

TESTIMONY BEFORE SENATE COMMERCE COMMITTEE

OPPOSITION TO SB-93 – CONSTRUCTION LIEN REGISTRATION BY GUS RAU MEYER FEBRUARY 12, 2013

My name is Gus Rau Meyer, President of Rau Construction Company in Overland Park. Rau was founded in 1870, and is a mid-size General Contractor working on commercial, retail, office and historic rehabilitation projects. I am here to urge your opposition to the lien registration bill SB 93 as it is currently written.

My concerns with this legislation include:

- 1) New Section 2 (a) states that the original contractor shall file a notice of commencement prior to the start of physical construction. Although we typically will have a number of projects in excess of several to many millions of dollars, we also may have a hundred of projects in the thousands of dollars each year. To require filings on all of these projects can become a major burden. Quite often, we are not informed of property legal descriptions as part of the contracting process. Often, especially for tenant finishes, we only get the street address. And often, especially for tenant finishes, we do not know who the property Owner is, only the tenant who is leasing the space from the property Owner.
- 2) What happens if we, as an Original Contractor, can not obtain specific information required for the initial notice filing, or what happens if we accidentally have an error in this information? This proposed legislation does not address what burdens the Original Contractor is taking in such an instance.
 - a) Are we now becoming liable for any and all Liens?
 - b) Proper legal description is imperative for a lien. Does this puts the burden of providing this on the Original Contractor and make us responsible if a lien is invalidated due to a wrong legal description for the lien or other courses of action by a subcontractor or remote claimant who relied upon this information?
 - c) Do we lose any lose any protection that this legislation is attempting to provide if we provide wrong information in the initial notice?
- 3) What happens if we start work prior to making our initial notice of filing? This could happen due to a mistake or not having time to make the filing. A good example of the later occurred last week when a regular customer had a major fire at a facility. Within hours of the fire we had our own manpower on the project. Within 12 hours of the fire we had subcontractors on the project. Since this happened on a Saturday we practically could not have had all the required owner and legal descriptions obtained, let alone the paperwork done, for an initial notice of filing. It appears that if this legislation was in place that we would have both broken the law by not making the initial filing, as well as given up any lien protection by not making a timely initial filing. Is the intent of this law to force General Contractors to decide whether to respond to emergency conditions and lose their lien right protection, or to do the paperwork and delay an emergency response?

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- 4) New Section 2 (c) (3) requires the Original Contactor to pay a fee for the original registration of a project, and then requires the Original Contactor to pay the fees of all “notice of furnishings” by subcontractors and remote claimants per New Section 3 (e). These fees are not defined, and could become extremely large, compared to the value of a small construction contract creating an extreme burden on an Original Contactor such as a General Contractor.
- 5) What happens to a remote claimant who does not have to provide a registry since their work is under \$5,000 per New Section 3 (a) when they make a claim but the Original Contractor has paid the Subcontractor so there is no “net” money due. In a number of sections this proposed legislation says that if the remote claimant has not filed and the claim is for more than the “net” money due, that the remote claimants claim will be reduced to the “net” amount due. This seems to be a conflict in this legislation by appearing to give a remote claimant who is under \$5,000 as safe harbor provision.
- 6) What happens to a remote claimant like an equipment supplier or a lumber yard who does not think or know that they will have work in excess of \$5,000 on a project so they do not provide a registry since they believe that their work is under \$5,000 per New Section 3 (a) but then they find they are providing services in excess of \$5,000 after they have provided \$5,000 in services? Do they automatically lose any ability to protect the first \$5,000 in work done if they then file their notice of registration?

As you can see, there are a number of very open questions in this legislation that will ultimately lead to lengthy legal battles. There also appears to be a significant burden (legal and financial) placed upon the Original Contractor(s) on a project. All of these are quite concerning. I urge you consideration to oppose SB 93 as it is currently written.

Thank you for your consideration. If you have any questions, please contact me at:

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