

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE.

The meeting was called to order by Chairman Donald Dahl at 9:00 a.m. on February 5, 2003 in Room 243-N of the Capitol.

All members were present

Committee staff present: Jerry Ann Donaldson, Kansas Legislative Research Department
Renaë Jefferies, Revisor of Statutes
June Evans, Secretary

Conferees appearing before the committee: Thomas M. Moore, Moore, Hennessy and Freeman, P.C.
Rich Jones, Branch Manager, Lawrence/Topeka, Western Extralite, Co.
Donald B. Dawson, Kansas City Chapter Manager, NECA
W. R. Miller, President, Building Erection Services Co.
Kathy Tolle, National Association of Credit Management
Kenneth Keller, Controller, Western Extralite Company
Wendy Harms, Associate Director, Kansas Ready Mixed Concrete Association
Corey D. Peterson, Executive Vice President, Associated General Contractors of Kansas, Inc.
Dean Ferrell, Farrell Construction of Topeka, Inc.
Roy Worthington, Chairman, Legislative Committee Kansas Land Title Association
Chris Wilson, Director of Governmental Affairs of the Kansas Building Industry Association (KBIA)
Kathleen Taylor Olsen, Kansas Bankers Association

Others attending: See attached sheet

The Chairman called the meeting to order and announced the committee would be meeting permanently in Room 243-N.

The Chairman opened the hearing on **HB 2064 - Filing times on certain liens extended for property other than residential property.**

Staff gave a briefing on **HB 2064**. Any person claiming a lien on real property, under the provisions of K.S.A. 60-1101, and amendments thereto, shall file with the clerk of the district court of the county in which property is located, within four months when such property is residential property, and within 6 months when such property is other than residential property, after the date material, equipment or supplies, used or consumed was last furnished or last labor performed under the contract a verified statement showing: (1) name of owner (2) name and address sufficient for service of process of the claimant (3) description of real property and (4) itemized statement.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE at 9:00 a.m. on February 5, 2003 in Room 243-N of the Capitol.

Thomas A. Moore, Attorney at Law, Moore, Hennessy & Freeman, P.C., testified as a proponent to **HB 2064**, stating the present mechanic's lien law is much too restrictive time-wise to allow the construction industry to function in what has become a generally accepted manner. A subcontractor or a supplier is required to file a mechanic's lien against the real estate and the improvements thereon within three (3) months of the last day worked on or the last material delivered to the project to be able to avail itself of the mechanic's lien remedy. The three month period of time is much too short and has resulted in many more liens being filed by a contractor or a supplier (as well as the original contractor) within six months of the last day worked on or the last materials delivered to the project. This longer period of time to file a lien has, based upon experience, allowed the owner and the contractors to resolve their differences without the real estate and improvements being encumbered. The shorter period of time results in proportionately a higher percentage of liens being filed in Kansas than in Missouri and much more rapid voluntary resolutions of disputes between the owner and contractors in Missouri than in Kansas.

It is believed that extending the time in which any contractor or supplier may file a lien benefits all parties involved in the construction project - owners, banks, contractors, subcontractors and suppliers. It also allows an attorney for an aggrieved contractor or supplier to utilize the mechanic's lien remedy as a last resort rather than as a first resort. As a result this would be beneficial for all parties to the construction project including lenders and owners.

Given the benefits which flow overall to all of the parties, the proposed six month time limitation should be enacted to replace the present three month mechanic's lien law time limitations in Kansas (See Attachment 1).

Rich Jones, Branch Manager, Lawrence/Topeka, Western Extralite Company, testified in support of **HB 2064**, stating the issue of lien time has been a problem for the people in the contracting industry. Relationships of years can flat get destroyed when owners, contractors, sub-contractors work together and a payment isn't made and down the line and a lien is needed. As a business operator in Kansas he has been looking at what other parts of the country are doing. Some states have liens at the beginning of the project.

Don Dawson, Chapter Manager, Kansas City Chapter, National Electrical Contractors Association (NECA), testified as a proponent to **HB 2064**. By extending the time period to six months the contractors of all types would have more time to reconcile construction contract issues prior to having to file a mechanics lien, thereby helping to preserve business relationships that might otherwise be jeopardized. Keeping valuable business relationships is important to all contractors. The current time period is three months, which, in many instances limits the ability of contractors to get issues resolved, and forces the filing of a mechanics lien. NECA believes extending the time period to file a mechanics lien would reduce the actual number of liens filed because more time would enable contractors the opportunity to resolve outstanding issues (Attachment 2).

W. R. Miller, President, Building Erection Services Company, Olathe, testified in support of **HB 2064**. Due to the ninety day requirement the company is forced to file numerous liens in Kansas in order to protect their payment rights. This is costly and burdensome and upsets many customers and owners (Attachment 3).

Kathy Tolle, National Association of Credit Management, Kansas City Division, Inc. testified as a proponent

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE at 9:00 a.m. on February 5, 2003 in Room 243-N of the Capitol.

to **HB 2064**. This bill would allow those companies selling materials or providing services to commercial builders and commercial construction sites more time to resolve disputes before having to file liens to protect their interest. This enables companies to build better customer relationships and save on the expense of filing mechanics liens which are costly (Attachment 4).

Kenneth R. Keller, Controller, Western Extralite Company, Kansas City, MO, testified as a proponent to **HB 2064**. Western Extralite is a wholesale electrical distributor with business locations in Kansas and Missouri. A large portion of sales is to electrical contractors working in the construction industry and is sold on credit. Mechanics liens are one of the primary remedies available to those in the construction industry to collect payments on unpaid sales. This should be used only as a last resort.

The mechanic's lien itself is similar in Kansas and Missouri. However, the time for filing a lien is quite different. The suppliers and subcontractors in Kansas, whether they are plumbers, electricians, concrete workers, etc., have three months to file a mechanic's lien from the last day worked or material is delivered to a project. Those same suppliers and subcontractors in Missouri have a 6-month filing period. The time differential is extremely important. The time frame is entirely unreasonable, unworkable and too short. Western Extralite Company urges passage of **HB 2064** extending the time for mechanic's lien filing from 3 months to 6 months for non-residential properties (Attachment 5).

Wendy Harms, Associate Director, Kansas Ready Mixed Concrete Association (KRMCA), testified in support of **HB 2064**. KRMCA is a statewide trade association comprised of over 75 producer members and one of the few industries to be represented in every county of the state.

The industry has observed an increasing trend in lengthened payments over the years. Due to the many certifications, tests, sign-offs and other requirements, architects and engineers tend to withhold payments until the paperwork is done. This has often led to situations where the industry is forced to file lien notices in 75 days and actual liens by 90 days even when they know the money is forthcoming. Approval of **HB 2064** would allow for a more orderly payment period on commercial projects (Attachment 6).

Dean Ferrell, President, Ferrell Construction of Topeka, Inc., testified in opposition to **HB 2064**. The bill extends the lien filing deadline for subcontractors and suppliers on non-residential construction projects from ninety (90) days to one hundred eighty (180) days. This change places general contractors in a "no win" situation and it has to do with who actually has the lien rights. Not only does a general contractor's subcontractors have lien rights, but the suppliers and subcontractors of the first tier subcontractor has lien rights as well. A general contractor keeps track of making certain first tier subcontractors are paid and tries to make certain they are paying their subcontractors and suppliers.

If the second tier subs and suppliers would keep the owner and/or general contractor informed of the slow paying first tier subcontractor, money could be withheld from the subcontractor or joint checks could be issued to assure all parties are paid in full; however, many rely on their right to file a lien. Many wait until the first tier subcontractor is paid in full before they file a lien, which, in essence, forces the general contractor, in order to keep the project lien free, to pay for the same work twice. Extending the deadline would not solve any problems. It would only make matters worse for general contractors and property owners and, at the same time, allow second tier vendors and subcontractors to become even more relaxed in their bill

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE at 9:00 a.m. on February 5, 2003 in Room 243-N of the Capitol.

collecting practices ([Attachment 7](#)).

Corey D. Peterson, Executive Vice President, Associated General Contractors (AGC) of Kansas, Inc., testified as an opponent to **HB 2064**. The AGC opposes for the following reasons: (1) Current law has served Kansas well for decades. Outside the few proponents from one small geographical area, this proposed change has received little support and much opposition from constituents in the majority of Kansas. (2) The period of six months is too long and unnecessarily puts owners and contractors at risk to pay for materials twice, particularly to suppliers not paid by subcontractors who were paid. (3) Extension would unnecessarily protract close-out jobs. (4) Owners will withhold final payment until lien filing period has ended to insure all bills have been paid. (5) Since renovation and new construction is affected, real estate transactions may be delayed or cancelled due to additional title insurance expenses. Economic activity should be promoted, not discouraged (6) Change would encourage companies with poor accounts receivable management to delay inevitable collection and management decisions for up to 6 months. The AGC would support a change that would extend the lien filing time for subcontractors and suppliers to 120 days; the same that is currently afforded general contractors([Attachment 8](#)).

Roy Worthington, Chairman, Legislative Committee Kansas Land Title Association, testified opposing **HB 2064**. The current law is a fair balance between the rights of property owners to protect their titles to real estate and the rights of contractors and subcontractors to file liens if their bills for material and/or labor are unpaid (i.e. currently 4 months for contractors and 3 months for subcontractors). It would be unfair to property owners to extend the time period for filing liens to 6 months after work is completed.

The suggested amendment is proposed: Amend 60-1103b - Subcontractors' liens; new residential property; *property other than residential property*. Add c. *A lien for the furnishing of labor, equipment, materials or supplies for property other than residential property; may be claimed pursuant to K.S.A. 60-1103 and amendments thereto only if the claimant has filed a notice of intent to perform work at the job site within thirty (30) days after commencement of furnishing labor, equipment, materials or supplies to the job site. Such notice shall be filed in the office of the clerk of the district court of the county where the property is located.*

Renumber the existing paragraphs. "Residential property" needs to be defined ([Attachment 9](#)).

Chris Wilson, Director of Governmental Affairs of the Kansas Building Industry Association (KBIA), opposed **HB 2064** and stated this only dealt with commercial projects. It would be very confusing to the Association to have two different time periods for filing liens. The current law is working well. It is felt if the lien filing period was extended, it would create a false sense of security for companies knowing they have the extended time period. They might, therefore, delay evaluation of whether a lien is needed ([Attachment 10](#)).

Kathleen Taylor Olsen, Kansas Bankers Association (KBA), testified their concern was that by extending the time in which a lien could be filed, the legislature would also be extending the time in which the title to that property would be clouded. This may end up delaying the closing of the transaction between lender and borrower. This has the potential of creating a hardship on the business property owner who is trying to finalize the transaction.

KBA suggests the committee consider requiring contractors and subcontractors on commercial property to

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE at 9:00 a.m. on February 5, 2003 in Room 243-N of the Capitol.

file a Notice of Intent to Perform in order to establish their potential lien on the property (Attachment 11).

The following submitted written testimony in support of **HB 2064**: George R. McGrew, General Counsel, Shawnee Rock Company (Attachment 12), Alan F. Alderson, Southwestern Association and Electric League (Attachment 13) and in opposition of **HB 2064**: Phil Sewell, Central Mechanical Wichita (Attachment 14).

The meeting adjourned at 10:55. The next meeting will be February 6.