

March 19, 2013

**House Judiciary Committee
RE: HB 2173**

**Chairman Kinzer
Vice Chairman Bruchman
Committee Members**

My name is William Miller. I represent The American Subcontractors Association and Midwest Crane and Rigging, LLC. ASA represents subcontractors and suppliers in Kansas and Western Missouri. Midwest Crane is a crane rental service with locations in Olathe and Topeka in Kansas and St. Joseph in Missouri.

I am here in opposition to HB 2173. This proposed bill has been presented to the Legislature several times over the last 6 years with very few changes. It was bad when first introduced and is bad today. It unfairly targets subcontractors and suppliers who in good faith, supply goods and services to the construction industry. In 2010, this bill was sent to the Judicial Council for study and recommendation due to the large number of opponents and the controversial nature of it. I served on the Council for 18 months and the Council was unable to reach any consensus on this bill and ended with no recommendation.

Over the last 8 years, Kansas has gone from a state that had almost no payment protection for subcontractors and suppliers to one of the top 2 states in the Union for payment protection for these groups. HB 2173 seeks to erode these protections that past Legislatures felt were vital to secure payment for work and materials provided for both public and private projects in Kansas.

The current lien law requires notice to be given to general contractors and owners of amounts due in order to extend the time for lien filing from 90 days to 150 days to preserve lien rights. Those that fail to notify and extend, lose their lien rights already under the current law. Few wait 90 days to extend their rights and most suppliers require payment in 30 days. Kansas payment law requires payment to the general contractor 30 days after a proper request for payment is sent to the owner. Subs must be paid within 7 days after the general receives payment and suppliers within 7 days after payment is received by the sub for both public and private projects. This process results in the supplier receiving payment 75 or more days after materials have been delivered. Most will or have filed for an extension by then to preserve their lien rights. This extension serves notice to the general contractor that the supplier is out there with money due.

The current lien law has worked well since the last revision in 2003 that extended the time for filing to 150 days from 90 days if notice is given to the general contractor and the owner prior to the 90 day deadline. There is no need to change the lien law that we now have.

Most construction contracts require a schedule of values to be filled out and approved prior to starting work or furnishing materials on a project. This schedule requires a list of suppliers and sub-subcontractors that a first tier subcontractor contracts with. It lists the name of the sub-sub or supplier and includes the value of that contract. The general should already know who the subcontractors are. This schedule serves as a milestone marker for monthly payments to the subcontractor. This schedule of values is approved by the general contractor/construction manager and in most cases by the architect before any work is started.

I have attached 3 pages from a standard AIA contract that has been widely used for many years. It refers to the schedule of values as well as product submittals that are required from equipment and material suppliers that are sent to the general contractor and to the architect. This is another proof that the general contractor has to know who the primary suppliers of equipment, materials, and services are and the value of that equipment, material, and service. Article 4, Section 4.1.2 requires submittals of product data from the suppliers. Article 4, sections 4.1.6 and Article 12, section 12.2 show that evidence of payment to these sub-subcontractors and suppliers have been paid is required, if requested by the general contractor.

This bill, if passed, would likely cause suppliers to require payment in advance of ordering or delivering any equipment or materials which would certainly adversely impact the construction industry in Kansas. I urge this Committee to reject this proposed bill. This HB 2173 should not be a substitute for poor management of construction projects. The tools are there. All the general contractors need to do is use them.

William Miller

**Government Relations Chairman
American Subcontractors Association
Midwest Crane and Rigging, LLC
Managing Member**