

2008 Legislative Summary:

How the Law Changed for the Construction Industry

BY DAVID W. ZIMMERMAN AND MELISSA A. ORIEN



S.B. 81—Illegal Immigration

The most publicized bill of the session seeks to regulate persons not lawfully within the state. The effective date of the bill is July 1, 2009, allowing lobbyist another session to modify the bill.

Contractors Required to Verify Workers

Under the bill, contractors on public jobs must electronically verify the im-

migration status of their workers. This provision applies to all contracts with public entities for “the physical performance of services within the state.”

“Contractors” include subcontractors, contract employees, staffing agencies, trade unions, or any contractors regardless of tier. It is unclear whether suppliers are to be included in this definition.

S.B. 81 does not require contractors to verify all workers, but does require verification of workers who meet the following three conditions:

- ❶ new employees hired on or after July 1, 2009;
- ❷ who are employed in the state of Utah; and
- ❸ who work under contractor’s supervision and direction

A contractor is only required to verify its own workers. Each subcontractor must certify its own verification by affidavit.

Unlawful Termination Provisions

S.B. 81 makes it unlawful for an employer to terminate a legal resident and replace him with or have his duties assumed by a worker who:

- ❶ the employer knows or should know is an illegal worker hired on or after July 1, 2009; and
- ❷ is working in Utah in a similar job category with similar skill and requirements. Employers who use the Status Verification System are exempt from civil liability for a violation of these provisions.

Transport or Concealment

The bill makes it a Class A misdemeanor to transport an illegal alien for over 100 miles for commercial advantage (with knowledge of in disregard of the alien’s status) or to knowingly conceal, harbor, or shelter an alien for commercial advantage.

S.B. 220—Cause of Action for Defective Construction

S.B. 220 was enacted to limit claims for defective construction. Under the statute, only a party who has a contract with the design team, contractor, or the developer can sue for defective construction.

LEGISLATIVE SUMMARY
continued on page 14

The effect of the bill is to preclude a subsequent purchaser or homeowners association from suing a designer, contractor, or developer for defective construction. Perhaps unintended, the bill also has the effect of prohibiting a contract from suing a designer for defects unless the parties had a contract.

The exception to the rule provides that a party can sue for defects if the defect causes personal injury or property damages to property other than the defective structure. "Property damage" is neither:

- ❶ failure of construction to function as designed; nor
- ❷ diminution in value of property because of defective construction or design.

H.B. 341: Damage to Underground Facility Amendments

H.B. 341 modified the duties of parties who excavate near or damage underground facilities, including:

- requirements for notice of excavation;
- identification of utilities that need not be marked;

- method for marking utilities;
- civil penalty for violation of provisions;
- requirements to maintain record of excavation notices; and
- creation of a dispute board to arbitrate disputes related to section.

S.B. 189: Independent Contractor Database Act

The legislature also enacted a bill designed to prevent employers from misclassifying their workers as independent contractors when the workers should be classified as employees. The main provisions of the bill authorize enforcement action to identify misclassification of workers and the commission of a database to track employees classified as independent contractors. The database is to be commissioned by July 1, 2009 and the bills are set to expire in 2013. ▀

Mr. Zimmerman and Ms. Orien are construction lawyers at Holland & Hart LLP who represent contractors in transactional and litigation matters throughout the Intermountain West.