

1                                   **CONSTRUCTION STANDARD AMENDMENTS**

2   2006 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Michael T. Morley**

5                                   Senate Sponsor: Thomas V. Hatch

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7 **LONG TITLE**

8 **General Description:**

9           This bill makes changes related to the construction industry.

10 **Highlighted Provisions:**

11           This bill:

- 12           ▶ defines terms;
- 13           ▶ addresses unenforced and wrongful liens;
- 14           ▶ addresses standards for filings made to the State Construction Registry;
- 15           ▶ requires notice of subsequent filings to a person who has filed a notice for a
- 16 construction project;
- 17           ▶ addresses notice filed on behalf of another person;
- 18           ▶ provides that a person filing a notice in the State Construction Registry is
- 19 responsible for the correctness and accuracy of the information;
- 20           ▶ addresses the designated agent's responsibilities for maintaining data entry accuracy
- 21 standards and other responsibilities;
- 22           ▶ addresses the effect of an inaccuracy on a filing in the State Construction Registry;
- 23           ▶ addresses the filing of a notice of completion;
- 24           ▶ addresses the effect of failure to file a required notice in the State Construction
- 25 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 **38-1-2**, as last amended by Chapter 365, Laws of Utah 1999

37 **38-1-7**, as last amended by Chapter 64, Laws of Utah 2005

38 **38-1-11**, as last amended by Chapter 64, Laws of Utah 2005

39 **38-1-24**, Utah Code Annotated 1953

40 **38-1-27**, as last amended by Chapter 64, Laws of Utah 2005

41 **38-1-30**, as last amended by Chapter 64, Laws of Utah 2005

42 **38-1-31**, as last amended by Chapter 64, Laws of Utah 2005

43 **38-1-32**, as last amended by Chapter 64, Laws of Utah 2005

44 **38-1-33**, as last amended by Chapter 64, Laws of Utah 2005

45 **38-1-35**, as enacted by Chapter 250, Laws of Utah 2004

46 **38-9-4**, as repealed and reenacted by Chapter 125, Laws of Utah 1997

47 ENACTS:

48 **58-56-18**, Utah Code Annotated 1953

49 **58-56-19**, Utah Code Annotated 1953



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

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

53 **38-1-2. "Contractors" and "subcontractors" defined.**

54 [~~Any~~] (1) Except for a person who contracts with an owner-builder, a person who does  
55 work or furnishes materials by contract, express or implied, with the owner, as provided in this  
56 chapter, [~~shall be~~] is considered an original contractor, and [~~all~~] any other [~~persons~~] person  
57 doing work or furnishing materials [~~shall be~~] is considered [~~subcontractors~~] to be a

58 subcontractor.

59 (2) As used in this chapter:

60 (a) "original contract" means a contract between an original contractor and the owner  
61 of real property to furnish labor, equipment, or materials to the real property;

62 (b) "original contract" does not include a contract between an owner-builder and  
63 another person;

64 (c) an "original contract" is considered to exist between an owner-builder and itself;  
65 and

66 (d) "owner-builder" means an owner of real property who obtains a building permit for  
67 work on the owner's property that will consist of more than one contract between the owner  
68 and any other person.

69 Section 2. Section **38-1-7** is amended to read:

70 **38-1-7. Notice of claim -- Contents -- Recording -- Service on owner of property.**

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

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

78 [(†)] (A) if as a result of work performed under the original contract a permanent  
79 certificate of occupancy is required for [~~such~~] the work, the date of issuance of a permanent  
80 certificate of occupancy by the local government entity having jurisdiction over the  
81 construction project;

82 [(†)] (B) if no certificate of occupancy is required by the local government entity  
83 having jurisdiction over the construction project, but as a result of the work performed under  
84 the original contract an inspection is required as per state-adopted building codes for [~~such~~] the  
85 work, the date of the final inspection for [~~such~~] the work by the local government entity having

86 jurisdiction over the construction project; or

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

91        (b) Notwithstanding Section 38-1-2, where a subcontractor performs substantial work  
92 after the applicable dates established by Subsections (1)(a)[~~(i)~~](ii)(A) and [~~(i)~~] (B), that  
93 subcontractor's subcontract shall be considered an original contract for the sole purpose of  
94 determining:

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

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

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

100            (i) repair work; or

101            (ii) warranty work.

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

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

106            (i) the name of the reputed owner if known or, if not known, the name of the record  
107 owner;

108            (ii) the name of the person:

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

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

111            (iii) the time when:

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

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

- 114 (iv) a description of the property, sufficient for identification;
- 115 (v) the name, current address, and current phone number of the lien claimant;
- 116 (vi) the amount of the lien claim;
- 117 (vii) the signature of the lien claimant or the lien claimant's authorized agent;
- 118 (viii) an acknowledgment or certificate as required under Title 57, Chapter 3,
- 119 Recording of Documents; and
- 120 (ix) if the lien is on an owner-occupied residence, as defined in Section 38-11-102, a
- 121 statement describing what steps an owner, as defined in Section 38-11-102, may take to require
- 122 a lien claimant to remove the lien in accordance with Section 38-11-107.

123 (b) Substantial compliance with the requirements of this [~~Subsection (2)~~] chapter is

124 sufficient to hold and claim a lien.

125 (3) (a) Within 30 days after filing the notice of lien, the lien claimant shall deliver or

126 mail by certified mail a copy of the notice of lien to:

- 127 (i) the reputed owner of the real property; or
- 128 (ii) the record owner of the real property.

129 (b) If the record owner's current address is not readily available to the lien claimant, the

130 copy of the claim may be mailed to the last-known address of the record owner, using the

131 names and addresses appearing on the last completed real property assessment rolls of the

132 county where the affected property is located.

133 (c) Failure to deliver or mail the notice of lien to the reputed owner or record owner

134 precludes the lien claimant from an award of costs and attorneys' fees against the reputed

135 owner or record owner in an action to enforce the lien.

136 (4) The Division of Occupational and Professional Licensing shall make rules

137 governing the form of the statement required under Subsection (2)(a)(ix).

138 Section 3. Section **38-1-11** is amended to read:

139 **38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected --**

140 **Instructions and form affidavit and motion.**

141 (1) A lien claimant shall file an action to enforce the lien filed under this chapter within

142 180 days from the day on which the lien claimant filed a notice of claim under Section 38-1-7.

143 (2) (a) Within the time period provided for filing in Subsection (1) the lien claimant  
144 shall file for record with the county recorder of each county in which the lien is recorded a  
145 notice of the pendency of the action, in the manner provided in actions affecting the title or  
146 right to possession of real property, or the lien shall be void, except as to persons who have  
147 been made parties to the action and persons having actual knowledge of the commencement of  
148 the action.

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

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

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

155 [~~3~~] (4) This section may not be interpreted to impair or affect the right of any person  
156 to whom a debt may be due for any work done or materials furnished to maintain a personal  
157 action to recover the same.

158 [~~4~~] (5) (a) If a lien claimant files an action to enforce a lien filed under this chapter  
159 involving a residence, as defined in Section 38-11-102, the lien claimant shall include with the  
160 service of the complaint on the owner of the residence:

161 (i) instructions to the owner of the residence relating to the owner's rights under Title  
162 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

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

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

169 (c) If a lien claimant fails to provide to the owner of the residence the instructions and

170 form affidavit required by Subsection [~~(4)~~] (5)(a), the lien claimant shall be barred from  
171 maintaining or enforcing the lien upon the residence.

172 (d) Judicial determination of the rights and liabilities of the owner of the residence  
173 under Title 38, Chapters 1 and 11, and Title 14, Chapter 2, shall be stayed until after the owner  
174 has been given a reasonable period of time to establish compliance with Subsections  
175 38-11-204(4)(a) and (4)(b) through an informal proceeding, as set forth in Title 63, Chapter  
176 46b, Administrative Procedures Act, commenced within 30 days of the owner being served  
177 summons in the foreclosure action, at the Division of Occupational and Professional Licensing  
178 and obtain a certificate of compliance or denial of certificate of compliance, as defined in  
179 Section 38-11-102.

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

- 182 (i) a copy of the application for a certificate of compliance; and
- 183 (ii) all materials filed in connection with the application.

184 (f) The Division of Occupational and Professional Licensing shall notify all lien  
185 claimants listed in an owner's application for a certificate of compliance under Subsection [~~(4)~~]  
186 (5)(d) of the issuance or denial of a certificate of compliance.

187 [~~(5)~~] (6) The written notice requirement applies to liens filed on or after July 1, 2004.  
188 Section 4. Section **38-1-24** is amended to read:

189 **38-1-24. Cancellation of record -- Penalty.**

190 The claimant of any lien filed as provided herein, on the payment of the amount thereof  
191 together with the costs incurred and the fees for cancellation, shall at the request of any person  
192 interested in the property charged therewith cause said lien to be canceled of record within ten  
193 days from the request, and upon failure to so cancel his lien within the time aforesaid shall  
194 forfeit and pay to the person making the request the sum of [~~\$20~~] \$100 per day or actual  
195 damages, whichever is greater, until the same shall be canceled, to be recovered in the same  
196 manner as other debts.

197 Section 5. Section **38-1-27** is amended to read:

198           **38-1-27. State Construction Registry -- Form and contents of notice of**  
199 **commencement, preliminary notice, and notice of completion.**

200           (1) As used in this section and Sections 38-1-30 through 38-1-37:

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

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

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

206           (i) under an original contract; or

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

208           ~~[(i) a specific project or improvement for which one building permit is issued; or]~~

209           ~~[(ii) if no building permit is required, the improvement or work required by a contract~~  
210 ~~between the owner and an original contractor under Section 38-1-2.]~~

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

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

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

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

217           (g) "Interested person" means a person who may be affected by a construction project.

218           (h) "Program" means the State Construction Registry Program created in this section.

219           (2) Subject to receiving adequate funding through a legislative appropriation and  
220 contracting with an approved third party vendor who meets the requirements of Sections

221 38-1-30 through 38-1-37, there is created the State Construction Registry Program that shall:

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

223           (ii) promote a fair working environment;

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

225           (c) provide a central repository for notices of commencement, preliminary notices, and

226 notices of completion filed in connection with all privately owned construction projects as well  
227 as all state and local government owned construction projects throughout Utah;

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

229 (i) notices of commencement;

230 (ii) preliminary notices; and

231 (iii) notices of completion;

232 (e) accommodate:

233 (i) electronic filing of the notices described in Subsection (2)(d); and

234 (ii) alternate filing of the notices described in Subsection (2)(d) by U.S. mail, telefax,

235 or any other alternate method as provided by rule made by the division in accordance with Title  
236 63, Chapter 46a, Utah Administrative Rulemaking Act;

237 (f) (i) provide electronic notification for up to three e-mail addresses for each interested  
238 person or company who requests notice from the construction notice registry; and

239 (ii) provide alternate means of notification for a person who makes an alternate filing,  
240 including U.S. mail, telefax, or any other method as prescribed by rule made by the division in  
241 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

242 (g) provide hard-copy printing of electronic receipts for an individual filing evidencing  
243 the date and time of the individual filing and the content of the individual filing.

244 (3) (a) The designated agent shall provide notice of all other filings for a project to any  
245 person who files a notice of commencement, preliminary notice, or notice of completion for  
246 that project, unless the person:

247 (i) requests that the person not receive notice of other filings; or

248 (ii) does not provide the designated agent with the person's contact information in a  
249 manner that adequately informs the designated agent.

250 [~~3~~ (a)] (b) An interested person may request notice of filings related to a project.

251 [~~b~~] (c) The database shall be indexed by:

252 (i) owner name;

253 (ii) original contractor name;

254 (iii) subdivision, development, or other project name, if any;  
255 (iv) project address;  
256 (v) lot or parcel number;  
257 (vi) unique project number assigned by the designated agent; and  
258 (vii) any other identifier that the division considers reasonably appropriate in  
259 collaboration with the designated agent.

260 (4) (a) In accordance with the process required by Section 63-38-3.2, the division shall  
261 establish the fees for:

262 (i) a notice of commencement;  
263 (ii) a preliminary notice;  
264 (iii) a notice of completion;  
265 (iv) a request for notice;  
266 (v) providing a required notice by an alternate method of delivery;  
267 (vi) a duplicate receipt of a filing; and  
268 (vii) account setup for a person who wishes to be billed periodically for filings with the  
269 database.

270 (b) The fees allowed under Subsection (4)(a) may not exceed the amount reasonably  
271 necessary to create and maintain the database.

272 (c) The fees established by the division may vary by method of filing if one form of  
273 filing is more costly to process than another form of filing.

274 (d) Notwithstanding Subsection 63-38-3.2(2)(c), the division need not submit the fee  
275 schedule for fees allowed by [~~this Subsection (4)~~] Subsections (4)(a)(i) through (vii) to the  
276 Legislature until the 2006 General Session.

277 (e) The division may provide by contract that the designated agent may retain all fees  
278 collected by the designated agent except that the designated agent shall remit to the division the  
279 cost of the division's oversight under Subsection (2)(b).

280 (5) (a) The database is classified as a public record under Title 63, Chapter 2,  
281 Government Records Access and Management Act, unless otherwise classified by the division.

282 (b) A request for information submitted to the designated agent is not subject to Title  
283 63, Chapter 2, Government Records Access and Management Act.

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

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

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

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

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

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

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

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

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

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

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

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

309 (c) Any order issued in a proceeding described in Subsection (8)(b) may prescribe the

310 method of that person's payment of fees for filing notices with the database after issuance of the  
311 order.

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

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

317 Section 6. Section **38-1-30** is amended to read:

318 **38-1-30. Third-party contract -- Designated agent.**

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

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

- 324 (i) local government entities issuing building permits;
- 325 (ii) original contractors;
- 326 (iii) subcontractors; and
- 327 (iv) other interested persons.

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

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

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

333 (a) the division to oversee and enforce this section, Section 38-1-27, and Sections  
334 38-1-31 through 38-1-37;

335 (b) the designated agent to administer this section, Section 38-1-27, and Sections  
336 38-1-31 through 38-1-37; and

337 (c) the form of submission of an alternate filing, which may include procedures for

338 rejecting an illegible or incomplete filing.

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

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

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

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

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

348 (iii) one year after the day on which a filing is cancelled under Subsection  
349 38-1-32(3)(c) or 38-1-33(2)(c).

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

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

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

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

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

361 Section 7. Section **38-1-31** is amended to read:

362 **38-1-31. Building permit -- Construction -- Notice registry -- Notice of**  
363 **commencement of work.**

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

366 government entity issuing that building permit shall input the building permit application and  
367 transmit the building permit information to the database electronically by way of the Internet or  
368 computer modem or by any other means and such information shall form the basis of a notice  
369 of commencement.

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

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

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

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

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

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

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

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

392 (i) identifies each construction project; and

393 (ii) can be associated with all notices of commencement, preliminary notices, and

394 notices of completion.

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

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

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

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

402 (ii) the name and address of the:

403 (A) original contractor; and

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

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

407 (B) the name and general description of the location of the project if the project cannot  
408 be reasonably identified by an address[;].

409 (b) A notice of commencement may include:

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

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

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

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

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

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

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

422 (b) Section 38-1-33.

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

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

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

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

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

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

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

436 (5) (a) The burden is upon any person seeking to enforce ~~[the]~~ a notice of  
437 commencement to verify the accuracy of information in the notice of commencement and  
438 prove that the notice of commencement is filed timely and meets all of the requirements in this  
439 section.

440 (b) A substantial inaccuracy in a notice of commencement renders the notice of  
441 commencement unenforceable.

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

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

447 Section 8. Section **38-1-32** is amended to read:

448 **38-1-32. Preliminary notice -- Subcontractor or supplier.**

449 (1) (a) (i) [A] Except for a person who has a contract with an owner or an

450 owner-builder, a subcontractor [or supplier] shall file a preliminary notice with the database  
451 within the later of:

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

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

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

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

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

464 (b) If a [~~subcontractor or supplier~~] person files a preliminary notice after the period  
465 prescribed by Subsection (1)(a), the preliminary notice becomes effective five days after the  
466 day on which the preliminary notice is filed.

467 (c) Failure to file a preliminary notice within the period required by Subsection (1)(a)  
468 precludes a [~~subcontractor or supplier~~] person from [~~filing~~] maintaining any claim for  
469 compensation earned for performance of labor or service or supply of materials or equipment  
470 furnished to the construction project before the expiration of five days after the late filing of a  
471 preliminary notice, except as against the person with whom the [~~subcontractor or supplier~~]  
472 person contracted.

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

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

477 (B) A county recorder need not verify that a valid preliminary notice is filed when a

478 person files a notice to hold and claim a lien under Section 38-1-17.

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

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

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

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

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

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

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

490 (iii) Upon request by person identified in Subsection (1)(a)(i), an original contractor  
491 shall provide the person with the building permit number for the project, or the number  
492 assigned to the project by the designated agent.

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

496 (A) the person filing the preliminary notice;

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

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

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

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

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

504 (iii) The designated agent fulfills the notice requirement of Subsection (2)(a)(i) when it  
505 sends the notice to the e-mail address, mailing address, or telefax number provided to the

506 designated agent whether or not the notice is actually received.

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

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

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

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

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

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

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

528 Section 9. Section **38-1-33** is amended to read:

529 **38-1-33. Notice of completion.**

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

531 (A) an owner of a construction project[;] or an original contractor[; a lender that has  
532 provided financing for the construction project, or surety that has provided bonding for the  
533 construction project,] may file a notice of completion with the database[;]; and

534           (B) a lender that has provided financing for the construction project, a surety that has  
535 provided bonding for the construction project, or a title company issuing a policy on the  
536 construction project, may file a notice of completion.

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

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

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

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

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

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

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

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

557           (i) repair work; or

558           (ii) warranty work.

559           (d) A notice of completion shall include:

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

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

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

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

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

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

568 ~~(e)~~ (e) Notwithstanding Subsection (1)(a)(ii)~~(e)~~, final completion of the original  
569 contract does not occur if work remains to be completed for which the owner is holding  
570 payment to ensure completion of the work.

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

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

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

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

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

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

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

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

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

589 ~~(g)~~ (g) A subcontract that is considered an original contract for purposes of this

590 section shall not create a requirement for an additional preliminary notice if a preliminary  
591 notice has already been given for the labor, service, equipment, and material furnished to the  
592 subcontractor who performs substantial work.

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

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

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

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

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

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

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

612 Section 10. Section **38-1-35** is amended to read:

613 **38-1-35. Limitation of liability.**

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

618           ~~[(2) The designated agent shall:]~~  
619           ~~[(a) not be entitled to the liability limitations provided by this section; and]~~  
620           ~~[(b) maintain a liability insurance policy in an amount set by rule.]~~  
621           (2) The designated agent and its principals, agents, and employees are not liable to any  
622 person for the accuracy, coherence, suitability, completeness, or legal effectiveness of  
623 information filed or searched in the database if the designated agent:  
624           (a) develops and maintains the database in compliance with reliability, availability, and  
625 security standards established by the division; and  
626           (b) meets data entry accuracy standards established by the division under Subsection  
627 38-1-30(6)(b).  
628           (3) The designated agent and its principals, agents, and employees are not liable for  
629 their inability to perform obligations under this chapter to the extent performance of those  
630 obligations is prevented by:  
631           (a) an act of God;  
632           (b) a fire;  
633           (c) a storm;  
634           (d) an earthquake;  
635           (e) an accident;  
636           (f) governmental interference; or  
637           (g) any other event or cause beyond the designated agent's control.

638           Section 11. Section **38-9-4** is amended to read:

639           **38-9-4. Civil liability for filing wrongful lien -- Damages.**

640           (1) A lien claimant who records or files or causes a wrongful lien as defined in Section  
641 38-9-1 to be recorded or filed in the office of the county recorder against real property is liable  
642 to a record interest holder for any actual damages proximately caused by the wrongful lien.

643           (2) If the person in violation of this Subsection (1) refuses to release or correct the  
644 wrongful lien within ~~[20]~~ ten days from the date of written request from a record interest holder  
645 of the real property delivered personally or mailed to the last-known address of the lien

646 claimant, the person is liable to that record interest holder for \$1,000 or for treble actual  
647 damages, whichever is greater, and for reasonable attorney fees and costs.

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

- 653 (a) is a wrongful lien;
- 654 (b) is groundless; or
- 655 (c) contains a material misstatement or false claim.

656 Section 12. Section **58-56-18** is enacted to read:

657 **58-56-18. Standardized building permit numbering.**

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

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

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

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

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

- 671 (a) three alphabetical characters identifying the compliance agency issuing the permit;
- 672 (b) two numeric digits indicating the day of the month on which the permit is issued;
- 673 (c) two numeric digits indicating the month in which the permit is issued;

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

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

678 Section 13. Section **58-56-19** is enacted to read:

679 **58-56-19. Standardized building permit content.**

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

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

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

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

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

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

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

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

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

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

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

700 Section 14. **Effective date.**

701 This bill takes effect on May 1, 2006, except that the amendments to Sections 58-56-18

702 and 58-56-19 in this bill take effect on January 1, 2007.