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February 7, 2013

To: Honorable Senator Julia Lynn, Chairman

From: James D. Day  
President  
J D Day & Company

RE: Senate Bill SB93

Good day,

I have been in the construction business for 40 years. 10 Years with Butler Manufacturing, 8 years as a General Contractor building for Proctor & Gamble, KCP&L, Phillips 66, Mobil Oil and many others. The last 20+ years my company has been a construction material supplier for sub-contractors, and General Contractors.

I have been involved with manufacturers furnishing materials to my company and the effects of pre-lien laws.

When national manufacturers see pre-lien requirements for specific states they send out notices before shipping materials. In many cases the manufacturers may send out a pre-lien notice even if one is not required. The manufacturers send out the notice because they do not want to miss the opportunity to protect their position to file should they not be paid for the materials they furnish.

When the notice goes out to the private, or public, owner everyone goes nuts! The private owner does not understand that it is a notice and believes a lien is going to be filed. The materials may or may not, be on the jobsite but the owner has not even received his bill from the General Contractor. How can the owner be in a default position? That is the owner's view.

The owner screams at the General Contractor that he is not paying anything until the "lien is removed". The General Contractor places an angry call to the sub-contractor as to why he has not paid the supplier. The sub-contractor calls the supplier angry that the "pre-lien notice" should not have been sent to the Owner and General Contractor when the sub-contractor has not even had the opportunity to invoice for the materials.

On public projects where liens are not allowed the manufacturers still send out the "pre-lien notices". They do not differentiate between public and private work when they ship materials to all 48 states. The process outlined above for a private project is just the same – the Key Public Administrator calls the General Contractor, the General calls the sub-contractor, the sub-contractor calls the supplier/manufacturer.

Bottom line is that none of the parties understand that it is a "Pre-lien Notice", not a "Lien Notice". The process ends up creating tension on the project. The process creates wasted time and effort calming everyone and explaining the process. It is a mess.

As to the specifics of the proposed bill who is responsible for the legal description called for in paragraph (k).(b).(3)? If the description is wrong does that make a potential "Lien Filing" wrong? Am I responsible to check someone else's work? If the information is wrong how do I correct the information? Who does the State person believe for information that someone wants to correct?

If General Contractors want to protect their interests they need to check out the sub-contractor. Is the firm financially stable? Have they executed contracts as required on other projects? Are there IRS, or State tax liens on file?

I realize Generals accept bids on bid day and may not have time to check a sub-contractor out. The General does have time to check out key and major sub-contractors between bid date and receiving a contract from the owner. There is no reason a General cannot go to an owner give them a reason to change sub-contractors and pricing to avoid a sub-contractor who has issues.

General Contractors need to protect themselves and owner with due diligence, not additional burdens on sub-contractors and suppliers who are responsible.