



BA Electric Supply  
428 SE Fleetway Circle  
Lees Summit MO 64081  
Phone (816)525-9600 Fax (816)525-9684

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March 21, 2010

The House Judiciary Committee

RE: HB 2173 .

Dear Representative:

With regard to HB 2173, I am writing today to compel you to vote no on this proposed legislation. 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. It is my belief that my company (and industry) will be unfairly harmed by the passage of this bill

Among my areas of concern:

- HB2173 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 of HB 2173 would unduly burden a remote-claimant. Limiting the notice of furnishing to 21 days from first delivery is just not practical for the industry. We supply minimal merchandise initially on a job, with the bulk coming well after 21 days. By the time we find out that our balance will be above the threshold for filing the notice, it's already too late.
- 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.
- 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 2173 adds no value to the lien process.
- HB 2173 would allow the owner or general contractor to "bond around" my valid lien with no provision to cover my fees and costs for filing the lien. State statute requires that

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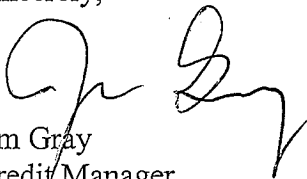
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I file my lien in a timely manner, yet the bond provisions of this bill will negate those efforts and associated costs, forcing me to hire counsel to file a claim with the bonding agent. This basically forces me to pay twice for the same security.

- 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. HB 2173 provides that my Notice isn't valid until the filing fee has been received from the original contractor. What if they simply choose not to pay as a strategy to avoid my notice? 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 to a registered remote claimant of their Notice of Commencement with all pertinent legal, ownership and bond information.
- While the proponents of HB 2173 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 an unnecessary burden to remote claimants, and lacks a compelling reason for passage as written. I would appreciate your vote against the provisions of HB 2173.

Sincerely,



Jim Gray  
Credit Manager  
BA Electric Supply