

**STATE CONSTRUCTION REGISTRY**

**AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael T. Morley**

Senate Sponsor: Wayne L. Niederhauser

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**LONG TITLE**

**General Description:**

This bill amends the State Construction Registry and certain related powers of the Division of Occupational and Professional Licensing (DOPL).

**Highlighted Provisions:**

This bill:

- ▶ modifies the definition of final completion of an original contract and project;
- ▶ modifies the subcontractor preliminary notice requirements;
- ▶ modifies the notice of commencement filing requirements;
- ▶ modifies the DOPL standardized building permit numbering system;
- ▶ prohibits a compliance agency from deviating from the DOPL standardized building permit numbering system; and
- ▶ makes technical corrections.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**38-1-7**, as last amended by Laws of Utah 2007, Chapter 332



- 28           **38-1-31**, as last amended by Laws of Utah 2008, Chapter 382
- 29           **38-1-32**, as last amended by Laws of Utah 2007, Chapter 332
- 30           **58-56-19**, as enacted by Laws of Utah 2006, Chapter 297
- 31           **58-56-20**, as last amended by Laws of Utah 2008, Chapter 328



33 *Be it enacted by the Legislature of the state of Utah:*

34           Section 1. Section **38-1-7** is amended to read:

35           **38-1-7. Notice of claim -- Contents -- Recording -- Service on owner of property.**

36           (1) (a) (i) Except as modified in Section 38-1-27, a person claiming benefits under this  
37 chapter shall file for record with the county recorder of the county in which the property, or  
38 some part of the property, is situated, a written notice to hold and claim a lien [~~within~~] no later  
39 than:

40           (A) 180 days after the day on which occurs final completion of the original contract if  
41 no notice of completion is filed under Section 38-1-33; or

42           (B) 90 days after the day on which a notice of completion is filed under Section  
43 38-1-33 ~~§~~ **but not later than the time frame established in Subsection (1)(a)(i)(A)** ~~←§~~ .

44           (ii) For purposes of this Subsection (1), final completion of the original contract, and  
45 for purposes of Section 38-1-33, final completion of the project, means:

46           (A) if as a result of work performed under the original contract a permanent certificate  
47 of occupancy is required for the work, the date of issuance of a permanent certificate of  
48 occupancy by the local government entity having jurisdiction over the construction project;

49           (B) if no certificate of occupancy is required by the local government entity having  
50 jurisdiction over the construction project, but as a result of the work performed under the  
51 original contract an inspection is required as per state-adopted building codes for the work, the  
52 date of the final inspection for the work by the local government entity having jurisdiction over  
53 the construction project; [~~or~~]

54           (C) if with regard to work performed under the original contract no certificate of  
55 occupancy and no final inspection are required as per state-adopted building codes by the local  
56 government entity having jurisdiction over the construction project, the date on which there  
57 remains no substantial work to be completed to finish the work on the original contract[~~;~~]; or

58           (D) if as a result of termination of the original contract prior to the completion of the

59 work defined by the original contract, the compliance agency does not issue a certificate of  
 60 occupancy or final inspection, the last date on which substantial work was performed under the  
 61 original contract.

62 (b) Notwithstanding Section 38-1-2, where a subcontractor performs substantial work  
 63 after the applicable dates established by Subsections (1)(a)(ii)(A) and (B), that subcontractor's  
 64 subcontract shall be considered an original contract for the sole purpose of determining:

65 (i) the subcontractor's time frame to file a notice of intent to hold and claim a lien  
 66 under this Subsection (1); and

67 (ii) the original contractor's time frame to file a notice of intent to hold and claim a lien  
 68 under this Subsection (1) for that subcontractor's work.

69 (c) For purposes of this chapter, the term "substantial work" does not include:

70 (i) repair work; or

71 (ii) warranty work.

72 (d) Notwithstanding Subsection (1)(a)(ii ~~H~~ → (C) ← ~~H~~ ), final completion of the original  
 72a contract does

73 not occur if work remains to be completed for which the owner is holding payment to ensure  
 74 completion of that work.

75 (2) (a) The notice required by Subsection (1) shall contain a statement setting forth:

76 (i) the name of the reputed owner if known or, if not known, the name of the record  
 77 owner;

78 (ii) the name of the person:

79 (A) by whom the lien claimant was employed; or

80 (B) to whom the lien claimant furnished the equipment or material;

81 (iii) the time when:

82 (A) the first and last labor or service was performed; or

83 (B) the first and last equipment or material was furnished;

84 (iv) a description of the property, sufficient for identification;

85 (v) the name, current address, and current phone number of the lien claimant;

86 (vi) the amount of the lien claim;

87 (vii) the signature of the lien claimant or the lien claimant's authorized agent;

88 (viii) an acknowledgment or certificate as required under Title 57, Chapter 3,

89 Recording of Documents; and

90 (ix) if the lien is on an owner-occupied residence, as defined in Section 38-11-102, a  
91 statement describing what steps an owner, as defined in Section 38-11-102, may take to require  
92 a lien claimant to remove the lien in accordance with Section 38-11-107.

93 (b) Substantial compliance with the requirements of this chapter is sufficient to hold  
94 and claim a lien.

95 (3) (a) Within 30 days after filing the notice of lien, the lien claimant shall deliver or  
96 mail by certified mail a copy of the notice of lien to:

97 (i) the reputed owner of the real property; or

98 (ii) the record owner of the real property.

99 (b) If the record owner's current address is not readily available to the lien claimant, the  
100 copy of the claim may be mailed to the last-known address of the record owner, using the  
101 names and addresses appearing on the last completed real property assessment rolls of the  
102 county where the affected property is located.

103 (c) Failure to deliver or mail the notice of lien to the reputed owner or record owner  
104 precludes the lien claimant from an award of costs and attorneys' fees against the reputed  
105 owner or record owner in an action to enforce the lien.

106 (4) The Division of Occupational and Professional Licensing shall make rules  
107 governing the form of the statement required under Subsection (2)(a)(ix).

108 Section 2. Section **38-1-31** is amended to read:

109 **38-1-31. Building permit -- Construction -- Notice registry -- Notice of**  
110 **commencement of work.**

111 (1) (a) (i) (A) For a construction project where a building permit is issued to an original  
112 contractor or owner-builder, [~~within~~] no later than 15 days after the issuance of the building  
113 permit:

114 (I) the local government entity issuing that building permit shall input the building  
115 permit application and transmit the building permit information to the database electronically  
116 by way of the Internet or computer modem or by any other means; [~~and~~] or

117 (II) the original contractor, owner, or owner-builder may file a notice of  
118 commencement [~~based on the building permit issued by the local government entity~~] with the  
119 database whether or not a building permit is issued or a notice of commencement is filed under  
120 Subsection (1)(a)(i)(A)(I).

121 (B) The information submitted under Subsection (1)(a)(i)(A) forms the basis of a  
122 notice of commencement.

123 (ii) The person to whom a building permit, filed under Subsection (1)(a)(i), is issued is  
124 responsible for the accuracy of the information in the building permit.

125 (iii) For the purposes of classifying a record under Title 63G, Chapter 2, Government  
126 Records Access and Management Act, building permit information transmitted from a local  
127 governmental entity to the database shall be classified in the database by the division  
128 notwithstanding the local governmental entity's classification of the building permit  
129 information.

130 (b) [~~Within~~] No later than 15 days after commencement of physical construction work  
131 at the project site, the original contractor, owner, or owner-builder may file a notice of  
132 commencement with the database whether or not a building permit is issued or a notice of  
133 commencement is filed under Subsection (1)(a).

134 (c) An original contractor, owner, or owner-builder may file a notice of  
135 commencement with the designated agent prior to the time frames established in Subsections  
136 (1)(a) and (b).

137 [~~(c)~~] (d) An owner of construction or an original contractor may file a notice of  
138 commencement with the designated agent within the time prescribed by Subsections (1)(a) and  
139 (b).

140 [~~(d)~~] (e) (i) If duplicate notices of commencement are filed, they shall be combined into  
141 one notice for each project and any notices filed relate back to the date of the earliest-filed  
142 notice of commencement for the project.

143 (ii) A duplicate notice of commencement that is untimely filed relates back under  
144 Subsection (1)[~~(d)~~](e)(i) if the earlier filed notice of commencement is timely filed.

145 (iii) Duplicate notices of commencement shall be automatically linked by the  
146 designated agent.

147 [~~(e)~~] (f) The designated agent shall assign each construction project a unique project  
148 number that:

149 (i) identifies each construction project; and

150 (ii) can be associated with all notices of commencement, preliminary notices, and  
151 notices of completion.

152            [~~f~~] g A notice of commencement is effective only as to any labor, service,  
153 equipment, and material furnished to the construction project that is furnished subsequent to  
154 the filing of the notice of commencement.

155            (2) (a) A notice of commencement shall include the following:

156            (i) the name and address of the owner of the project;

157            (ii) the name and address of the:

158            (A) original contractor; and

159            (B) surety providing any payment bond for the project, or if none exists, a statement  
160 that a payment bond was not required for the work being performed; and

161            (iii) (A) the project address if the project can be reasonably identified by an address; or

162            (B) the name and general description of the location of the project if the project cannot  
163 be reasonably identified by an address.

164            (b) A notice of commencement may include:

165            (i) a general description of the project; or

166            (ii) the lot or parcel number, and any subdivision, development, or other project name,  
167 of the real property upon which the project is to be constructed if the project is subject to  
168 mechanics' liens.

169            (c) A notice of commencement need not include all of the items listed in Subsection  
170 (2)(a) if:

171            (i) a building permit is issued for the project; and

172            (ii) all items listed in Subsection (2)(a) that are available on the building permit are  
173 included in the notice of commencement.

174            (3) If a notice of commencement for a construction project is not filed within the time  
175 set forth in Subsections(1)(a) and (b), the following do not apply:

176            (a) Section 38-1-32; and

177            (b) Section 38-1-33.

178            (4) (a) Unless a person indicates to the division or designated agent that the person  
179 does not wish to receive a notice under this section, electronic notice of the filing of a notice of  
180 commencement or alternate notice as prescribed in Subsection (1), shall be provided to:

181            (i) all persons who have filed notices of commencement for the project; and

182            (ii) all interested persons who have requested notices concerning the project.

183 (b) (i) A person to whom notice is required under Subsection (4)(a) is responsible for:

184 (A) providing an e-mail address, mailing address, or telefax number to which a notice  
185 required by Subsection (4)(a) is to be sent; and

186 (B) the accuracy of any e-mail address, mailing address, or telefax number to which  
187 notice is to be sent.

188 (ii) The designated agent fulfills the notice requirement of Subsection (4)(a) when it  
189 sends the notice to the e-mail address, mailing address, or telefax number provided to the  
190 designated agent whether or not the notice is actually received.

191 (5) (a) The burden is upon any person seeking to enforce a notice of commencement to  
192 verify the accuracy of information in the notice of commencement and prove that the notice of  
193 commencement is filed timely and meets all of the requirements in this section.

194 (b) A substantial inaccuracy in a notice of commencement renders the notice of  
195 commencement unenforceable.

196 (c) A person filing a notice of commencement by alternate filing is responsible for  
197 verifying and changing any incorrect information in the notice of commencement before the  
198 expiration of the time period during which the notice is required to be filed.

199 (6) At the time a building permit is obtained, each original contractor shall  
200 conspicuously post at the project site a copy of the building permit obtained for the project.

201 Section 3. Section **38-1-32** is amended to read:

202 **38-1-32. Preliminary notice by subcontractor.**

203 (1) (a) (i) Except for a person who has a contract with an owner or an owner-builder or  
204 a laborer compensated with wages, a subcontractor shall file a preliminary notice with the  
205 database [~~within the later of~~] ~~H~~→ [**no later than**] **by the later of** ←~~H~~ :

206 (A) 20 days after commencement of its own work or the commencement of furnishing  
207 labor, service, equipment, and material to a construction project; or

208 (B) 20 days after the filing of a notice of commencement ~~H~~→ **if the subcontractor's work**  
208a **commences before the filing of the first notice of commencement** ←~~H~~ .

209 (ii) A preliminary notice filed within the period described in Subsection (1)(a)(i) is  
210 effective as to all labor, service, equipment, and material furnished to the construction project,  
211 including labor, service, equipment, and material provided to more than one contractor or  
212 subcontractor.

213 (iii) (A) If more than one notice of commencement is filed for a project, a person may

214 attach a preliminary notice to any ~~[of the notices]~~ notice of commencement filed for the project  
215 by a party authorized in Section 38-1-31.

216 (B) A preliminary notice attached to an untimely ~~§~~ ~~→~~ ~~[-, but otherwise valid,]~~ ~~←~~ ~~§~~ notice of  
217 commencement is valid if there is also a valid and timely notice of commencement for the  
218 project ~~[to which the preliminary notice may attach]~~ filed by a party authorized in Section  
219 38-1-31.

220 (b) If a person files a preliminary notice after the period prescribed by Subsection  
221 (1)(a), the preliminary notice becomes effective five days after the day on which the  
222 preliminary notice is filed.

223 (c) Except as provided in Subsection (1)(e), failure to file a preliminary notice within  
224 the period required by Subsection (1)(a) precludes a person from maintaining any claim for  
225 compensation earned for performance of labor or service or supply of materials or equipment  
226 furnished to the construction project before the expiration of five days after the late filing of a  
227 preliminary notice, except as against the person with whom the person contracted.

228 (d) (i) (A) If a person who is required to file a preliminary notice under this chapter  
229 fails to file the preliminary notice, that person may not hold a valid lien under this chapter.

230 (B) A county recorder need not verify that a valid preliminary notice is filed when a  
231 person files a notice to hold and claim a lien under Section 38-1-7.

232 (ii) The content of a preliminary notice shall include:

233 (A) the building permit number for the project, or the number assigned to the project  
234 by the designated agent;

235 (B) the name, address, and telephone number of the person furnishing the labor,  
236 service, equipment, or material;

237 (C) the name and address of the person who contracted with the claimant for the  
238 furnishing of the labor, service, equipment, or material;

239 (D) the name of the record or reputed owner of the project;

240 (E) the name of the original contractor under which the claimant is performing or will  
241 perform its work; and

242 (F) the address of the project or a description of the location of the project.

243 (iii) Upon request by person identified in Subsection (1)(a)(i), an original contractor  
244 shall provide the person with the building permit number for the project, or the number

245 assigned to the project by the designated agent.

246 (e) If a person provides labor, service, equipment, or material before the filing of a  
247 notice of commencement and the notice of commencement is filed more than 15 days after the  
248 day on which the person providing labor, service, equipment, or material begins work on the  
249 project, the person providing labor, service, equipment, or material need not file a preliminary  
250 notice to maintain the person's right to hold a lien under this chapter or any other right,  
251 including a right referenced under Subsection (1)(c).

252 (2) (a) (i) Unless a person indicates to the division or designated agent that the person  
253 does not wish to receive a notice under this section, electronic notification of the filing of a  
254 preliminary notice or alternate notice as prescribed in Subsection (1), shall be provided to:

255 (A) the person filing the preliminary notice;

256 (B) each person that filed a notice of commencement for the project; and

257 (C) all interested persons who have requested notices concerning the project.

258 (ii) A person to whom notice is required under Subsection (2)(a)(i) is responsible for:

259 (A) providing an e-mail address, mailing address, or telefax number to which a notice  
260 required by Subsection (2)(a) is to be sent; and

261 (B) the accuracy of any e-mail address, mailing address, or telefax number to which  
262 notice is to be sent.

263 (iii) The designated agent fulfills the notice requirement of Subsection (2)(a)(i) when it  
264 sends the notice to the e-mail address, mailing address, or telefax number provided to the  
265 designated agent whether or not the notice is actually received.

266 (b) The burden is upon the person filing the preliminary notice to prove that the person  
267 has substantially complied with the requirements of this section.

268 (c) Subject to Subsection ~~§~~ ~~→~~ [(1)] (2) ~~←~~ ~~§~~ (d), a person required by this section to give  
268a preliminary  
269 notice is only required to give one notice for each project.

270 (d) If the labor, service, equipment, or material is furnished pursuant to contracts under  
271 more than one original contract, the notice requirements must be met with respect to the labor,  
272 service, equipment, or material furnished under each original contract.

273 (3) (a) If a construction project owner, original contractor, subcontractor, or other  
274 interested person believes that a preliminary notice has been filed erroneously, that owner,  
275 original contractor, subcontractor, or other interested person can request from the person who

276 filed the preliminary notice evidence establishing the validity of the preliminary notice.

277 (b) Within ten days after the request described in Subsection (3)(a), the person or entity  
278 that filed the preliminary notice shall provide the requesting person or entity proof that the  
279 preliminary notice is valid.

280 (c) If the person or entity that filed the preliminary notice does not provide proof of the  
281 validity of the preliminary notice, that person or entity shall immediately cancel the preliminary  
282 notice from the database in any manner prescribed by the division pursuant to rule.

283 (4) A person filing a preliminary notice by alternate filing is responsible for verifying  
284 and changing any incorrect information in the preliminary notice before the expiration of the  
285 time period during which the notice is required to be filed.

286 (5) Until June 1, 2008, nothing in this section affects a person's rights under Title 38,  
287 Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

288 Section 4. Section **58-56-19** is amended to read:

289 **58-56-19. Standardized building permit numbering.**

290 (1) As used in this section, "project" means a "construction project" as defined in  
291 Section 38-1-27.

292 (2) [~~Upon recommendation by the commission, the~~] The division shall develop a  
293 standardized building permit numbering system for use by any compliance agency in the state  
294 that issues a permit for construction.

295 (3) (a) Beginning on [~~January 1, 2007, any~~] July 1, 2009, a compliance agency issuing  
296 a permit for construction shall use the standardized building permit numbering system  
297 [~~developed~~] described under Subsection (2).

298 (b) [~~Notwithstanding Subsection (3)(a), a~~] A compliance agency may not use [~~a~~  
299 ~~different~~] a numbering system [~~if that numbering system is used in addition to~~] other than the  
300 system [~~developed~~] described under Subsection (2) to define a building permit number.

301 (4) The standardized building permit numbering system [~~developed~~] described under  
302 Subsection (2) shall include ~~It~~ → [alpha or numeric characters in the following order:

303 ~~—(a) three alphabetical characters identifying the compliance agency issuing the permit;~~  
304 and

305 ~~—(b) ←It~~ ←It a combination of alpha or numeric characters arranged in a format acceptable to the  
306 compliance agency.

307 ~~[(b) two numeric digits indicating the day of the month on which the permit is issued;]~~  
308 ~~[(c) two numeric digits indicating the month in which the permit is issued;]~~  
309 ~~[(d) two numeric digits indicating the last two digits of the year in which the permit is~~  
310 ~~issued, and]~~  
311 ~~[(e) three numeric digits indicating the serialized number of the permit issued on a~~  
312 ~~given day.]~~

313 Section 5. Section **58-56-20** is amended to read:

314 **58-56-20. Standardized building permit content.**

315 (1) ~~[After receiving a recommendation from the commission, the]~~ In accordance with  
316 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall adopt a  
317 standardized building permit form by rule.

318 (2) (a) The standardized building permit form created under Subsection (1) shall  
319 include fields for indicating the following information:

- 320 (i) the name and address of the owner of or contractor for the project;
- 321 (ii) (A) the address of the project; or
- 322 (B) a general description of the project; and
- 323 (iii) whether the permit applicant is an original contractor or owner-builder.

324 (b) The standardized building permit form created under Subsection (1) may include  
325 any other information the division considers useful.

326 (3) (a) A compliance agency shall issue a permit for construction only on a  
327 standardized building permit form approved by the division.

328 (b) A permit for construction issued by a compliance agency under Subsection (3)(a)  
329 shall print the standardized building permit number assigned under Section 58-56-19 in the  
330 upper right-hand corner of the building permit form in at least 12-point type.

331 (c) (i) Except as provided in Subsection (3)(c)(ii), a compliance agency may not issue a  
332 permit for construction if the information required by Subsection (2)(a) is not completed on the  
333 building permit form.

334 (ii) If a compliance agency does not issue a separate permit for different aspects of the  
335 same project, the compliance agency may issue a permit for construction without the  
336 information required by Subsection (2)(a)(iii).

337 (d) A compliance agency may require additional information for the issuance of a

338 permit for construction.

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**Legislative Review Note**  
as of **2-2-09 7:47 AM**

**Office of Legislative Research and General Counsel**

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**H.B. 154 - State Construction Registry Amendments**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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