

**Alsop Sand Co. Inc.**  
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March 19, 2013

Representative Lance Kinser, Chair  
House Committee on Judiciary  
Room 112-N, State Capitol  
Topeka, Kansas

Re: Written Testimony on HB 2173

Dear Mr. Chair and members of the Senate Commerce Committee:

I am a third generation sand producer, President of Alsop Sand Co. Inc. & President of the Kansas Aggregate Producers Association. Alsop Sand operates in North Central Kansas; we supply sand & gravel we produce. As well as crushed stone that we purchase from quarries, asphalt millings we purchase from highway contractors and resell both the stone & millings to construction projects.

As the population declined in the market areas we served, we decided that in order to maintain enough sales volume to survive, we would need to expand into more market areas.

When I first joined upper management we had two sand plants one near Scandia and the second near Clay Center.

Today we have sand plants near Scandia, Concordia, Clay Center, Abilene and Salina. We have asphalt millings stockpiles in Republic, Cloud, Dickinson, Saline, Lincoln and Ellsworth Counties.

Our products are used consistently in Smith, Jewell, Republic, Clay, Cloud, Ottawa, Mitchell, Osborne, Dickinson, Saline, McPherson, Ellsworth and Lincoln Counties.

I have an incredibly capable office manager and assist office manager. These two ladies schedule all the deliveries for all the above locations, from the main office in Concordia.

It is physically impossible for these two ladies to be able to file a "Notice of Furnishing" within 21 days, on every commercial construction project that we might deliver materials to in all these counties and the proponents of HB 2173 know that. It is impossible, if the subcontractor uses their own trucks to pick up the materials, in which case the office personnel would not be aware of the sale until the following week when the sales tickets arrive at the main office in the mail, additionally the loader operator that loaded their truck and filled out the ticket may not be told where the sand/materials are going.

Often the subcontractors truck driver have a limited knowledge of business practices and if they only have one project in our area, do not want any job name on the tickets.

This bill is an attempt to take away a suppliers right to be paid for their product.

Language that is quite important, that may not be obvious:

In NO EVENT shall the liens filed by a remote claimant exceed the net amount owed by the general contractor to the subcontractor?

That means that the General Contractor can delay payment for six months, but does not have to pay the subcontractor or supplier interest.

If a "Notice of Furnishings" **HAS NOT BEEN FILED** as provided for in Section 3, and amendments thereto, by a remote claimant (material supplier) as defined in Section 1, and amendments thereto, the aggregate amount of any liens filed by a remote claimant (material supplier) shall not exceed the net amount due from the original contractor under the terms of the subcontract with the subcontractor to who the remote claimant (material supplier) has supplied labor, equipment, materials or supplies.

This clause again lets the General Contractor use the supplier's money for many months interest free, even though they signed a payment schedule agreement and failed to honor their agreement.

It also, translates to the fact that the subcontractor can exceed the materials required on the plans by 15% and the General Contractor only has to pay for the plan quantity.

Example; Whether the plans were right or wrong, if the subcontractor puts 11,500 tons of base product on the project, rather than the 10,000 tons the plans call for, the supplier should be paid for all 11,500 tons of materials.

This bill states that only the planned quantity is due, although it states it in a manner most people would miss.

When I was first started bidding/quoting projects, if a subcontractor submitted a stupid-low bid that obviously contained a mistake, the general contractor would either contact them and explain there was something wrong or just refuse to use their faulty bid.

Today general contractors, like the sponsors of this bill, seem to delight in using these faulty bids. They seem to think that the stupid cheap subcontractor bid, will give them a bidding advantage. But instead of accepting the responsibility for their own actions, they want you to absolve them of that responsibility through HB 2173.

As an example, if a "Notice of Furnishings" is not filed on time, and the subcontractor figures 1,000 tons of base product instead of 10,000 tons required on the job. Because of

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this mistake their bid is \$27,000 lower than it should have been. HB 2173 allows the General Contractor to only pay the for \$3,000 worth of base materials, rather than the \$30,000 that went into the project.

Please vote against this Pandora's Box, HB 2173 will make Kansas a worse place to live and work in for most of us. It will benefit only a tiny minority, who could solve their problems with better business practices.

Sincerely,  
Dane Q. Barclay