

Representative Michael T. Morley proposes the following substitute bill:

CONSTRUCTION STANDARD AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: Thomas V. Hatch

LONG TITLE

General Description:

This bill makes changes related to the construction industry.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses standards for filings made to the State Construction Registry;
- ▶ requires notice of subsequent filings to a person who has filed a notice for a construction project;
- ▶ addresses who may file a notice of commencement;
- ▶ addresses notice filed on behalf of another person;
- ▶ provides that a person filing a notice in the State Construction Registry is responsible for the correctness and accuracy of the information;
- ▶ addresses the designated agent's responsibilities for maintaining data entry accuracy standards and other responsibilities;
- ▶ addresses the effect of an inaccuracy on a filing in the State Construction Registry;
- ▶ requires the filing of a notice of completion;
- ▶ addresses the effect of failure to file a required notice in the State Construction Registry;



- 26 ▶ provides liability protection to the designated agent for the designated agent's
- 27 maintenance of the State Construction Registry;
- 28 ▶ provides for standardized building permit forms; and
- 29 ▶ makes technical changes.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill provides an effective date.

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **38-1-7**, as last amended by Chapter 64, Laws of Utah 2005

36a ~~Ĥ~~→ **38-1-11**, as last amended by Chapter 64, Laws of Utah 2005

36b **38-1-24**, No Change Since 1953 ←~~Ĥ~~

37 **38-1-27**, as last amended by Chapter 64, Laws of Utah 2005

38 **38-1-30**, as last amended by Chapter 64, Laws of Utah 2005

39 **38-1-31**, as last amended by Chapter 64, Laws of Utah 2005

40 **38-1-32**, as last amended by Chapter 64, Laws of Utah 2005

41 **38-1-33**, as last amended by Chapter 64, Laws of Utah 2005

42 **38-1-35**, as enacted by Chapter 250, Laws of Utah 2004

42a ~~Ĥ~~→ **38-9-4**, as repealed and reenacted by Chapter 125, Laws of Utah 1997 ←~~Ĥ~~

43 ENACTS:

44 **58-56-18**, Utah Code Annotated 1953

45 **58-56-19**, Utah Code Annotated 1953



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

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

49 **38-1-7. Notice of claim -- Contents -- Recording -- Service on owner of property.**

50 (1) (a) (i) Except as modified in Section 38-1-27, a person claiming benefits under this
51 chapter shall file for record with the county recorder of the county in which the property, or
52 some part of the property, is situated, a written notice to hold and claim a lien within 90 days
53 from the date of final completion of the original contract under which the claimant claims a
54 lien under this chapter.

55 (ii) For purposes of this Subsection (1), final completion of the original contract
56 means:

57 [(i)] (A) if as a result of work performed under the original contract a permanent
58 certificate of occupancy is required for [~~such~~] the work, the date of issuance of a permanent
59 certificate of occupancy by the local government entity having jurisdiction over the
60 construction project;

61 [(ii)] (B) if no certificate of occupancy is required by the local government entity
62 having jurisdiction over the construction project, but as a result of the work performed under
63 the original contract an inspection is required as per state-adopted building codes for [~~such~~] the
64 work, the date of the final inspection for [~~such~~] the work by the local government entity having
65 jurisdiction over the construction project; or

66 [(iii)] (C) if with regard to work performed under the original contract no certificate of
67 occupancy and no final inspection are required as per state-adopted building codes by the local
68 government entity having jurisdiction over the construction project, the date on which there
69 remains no substantial work to be completed to finish [~~such~~] the work on the original contract.

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

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

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

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

78 (i) repair work; or

79 (ii) warranty work.

80 (d) Notwithstanding Subsection (1)(a)[~~(iii)~~](ii), final completion of the original
81 contract does not occur if work remains to be completed for which the owner is holding
82 payment to ensure completion of that work.

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

84 (i) the name of the reputed owner if known or, if not known, the name of the record
85 owner;

86 (ii) the name of the person:

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

88 (B) to whom the lien claimant furnished the equipment or material;
 89 (iii) the time when:
 90 (A) the first and last labor or service was performed; or
 91 (B) the first and last equipment or material was furnished;
 92 (iv) a description of the property, sufficient for identification;
 93 (v) the name, current address, and current phone number of the lien claimant;
 94 (vi) the amount of the lien claim;
 95 (vii) the signature of the lien claimant or the lien claimant's authorized agent;
 96 (viii) an acknowledgment or certificate as required under Title 57, Chapter 3,
 97 Recording of Documents; and

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

101 (b) Substantial compliance with the requirements of this [~~Subsection (2)~~] chapter is
 102 sufficient to hold and claim a lien.

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

105 (i) the reputed owner of the real property; or
 106 (ii) the record owner of the real property.

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

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

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

115a **H→ Section 2. Section 38-1-11 is amended to read:**

115b **38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected -- Instructions**
 115c **and form affidavit and motion.**

115d **(1) A lien claimant shall file an action to enforce the lien filed under this chapter within 180**
 115e **days from the day on which the lien claimant filed a notice of claim under Section 38-1-7.**

115f **(2) (a) Within the time period provided for filing in Subsection (1) the lien claimant shall file**
 115g **for record with the county recorder of each county in which the lien is recorded a notice of**

115h the ~~H~~pendency of the action, in the manner provided in actions affecting the title or right to
 115i possession of real property, or the lien shall be void, except as to persons who have been made parties
 115j to the action and persons having actual knowledge of the commencement of the action.

115k (b) The burden of proof shall be upon the lien claimant and those claiming under the lien
 115l claimant to show actual knowledge.

115m (3) (a) A lien filed under this chapter is automatically and immediately void if an action
 115n to enforce the lien is not filed within the time required by Section 38-1-11.

115o (b) Notwithstanding Section 78-12-40, a court has no subject matter jurisdiction to
 115p adjudicate a lien that becomes void under Subsection (3)(a).

115q ~~[(3)]~~ (4) This section may not be interpreted to impair or affect the right of any person to
 115r whom a debt may be due for any work done or materials furnished to maintain a personal action to
 115s recover the same.

115t ~~[(4)]~~ (5) (a) If a lien claimant files an action to enforce a lien filed under this chapter
 115u involving a residence, as defined in Section 38-11-102, the lien claimant shall include with the service of
 115v the complaint on the owner of the residence:

115w (i) instructions to the owner of the residence relating to the owner's rights under Title 38,
 115x Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

115y (ii) a form affidavit to enable the owner of the residence to specify the grounds upon which the
 115z owner may exercise available rights under Title 38, Chapter 11, Residence Lien Restriction and Lien
 115aa Recovery Fund Act.

115ab (b) The instructions and form affidavit required by Subsection ~~[(4)]~~ (5) (a) shall meet the
 115ac requirements established by rule by the Division of Occupational and Professional Licensing in
 115ad accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

115ae (c) If a lien claimant fails to provide to the owner of the residence the instructions and form
 115af affidavit required by Subsection ~~[(4)]~~ (5) (a), the lien claimant shall be barred from maintaining or
 115ag enforcing the lien upon the residence.

115ah (d) Judicial determination of the rights and liabilities of the owner of the residence under Title
 115ai 38, Chapters 1 and 11, and Title 14, Chapter 2, shall be stayed until after the owner has been given a
 115aj reasonable period of time to establish compliance with Subsections 38-11-204(4)(a) and (4)(b) through
 115ak an informal proceeding, as set forth in Title 63, Chapter 46b, Administrative Procedures Act,
 115al commenced within 30 days of the owner being served summons in the foreclosure action, at the
 115am Division of Occupational and Professional Licensing and obtain a certificate of compliance or denial of
 115an certificate of compliance, as defined in Section 38-11-102.

115ao (e) An owner applying for a certificate of compliance under Subsection ~~[(4)]~~ (5) (d) shall send
 115ap by certified mail to all lien claimants:

115aq (i) a copy of the application for a certificate of compliance; and

115ar (ii) all materials filed in connection with the application. ←H
115as (f) The Division of Occupational and Professional Licensing shall notify all lien claimants
115at listed in an owner's application for a certificate of compliance under Subsection [~~(4)~~] (5) (d) of the
115au issuance or denial of a certificate of compliance.
115av [~~(5)~~] (6) The written notice requirement applies to liens filed on or after July 1, 2004.
115aw Section [~~2~~] 3 . Section 38-1-24 is amended to read:
115ax 38-1-24. Cancellation of record -- Penalty.
115ay The claimant of any lien filed as provided herein, on the payment of the amount thereof
115az together with the costs incurred and the fees for cancellation, shall at the request of any person
115ba interested in the property charged therewith cause said lien to be canceled of record within ten days
115bb from the request, and upon failure to so cancel his lien within the time aforesaid shall forfeit and pay
115bc to the person making the request the sum of [~~\$20~~] \$100 per day or actual damages, whichever is
115bd greater, until the same shall be canceled, to be recovered in the same manner as other debts. ←H
116 Section H→ [2] 4 ←H . Section 38-1-27 is amended to read:
117 38-1-27. State Construction Registry -- Form and contents of notice of
118 commencement, preliminary notice, and notice of completion.

- 119 (1) As used in this section and Sections 38-1-30 through 38-1-37:
- 120 (a) "Alternate filing" means a legible and complete filing made in a manner established
- 121 by the division under Subsection (2)(e) other than an electronic filing.
- 122 (b) "Cancel" means to indicate that a filing is no longer given effect.
- 123 (c) "Construction project," "project," or "improvement" means all labor, equipment,
- 124 and materials provided:
- 125 (i) under an original contract; or
- 126 (ii) by, or under contracts with, an owner-builder.
- 127 [~~(i) a specific project or improvement for which one building permit is issued; or~~]
- 128 [~~(ii) if no building permit is required, the improvement or work required by a contract~~
- 129 ~~between the owner and an original contractor under Section 38-1-2.]~~
- 130 (d) "Database" means the State Construction Registry created in this section.
- 131 (e) (i) "Designated agent" means the third party the Division of Occupational and
- 132 Professional Licensing contracts with to create and maintain the State Construction Registry.
- 133 (ii) The designated agent is not an agency, instrumentality, or a political subdivision of
- 134 the state.
- 135 (f) "Division" means the Division of Occupational and Professional Licensing.
- 136 (g) "Interested person" means a person who may be affected by a construction project.
- 137 (h) "Original contract":
- 138 (i) means a contract between an original contractor, as that term is used in Section
- 139 38-1-2, and the owner of real property or the owner's agent to furnish labor, equipment, or
- 140 materials to the property; and
- 141 (ii) does not include a contract between an owner-builder and another person.
- 142 (i) "Owner-builder" means an owner of real property who obtains a building permit for
- 143 work on the owner's property that will consist of more than one contract between the owner
- 144 and another person.
- 145 [~~(h)~~] (j) "Program" means the State Construction Registry Program created in this
- 146 section.
- 147 (2) Subject to receiving adequate funding through a legislative appropriation and
- 148 contracting with an approved third party vendor who meets the requirements of Sections
- 149 38-1-30 through 38-1-37, there is created the State Construction Registry Program that shall:

- 150 (a) (i) assist in protecting public health, safety, and welfare; and
151 (ii) promote a fair working environment;
152 (b) be overseen by the division with the assistance of the designated agent;
153 (c) provide a central repository for notices of commencement, preliminary notices, and
154 notices of completion filed in connection with all privately owned construction projects as well
155 as all state and local government owned construction projects throughout Utah;
156 (d) be accessible for filing and review by way of the program Internet website of:
157 (i) notices of commencement;
158 (ii) preliminary notices; and
159 (iii) notices of completion;
160 (e) accommodate:
161 (i) electronic filing of the notices described in Subsection (2)(d); and
162 (ii) alternate filing of the notices described in Subsection (2)(d) by U.S. mail, telefax,
163 or any other alternate method as provided by rule made by the division in accordance with Title
164 63, Chapter 46a, Utah Administrative Rulemaking Act;
165 (f) (i) provide electronic notification for up to three e-mail addresses for each interested
166 person or company who requests notice from the construction notice registry; and
167 (ii) provide alternate means of notification for a person who makes an alternate filing,
168 including U.S. mail, telefax, or any other method as prescribed by rule made by the division in
169 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and
170 (g) provide hard-copy printing of electronic receipts for an individual filing evidencing
171 the date and time of the individual filing and the content of the individual filing.
172 (3) (a) The designated agent shall provide notice of all other filings for a project to any
173 person who files a notice of commencement, preliminary notice, or notice of completion for
174 that project, unless the person:
175 (i) requests that the person not receive notice of other filings; or
176 (ii) does not provide the designated agent with the person's contact information in a
177 manner that adequately informs the designated agent.
178 [~~(3)~~(a)] (b) An interested person may request notice of filings related to a project.
179 [~~(b)~~] (c) The database shall be indexed by:
180 (i) owner name;

- 181 (ii) original contractor name;
 - 182 (iii) subdivision, development, or other project name, if any;
 - 183 (iv) project address;
 - 184 (v) lot or parcel number;
 - 185 (vi) unique project number assigned by the designated agent; and
 - 186 (vii) any other identifier that the division considers reasonably appropriate in
187 collaboration with the designated agent.
- 188 (4) (a) In accordance with the process required by Section 63-38-3.2, the division shall
189 establish the fees for:
- 190 (i) a notice of commencement;
 - 191 (ii) a preliminary notice;
 - 192 (iii) a notice of completion;
 - 193 (iv) a request for notice;
 - 194 (v) providing a required notice by an alternate method of delivery;
 - 195 (vi) a duplicate receipt of a filing; and
 - 196 (vii) account setup for a person who wishes to be billed periodically for filings with the
197 database.
- 198 (b) The fees allowed under Subsection (4)(a) may not exceed the amount reasonably
199 necessary to create and maintain the database.
- 200 (c) The fees established by the division may vary by method of filing if one form of
201 filing is more costly to process than another form of filing.
- 202 (d) Notwithstanding Subsection 63-38-3.2(2)(c), the division need not submit the fee
203 schedule for fees allowed by [~~this Subsection (4)~~] Subsections (4)(a)(i) through (vii) to the
204 Legislature until the 2006 General Session.
- 205 (e) The division may provide by contract that the designated agent may retain all fees
206 collected by the designated agent except that the designated agent shall remit to the division the
207 cost of the division's oversight under Subsection (2)(b).
- 208 (5) (a) The database is classified as a public record under Title 63, Chapter 2,
209 Government Records Access and Management Act, unless otherwise classified by the division.
- 210 (b) A request for information submitted to the designated agent is not subject to Title
211 63, Chapter 2, Government Records Access and Management Act.

212 (c) Information contained in a public record contained in the database shall be
213 requested from the designated agent.

214 (d) The designated agent may charge a commercially reasonable fee allowed by the
215 designated agent's contract with the division for providing information under Subsection (5)(c).

216 (e) Notwithstanding Title 63, Chapter 2, Government Records Access and
217 Management Act, if information is available in a public record contained in the database, a
218 person may not request the information from the division.

219 (f) (i) A person may request information that is not a public record contained in the
220 database from the division in accordance with Title 63, Chapter 2, Government Records
221 Access and Management Act.

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

224 (6) The following are not an adjudicative proceeding under Title 63, Chapter 46b,
225 Administrative Procedures Act:

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

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

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

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

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

234 (b) A determination that a person is delinquent on the payment of a fee for filing
235 established under Subsection (4) shall be made in accordance with Title 63, Chapter 46b,
236 Administrative Procedures Act.

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

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

242 (10) A person filing a notice of commencement, preliminary notice, or notice of

243 completion is responsible for verifying the accuracy of information entered into the database,
244 whether the person files electronically or by alternate or third-party filing.

245 Section ~~H~~→ [3] 5 ←~~H~~ . Section 38-1-30 is amended to read:

246 **38-1-30. Third-party contract -- Designated agent.**

247 (1) The division shall contract in accordance with Title 63, Chapter 56, Utah
248 Procurement Code, with a third party to establish and maintain the database for the purposes
249 established under this section, Section 38-1-27, and Sections 38-1-31 through 38-1-37.

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

252 (i) local government entities issuing building permits;

253 (ii) original contractors;

254 (iii) subcontractors; and

255 (iv) other interested persons.

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

257 ~~(b)~~ (c) The division and the designated agent shall design, develop, and test the
258 database for full implementation on May 1, 2005.

259 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
260 division shall make rules and develop procedures for:

261 (a) the division to oversee and enforce this section, Section 38-1-27, and Sections
262 38-1-31 through 38-1-37;

263 (b) the designated agent to administer this section, Section 38-1-27, and Sections
264 38-1-31 through 38-1-37; and

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

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

269 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
270 division shall make rules to allow the designated agent to periodically archive projects from the
271 database.

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

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

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

276 (iii) one year after the day on which a filing is cancelled under Subsection
277 38-1-32(3)(c) or 38-1-33(2)(c).

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

280 (5) The designated agent shall carry errors and omissions insurance in the amounts
281 established by rule made by the division in accordance with Title 63, Chapter 46a, Utah
282 Administrative Rulemaking Act.

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

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

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

289 Section ~~H~~→ [4] 6 ←~~H~~ . Section 38-1-31 is amended to read:

290 **38-1-31. Building permit -- Construction -- Notice registry -- Notice of**
291 **commencement of work.**

292 (1) (a) (i) For a construction project where a building permit is issued to an original
293 contractor or owner-builder, within 15 days after the issuance of the building permit, the local
294 government entity issuing that building permit shall input the building permit application and
295 transmit the building permit information to the database electronically by way of the Internet or
296 computer modem or by any other means and such information shall form the basis of a notice
297 of commencement.

298 (ii) The person to whom a building permit, filed under Subsection (1)(a)(i), is issued is
299 ~~H~~→ [considered to be the person filing the notice of commencement] responsible for the accuracy
299a of the information in the building permit ←~~H~~ .

300 [(ii)] (iii) For the purposes of classifying a record under Title 63, Chapter 2,
301 Government Records Access and Management Act, building permit information transmitted
302 from a local governmental entity to the database shall be classified in the database by the
303 division notwithstanding the local governmental entity's classification of the building permit
304 information.

305 (b) For a construction project where a building permit is not issued, within 15 days
306 after commencement of physical construction work at the project site, the original contractor
307 ~~[shall]~~ or owner-builder may file a notice of commencement with the database.

308 (c) An owner of construction~~[, a lender, surety, or other interested person]~~ or an
309 original contractor may file a notice of commencement with the designated agent within the
310 time prescribed by Subsections (1)(a) and (b).

311 (d) (i) If duplicate notices of commencement are filed, they shall be combined into one
312 notice for each project and any notices filed relate back to the date of the earliest-filed notice of
313 commencement for the project.

314 (ii) A duplicate notice of commencement that is untimely filed relates back under
315 Subsection (1)(d)(i) if the earlier filed notice of commencement is timely filed.

316 (iii) On January 1, 2007 and thereafter, duplicate notices of commencement shall be
317 automatically linked by the designated agent.

318 (e) The designated agent shall assign each construction project a unique project number
319 that:

320 (i) identifies each construction project; and

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

323 ~~[(e) (i) A notice of commencement is effective as to all labor, service, equipment, and~~
324 ~~material furnished to the construction project after the filing of the notice of commencement.]~~

325 ~~[(f)]~~ (f) A notice of commencement is effective only as to ~~[the]~~ any labor, service,
326 equipment, and material furnished to the construction project that is ~~[provided]~~ furnished
327 subsequent to the filing of the notice of commencement.

328 (2) (a) The content of a notice of commencement shall include the following:

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

330 (ii) the name and address of the:

331 (A) original contractor; and

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

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

335 (B) the name and general description of the location of the project if the project cannot

336 be reasonably identified by an address[;].

337 (b) A notice of commencement may include:

338 [~~(iv)~~] (i) a general description of the project; [~~and~~] or

339 [~~(v)~~] (ii) the lot or parcel number, and any subdivision, development, or other project
340 name, of the real property upon which the project is to be constructed if the project is subject to
341 mechanics' liens.

342 [~~(b)~~] (c) The content of a notice of commencement need not include all of the items
343 listed in Subsection (2)(a) if:

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

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

347 (3) If a notice of commencement for a construction project is not filed within the time
348 set forth in Subsections 38-1-31(1)(a) and (b), the following do not apply:

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

350 (b) Section 38-1-33.

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

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

355 (ii) all interested persons who have requested such notice for the project.

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

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

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

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

364 (5) (a) The burden is upon any person seeking to enforce [~~the~~] a notice of
365 commencement to verify the accuracy of information in the notice of commencement and
366 prove that the notice of commencement is filed timely and meets all of the requirements in this

367 section.

368 (b) A substantial inaccuracy ~~H→~~ [or misinformation] ~~←H~~ in a notice of
 368a commencement renders
 369 the notice of commencement unenforceable.

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

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

375 Section ~~H→~~ [5] 7 ~~←H~~ . Section 38-1-32 is amended to read:

376 **38-1-32. Preliminary notice -- Subcontractor or supplier.**

377 (1) (a) (i) A subcontractor or supplier shall file a preliminary notice with the database
 378 within the later of:

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

381 (B) 20 days after the filing of a notice of commencement.

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

386 (iii) (A) If more than one notice of commencement is filed for a project, a person may
 387 attach a preliminary notice to any of the notices of commencement filed for the project.

388 (B) A preliminary notice attached to an untimely notice of commencement is valid if
 389 there is also a valid and timely notice of commencement for the project to which the
 390 preliminary notice may attach.

391 (b) If a subcontractor or supplier files a preliminary notice after the period prescribed
 392 by Subsection (1)(a), the preliminary notice becomes effective five days after the day on which
 393 the preliminary notice is filed.

394 (c) Failure to file a preliminary notice within the period required by Subsection (1)(a)
 395 precludes a subcontractor or supplier from [filing] maintaining any claim for compensation
 396 earned for performance of labor or service or supply of materials or equipment furnished to the
 397 construction project before the expiration of five days after the late filing of a preliminary

398 notice, except as against the person with whom the subcontractor or supplier contracted.

399 ~~[(d) (i) The preliminary notice must be filed before a notice of lien may be filed with~~
400 ~~the county recorder pursuant to Section 38-1-7.]~~

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

403 (B) ~~Ĥ~~→ [Notwithstanding Subsection (1)(d)(i)(A), a person may file a notice to hold and
404 claim a lien under Section 38-1-7 without proving to the county recorder that the person filed a
405 preliminary notice] A county recorder need not verify that a valid preliminary notice is
405a filed when a person files a notice to hold and claim a lien under Section 38-1-17 ←Ĥ .

406 (ii) The content of a preliminary notice shall include ~~[the following]:~~

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

409 ~~[(A)]~~ (B) the name, address, and telephone number of the person furnishing the labor,
410 service, equipment, or material;

411 ~~[(B)]~~ (C) the name and address of the person who contracted with the claimant for the
412 furnishing of the labor, service, equipment, or material;

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

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

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

417 (iii) Upon request by a subcontractor or supplier, an original contractor shall provide
418 the subcontractor or supplier with the building permit number for the project, or the number
419 assigned to the project by the designated agent.

419a **Ĥ→ (e) An original contractor, or other person who has a contract directly with the owner of a**
419b **construction project, need not file a preliminary notice under this section. ←Ĥ**

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

423 (A) the person filing the preliminary notice;

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

425 (C) all interested persons who have requested such notice for the project.

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

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

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

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

434 (b) The burden is upon the person filing the preliminary notice to prove that the
435 [~~preliminary notice is filed timely and~~] person has substantially [~~meets all of~~] complied with
436 the requirements of this section.

437 (c) Subject to Subsection (1)(d), a person required by this section to give preliminary
438 notice is only required to give one notice for each project.

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

442 (3) (a) If a construction project owner, original contractor, subcontractor, or other
443 interested person believes that a preliminary notice has been filed erroneously, that owner,
444 original contractor, subcontractor, or other interested person can request from the person who
445 filed the preliminary notice evidence establishing the validity of the preliminary notice.

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

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

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

455 Section ~~Ĥ~~ → [6] § ~~Ĥ~~ . Section 38-1-33 is amended to read:

456 **38-1-33. Notice of completion.**

457 (1) (a) (i) Upon final completion of a construction project[;]:

458 (A) an owner of a construction project[;] or an original contractor[; ~~a lender that has~~
459 ~~provided financing for the construction project, or surety that has provided bonding for the~~

460 ~~construction project,~~] may file a notice of completion with the database[-]; and
461 (B) a lender that has provided financing for the construction project, ~~H~~→ [or] a ~~H~~←
461a surety that has
462 provided bonding for the construction project ~~H~~→ , or a title company issuing a policy on
462a the construction project ~~H~~← , may file a notice of completion.

463 (ii) Final completion, for purposes of this Subsection (1), shall mean:

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

467 (B) if no certificate of occupancy is required by the local government entity having
468 jurisdiction over the construction project, but as a result of the work performed under the
469 original contract an inspection is required for such work, the date of the final inspection for
470 such work by the local government entity having jurisdiction over the construction project; or

471 (C) if with regard to the work performed under the original contract no certificate of
472 occupancy and no final inspection are required by the local government entity having
473 jurisdiction over the construction project, the date on which there remains no substantial work
474 to be completed to finish such work on the original contract.

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

478 (i) the subcontractor's time frame to file a notice to hold and claim a lien under
479 Subsection 38-1-7(1); and

480 (ii) the original contractor's time frame to file a notice to hold and claim a lien under
481 Subsection 38-1-7(1) for that subcontractor's work.

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

483 (i) repair work; or

484 (ii) warranty work.

485 (d) A notice of completion shall include:

486 (i) the building permit number for the project, or the number assigned to the project by
487 the designated agent;

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

490 (iii) the name of the original contractor for the project;

491 (iv) the address of the project or a description of the location of the project;

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

493 (vi) the method used to determine final completion.

494 [~~(d)~~] (e) Notwithstanding Subsection (1)(a)(ii)[~~(c)~~], final completion of the original
495 contract does not occur if work remains to be completed for which the owner is holding
496 payment to ensure completion of the work.

497 [~~(e)~~] (f) (i) Unless a person indicates to the division or designated agent that the person
498 does not wish to receive a notice under this section, electronic notification of the filing of a
499 notice of completion or alternate notice as prescribed in Subsection (1)(a), shall be provided to:

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

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

502 (C) all interested persons who have requested notice for the project.

503 (ii) A person to whom notice is required under Subsection (1)[~~(e)~~](f) is responsible for:

504 (A) providing an e-mail address, mailing address, or telefax number to which a notice
505 required by Subsection (1)[~~(e)~~](f) is to be sent; and

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

508 (iii) The designated agent fulfills the notice requirement of Subsection (1)[~~(e)~~](f)(i)
509 when it sends the notice to the e-mail address, mailing address, or telefax number provided to
510 the designated agent, whether or not the notice is actually received.

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

515 [~~(f)~~] (g) A subcontract that is considered an original contract for purposes of this
516 section shall not create a requirement for an additional preliminary notice if a preliminary
517 notice has already been given for the labor, service, equipment, and material furnished to the
518 subcontractor who performs substantial work.

519 (2) (a) If a construction project owner, original contractor, subcontractor, or other
520 interested person believes that a notice of completion has been filed erroneously, that owner,
521 original contractor, subcontractor, or other interested person can request from the person who

522 filed the notice of completion evidence establishing the validity of the notice of completion.

523 (b) Within ten days after the request described in Subsection (2)(a), the person that
524 filed the notice of completion shall provide the requesting person proof that the notice of
525 completion is valid.

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

529 (3) Notwithstanding Subsection 38-1-7(1)(a)(i), a person claiming benefits under this
530 chapter shall file for record with the county recorder of the county in which the property, or
531 some part of the property is situated, a written notice to hold and claim a lien within:

532 (a) 90 days after the day on which a notice of completion is filed under this section; or

533 (b) 180 days after the day on which occurs final completion, if no notice of completion
534 is filed under this section.

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

538 Section ~~H~~→ [7] 9 ←~~H~~ . Section **38-1-35** is amended to read:

539 **38-1-35. Limitation of liability.**

540 (1) The state and the state's agencies, instrumentalities, [~~and~~] political subdivisions [~~are~~
541 ~~not liable for any errors in receiving, recording, maintaining, and reporting any notices or~~
542 ~~information in the database], and an employee of a governmental entity are immune from suit
543 for any injury resulting from the state construction registry.~~

544 [~~(2) The designated agent shall:~~

545 [~~(a) not be entitled to the liability limitations provided by this section; and]~~

546 [~~(b) maintain a liability insurance policy in an amount set by rule.]~~

547 (2) The designated agent and its principals, agents, and employees are not liable to any
548 person for the accuracy, coherence, suitability, completeness, or legal effectiveness of
549 information filed or searched in the database if the designated agent:

550 (a) develops and maintains the database in compliance with reliability, availability, and
551 security standards established by the division; and

552 (b) meets data entry accuracy standards established by the division under Subsection

553 38-1-30(6)(b).

554 (3) The designated agent and its principals, agents, and employees are not liable for
 555 their inability to perform obligations under this chapter to the extent performance of those
 556 obligations is prevented by:

557 (a) an act of God;

558 (b) a fire;

559 (c) a storm;

560 (d) an earthquake;

561 (e) an accident;

562 (f) governmental interference; or

563 (g) any other event or cause beyond the designated agent's control.

563a **H→ Section [8] 10 . Section 38-9-4 is amended to read:**

563b **38-9-4. Civil liability for filing wrongful lien -- Damages.**

563c **(1) A lien claimant who records or files or causes a wrongful lien as defined in Section 38-9-1**
 563d **to be recorded or filed in the office of the county recorder against real property is liable to a record**
 563e **interest holder for any actual damages proximately caused by the wrongful lien.**

563f **(2) If the person in violation of this Subsection (1) refuses to release or correct the wrongful**
 563g **lien within [20] 10 days from the date of written request from a record interest holder of the real**
 563h **property delivered personally or mailed to the last-known address of the lien claimant, the person is**
 563i **liable to that record interest holder for \$1,000 or for treble actual damages, whichever is greater, and**
 563j **for reasonable attorney fees and costs.**

563k **(3) A person is liable to the record owner of real property for \$3,000 or for treble actual**
 563l **damages, whichever is greater, and for reasonable attorney fees and costs, who records or files or**
 563m **causes to be recorded or filed a wrongful lien as defined in Section 38-9-1 in the office of the county**
 563n **recorder against the real property, knowing or having reason to know that the document:**

563o **(a) is a wrongful lien;**

563p **(b) is groundless; or**

563q **(c) contains a material misstatement or false claim. ←H**

564 **Section H→ [8] 11 ←H . Section 58-56-18 is enacted to read:**

565 **58-56-18. Standardized building permit numbering.**

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

568 **(2) Upon recommendation by the commission, the division shall develop a**
 569 **standardized building permit numbering system for use by any compliance agency in the state**
 570 **that issues a permit for construction.**

571 (3) (a) Beginning on January 1, 2007, any compliance agency issuing a permit for
572 construction shall use the standardized building permit numbering system developed under
573 Subsection (2).

574 (b) Notwithstanding Subsection (3)(a), a compliance agency may use a different
575 numbering system if that numbering system is used in addition to the system developed under
576 Subsection (2).

577 (4) The standardized building permit numbering system developed under Subsection
578 (2) shall include:

579 (a) three alphabetical characters identifying the compliance agency issuing the permit;

580 (b) two numeric digits indicating the day of the month on which the permit is issued;

581 (c) two numeric digits indicating the month in which the permit is issued;

582 (d) two numeric digits indicating the last two digits of the year in which the permit is
583 issued; and

584 (e) three numeric digits indicating the serialized number of the permit issued on a
585 given day.

586 Section ~~H~~→ [9] 12 ←~~H~~ . Section **58-56-19** is enacted to read:

587 **58-56-19. Standardized building permit content.**

588 (1) After receiving a recommendation from the commission, the division shall adopt a
589 standardized building permit form by rule.

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

592 (i) the name and address of the owner of or contractor for the project;

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

594 (B) a general description of the project; and

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

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

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

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

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

606 (c) A compliance agency may require additional information for the issuance of a
607 permit for construction.

608 Section ~~H~~→ [10] 13 ←~~H~~ . **Effective date.**

609 This bill takes effect on May 1, 2006, except that the amendments to Sections 58-56-18
610 and 58-56-19 in this bill take effect on January 1, 2007.

Fiscal Note
Bill Number HB0160S01

Construction Standard Amendments

06-Feb-06

11:21 AM

State Impact

No fiscal impact.

Individual and Business Impact

Local governments may incur costs to reprint forms, modify data bases to accommodate uniform permit numbers, and employee training. These costs may be mitigated by the January 1, 2007 effective date.

Office of the Legislative Fiscal Analyst