

Representative David Clark proposes the following substitute bill:

MECHANICS' LIENS REVISIONS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David Clark

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies provisions relating to mechanics' liens.

Highlighted Provisions:

This bill:

- ▶ provides priority between construction loans and mechanics' liens;
- ▶ modifies provisions related to the State Construction Registry;
- ▶ modifies the information by which the State Construction Registry is to be indexed;
- ▶ requires each notice or document submitted for inclusion in the State Construction Registry to contain specified information;
- ▶ modifies provisions related to building permits and notices of commencement;
- ▶ modifies requirements related to the filing of a preliminary notice;
- ▶ eliminates the requirement to file a notice of commencement on a private project;
- ▶ requires the original contractor and each subcontractor on a private project to file a preliminary notice;
- ▶ prohibits an original contractor or subcontractor who fails to file a preliminary notice on a private project from claiming a mechanics' lien;
- ▶ repeals obsolete language;
- ▶ modifies the requirements for a notice of completion;



- 26 ▶ modifies the requirements related to a standardized building permit form; and
- 27 ▶ makes technical changes.

28 Money Appropriated in this Bill:

29 None

30 Other Special Clauses:

31 This bill takes effect on August 1, 2011.

32 This bill coordinates with H.B. 203, Codification of State Construction and Fire Codes,
33 to technically merge substantive amendments.

34 This bill coordinates with H.B. 115, Mechanics' Liens Amendments, by technically
35 merging substantive amendments.

36 Utah Code Sections Affected:

37 **AMENDS:**

38 **14-1-20**, as last amended by Laws of Utah 2010, Chapter 378

39 **14-2-5**, as last amended by Laws of Utah 2010, Chapter 378

40 **38-1-1**, Utah Code Annotated 1953

41 **38-1-5**, Utah Code Annotated 1953

42 **38-1-27**, as last amended by Laws of Utah 2009, Chapters 183 and 239

43 **38-1-30**, as last amended by Laws of Utah 2008, Chapter 382

44 **38-1-31**, as last amended by Laws of Utah 2009, Chapter 50

45 **38-1-32**, as last amended by Laws of Utah 2009, Chapter 50

46 **38-1-33**, as last amended by Laws of Utah 2010, Chapter 76

47 **58-56-20**, as last amended by Laws of Utah 2010, Chapter 310

48 **63G-6-506**, as renumbered and amended by Laws of Utah 2008, Chapter 382

49 **ENACTS:**

50 **38-1-30.5**, Utah Code Annotated 1953

51 **38-1-31.5**, Utah Code Annotated 1953

52 **38-1-32.5**, Utah Code Annotated 1953

53 **REPEALS:**

54 **38-1-37**, as last amended by Laws of Utah 2005, Chapter 64

55 Utah Code Sections Affected by Coordination Clause:

56 **15A-1-209**, Utah Code Annotated 1953

- 57 **30-1-30.5**, Utah Code Annotated 1953
- 58 **38-1-2**, as last amended by Laws of Utah 2006, Chapter 297
- 59 **38-1-5**, Utah Code Annotated 1953
- 60 **38-1-19**, Utah Code Annotated 1953
- 61 **38-1-27**, as last amended by Laws of Utah 2009, Chapters 183 and 239
- 62 **38-1-32**, as last amended by Laws of Utah 2009, Chapter 50



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

65 Section 1. Section **14-1-20** is amended to read:

66 **14-1-20. Preliminary notice requirement.**

67 (1) Any person furnishing labor, service, equipment, or material for which a payment
68 bond claim may be made under this chapter shall provide preliminary notice to the designated
69 agent as prescribed by Section ~~[38-1-32]~~ 38-1-32.5, except that this section does not apply:

70 (a) to a person performing labor for wages; or

71 (b) if a notice of commencement is not filed as prescribed in Section ~~[38-1-31]~~

72 38-1-31.5 for the project or improvement for which labor, service, equipment, or material is
73 furnished.

74 (2) Any person who fails to provide the preliminary notice required by Subsection (1)
75 may not make a payment bond claim under this chapter.

76 (3) The preliminary notice required by Subsection (1) shall be provided prior to
77 commencement of any action on the payment bond.

78 Section 2. Section **14-2-5** is amended to read:

79 **14-2-5. Preliminary notice requirement.**

80 (1) Any person furnishing labor, service, equipment, or material for which a payment
81 bond claim may be made under this chapter shall provide preliminary notice to the designated
82 agent as prescribed by Section 38-1-32, except that this section does not apply~~[(a)]~~ to a person
83 performing labor for wages~~[; or]~~.

84 ~~[(b) if a notice of commencement is not filed as prescribed in Section 38-1-31 for the
85 project or improvement for which labor, service, equipment, or material is furnished.]~~

86 (2) Any person who fails to provide the preliminary notice required by Subsection (1)
87 may not make a payment bond claim under this chapter.

88 (3) The preliminary notice required by Subsection (1) shall be provided prior to
89 commencement of any action on the payment bond.

90 Section 3. Section 38-1-1 is amended to read:

91 **38-1-1. Public buildings not subject to act.**

92 ~~[The provisions of this]~~ Except as provided in Sections 38-1-27, 38-1-30 through
93 38-1-37, and 38-1-40 relating to the State Construction Registry, this chapter ~~[shall]~~ does not
94 apply to any public building, structure, or improvement.

95 Section 4. Section 38-1-5 is amended to read:

96 **38-1-5. Priority -- Over other encumbrances.**

97 ~~[The liens herein provided for shall relate]~~

98 (1) As used in this section:

99 (a) "First preliminary notice filing" means the filing of the earliest filed valid
100 preliminary notice.

101 (b) "Project property" means the real property on which a building or structure is being
102 constructed or altered or on which an improvement is being made.

103 (c) "Valid preliminary notice" means a preliminary notice filed in accordance with
104 Section 38-1-32 that has not been canceled under Subsection 38-1-32(5).

105 (2) A lien under this chapter relates back to, and [take] takes effect as of, the time of
106 the [commencement to do work or furnish materials on the ground for the structure or
107 improvement, and shall have] first preliminary notice filing.

108 (3) (a) Subject to Subsection (3)(b), a lien under this chapter has priority over:

109 (i) any lien, mortgage, or other encumbrance [which may have attached subsequently to
110 the time when the building, improvement or structure was commenced, work begun, or first
111 material furnished on the ground; also over] that attaches after the first preliminary notice
112 filing; and

113 (ii) any lien, mortgage, or other encumbrance of which the lien holder had no notice
114 and which was unrecorded at the time [the building, structure or improvement was
115 commenced, work begun, or first material furnished on the ground] of the first preliminary
116 notice filing.

117 (b) (i) A claimant may voluntarily subordinate the claimant's lien under this chapter to
118 the mortgage or trust deed of a lender providing financing for the project.

119 (ii) The mortgage or trust deed of a lender that provides financing for a project has
 120 priority over each lien under this chapter of a claimant who files a preliminary notice under
 121 Section 38-1-32 after the mortgage or trust deed is recorded if each claimant who files a
 122 preliminary notice before the recording of the mortgage or trust deed subordinates the
 123 claimant's lien to the lender's mortgage or trust deed.

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

125 **38-1-27. State Construction Registry.**

126 (1) As used in this section, Sections 38-1-30 through 38-1-37, and Section 38-1-40:

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

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

130 (c) "Construction project[;]" or "project[;]" [~~or "improvement"~~] means all labor,
 131 service, equipment, and materials provided[;-(i)] under an original contract[;or].
 132 [(ii) by, or under contracts with, an owner-builder.]

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

134 (e) (i) "Designated agent" means the third party the [~~Division of Occupational and~~
 135 ~~Professional Licensing~~] division contracts with to create and maintain the State Construction
 136 Registry.

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

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

140 (g) "Entry number" means the reference number that:

141 (i) the designated agent assigns to each notice or other document filed with the
 142 database; and

143 (ii) is unique for each notice or other document.

144 (h) "Government project" means a construction project undertaken by or for:

145 (i) the state, including a department, division, or other agency of the state; or

146 (ii) a county, city, town, school district, local district, special service district,
 147 community development and renewal agency, or other political subdivision of the state.

148 (i) "Government project-identifying information" means:

149 (i) the lot or parcel number of each lot included in project property that has a lot or

150 parcel number; and

151 (ii) the unique project number assigned by the designated agent.

152 ~~[(g)]~~ (j) "Interested person" means a person who may be affected by a construction
153 project.

154 (k) "Private project" means a construction project that is not a government project.

155 ~~[(h)]~~ (l) "Program" means the State Construction Registry Program created in this
156 section.

157 (m) "Project property" means the real property on which a construction project occurs
158 or will occur.

159 (2) Subject to receiving adequate funding through a legislative appropriation and
160 contracting with an approved third party vendor who meets the requirements of Sections
161 38-1-30 through 38-1-37, there is created the State Construction Registry Program that shall:

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

163 (ii) promote a fair working environment;

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

165 (c) provide a central repository for ~~[notices of commencement, preliminary notices, and~~
166 ~~notices of completion filed in connection with all privately owned construction projects as well~~
167 ~~as all state and local government owned construction projects throughout Utah]~~ all notices filed
168 with the database under Section 38-1-30.5, 38-1-31.5, 38-1-32, 38-1-32.5, 38-1-33, or 38-1-40;

169 (d) ~~[be]~~ make accessible ~~[for filing and review]~~, by way of the program Internet
170 website ~~[of]~~:

171 (i) the filing and reviewing of notices described in Subsection (2)(c); and

172 ~~[(i) notices of commencement;]~~

173 ~~[(ii) preliminary notices;]~~

174 ~~[(iii) a notice of intent to file notice of final completion;]~~

175 ~~[(iv) a notice for remaining amounts due to complete the contract; and]~~

176 ~~[(v) notices of completion;]~~

177 (ii) the transmitting of building permit information under Subsection 38-1-31(2)(a) and
178 the reviewing of that information;

179 (e) accommodate:

180 (i) electronic filing of the notices described in Subsection (2)~~[(f)]~~(c) and electronic

181 transmitting of building permit information described in Subsection (2)(d)(ii); and
182 (ii) alternate filing of the notices described in Subsection (2)(d) by U.S. mail, telefax,
183 or any other alternate method as provided by rule made by the division in accordance with Title
184 63G, Chapter 3, Utah Administrative Rulemaking Act;
185 (f) (i) provide electronic notification for up to three email addresses for each interested
186 person or company who requests notice from the construction notice registry; and
187 (ii) provide alternate means of notification for a person who makes an alternate filing,
188 including U.S. mail, telefax, or any other method as prescribed by rule made by the division in
189 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
190 (g) provide hard-copy printing of electronic receipts for an individual filing evidencing
191 the date and time of the individual filing and the content of the individual filing.
192 (3) (a) The designated agent shall provide notice of all other filings for a project to any
193 person who files a notice of commencement, preliminary notice, or notice of completion for
194 that project, unless the person:
195 (i) requests that the person not receive notice of other filings; or
196 (ii) does not provide the designated agent with the person's contact information in a
197 manner that adequately informs the designated agent.
198 (b) An interested person may request notice of filings related to a project.
199 (c) The database shall be indexed by:
200 (i) the name of the property owner [name];
201 (ii) the name of the original contractor [name];
202 (iii) subdivision, development, or other project name, if any;
203 (iv) project address;
204 (v) lot or parcel number;
205 [~~(vi) unique project number assigned by the designated agent; and~~]
206 (vi) the address of the project property;
207 (vii) entry number;
208 (viii) the name of the county in which the project property is located;
209 (vi) for private projects:
210 (A) the tax parcel identification number of each parcel included in the project property;
211 and

212 (B) the building permit number;
213 (vii) for government projects, the government project-identifying information; and
214 ~~[(vii)]~~ (viii) any other identifier that the division considers reasonably appropriate in
215 collaboration with the designated agent.

216 (4) (a) In accordance with the process required by Section 63J-1-504, the division shall
217 establish the fees for:

- 218 ~~[(i) a notice of commencement;]~~
- 219 ~~[(ii) a preliminary notice;]~~
- 220 ~~[(iii) a notice of intent to file notice of final completion;]~~
- 221 ~~[(iv) a notice for remaining amounts due to complete the contract;]~~
- 222 ~~[(v) a notice of completion;]~~

223 (i) notices described in Subsection (2)(c);

224 ~~[(vi)]~~ (ii) a request for notice;

225 ~~[(vii)]~~ (iii) providing a required notice by an alternate [method of delivery] filing;

226 ~~[(viii)]~~ (iv) a duplicate receipt of a filing; and

227 ~~[(ix)]~~ (v) account setup for a person who wishes to be billed periodically for filings
228 with the database.

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

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

233 (d) The division may provide by contract that the designated agent may retain all fees
234 collected by the designated agent except that the designated agent shall remit to the division the
235 cost of the division's oversight under Subsection (2)(b).

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

238 (b) A request for information submitted to the designated agent is not subject to Title
239 63G, Chapter 2, Government Records Access and Management Act.

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

242 (d) The designated agent may charge a commercially reasonable fee allowed by the

243 designated agent's contract with the division for providing information under Subsection (5)(c).

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

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

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

252 (6) The following are not an adjudicative proceeding under Title 63G, Chapter 4,
253 Administrative Procedures Act:

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

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

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

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

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

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

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

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

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

273 (11) Each notice or other document submitted for inclusion in the database and for

274 which this chapter does not specify information required to be included in the notice or other
275 document shall contain:

276 (a) the name of the county in which the project property to which the notice or other
277 document applies is located;

278 (b) for a private project:

279 (i) the tax parcel identification number of each parcel included in the project property;

280 or

281 (ii) the number of the building permit for the construction project on the project
282 property; and

283 (c) for a government project, the government project-identifying information.

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

285 **38-1-30. Third party contract -- Designated agent.**

286 (1) The division shall contract in accordance with Title 63G, Chapter 6, Utah
287 Procurement Code, with a third party to establish and maintain the database for the purposes
288 established under this section, Section 38-1-27, and Sections 38-1-31 through 38-1-37.

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

291 (i) local government entities issuing building permits;

292 (ii) original contractors;

293 (iii) subcontractors; and

294 (iv) other interested persons.

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

296 (c) The division and the designated agent shall design, develop, and test the database
297 for full implementation on May 1, 2005.

298 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
299 division shall make rules and develop procedures for:

300 (a) the division to oversee and enforce this section, Section 38-1-27, and Sections
301 38-1-31 through 38-1-37;

302 (b) the designated agent to administer this section, Section 38-1-27, and Sections
303 38-1-31 through 38-1-37; and

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

305 rejecting an illegible or incomplete filing.

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

308 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
309 division shall make rules to allow the designated agent to periodically archive projects from the
310 database.

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

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

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

315 (iii) one year after the day on which a filing is cancelled under Subsection
316 38-1-32~~(3)~~(5)(c) or 38-1-33(2)(c).

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

319 (5) The designated agent shall carry errors and omissions insurance in the amounts
320 established by rule made by the division in accordance with Title 63G, Chapter 3, Utah
321 Administrative Rulemaking Act.

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

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

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

328 Section 7. Section **38-1-30.5** is enacted to read:

329 **38-1-30.5. Notice of construction loan.**

330 (1) As used in this section, "construction loan" does not include a consumer loan
331 secured by the equity in the consumer's home.

332 (2) Promptly after recording a mortgage or trust deed securing a construction loan, the
333 lender on the loan shall file with the database a notice of construction loan.

334 (3) A notice under Subsection (2) shall include:

335 (a) the lender's name, address, and telephone number;

- 336 (b) the name of the trustor on the trust deed securing the loan;
- 337 (c) the tax parcel identification number of each parcel included or to be included in the
- 338 construction project for which the loan was given;
- 339 (d) the address of the project property;
- 340 (e) the name of the county in which the project property is located; and
- 341 (f) for each claimant who subordinates the claimant's lien to the lender's mortgage or
- 342 trust deed as provided in Subsection 38-1-5(3)(b)(i):
- 343 (i) the name of the claimant; and
- 344 (ii) the entry number of the preliminary notice that the claimant filed with the database
- 345 for the project.

346 (4) A lender that files a notice of construction loan containing incomplete or inaccurate
 347 information may not be held liable for damages suffered by any other person who relies on the
 348 inaccurate or incomplete information in filing a preliminary notice.

349 Section 8. Section **38-1-31** is amended to read:

350 **38-1-31. Building permit -- Transmission to database -- Posting at project site.**

351 ~~[(1)(a)(i)(A) For a construction project where a building permit is issued to an~~
 352 ~~original contractor or owner-builder, no later than 15 days after the issuance of the building~~
 353 ~~permit:]~~

354 ~~[(f) the local government entity issuing that]~~

355 (1)(a) A county, city, or town issuing a building permit for a private project shall, no
 356 later than 15 days after issuing the permit, input the building permit application and transmit
 357 the building permit information to the database electronically by way of the Internet or
 358 computer modem or by any other means[; or].

359 ~~[(H) the original contractor, owner, or owner-builder may file a notice of~~
 360 ~~commencement with the database whether or not a building permit is issued or a notice of~~
 361 ~~commencement is filed under Subsection (1)(a)(i)(A)(f).]~~

362 ~~[(B) The information submitted under Subsection (1)(a)(i)(A) forms the basis of a~~
 363 ~~notice of commencement.]~~

364 ~~[(ii)]~~ (b) The person to whom a building permit, filed under Subsection (1)(a)~~[(f)]~~, is
 365 issued is responsible for the accuracy of the information in the building permit.

366 ~~[(iii)]~~ (c) For the purposes of classifying a record under Title 63G, Chapter 2,

367 Government Records Access and Management Act, building permit information transmitted
368 from a ~~[local governmental entity]~~ county, city, or town to the database shall be classified in
369 the database by the division notwithstanding the ~~[local governmental entity's]~~ classification of
370 the building permit information by the county, city, or town.

371 ~~[(b) No later than 15 days after commencement of physical construction work at the~~
372 ~~project site, the original contractor, owner, or owner-builder may file a notice of~~
373 ~~commencement with the database whether or not a building permit is issued or a notice of~~
374 ~~commencement is filed under Subsection (1)(a).]~~

375 ~~[(c) An original contractor, owner, or owner-builder may file a notice of~~
376 ~~commencement with the designated agent prior to the time frames established in Subsections~~
377 ~~(1)(a) and (b).]~~

378 ~~[(d) An owner of construction or an original contractor may file a notice of~~
379 ~~commencement with the designated agent within the time prescribed by Subsections (1)(a) and~~
380 ~~(b).]~~

381 ~~[(e) (i) If duplicate notices of commencement are filed, they shall be combined into one~~
382 ~~notice for each project and any notices filed relate back to the date of the earliest-filed notice of~~
383 ~~commencement for the project.]~~

384 ~~[(ii) A duplicate notice of commencement that is untimely filed relates back under~~
385 ~~Subsection (1)(e)(i) if the earlier filed notice of commencement is timely filed.]~~

386 ~~[(iii) Duplicate notices of commencement shall be automatically linked by the~~
387 ~~designated agent.]~~

388 ~~[(f) The designated agent shall assign each construction project a unique project~~
389 ~~number that:]~~

390 ~~[(i) identifies each construction project; and]~~

391 ~~[(ii) can be associated with all notices of commencement, preliminary notices, and~~
392 ~~notices of completion.]~~

393 ~~[(g) A notice of commencement is effective only as to any labor, service, equipment,~~
394 ~~and material furnished to the construction project that is furnished subsequent to the filing of~~
395 ~~the notice of commencement.]~~

396 ~~[(2) (a) A notice of commencement shall include the following:]~~

397 ~~[(i) the name and address of the owner of the project;]~~

398 ~~[(ii) the name and address of the:]~~
399 ~~[(A) original contractor; and]~~
400 ~~[(B) surety providing any payment bond for the project, or if none exists, a statement~~
401 ~~that a payment bond was not required for the work being performed; and]~~
402 ~~[(iii) (A) the project address if the project can be reasonably identified by an address;~~
403 ~~or]~~
404 ~~[(B) the name and general description of the location of the project if the project cannot~~
405 ~~be reasonably identified by an address.]~~
406 ~~[(b) A notice of commencement may include:]~~
407 ~~[(i) a general description of the project; or]~~
408 ~~[(ii) the lot or parcel number, and any subdivision, development, or other project name;~~
409 ~~of the real property upon which the project is to be constructed if the project is subject to~~
410 ~~mechanics' liens.]~~
411 ~~[(c) A notice of commencement need not include all of the items listed in Subsection~~
412 ~~(2)(a) if:]~~
413 ~~[(i) a building permit is issued for the project; and]~~
414 ~~[(ii) all items listed in Subsection (2)(a) that are available on the building permit are~~
415 ~~included in the notice of commencement.]~~
416 ~~[(3) If a notice of commencement for a construction project is not filed within the time~~
417 ~~set forth in Subsections(1)(a) and (b), the following do not apply:]~~
418 ~~[(a) Section 38-1-32; and]~~
419 ~~[(b) Section 38-1-33.]~~
420 ~~[(4) (a) Unless a person indicates to the division or designated agent that the person~~
421 ~~does not wish to receive a notice under this section, electronic notice of the filing of a notice of~~
422 ~~commencement or alternate notice as prescribed in Subsection (1), shall be provided to:]~~
423 ~~[(i) all persons who have filed notices of commencement for the project; and]~~
424 ~~[(ii) all interested persons who have requested notices concerning the project.]~~
425 ~~[(b) (i) A person to whom notice is required under Subsection (4)(a) is responsible for:]~~
426 ~~[(A) providing an e-mail address, mailing address, or telefax number to which a notice~~
427 ~~required by Subsection (4)(a) is to be sent; and]~~
428 ~~[(B) the accuracy of any e-mail address, mailing address, or telefax number to which~~

429 ~~notice is to be sent.]~~

430 ~~[(ii) The designated agent fulfills the notice requirement of Subsection (4)(a) when it~~
431 ~~sends the notice to the e-mail address, mailing address, or telefax number provided to the~~
432 ~~designated agent whether or not the notice is actually received.]~~

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

436 ~~[(b) A substantial inaccuracy in a notice of commencement renders the notice of~~
437 ~~commencement unenforceable.]~~

438 ~~[(c) A person filing a notice of commencement by alternate filing is responsible for~~
439 ~~verifying and changing any incorrect information in the notice of commencement before the~~
440 ~~expiration of the time period during which the notice is required to be filed.]~~

441 ~~[(6)] (2) At the time a building permit is obtained, each original contractor shall~~
442 ~~conspicuously post at the project site a copy of the building permit obtained for the project.~~

443 Section 9. Section **38-1-31.5** is enacted to read:

444 **38-1-31.5. Notice of commencement for a government project.**

445 (1) No later than 15 days after commencement of physical construction work at a
446 government project site, the original contractor, owner, or owner-builder shall file a notice of
447 commencement with the database.

448 (2) An original contractor, owner, or owner-builder on a government project may file a
449 notice of commencement with the designated agent before the commencement of physical
450 construction work on the project property.

451 (3) (a) If duplicate notices of commencement are filed, they shall be combined into one
452 notice for each government project, and any notices filed relate back to the date of the
453 earliest-filed notice of commencement for the project.

454 (b) A duplicate notice of commencement that is untimely filed relates back under
455 Subsection (3)(a) if the earlier filed notice of commencement is timely filed.

456 (c) Duplicate notices of commencement shall be automatically linked by the designated
457 agent.

458 (4) The designated agent shall assign each government project a unique project number
459 that:

460 (a) identifies the project; and
461 (b) can be associated with all notices of commencement, preliminary notices, and
462 notices of completion filed in connection with the project.
463 (5) A notice of commencement is effective only as to any labor, service, equipment,
464 and material that is furnished after the notice of commencement is filed.
465 (6) (a) A notice of commencement shall include:
466 (i) the name, address, and email address of the owner of the project;
467 (ii) the name, address, and email address of the original contractor;
468 (iii) the name, address, and email address of the surety providing any payment bond for
469 the project or, if none exists, a statement that a payment bond was not required for the work
470 being performed;
471 (iv) (A) the project address if the project can be reasonably identified by an address; or
472 (B) the name and general description of the location of the project, if the project cannot
473 be reasonably identified by an address; and
474 (v) the government project identifying information.
475 (b) A notice of commencement may include a general description of the project.
476 (7) If a notice of commencement for a government project is not filed within the time
477 set forth in Subsection (1), Sections 38-1-32 and 38-1-33 do not apply.
478 (8) (a) Notwithstanding any other provision of this chapter, a notice of commencement
479 need not be filed for a private project.
480 (b) A provision of this chapter does not apply to a private project if the provision
481 depends for its effectiveness upon the filing of a notice of commencement.
482 (9) (a) Unless a person indicates to the division or designated agent that the person
483 does not wish to receive a notice under this section, the designated agent shall provide
484 electronic notice of the filing of a notice of commencement or alternate filing to:
485 (i) all persons who have filed notices of commencement for the project; and
486 (ii) all interested persons who have requested notices concerning the project.
487 (b) A person to whom notice is required under Subsection (9)(a) is responsible for:
488 (i) providing an email address, mailing address, or telefax number to which a notice
489 required by Subsection (9)(a) is to be sent; and
490 (ii) the accuracy of any email address, mailing address, or telefax number to which

491 notice is to be sent.

492 (c) The designated agent fulfills the notice requirement of Subsection (9)(a) by sending
 493 the notice to the email address, mailing address, or telefax number provided to the designated
 494 agent, whether or not the notice is actually received.

495 (10) (a) The burden is upon any person seeking to enforce a notice of commencement
 496 to verify the accuracy of information in the notice of commencement and prove that the notice
 497 of commencement is filed timely and meets all of the requirements of this section.

498 (b) A substantial inaccuracy in a notice of commencement renders the notice of
 499 commencement invalid.

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

503 Section 10. Section **38-1-32** is amended to read:

504 **38-1-32. Preliminary notice for a private project.**

505 (1) (a) [~~(i) Except for a person who has a contract with an owner or an owner-builder~~
 506 ~~or a laborer compensated with wages, a subcontractor]~~ A person who, under Section 38-1-3, is
 507 entitled to a lien under this chapter with respect to a private project shall file a preliminary
 508 notice with the database [by the] no later [of: (A)] than 20 days after [commencement of its
 509 own work or the commencement of] the person commences furnishing labor, service,
 510 equipment, [and] or material to [a construction] the project[; or].

511 [~~(B) 20 days after the filing of a notice of commencement if the subcontractor's work~~
 512 ~~commences before the filing of the first notice of commencement.]~~

513 [(ii)] (b) [A] Subject to Subsection (1)(c), a preliminary notice [filed within the period
 514 described in Subsection (1)(a)(i)] is effective as to all labor, service, equipment, and material
 515 [furnished] that the person filing the notice furnishes to the [construction] private project,
 516 including labor, service, equipment, and material [provided] that the person furnishes to more
 517 than one contractor or subcontractor on that same project.

518 [(iii) (A) ~~If more than one notice of commencement is filed for a project, a person may~~
 519 ~~attach a preliminary notice to any notice of commencement filed for the project by a party~~
 520 ~~authorized in Section 38-1-31.]~~

521 [(B) ~~A preliminary notice attached to an untimely notice of commencement is valid if~~

522 there is also a valid and timely notice of commencement for the project filed by a party
523 authorized in Section 38-1-31.]

524 ~~[(b)]~~ (c) ~~[If a person files a]~~ A preliminary notice filed after the period ~~[prescribed by]~~
525 provided in Subsection (1)(a)~~[-, the preliminary notice]:~~

526 (i) becomes effective five days after the day ~~[on which]~~ the preliminary notice is
527 filed[-]; and

528 (ii) is not effective for labor, service, equipment, or material that the person who files
529 the preliminary notice furnishes to the construction project before five days after the
530 preliminary notice is filed.

531 ~~[(c) Except as provided in Subsection (1)(c), failure to file a preliminary notice within~~
532 ~~the period required by Subsection (1)(a) precludes a person from maintaining any claim for~~
533 ~~compensation earned for performance of labor or service or supply of materials or equipment~~
534 ~~furnished to the construction project before the expiration of five days after the late filing of a~~
535 ~~preliminary notice, except as against the person with whom the person contracted.]~~

536 (d) (i) (A) ~~[If a]~~ A person who [is required to file a preliminary notice under this
537 ~~chapter] fails to file [the] a preliminary notice[-, that person] as required in this section may not~~
538 hold a valid lien under this chapter.

539 (B) A person who files a preliminary notice after the period provided in Subsection
540 (1)(a) may not hold a valid lien under this chapter for labor, service, equipment, or material the
541 person furnishes to the construction project before five days after the preliminary notice is
542 filed.

543 ~~[(B)]~~ (ii) A county recorder need not verify that a valid preliminary notice is filed when
544 a person files a notice to hold and claim a lien under Section 38-1-7.

545 ~~[(ii) The content of a]~~

546 (e) A preliminary notice that is timely filed with the database with respect to a private
547 project is considered to have been filed at the time of the first preliminary notice filing, as
548 defined in Section 38-1-5.

549 (f) If a preliminary notice filed with the database includes the tax parcel identification
550 number of a parcel not previously associated in the database with a private project, the
551 designated agent shall promptly notify the person who filed the preliminary notice that:

552 (i) the preliminary notice includes a tax parcel identification number of a parcel not

553 previously associated in the database with a private project; and
554 (ii) the likely explanation is that:
555 (A) the preliminary notice is the first filing for the project; or
556 (B) the tax parcel identification number is incorrectly stated in the preliminary notice.
557 (g) A preliminary notice for a private project shall include:
558 ~~[(A) the building permit number for the project, or the number assigned to the project~~
559 ~~by the designated agent;]~~
560 ~~[(B)]~~ (i) the name, address, [and] telephone number, and email address of the person
561 furnishing the labor, service, equipment, or material for which the preliminary notice is filed;
562 ~~[(C)]~~ (ii) the name and address of the person who contracted with the claimant for the
563 furnishing of the labor, service, equipment, or material;
564 ~~[(D)]~~ (iii) the name of the record or reputed owner of the project property;
565 ~~[(E)]~~ (iv) the name of the original contractor under which the claimant is [performing]
566 furnishing or will [perform its work; and] furnish labor, service, equipment, or material;
567 ~~[(F)]~~ (v) the address of the project property or a description of the location of the
568 project[-];
569 ~~[(iii) Upon request by person identified in Subsection (1)(a)(i), an original contractor~~
570 ~~shall provide the person with the building permit number for the project, or the number~~
571 ~~assigned to the project by the designated agent.]~~
572 ~~[(e) If a person provides labor, service, equipment, or material before the filing of a~~
573 ~~notice of commencement and the notice of commencement is filed more than 15 days after the~~
574 ~~day on which the person providing labor, service, equipment, or material begins work on the~~
575 ~~project, the person providing labor, service, equipment, or material need not file a preliminary~~
576 ~~notice to maintain the person's right to hold a lien under this chapter or any other right,~~
577 ~~including a right referenced under Subsection (1)(e).]~~
578 (vi) the name of the county in which the project property is located; and
579 (vii) (A) the tax parcel identification number of each parcel included in the project
580 property;
581 (B) the entry number of a previously filed notice of construction loan under Section
582 38-1-30.5 on the same project;
583 (C) the entry number of a previously filed preliminary notice on the same project that

584 includes the tax parcel identification number of each parcel included in the project property; or

585 (D) the entry number of the building permit issued for the project.

586 (h) A preliminary notice for a private project may include:

587 (i) the subdivision, development, or other project name applicable to the construction

588 project for which the preliminary notice is filed; and

589 (ii) the lot or parcel number of each lot or parcel that is included in the project

590 property.

591 (2) (a) [(†)] Unless a person indicates to the division or designated agent that the person

592 does not wish to receive a notice under this section, electronic notification of the filing of a

593 preliminary notice or alternate [~~notice as prescribed in Subsection (1);~~] filing shall be provided

594 to:

595 [~~(A)~~] (i) the person filing the preliminary notice; and

596 [~~(B)~~] each person that filed a notice of commencement for the project; and]

597 [~~(C)~~] all interested persons who have requested notices]

598 (ii) each person who has requested a notice concerning the project.

599 [(†)] (b) A person to whom notice is required to be provided under Subsection

600 (2)(a)[(†)] is responsible for:

601 [~~(A)~~] (i) providing an email address, mailing address, or telefax number to which a
602 notice required by Subsection (2)(a) is to be sent; and

603 [~~(B)~~] (ii) the accuracy of any email address, mailing address, or telefax number to
604 which notice is to be sent.

605 [(†)] (c) The designated agent fulfills the notice requirement of Subsection (2)(a)[(†)]
606 when it sends] by sending the notice to the email address, mailing address, or telefax number
607 provided to the designated agent, whether or not the notice is actually received.

608 [~~(b)~~] (3) (a) The burden is upon the person filing the preliminary notice to prove that
609 the person has substantially complied with the requirements of this section.

610 (b) Substantial compliance with the requirements of Subsection (1)(g) may be
611 established by a person's reasonable reliance on information in the database provided by a
612 previously filed:

613 (i) notice of construction loan under Section 38-1-30.5; or

614 (ii) preliminary notice.

615 ~~[(e)]~~ (4) (a) Subject to Subsection ~~[(2)(d)]~~ (4)(b), a person required by this section to
 616 give preliminary notice is only required to give one notice for each project.

617 ~~[(d)]~~ (b) If the labor, service, equipment, or material is furnished pursuant to contracts
 618 under more than one original contract, the notice requirements ~~[must]~~ shall be met with respect
 619 to the labor, service, equipment, or material furnished under each original contract.

620 ~~[(3)]~~ (5) (a) ~~[If a]~~ A construction project owner, original contractor, subcontractor, or
 621 other interested person who believes that a preliminary notice has been filed erroneously~~[-that~~
 622 ~~owner, original contractor, subcontractor, or other interested person can]~~ may request from the
 623 person who filed the preliminary notice evidence establishing the validity of the preliminary
 624 notice.

625 (b) Within 10 days after the request described in Subsection ~~[(3)]~~ (5)(a), the person or
 626 entity that filed the preliminary notice shall provide the requesting person or entity proof that
 627 the preliminary notice is valid.

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

631 ~~[(4)]~~ (6) A person filing a preliminary notice by alternate filing is responsible for
 632 verifying and changing any incorrect information in the preliminary notice before the
 633 expiration of the time period during which the notice is required to be filed.

634 ~~[(5) Until June 1, 2008, nothing in this section affects a person's rights under Title 38,~~
 635 ~~Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.]~~

636 (7) A person who files a preliminary notice that contains inaccurate or incomplete
 637 information may not be held liable for damages suffered by any other person who relies on the
 638 inaccurate or incomplete information in filing a preliminary notice.

639 Section 11. Section **38-1-32.5** is enacted to read:

640 **38-1-32.5. Preliminary notice on government project.**

641 (1) Except for a person who has a contract with an owner or an owner-builder or a
 642 laborer compensated with wages, a subcontractor on a government project shall file a
 643 preliminary notice with the database by the later of:

644 (a) 20 days after the subcontractor commences the subcontractor's own work or
 645 commences furnishing labor, service, equipment, or material to the construction project; and

646 (b) 20 days after the filing of a notice of commencement, if the subcontractor's work
647 commences before the filing of the first notice of commencement.

648 (2) A preliminary notice filed within the period described in Subsection (1) is effective
649 as to all labor, service, equipment, and material that the subcontractor furnishes to the
650 construction project, including labor, service, equipment, and material provided that the
651 subcontractor furnishes to more than one contractor or subcontractor.

652 (3) (a) If more than one notice of commencement is filed for a project, a person may
653 attach a preliminary notice to any notice of commencement filed for the project.

654 (b) A preliminary notice attached to an untimely notice of commencement is valid if
655 there is also a valid and timely notice of commencement for the project.

656 (4) If a person files a preliminary notice after the period prescribed by Subsection (1),
657 the preliminary notice becomes effective five days after the day on which the preliminary
658 notice is filed.

659 (5) Except as provided in Subsection (8), failure to file a preliminary notice within the
660 period required by Subsection (1) precludes a person from maintaining any claim for
661 compensation earned for labor, service, materials, or equipment furnished to the construction
662 project before the expiration of five days after the late filing of a preliminary notice, except as
663 against the person with whom the person contracted.

664 (6) A preliminary notice on a government project shall include:

665 (a) the government project-identifying information;

666 (b) the name, address, and telephone number of the person furnishing the labor,
667 service, equipment, or material;

668 (c) the name and address of the person who contracted with the claimant for the
669 furnishing of the labor, service, equipment, or material;

670 (d) the name of the record or reputed owner of the project;

671 (e) the name of the original contractor under which the claimant is performing or will
672 perform its work; and

673 (f) the address of the project or a description of the location of the project.

674 (7) Upon request, an original contractor shall provide a subcontractor with the number
675 assigned to the project by the designated agent.

676 (8) A person who provides labor, service, equipment, or material before the filing of a

677 notice of commencement need not file a preliminary notice to maintain any right the person
678 would otherwise have, if the notice of commencement is filed more than 15 days after the day
679 on which the person begins work on the project.

680 (9) Subsections 38-1-32(2), (3), (4), (5), and (6) apply to a preliminary notice on a
681 government project under this section to the same extent that those subsections apply to a
682 preliminary notice on a private project under Section 38-1-32.

683 Section 12. Section **38-1-33** is amended to read:

684 **38-1-33. Notice of completion.**

685 (1) (a) Upon final completion of a construction project, and in accordance with Section
686 38-1-40, the following with a construction project registered with the database may file a notice
687 of completion with the database:

- 688 (i) an owner of the construction project;
689 (ii) an original contractor of the construction project;
690 (iii) a lender that has provided financing for the construction project;
691 (iv) a surety that has provided bonding for the construction project; or
692 (v) a title company issuing a title insurance policy on the construction project.

693 (b) Notwithstanding Section 38-1-2, if a subcontractor performs substantial work after
694 the applicable dates established by Subsection (1)(a), that subcontractor's subcontract is
695 considered an original contract for the sole purpose of determining:

- 696 (i) the subcontractor's time frame to file a notice to hold and claim a lien under
697 Subsection 38-1-7(1); and
698 (ii) the original contractor's time frame to file a notice to hold and claim a lien under
699 Subsection 38-1-7(1) for that subcontractor's work.

700 (c) A notice of completion shall include:

701 [~~(i) the building permit number for the project, or the number assigned to the project by~~
702 ~~the designated agent;]~~

703 [~~(ii)~~] (i) the name, address, [~~and~~] telephone number, and email address of the person
704 filing the notice of completion;

705 [~~(iii) the name of the original contractor for the project;]~~

706 [~~(iv) the address of the project or a description of the location of the project;]~~

707 (ii) the name of the county in which the project property is located;

- 708 (iii) for a private project:
- 709 (A) the tax parcel identification number of each parcel included in the project property;
- 710 (B) the entry number of a preliminary notice on the same project that includes the tax
- 711 parcel identification number of each parcel included in the project property; or
- 712 (C) the entry number of the building permit issued for the project;
- 713 (iv) for a government project, the government project-identifying information;
- 714 (v) the date on which final completion is alleged to have occurred; and
- 715 (vi) the method used to determine final completion.
- 716 (d) For purposes of this section, final completion of the original contract does not occur
- 717 if work remains to be completed for which the owner is holding payment to ensure completion
- 718 of the work.
- 719 (e) (i) Unless a person indicates to the division or designated agent that the person does
- 720 not wish to receive a notice under this section, electronic notification of the filing of a notice of
- 721 completion or alternate ~~[notice as prescribed in Subsection (1)(a);]~~ filing shall be provided to:
- 722 (A) each person that filed a notice of commencement for the project;
- 723 (B) each person that filed preliminary notice for the project; and
- 724 (C) all interested persons who have requested notices concerning the project.
- 725 (ii) A person to whom notice is required under this Subsection (1)(e) is responsible for:
- 726 (A) providing an email address, mailing address, or telefax number to which a notice
- 727 required by this Subsection (1)(e) is to be sent; and
- 728 (B) the accuracy of any email address, mailing address, or telefax number to which
- 729 notice is to be sent.
- 730 (iii) The designated agent fulfills the notice requirement of Subsection (1)(e)(i) when it
- 731 sends the notice to the email address, mailing address, or telefax number provided to the
- 732 designated agent, whether or not the notice is actually received.
- 733 (iv) Upon the filing of a notice of completion, the time periods for filing a preliminary
- 734 ~~[notices]~~ notice stated in Section ~~[38-1-27]~~ 38-1-32 or 38-1-32.5 are modified such that all
- 735 preliminary notices shall be filed subsequent to the notice of completion and within 10 days
- 736 from the day on which the notice of completion is filed.
- 737 (f) A subcontract that is considered an original contract for purposes of this section
- 738 does not create a requirement for an additional preliminary notice if a preliminary notice has

739 already been given for the labor, service, equipment, and material furnished to the
740 subcontractor who performs substantial work.

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

745 (b) Within 10 days after the request described in Subsection (2)(a), the person who
746 filed the notice of completion shall provide the requesting person proof that the notice of
747 completion is valid.

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

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

754 Section 13. Section **58-56-20** is amended to read:

755 **58-56-20. Standardized building permit content.**

756 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
757 division shall adopt a standardized building permit form by rule.

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

760 (i) the name and address of the owner of [~~or contractor for the~~] each parcel of property
761 on which the project will occur;

762 (ii) the name and address of the contractor for the project;

763 [~~(ii)~~] (iii) (A) the address of the project; or

764 (B) a general description of the project; [~~and~~]

765 (iv) the county in which the property on which the project will occur is located;

766 (v) the tax parcel identification number of each parcel of the property; and

767 [~~(iii)~~] (vi) whether the permit applicant is an original contractor or owner-builder.

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

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

772 (b) A permit for construction issued by a compliance agency under Subsection (3)(a)
773 shall print the standardized building permit number assigned under Section 58-56-19 in the
774 upper right-hand corner of the building permit form in at least 12-point type.

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

778 (ii) If a compliance agency does not issue a separate permit for different aspects of the
779 same project, the compliance agency may issue a permit for construction without the
780 information required by Subsection (2)(a)~~(iii)~~(vi).

781 (d) A compliance agency may require additional information for the issuance of a
782 permit for construction.

783 (4) A local regulator issuing a single-family residential building permit application
784 shall include in the application or attach to the building permit the following notice
785 prominently placed in at least 14 point font: "Decisions relative to this application are subject
786 to review by the chief executive officer of the municipal or county entity issuing the
787 single-family residential building permit and appeal under the International Residential Code as
788 adopted by the Legislature."

789 Section 14. Section **63G-6-506** is amended to read:

790 **63G-6-506. Preliminary notice requirement.**

791 (1) Any person furnishing labor, service, equipment, or material for which a payment
792 bond claim may be made under this chapter shall provide preliminary notice to the designated
793 agent as prescribed by Section ~~[38-1-32]~~ 38-1-32.5, except that this section does not apply:

794 (a) to a person performing labor for wages; or

795 (b) if a notice of commencement is not filed as prescribed in Section ~~[38-1-31]~~
796 38-1-31.5 for the project or improvement for which labor, service, equipment, or material is
797 furnished.

798 (2) Any person who fails to provide the preliminary notice required by Subsection (1)
799 may not make a payment bond claim under this chapter.

800 (3) The preliminary notice required by Subsection (1) must be provided ~~[prior to]~~

801 before commencement of any action on the payment bond.

802 Section 15. **Repealer.**

803 This bill repeals:

804 Section **38-1-37, Application of Section 38-1-27 and Sections 38-1-30 through**

805 **38-1-36.**

806 Section 16. **Effective date.**

807 This bill takes effect on August 1, 2011.

808 Section 17. **Coordinating H.B. 260 with H.B. 203 -- Technically merging**

809 **substantive amendments.**

810 If this H.B. 260 and H.B. 203, Codification of State Construction and Fire Codes, both
811 pass, it is the intent of the Legislature that:

812 (1) the coordination clause in this H.B. 260 supersedes the coordination clause
813 contained in H.B. 203; and

814 (2) the Office of Legislative Research and General Counsel, in preparing the Utah
815 Code database for publication:

816 (a) modify Subsection 15A-1-209(3)(b), as enacted in H.B. 203, to read:

817 "(b) The standardized building permit form created under this Subsection (3) shall
818 include fields for indicating the following information:

819 (i) the name and address of the owner of each parcel of property on which the project
820 will occur;

821 (ii) the name and address of the contractor for the project;

822 (iii) (A) the address of the project; or

823 (B) a general description of the project;

824 (iv) the county in which the property on which the project will occur is located;

825 (v) the tax parcel identification number of each parcel of the property; and

826 (vi) whether the permit applicant is an original contractor or owner-builder."; and

827 (b) change the citation in Subsection 15A-1-209(3)(f)(ii), as enacted in H.B. 203, from
828 "Subsection (3)(b)(iii)" to "Subsection (3)(b)(vi)."

829 Section 18. **Coordinating H.B. 260 with H.B. 115 -- Technically merging**

830 **substantive amendments.**

831 If this H.B. 260 and H.B. 115, Mechanics' Lien Amendments, both pass, it is the intent

832 of the Legislature that:

833 (1) the Office of Legislative Research and General Counsel, in preparing the Utah
834 Code database for publication:

835 (a) modify Subsection 38-1-2(6) to read:

836 "(6) "Construction service":

837 (a) means to furnish labor, service, material, or equipment for the purpose and during
838 the process of constructing, altering, or repairing an improvement; and

839 (b) includes the scheduling, estimating, staking, supervising, managing, materials
840 testing, inspection, observation, and quality control or assurance involved in constructing,
841 altering, or repairing an improvement.";

842 (b) modify Section 38-1-5 to read:

843 **"38-1-5. Priority -- Over other encumbrances.**

844 ~~[The liens herein provided for shall relate]~~

845 (1) As used in this section:

846 (a) "First preliminary notice filing" means the filing of the earliest filed valid
847 preliminary notice.

848 (b) "Project property" means the real property on which an improvement is being
849 constructed or made.

850 (c) "Valid preliminary notice" means a preliminary notice filed in accordance with
851 Section 38-1-32 that has not been canceled under Subsection 38-1-32(5).

852 (2) A construction service lien relates back to, and [take] takes effect as of, the time of
853 the [commencement to do work or furnish materials on the ground for the structure or
854 improvement, and shall have] first preliminary notice filing.

855 (3) (a) Subject to Subsection (3)(b), a construction service lien has priority over:

856 (i) any lien, mortgage, or other encumbrance [which may have attached subsequently to
857 the time when the building, improvement or structure was commenced, work begun, or first
858 material furnished on the ground; also over] that attaches after the first preliminary notice
859 filing; and

860 (ii) any lien, mortgage, or other encumbrance of which the lien holder had no notice
861 and which was unrecorded at the time [the building, structure or improvement was
862 commenced, work begun, or first material furnished on the ground] of the first preliminary

863 notice filing.

864 (b) (i) A claimant of a construction service lien may voluntarily subordinate the
 865 claimant's lien under this chapter to the mortgage or trust deed of a lender providing financing
 866 for the project.

867 (ii) The mortgage or trust deed of a lender that provides financing for a project has
 868 priority over each construction service lien of a claimant who files a preliminary notice under
 869 Section 38-1-32 after the mortgage or trust deed is recorded if each claimant for a construction
 870 service lien who files a preliminary notice before the recording of the mortgage or trust deed
 871 subordinates the claimant's lien to the lender's mortgage or trust deed."

872 (c) modify Subsection 38-1-19(1) to read:

873 "~~When any~~ (1) If a subcontractor ~~[shall have]~~ has actually begun to ~~[furnish labor or~~
 874 materials] perform preconstruction service or furnish construction service for which ~~[he]~~ the
 875 subcontractor is entitled to a lien ~~[no]~~, a payment to the original contractor ~~[shall]~~ may not
 876 impair or defeat ~~[such]~~ the lien~~[-; and no]~~."

877 (d) modify Subsection 38-1-27(2)(c) to read:

878 "(c) provide a central repository for ~~[notices of commencement, preliminary notices,~~
 879 ~~and notices of completion filed in connection with all privately owned construction projects as~~
 880 ~~well as all state and local government owned construction projects throughout Utah]~~ all notices
 881 filed with the database under Section 38-1-30.5, 38-1-30.7, 38-1-31.5, 38-1-32; 38-1-32.5;
 882 38-1-33, or 38-1-40;"

883 (e) modify Subsection 38-1-32(1) to read:

884 "(1) (a) ~~[(i) Except for a person who has a contract with an owner or an owner-builder~~
 885 ~~or a laborer compensated with wages, a subcontractor]~~ A person who, under Section 38-1-3, is
 886 entitled to a construction service lien with respect to a private project shall file a preliminary
 887 notice with the database ~~[by the]~~ no later ~~[of: (A)]~~ than 20 days after ~~[commencement of its~~
 888 own work or the commencement of] the person commences furnishing ~~[labor, service,~~
 889 equipment, and material] construction service to ~~[a construction]~~ the project~~[-; or]~~.

890 ~~[(B) 20 days after the filing of a notice of commencement if the subcontractor's work~~
 891 ~~commences before the filing of the first notice of commencement.]~~

892 ~~[(ii) (b) [A] Subject to Subsection (1)(c), a preliminary notice [filed within the period~~
 893 ~~described in Subsection (1)(a)(i)] is effective as to all [labor, service, equipment, and material~~

894 ~~furnished]~~ construction service that the person filing the notice furnishes to the [~~construction]~~
895 private project, including [labor, service, equipment, and material provided] construction
896 service that the person furnishes to more than one contractor or subcontractor on that same
897 project.

898 ~~[(iii) (A) If more than one notice of commencement is filed for a project, a person may~~
899 ~~attach a preliminary notice to any notice of commencement filed for the project by a party~~
900 ~~authorized in Section 38-1-31.]~~

901 ~~[(B) A preliminary notice attached to an untimely notice of commencement is valid if~~
902 ~~there is also a valid and timely notice of commencement for the project filed by a party~~
903 ~~authorized in Section 38-1-31.]~~

904 ~~[(b)]~~ (c) ~~[If a person files a]~~ A preliminary notice filed after the period [~~prescribed by]~~
905 provided in Subsection (1)(a)~~[-, the preliminary notice];~~

906 (i) becomes effective five days after the day [~~on which]~~ the preliminary notice is
907 filed[-]; and

908 (ii) is not effective for construction service that the person who files the preliminary
909 notice furnishes to the construction project before five days after the preliminary notice is filed.

910 ~~[(e) Except as provided in Subsection (1)(e), failure to file a preliminary notice within~~
911 ~~the period required by Subsection (1)(a) precludes a person from maintaining any claim for~~
912 ~~compensation earned for performance of labor or service or supply of materials or equipment~~
913 ~~furnished to the construction project before the expiration of five days after the late filing of a~~
914 ~~preliminary notice, except as against the person with whom the person contracted.]~~

915 (d) (i) (A) ~~[If a]~~ A person who [is required to file a preliminary notice under this
916 chapter] fails to file [the] a preliminary notice[-, that person] as required in this section may not
917 hold a valid construction service lien under this chapter.

918 (B) A person who files a preliminary notice after the period provided in Subsection
919 (1)(a) may not hold a valid construction service lien for construction service the person
920 furnishes to the construction project before five days after the preliminary notice is filed.

921 ~~[(B)]~~ (ii) A county recorder need not verify that a valid preliminary notice is filed when
922 a person files a notice to hold and claim a lien under Section 38-1-7.

923 ~~[(ii) The content of a]~~

924 (e) A preliminary notice that is timely filed with the database with respect to a private

925 project is considered to have been filed at the time of the first preliminary notice filing, as
 926 defined in Section 38-1-5.

927 (f) If a preliminary notice filed with the database includes the tax parcel identification
 928 number of a parcel not previously associated in the database with a private project, the
 929 designated agent shall promptly notify the person who filed the preliminary notice that:

930 (i) the preliminary notice includes a tax parcel identification number of a parcel not
 931 previously associated in the database with a private project; and

932 (ii) the likely explanation is that:

933 (A) the preliminary notice is the first filing for the project; or

934 (B) the tax parcel identification number is incorrectly stated in the preliminary notice.

935 (g) A preliminary notice for a private project shall include:

936 ~~[(A) the building permit number for the project, or the number assigned to the project~~
 937 ~~by the designated agent;]~~

938 ~~[(B)]~~ (i) the name, address, [and] telephone number, and email address of the person
 939 furnishing the [labor, service, equipment, or material] construction service for which the
 940 preliminary notice is filed;

941 ~~[(C)]~~ (ii) the name and address of the person who contracted with the claimant for the
 942 furnishing of the [labor, service, equipment, or material] construction service;

943 ~~[(D)]~~ (iii) the name of the record or reputed owner of the project property;

944 ~~[(E)]~~ (iv) the name of the original contractor for construction service under which the
 945 claimant is [performing] furnishing or will [perform its work; and] furnish construction
 946 service;

947 ~~[(F)]~~ (v) the address of the project property or a description of the location of the
 948 project[-];

949 ~~[(iii) Upon request by person identified in Subsection (1)(a)(i), an original contractor~~
 950 ~~shall provide the person with the building permit number for the project, or the number~~
 951 ~~assigned to the project by the designated agent.]~~

952 ~~[(e) If a person provides labor, service, equipment, or material before the filing of a~~
 953 ~~notice of commencement and the notice of commencement is filed more than 15 days after the~~
 954 ~~day on which the person providing labor, service, equipment, or material begins work on the~~
 955 ~~project, the person providing labor, service, equipment, or material need not file a preliminary~~

956 notice to maintain the person's right to hold a lien under this chapter or any other right,
957 including a right referenced under Subsection (1)(c):]

958 (vi) the name of the county in which the project property is located; and
959 (vii) (A) the tax parcel identification number of each parcel included in the project
960 property;
961 (B) the entry number of a previously filed notice of construction loan under Section
962 38-1-30.7 on the same project;
963 (C) the entry number of a previously filed preliminary notice on the same project that
964 includes the tax parcel identification number of each parcel included in the project property; or
965 (D) the entry number of the building permit issued for the project.
966 (h) A preliminary notice for a private project may include:
967 (i) the subdivision, development, or other project name applicable to the construction
968 project for which the preliminary notice is filed; and
969 (ii) the lot or parcel number of each lot or parcel that is included in the project
970 property.";
971 (f) modify Subsection 38-1-32(4) to read:
972 "[(e)] (4) (a) Subject to Subsection [(2)(d)] (4)(b), a person required by this section to
973 give preliminary notice is only required to give one notice for each project.
974 [(d)] (b) If the [labor, service, equipment, or material] construction service is furnished
975 pursuant to contracts under more than one original contract for construction service, the notice
976 requirements [must] shall be met with respect to the [labor, service, equipment, or material]
977 construction service furnished under each original contract.";
978 (2) the amendments to Subsection 38-1-27(2)(d) in this H.B. 260 supersede the
979 amendments to Subsection 38-1-27(2)(d) in H.B. 115;
980 (3) the amendments to Subsection 38-1-27(4)(a) in this H.B. 260 supersede the
981 amendments to Subsection 38-1-27(4)(a) in H.B. 115; and
982 (4) (a) Section 30-1-30.5, as enacted in this H.B. 260, be renumbered to Section
983 30-1-30.7; and
984 (b) all references in this H.B. 260 to Section 30-1-30.5 be changed to Section
985 30-1-30.7.

FISCAL NOTE

H.B. 260 2nd Sub. (Gray)

SHORT TITLE: Mechanics' Liens Revisions

SPONSOR: Clark, D.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.