

Office of
LEGISLATIVE AUDITOR GENERAL
State of Utah

ILR 2007-E

**A Limited Review of the
State Construction Registry**

The purpose of the SCR is to “assist in protecting public health, safety, and welfare; and promote a fair working environment.”

Utah Interactive is the designated agent responsible for the creation and maintenance of the SCR.

H.B. 136 of the 2004 General Session modified the Mechanics’ Lien statute to establish the State Construction Registry (SCR). The SCR is an online bulletin board that allows interested parties to know who is working on a specific construction project in order to “assist in protecting public health, safety, and welfare; and promote a fair working environment.” The SCR increases accountability by allowing all interested parties in a construction project to view any work provided on the project.

The Division of Occupational and Professional Licensing (DOPL or division) oversees the operation of the SCR. Specifically, the division is responsible for “establishing rules to implement the SCR; providing oversight of the design, operation, and maintenance of the SCR; and auditing the functionality and integrity of the SCR.” As allowed by statute, DOPL has contracted with Utah Interactive as its third-party designated agent in the creation and maintenance of the SCR. In addition, the designated agent is responsible for “providing training, marketing, and technical support.”

SCR Notices Clarify Lien Rights and Timetables

Filing in the SCR is not mandatory to retain lien rights in all instances. The SCR includes three notices that are discussed below: notice of commencement, preliminary notice, and notice of completion.

A notice of commencement must be filed in order for the SCR to function.

Notice of Commencement. By statute, use of the SCR is initiated by a declaration that work has begun on a project. This notice is usually filed by the local government entity and must be filed within 15 days of issuing the building permit. *Utah Code 38-1-31(1)(a)(i)(A)* states that “the local government entity issuing [the] building permit shall input the building permit application and transmit the building permit information to the [SCR] database electronically by way of the Internet or computer modem or by any other means.”

A notice of commencement may also be filed by a general contractor and costs \$7.50 to file. Local government entities, however, are not charged a fee to file a notice of commencement.

Preliminary notices must be filed to retain lien rights if a notice of commencement is filed.

Preliminary Notice. Once a notice of commencement has been filed, any party who does work on the project must submit a preliminary notice in order to retain lien rights. If a notice of commencement is not filed, a subcontractor or material supplier does not need to file a preliminary notice in order to retain lien rights. Each preliminary notice costs \$1 to file and must be filed within 20 days of commencing work.

Notice of Completion. After a project is completed, a surety, a title company, a general contractor, or an owner may file a notice of completion. If a notice of completion is not filed, the window for filing a lien is extended from 90 days to 180 days after the completion of a project. The notice of completion filing costs \$7.50.

Filings in the SCR Have Increased

SCR filings have increased as program awareness increases. Due to extenuating circumstances, DOPL has taken the role of training industry professionals about the SCR. By rule, Utah Interactive is responsible for marketing the SCR and training SCR users and potential users. Since September 2006, 10,013 contractors/suppliers have gone through a three-hour training class on the SCR provided by DOPL. This represents

DOPL has trained over 10,000 contractors since September 2006.

about half of all licensed contractors in the state. Figure 1 shows the actual number of filings in the SCR since its inception in May 2005.

Notices of commencement and preliminary notices have increased at a higher rate than notices of completion.

Figure 1 SCR Filings. Notice of commencement and preliminary notice filings increased drastically during the first year. Notices of completion have increased at a lower rate.

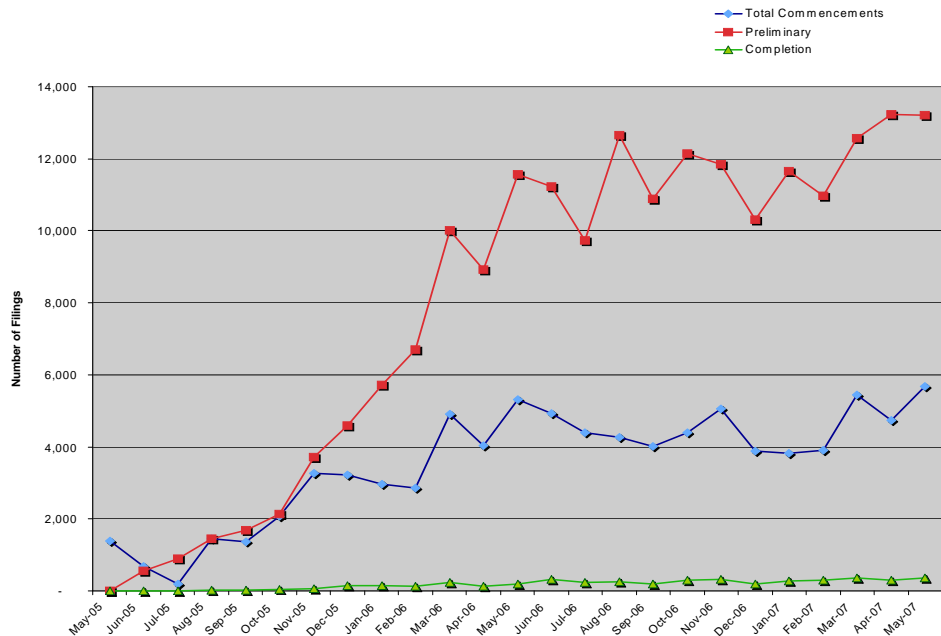


Figure 1 shows that notice of commencement and preliminary notice filings have increased over the last two years. Notice of completion filings, however, have increased at a lower rate. While the extensive training program provided by DOPL can be a reason for the increase in notice of commencement and preliminary notice filings, the lack of training to title companies, sureties, and owners can be partially to blame for the lack of growth in notice of completion filings.

We were asked to review the SCR in order to determine its overall effectiveness. Specifically, we were asked to:

Lack of training could be one reason why notices of completion are not regularly filed.

- Evaluate the level of city and county compliance with the statute.
- Identify any problem areas in the SCR.
- Determine if the current system is meeting its original intent to “assist in protecting the public health, safety, and welfare; and promote a fair working environment.”

To address these concerns, we took a sample of building permits from four cities and compared the permit identifiers to the records in the SCR to determine if the cities were compliant with statute. With the help of Utah Interactive, we tracked all contractor and material supplier concerns with the SCR over a six-week time period in order to determine potential problem areas. Finally, we created a survey to help us assess the program’s ability to fulfill its legislative intent. This survey was administered by DOPL during three training classes conducted during the last quarter of fiscal year 2007.

Local Government Entities Do Not Always Comply with Statute

Local government entities have not consistently filed notices of commencement within 15 days of issuing a building permit, as required by statute. Only 68 percent of the surveyed building permits were entered into the SCR in a timely fashion. The division should regularly audit local government entities to determine how well they comply with this statute. Additionally, Utah Interactive should notify local government entities when their building permit information transmissions are illegible.

Local Government Entities Should Transmit Building Permits to the SCR

In order for the SCR to function, notices of commencement must be filed in a timely fashion. H.B. 136 of the 2004 General Session requires local government entities to transmit building permit information to the SCR within 15 days. This bill was intended to gain compliance with the SCR by ensuring that notices of commencement were filed whenever a building permit was issued. After a notice of commencement is filed, any entity that performs work on the project must file a preliminary notice in order to preserve its lien rights. Figure 2 shows the statutory requirements for local government entities.

Notices of commencement were only filed in 68 percent of surveyed building permits.

Local government entities are required to transmit building permit information within 15 days of issuance.

Figure 2 Utah Code 38-1-31. Local government entities are required to transmit building permit information to the SCR.

(1)(a)(i)(A) For a construction project where a building permit is issued to an original contractor or owner-builder, within 15 days after the issuance of the building permit:

(l) the local government entity issuing that building permit shall input the building permit application and transmit the building permit information to the database electronically by way of the Internet or computer modem or by any other means;

Local government entities have options for transmitting building permit information. Local government entities can fax or email the building permit information to Utah Interactive or they can submit the data through an FTP server. Additionally, local government entities have the option to file a notice of commencement directly by logging on to the SCR website. DOPL reports that 92 percent of the local government entities either fax or email building permit data. All notices of commencement are free when filed by the local government entity.

Some Cities Fail to Transmit Building Permit Information

Success of the SCR program is hampered by problems with local government entity filings. Late filings and transmission errors invalidate a large portion of notices of commencement sent to the state. Figure 3 shows the results of this survey.

Local government entities have not always transmitted building permit information in a timely fashion.

Figure 3 Building Permits Filed in the SCR. Reviewed municipalities only filed valid notices of commencement for 68 percent of surveyed building permits. All surveyed building permits were issued during the last two quarters of fiscal year 2007.

Days	0-7 Days	8-15 Days	>15 Days	Not Filed	Compliance Rate
South Jordan	20	15	0	5	88%
Park City	38	0	2	0	95
Lehi	23	0	0	17	58
West Jordan	5	8	24	3	33
Total	86	23	26	25	68%
* A city must transmit the building permit information within 15 days of issuance in order to comply with statute.					
<i>Source: Review of 160 building permits from four municipalities. Permits were identified using a state-assigned permit identifier.</i>					

Figure 3 shows that 25 of the 160 building permits that were sampled never had a notice of commencement filed in the SCR. Additionally, notices of commencement for 26 of the building permits were filed more than 15 days after the building permit was issued, which makes them statutorily invalid. Without a valid notice of commencement, the SCR cannot function.

Subcontractors and material suppliers lose their lien rights if they fail to file a preliminary notice.

Additionally, subcontractors and material suppliers have told us that it can sometimes be difficult to locate a notice of commencement in the database even if it has been filed. Thus, persons wishing to file a preliminary notice must spend time and resources looking for a notice of commencement that is either invalid or has not been filed in an attempt to preserve their lien rights. If they cannot find a valid notice of commencement in time to file a preliminary notice, they lose their lien rights on that construction project.

DOPL Should Regularly Audit Compliance with Statute

This review has identified three factors that may contribute to noncompliance with statute by local government entities. First, local government entities are not adequately trained. Second, local government entities do not find value in transmitting building permit information to

Local government entities need additional SCR training.

the SCR. Third, illegible transmissions from local government entities are often discarded at the state level without contacting the local government entity.

Local Government Entities Are Not Adequately Trained in Their SCR Transmission Duties. While the statute has been in effect since 2004, some cities appear to lack sufficient training on transferring data to the SCR. For example, one surveyed city did not transmit any building permit data for several months in 2007 because a new city official was not aware of the statutory requirement. This issue was easily resolved by educating the city officials.

We are concerned that contractors and material suppliers may be wasting time and resources trying to find notices of commencement that may never be properly entered into the SCR due to the lack of knowledge of local government entities. Neither the division nor Utah Interactive monitor notice of commencement filings by local government entities to determine if additional training is needed.

Some local government entities do not have resources to fully adopt the state-assigned building permit.

Local Government Entities Do Not Find Value in Transmitting the Building Permit Information to the SCR. Officials from all four surveyed cities expressed concern that the cost of transmitting building permit information placed an unfunded burden on them. Three of the four cities reported that they did not have the resources to upgrade their building permit management systems to accommodate the newly required state-assigned building permit identifier.

Instead of expending the resources on new permit management systems, these three cities use a city-issued permit number for use within the city and assign a state building permit identifier to each project for state identification purposes for each project. Thus, each project in these three cities has two building permit identifiers. As mentioned in greater detail later in this report, having two permit identifiers adds to the confusion of locating a project in the SCR.

Utah Interactive discards illegible transmissions, resulting in some notices of commencement not being filed.

Illegible Transmissions from Local Government Entities Are Discarded. Utah Interactive reports that it does not contact local government entities if the transmissions are illegible. Thus, a notice of commencement is not filed for certain projects based on a bad transmission between the local government entity and Utah Interactive. As mentioned previously, a notice of commencement must be filed in

DOPL should regularly monitor the compliance of local government entities.

DOPL should expand its training to include banks, title companies, and homeowners.

DOPL should continue to train industry professionals on the SCR.

order for the SCR to function. Utah Interactive should contact local government entities if a transmission is illegible.

These issues could easily be resolved by a monitoring program. According to the SCR administrative rules, DOPL has the responsibility of “auditing the functionality and integrity of the SCR.” We believe that this responsibility should include regular audits to determine how well local government entities comply with statute.

Minor Problem Areas Need to Be Addressed

Lack of program user training and knowledge appear to present a major challenge for the SCR. DOPL has provided an extensive training program to almost half of all licensed contractors in the state. However, this training needs to continue and would further benefit by expanding its audience to banks, title companies, and homeowners. We believe these user demographics could benefit from increased knowledge of the SCR.

Local government entities would also benefit from increased training. Confusion still exists over how to find notices of commencement in the SCR. One cause of the confusion appears to be lack of understanding at the local level regarding the state-assigned permit identifier. DOPL should continue to train local government entities on the state-assigned building permit identifier.

Additionally, the division should review the administrative rules governing the SCR. Currently, there appear to be some inconsistencies in the rules that should be revised. We believe a comprehensive review of the administrative rules is necessary in order to promote consistency with statute and division practices.

Industry Professionals Need Additional SCR Training

The division has undertaken an extensive training program in which almost half of all licensed contractors have attended a three-hour SCR training class since September 2006. We believe that DOPL should continue to train the remaining contractors and material suppliers.
DOPL

should also develop a training program to involve banks, title companies, and homeowners.

DOPL Should Continue Training Contractors and Material Suppliers. In 2004, the Legislature appropriated \$338,100 per year for the implementation of the SCR. The division believes that this funding was only appropriated for the first two years of the SCR, however it appears that this funding is ongoing. DOPL has used this appropriation to train more than 10,000, or almost half, of all licensed contractors. The division reports that it continues to receive requests for additional training; however, training funds were a one-time appropriation. It appears that the training has increased awareness of the SCR and motivated industry professionals to use the SCR in the future.

81 percent of SCR training participants said they planned to use the SCR after the training.

With the help of DOPL, we surveyed participants of three training classes in Salt Lake City and Provo. Of the 267 survey participants, most of which were contractors or material suppliers, only 16 percent had used the SCR in the past. However, 81 percent of the survey participants said they plan to use the SCR in the future. Most of the 19 percent who will not use the SCR in the future claim to have good relationships with their colleagues or have too small of a workload to make the SCR worth the time and effort. The 16 percent of the contractors who had used the SCR in the past made the following recommendations for improvement:

- Offer additional training
- Make information easier to find
- Require everyone to use the SCR
- Increase website speed

The Legislature should continue to fund SCR training for an additional two years.

We believe that SCR training is essential for the continued growth and increased awareness of the SCR. We recommend that the Legislature continue the \$338,100 appropriation for another two years. During this time, the division should continue to train the remaining contractors and material suppliers. DOPL should also develop and carry out a plan for educating banks, title companies, and homeowners on the SCR in order fulfill its legislative intent to “assist in protecting public health, safety, and welfare; and promote a fair working environment.”

Notices of Commencement Can Be Difficult to Locate

Some contractors and material suppliers have had difficulty locating notices of commencement.

Contractors and material suppliers sometimes have trouble locating notices of commencement. Due to lack of resources, some cities issue a city building permit number in addition to assigning a state building permit identifier. We recommend that DOPL improve training of local government entities, in order to ease the difficulty of locating notices of commencement.

As mentioned earlier, a subcontractor or material supplier must file a preliminary notice, if a notice of commencement has been filed, in order to retain lien rights. If a subcontractor or material supplier does not file a preliminary notice because they are unable to find a notice of commencement, yet one has been filed, they still lose their lien rights under the Mechanics' Lien statute unless they file a preliminary notice. Thus, it is important for subcontractors and material suppliers to be able to find notices of commencement within the SCR.

The SCR allows an interested party to search for a notice of commencement by:

- SCR Number
- Building Permit Identifier
- Project Name
- Parcel Number
- Project Address
- Contractor/Business Name

Most contractors and material suppliers use the building permit identifier to search for a notice of commencement.

Due to various discrepancies in spelling or numbering, searching by the SCR number or the building permit identifier appear to be the easiest way to find a notice of commencement. However, the building permit identifier is typically easier to obtain, so most contractors and material suppliers use the building permit identifier to find a notice of commencement.

H.B. 160 of the 2006 General Session provided a standardized building permit format for the entire state. Figure 4 shows the standardized building permit numbering system.

H.B. 160 of the 2006 General Session initiated a standardized building permit.

62 percent of all local government entities still use their old building permit identifiers in addition to the state-assigned identifier.

Having two building permit identifiers has led to confusion among contractors and material suppliers.

Figure 4 *Utah Code 58-56-18(4)*. H.B. 160 of the 2006 General Session standardized building permits throughout the state.

- (4) The standardized building permit numbering system developed under Subsection (2) shall include:
- (a) three alphabetical characters identifying the compliance agency issuing the permit;
 - (b) two numeric digits indicating the day of the month on which the permit is issued;
 - (c) two numeric digits indicating the month in which the permit is issued;
 - (d) two numeric digits indicating the last two digits of the year in which the permit is issued; and
 - (e) three numeric digits indicating the serialized number of the permit issued on a given day.

Figure 4 shows the requirements for a state-assigned building permit identifier throughout the state. For example, a permit issued by Salt Lake City issued on June 1, 2007, could be SLC010607001.

While the state-assigned building permit identifiers have standardized building permit numbers throughout the state, some local government entities have had a difficult time switching entirely over to the new identifiers. The state-assigned identifier is longer and contains alpha characters instead of the shorter, all numeric characters used by many cities' computer systems. These two factors have prevented many cities from fully adopting the state-assigned building permit identifiers.

Three of the four cities that were surveyed for this audit still assign a city-issued permit number. DOPL reports that 62 percent of all local government entities in the state use two building permit identifiers. These local government entities assign a state permit identifier in order to comply with statute; however, the state-assigned identifier is rarely used by many local government entities because they claim that it would be too costly to implement a computer system to accomplish something that is not seen as valuable to some cities. DOPL should train the local government entities to understand the value of using the state-assigned permit identifier.

Having two building permit identifiers for one project can lead to confusion among contractors, subcontractors, and material suppliers who are trying to find a notice of commencement. For example, if a contractor or material supplier were to call a city to obtain the building permit identifier for a project, the city may give him/her the city-issued number,

which the city uses, instead of the state-assigned identifier, which is in the SCR. We recommend that DOPL train all local government entities to use the state-assigned building permit number whenever possible.

Some Administrative Rules Need to Be Revised

DOPL needs to review and revise the administrative rules governing the SCR. Some of the rules seem to contradict other rules while others do not portray the actual practice of the division. This audit did not review all of the administrative rules governing the SCR; however, we believe that division should review the rules and correct any inconsistencies.

Specifically, two administrative rules need to be revised. R156-38b-506(1) states that “In the case of an electronic filing, [the official filing date] shall be the date the SCR accepts a filing input by the person making the filing and makes available a payment receipt to the person making the filing.” As mentioned earlier, local government entities are not required to submit payment for filing a notice of commencement and, thus, would not receive a “payment receipt” as required by rule. This rule has led at least one lien law professional to believe that a notice of commencement that is issued by a local government entity is invalid because a payment receipt is not issued.

Another rule, R156-38b-501(2)(b), contradicts *Utah Code* by requiring the original contractor to file a notice of commencement. Statute states that original contractor *may*, but is not required to, file a notice of commencement if the local government entity does not file the notice.

Recommendations

1. We recommend that DOPL conduct regular audits of local government entities to determine how well they comply with statute.
2. We recommend that DOPL direct Utah Interactive to notify local government entities if building permit information transmissions are illegible.

Some administrative rules governing the SCR are inconsistent with statute and legislative intent.

DOPL should review and update the administrative rules that govern the SCR.

3. We recommend that DOPL direct Utah Interactive to monitor the monthly notice of commencement filings by local government entities in order to gauge the need for educating local officials on how to transmit building permit information.
4. We recommend that the Legislature continue the \$338,100 appropriation to DOPL that will be used for further training related to the SCR.
5. We recommend that during the next two years, DOPL use the appropriation to do the following:
 - Continue to train as many contractors, material suppliers, and other interested parties about the SCR
 - Develop and carry out a plan to train banks, title companies, and homeowners about the SCR
 - Train local government on the use and value of the state-assigned building permit identifier.
6. We recommend that DOPL and Utah Interactive review and revise all administrative rules in order to ensure consistency with statute and with the intent of the statute.

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Agency Response

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State of Utah
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October 10, 2007

Mr. John M. Schaff
Legislative Auditor General
W315 State Capitol Complex
Salt Lake City, Utah 84114

RE: A Limited Review of the State Construction Registry (Report No. ILR2007-D)

Dear Mr. Schaff:

The Division of Occupational and Professional Licensing (DOPL) has reviewed the report from the Legislative Auditor General and is pleased to have an opportunity to respond.

As a relatively new program, the State Construction Registry (SCR) welcomed the opportunity to meet with our auditors to discuss the progress we have made. Our auditors were courteous, professional, and they provided excellent recommendations, most of which we have already started to implement.

To be specific, DOPL and Utah Interactive (UI) began implementation of the first, third and fifth recommendations in June of 2007. We are encouraged by the corresponding improvements and believe that the recommendations will yield significant improvement to the SCR.

In response to the second recommendation, DOPL and UI have designed a solution for notifying local government entities of illegible or missing transmissions. This solution will be tested on a pilot basis with a limited number of municipalities. If successful, the solution would be applied statewide before the end of the year.

The sixth recommendation referred to a revision of administrative rules. DOPL has requested a comprehensive administrative rule review from the Office of the Attorney General (AG) and intends to initiate rule making procedures after receiving AG input.

In addition to the recommendations offered in your report, DOPL has identified areas of potential improvement which could incorporate future legislative involvement. These improvements deal with the Standardized Building Permit, online lien waivers, and better integrating the SCR with the Title industry.

In conclusion, DOPL appreciates the opportunity to respond to this limited review. The recommendations made by the auditors were appropriate and we will continue to address each of them.

Sincerely,

F. David Stanley