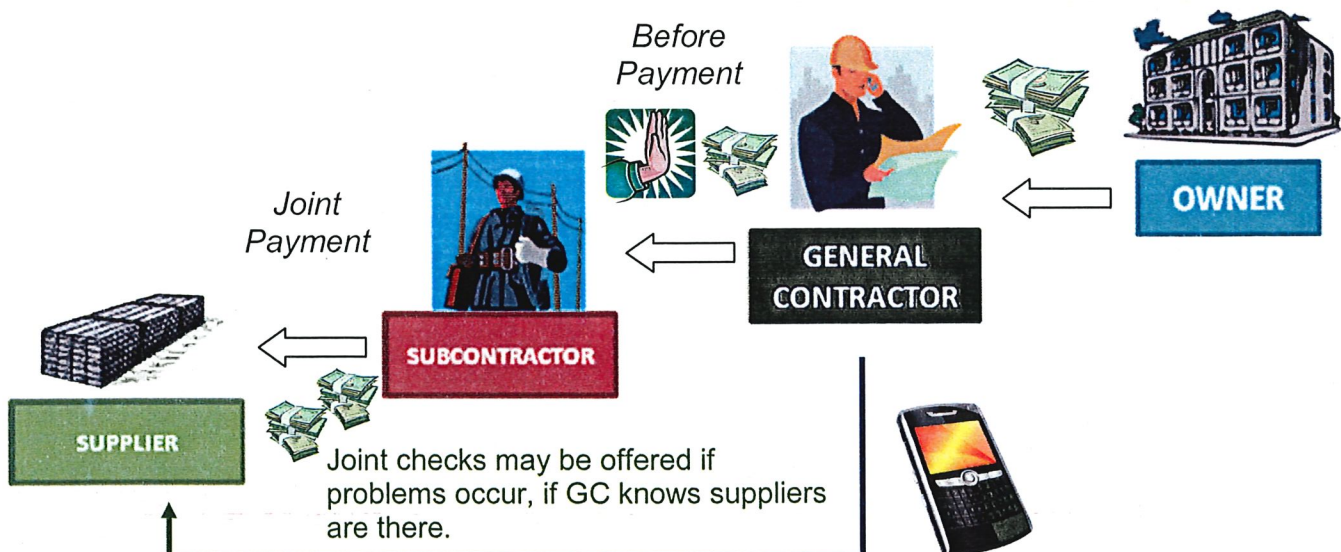
**Protections for Remote Claimants:** Per KSA Chapter 16, Article 18 (and Article 19 for public construction), subcontractors (and suppliers by definition of subcontractor) are protected from slow or incomplete pay. KSA 16-1803 allows 18% per annum due on undisputed late payments. KSA 16-1806 calls for prevailing party to be awarded costs of action to enforce act and reasonable attorney fees.

# POTENTIAL SCENARIO



## How would State Construction Registry Help?

Before paying subcontractor, GC can contact supplier to insure subcontractor has been keeping up on payments to supplier, or if a new supplier working for a subcontractor, GC may offer safeguards to new supplier such as a joint check.



## HISTORY OF BILL

AGC has been working on this bill for over four years. Each year AGC has negotiated with opponents to find ways to make the bill as fair as possible; attempting to find the best way to insure all parties are paid timely on a construction project.

### 2008

Bill (SB 603) was introduced modeled after Arizona Law that required notification of furnishing be provided via certified mail. Suppliers objected to the time and expense this process would require.

### 2009

Bill was modified further and reintroduced (SB 292), but no agreement was reached between proponents and opponents. Committee asked parties to reach agreement over interim.

### 2010

Following several industry meetings and considering concerns of suppliers, a new bill was drafted (SB 469) to allow for notification to be provided electronically through a State Construction Registry. This approach, modeled after Utah law, provided an inexpensive and quick solution to the concerns expressed by suppliers.

Bill was supported by Secretary Thornburg, but was later opposed by Secretary Biggs.

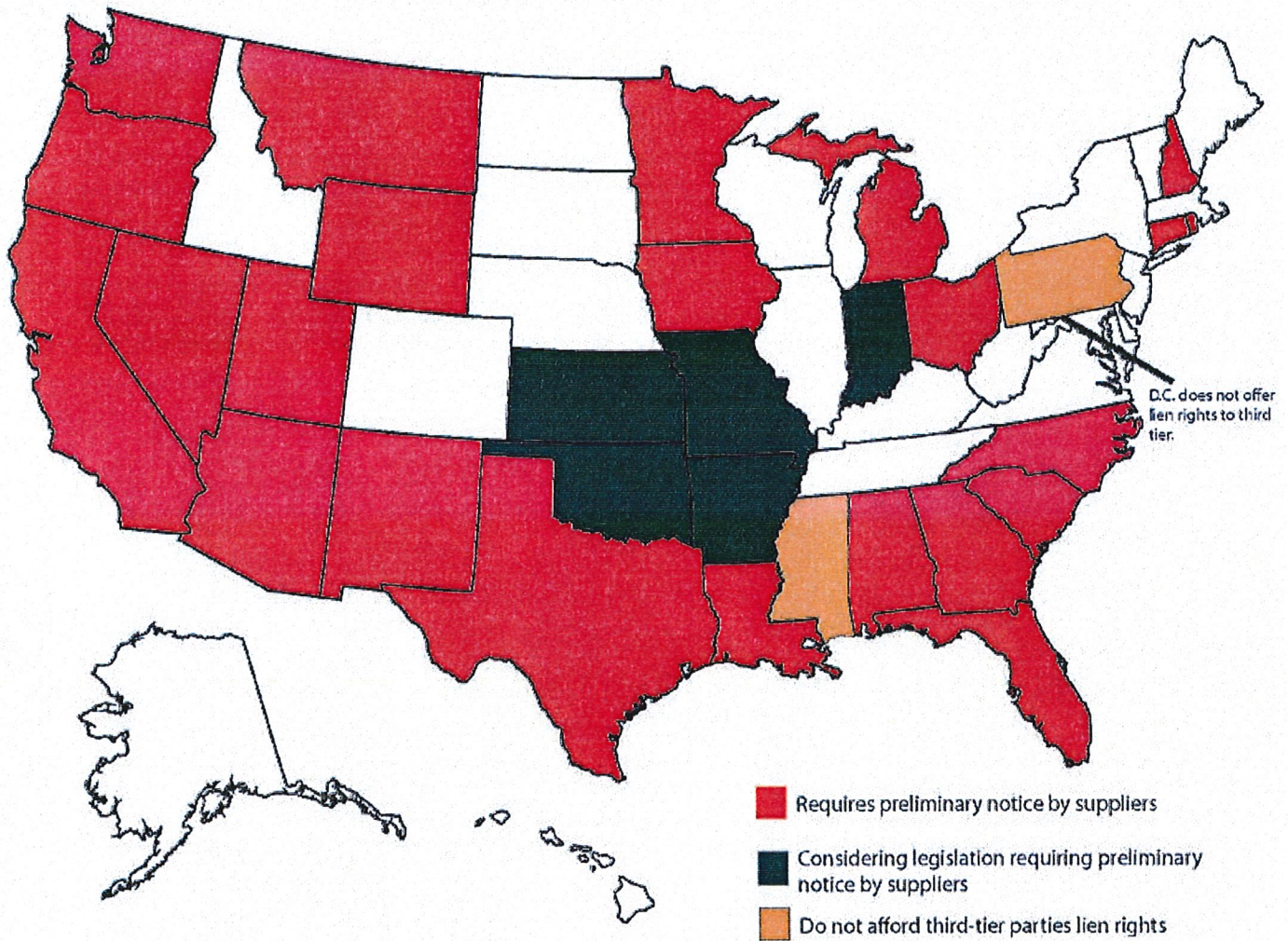
Bill failed to get out of Senate Judiciary on split vote, with Chair casting deciding vote. **Contents of bill later passed out of the House via a floor amendment with over 80 votes in favor**, but was removed by Conference Committee. Senate Committee sent to Judicial Council who met this summer. Council agreed there is a problem with current lien laws as explained by AGC, but could not come up with a resolution as to how it could be remedied.



## HOW DOES KANSAS COMPARE TO OTHER STATES?

Lien laws vary greatly across the U.S. Comparing “apples to apples” is difficult.

Twenty three states require notification of furnishings. Two states and the District of Columbia do not afford 3<sup>rd</sup> tier subcontractors and suppliers lien rights at all.



## II ILLUSTRATION OF NUMBER OF SUBCONTRACTORS AND SUPPLIERS ON A COMMERCIAL CONSTRUCTION PROJECT

ABOVE ESTIMATES WERE EXTRAPOLATED FROM THE FOLLOWING INFORMATION

| Project                           | Value         | #<br>1st Tier  | Estimate #<br>2nd Tier | Total |
|-----------------------------------|---------------|----------------|------------------------|-------|
|                                   |               | Subs/Suppliers | Subs/Suppliers         |       |
| Aircraft Maintenance Hanger       | 7,251,885.00  | 28             | 42                     | 70    |
| Ameripride Fire Restoration       | 184,641.00    | 5              | 8                      | 13    |
| Area on Aging                     | 625,675.00    | 12             | 18                     | 30    |
| Baxter & Associates               | 707,196.00    | 25             | 38                     | 63    |
| Blue Valley Southwest High School | 64,287,000.00 | 67             | 101                    | 168   |
| Central KS Med Center             | 137,066.00    | 6              | 9                      | 15    |
| Coffeyville Wal-Mart              | 11,000,000.00 | 42             | 63                     | 105   |
| Collegiate School                 | 5,905,451.00  | 31             | 47                     | 78    |
| Colwich Grade School              | 4,081,687.00  | 41             | 62                     | 103   |
| El Dorado High School             | 20,852,888.00 | 54             | 81                     | 135   |
| Joplin Humane Society             | 2,800,000.00  | 30             | 45                     | 75    |
| KaMMCO/KMS                        | 10,408,978.00 | 34             | 51                     | 85    |
| Neosho County Sheriff's Dept      | 275,000.00    | 9              | 14                     | 23    |
| New Emergency Dept. Add/Remodel   | 32,427,763.00 | 38             | 57                     | 95    |
| PSU Health Center                 | 2,200,000.00  | 31             | 47                     | 78    |
| Sam's Club                        | 3,087,000.00  | 33             | 50                     | 83    |
| Seeders Inc.                      | 769,767.00    | 20             | 30                     | 50    |
| Springfield Infinity              | 1,200,000.00  | 17             | 26                     | 43    |
| St David's Episcopal Church       | 3,580,588.00  | 28             | 42                     | 70    |
| St. Marks Church                  | 416,532.00    | 15             | 23                     | 38    |
| USD 417 High School               | 5,517,227.00  | 37             | 56                     | 93    |
| Via Christi Hope                  | 2,915,642.00  | 15             | 23                     | 38    |
| Washburn Rural HS Gym             | 9,709,600.00  | 32             | 48                     | 80    |
| Woodruff Dental                   | 1,044,155.00  | 23             | 35                     | 58    |
| Total                             |               | 673            | 1010                   | 1683  |
| Avg per project                   |               | 28.04          | 42.06                  | 70.10 |

## SUMMARY

HB 2072 is the culmination of four years' of negotiations, featuring many compromises based on concerns of opponents.

The bill has the support of the Secretary of State's office, which would develop and maintain the registry. The bill has no fiscal note.

The bill is an attempt to insert fairness into the current lien laws with a simple requirement of notification. The underlying lien laws remain unchanged. The ultimate goal is to create a system that insures payment is made in a manner that will eliminate the need for the filing of liens or against bonds.



**WRITTEN TESTIMONY PRESENTED TO THE HOUSE COMMITTEE  
ON JUDICIARY**

**RE: HB2072**

**FEBRUARY 1, 2011**

**BY  
GARY L. OBORNY, CEO/CHAIRMAN  
OCCIDENTAL MANAGEMENT, INC.**

Mister Chairman and members of the committee, my name is Gary Oborny. I am CEO and Chairman of Occidental Management, Inc., a commercial real estate development company based in Wichita, Kansas. Thank you for the opportunity to participate in this valuable public process.

**Occidental Management, Inc. supports House Bill 2072 and also asks that you support its passage.**

Kansas law already provides protection to residential land owners when contractors are providing services on their properties. It is also time to afford commercial land owners protection from the filing of mechanic's liens which are outside their sphere of control. On past development projects, Occidental or its tenants have experienced mechanic's liens filed by 2<sup>nd</sup> or 3<sup>rd</sup> party contractors or vendors. These referenced mechanic's liens have occurred even when Occidental or the tenant had paid the General Contractor in a timely manner and within the scope of the contractual agreement.

A number of problematic occurrences happen when a mechanic's lien is filed on a development project.

- ❖ **Clouds the title for the owner, impeding property sales and transfers;**
- ❖ **Lenders are notified which in turn can cause credit problems for the borrower (i.e. the developer);**
- ❖ **The General Contractors passing this potential cost on to the developer when bidding future projects;**
- ❖ **In severe cases, potential loss of a General Contractor, affecting the amount of competitiveness in the market.**

Occidental Management, Inc. believes that Bill 2072 will help rectify this present problem within the commercial building industry and give a greater assurance that all parties are conducting themselves in a professional and responsible business-like manner.

I thank you in advance for your consideration in passage of Bill 2072.





**TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE IN SUPPORT OF HOUSE BILL 2072**

by Augie Huber, President, Kansas City Chapter, Associated General Contractors  
on February 10, 2011

Thank you, Chairman Kinzer, and members of the committee. My name is Augie Huber. I am chief executive officer of A.L. Huber, Inc. in Overland Park, KS and I am the current president of the Kansas City Chapter, Associated General Contractors (AGC). I do appreciate the opportunity to testify in support of House Bill 2072 this afternoon. The Kansas City Chapter, AGC represents 80 general contractors and 65 associate subcontractor and supplier members engaged in the commercial and industrial building construction industry throughout portions of Missouri and northeast Kansas. Nearly three-quarters of our members are located in the Kansas City area and are either domiciled in Kansas or perform work in the state.

HB 2072 authorizes the secretary of state to establish an online state construction registry for the purpose of filing and maintaining notifications by original contractors, subcontractors and remote claimants. Its use would establish transparency regarding all parties involved in non-residential building construction projects in Kansas so that all are properly paid and so that unjust "double payments" and unnecessary lien filings can be avoided. Fees associated with the use of the registry would offset administrative costs incurred by the secretary of state.

Liens may be filed against owners' property by unpaid general contractors, subcontractors and suppliers due to such owners' failure to pay for all or part of the labor and/or materials involved in the construction or improvements performed on their property. In other instances, both owners (who have already paid their general contractors) and their general contractors (who have already paid their subcontractors and suppliers) are caught unaware and are very adversely impacted when liens are placed on owners' property by unknown "remote lien claimants". Remote lien claimants include sub-subcontractors and material suppliers to the general contractor's subcontractors and such claims arise when subcontractors don't pass payment on through to their own sub-subcontractors and suppliers.

When a lien is filed by an unknown remote lien claimant, the owner is impacted because the lien clouds title to the property even though the owner has already paid for the labor or materials provided by such claimant. In turn, the owner's general contractor is very adversely impacted because the general contractor must indemnify the owner against such an unanticipated loss. So the general contractor, who has already paid the subcontractor for the labor or materials involved, must pay a second time to have the lien removed from the owner's property. The unexpected cost can be very substantial and comes directly out of the general contractor's pocket. An online construction registry would address this unfair result by making owners and general contractors aware of potential remote lien claimants and ensuring payment to them, through joint checks for example. Such a registry would also provide owners with knowledge of all their general contractors' first tier subcontractors so that steps can be taken to ensure that they are paid as well.

Certainly a state construction registry would benefit owners and general contractors in the state. Because the registry would provide real transparency as to all involved in a building project, we believe that first tier subcontractors and suppliers and lower tier sub-subcontractors and suppliers would all benefit because all would be provided a new level of assurance that they will be paid and paid in timely fashion. In short, an online construction registry would provide a very accessible, economical and transparent way to ensure that all parties involved in non-residential building construction in Kansas are properly paid. Importantly, its use would also prevent the unfairness of having to pay twice for labor and materials and should result in a reduction in the number of lien filings in the state. I thank you for your consideration of our position on this important bill. I respectfully ask that you recommend House Bill 2072 favorably to the full House of Representatives and I would be glad to try to answer any questions that you might have at the appropriate time.





**AIA Kansas**  
*A Chapter of the American  
Institute of Architects*

February 10, 2011

**TO:** Representative Kinzer and Members of the Judiciary Committee

**FROM:** Trudy Aron, Executive Director

**RE:** Support for HB 2072

Good afternoon Mr. Chairman and members of the Committee. I am Trudy Aron, Executive Director, of the American Institute of Architects in Kansas. Thank you for allowing us to testify in support of HB 2072.

AIA Kansas is a statewide association of architects and intern architects. Most of our 600 members work in over 100 private practice architectural firms designing a variety of project types for both public and private clients. Our members are designing tomorrow's buildings today, aiming to meet the "triple bottom line:" buildings that are affordable, protect the health of the building occupants, and respect our environment.

HB 2072, as you had heard AGC testify, creates a State Construction Registry within the Secretary of State's Office. It amends the mechanic's lien law to correct a loophole to protect owners and general contractors from paying for goods and services twice and to insure timely and full payment to all parties on a commercial building construction project.

No one wants to pay for something twice, but this happens frequently on commercial construction projects when the owner and the general contractor do not and cannot know everyone who is providing services and/or materials and supplies to the construction site. Many times, the only time this is known is when a mechanic's lien is filed. However, that may be after the owner, and hence the general contractor, has already paid for that portion of the work or material.

This registry would allow the owner and the general contractor to know who has lien rights. This allows the general contractor to make sure that the proper payment goes to the subcontractor, sub-subcontractor, or material supplier. This is the only way to make sure the owner and/or the general contractor do not have to pay for something twice.

Thank you for allowing AIA Kansas to provide testimony in support of HB 2072. We ask for your "yes" vote to pass the measure to the full house. I'll be happy to answer questions.

President  
Gary Nevius, AIA  
Overland Park  
President Elect  
Hans Nettelblad, AIA  
Overland Park  
Treasurer  
Gwenda S. Gigous, AIA  
Topeka  
Secretary  
Charles Smith, AIA  
Topeka

Directors  
Richard C. Brown, AIA  
Wichita  
Timothy Clark, AIA  
Manhattan  
Tim de Noble, AIA  
Manhattan  
David Drescher, AIA  
Wichita  
Dale R. Duncan, AIA  
Olathe  
Peter Gierer, AIA  
Topeka  
Nils Gore  
Lawrence  
Peter Hauff, AIA  
Emporia  
Joshua Herrman, AIA  
Wichita  
Craig Lofton, AIA  
Lindsborg  
Amanda Moore, Assoc. AIA  
Topeka  
Daniel (Terry) Tevis, AIA  
Lenexa  
Jason VanHecke, AIA  
Wichita  
J. Michael Vieux, AIA  
Leavenworth

Executive Director  
Trudy Aron, Hon. AIA, CAE  
info@aiaks.org

700 SW Jackson, Suite 209 · Topeka, KS 66603 · 800-444-9853 or 785-357-5308 · www.aiaks.org

House Judiciary  
Date 2-10-11  
Attachment # 9



February 1, 2011

To House Committee on Judiciary

From: Kathleen Taylor Olsen, Kansas Bankers Association

**Re: HB 2072: State Construction Registry**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present written testimony today in support of **HB 2072**, which would create a State Construction Registry – an electronic filing registry for general contractors, subcontractor and remote claimants who potentially could claim a lien on real estate for work performed or supplies delivered.

The KBA was invited to participate in many meetings held in the past two years regarding this idea. At these meetings, we expressed support for a registry that would allow interested parties – including a lender with a security interest in the underlying real property – to better identify all potential claims which could become liens on that real property, with the ultimate goal being that all parties who have performed work or delivered supplies, are paid and there is no need to file a lien.

Unpaid subcontractors or remote claimants have the ability to file a statutory lien on the property where work was performed or supplies were delivered. These such liens can become problematic for the property owner as they become clouds on the title to the property. The KBA supports any measure that can help all parties to know who and how many potential claims are out there. 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 if there is some assurance that all parties have been identified.

It is our understanding that this bill would not affect a subcontractor's or remote claimant's right to collect payment for services rendered through a civil cause of action. In other words, the subcontractor or remote claimant may lose the right to put a lien on the property by not filing a Notice of Furnishing under this act, but will not lose the right to collect payment for work performed or services rendered by suing the general contractor and/or the property owner.

This bill **does** provide an additional tool by which the property owner and general contractor can assure that all parties due and owing for work performed or supplies rendered are paid and thereby, help keep all parties from having the costs of time and money associated with such an action.

Thank you for your time and consideration of this important matter. We would respectfully request that the Committee consider acting favorably with regard to **HB 2072**

THE LAW COMPANY INC.  
CONTRACTORS | CONSTRUCTION MANAGERS  
*Building Excellence Since 1959*



**TESTIMONY OF  
DENNIS KERSCHEN, SENIOR VICE PRESIDENT,  
THE LAW COMPANY  
BEFORE HOUSE COMMITTEE ON JUDICIARY  
HB 2072**

Mister Chairman and members of the committee, my name is Dennis Kerschen. I am the Senior Vice President for The Law Company, a general contracting company headquartered in Wichita, KS.

I am writing you today to express my strong support of House Bill 2072 which creates the State Construction Registry under the supervision of the Secretary of State's office. This website would serve as a much needed tool giving the general contractor access to vital information on a construction project.

As a general contractor in Kansas, we are facing a severe problem caused by a loophole in the lien laws that exposes the contractor to unfair risk. Today, subcontractors are failing at an alarming rate leaving unpaid balances to their suppliers on construction projects. Many times these failing subcontractors HAVE been paid but they are NOT paying their subcontractors or suppliers below them. These third-tier subcontractors and suppliers then either file liens on the property or file a claim on our bond. Due to contractual obligations with the owner, it is our responsibility to clear that lien by paying a party, with which we have no contractual relationship, from our own pocket.

Our company along with the AGC of Kansas, is simply asking for any party to a construction contract to file a brief Notice of Furnishing to the contractor within 21 days of first providing services or materials to a jobsite. With this information, we can then take proactive and PROTECTIVE measures to ensure those suppliers get paid the first time and the contractor does not have to pay money out of their own pocket for something that has already rightfully been paid.

The company I represent has performed work in Ohio, Arizona, Florida, and Iowa- four of the 27 states which require some form of preliminary notice to the owner or contractor by subcontractors and suppliers in order for those parties to preserve their liens rights. I can say having this requirement in place in those states provides essential information for us, the contractor, to properly and efficiently manage payment to all parties of a project. The end goal of this legislation is not to harm suppliers. The goal is to help those individuals get paid.

I urge you to support HB 2072 as this legislation is long overdue in Kansas.

House Judiciary  
Date 2-10-11  
Attachment # 11





January 28, 2011

Committee on Judiciary  
Kansas State House  
Re; House Bill 2072 Lien Notification

Dear Committee Chair person

I am writing to you and your Committee regarding House Bill #2072 instituting a Lien Notification system that is badly needed in the State of Kansas. My family is in its third generation, of providing Commercial construction service to clients across the State of Kansas. Since 1958 we have been constructing schools, hospitals, retirement facilities and many public and institutional Facilities.

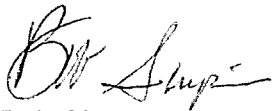
Currently we are working in the following Kansas City's of Anthony, Harper, Pratt, Hays, Derby and Wichita. In this work we will at any time be handling over 200 suppliers and subcontractors.

As we all know the current climate is very challenging and our bids and budgets along with margin are extremely tight. It goes without saying paying for things twice will not allow my company and its payroll to continue to operate and sustain itself.

It is my belief that it is only responsible for suppliers and subcontractors to pay promptly when paid by our company. In the past few months I have had my accounting staff spend countless hours on the phone chasing down second and third tier suppliers to make sure the bills have been paid by our first tier subs and suppliers. Earlier this fall I had a concrete subcontractor who had been submitting monthly lien releases in a fraudulent manner as the ready mix supplier and rebar supplier had not been paid for over four months resulting in a six figure past due bill that I had to clean up.

I would ask that you consider this bill as an important piece of legislation for the financial health of the construction industry. This is a risk that should not be forced totally onto the shoulders of prime contractors. Everyone who participates in the cycle of payment takes a risk on who they do business with, but it is only right that these people come out of the shadows so we can provide them the assurance of payment.

Sincerely Yours



Bob Simpson  
President

BS/rds

316-942-3206  
FAX: 316-943-1298  
1631 South Anna  
P.O. Box 77058  
Wichita, Kansas 67277-1058  
License #66  
www.simpsonassoc.com

*Building spaces that increase the value of life.*

House Judiciary  
Date 2-10-11  
Attachment # 12

# **CROSSLAND**

**CONSTRUCTION COMPANY, INC.**

833 S.E. Avenue • P.O. Box 45

Columbus, Kansas 66725

tel 620.429.1414

fax 620.429.1412

Testimony of Bennie Crossland

House Judiciary Committee

Feb 1, 2011

House Bill 2072

Mr. Chairman and Members of the Committee,

My name is Bennie Crossland, President of Crossland Construction Company of Columbus, Kansas. We are a family owned and operated business with offices in Columbus, KS, Rogers, AR, Tulsa, OK, Prosper, TX, Kansas City, MO. and Wichita, KS. Crossland companies currently employ over 718 people. I have been in the General Contracting business for over 30 years and am a past President of AGC of Kansas. I am currently a National Director of AGC of America, and a Board Member of AGC of Kansas.

I come to you today with a problem which exists in our industry. This problem greatly affects the risk General Contractors take in building a project. This problem points out an inequity in the law which puts unnecessary risk on General Contractors.

### **The Problem**

When a General Contractor takes a job, he issues subcontracts and purchase orders to subcontractors and suppliers for portions of the work he needs help in supplying. In turn, the subcontractors and suppliers hire subcontractors (sub of a subcontractor) and suppliers to help them perform the portion of the work they have contracted with the General Contractor to perform.

The General Contractor pays the subcontractors and suppliers with whom he has a direct contract and in turn, they pay their subs and suppliers. We call these remote claimants (People who do NOT have a direct relationship with the General Contractor). The problem arises when the subcontractor and suppliers (the ones who DO have a direct contract with the General Contractor) fail to pay their downstream subs and suppliers (remote claimants). The General Contractor has no way of knowing who all these people are.

The General Contractor is required to give the owner a project free of liens. When remote claimants do not get paid, they file liens or claims on payment bonds. In order for the General Contractor to deliver to the owner a clean project lien free, he is forced to pay the remote claimants for work he has already paid his subcontractor or supplier for previously. In essence the General Contractor pays twice for the same work.

Under current law, the remote claimants have little risk. They know if the job has a payment bond or if the General Contractor is reputable, they will get paid. Suppliers will rarely check a subcontractor's credit if a bond payment is in place.

Some of you are asking what happened to the subcontractor. In most instances he has disappeared or gone bankrupt, leaving the General Contractor with a big mess.

General Contractors today try all different kinds of methods to prevent this from happening. We ask for a list of subcontractors' subs and suppliers up front. We check with these remote claimants before each payment to our subs to ensure they are getting paid. The problem is when you have a bad sub or supplier; they will shift purchasing places often without informing the General Contractor. The first time he knows there is a problem is when the new supplier shows up demanding payment from the General Contractor, or he files a lien or bond claim.

### **The Solution**

The good news is that the legislation before you today brings a fair, simple and equitable solution to this problem. This legislation before you requires two simple notifications. The first is required of the General Contractor. It is called a Notice of Commencement which is filed prior to the start of the project. This simple Notice states who the Owner is, who the General Contractor is, contact information for the Owner and General Contractor, location of the property, a brief description of the construction or improvement, name of the person filing the notice of commencement and the date of the Contract. The Notice also lets all subcontractors and remote claimants know work is about to begin on this site and if they do not have a direct relationship with the General Contractor they must file a one-time Notice of Furnishing within 21 days of supplying material, labor, equipment or supplies to this job in order to preserve their lien rights. If no Notice of Commencement is filed, no Notice of Furnishing is required.

### **How It Works**

The General Contractor records this Notice before starting work by filing with the Electronic Construction Registry, an electronic website operated by the Secretary of State's office. The subcontractors and remote claimants (people who have no direct contract with the General Contractor) are then required to file a one Notice of Furnishing. This is a onetime notice per project.

The purpose of the Notice of Furnishing is to let the General Contractor know this person or company is supplying goods and services to his job. It helps the General Contractor know who these people are and to contact them so he can pay them.

- The Notice of Furnishing contains the name, address and contact information of the subcontractor or remote claimant, the date(s) he supplied materials on the job, to who he supplied the goods (subcontractor or supplier) and a brief description of the equipment, materials or supplies being provided.
- The Notice of Furnishing (filed electronically) allows the General Contractor to take protective measures to make sure the remote claimant is paid.
- The Notice of Furnishing is to be served only if the General Contractor has filed a Notice of Commencement.
- The Notice of Furnishing must be filed within 21 days of supplying material, labor, equipment or supplies to a jobsite or the subcontractor or remote claimant will lose his lien or payment bond rights.
- The Notice of Furnishing is sent electronically to the General Contractor. He may then contact the supplier to established owed amounts and may take protective measures by either making direct payment or pay by joint check to the subcontractor and remote claimant.
- The Notice of Furnishing is a one-time notice. If the remote claimant does not file the notice of furnishings he is limited to the amount the General Contractor owes the subcontractor.

We have worked with our opponents for the past year on an Electronic Construction Registry and tried to listen to their concerns, but have been unable to come to agreement.

During the Judicial Council AGC compromised on the following items

1. AGC agreed to make the Notice of Commencement must be filed prior to commencement of the job.
2. AGC compromised and was willing to make the system mandatory for all jobs.
3. AGC had agreed to make a minimum threshold of \$5,000.00 before a Notice of Furnishings was necessary.
4. AGC agreed to include residential construction.
5. AGC agreed to if the Notice of Furnishings was supplied that a Notice of Intent to file a lien not be required.

All of these compromises were met with our opponents continually moving the target. Off the record they will tell you privately that something needs to be done but they do not want to give up this one sided system. We have excluded roads, highways, bridges, dams or turnpikes.

- Electronic Filing is easy and fast.
- Electronic Filing is cost effective- For Commercial construction in Kansas it is estimated there are only 900 commercial jobs of this nature in the state. If you had to file a notice of furnishing on every job your cost as a supplier would be estimated at no more than \$1,800.00.

These simple Notices level the playing field for a General Contractor and remote claimants. It will reduce liens being filed and ensure subs of subcontractor and suppliers of subcontractors get paid.

Many states such as Alabama, Arizona, California, District of Columbia, Florida, Georgia, Iowa, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Montana, New Mexico, New York, North Carolina, Ohio, Pennsylvania, South Dakota, South Carolina, Texas, Utah, Virginia, Washington, and Wyoming have Notice of Furnishing or Pre-lien Notices required. I ask you to join the ranks of these states in making lien laws fair by supporting this legislation.

**Again, I respectfully request that the committee to support House Bill 2072 and report it favorably for passage.**



**TESTIMONY OF  
BEN HUTTON  
BEFORE HOUSE JUDICIARY COMMITTEE  
HB 2072  
February 1, 2011**

Mr. Chairman and Members of the Committee,

My name is Ben Hutton, I am the President of Hutton Construction. Hutton Construction is a 2<sup>nd</sup> generation Kansas family business based in Wichita focusing wholly on commercial construction. Thank you for allowing me to submit my thoughts to you concerning this important matter.

**Today I ask for your support and recommendation for passage of House Bill 2072.**

The commercial construction process of today is complex. As buildings have become more sophisticated and companies have specialized in various lines of work the number of companies and people involved in a typical construction project has grown substantially. On a typical project a General Contractor could easily have as many as 50 direct subcontractors or suppliers. If each of these 1<sup>st</sup> tier subcontractors has only three or four suppliers or subcontractors themselves you can see the numbers grow very quickly. It is important to note that the General Contractor has no contractual relationship with these 2<sup>nd</sup> tier subcontractors and suppliers, and sometimes does not even know of their existence.

This is the crux of the problem, and the reason for HB 2072. How can I, as the General Contractor, be asked to be responsible for paying a party when I don't know about them? The Notice of Furnishing method outlined in HB 2072 provides a quick, simple and effective way to address this issue, and I ask for your support of the bill.

As we have worked through this issue over the past couple of years a common argument that we have heard is that one solution would be to require a Performance and Payment Bond from all subcontractors. While this may seem to address the problem there are many concerns that make it impractical and unworkable. First and foremost is the fact that many subcontractors are unable to provide this bond and would be eliminated from bidding process completely. Secondary to this, but still a large issue, is that the cost to provide these bonds would be an additional expense to a project, something many project owners would not find acceptable, especially when the problem can be solved simply and very inexpensively through HB 2072.

Again, thank you for allowing me to submit my testimony to you today. I ask that you support HB 2072 and recommend it favorably for passage.



**COMPTON  
CONSTRUCTION  
CORPORATION**

**GENERAL CONTRACTOR**

January 31, 2011

Committee on Judiciary  
Kansas State House  
Topeka, Kansas

Re: House Bill 2072 Lien Notification

Dear Committee Chair Person:

I am writing in support of the Lien Notification Bill 2072. Compton Construction Corporation is a small Commercial General Contractor. We are Based in Wichita Kansas, and are in our Fourteenth (14) year of business. Our project sizes are less than Ten (10) million with the majority in the one (1) to three (3) million size. Our work area encompasses the State of Kansas with the exception of the Northeast corner of the state. Our Projects have taken us from Ulysses to Coffeyville and Arkansas City to Belleville. In each location we work hard to include as many local subcontractors and suppliers as possible.

In these challenging economic conditions we all are trying to function on lower margins. We are seeing an increase in our Subcontractors and Suppliers struggle, as we do to keep current with our financial affairs. With the majority of our work being competitively bid type projects, we are forced to accept the lowest bid/price to help ensure our success. The proposed Lien Notification System would be welcome and provide fairness to all parties to the project that for now is missing.

I would ask that you consider this legislation as an excellent way of tracking all of the players on a project. Sometimes the Generals are not aware of the third tier; this system would allow us a better understanding of how the contract monies are dispersed to those whom are due.

Sincerely,  
Compton Construction Corporation



Gib Compton  
President

GC/ceg  
Copy: file



1957 N. MOSLEY WICHITA, KANSAS 67214 BUS: (316) 265-2915 FAX: (316) 265-2092 [www.palsglass.com](http://www.palsglass.com) [www.sinclairmasonry.com](http://www.sinclairmasonry.com)

Testimony of Tim L. Sinclair

House Judiciary Committee

February 1, 2011

House Bill 2072

Chairman and Members of the Committee:

My name is Tim L. Sinclair, Owner/President of Sinclair Masonry, Inc. and Pal's Glass Service, Inc. of Wichita, KS. Our companies are primarily Subcontractors in the commercial construction industry. We work all over the nation outreaching as far as Oregon, Rhode Island, Georgia, Texas, Nebraska along with the majority of our work in the Kansas/Oklahoma region. We currently employ over 160 people. I have worked as a Supplier, Subcontractor and/or General Contractor for over 24 years. I am currently on the Board of AGC of Kansas representing the Specialty Contractors which are primarily Subcontractors and Suppliers, and also serve on AGC of America's Specialty Contractor's national board.

I come to you today as a member of the construction industry. I grew up in the construction industry and can remember the "typical" construction worker was not looked upon as a person that was "successful," and my dad worked in construction. Our thoughts as kids were that construction workers were the guys that must not be able to find anything else to do so they just work in construction. This has changed somewhat over the past 30 years. As an industry we have made great strides since then improving our image. Now the "typical" construction worker is more educated, successful, established and career-oriented.

The industry has advanced in several categories including technology, education, speed, competition, and quality, to name a few. But our industry still gets a lot of negative press due to companies going out of business that creates a "ripple" effect that impacts several entities including bankers, owners, general contractors, subcontractors, suppliers, and families. The construction industry has very little "barrier to entry" requirements. This is good and bad. The good part is that somebody like me can start a company with only \$5,000 and build it into whatever is desired, in our case, over \$13,000,000 in Revenues in 2010. We always want the entrepreneur to be successful for the many benefits their business creates. The bad news is that not all businesses survive and sometimes they leave unpaid bills.

House Judiciary  
Date 2-10-11  
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When we first started Sinclair Masonry and Pal's Glass we had to prove our financial stability with our suppliers. We were on COD (Cash on Delivery) with many of them until we could prove to them that they will get paid. All of our suppliers, then and now, do a very thorough job of making sure that we are solvent and that they will be able to get paid. The majority of our suppliers provide materials all over the country, have 1000's of customers and have told me that the State of Kansas has the some of the most lenient lien laws that they have ever seen. They are not used to having the freedom of doing nothing on their end to make sure that they get paid, which is exactly what our laws allow. **In Kansas, any supplier can supply materials to anybody, without any preventive measures and be assured they are going to get paid by filing a lien within 90 or 120 days. THIS IS NOT A FAIR SYSTEM.**

Any and all companies should have the responsibility to only sell their product to an entity from whom they believe they will get paid. If they don't know for sure that they are going to get paid via credit and invoicing, they should demand COD. **It is not fair for a 3<sup>rd</sup> party, ie General Contractor to take the financial risk for a supplier that they do not even know is supplying materials to the project.**

**I encourage you to help advance the construction industry by the passing HB 2072 out favorably.** This will help prevent the "ripple" effect upon the next company going out of business. House Bill 2072 makes the lien law system in Kansas a fairer one for all parties.



219 N. Whiteside, P.O. Box 490  
Hutchinson, KS 67504-0490  
620-665-1155 / Fax 620-665-0911

January 31, 2011

Committee on Judiciary  
Kansas State House

Re; House Bill 2072 – Lien Notification

Dear Committee Chairman,

Thank you for the opportunity to express our thoughts and concerns to you.

We are a small general contractor from Hutchinson, performing our trade in central, south central, and western Kansas. We have carefully and faithfully established our good credit and reputation for prompt payment to subcontractors.

Due to the competitive nature of our business we must use the lowest subcontract bids on our projects. If an unscrupulous or irresponsible subcontractor refuses or is unable to pay their suppliers or sub-subcontractors, we have few means to be informed of this in time to stop payment.

Currently there is little incentive for suppliers to qualify to whom they extend credit if there are no checks and balances in the lien process. This can result in our subcontractor collecting payment without faithfully paying their own obligations, ending with us being forced to pay twice.

Because we choose to practice prompt and faithful payment practices, this quandary has resulted in our forced double payment multiple times in the past, at a cost to us of tens of thousands of dollars. In years past my father was a victim of an unscrupulous subcontractor who charged materials in excess of \$50,000 for his house against our projects, which we then had to pay to clear the lien. We found that this subcontractor had a history of this behavior, and yet the suppliers continued to extend them credit.

The Lien Notification Bill #2072 would establish a simple procedure wherein suppliers and sub-subcontractors can continue to protect their lien rights, at the same time informing us of those rights.

I ask that you approve this legislation extending a measure by which we may protect ourselves from those few subcontractors who use this to their benefit at our expense.

Sincerely,

Sid Wiens, President



January 31, 2011

Testimony House Bill 2072

Mister Chairman and Members of the Committee:

My name is Steve Mohan, President of Mohan Construction, Inc. in Topeka, Kansas. We are a Commercial General Contractor that provides services for new construction, renovation, construction management and design-build.

I would like to take this time to offer my support for HB 2072, regarding notice of furnishings for commercial construction projects. HB 2072 is the culmination of four years of negotiations, featuring many compromises based on concerns of opponents. This bill is an attempt to insert fairness into the current lien laws with a simple requirement of notification. The underlying lien laws remain unchanged. The ultimate goal is to create a system that insures payment is made in a manner that will eliminate the need for the filing of liens or against bonds. This extremely important legislation will benefit General Contractors, Subcontractors, and all Vendors who supply labor and materials to a construction site. If a General Contractor is aware of all the Vendors on a jobsite before or at the time work is performed, and a Subcontractor is unable to pay, the General Contractor has a much better opportunity to make sure everyone is paid.

For example, if a General Contractor pays a Subcontractor for work performed, and that subcontract fails to pay his Suppliers, the General Contractor may have to pay those Suppliers and, in effect, pay twice for the same work.

There could be a major financial burden for any General Contractor, but could be devastating for a smaller General Contractor like Mohan Construction. Most smaller General Contractors do not have the financial resources of larger General Contractors and an event such as this would reduce his working capital and bonding capacity and could force him out of business. If he is aware of all Vendors furnishing labor and materials on a jobsite, before or at the time work is performed, it gives him an opportunity to pay those Vendors and protect himself from financial difficulty.

Thank you for your time, and I strongly urge you to support HB 2072.

Sincerely,

MOHAN CONSTRUCTION, INC.

Steve Mohan  
President



SM: hc  
cc: File  
OffAdmin/CorrGen/HB2072

125 S. Kansas Avenue • Topeka, Kansas 66603-3614 • Tel. 785.233.1615 • Fax. 785.233.8731  
www.mohanconstruction.com

House Judiciary  
Date 2-10-11  
Attachment # 18



**Testimony of  
Rick McCafferty, Executive Vice President,  
Key Construction, Inc.  
Before House Committee on Judiciary  
HB 2072  
February 3, 2011**

My name is Rick McCafferty. I'm an Executive Vice President with Key Construction, Inc.

The purpose of my testimony is to support the passage of House Bill 2072 and explain the potential and actual risks that a general contractor (G.C.) faces with regard to claims for unpaid materials and/or services. Also, to cite examples where my company has fell victim to the circumstances of our current lien laws.

Under the current lien statutes, there are no formal notifications that a G.C. receives from a company when they have provided materials or services that are protected by our lien laws on a project for which that G.C. us under contract. The risk here in its simplest terms, is that after a first tier subcontractor is paid in full by a G.C., and that subcontractor fails to pay their sub or material subcontractor (2<sup>nd</sup> tier), that entity can successfully file a lien and recover its cost from the G.C. or owner, even though the first tier subcontractor was paid for the work.

The only protection or measures that a G.C. has to mitigate this risk is to investigate that every 2<sup>nd</sup> tier entity that has lien rights on a project has been paid by their 1<sup>st</sup> tier subcontractor and if not, force this payment action by the usage of Joint checks (jointly payable to 1<sup>st</sup> and 2<sup>nd</sup> tier subcontractors/vendors) for willing parties. However, this protocol is only as effective as 1<sup>st</sup> tier subcontractors report and can be innocently flawed by even willing participants as to who is protected under the lien statutes for the State of Kansas.

Another way a Contractor can protect themselves is to require their subcontractor to provide a performance and payment bond. While being an expensive alternative, the bonding option helps in matters such as these, but is certainly not a guarantee by any means. In addition to the cost of these bonds which can add up to 2-3% to the price of construction, limiting subcontractor awards to only "bondable" companies will eliminate a great number of small

GENERAL  
CONTRACTOR

741 WEST SECOND  
WICHITA KS 67203  
316-263-9515  
FAX: 316-263-1161





construction businesses that perform work in Kansas or any other state. This can also inhibit competition and in turn cost private owners and in many cases, taxpayers (for publicly funded projects) in higher construction costs.

While some of the specific incidents our company has faced have been small in dollars, those dollars can add up significantly and in the past 10 years have cost us in excess of \$800,000 in the settlement and defense of both legitimate and frivolous claims.

Our company has performed work in over 30 different States and many of them have similar lien notification requirements that are more onerous to the supplier than that as proposed in HB 2072. Owners, General Contractors and Subcontractors in those States understand the notification requirements and we have avoided situations where Owners and Contractors had to pay for materials or services more than 1 (one) time.

To summarize, if the notification requirements as set forth in this proposed legislation were enacted, a G.C. would know what companies had a lien protected interest in their projects, thus allowing that G.C. to ensure payment (by joint or direct payment) to that entity and be assured that all legitimate debts are satisfied prior to final payment to a subcontractor. This would mitigate situations where a projects' owner and/or contractor would have to pay for materials or services "twice" in order to satisfy lien claimants protected under our current mechanics lien statutes.

Thank you for your consideration.

Respectfully Submitted,  
KEY CONSTRUCTION, INC



Rick McCafferty  
Executive Vice President





Robert P. Burns  
316.268.7950 DIRECT  
316.268.9797 DIRECT FAX  
rburns@stinson.com

February 8, 2011

**TESTIMONY ON HB 2072**  
**BY**  
**ROBERT P. BURNS, PARTNER, STINSON MORRISON HECKER LLP**

I am a partner in the law firm of Stinson Morrison Hecker LLP. I graduated from the University of Kansas School of Law in May, 1984. I have practiced in the area of construction law on a nearly exclusive basis since 1989. I have represented a number of clients in construction law matters in Kansas since 1989. In addition, I have represented and advised clients in a number of construction law matters in other states during my years of practice, including Florida, Texas and Arizona. During my years of construction law practice, I have become well acquainted with the mechanic lien statutes in Kansas, Florida, Texas and Arizona. I have been involved both in filing and litigating mechanic's lien claims on behalf of claimants and defending such claims on behalf of owners and contractors.

The current mechanic's lien statute in Kansas (K.S.A. § 60-1101, *et. seq.*) does not contain any provision which permits remote subcontractors and suppliers to identify themselves to general contractors. As a result, it is possible (and in fact it happens) that a remote subcontractor or supplier may perform work or supply materials on a project in Kansas without the knowledge of the general contractor. When this occurs, and the remote subcontractor or supplier is not paid by the first tier subcontractor, the remote

subcontractor or supplier is left with little choice but to exercise its lien rights. When this occurs, the owner and its property (and/or many times, the general contractor, depending on the terms of the prime contract) becomes subject to a mechanic's lien claim. At that point, either the owner or the general contractor may be forced to pay twice for work performed and/or materials supplied by the remote claimant. To reiterate, the reason this problem can and does occur in Kansas is that there is nothing in the current Kansas mechanic's lien statute which allows remote subcontractors and suppliers to identify themselves to the general contractor as a project participant. Without this information, the general contractor and owner can be "blind-sided" with a mechanic's lien from a claimant they did not know was working on the project. HB 2072 would rectify this arguable shortcoming in the present Kansas mechanic's lien statute.

In support of HB 2072 which includes a system which would permit remote subcontractors and suppliers to identify themselves, I am familiar with the mechanic's lien statutes in Florida, Texas and Arizona, all of which have some form of pre-work or early notification requirement by remote subcontractors and suppliers. The benefit of such pre-work or early notification requirements is that remote subcontractors and suppliers can positively identify themselves so that all parties know they are working or supplying materials and expect to be paid. In these states (and there are others which I know of but do not have extensive experience in), with pre-work or early notification requirements, the general contractor has the opportunity to pro-actively make sure remote subcontractors and suppliers are properly paid for their work and/or materials. As a result of the statutory schemes in Florida, Texas and Arizona, I believe there are

fewer unpaid remote subcontractors and suppliers, less mechanic's lien filings and less mechanic's lien litigation compared to Kansas. In those states, private construction projects tend to be constructed and administered more effectively with fewer payment claims by remote subcontractors and suppliers.

I believe that passage of HB 2072 would substantially enhance and improve the Kansas mechanic's lien statutory system. By adding the provisions allowing remote subcontractors and suppliers to reasonably identify themselves as participants to a construction project, general contractors would have much more opportunity to engage in pro-active efforts to insure proper and timely payments are made to remote subcontractors and suppliers. HB 2072 should result in a fewer number of unpaid remote claimants, fewer mechanic's liens and less mechanic's lien litigation in Kansas, much as I believe the comparable provisions have resulted in Florida, Texas and Arizona.

HB 2072 would benefit owners, general contractors and remote claimants by creating an information exchange system that greatly enhances remote claimants' opportunity to be timely and properly paid for work they perform or materials they supply to a Kansas construction project.

# KRMCA

Kansas Ready Mixed  
Concrete Association

# KAPA

Kansas Aggregate  
Producers' Association

## TESTIMONY

Date: February 10, 2011

By: Woody Moses, Managing Director  
Kansas Aggregate Producers' Association  
Kansas Ready Mixed Concrete Association

Regarding: House Bill 2072, An act concerning liens; relating to supplier's liens

Before: The House Committee on Judiciary

Good afternoon Mr. Chairman and Members of the Committee:

My name is Woody Moses, Managing Director of the Kansas Aggregate Producers' Association and the Kansas Ready Mixed Concrete Association. The Kansas Aggregate Producer's Association (KAPA) and the Kansas Ready Mixed Concrete Association (KRMCA) is a state wide trade association comprised of over 170 members located or conducting operations in all 165 legislative districts in this state, providing basic building materials to all Kansans. And as such have a vital interest in lien law as without them we could not make a living. I appreciate the opportunity to appear before you today to express our opposition regarding HB 2072.

Over the course of many years we, as a state, have crafted a good lien law structure, which functions just as it was intended to by spreading risk in a balanced manner. Now comes before you, HB 2072 which seeks to upset the carefully crafted balance by shifting the risk from one group (general contractors) to another (subcontractors and suppliers). Ironical, as general contractors profess to make a living out of accepting risk, which justifies their existence. It is even more ironical, as the contractor already enjoys automatic lien protection, pursuant to K.S.A. 60-1101. Yet they seek to limit those of others.

Lien laws have existed in North America for over 400 years and in all 50 states for a good reason, to establish a framework whereby real property can be improved by fairly assigning the risks and providing a means whereby the fruits of one's labor may be recovered. After all, unlike a refrigerator or automobile, our product becomes a part of the real property and is impossible to recover. It is the faith in our lien law that allows our industry to furnish products to a construction project. HB 2072 significantly reduces our chances to recover by 86% as it

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essentially reduces the time to file a lien from a potential 150 days to 21. If approved working under HB 2072 will more resemble going to a casino than furnishing a job.

As you weigh the pros and cons of the measure before you we suggest you may wish to consider the following questions and how the answers bear on the development of good public policy.

### **Is it necessary to create more government?**

At the heart of HB 2072 is the establishment of what is called the State Construction Registry within the office of the Secretary of State. This of course will lead to more government as it will be necessary to add more staff, write more rules and create more bureaucracy to administer a new system that currently does not exist. Proponents will allege that the net effect is zero as it will all be paid for by fees; and while this may be true, be rest assured someone will be paying more simply because new regulatory schemes, while innocent at first, just like a newborn, will find a way to grow. So, there will be more government for someone to support. We seriously question, given the lessons we learned last November, if this is what voters want right now. No matter how one spins it at the end of the day more government is created.

### **Where is the public good?**

The implied purpose of all legislation is to act on behalf of the public good. Yet, while HB 2072 will help a small number of general contractors, it is hard to see where the public good is being advanced. For example, the bill does not protect homeowners arguably the largest group in need of protection under our current lien laws. Additionally, as HB 2072 will shift the risk, in some cases to unknown parties, construction prices will go up in order to allow for potentially unknown losses; thus raising costs to owners, businesses and the public. It does not appear that much in way of doing public good can be found in this bill, as a matter of fact, just the opposite.

### **Where is the problem?**

All good legislation should, in essence, seek to solve an apparent problem. In the case of the bill before you it is very hard to discern any problem. Where are the bankruptcies? Where are the projects lacking bidders? Construction in Kansas continues to function in Kansas. Contracts are being advertised and bidders continue to bid every day. If our current lien laws were broke there simply would not be any bids. In other words the free market is functioning fine and until such time as it does not; there is no need to fix a problem that does not exist.



### **Is it worth upsetting the current system?**

Liens laws, first passed by the Massachusetts Bay Colony, have been in existence for over 400 years in North America. Since this time much case law has been developed both defining and processing how liens laws work. Ergo, all the players know how lien law works and what the rules are for all. If adopted, HB 2072 will require doing much of this work over again spending lots of time in court and paying legal fees. After all, it will be the courts that define what a "Notice of Commencement" is, what a "Notice of Furnishings" is and when the 21 days begin or end. Not much in the way of cost reduction here. Once again, it appears only one small sliver of society (big general contractors) are served, while the rest of society gets to pick up the tab.

As a of result the issues raised in this policy it was referred to the Kansas Judicial Council where efforts are being made to develop a fair system that addresses the issue without unjustly shifting the risk. Perhaps our time would be better spent by letting the Kansas Judicial Council continue their work, rather than to invent and implement an untested system with unknown effects.

### **Whatever happened to risk?**

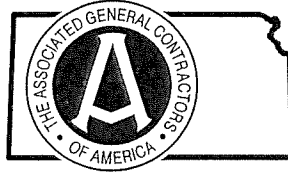
Our free market system of general construction, developed over the last 200 years, rests upon the acceptance of risk in return for a suitable reward. Ironically, it is the general contractor who offers to owner a lien free project in return for a reward. It is only through the acceptance of risk that a general contractor can justify their existence. Yet, in HB 2072 while they still seek the reward they now come to you and asked to be relieved of the risk.

For all these reasons and more we urge this committee to reject HB 2072 as its passage would:

- Basically contrary to our economic system by legislating in the free market,
- Unfairly shifts risk to our industry by reducing the amount of time to file a lien from a potential 150 days to 21 days,
- Raise construction costs as suppliers/subcontractors will be forced to raise prices to compensate for the additional risk,
- Or in the alternative require payment prior to delivery,
- Layers on additional requirements to an already complicated lien law in effect creating a fourth lien law in addition to the current three.
- Creates even more uncertainty in an already uncertain marketplace, and
- Lacks a compelling reason for passage.

While many questions have been posed this afternoon it ultimately comes down to one. **Does HB 2072 really create good public policy?** We think not. Thank you for your time and attention, I will be happy to respond to any questions you may have at the appropriate time.

# KANSAS CONTRACTORS ASSOCIATION



## OFFICERS

KIP SPRAY, President  
Great Bend, Kansas

BRIAN HANSEN, Vice President  
Towanda, Kansas

JAKE KLAVER, Treasurer  
Kingman, Kansas

## STAFF

DAN RAMLOW, Executive Vice President  
✓ BOB TOTTEN, Public Affairs Director  
KAREN WAGAMAN, Director of Marketing  
NANCY DELGADO, Administrative Coordinator  
KRIS DENTON, Bookkeeper

316 SW 33RD ST • PO BOX 5061  
TOPEKA, KS 66605-0061

TEL (785) 266-4152

FAX (785) 266-6191

kca@ink.org

www.kansascontractors.org

## DIRECTORS

CORKY BEACHNER  
St. Paul, Kansas  
TODD CARLILE  
Liberal, Kansas  
DON CLARKSON  
Kansas City, Missouri  
ROGER HECKERT  
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Kansas City, Kansas

## Testimony

By the Kansas Contractors Association before the Senate Judiciary Committee

regarding HB 2072—the Lien Construction Registry

February 1, 2011

Mr. Chairman and members of the Committee, I am Bob Totten, Public Affairs Director for the Kansas Contractors Association. Our organization represents over 300 companies who are involved in the construction of dams, highways and water treatment facilities in Kansas and the Midwest.

Today, I come to you in opposition of HB 2072. Our members wholeheartedly agree that this is an unnecessary piece of legislation and is just another example of the government intrusion 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 water treatment facilities and other construction projects and it would affect their businesses even though their main business is normally in the construction of roads and bridges.

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. Their basic response was don't change the lien laws. They are there for a purpose and if you change it, then we will never get paid.

Right now, our members have a mountain of paperwork to fill out...from EPA concerns to EEO documents...and it must be done for every job. Having another unnecessary filing just to reserve the right to file a lien is just incomprehensively by our members.

---

~~In our minds, this new proposal is really a shift in risk. Moving the risk of a project~~  
onto a sub contractors or vendor. We don't believe that is the appropriate way to handle a construction project. By requiring the reservation of a lien right you already have, it starts a project with a bad taste in your mouth. In some instances, the filing to reserve your lien right may occur even before a sub contractor actually provides a service on a job. In essence it says: I know I am going to have problems on this job so I have to reserve the right to file a lien against you because the general contractor has a history of not paying his bills. That just doesn't seem right.

In the discussions I have been involved in, I have not gotten a clear picture of what this construction registry is going to cost. I initially heard a figure around \$50 thousand would be needed for startup and then I was told the startup costs would be folded into the fees associated with the filings. In one instance a cost of  $\frac{3}{4}$ 's of a million dollars was thrown around. I don't think anyone knows. The filing fees are not clear in any of the documentation I have seen except that the Secretary of State will determine the fees.

My question is no matter who pays for the new construction registry, it will require

additional employees at the Secretary of State's office and in the end, the general public will pay for the service either in new taxes or the general cost of a project.

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 but this appears to go in the wrong direction to solve a problem that doesn't exist. Even Governor Brownback indicated in his state of the state address that he didn't favor the ever expanding size of state government.

I have heard this is a problem but I am not sure that is the case. I have attached to my testimony a graph that shows the filings in Shawnee county with the district court on liens. If you look...the filings of liens 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.

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 will have a need to file a lien but because they missed the deadline they won't be able to and then the prime contractors will say "you didn't file to reserve your lien right so you are out of luck. That does not seem fair.

These small contractors aren't big enough to file a lawsuit to regain their status or payments in court and so the small guys will just have to foot the bill for a problem that is inherently the responsibility of the prime.

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



was studied last year and was referred to the Kansas Judicial Council...and that group met several times and couldn't come up with a solution .

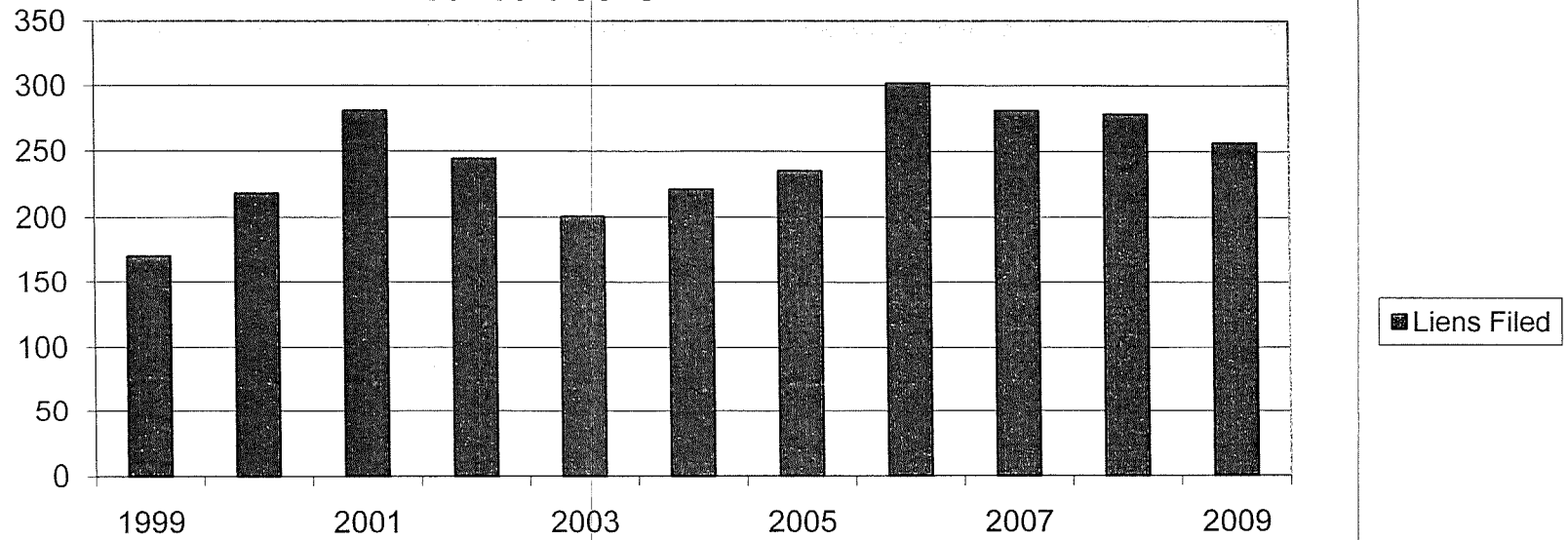
The sponsors of this measure have indicated that the registry is being set up because sometimes general contractors don't always know who is providing material on a project. And our basic question is "why not"? Our members believe that if a company had a project underway, they would make sure they knew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

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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.

---

## Liens Filed in Shawnee Co. District Court



John C. Frieden\*  
Michael J. Unrein  
Randall J. Forbes  
James B. Biggs\*  
Kevin M. Fowler

**FRIEDEN, UNREIN,  
FORBES & BIGGS** LLP  
**ATTORNEYS AT LAW**

Brenda L. Hea  
Eric I. Unrein\*\*  
Clinton E. Patty  
Matthew R. Bergmann

555 South Kansas Avenue, Suite 303, P.O. Box 639 • Topeka, Kansas 66601 • www.fufblaw.com

Tel: 785-354-1100 • Toll Free: 888-293-4916 • Fax: 785-354-1113

\*Also admitted in Missouri \*\*Also Admitted in Illinois

*cpatty@fufblaw.com*

**TESTIMONY**

**By**

**CLINT PATTY**

**HB 2072**

**Before the House Judiciary Committee**

**February 10, 2011**

Chair Kinzer, members of the committee, my name is Clint Patty. I am an attorney with the law firm of Frieden, Unrein, Forbes and Biggs in Topeka, Kansas, and am here representing my client, the Kansas Aggregate Producers Association (the "Association") both as counsel and a member of the Association. I have been asked to provide testimony in opposition to HB 2072.

Proponents of HB 2072 are largely general contractors attempting to shift their subcontractor problems to remote suppliers of materials to construction sites. In doing so, they impose one of the most restrictive and burdensome preliminary lien requirements in the nation on mostly small businesses least equipped to bear this new and inequitable expense.

Regarding our Association, we do not view it as the aggregate supplier's responsibility to assure subcontractors bid compliance to an owner or general contractor. Remedies exist under Kansas law for these situations that general contractors can utilize, and burdening suppliers with an additional compliance issue for a problem where they have no involvement is inherently unfair and unnecessary. Not one proponent can point to a problem with suppliers that supports this radical change in public policy.

Only a handful of states place such burdensome requirements on suppliers. Kansas law has always created a level playing field for contractors and suppliers regarding lien rights. Currently, suppliers are afforded 90 days to perfect their lien rights. Under HB 2072 that becomes 21 days or the lien rights are largely limited or lost. As a practical matter, most aggregate producers will be unable to effectively comply with this requirement.

Additionally, the Association has identified a number of procedural shortcomings in this misguided bill. Among them are the following:

House Judiciary  
Date 2-10-11  
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1. HB 2072 provides no punishment for the Contractor that fails to file a notice of commencement. Yet, if the supplier fails to timely file a notice of furnishing, lien rights are capped. This seems fundamentally unfair, and may have some practical issues in application as discussed below;
2. As a practical matter, what happens if a contractor fails to timely file the notice of commencement, or if a supplier provides materials within the 21 day period they have to file the notice? When would the deadline commence for the notice of furnishing; 21 days from the notice of commencement or 21 days from the date the materials are provided on the site?;
3. There is no indication in the present bill if it applies to state and local government projects.

In closing, the Association urges rejection of HB 2072, as an unnecessary and overly burdensome law that shifts the currently level playing field created by Kansas lien law against the very companies least capable of bearing a larger burden. Thank you once again for allowing me the opportunity to provide my client's position on this important matter.





**Associated Material & Supply Co.**

**Box 4476**

**Wichita, Kansas 67204**

**(316) 721-3843**

---

**TESTIMONY**

**By**

**Nadine Stannard, Owner & President  
Associated Material & Supply**

**Before the House Judiciary Committee**

**Regarding HB 2072 – A bill dealing with Liens**

**February 10, 2011**

Mr. Chairman and Members of the Committee,

My name is Nadine Stannard, President of Associated Material and Supply Company, Inc. We own and operate two sand and gravel production sites in South Central Kansas.

I am appearing today on my own behalf, on the behalf of the Wichita Area Builders Association as Chairman of the Legislative Committee, and on behalf the Kansas Aggregate Producers Association and its members who have concerns regarding the impact of this legislation on their businesses.

The 1160 members of the Wichita Area Builders Association are engaged in all facets of both residential and non-residential construction, and I can tell you that while a relatively few non-residential contractors think the proposed legislation might have some merit, the vast majority do not, and are not willing to support the creation of more government in the name of protection of their respective businesses.

While not perfect and effective in all cases, the current lien laws of the state provide a business owner – whether a general contractor, sub-contractor, or supplier – a process, that if followed as intended, a reasonable degree of protection in terms of knowing who is providing products and services to whom and on what basis. Yes, generals have to take steps:

- To know about whom they are doing business and how they operate;
- To monitor who is doing what as a supplier and subcontractor in order to assure things are kept in check as desired; and

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Date 2-10-11  
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- To employ best management practices suitable for use in their businesses in order to assure that those involved are doing business with each other as agreed by contract, and otherwise.

As business owners we know that we cannot abdicate our personal responsibilities to run our businesses as we must in order to continue in business and be profitable.

We also know that when we abdicate this responsible to some other entity that is not vested in our businesses as we are, we can end up paying a lot of money for results that are not satisfactory, and dealing with the unintended consequences of legislation that comes about through the development of rules and regulations adopted to enforce the intent of the legislation as originally understood.

Let me explain the process of my day to day operation. A truck will come to the yard unannounced to load. Sometimes it's for a customer other than the trucker, often the trucker is the customer. Sometimes a load destined for a particular job, only to be diverted to another. Many of my customers value their privacy and don't want me to know where they take the material. I wonder what they will say if I tell them that their Legislator passed a regulation that puts me in a position of having to know.

If it were possible to track each load, it would be time consuming, therefore expensive for a company to hire the personnel. We have 100-200 trucks leaving our plant each day. It would be expensive for the governmental agency to track, as well. Therefore, we would be paying fees and increasing company overhead for another regulation that is ineffective.

Incidentally, or maybe not so incidentally, I, as a supplier have **NEVER** been paid twice for anything! I'm amazed.

With so many opposed to this legislation, it appears to me that passing H.B. 2072 would be legislating against the majority. Unpopular legislation creates animosity.

I will be glad to answer any questions your might have.

Thank you

Nadine Stannard



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1333 South Second Street, Leavenworth Kansas 66048, (913) 772-4010  
Plant Locations: Leavenworth, Olathe, Kansas City, KS

## TESTIMONY

Date: February 10, 2011

By: Blaine Weeks, CFO  
Geiger Ready Mix Co., Inc.

Regarding: House Bill 2072, An act concerning liens; relating to supplier's liens

Before: The House Committee on Judiciary

Good afternoon Mr. Chairman and Members of the Committee:

My name is Blaine Weeks, and I am the CFO for Geiger Ready Mix Co., Inc. We (Geiger is) are a 5<sup>th</sup> generation family owned supplier of ready mix material serving the Greater Kansas City Metropolitan market. We have three plants located in Kansas and two plant located in Missouri. Our customer mix is equally balanced between residential and commercial accounts. As the CFO, one of my primary responsibilities is credit and collections. As you can imagine, during the last few years, we have had to utilize mechanics liens and bond claims to a degree we have not seen in quite some time. We work very closely with our attorney's and utilize their expertise when it comes to filing our liens. The lien laws in Kansas place the burden on the supplier to file the perfect lien, which is why we rely on legal counsel to assist with this process. I do not claim to be a lien expert, but feel like my experiences can provide a real world perspective. I appreciate the opportunity to appear before you today to speak in opposition of HB 2072.

To put in perspective some of my opening comments, we have supplied material to hundreds of projects over the years. Even though we have had to file an increasing number of liens, in large part, the lien is the last resort. In most cases we can avoid filing the lien by simply indicating our intentions to either the subcontractor or in some cases, the general contractor. Current lien laws give us ample time to work through payment problems and come to a workable resolution. Our trigger point is about 45 to 60 days when we start to get concerned about payment. One of the provisions of HB 2072 is the creation of a State Construction Registry. My concern with this provision is the additional administrative burden that will be placed on suppliers. As I mentioned before, the majority of the projects where we supply material, we do not have a problem getting paid. With the 21 day "Notice of Furnishing"

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Leavenworth, KS 66048-0050  
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*Leavenworth, Kansas*

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*Liberty, Missouri*

*Lee's Summit, Missouri*

requirement, we would have to file on every project. The additional fees and new layer of administration is something that we simply cannot afford. I also see this as just one more "hoop" for the suppliers to jump through and one more reason to throw our lien out of court.

As a ready mix supplier, our company continues to face extreme pricing pressure within our market. Nearly every aspect of this proposed bill will no doubt increase our costs. Given the current state of the pricing in our market, there is no way that we would be able to pass these costs on to our customers. Therefore, we would bear the brunt of these additional costs.

Looking back on my experiences in using the lien laws over the last several years, I see no need to make changes to what I believe is an already adequate system. For whatever return on investment there might be, I do not believe that adding another layer of bureaucracy is necessary.

Thank you for your time today and I am happy to respond to any questions you may have.





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FAX 785-597-5117

## TESTIMONY

By the

**Hamm, Inc.**

Before the  
**House Judiciary Committee**

Regarding HB 2072  
Concerning Remote Claim Liens

February 10, 2011

Mr. Chairman and members of the committee my name is Ramon Gonzalez, I'm an employee of Hamm Inc. located in Perry, KS and a member of the Kansas Aggregate Producers Association. I would like to take this time to thank you for allowing me to appear before you today in opposition of HB 2072. Hamm Quarry and Hamm Contractor, the two major subsidiaries of Hamm, Inc. have been providing crushed limestone products and heavy-highway construction for the state of Kansas for over 55 years.

Hamm Quarry operates numerous limestone producing quarries in over 14 counties in NE Kansas. Our quarries are in operation for state, county, and township projects as well as numerous commercial and residential projects throughout the state.

The construction and aggregate industry is a seasonal one here in Kansas. Although things may slow in the winter they almost always rev up to a furious pace in the spring and summer. The biggest problem that we, as a quarry producer, face is the end use of our product. We make big rocks into little rocks, knowing where and to what particular project the aggregate is going to is extremely difficult. A majority of the projects we supply to we are completely unaware of the "original contractor" and hardly ever are we in contact with the actual owner. It is not uncommon to sell over 200 loads of aggregate in a single day at a single

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site. That can translate to over 4,000 ton in a single day. Many times the sub-contractor that we sell to has not informed us of the job which they are working. Other times the actual third party hauler is our only contact. Unfortunately they seldom know the details of the job they are hauling. The answer to "Where is this aggregate going?" can be as vague as "Topeka". Although I do not stand here and say that we couldn't possibly do a better job of finding end use, I do think it is unfair to put the responsibility on the supplier to find the job, subcontractor, contractor and owner for each load of aggregate we sell. In my opinion a contractor should know who their sub-contractors are, a sub-contractor should know their suppliers. I believe information flowing downhill is much more practical than an aggregate producer which provided \$1,000 worth of material on a \$100,000 project trying to find the prime contractor, project name or location. In closing I believe the current Lien Laws provide for adequate protection against non-payment and I would urge this committee to oppose HB 2072.

I would like to thank you for allowing me to appear here today and would be willing to answer any questions you may have at the appropriate time. Thank you.

February 1, 2011

The Honorable Representative Lance Kinzer, Chairman  
House Judiciary Committee  
RE HB 2072

Mr. Chairman

Thank you for allowing me to address you and your committee today in opposition to HB 2072. I'm Ken Keller retired controller of Western Extralite Company. Western Extralite Company is a supplier of electrical supplies 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.

Mechanic liens have been put in place to assist those in the construction trade in getting paid. The feeling is the person receiving the economic benefit from the project should be responsible to see everyone is paid for work preformed 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 left Western Extralite Company we were issuing 269,000 invoices in a year. Let's say that's 10,000 jobs, I really don't know the exact count. They would have to monitor the state construction site for any jobs for which they are supplying material so they could file a notice of furnishing to protect their lien rights. All that cost and effort with little or no benefit. Why?

This is bad legislation, with no benefit to the public. I urge you to vote` no on HB 2072

Ken Keller

Controller, Retired  
Western Extralite Company.

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# BUILDING ERECTION SERVICES COMPANY

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

February 1, 2011

House Judiciary Committee

Chairman Kinzer

Vice Chairman Patton

Committee Members

My name is Bill Miller. I represent the American Subcontractors Association, Greater Kansas City Chapter. Our membership is on both sides of the state line in Eastern Kansas and Western Missouri. We represent both subcontractors and suppliers in the construction industry.

Our members are opposed to HB2072 for the following reasons.

The subcontractors are known to the general contractors because they are contracted to the general contractor.

Major suppliers are also known to the general contractor because the components that they supply must be approved by the architect through the submittal process through the general contractor.

Subcontractors are required to provide supplier lists that must be constantly updated and included with the monthly billing.

Monthly billings are done based upon a preapproved schedule of values that must be approved prior to any billing. These billings have a line item for materials delivered to the project or in bonded storage.

Lien waivers from sub-subs and suppliers are required to be included with each months billing for the previous months payment.

We believe that HB2072 is too costly and cumbersome and is not necessary or good for an industry that is already overloaded with regulations that have made construction costs far too expensive for Kansas business.

Bill Miller

  
American Subcontractors Association



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METAL BUILDING  
CERTIFIED  
House Judiciary  
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BA ELECTRIC SUPPLY, INC.,  
428 SE Fleetway Drive  
Lees Summit, MO 64081  
Phone (816)525-9600 Fax (816)525-9684

---

March 21, 2010

Chairman Lance Kinzer  
House Judiciary Committee

RE: HB 2072

Dear Representative Kinzer:

With regard to HB 2072, I am writing today to compel you to vote against the bill. BA Electric Supply is a supplier of lighting and electrical components used in new and existing construction projects. My company routinely supplies materials to sub-contractors working in the state of Kansas and would be adversely harmed by the passage of this bill.

Among my areas of concern:

- The bill unfairly targets the wrong party. The unpaid supplier is entitled to recovery or compensation for materials that were installed at, and add value to, the job site. The sub-contractor should be held accountable, not the supplier.
- The notification requirements would unduly burden a remote-claimant. If enacted, additional resources and funds would be required to continually monitor records in every county and to pay filing fees on every single job in the State. These costs ultimately will be passed on to the construction industry, thereby increasing costs to the community. This legislation overwhelmingly benefits the Contractor, yet the remote-claimant is made to assume the administrative and financial burden of their protection.
- If the sub-contractor fails to pay a remote-claimant, the contractor has a contractual basis to recover damages arising from the misappropriation of funds that result in a lien. This bill seeks to subvert that remedy. Given the time-constraints in filing the Notice of Furnishing, it will provide an additional defense to void, or avoid, part or all of a remote-claimants valid lien, with no consequence to the sub-contractor.

COMMERCIAL

INDUSTRIAL

RESIDENTIAL

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- HB2064, enacted in 2003, allows a supplier to file a Notice of Extension to Lien Rights in the appropriate county within 90 days of last providing materials. This filing provides for an additional 60 days to a remote-claimants lien rights - during which time the debt is typically resolved between the parties. This filing and associated mailings already provide for adequate notification to the general contractor of a remote-claimants intent to file a lien. The notice of furnishing required in HB 2072 adds no value to the lien process.
- As a reaction to this legislation, I would be reluctant to supply any materials at all until I have a file-stamped copy of the notice of furnishing. Given the lead-time required for special-order materials required on most projects, this will result in lengthy delays in obtaining materials which will likely cause delays in the entire construction process.
- In the interest of fairness, if this legislation moves forward it should be amended to require that the burden of notification be placed on the contractor. The sub-contractor should be required to provide a list of suppliers to the contractor. The contractor would then send notice, by certified mail to each supplier, of their Notice of Commencement with all pertinent legal, ownership and bond information.
- HB 2072 allows a contractor to "bond-around" a valid lien filed by a remote claimant. Even if I follow the letter of the law in preserving my lien rights, the contractor has a remedy to void my lien, leaving me with no remedy to recover the fees and costs associated with its filing.
- While the proponents of HB 2072 state that the bill will reduce liens being filed and prevent the contractor from paying twice for the same work, nothing in this bill supports that claim. There is still nothing to keep the sub-contractor from simply running off with the money. Many contractors successfully avoid liens by requiring supplier lien waivers from the sub-contractor before releasing their draw check. Sadly, most contractors do not even take the time to obtain this information. This legislation could be avoided entirely with a little due diligence on the contractor's part.

Lien law exists for good and equitable reason. This bill unfairly tips the scales in favor of the contractor. It will increase construction costs and delays, create unnecessary paperwork and cost, and lacks a compelling reason for passage. I would appreciate your vote against these provisions of HB 2072

Sincerely,

Jim Gray  
District Credit Manager  
BA Electric Supply





# WESTERN EXTRALITE COMPANY

DISTRIBUTORS OF QUALITY ELECTRICAL AND VOICE/DATA PRODUCTS

1470 Liberty St. • Kansas City, MO • 64102

Testimony House Bill No. 2072

Judiciary Committee

February 10, 2011

Mr. Chairman and Members of the Committee:

Western Extralite Company is a supplier of electrical and datacomm products to the construction industry with 8 locations and approximately 60 employees in Kansas. We would be negatively impacted by this legislation for the following reasons.

1. HB 2064 has been in effect since 2003 and it provides a fair balance between the interests of the General Contractor, the sub-contractor, and the supplier. It provides a "Notice of intent to file lien" provision that informs the General Contractors of the supplier's involvement.
2. This bill shifts the risk and costs unfairly to the supplier. The supplier has provided material and deserves to be paid for it. They should not be punished for the wrong doing of the sub-contractor. The General Contractors already control the flow of money on the projects. If they use a little due diligence and verify with suppliers they have been paid before releasing funds they will not have to be concerned about liens. This bill is basically an unfunded mandate with little value to the general public and the costs outweigh the benefits.
3. There is no feasible way for the supplier to know who the General Contractor is on all jobs. Many times the sub-contractor will buy material for a job that the supplier has no knowledge about at all. This would increase costs to all by requiring the supplier to monitor the State Construction Registry continually or risk losing lien rights.
4. This bill is very similar to SB 469 that was defeated for good reason last year and the underlying conditions have not changed.
5. Finally, is this such a problem that is requires more government involvement? This issue is by no means "out of control". If everyone involved takes the time to make "good" business decisions on who they choose to do business with, this issue can be eliminated. The old saying "if it sounds too good to be true it probably is" pertains to this issue. If General Contractors choose to hire someone who has made a ridiculously low bid they need to live with that decision and not try to shift the risk to another party.

Please vote against this bill, it is not the answer. Thank you for your time.

Sincerely,

Tim Carpenter  
Credit Manager

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House Judiciary

Date 2-10-11

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# **WESTERN EXTRALITE COMPANY**

**DISTRIBUTORS OF QUALITY ELECTRICAL AND VOICE/DATA PRODUCTS**

4024 S. Topeka Blvd., Topeka, Ks. 66609

02/10/11

## **TESTIMONY BY JOE STEELE**

**My name is Joe Steele. I am Operations Manager for the Western Extralite Topeka Service Center and I have over 30 years experience in the electrical equipment supply business. I strongly urge you to oppose HB2072 as it will result in punitive administrative costs for all of the supplier industries in order to maintain our lien rights.**

**We currently operate under a lien law enacted in 2003, which has worked well and is proven. HB2072, because of substantially increased paperwork, effectively places a tax on Suppliers/distributors who are often small businesses. Ultimately, these costs will have to be passed along.**

**General contractors can achieve the same thing that HB2072 provides, by thoroughly checking the credit status of the subcontractors before hiring them and then requiring all their subcontractors to provide lien waivers with each pay request.**

**A similar bill was proposed last year and defeated for many of the same reasons. I urge you to do the same to HB2072.**

**Thank you.**

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House Judiciary

Date 2-10-11

Attachment # 31



Midway Sales & Distributing, Inc. d/b/a

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## TESTIMONY ON HOUSE BILL 2072 HOUSE JUDICIARY COMMITTEE

By **Kenneth Daniel**

**February 1, 2011**

*Kenneth L. Daniel is an unpaid volunteer lobbyist who advocates for Kansas small businesses. He is Chairman of the Board of Midway Wholesale, a business he founded in 1970. Midway has nine locations and 125 employees.*

Mr. Chairman and Members of the Committee:

I speak in strong opposition of House Bill 2072 in its entirety. This bill guts the Kansas lien laws and uproots the long-existing financing of much of the construction industry in Kansas.

It is the threat of lien filings and not the actuality that occupies the attention of the powerful parties, that being the building owners and the general contractors.

Midway Wholesale is a construction materials supplier. About half of the costs of commercial building construction are materials costs. We extend credit to contractors, and become the de facto financiers of most construction projects. One of our only protections is the threat of lien filings in the event we don't get paid for materials we furnished for a construction project.

The website for AGC of America shows only 60 General Contractor members in Kansas who do commercial construction. These contractors are the ones who write the construction contracts and are parties to them. And, they are the ones who write the checks to pay on those contracts. They are the ones in a position to require their subcontractors to reveal where the project materials were purchased, and who their sub-subcontractors are.

In the past 18 years, no member of AGC has suffered ANY loss due to lien filings by Midway. In fact, we have only filed four liens on commercial projects during that 18 years, only one of which was against an AGC member, who suffered no loss because of it.

Many of the more than 6000 subcontractors in Kansas who perform the work for commercial projects hire sub-subcontractors who are not parties to the contracts. Very few of the 3500 construction material suppliers in Kansas are parties to the construction contracts at all, yet they furnish approximately 50% of the financing.

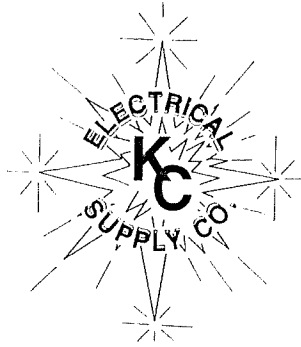
In 2010, Midway issued 118,587 invoices. More than 98% of those were to our 4800 contractor, sub-contractor, and sub-sub contractor customers. We did not file a single lien on any of those projects. In fact, we have filed only one lien on a commercial construction project in many years, and the contractor did not suffer any loss because of it.

This bill abuses suppliers and sub-sub contractors. It requires very little responsibility for the owners, general contractors, and subcontractors who get to choose who does the work and enjoy the luxury of being party to the written contracts.

This bill will enable dishonest, incompetent, or careless building owners, developers, contractors, and subcontractors to avoid paying for materials, leaving companies like Midway to suffer the losses.

Owners, developers, general contractors, and subcontractors control the money. They are the parties to the contracts. It should not be our job to be the policemen for the industry when we have few rights to begin with.

**This bill will strip us of even this marginal protection. This is a very ugly proposal. I strongly urge you to reject House Bill 2072.**



## KANSAS CITY ELECTRICAL SUPPLY CO.

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

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Fax (913) 563-7050

[www.kcelectricalsupply.com](http://www.kcelectricalsupply.com)

*February 9, 2011*

*Re: HB 2072*

I am John Owens, the Treasurer of Kansas City Electrical Supply Co., and this is my written testimony in opposition to House Bill 2072. This legislation puts an unnecessary administrative and financial burden on suppliers and subcontractors which are referred to as "remote claimants." Currently, if a supplier or subcontractor wishes to extend their lien rights from 90 days to 150 days, we are required to file a lien extension. This requires a filing fee and the general contractor receives this notice. With the proposed legislation, we would be required to file an additional notice "Notice of furnishing" and pay another fee. Failure to do so would jeopardize our lien rights. If the general contractors are trying to establish a list of suppliers earlier in the construction phase, they should require subcontractors to list their suppliers at the time of signing the contract. This essentially accomplishes the same thing without a change in legislation and without any additional burden, financial or administrative, placed on the supplier.

Allowing this bill to pass will hurt small businesses and ultimately increase the cost of construction in the state of Kansas. A similar bill, SB 469, was defeated last year for the same reasons.

Thank you for your time and consideration.

John M. Owens  
Treasurer

House Judiciary  
Date 2-10-11  
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Heart of America  
Chapter

February 1, 2011

Kansas House Judiciary Committee  
Kansas State Capitol  
300 SW 10<sup>th</sup> Street  
Topeka, KS 66212

Mr. Chairman and Members of the Committee:

I am writing on behalf of the members of Associated Builders and Contractors (ABC), Heart of America Chapter. We represent that portion of more than 23,000 member companies that reside or conduct business in the state of Kansas.

ABC steadfastly supports the concepts of free enterprise and merit based performance in the construction industry. Among the basic tenets of free enterprise – and the founding documents of our country – are the rights to freely contract for services and goods and to seek redress of any grievance or dispute relating to such contracts through our court system.

House Bill 2072, relating to mechanics liens, attempts to create a time-limited process for notification of lien rights through a state registry. Failure to meet the statutorily imposed timeline may impair a claimant's right to recovery.

ABC is concerned about a government imposed limitation on our basic legal right to seek redress through the court unless it can be demonstrated that the limitation is clearly in the public interest and its objectives cannot be accomplished in a less intrusive manner.

ABC Heart of America Chapter would strongly encourage the committee to reject this legislation and put the onus – or burden of proof – on proponents to demonstrate that the stated objectives are in the public's best interest and cannot be accomplished without such intrusion by government into our voluntary system of contracting.

Respectfully,

✓ Jim Kistler  
President and CEO