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TESTIMONY
By
CLINT PATTY

HB 2173
Before the House Judiciary Committee

March 19, 2013

Chair Kinzer, members of the committee, my name is Clint Patty. I am an attorney with the law firm of Frieden, Unrein and Forbes 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 2173.

Proponents of HB 2173 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. In short, unless 1) suppliers are able to participate in a yet undeveloped computer system in the Secretary of State’s office; and, 2) have the staff to submit electronic claims to the state within 21 days; their lien rights become capped at the amount the original contractor owes a subcontractor.

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 2173 that becomes 21 days or the lien rights are largely limited or lost (except for claims of \$5,000 or less). 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:

1. HB 2173 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 that this bill applies to residential projects. Why would one entire portion of the construction industry be left out of such a registry?

In closing, the Association urges rejection of HB 2173, 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.