



WRITTEN TESTIMONY

Date: March 19, 2013

By: Justin Crain, President, Kansas Ready Mixed Concrete Association and Vice President & Treasurer, American Concrete Co., Pittsburg, Kansas

Regarding: House Bill 2173, An act concerning liens; relating to supplier's liens

Before: The House Committee on Judiciary

Representative Kinser and Members of the Committee:

My name is Justin Crain, I am the Vice President & Treasurer of American Concrete Co. located in Pittsburg, Kansas and am also currently serving as President of the Kansas Ready Mixed Concrete Association. I appreciate the opportunity to appear before you today on behalf of both organizations to testify in opposition to HB 2173.

American Concrete is a 3rd generation family owned supplier of ready mix material serving the Pittsburg and Southeast Kansas market. Our customer mix is equally balanced between residential and commercial accounts. 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 and perfect the lien, which is why we rely on legal counsel to assist with this process. I do not claim to be a lien expert, but I hope my experiences can provide a real world perspective.

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 2173 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" 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. Some other concerns I have with the bill are:

- Who do I lien for materials prior to the "notice of commencement"? Often times material for footings or bedding may be furnished prior to the actual commencement of work. The owner? If so, is that done under current law?
- If we deliver directly to the general is current lien law in effect?
- Does any material we deliver as a result of additional material under a change order fall under the original subcontract or are the amounts, subject to lien, reset?
- What if I provide material to multiple subcontractor, am I subject to the first subcontract, the largest subcontract or the smallest subcontract?

In my opinion it makes no sense to set up another set of rules when the ones we already have answer each of the questions above.

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.

Sincerely,

Justin N. Crain
Vice President & Treasurer
American Concrete Co.