SENATE BILL No. 469

By Committee on Ways and Means

Be it enacted by the Legislature of the State of Kansas:

New Section 1. As used in sections 1, 2, 3 and 4, and amendments thereto:

(a) “Authorized person” means any individual authorized by an original contractor, subcontractor or remote claimant to act on their behalf.

(b) “Construction” means furnishing labor, equipment, material or supplies for the improvement of a new or pre-existing structure which is not constructed for use as a single-family residence or multi-family residence of four units or less. “Construction” does not include highways, roads, bridges, dams or turnpikes.

(c) “Notice of commencement” means a notice filed by an original contractor with the state construction registry providing the information required to be given pursuant to section 2, and amendments thereto.

(d) “Notice of furnishing” means a notice from a subcontractor or remote claimant that is filed prior to the recording of a mechanic’s lien and which is required to be filed pursuant to section 3, and amendments thereto.

(e) “Original contractor” means any contractor who has a contract directly with the owner. “Original contractor” may include more than one contractor and be referred to as a general contractor.

(f) “Owner” shall include the trustee, agent or spouse of the owner.

(g) “Remote claimant” means a subcontractor to a subcontractor, also referred to as a sub-subcontractor, as well as people who supply materials to subcontractors. Remote claimants have no contract directly with the original contractor.

(h) “Secretary” means the secretary of state.

(i) “State construction registry” means a system created pursuant to section 4, and amendments thereto, for the purposes of filing and maintaining notifications by original contractors, subcontractors and remote claimants required pursuant to sections 2 and 3, and amendments thereto.
“Subcontractor” means any person who furnishes labor, equipment, materials or supplies pursuant to a contract directly with an original contractor.

New Sec. 2. (a) Prior to, but no later than 15 calendar days after commencement of physical construction work at the project site, any original contractor may file a notice of commencement with the state construction registry created pursuant to section 4, and amendments thereto. The purpose of the notice of commencement is to notify other persons who are working on the project, including, but not limited to, subcontractors or remote claimants that the project has started and to give information as to the name and address of the owner, the original contractor, and the description of the project.

(b) The notice of commencement shall include the following:

(1) The name and address of the owner of the project contracting for the construction or improvement.

(2) The name and address of any original contractor.

(3) The name, address and contact information of the owner.

(4) The legal description of the real property or the street address, city, state, county and zip code of the real property on which the construction or improvement is to be made.

(5) A brief description of the construction or improvement to be performed on the property.

(6) The date the owner first executed a contract with an original contractor for the construction or improvement.

(7) The name and address of the person preparing the notice of commencement.

(8) The following statement:

“To remote claimants, subcontractors or suppliers: Take notice that labor or work is about to begin on or materials are about to be furnished for an improvement to the real property described in this notice. Any remote claimant or subcontractor may preserve such claimant’s lien rights by filing a notice of furnishing with the State Construction Registry, which serves as notice to the original contractor or contractors, within 21 days of furnishing labor, equipment, materials or supplies to this project.”

(c) The notice of commencement shall be deemed sufficient if filed in the form and manner prescribed by the secretary of state.

(d) The original contractor may take protective measures by either making direct payments or payments by joint check to remote claimants to ensure that the remote claimant is paid.

New Sec. 3. (a) If any original contractor has filed a notice of commencement with the state construction registry pursuant to section 2, and amendments thereto, concerning a project for which a subcontractor or remote claimant has furnished labor, equipment, materials or supplies,
such subcontractor or remote claimant shall file a notice of furnishing
with the state construction registry created pursuant to section 4, and
amendments thereto, in order to preserve their lien rights for construc-
tion subject to this act.
(b) The notice of furnishing shall include the following:
(1) The name and address of the original contractor.
(2) The name and address of persons with whom the remote claimant
or subcontractor has contracted concerning the project at the time of
filing.
(3) The name, address, telephone number, fax number and e-mail
address of the subcontractor or remote claimant.
(4) The legal description or address, city, state, county and zip code
of the real property on which the construction or improvement is to be
made.
(5) A brief description of the construction or improvement to be per-
formed on the project.
(c) The notice of furnishing shall be deemed sufficient if filed in the
form and manner prescribed by the secretary of state.
(d) If a notice of commencement has not been filed with the state
construction registry, a subcontractor or remote claimant may not file a
notice of furnishing with the state construction registry.
(e) Nothing in this act shall expand or create any additional rights of
a person to claim a lien pursuant to K.S.A. 60-1103, and amendments
thereto, or to file a claim under a bond furnished pursuant to K.S.A. 60-
1110 or K.S.A. 60-1111, and amendments thereto.
(f) If any original contractor has filed a notice of commencement with
the state construction registry pursuant to section 2, and amendments
thereto, concerning a project for which a subcontractor or remote claim-
ant has furnished labor, equipment, materials or supplies, a lien for the
furnishing of labor, equipment, materials or supplies by such subcontrac-
tor or remote claimant pursuant to K.S.A. 60-1103, and amendments
thereto, for construction subject to this act, may be claimed only if the
subcontractor or remote claimant filed a notice of furnishing with the
state construction registry within 21 calendar days of the date of furnish-
ing any such labor, equipment, materials or supplies. If the subcontractor
or remote claimant does not file within such time period, the subcon-
tractor or remote claimant may file at a later date. In such event, the
subcontractor or remote claimant’s lien rights will only be effective from
the date of the filing of the notice of furnishing.
New Sec. 4. (a) The secretary shall implement and maintain the state
construction registry. When any provision of this act requires any notice
to be filed with the state construction registry, the notice shall be filed in
the form and manner prescribed by the secretary.
(b) A notice of commencement shall contain the information prescribed in section 2, and amendments thereto.

c) A notice of furnishing shall contain the information prescribed in section 3, and amendments thereto.

d) Any notice filed with the state construction registry shall be signed by an authorized person. The fact that a person’s signature appears on such notice shall be prima facie evidence that such person is authorized to sign the notice on behalf of the original contractor, subcontractor or remote claimant and that the notice is subscribed by the person as true, under penalty of perjury.

e) Upon receipt of any notice, and upon tender of the required fees, the secretary shall certify that the notice has been filed in the office of secretary of state by endorsing upon the notice the word “filed” and the date and hour of its filing. This endorsement is the “filing date” of the notice and is conclusive of the date and time of its filing in the absence of actual fraud. The secretary shall thereupon record the endorsed notice in the state construction registry.

(f) The secretary shall adopt rules and regulations prescribing the form and manner of filing any notice required to be filed with the state construction registry and fixing the fees to be charged and collected under this section.

g) The secretary of state shall remit all moneys received from fees and charges under this section, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the information and services fee fund of the secretary of state.

Sec. 5. K.S.A. 60-1103 is hereby amended to read as follows: 60-1103. (a) Procedure. Any supplier, remote claimant or subcontractor, as defined in section 1, and amendments thereto, or other person furnishing labor, equipment, material or supplies, used or consumed at the site of the property subject to the lien, under an agreement with the contractor, subcontractor or owner contractor may obtain a lien for the amount due in the same manner and to the same extent as the original contractor except that:

(1) The lien statement must state the name of the contractor and be filed within three months after the date supplies, material or equipment was last furnished or labor performed by the claimant;

(2) if a warning statement is required to be given pursuant to K.S.A. 60-1103a, and amendments thereto, there shall be attached to the lien statement the affidavit of the supplier or subcontractor that such warning statement was properly given; and

(3) a notice of intent to perform, if required pursuant to K.S.A. 60-
1103b, and amendments thereto, must have been filed as provided by that section; and

(4) a notice of furnishings, if required pursuant to section 3, and amendments thereto, must have been filed as provided by that section.

(b) Owner contractor is defined as any person, firm or corporation who:

(1) Is the fee title owner of the real estate subject to the lien; and

(2) enters into contracts with more than one person, firm or corporation for labor, equipment, material or supplies used or consumed for the improvement of such real property.

(c) Recording and notice. When a lien is filed pursuant to this section, the clerk of the district court shall enter the filing in the general index. The claimant shall (1) cause a copy of the lien statement to be served personally upon any one owner, any holder of a recorded equitable interest and any party obligated to pay the lien in the manner provided by K.S.A. 60-304, and amendments thereto, for the service of summons within the state, or by K.S.A. 60-308, and amendments thereto, for service outside of the state, (2) mail a copy of the lien statement to any one owner of the property, any holder of a recorded equitable interest and to any party obligated to pay the same by restricted mail or (3) if the address of any one owner or such party is unknown and cannot be ascertained with reasonable diligence, post a copy of the lien statement in a conspicuous place on the premises. The provisions of this subsection requiring that the claimant serve a copy of the lien statement shall be deemed to have been complied with, if it is proven that the person to be served actually received a copy of the lien statement. No action to foreclose any lien may proceed or be entered against residential real property in this state unless the holder of a recorded equitable interest was served with notice in accordance with the provisions of this subsection.

(d) Rights and liability of owner. The owner of the real property shall not become liable for a greater amount than the owner has contracted to pay the original contractor, except for any payments to the contractor made:

(1) Prior to the expiration of the three-month period for filing lien claims, if no warning statement is required by K.S.A. 60-1103a, and amendments thereto; or

(2) subsequent to the date the owner received the warning statement, if a warning statement is required by K.S.A. 60-1103a, and amendments thereto.

The owner may discharge any lien filed under this section which the contractor fails to discharge and credit such payment against the amount due the contractor.

(e) Notwithstanding subsection (a)(1), a lien for the furnishing of la-
bor, equipment, materials or supplies on property other than residential
property may be claimed pursuant to this section, and amendments
thereo, within five months only if the claimant has filed a notice of ex-
tension within three months since last furnishing labor, equipment, ma-
terials 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 such property is
located and shall be mailed by certified and regular mail to the general
contractor or construction manager and a copy to the owner by regular
mail, if known. The notice of extension shall be deemed sufficient if in
substantial compliance with the form set forth by the judicial council.

Sec. 6. K.S.A. 60-1110 is hereby amended to read as follows: 60-
1110. (a) The contractor or owner may execute a bond to the state of
Kansas for the use of all persons in whose favor liens might accrue by
virtue of this act, conditioned for the payment of all claims which might
be the basis of liens in a sum not less than the contract price, or to any
person claiming a lien which is disputed by the owner or contractor,
conditioned for the payment of such claim in the amount thereof. Any
such bond shall have good and sufficient sureties, be approved by a judge
of the district court and filed with the clerk of the district court. When
bond is approved and filed, no lien for the labor, equipment, material or
supplies under contract, or claim described or referred to in the bond
shall attach under this act, and if when such bond is filed liens have
already been filed, such liens are discharged. Suit may be brought on
such bond by any person interested but no such suit shall name as de-
fendant any person who is neither a principal or surety on such bond, nor
contractually liable for the payment of the claim.

(b) If any original contractor has filed a notice of commencement
concerning a project for which a subcontractor or remote claimant has
furnished labor, equipment, materials or supplies, no subcontractor or
remote claimant may file a claim under a payment bond obtained and
executed pursuant to this section, unless such subcontractor or remote
claimant has filed a notice of furnishing required pursuant to section 3,
and amendments thereto. As used in this subsection, terms have the mean-
ings provided by section 1, and amendments thereto.

Sec. 7. K.S.A. 60-1111 is hereby amended to read as follows: 60-
1111. (a) Bond by contractor. Except as provided in this section, when-
ever any public official, under the laws of the state, enters into contract
in any sum exceeding $100,000 with any person or persons for the pur-
pose of making any public improvements, or constructing any public
building or making repairs on the same, such officer shall take, from the
party contracted with, a bond to the state of Kansas with good and suf-
ficient sureties in a sum not less than the sum total in the contract, con-
ditioned that such contractor or the subcontractor of such contractor shall
pay all indebtedness incurred for labor furnished, materials, equipment or supplies, used or consumed in connection with or in or about the construction of such public building or in making such public improvements.

A contract which requires a contractor or subcontractor to obtain a payment bond or any other bond shall not require that such bond be obtained from a specific surety, agent, broker or producer. A public official entering into a contract which requires a contractor or subcontractor to obtain a payment bond or any other bond shall not require that such bond be obtained from a specific surety, agent, broker or producer.

(b) Filing and limitations. The bond required under subsection (a) shall be filed with the clerk of the district court of the county in which such public improvement is to be made. When such bond is filed, no lien shall attach under this article. Any liens which have been filed prior to the filing of such bond shall be discharged. Any person to whom there is due any sum for labor or material furnished, as stated in subsection (a), or such person’s assigns, may bring an action on such bond for the recovery of such indebtedness but no action shall be brought on such bond after six months from the completion of such public improvements or public buildings.

(c) In any case of a contract for construction, repairs or improvements for the state or a state agency under K.S.A. 75-3739 or 75-3741, and amendments thereto, a certificate of deposit payable to the state may be accepted in accordance with and subject to K.S.A. 60-1112, and amendments thereto. When such certificate of deposit is so accepted, no lien shall attach under this article. Any liens which have been filed prior to the acceptance of such certificate of deposit shall be discharged. Any person to whom there is due any sum for labor furnished, materials, equipment or supplies used or consumed in connection with or for such contract for construction, repairs or improvements shall make a claim therefor with the director of purchases under K.S.A. 60-1112, and amendments thereto.

(d) If any original contractor has filed a notice of commencement concerning a project for which a subcontractor or remote claimant has furnished labor, equipment, materials or supplies, no subcontractor or remote claimant may file a claim under a public works bond obtained and executed pursuant to this section, unless such subcontractor or remote claimant has filed a notice of furnishing required pursuant to section 3, and amendments thereto. As used in this subsection, terms have the meanings provided by section 1, and amendments thereto.

Sec. 8. K.S.A. 60-1103, 60-1110 and 60-1111 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after July 1, 2011, and its publication in the statute book.