

1 **CONSTRUCTION STANDARD AMENDMENTS**

2 2006 GENERAL SESSION

3 STATE OF UTAH

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

5 Senate Sponsor: _____

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 standards for filings made to the State Construction Registry;
- 14 ▶ requires notice of subsequent filings to a person who has filed a notice for a
- 15 construction project;
- 16 ▶ addresses who may file a notice of commencement;
- 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 ▶ requires 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 **38-1-7**, as last amended by Chapter 64, Laws of Utah 2005
- 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

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 [(†)] (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 for [~~such~~] the work, the date of the final
64 inspection for [~~such~~] the work by the local government entity having jurisdiction over the
65 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 by the local government entity having
68 jurisdiction over the construction project, the date on which there remains no substantial work
69 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)(C), 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).

116 Section 2. 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 3. 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 4. 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 considered to be the person filing the notice of commencement.

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 and
312 automatically linked by the designated agent into one notice for each project and the notices
313 relate back to the date of the earliest-filed notice of 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 (e) The designated agent shall assign each construction project a unique project number
317 that:

318 (i) identifies each construction project; and

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

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

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

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

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

328 (ii) the name and address of the:

329 (A) original contractor; and

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

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

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

335 (b) A notice of commencement may include:

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

337 ~~[(v) (ii) the lot or parcel number, and any subdivision, development, or other project~~

338 name, of the real property upon which the project is to be constructed if the project is subject to
339 mechanics' liens.

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

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

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

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

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

348 (b) Section 38-1-33.

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

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

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

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

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

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

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

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

366 (b) A substantial inaccuracy or misinformation in a notice of commencement renders
367 the notice of commencement unenforceable.

368 (c) A person filing a notice of commencement by alternate filing is responsible for

369 verifying and changing any incorrect information in the notice of commencement before the
370 expiration of the time period during which the notice is required to be filed.

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

373 Section 5. Section **38-1-32** is amended to read:

374 **38-1-32. Preliminary notice -- Subcontractor or supplier.**

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

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

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

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

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

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

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

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

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

399 (d) (i) (A) If a person who is required to file a preliminary notice under this chapter

400 fails to file the preliminary notice, that person may not hold a valid lien under this chapter.

401 (B) Notwithstanding Subsection (1)(d)(i)(A), a person may file a notice to hold and
402 claim a lien under Section 38-1-7 without proving to the county recorder that the person filed a
403 preliminary notice.

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

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

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

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

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

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

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

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

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

421 (A) the person filing the preliminary notice;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

453 Section 6. Section **38-1-33** is amended to read:

454 **38-1-33. Notice of completion.**

455 (1) (a) (i) Upon final completion of a construction project[-];

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

459 (B) a lender that has provided financing for the construction project, or surety that has
460 provided bonding for the construction project, may file a notice of completion.

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

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

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

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

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

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

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

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

481 (i) repair work; or

482 (ii) warranty work.

483 (d) A notice of completion shall include:

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

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

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

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

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

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

492 [~~(d)~~] (e) Notwithstanding Subsection (1)(a)(ii)[~~(c)~~], final completion of the original

493 contract does not occur if work remains to be completed for which the owner is holding
494 payment to ensure completion of the work.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

531 (ii) 180 days after the day on which occurs final completion, if no notice of completion
532 is filed under this section.

533 (b) Notwithstanding Subsection 38-1-11(1), a lien claimant shall file an action to
534 enforce a written notice to hold and claim a lien filed under Subsection (3)(a) within:

535 (i) 120 days after filing under Subsection (3)(a)(i); or

536 (ii) 180 days after filing under Subsection (3)(a)(ii).

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

540 Section 7. Section **38-1-35** is amended to read:

541 **38-1-35. Limitation of liability.**

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

546 ~~[(2) The designated agent shall:]~~

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

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

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

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

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

555 38-1-30(6)(b).

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

559 (a) an act of God;

560 (b) a fire;

561 (c) a storm;

562 (d) an earthquake;

563 (e) an accident;

564 (f) governmental interference; or

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

566 Section 8. Section **58-56-18** is enacted to read:

567 **58-56-18. Standardized building permit numbering.**

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

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

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

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

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

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

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

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

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

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

588 Section 9. Section **58-56-19** is enacted to read:

589 **58-56-19. Standardized building permit content.**

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

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

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

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

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

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

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

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

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

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

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

610 Section 10. **Effective date.**

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

Legislative Review Note

as of 1-25-06 3:44 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0160

Construction Standard Amendments

31-Jan-06

8:31 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