

STATE CONSTRUCTION REGISTRY

AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies provisions relating to the state construction registry.

Highlighted Provisions:

This bill:

- ▶ eliminates the requirement to file a notice of commencement with respect to private construction projects;
- ▶ modifies who is required to file a preliminary notice;
- ▶ modifies provisions relating to the filing of a notice of commencement;
- ▶ requires documents transmitted to the state construction registry database to identify the county in which the project is located and the tax identification or parcel number of the property on which the project will occur;
- ▶ modifies requirements relating to the content of a building permit;
- ▶ repeals obsolete language; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 38-1-27, as last amended by Laws of Utah 2009, Chapters 183 and 239

30 38-1-30, as last amended by Laws of Utah 2008, Chapter 382

31 38-1-31, as last amended by Laws of Utah 2009, Chapter 50

32 38-1-32, as last amended by Laws of Utah 2009, Chapter 50

33 38-1-33, as last amended by Laws of Utah 2009, Chapter 239

34 38-1-37, as last amended by Laws of Utah 2005, Chapter 64

35 58-56-20, as last amended by Laws of Utah 2009, Chapters 50 and 129

36 REPEALS:

37 38-1-36, as enacted by Laws of Utah 2004, Chapter 250



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

40 Section 1. Section 38-1-27 is amended to read:

41 **38-1-27. State Construction Registry -- Form and contents of notice of**
42 **commencement, preliminary notice, and notice of completion.**

43 (1) As used in this section, Sections 38-1-30 through 38-1-37, and Section 38-1-40:

44 (a) "Alternate filing" means a legible and complete filing made in a manner established
45 by the division under Subsection (2)(e) other than an electronic filing.

46 (b) "Cancel" means to indicate that a filing is no longer given effect.

47 (c) "Construction project," "project," or "improvement" means all labor, equipment,
48 and materials provided:

49 (i) under an original contract; or

50 (ii) by, or under contracts with, an owner-builder.

51 (d) "Database" means the State Construction Registry created in this section.

52 (e) (i) "Designated agent" means the third party the Division of Occupational and
53 Professional Licensing contracts with to create and maintain the State Construction Registry.

54 (ii) The designated agent is not an agency, instrumentality, or a political subdivision of
55 the state.

56 (f) "Division" means the Division of Occupational and Professional Licensing.

57 (g) "Government project" means a construction project undertaken by or for:

58 (i) the state, including a department, division, or other agency of the state; or

59 (ii) a county, city, town, school district, local district, special service district,
 60 community development and renewal agency, or other political subdivision of the state.

61 ~~[(g)]~~ (h) "Interested person" means a person who may be affected by a construction
 62 project.

63 (i) "Permitted project" means a private project for which a building permit is issued.

64 (j) "Private project" means a construction project that is not a government project.

65 ~~[(h)]~~ (k) "Program" means the State Construction Registry Program created in this
 66 section.

67 (l) "Project-identifying information" means:

68 (i) for a government project, the unique project number assigned by the ~~H→~~ [designated
 69 agent] governmental entity undertaking the project ←H :

70 (ii) for a permitted project ~~H→~~ [] :

70a (A) ←H the number of the building permit issued for the project;

71 and

71a ~~H→~~ (B) the name of the county or municipality that issued the building permit; and ←H

72 (iii) for a private project that is not a permitted project:

73 (A) the name of the county in which the property on which the project occurs or will
 74 occur is located; and

75 (B) the tax identification or parcel number of that property.

76 (2) Subject to receiving adequate funding through a legislative appropriation and
 77 contracting with an approved third party vendor who meets the requirements of Sections
 78 38-1-30 through 38-1-37, there is created the State Construction Registry Program that shall:

79 (a) (i) assist in protecting public health, safety, and welfare; and

80 (ii) promote a fair working environment;

81 (b) be overseen by the division with the assistance of the designated agent;

82 (c) provide a central repository for notices of commencement, preliminary notices, and
 83 notices of completion filed in connection with all privately owned construction projects as well
 84 as all state and local government owned construction projects throughout ~~[Utah]~~ the state;

85 (d) be accessible for filing and review by way of the program Internet website of:

86 (i) notices of commencement;

87 (ii) preliminary notices;

88 (iii) a notice of intent to file notice of final completion;

89 (iv) a notice for remaining amounts due to complete the contract; and

- 90 (v) notices of completion;
- 91 (e) accommodate:
- 92 (i) electronic filing of the notices described in Subsection (2)(d); and
- 93 (ii) alternate filing of the notices described in Subsection (2)(d) by U.S. mail, telefax,
- 94 or any other alternate method as provided by rule made by the division in accordance with Title
- 95 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 96 (f) (i) provide electronic notification for up to three e-mail addresses for each interested
- 97 person or company who requests notice from the construction notice registry; and
- 98 (ii) provide alternate means of notification for a person who makes an alternate filing,
- 99 including U.S. mail, telefax, or any other method as prescribed by rule made by the division in
- 100 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
- 101 (g) provide hard-copy printing of electronic receipts for an individual filing evidencing
- 102 the date and time of the individual filing and the content of the individual filing.
- 103 (3) (a) The designated agent shall provide notice of all other filings for a project to any
- 104 person who files a notice of commencement, preliminary notice, or notice of completion for
- 105 that project, unless the person:
- 106 (i) requests that the person not receive notice of other filings; or
- 107 (ii) does not provide the designated agent with the person's contact information in a
- 108 manner that adequately informs the designated agent.
- 109 (b) An interested person may request notice of filings related to a project.
- 110 (c) The database shall be indexed by:
- 111 (i) owner name;
- 112 (ii) original contractor name;
- 113 (iii) subdivision, development, or other project name, if any;
- 114 (iv) project address;
- 115 [~~(v) lot or parcel number;~~]
- 116 [~~(vi) unique project number assigned by the designated agent; and~~]
- 117 (v) the project-identifying information; and
- 118 [~~(vii)~~] (vi) any other identifier that the division considers reasonably appropriate in
- 119 collaboration with the designated agent.
- 120 (4) (a) In accordance with the process required by Section 63J-1-504, the division shall

121 establish the fees for:

122 (i) a notice of commencement;

123 (ii) a preliminary notice;

124 (iii) a notice of intent to file notice of final completion;

125 (iv) a notice for remaining amounts due to complete the contract;

126 (v) a notice of completion;

127 (vi) a request for notice;

128 (vii) providing a required notice by an alternate method of delivery;

129 (viii) a duplicate receipt of a filing; and

130 (ix) account setup for a person who wishes to be billed periodically for filings with the

131 database.

132 (b) The fees allowed under Subsection (4)(a) may not exceed the amount reasonably

133 necessary to create and maintain the database.

134 (c) The fees established by the division may vary by method of filing if one form of

135 filing is more costly to process than another form of filing.

136 (d) The division may provide by contract that the designated agent may retain all fees

137 collected by the designated agent except that the designated agent shall remit to the division the

138 cost of the division's oversight under Subsection (2)(b).

139 (5) (a) The database is classified as a public record under Title 63G, Chapter 2,

140 Government Records Access and Management Act, unless otherwise classified by the division.

141 (b) A request for information submitted to the designated agent is not subject to Title

142 63G, Chapter 2, Government Records Access and Management Act.

143 (c) Information contained in a public record contained in the database shall be

144 requested from the designated agent.

145 (d) The designated agent may charge a commercially reasonable fee allowed by the

146 designated agent's contract with the division for providing information under Subsection (5)(c).

147 (e) Notwithstanding Title 63G, Chapter 2, Government Records Access and

148 Management Act, if information is available in a public record contained in the database, a

149 person may not request the information from the division.

150 (f) (i) A person may request information that is not a public record contained in the

151 database from the division in accordance with Title 63G, Chapter 2, Government Records

152 Access and Management Act.

153 (ii) The division shall inform the designated agent of how to direct inquiries made to
154 the designated agent for information that is not a public record contained in the database.

155 (6) The following are not an adjudicative proceeding under Title 63G, Chapter 4,
156 Administrative Procedures Act:

157 (a) the filing of a notice permitted by this chapter;

158 (b) the rejection of a filing permitted by this chapter; or

159 (c) other action by the designated agent in connection with a filing of any notice
160 permitted by this chapter.

161 (7) The division and the designated agent need not determine the timeliness of any
162 notice before filing the notice in the database.

163 (8) (a) A person who is delinquent on the payment of a fee established under
164 Subsection (4) may not file a notice with the database.

165 (b) A determination that a person is delinquent on the payment of a fee for filing
166 established under Subsection (4) shall be made in accordance with Title 63G, Chapter 4,
167 Administrative Procedures Act.

168 (c) Any order issued in a proceeding described in Subsection (8)(b) may prescribe the
169 method of that person's payment of fees for filing notices with the database after issuance of the
170 order.

171 (9) If a notice is filed by a third party on behalf of another, the notice is considered to
172 be filed by the person on whose behalf the notice is filed.

173 (10) A person filing a notice of commencement, preliminary notice, or notice of
174 completion is responsible for verifying the accuracy of information entered into the database,
175 whether the person files electronically or by alternate or third party filing.

176 (11) Each notice or other document that relates to a private project and is submitted for
177 inclusion in the database shall contain the project-identifying information for the construction
178 project to which the notice or other document relates.

179 Section 2. Section **38-1-30** is amended to read:

180 **38-1-30. Third-party contract -- Designated agent.**

181 (1) The division shall contract in accordance with Title 63G, Chapter 6, Utah
182 Procurement Code, with a third party to establish and maintain the database for the purposes

183 established under this section, Section 38-1-27, and Sections 38-1-31 through 38-1-37.

184 (2) (a) The third party under contract under this section is the division's designated
185 agent, and shall develop and maintain a database from the information provided by:

186 (i) local government entities issuing building permits;

187 (ii) original contractors;

188 (iii) subcontractors; and

189 (iv) other interested persons.

190 (b) The database shall accommodate filings by third parties on behalf of clients.

191 (c) The division and the designated agent shall design, develop, and test the database
192 for full implementation on May 1, 2005.

193 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
194 division shall make rules and develop procedures for:

195 (a) the division to oversee and enforce this section, Section 38-1-27, and Sections
196 38-1-31 through 38-1-37;

197 (b) the designated agent to administer this section, Section 38-1-27, and Sections
198 38-1-31 through 38-1-37; and

199 (c) the form of submission of an alternate filing, which may include procedures for
200 rejecting an illegible or incomplete filing.

201 (4) (a) The designated agent shall archive computer data files at least semiannually for
202 auditing purposes.

203 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
204 division shall make rules to allow the designated agent to periodically archive projects from the
205 database.

206 (c) A project shall be archived no earlier than:

207 (i) one year after the day on which a notice of completion is filed for a project;

208 (ii) if no notice of completion is filed, two years after the last filing activity for a
209 project; or

210 (iii) one year after the day on which a filing is cancelled under Subsection

211 38-1-32~~(3)~~(4)(c) or 38-1-33(2)(c).

212 (d) The division may audit the designated agent's administration of the database as
213 often as the division considers necessary.

214 (5) The designated agent shall carry errors and omissions insurance in the amounts
 215 established by rule made by the division in accordance with Title 63G, Chapter 3, Utah
 216 Administrative Rulemaking Act.

217 (6) (a) The designated agent shall make reasonable efforts to assure the accurate entry
 218 into the database of information provided in alternate filings.

219 (b) The designated agent shall meet or exceed standards established by the division for
 220 the accuracy of data entry for alternate filings.

221 (7) The designated agent is not liable for the correctness of the information contained
 222 in an alternate filing it enters into the database.

223 Section 3. Section **38-1-31** is amended to read:

224 **38-1-31. Building permit -- Construction -- Notice registry -- Notice of**
 225 **commencement of work.**

226 (1) (a) (i) ~~H→ [(A) For a construction project where a building permit is issued to an original~~
 227 ~~contractor or owner-builder, no later than 15 days after the issuance of the building permit:~~
 228 ~~—(F) the] A ←H~~ local government entity issuing ~~H→ [that] a ←H~~ building permit ~~H→ for a~~
 228a ~~private project ←H~~ shall ~~H→ , no later than 15 days after issuing the permit, ←H~~ input
 228b the building
 229 permit application and transmit the building permit information to the database electronically
 230 by way of the Internet or computer modem or by any other means ~~H→ [; or] .~~

231 ~~[(H) the original contractor, owner, or owner-builder may file a notice of~~
 232 ~~commencement with the database whether or not a building permit is issued or a notice of~~
 233 ~~commencement is filed under Subsection (1)(a)(i)(A)(F):~~

234 ~~—(B) The information submitted under Subsection (1)(a)(i)(A) forms the basis of a~~
 235 ~~notice of commencement.] ←H~~

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

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

243 (b) No later than 15 days after commencement of physical construction work at
 243a the ~~H→ government ←H~~
 244 project site, the original contractor, owner, or owner-builder ~~H→ [may] shall ←H~~ file a notice of

245 commencement with the database ~~H→ [whether or not a building permit is issued or a notice of~~
 246 ~~commencement is filed under Subsection (1)(a)] ←H~~ .

247 (c) An original contractor, owner, or owner-builder may file a notice of
 248 commencement with the designated agent [prior to] within ~~H→ [either of the time frames~~
 249 ~~established in Subsections (1)(a) and (b)] the time frame established in Subection (1)(b) ←H~~ .

250 ~~H→ [(d) An owner of construction or an original contractor may file a notice of~~
 251 ~~commencement with the designated agent within either of the time [prescribed by] frames~~
 252 ~~established in Subsections (1)(a) and (b):~~

253 ~~——(e) (d) ←H~~ (i) If duplicate notices of commencement are filed, they shall be combined
 253a into one
 254 notice for each project and any notices filed relate back to the date of the earliest-filed notice of
 255 commencement for the project.

256 (ii) A duplicate notice of commencement that is untimely filed relates back under
 257 Subsection (1) ~~H→ [(e) (d) ←H~~ (i) if the earlier filed notice of commencement is timely filed.

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

260 ~~H→ [(f) (e) ←H~~ (i) The designated agent shall assign each [construction] government
 260a project a
 261 unique project number that:

262 [(†) (A) identifies each construction project; and

263 [(†) (B) can be associated with all notices of commencement, preliminary notices, and
 264 notices of completion.

265 (ii) The project-identifying information for a private project constitutes the unique
 266 project identifier that:

267 (A) identifies the construction project; and

268 (B) shall be associated with the preliminary notice and notice of completion.

269 ~~H→ [(g) (f) ←H~~ A notice of commencement is effective only as to any labor, service,
 269a equipment,

270 and material furnished to the construction project that is furnished subsequent to the filing of
 271 the notice of commencement.

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

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

274 (ii) the name and address of the:

275 (A) original contractor; and

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

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

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

281 (b) A notice of commencement may include:

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

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

286 ~~[(c) A notice of commencement need not include all of the items listed in Subsection~~
 287 ~~(2)(a) if:]~~

288 ~~[(i) a building permit is issued for the project; and]~~

289 ~~[(ii) all items listed in Subsection (2)(a) that are available on the building permit are~~
 290 ~~included in the notice of commencement.]~~

291 (3) If a notice of commencement for a ~~H~~→ [construction] government ←~~H~~ project is not
 291a filed within the time

292 set forth in ~~H~~→ [Subsections (1)(a) and] Subsection (1) ←~~H~~ (b), the following do not apply:

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

294 (b) Section 38-1-33.

295 (4) (a) Notwithstanding any other provision of this chapter, a notice of commencement
 296 need not be filed for a private project.

297 (b) A provision of this chapter does not apply to a private project if the provision
 298 depends for its effectiveness upon the filing of a notice of commencement.

299 ~~[(4)]~~ (5) (a) Unless a person indicates to the division or designated agent that the
 300 person does not wish to receive a notice under this section, electronic notice of the filing of a
 301 notice of commencement or alternate notice as prescribed in Subsection (1), shall be provided
 302 to:

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

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

305 (b) (i) A person to whom notice is required under Subsection ~~[(4)]~~ (5)(a) is responsible
 306 for:

307 (A) providing an e-mail address, mailing address, or telefax number to which a notice
308 required by Subsection [~~(4)~~] (5)(a) is to be sent; and

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

311 (ii) The designated agent fulfills the notice requirement of Subsection [~~(4)~~] (5)(a) when
312 it sends the notice to the e-mail address, mailing address, or telefax number provided to the
313 designated agent whether or not the notice is actually received.

314 [~~(5)~~] (6) (a) The burden is upon any person seeking to enforce a notice of
315 commencement to verify the accuracy of information in the notice of commencement and
316 prove that the notice of commencement is filed timely and meets all of the requirements in this
317 section.

318 (b) A substantial inaccuracy in a notice of commencement renders the notice of
319 commencement unenforceable.

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

323 [~~(6)~~] (7) At the time a building permit is obtained, each original contractor shall
324 conspicuously post at the project site a copy of the building permit obtained for the project.

325 Section 4. Section **38-1-32** is amended to read:

326 **38-1-32. Preliminary notice by subcontractor.**

327 (1) As used in this section, "subcontractor":

328 (a) for a private project, means a person who:

329 (i) furnishes labor, service, equipment, or material to a private project; and

330 (ii) is not:

331 (A) the person identified on the building permit as the contractor for the project;

332 (B) an owner-builder; or

333 (C) a laborer compensated with wages; and

334 (b) for a government project:

335 (i) has the same meaning as provided in Section 38-1-2; and

336 (ii) does not include:

337 (A) a person who has a contract with an owner;

338 (B) an owner-builder; or

339 (C) a laborer compensated with wages.

340 ~~[(1) (a) (i) Except for a person who has a contract with an owner or an owner-builder~~
 341 ~~or a laborer compensated with wages, a]~~

342 (2) (a) (i) A subcontractor shall file a preliminary notice with the database;

343 (A) for a private project, no later than 20 days after commencement of the
 344 subcontractor's work or the ~~H→~~ **subcontractor's** ~~←H~~ commencement of furnishing labor,
 344a service, equipment, or material
 345 to the private project ~~H→~~ , whether or not a local government entity has submitted building
 345a permit information to the database under Subsection 38-1-31(1)(a) ~~←H~~ ; or

346 (B) for a government project, by the later of:

347 ~~[(A)]~~ (I) 20 days after commencement of [its own] the subcontractor's work or the
 348 commencement of furnishing labor, service, equipment, [and] or material to a construction
 349 project; or

350 ~~[(B)]~~ (II) subject to Subsection (2)(e), 20 days after the filing of a notice of
 351 commencement if the subcontractor's work commences before the filing of the first notice of
 352 commencement.

352a ~~H→~~ (ii) If a local government entity has not submitted building permit information to the
 352b database at the time a subcontractor for a private project files a preliminary notice with the
 352c database under Subsection (2)(a)(i)(A), the subcontractor shall include in the preliminary
 352d notice:

352e (A) the name of the county in which the property on which the project occurs or will
 352f occur is located; and

352g (B) the tax identification or parcel number of that property.

353 ~~[(iii)]~~ (iii) ~~←H~~ A preliminary notice filed within the period described in Subsection
 353a ~~[(+)]~~ (2)(a)(i) is

354 effective as to all labor, service, equipment, and material furnished to the construction project,
 355 including labor, service, equipment, and material provided to more than one contractor or
 356 subcontractor.

357 ~~H→~~ ~~[(iii)]~~ (iv) ~~←H~~ (A) If more than one notice of commencement is filed for a government
 357a project, a
 358 person may attach a preliminary notice to any notice of commencement filed for the project by
 359 a party authorized in Section 38-1-31.

360 (B) A preliminary notice attached to an untimely notice of commencement is valid if

361 there is also a valid and timely notice of commencement for the government project filed by a
362 party authorized in Section 38-1-31.

363 (b) If a person files a preliminary notice after the period prescribed by Subsection
364 [~~(1)(a)~~] (2)(a)(i), the preliminary notice becomes effective five days after the day on which the
365 preliminary notice is filed.

366 (c) Except as provided in Subsection [~~(1)~~] (2)(e), failure to file a preliminary notice
367 within the period required by Subsection [~~(1)~~] (2)(a)(i) precludes a person from maintaining
368 any claim for compensation earned for performance of labor or service or supply of materials

369 or equipment furnished to the construction project before the expiration of five days after the
 370 late filing of a preliminary notice, except as against the person with whom the person
 371 contracted.

372 (d) (i) (A) ~~[If a person who is required to file a preliminary notice under this chapter] A~~
 373 ~~subcontractor on a private project who fails to file [the] a preliminary notice[, that person] H→ ,~~
 373a **whether or not a local government entity has submitted building permit information to the**
 373b **database as required in Subsection 38-1-31(1)(a), ←H** may
 374 not hold a valid lien under this chapter.

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

377 (ii) ~~[The content of a] A~~ preliminary notice shall include:

378 ~~[(A) the building permit number for the project, or the number assigned to the project~~
 379 ~~by the designated agent;]~~

380 (A) the project-identifying information;

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

383 (C) the name and address of the person who contracted with the claimant for the
 384 furnishing of the labor, service, equipment, or material[;].

385 ~~[(D) the name of the record or reputed owner of the project;]~~

386 ~~[(E) the name of the original contractor under which the claimant is performing or will~~
 387 ~~perform its work; and]~~

388 ~~[(F) the address of the project or a description of the location of the project.]~~

389 (iii) Upon request by person identified in Subsection ~~[(H)]~~ (2)(a)(i), an original
 390 contractor shall provide the person with the building permit number for the project, or the
 391 number assigned to the project by the designated agent.

392 (e) ~~[If a person provides labor, service, equipment, or material before the filing of a~~
 393 ~~notice of commencement and the notice of commencement is filed more than 15 days after the~~
 394 ~~day on which the person providing labor, service, equipment, or material begins work on the~~
 395 ~~project, the person] A subcontractor~~ providing labor, service, equipment, or material for a
 396 government project need not file a preliminary notice to maintain ~~[the person's right to hold a~~
 397 ~~lien under this chapter or]~~ any ~~[other]~~ right, including a right referenced under Subsection ~~[(H)]~~
 398 (2)(c), if:

399 (i) the subcontractor provides labor, service, equipment, or material before the filing of

400 a notice of commencement; and

401 (ii) the notice of commencement is filed more than 15 days after the day on which the
402 subcontractor providing labor, service, equipment, or material begins work on the project.

403 ~~[(2)]~~ (3) (a) (i) Unless a person indicates to the division or designated agent that the
404 person does not wish to receive a notice under this section, electronic notification of the filing
405 of a preliminary notice or alternate notice as prescribed in Subsection ~~[(1)]~~ (2), shall be
406 provided to:

407 (A) the person filing the preliminary notice;

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

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

410 (ii) A person to whom notice is required under Subsection ~~[(2)]~~ (3)(a)(i) is responsible
411 for:

412 (A) providing an e-mail address, mailing address, or telefax number to which a notice
413 required by Subsection ~~[(2)]~~ (3)(a) is to be sent; and

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

416 (iii) The designated agent fulfills the notice requirement of Subsection ~~[(2)]~~ (3)(a)(i)
417 when it sends the notice to the e-mail address, mailing address, or telefax number provided to
418 the designated agent whether or not the notice is actually received.

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

421 (c) Subject to Subsection ~~[(2)]~~ (3)(d), a person required by this section to give
422 preliminary notice is only required to give one notice for each project.

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

426 ~~[(3)]~~ (4) (a) If a construction project owner, original contractor, subcontractor, or other
427 interested person believes that a preliminary notice has been filed erroneously, that owner,
428 original contractor, subcontractor, or other interested person can request from the person who
429 filed the preliminary notice evidence establishing the validity of the preliminary notice.

430 (b) Within 10 days after the request described in Subsection ~~[(3)]~~ (4)(a), the person or

431 entity that filed the preliminary notice shall provide the requesting person or entity proof that
432 the preliminary notice is valid.

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

436 ~~[(4)]~~ (5) A person filing a preliminary notice by alternate filing is responsible for
437 verifying and changing any incorrect information in the preliminary notice before the
438 expiration of the time period during which the notice is required to be filed.

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

441 Section 5. Section **38-1-33** is amended to read:

442 **38-1-33. Notice of completion.**

443 (1) (a) Upon final completion of a construction project, and in accordance with Section
444 38-1-40, the following with a construction project registered with the database may file a notice
445 of completion with the database:

- 446 (i) an owner of the construction project;
- 447 (ii) an original contractor of the construction project;
- 448 (iii) a lender that has provided financing for the construction project;
- 449 (iv) a surety that has provided bonding for the construction project; or
- 450 (v) a title company issuing a title insurance policy on the construction project[;].
- 451 ~~[(vi) a lender that has provided financing for the construction project;]~~
- 452 ~~[(vii) a surety that has provided bonding for the construction project; or]~~
- 453 ~~[(viii) a title company issuing a title insurance policy on the construction project.]~~

454 (b) Notwithstanding Section 38-1-2, if a subcontractor performs substantial work after
455 the applicable dates established by Subsection (1)(a), that subcontractor's subcontract is
456 considered an original contract for the sole purpose of determining:

- 457 (i) the subcontractor's time frame to file a notice to hold and claim a lien under
458 Subsection 38-1-7(1); and
- 459 (ii) the original contractor's time frame to file a notice to hold and claim a lien under
460 Subsection 38-1-7(1) for that subcontractor's work.

461 (c) A notice of completion shall include:

462 ~~[(i) the building permit number for the project, or the number assigned to the project by~~
463 ~~the designated agent;]~~

464 (i) the project-identifying information;

465 (ii) the name, address, and telephone number of the person filing the notice of
466 completion;

467 ~~[(iii) the name of the original contractor for the project;]~~

468 ~~[(iv) the address of the project or a description of the location of the project;]~~

469 ~~(v)~~ (iii) the date on which final completion is alleged to have occurred; and

470 ~~(vi)~~ (iv) the method used to determine final completion.

471 (d) For purposes of this section, final completion of the original contract does not occur
472 if work remains to be completed for which the owner is holding payment to ensure completion
473 of the work.

474 (e) (i) Unless a person indicates to the division or designated agent that the person does
475 not wish to receive a notice under this section, electronic notification of the filing of a notice of
476 completion or alternate notice as prescribed in Subsection (1)(a), shall be provided to:

477 (A) each person that filed a notice of commencement for the project;

478 (B) each person that filed preliminary notice for the project; and

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

480 (ii) A person to whom notice is required under this Subsection (1)(e) is responsible for:

481 (A) providing an e-mail address, mailing address, or telefax number to which a notice
482 required by this Subsection (1)(e) is to be sent; and

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

485 (iii) The designated agent fulfills the notice requirement of Subsection (1)(e)(i) when it
486 sends the notice to the e-mail address, mailing address, or telefax number provided to the
487 designated agent, whether or not the notice is actually received.

488 (iv) Upon the filing of a notice of completion, the time periods for filing preliminary
489 notices stated in Section 38-1-27 are modified such that all preliminary notices shall be filed
490 subsequent to the notice of completion and within 10 days from the day on which the notice of
491 completion is filed.

492 (f) A subcontract that is considered an original contract for purposes of this section

493 does not create a requirement for an additional preliminary notice if a preliminary notice has
494 already been given for the labor, service, equipment, and material furnished to the
495 subcontractor who performs substantial work.

496 (2) (a) If a construction project owner, original contractor, subcontractor, or other
497 interested person believes that a notice of completion has been filed erroneously, that owner,
498 original contractor, subcontractor, or other interested person can request from the person who
499 filed the notice of completion evidence establishing the validity of the notice of completion.

500 (b) Within 10 days after the request described in Subsection (2)(a), the person who
501 filed the notice of completion shall provide the requesting person proof that the notice of
502 completion is valid.

503 (c) If the person that filed the notice of completion does not provide proof of the
504 validity of the notice of completion, that person shall immediately cancel the notice of
505 completion from the database in any manner prescribed by the division pursuant to rule.

506 (3) A person filing a notice of completion by alternate filing is responsible for verifying
507 and changing any incorrect information in the notice of completion before the expiration of the
508 time period during which the notice is required to be filed.

509 Section 6. Section **38-1-37** is amended to read:

510 **38-1-37. Application of Section 38-1-27 and Sections 38-1-30 through 38-1-35.**

511 (1) Except as provided in Subsection (3), Section 38-1-27 and Sections 38-1-30
512 through [~~38-1-36~~] 38-1-35 in effect as of May 1, 2005 [~~shall~~] apply to construction projects for
513 which a notice of commencement is filed on or after May 1, 2005.

514 (2) A construction project for which a notice of commencement is filed before May 1,
515 2005 is subject to the provisions of this chapter in effect prior to May 1, 2005.

516 (3) (a) Section 38-1-27 and Sections 38-1-30 through [~~38-1-36~~] 38-1-35 in effect as of
517 May 1, 2005, [~~shall~~] apply to a construction project for which a notice of commencement is
518 filed on or after November 1, 2005 involving a residence, as defined in Subsection
519 38-11-102(22).

520 (b) For a construction project for which a notice of commencement is filed before
521 November 1, 2005 involving a residence, as defined in Subsection 38-11-102(22), the law in
522 effect on April 30, 2005 [~~shall govern~~] governs.

523 Section 7. Section **58-56-20** is amended to read:

524 **58-56-20. Standardized building permit content.**

525 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
526 division shall adopt a standardized building permit form by rule.

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

529 (i) the name and address of:

530 (A) the owner of ~~or~~ the project; and

531 (B) the contractor for the project;

532 (ii) (A) the address of the project; or

533 (B) a general description of the project; ~~and~~

534 (iii) the county in which the project is located;

535 (iv) the tax identification or parcel number of the property on which the project will
536 occur; and

537 ~~(iii)~~ (v) whether the permit applicant is an original contractor or owner-builder.

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

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

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

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

548 (ii) If a compliance agency does not issue a separate permit for different aspects of the
549 same project, the compliance agency may issue a permit for construction without the
550 information required by Subsection (2)(a)~~(iii)~~(v).

551 (d) A compliance agency may require additional information for the issuance of a
552 permit for construction.

553 (4) A local regulator issuing a single-family residential building permit application
554 shall include in the application or attach to the building permit the following notice

555 prominently placed in at least 14-point font: "Decisions relative to this application are subject
556 to review by the chief executive officer of the municipal or county entity issuing the
557 single-family residential building permit and appeal under the International Residential Code."

558 Section 8. **Repealer.**

559 This bill repeals:

560 Section **38-1-36, Construction notice does not impart notice.**

Legislative Review Note
as of **1-29-10 11:54 AM**

Office of Legislative Research and General Counsel

H.B. 126 - State Construction Registry Amendments

Fiscal Note

2010 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or local governments. Businesses may be impacted due to the proposed change in statute.
