

# SB0148S01 compared with SB0148

~~{deleted text}~~ shows text that was in SB0148 but was deleted in SB0148S01.

inserted text shows text that was not in SB0148 but was inserted into SB0148S01.

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Senator Daniel McCay proposes the following substitute bill:

## CONSTRUCTION REGISTRY AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Daniel McCay**

House Sponsor: \_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill enacts ~~{and amends}~~ provisions ~~{regarding}~~ for the creation and maintenance of the Construction Business ~~{Registry and the State Construction}~~ Registry.

#### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ directs the Division of Occupational and Professional Licensing (division) to establish and maintain a database, the Construction Business Registry, of contact information for licensed contractors;
- ▶ establishes the parameters of the Construction Business Registry;

~~{~~ → renames the "State Construction Registry" the "Construction Project Registry";

→ requires the division to make both the Construction Business Registry and the

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~~Construction Project Registry available through the Internet as part of the State Construction Registries;~~

- ~~†~~ ▶ permits the division to establish a fee in relation to the Construction Business Registry;
- ▶ grants rulemaking authority; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

~~{AMENDS:~~

~~———— 38-1a-102, as last amended by Laws of Utah 2019, Chapter 250~~

~~———— 38-1a-103, as renumbered and amended by Laws of Utah 2012, Chapter 278~~

~~———— 38-1a-201, as last amended by Laws of Utah 2013, Chapter 278~~

~~{ENACTS:~~

~~{13-61-101}~~58-55-701, Utah Code Annotated 1953

~~{13-61-201}~~58-55-702, Utah Code Annotated 1953

~~{13-61-301}~~58-55-703, Utah Code Annotated 1953

~~{13-61-302}~~58-55-704, Utah Code Annotated 1953

~~{———— 13-61-303, Utah Code Annotated 1953~~

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

Section 1. Section ~~{13-61-1}~~58-55-701 is enacted to read:

~~{CHAPTER 61. STATE CONSTRUCTION REGISTRIES~~

~~{Part {1}7. {General Provisions}~~Construction Business Registry

~~{13-61-101}~~58-55-701. **Definitions.**

As used in this ~~{chapter:~~

~~———— (1) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.~~

~~———— (2) "Licensed" part, "licensed contractor" means a person licensed under {Title 58.~~

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~~Chapter 55, Utah Construction Trades Licensing Act~~ this chapter.

Section 2. Section ~~{13-61-201}~~ 58-55-702 is enacted to read:

~~{Part 2. State Construction Registries~~

~~—— 13-61-201. Making State Construction Registries accessible to public.~~

~~—— (1) The division shall, by way of an Internet website, make accessible the State Construction Registries.~~

~~—— (2) The State Construction Registries consist of:~~

~~—— (a) the Construction Business Registry under Part 3, Construction Business Registry; and~~

~~—— (b) the Construction Project Registry under Title 38, Chapter 1a, Part 2, Construction Project Registry.~~

~~—— (3) The division may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish and maintain the State Construction Registries in accordance with this section.~~

~~Section 3. Section 13-61-301 is enacted to read:~~

~~Part 3. Construction Business Registry~~

~~—— 13-61-301} 58-55-702. Construction Business Registry.~~

~~(1) The division shall establish and maintain the Construction Business Registry as described in this section.~~

~~(2) The Construction Business Registry shall consist of a database of contact information for licensed contractors.~~

~~(3) Beginning January 1, 2023, the division shall ensure that the Construction Business Registry:~~

~~(a) is accessible to the public through an Internet website ~~{ as part of the State Construction Registries described in Section 13-61-201 }~~; and~~

~~(b) is indexed by:~~

~~(i) the name of the licensed contractor;~~

~~(ii) the name of the licensed contractor's licensed business;~~

~~(iii) the classification of the licensed contractor, as described in Section 58-55-301; and~~

~~(iv) any other identifier that the division considers reasonably appropriate.~~

(4) The division may link or otherwise associate the Construction Business Registry

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with the State Construction Registry under Title 38, Chapter 1a, Part 2, State Construction Registry.

~~{4}5~~ (a) The division shall establish a process for a licensed contractor to:

(i) before entry into the Construction Business Registry, specify the licensed contractor's contact information that the licensed contractor wants included in the Construction Business Registry;

(ii) opt out of participation in the Construction Business Registry at any time; or

(iii) amend the licensed contractor's contact information in the Construction Business Registry at any time.

(b) If a licensed contractor does not specify the licensed contractor's contact information for the Construction Business Registry, the division shall include in the Construction Business Registry only public contact information for the licensed contractor.

Section ~~{4}3~~. Section ~~{13-61-302}~~58-55-703 is enacted to read:

~~{13-61-302}~~58-55-703. **Fees.**

The division may establish a fee for the entry of a licensed contractor's contact information into the Construction Business Registry, in accordance with Section 63J-1-504, to assist in offsetting the cost of creating, administering, and maintaining the Construction Business Registry.

Section ~~{5}4~~. Section ~~{13-61-303}~~58-55-704 is enacted to read:

~~{13-61-303}~~58-55-704. **Rulemaking.**

The division may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish and maintain the Construction Business Registry in accordance with this part.

~~{~~ Section 6. Section 38-1a-102 is amended to read:

~~\_\_\_\_\_~~ 38-1a-102. Definitions:

~~\_\_\_\_\_~~ As used in this chapter:

~~\_\_\_\_\_~~ (1) "Alternate means" means a method of filing a legible and complete notice or other document with the registry other than electronically, as established by the division by rule.

~~\_\_\_\_\_~~ (2) "Anticipated improvement" means the improvement:

~~\_\_\_\_\_~~ (a) for which preconstruction service is performed; and

~~\_\_\_\_\_~~ (b) that is anticipated to follow the performing of preconstruction service.

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~~—— (3) "Applicable county recorder" means the office of the recorder of each county in which any part of the property on which a claimant claims or intends to claim a preconstruction or construction lien is located.~~

~~—— (4) "Bona fide loan" means a loan to an owner or owner-builder by a lender in which the owner or owner-builder has no financial or beneficial interest greater than 5% of the voting shares or other ownership interest.~~

~~—— (5) "Claimant" means a person entitled to claim a preconstruction or construction lien.~~

~~—— (6) "Compensation" means the payment of money for a service rendered or an expense incurred, whether based on:~~

~~—— (a) time and expense, lump sum, stipulated sum, percentage of cost, cost plus fixed or percentage fee, or commission; or~~

~~—— (b) a combination of the bases listed in Subsection (6)(a).~~

~~—— (7) "Construction lender" means a person who makes a construction loan.~~

~~—— (8) "Construction lien" means a lien under this chapter for construction work.~~

~~—— (9) "Construction loan" does not include a consumer loan secured by the equity in the consumer's home.~~

~~—— (10) "Construction project" means an improvement that is constructed pursuant to an original contract.~~

~~—— (11) "Construction work":~~

~~—— (a) means labor, service, material, or equipment provided for the purpose and during the process of constructing, altering, or repairing an improvement; and~~

~~—— (b) includes scheduling, estimating, staking, supervising, managing, materials testing, inspection, observation, and quality control or assurance involved in constructing, altering, or repairing an improvement.~~

~~—— (12) "Contestable notice" means a notice of preconstruction service under Section 38-1a-401, a preliminary notice under Section 38-1a-501, or a notice of completion under Section 38-1a-506.~~

~~—— (13) "Contesting person" means an owner, original contractor, subcontractor, or other interested person.~~

~~—— (14) "Designated agent" means the third party the division contracts with as provided in Section 38-1a-202 to create and maintain the registry.~~

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~~———— (15) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.~~

~~———— (16) "Entry number" means the reference number that:~~

~~———— (a) the designated agent assigns to each notice or other document filed with the registry; and~~

~~———— (b) is unique for each notice or other document.~~

~~———— (17) "Final completion" means:~~

~~———— (a) the date of issuance of a permanent certificate of occupancy by the local government entity having jurisdiction over the construction project, if a permanent certificate of occupancy is required;~~

~~———— (b) the date of the final inspection of the construction work by the local government entity having jurisdiction over the construction project, if an inspection is required under a state-adopted building code applicable to the construction work, but no certificate of occupancy is required;~~

~~———— (c) unless the owner is holding payment to ensure completion of construction work, the date on which there remains no substantial work to be completed to finish the construction work under the original contract, if a certificate of occupancy is not required and a final inspection is not required under an applicable state-adopted building code; or~~

~~———— (d) the last date on which substantial work was performed under the original contract, if, because the original contract is terminated before completion of the construction work defined by the original contract, the local government entity having jurisdiction over the construction project does not issue a certificate of occupancy or perform a final inspection.~~

~~———— (18) "Final lien waiver" means a form that complies with Subsection 38-1a-802(4)(c).~~

~~———— (19) "First preliminary notice filing" means a preliminary notice that:~~

~~———— (a) is the earliest preliminary notice filed on the construction project for which the preliminary notice is filed;~~

~~———— (b) is filed on a construction project that, at the time the preliminary notice is filed, has not reached final completion; and~~

~~———— (c) is not cancelled under Section 38-1a-307.~~

~~———— (20) "Government project-identifying information" has the same meaning as defined in Section 38-1b-102.~~

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~~———— (21) "Improvement" means:~~

~~———— (a) a building, infrastructure, utility, or other human-made structure or object constructed on or for and affixed to real property; or~~

~~———— (b) a repair, modification, or alteration of a building, infrastructure, utility, or object referred to in Subsection (21)(a).~~

~~———— (22) "Interested person" means a person that may be affected by a construction project.~~

~~———— (23) "Notice of commencement" means a notice required under Section 38-1b-201 for a government project, as defined in Section 38-1b-102.~~

~~———— (24) "Original contract":~~

~~———— (a) means a contract between an owner and an original contractor for preconstruction service or construction work; and~~

~~———— (b) does not include a contract between an owner-builder and another person.~~

~~———— (25) "Original contractor" means a person, including an owner-builder, that contracts with an owner to provide preconstruction service or construction work.~~

~~———— (26) "Owner" means the person that owns the project property.~~

~~———— (27) "Owner-builder" means an owner, including an owner who is also an original contractor, who:~~

~~———— (a) contracts with one or more other persons for preconstruction service or construction work for an improvement on the owner's real property; and~~

~~———— (b) obtains a building permit for the improvement.~~

~~———— (28) "Preconstruction lien" means a lien under this chapter for a preconstruction service.~~

~~———— (29) "Preconstruction service":~~

~~———— (a) means to plan or design, or to assist in the planning or design of, an improvement or a proposed improvement:~~

~~———— (i) before construction of the improvement commences; and~~

~~———— (ii) for compensation separate from any compensation paid or to be paid for construction work for the improvement; and~~

~~———— (b) includes consulting, conducting a site investigation or assessment, programming, preconstruction cost or quantity estimating, preconstruction scheduling, performing a preconstruction construction feasibility review, procuring construction services, and preparing~~

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~~a study, report, rendering, model, boundary or topographic survey, plat, map, design, plan, drawing, specification, or contract document.~~

~~—— (30) "Private project" means a construction project that is not a government project.~~

~~—— (31) "Project property" means the real property on or for which preconstruction service or construction work is or will be provided.~~

~~—— (32) "Registry" means the [State] Construction Project Registry under [Part 2, State Construction Registry] Part 2, Construction Project Registry.~~

~~—— (33) "Required notice" means:~~

~~—— (a) a notice of preconstruction service under Section 38-1a-401;~~

~~—— (b) a preliminary notice under Section 38-1a-501 or Section 38-1b-202;~~

~~—— (c) a notice of commencement;~~

~~—— (d) a notice of construction loan under Section 38-1a-601;~~

~~—— (e) a notice under Section 38-1a-602 concerning a construction loan default;~~

~~—— (f) a notice of intent to obtain final completion under Section 38-1a-506; or~~

~~—— (g) a notice of completion under Section 38-1a-507.~~

~~—— (34) "Subcontractor" means a person that contracts to provide preconstruction service or construction work to:~~

~~—— (a) a person other than the owner; or~~

~~—— (b) the owner, if the owner is an owner-builder.~~

~~—— (35) "Substantial work" does not include repair work or warranty work.~~

~~—— (36) "Supervisory subcontractor" means a person that:~~

~~—— (a) is a subcontractor under contract to provide preconstruction service or construction work; and~~

~~—— (b) contracts with one or more other subcontractors for the other subcontractor or subcontractors to provide preconstruction service or construction work that the person is under contract to provide.~~

~~—— Section 7. Section ~~38-1a-103~~ is amended to read:~~

~~—— **38-1a-103. Government projects not subject to chapter -- Exception.**~~

~~—— Except as provided in Section 38-1a-102, [Part 2, State Construction Registry] Part 2, Construction Project Registry, and Chapter 1b, Government Construction Projects, this chapter does not apply to a government project, as defined in Section 38-1b-102.~~



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~~Section 8. Section 38-1a-201 is amended to read:~~

~~38-1a-201. Establishment of Construction Project Registry -- Filing index.~~

~~(1) Subject to receiving adequate funding through a legislative appropriation and contracting with an approved third party vendor as provided in Section 38-1a-202, the division shall establish and maintain the [State] Construction Project Registry to:~~

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

~~(ii) promote a fair working environment;~~

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

~~(c) provide a central repository for all required notices;~~

~~(d) make accessible, by way of an Internet website as part of the State Construction Registries described in Section 13-61-201:~~

~~(i) the filing and review of required notices; and~~

~~(ii) the transmitting of building permit information under Subsection 38-1a-205(1) and the reviewing of that information;~~

~~(e) accommodate:~~

~~(i) electronic filing of required notices and electronic transmitting of building permit information described in Subsection (1)(d)(ii); and~~

~~(ii) the filing of required notices by alternate means, including United States mail, telefax, or any other method as the division provides by rule;~~

~~(f) (i) provide electronic notification for up to three email addresses for each interested person who requests to receive notification under Section 38-1a-204 from the designated agent; and~~

~~(ii) provide alternate means of providing notification to a person who makes a filing by alternate means, including United States mail, telefax, or any other method as the division prescribes by rule; and~~

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

~~(2) The designated agent shall index filings in the registry by:~~

~~(a) the name of the owner;~~

~~(b) the name of the original contractor;~~

~~(c) subdivision, development, or other project name, if any;~~

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- ~~—— (d) lot or parcel number;~~
  - ~~—— (e) the address of the project property;~~
  - ~~—— (f) entry number;~~
  - ~~—— (g) the name of the county in which the project property is located;~~
  - ~~—— (h) for private projects:~~
  - ~~—— (i) the tax parcel identification number of each parcel included in the project property;~~
- and
- ~~—— (ii) the building permit number;~~
  - ~~—— (i) for government projects, the government project-identifying information; and~~
  - ~~—— (j) any other identifier that the division considers reasonably appropriate in collaboration with the designated agent.~~

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