

## **Chapter 1b Government Construction Projects**

### **Part 1 General Provisions**

#### **38-1b-101 Title.**

This chapter is known as "Government Construction Projects."

Enacted by Chapter 278, 2012 General Session

#### **38-1b-102 Definitions.**

As used in this chapter:

- (1) "Alternate means" means the same as that term is defined in Section 38-1a-102.
- (2) "Construction project" means the same as that term is defined in Section 38-1a-102.
- (3) "Construction work" means the same as that term is defined in Section 38-1a-102.
- (4) "Designated agent" means the same as that term is defined in Section 38-1a-102.
- (5) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.
- (6) "Government project" means a construction project undertaken by or for:
  - (a) the state, including a department, division, or other agency of the state; or
  - (b) a county, city, town, school district, local district, special service district, community reinvestment agency, or other political subdivision of the state.
- (7) "Government project-identifying information" means:
  - (a) the lot or parcel number of each lot included in the project property that has a lot or parcel number; or
  - (b) the unique project number assigned by the designated agent.
- (8) "Original contractor" means the same as that term is defined in Section 38-1a-102.
- (9) "Owner" means the same as that term is defined in Section 38-1a-102.
- (10) "Owner-builder" means the same as that term is defined in Section 38-1a-102.
- (11) "Private project" means a construction project that is not a government project.
- (12) "Project property" means the same as that term is defined in Section 38-1a-102.
- (13) "Registry" means the same as that term is defined in Section 38-1a-102.

Amended by Chapter 350, 2016 General Session

### **Part 2 Notices Relating to Government Projects**

#### **38-1b-201 Notice of commencement for a government project.**

- (1) No later than 15 days after commencement of physical construction work at a government project site, the original contractor, owner, or owner-builder shall file a notice of commencement with the registry.
- (2) An original contractor, owner, or owner-builder on a government project may file a notice of commencement with the designated agent before the commencement of physical construction work on the project property.

- (3)
  - (a) If duplicate notices of commencement are filed, they shall be combined into one notice for each government project, and any notices filed relate back to the date of the earliest-filed notice of commencement for the project.
  - (b) A duplicate notice of commencement that is untimely filed relates back under Subsection (3) (a) if the earlier filed notice of commencement is timely filed.
  - (c) Duplicate notices of commencement shall be automatically linked by the designated agent.
- (4) The designated agent shall assign each government project a unique project number that:
  - (a) identifies the project; and
  - (b) can be associated with all notices of commencement, preliminary notices, and notices of completion filed in connection with the project.
- (5) A notice of commencement is effective only as to any construction work that is provided after the notice of commencement is filed.
- (6)
  - (a) A notice of commencement shall include:
    - (i) the name, address, and email address of the owner;
    - (ii) the name, address, and email address of the original contractor;
    - (iii) the name, address, and email address of the surety providing any payment bond for the project or, if none exists, a statement that a payment bond was not required for the work being performed;
    - (iv)
      - (A) the address of the project property if the project property can be reasonably identified by an address; or
      - (B) the name and general description of the location of the project property, if the project property cannot be reasonably identified by an address; and
    - (v) the government project-identifying information.
  - (b) A notice of commencement may include a general description of the project.
- (7) If a notice of commencement for a government project is not filed within the time set forth in Subsection (1), then Section 38-1b-202 and Section 38-1b-203, with respect to the filing of a notice of completion, do not apply.
- (8)
  - (a) The burden is upon any person seeking to enforce a notice of commencement to verify the accuracy of information in the notice of commencement and prove that the notice of commencement is filed timely and meets all of the requirements of this section.
  - (b) A substantial inaccuracy in a notice of commencement renders the notice of commencement invalid.
  - (c) A person filing a notice of commencement by alternate means is responsible for verifying and changing any incorrect information in the notice of commencement before the expiration of the time period during which the notice is required to be filed.

Renumbered and Amended by Chapter 278, 2012 General Session

**38-1b-202 Preliminary notice on government project.**

- (1)
  - (a) Except for a person who has a contract with an owner or an owner-builder or a laborer compensated with wages, a subcontractor on a government project shall file a preliminary notice with the registry by the later of:

- (i) 20 days after the subcontractor commences providing construction work to the construction project; and
  - (ii) 20 days after the filing of a notice of commencement, if the subcontractor's work commences before the filing of the first notice of commencement.
- (b) Subsection (1) does not exempt the following from complying with the requirements of this section:
- (i) a temporary labor service company or organization;
  - (ii) a professional employer company or organization; or
  - (iii) any other entity that provides labor.
- (2) A preliminary notice filed within the period described in Subsection (1) is effective as to all construction work that the subcontractor provides to the construction project, including construction work that the subcontractor provides to more than one contractor or subcontractor.
- (3)
- (a) If more than one notice of commencement is filed for a project, a person may attach a preliminary notice to any notice of commencement filed for the project.
  - (b) A preliminary notice attached to an untimely notice of commencement is valid if there is also a valid and timely notice of commencement for the project.
- (4) A preliminary notice filed after the period prescribed by Subsection (1) becomes effective on the date that is five days after the date on which the preliminary notice is filed.
- (5) Except as provided in Subsection (8), failure to file a preliminary notice within the period required by Subsection (1) precludes a person from maintaining any claim for compensation earned for construction work provided to the construction project before the the date that is five days after the preliminary notice was filed, except as against the person with whom the person contracted.
- (6) A preliminary notice on a government project shall include:
- (a) the government project-identifying information;
  - (b) the name, address, and telephone number of the person providing the construction work;
  - (c) the name and address of the person who contracted with the claimant for the providing of construction work;
  - (d) the name of the record or reputed owner;
  - (e) the name of the original contractor under which the claimant is performing or will perform its work; and
  - (f) the address of the project property or a description of the location of the project property.
- (7) Upon request, an original contractor shall provide a subcontractor with the number assigned to the project by the designated agent.
- (8) A person who provides construction work before the filing of a notice of commencement need not file a preliminary notice to maintain any right the person would otherwise have, if the notice of commencement is filed more than 15 days after the day on which the person begins work on the project.
- (9) The burden is upon the person filing a preliminary notice to prove that the person has substantially complied with the requirements of this section.
- (10) Subsections 38-1a-501(1)(e) and (f) and (3) apply to a preliminary notice on a government project under this section to the same extent that those subsections apply under Section 38-1a-501 to a preliminary notice on a project that is not a government project.

Renumbered and Amended by Chapter 278, 2012 General Session  
Amended by Chapter 330, 2012 General Session  
Amended by Chapter 369, 2012 General Session

**38-1b-203 Notice of intent to obtain final completion and notice of completion.**

Sections 38-1a-506 and 38-1a-507 apply to a government project to the same extent as those sections apply to a construction project that is subject to Chapter 1a, Preconstruction and Construction Liens.

Enacted by Chapter 278, 2012 General Session