

Representative Michael T. Morley proposes the following substitute bill:

CONSTRUCTION FILING AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael T. Morley

LONG TITLE

General Description:

This bill makes changes to mechanics' liens.

Highlighted Provisions:

This bill:

- ▶ addresses exemptions from preliminary notice requirements;
- ▶ addresses final completion of an original contract;
- ▶ addresses certificates of compliance;
- ▶ defines terms;
- ▶ clarifies how the State Construction Registry is to be indexed;
- ▶ requires the division to comply with Title 63, Chapter 38, Budgetary Procedures Act, when setting fees for the database;
- ▶ provides that actions in connection with a filing to the database are not adjudications within the meaning of Title 63, Chapter 46b, Administrative Procedures Act;
- ▶ clarifies that the division is not responsible for monitoring the timeliness of filings;
- ▶ establishes provisions for addressing delinquency of payment of a filing fee for a filing to the database;
- ▶ allows the division to make rules establishing the form of submission of an alternate filing;



26 ▶ provides that the archiving of a notice filed with the database may occur no earlier
27 than the later of:

- 28 • one year after the filing of a notice of completion;
- 29 • two years after the last filing activity if no notice of completion is filed; or
- 30 • one year after a filing is cancelled;

31 ▶ provides that data submitted to the database by a governmental entity is classified
32 under Title 63, Chapter 2, Government Records Access and Management Act, by
33 the division;

34 ▶ clarifies the required content of a notice of commencement filed for a project where
35 no building permit is required;

36 ▶ provides that a person requesting a notice of filings for a project is responsible for
37 the accuracy of an e-mail address, mailing address, or the telefax number to which
38 notice is requested to be sent;

39 ▶ provides that a designated agent need only send the notice to the provided e-mail
40 address, mailing address, or telefax number, whether or not the notice is actually
41 received;

42 ▶ modifies the time within which a subcontractor or supplier must file a preliminary
43 notice;

44 ▶ clarifies that a preliminary notice filed for one construction project applies to all
45 labor, service, equipment, and material for that construction project;

46 ▶ provides that a qualified beneficiary may recover from the Residence Lien Recovery
47 Fund only if the qualified beneficiary files an action within 180 days after a notice
48 of claim is filed under Section 38-1-7; and

49 ▶ makes technical changes.

50 **Monies Appropriated in this Bill:**

51 None

52 **Other Special Clauses:**

53 This bill provides retrospective operation.

54 **Utah Code Sections Affected:**

55 AMENDS:

56 **14-1-20 (Superseded 05/01/05)**, as last amended by Chapter 30, Laws of Utah 2004

- 57 **14-2-5 (Superseded 05/01/05)**, as last amended by Chapter 30, Laws of Utah 2004
- 58 **38-1-7 (Effective 05/01/05)**, as last amended by Chapters 85 and 250, Laws of Utah
- 59 2004
- 60 **38-1-11**, as last amended by Chapters 42, 85 and 188, Laws of Utah 2004
- 61 **38-1-27 (Effective 05/01/05)**, as repealed and reenacted by Chapter 250, Laws of Utah
- 62 2004
- 63 **38-1-30**, as enacted by Chapter 250, Laws of Utah 2004
- 64 **38-1-31 (Effective 05/01/05)**, as enacted by Chapter 250, Laws of Utah 2004
- 65 **38-1-32 (Effective 05/01/05)**, as enacted by Chapter 250, Laws of Utah 2004
- 66 **38-1-33 (Effective 05/01/05)**, as enacted by Chapter 250, Laws of Utah 2004
- 67 **38-1-37 (Effective 05/01/05)**, as enacted by Chapter 250, Laws of Utah 2004
- 68 **38-11-204**, as last amended by Chapter 42, Laws of Utah 2004
- 69 **63-56-38.1 (Superseded 05/01/05)**, as last amended by Chapter 30, Laws of Utah 2004

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

72 Section 1. Section **14-1-20 (Superseded 05/01/05)** is amended to read:

73 **14-1-20 (Superseded 05/01/05). Preliminary notice requirement.**

74 (1) Any person furnishing labor, service, equipment, or material for which a payment
75 bond claim may be made under this chapter shall provide preliminary notice to the payment
76 bond principal as prescribed by Section 38-1-27, except that this section does not apply:

77 (a) to a person who is in privity of contract with the payment bond principal;

78 **(b) to a person who contracts directly with the payment bond principal;**

79 ~~(b)~~ (c) to a person performing labor for wages; or

80 ~~(c)~~ (d) if a notice of commencement is not filed as prescribed in Section 38-1-27 for
81 the project or improvement for which labor, service, equipment, or material is furnished.

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

84 (3) The preliminary notice required by Subsection (1) must be provided prior to
85 commencement of any action on the payment bond.

86 Section 2. Section **14-2-5 (Superseded 05/01/05)** is amended to read:

87 **14-2-5 (Superseded 05/01/05). Preliminary notice requirement.**

88 (1) Any person furnishing labor, service, equipment, or material for which a payment
89 bond claim may be made under this chapter shall provide preliminary notice to the payment
90 bond principal as prescribed by Section 38-1-27, except that this section does not apply:

91 (a) to a person who is in privity of contract with the payment bond principal;

92 (b) to a person who contracts directly with the payment bond principal;

93 [~~(b)~~] (c) to a person performing labor for wages; or

94 [~~(c)~~] (d) if a notice of commencement is not filed as prescribed in Section 38-1-27 for
95 the project or improvement for which labor, service, equipment, or material is furnished.

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

98 (3) The preliminary notice required by Subsection (1) must be provided prior to
99 commencement of any action on the payment bond.

100 Section 3. Section **38-1-7 (Effective 05/01/05)** is amended to read:

101 **38-1-7 (Effective 05/01/05). Notice of claim -- Contents -- Recording -- Service on**
102 **owner of property.**

103 (1) (a) Except as modified in Section 38-1-27, a person claiming benefits under this
104 chapter shall file for record with the county recorder of the county in which the property, or
105 some part of the property, is situated, a written notice to hold and claim a lien within 90 days
106 from the date of final completion of the original contract under which the claimant claims a
107 lien under this chapter. For purposes of this Subsection (1), final completion of the original
108 contract means:

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

112 (ii) if no certificate of occupancy is required by the local government entity having
113 jurisdiction over the construction project, but as a result of the work performed under the
114 original contract an inspection is required for such work, the date of the final inspection for
115 such work by the local government entity having jurisdiction over the construction project; or

116 (iii) if with regard to work performed under the original contract no certificate of
117 occupancy and no final inspection are required by the local government entity having
118 jurisdiction over the construction project, the date on which there remains no substantial work

119 to be completed to finish such work on the original contract.

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

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

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

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

128 (i) repair work; or

129 (ii) warranty work[~~;~~ or].

130 [~~(iii) work for which the project owner is not holding payment to ensure completion of~~
131 ~~that work.~~]

132 (d) Notwithstanding Subsection (1)(a)(iii), final completion of the original contract
133 does not occur if work remains to be completed for which the owner is holding payment to
134 ensure completion of that work.

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

136 (i) the name of the reputed owner if known or, if not known, the name of the record
137 owner;

138 (ii) the name of the person:

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

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

141 (iii) the time when:

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

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

144 (iv) a description of the property, sufficient for identification;

145 (v) the name, current address, and current phone number of the lien claimant;

146 (vi) the amount of the lien claim;

147 (vii) the signature of the lien claimant or the lien claimant's authorized agent;

148 (viii) an acknowledgment or certificate as required under Title 57, Chapter 3,

149 Recording of Documents; and

150 (ix) if the lien is on an owner-occupied residence, as defined in Section 38-11-102, a
151 statement describing what steps an owner, as defined in Section 38-11-102, may take to require
152 a lien claimant to remove the lien in accordance with Section 38-11-107.

153 (b) Substantial compliance with the requirements of this Subsection (2) is sufficient to
154 hold and claim a lien.

155 (3) (a) Within 30 days after filing the notice of lien, the lien claimant shall deliver or
156 mail by certified mail a copy of the notice of lien to:

157 (i) the reputed owner of the real property; or

158 (ii) the record owner of the real property.

159 (b) If the record owner's current address is not readily available to the lien claimant, the
160 copy of the claim may be mailed to the last-known address of the record owner, using the
161 names and addresses appearing on the last completed real property assessment rolls of the
162 county where the affected property is located.

163 (c) Failure to deliver or mail the notice of lien to the reputed owner or record owner
164 precludes the lien claimant from an award of costs and attorneys' fees against the reputed
165 owner or record owner in an action to enforce the lien.

166 (4) The Division of Occupational and Professional Licensing shall make rules
167 governing the form of the statement required under Subsection (2)(a)(ix).

168 Section 4. Section **38-1-11** is amended to read:

169 **38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected --**
170 **Instructions and form affidavit and motion.**

171 (1) A lien claimant shall file an action to enforce the lien filed under this chapter within
172 180 days from the day on which the lien claimant filed a notice of claim under Section 38-1-7.

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

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

181 (3) This section may not be interpreted to impair or affect the right of any person to
182 whom a debt may be due for any work done or materials furnished to maintain a personal
183 action to recover the same.

184 (4) (a) If a lien claimant files an action to enforce a lien filed under this chapter
185 involving a residence, as defined in Section 38-11-102, the lien claimant shall include with the
186 service of the complaint on the owner of the residence:

187 (i) instructions to the owner of the residence relating to the owner's rights under Title
188 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

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

192 (b) The instructions and form affidavit required by Subsection (4)(a) shall meet the
193 requirements established by rule by the Division of Occupational and Professional Licensing in
194 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

195 (c) If a lien claimant fails to provide to the owner of the residence the instructions and
196 form affidavit required by Subsection (4)(a), the lien claimant shall be barred from maintaining
197 or enforcing the lien upon the residence.

198 (d) Judicial determination of the rights and liabilities of the owner of the residence
199 under Title 38, Chapters 1 and 11, and Title 14, Chapter 2, shall be stayed until after the owner
200 has been given a reasonable period of time to establish compliance with Subsections
201 38-11-204(4)(a) and (4)(b) through an informal proceeding, as set forth in Title 63, Chapter
202 46b, Administrative Procedures Act, commenced within 30 days of the owner being served
203 summons in the foreclosure action, at the Division of Occupational and Professional Licensing
204 and obtain a certificate of compliance or denial of certificate of compliance, as defined in
205 Section 38-11-102.

206 (e) An owner applying for a certificate of compliance under Subsection (4)(d) shall
207 send by certified mail to all lien claimants;

208 (i) a copy of the application for a certificate of compliance; and

209 (ii) all materials filed in connection with the application.

210 (f) The Division of Occupational and Professional Licensing shall notify all lien
211 claimants listed in an owner's application for a certificate of compliance under Subsection

212 (4)(e) of the issuance or denial of a certificate of compliance.

213 (5) The written notice requirement applies to liens filed on or after July 1, 2004.

214 Section 5. Section **38-1-27 (Effective 05/01/05)** is amended to read:

215 **38-1-27 (Effective 05/01/05). State Construction Registry -- Form and contents of**
216 **notice of commencement, preliminary notice, and notice of completion.**

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

218 (a) "Alternate filing" means a filing made in a manner established by the division under
219 Subsection (2)(e) other than an electronic filing.

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

221 (c) "Construction project," "project," or "improvement" means:

222 (i) a specific project or improvement for which one building permit is issued; or

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

225 ~~(a)~~ (d) "Database" means the State Construction ~~[Notice]~~ Registry ~~[Database]~~ created
226 in this section.

227 ~~(b)~~ (e) (i) "Designated agent" means the third party the Division of Occupational and
228 Professional Licensing contracts with to create and maintain the State Construction ~~[Notice]~~
229 Registry ~~[Database]~~.

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

232 ~~(c)~~ (f) "Division" means the Division of Occupational and Professional Licensing.

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

234 ~~(d)~~ (h) "Program" means the State Construction ~~[Notice]~~ Registry ~~[Database]~~
235 Program created in this section.

236 (2) Subject to receiving adequate funding through a legislative appropriation and
237 contracting with an approved third party vendor who meets the requirements of Sections
238 38-1-30 through 38-1-37, there is created the State Construction ~~[Notice]~~ Registry ~~[Database]~~
239 Program ~~[which]~~ that shall:

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

241 (ii) promote a fair working environment;

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

243 (c) provide a central repository for notices of commencement, preliminary notices, and
244 notices of completion filed in connection with all privately owned construction projects as well
245 as all state and local government owned construction projects throughout Utah;

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

247 (i) notices of commencement[;];

248 (ii) preliminary notices[;]; and

249 (iii) notices of completion ~~[via the program Internet website];~~

250 (e) accommodate;

251 (i) electronic filing of ~~[such notices as well as provide for]~~ the notices described in
252 Subsection (2)(d); and

253 (ii) alternate filing of the notices described in Subsection (2)(d) by U.S. mail, telefax,
254 ~~[telephone,]~~ or any other alternate method as provided by rule made by the division in
255 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

256 (f) (i) provide electronic notification for up to three e-mail addresses for each interested
257 person or company who requests notice from the construction notice registry ~~[as well as]; and~~

258 (ii) provide alternate means of notification for ~~[those persons]~~ a person who ~~[make]~~
259 makes an alternate ~~[filings]~~ filing, including U.S. mail, telefax, or any other method as
260 prescribed by rule made by the division in accordance with Title 63, Chapter 46a, Utah
261 Administrative Rulemaking Act; and

262 (g) provide hard-copy printing of electronic receipts for an individual ~~[filings]~~ filing
263 evidencing the date and time of the individual ~~[filings as well as]~~ filing and the content of the
264 individual ~~[filings]~~ filing.

265 (3) (a) ~~[Persons interested in a construction project]~~ An interested person may request
266 notice of filings related to ~~[the]~~ a project.

267 (b) The database shall be indexed by:

268 (i) owner name[;];

269 (ii) original contractor name[;];

270 (iii) subdivision, development, or other project name, if any;

271 (iv) project address[;];

272 (v) lot or parcel number[;];

273 (vi) unique project number[;] assigned by the designated agent; and

274 (vii) any other identifier that the division considers reasonably appropriate [and
275 established by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative
276 Rulemaking Act] in collaboration with the designated agent.

277 (4) (a) In accordance with [~~Title 63, Chapter 46a, Utah Administrative Rulemaking~~
278 ~~Act,] the process required by Section 63-38-3.2, the division shall establish [by rule] the
279 [filing] fees for [notices]:~~

280 (i) a notice of commencement[;];

281 (ii) a preliminary [notices, notices] notice;

282 (iii) a notice of completion[; and requests];

283 (iv) a request for notice[; which fees may not exceed the amount reasonably necessary
284 to create and maintain the database.];

285 (v) providing a required notice by an alternate method of delivery;

286 (vi) a duplicate receipt of a filing; and

287 (vii) account setup for a person who wishes to be billed periodically for filings with the
288 database.

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

291 ~~[(b)]~~ (c) The fees established by the division may vary by method of filing if one form
292 of filing is more costly than [other forms] another form of filing.

293 (d) Notwithstanding Subsection 63-38-3.2(2)(c), the division need not submit the fee
294 schedule for fees allowed by this Subsection (4) to the Legislature until the 2006 General
295 Session.

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

299 (5) The following are not an adjudicative proceeding under Title 63, Chapter 46b,
300 Administrative Procedures Act:

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

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

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

305 (6) The division and the designated agent need not determine the timeliness of any
306 notice before filing the notice in the database.

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

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

312 (c) Any order issued in a proceeding described in Subsection (7)(b) may prescribe the
313 method of that person's payment of fees for filing notices with the database after issuance of the
314 order.

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

316 **38-1-30. Third party contract -- Designated agent.**

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

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

322 (i) local government entities issuing building permits;

323 (ii) original contractors;

324 (iii) subcontractors; and

325 (iv) other interested persons.

326 (b) The division and the designated agent shall design, develop, and test the database
327 for full implementation on May 1, 2005.

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

330 (a) the division to oversee and enforce this section, Section 38-1-27, and Sections
331 38-1-31 through 38-1-37; ~~and~~

332 (b) the designated agent to administer this section, Section 38-1-27, and Sections
333 38-1-31 through 38-1-37[-]; and

334 (c) the form of submission of an alternate filing.

335 (4) (a) The designated agent shall archive computer data files at least semiannually for

336 auditing purposes.

337 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
338 division shall make rules to allow the designated agent~~[- unless requested otherwise by an~~
339 ~~interested party for a particular project,]~~ to periodically archive ~~[and purge completed or~~
340 ~~inactive]~~ projects from the database~~[-]~~.

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

342 (i) ~~[no earlier than]~~ one year after the day on which a notice of ~~[commencement]~~
343 completion is filed for a ~~[particular]~~ project; ~~[or]~~

344 (ii) if no notice of ~~[commencement]~~ completion is filed, ~~[no earlier than]~~ two years
345 after the last filing activity for a ~~[particular]~~ project~~[-]~~; or

346 (iii) one year after the day on which a filing is cancelled under Subsection
347 38-1-32(3)(c) or 38-1-33(2)(c).

348 ~~[(c)]~~ (d) The division may audit the designated agent's administration of the database as
349 often as the division considers necessary.

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

353 Section 7. Section **38-1-31 (Effective 05/01/05)** is amended to read:

354 **38-1-31 (Effective 05/01/05). Building permit -- Construction -- Notice registry --**
355 **Notice of commencement of work.**

356 (1) (a) (i) For a construction project where a building permit is issued, within 15 days
357 after the issuance of the building permit, the local government entity issuing that building
358 permit shall input the ~~[data]~~ building permit application and transmit the building permit
359 information to the database electronically ~~[via]~~ by way of the Internet or computer modem or
360 by any other means and such information shall form the basis of a notice of commencement.

361 (ii) For the purposes of classifying a record under Title 63, Chapter 2, Government
362 Records Access and Management Act, building permit information transmitted from a local
363 governmental entity to the database shall be classified in the database by the division
364 notwithstanding the local governmental entity's classification of the building permit
365 information.

366 (b) For a construction project where a building permit is not issued, within 15 days

367 after commencement of physical construction work at the project site, the original contractor
368 shall file a notice of commencement with the database.

369 (c) An owner of construction, a lender, surety, or other interested ~~[party]~~ person may
370 file a notice of commencement with the designated agent within the ~~[prescribed]~~ time ~~[set forth~~
371 ~~in Subsection]~~ prescribed by Subsections (1)(a) and (b).

372 (d) If duplicate notices of commencement are filed, they shall be combined into one
373 notice for each project. The designated agent shall assign each construction project a unique
374 project number ~~[which]~~ that:

375 (i) identifies each construction project; and

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

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

381 (ii) A notice of commencement is effective only as to the ~~[work, materials, or~~
382 ~~equipment]~~ labor, service, equipment, and material furnished to the construction project that is
383 provided subsequent to the filing of the notice of commencement.

384 (2) (a) The content of a notice of commencement shall include the following ~~[if~~
385 ~~available on a building permit]:~~

386 ~~[(a)]~~ (i) the name and address of the owner of the project ~~[or improvement];~~

387 ~~[(b)]~~ (ii) the name and address of the:

388 ~~[(i)]~~ (A) original contractor; and

389 ~~[(ii)]~~ (B) surety providing any payment bond for the project ~~[or improvement], or if~~
390 none exists, a statement that a payment bond was not required for the work being performed;

391 ~~[(c)-(i)]~~ (iii) (A) the project address if the project can be reasonably identified by an
392 address; or

393 ~~[(ii)]~~ (B) the name and general description of the location of the project if the project
394 cannot be reasonably identified by an address;

395 ~~[(d)]~~ (iv) a general description of the project; and

396 ~~[(e)]~~ (v) the lot or parcel number, and any subdivision, development, or other project
397 name, of the real property upon which the project is to be constructed if the project is subject to

398 mechanics' liens[; and].

399 ~~[(f) a legal description of the property on which the project is located if the project is~~
400 ~~subject to mechanics' liens.]~~

401 (b) The content of a notice of commencement need not include all of the items listed in
402 Subsection (2)(a) if:

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

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

406 (3) ~~[Failure to file any]~~ If a notice of commencement for a construction project
407 ~~[suspends the operation of]~~ is not filed within 15 days after the day on which a building permit
408 is issued, the following do not apply:

409 (a) ~~[the preliminary notice provisions of]~~ Section 38-1-32; and

410 (b) ~~[the notice of completion provisions of]~~ Section 38-1-33.

411 (4) (a) [Electronic] Unless a person indicates to the division or designated agent that
412 the person does not wish to receive a notice under this section, electronic notice of the filing of
413 a notice of commencement or alternate notice as prescribed in Subsection (1), shall be provided
414 to:

415 ~~[(a)]~~ (i) all persons who have filed notices of commencement for the project; and

416 ~~[(b)]~~ (ii) all interested [parties] persons who have requested such notice for the project.

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

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

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

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

425 (5) The burden is upon any person seeking to enforce the notice of commencement to
426 prove that the notice of commencement is filed timely and meets all of the requirements in this
427 section.

428 (6) At the time a building permit is obtained, each original contractor shall

429 conspicuously post at the project site a copy of [~~each~~] the building permit obtained for the
430 project [~~improvement~~].

431 Section 8. Section **38-1-32 (Effective 05/01/05)** is amended to read:

432 **38-1-32 (Effective 05/01/05). Preliminary notice -- Subcontractor or supplier.**

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

435 (A) [~~Within~~] 20 days after commencement of its own work or the commencement of
436 furnishing [~~materials or equipment~~] labor, service, equipment, and material to a construction
437 project[~~, a subcontractor or supplier shall file a preliminary notice with the construction notice~~
438 ~~registry.~~]; or

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

440 (ii) A preliminary notice filed within the [~~20-day~~] period described in Subsection
441 (1)(a)(i) is effective as to all [~~work, materials, and equipment~~] labor, service, equipment, and
442 material furnished to the construction project, including labor, service, equipment, and material
443 provided to more than one contractor or subcontractor.

444 (b) If a subcontractor or supplier files a preliminary notice after the [~~20-day~~] period
445 prescribed by Subsection (1)(a), the preliminary notice becomes effective [~~as of~~] five days after
446 the [~~filing of the~~] day on which the preliminary notice is filed.

447 (c) Failure to file a preliminary notice within the [~~20-day~~] period required by
448 Subsection (1)(a) precludes a subcontractor or supplier from filing any claim for compensation
449 earned for performance of [~~work~~] labor or service or supply of materials or equipment
450 furnished to the construction project before the expiration of five days after the late filing of a
451 preliminary notice, except as against the person with whom the subcontractor or supplier
452 contracted.

453 (d) (i) The preliminary notice must be filed before a notice of lien may be filed with the
454 county recorder pursuant to Section 38-1-7.

455 (ii) The content of a preliminary notice shall include the following:

456 [(i)] (A) the name, address, and telephone number of the person furnishing the labor,
457 service, equipment, or material;

458 [(ii)] (B) the name and address of the person who contracted with the claimant for the
459 furnishing of the labor, service, equipment, or material;

460 [(iii)] (C) the name of the record or reputed owner of the project [~~or improvement~~];
461 [(iv)] (D) the name of the original contractor under which the claimant is performing or
462 will perform its work; and

463 [(v)] (E) the address of the project [~~or improvement~~] or a description of the location of
464 the project [~~or improvement~~].

465 (2) (a) (i) [~~Electronic~~] Unless a person indicates to the division or designated agent that
466 the person does not wish to receive a notice under this section, electronic notification of the
467 filing of a preliminary notice or alternate notice as prescribed in Subsection (1), shall be
468 provided to:

469 [(i)] (A) the person filing the preliminary notice;

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

471 [(iii)] (C) all interested [~~parties~~] persons who have requested such notice for the
472 project.

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

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

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

478 (iii) The designated agent fulfills the notice requirement of Subsection (2)(a)(i) when it
479 sends the notice to the e-mail address, mailing address, or telefax number provided to the
480 designated agent whether or not the notice is actually received.

481 (b) The burden is upon the person filing the preliminary notice to prove that the
482 preliminary notice is filed timely and substantially meets all of the requirements of this section.

483 (c) Subject to Subsection (1)(d), a person required by this section to give preliminary
484 notice is only required to give one notice for each project [~~or improvement, which may include~~
485 ~~an entire structure or a scheme of improvements~~].

486 (d) If the labor, service, equipment, or material is furnished pursuant to contracts under
487 more than one original contract, the notice requirements must be met with respect to the labor,
488 service, equipment, or [~~materials~~] material furnished under each original contract.

489 (3) (a) If a construction project owner, original contractor, subcontractor, or other
490 interested person believes that a preliminary notice has been filed erroneously, that owner,

491 original contractor, subcontractor, or other interested person can request from the person who
492 filed the preliminary notice evidence establishing the validity of the preliminary notice.

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

496 (c) If the person or entity that filed the preliminary notice [~~cannot~~] does not provide
497 proof of the validity of the preliminary notice, that person or entity shall immediately [~~remove~~]
498 cancel the preliminary notice from the database in any manner prescribed by the division
499 pursuant to rule.

500 Section 9. Section **38-1-33 (Effective 05/01/05)** is amended to read:

501 **38-1-33 (Effective 05/01/05). Notice of completion.**

502 (1) (a) (i) Upon final completion of a construction project, an owner of a construction
503 project, an original contractor, a lender that has provided financing for the construction project,
504 or surety that has provided bonding for the construction project, may file a notice of completion
505 with the database.

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

507 [(i)] (A) if as a result of work performed under the original contract a permanent
508 certificate of occupancy is required for such work, the date of issuance of a permanent
509 certificate of occupancy by the local government entity having jurisdiction over the
510 construction project;

511 [(ii)] (B) if no certificate of occupancy is required by the local government entity
512 having jurisdiction over the construction project, but as a result of the work performed under
513 the original contract an inspection is required for such work, the date of the final inspection for
514 such work by the local government entity having jurisdiction over the construction project; or

515 [(iii)] (C) if with regard to the work performed under the original contract no certificate
516 of occupancy and no final inspection are required by the local government entity having
517 jurisdiction over the construction project, the date on which there remains no substantial work
518 to be completed to finish such work on the original contract.

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

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

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

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

527 (i) repair work; or

528 (ii) warranty work[~~; or~~].

529 [~~(iii) work for which the project owner is not holding payment to ensure completion of~~
530 ~~that work.~~]

531 (d) Notwithstanding Subsection (1)(a)(ii)(C), final completion of the original contract
532 does not occur if work remains to be completed for which the owner is holding payment to
533 ensure completion of the work.

534 [~~(d)~~] (e) (i) [~~Electronic~~] Unless a person indicates to the division or designated agent
535 that the person does not wish to receive a notice under this section, electronic notification of
536 the filing of a notice of completion or alternate notice as prescribed in Subsection (1)(a), shall
537 be provided to:

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

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

540 (C) all interested [~~parties~~] persons who have requested notice for the project.

541 (ii) A person to whom notice is required under Subsection (1)(d) is responsible for:

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

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

546 (iii) The designated agent fulfills the notice requirement of Subsection (1)(d)(ii) when
547 it sends the notice to the e-mail address, mailing address, or telefax number provided to the
548 designated agent, whether or not the notice is actually received.

549 [~~(iv)~~] (iv) Upon the filing of a notice of completion, the time periods for filing
550 preliminary notices stated in Section 38-1-27 are modified such that all preliminary notices
551 shall be filed subsequent to the notice of completion and [~~shall be filed~~] within ten days from
552 the day on which the notice of completion is filed.

553 [(e)] (f) A subcontract that is considered an original contract for purposes of this
554 section shall not create a requirement for an additional preliminary notice if a preliminary
555 notice has already been given for ~~[materials and]~~ the labor, service, equipment, and material
556 furnished to the subcontractor who performs substantial work.

557 (2) (a) If a construction project owner, original contractor, subcontractor, or other
558 interested person believes that a notice of completion has been filed erroneously, that owner,
559 original contractor, subcontractor, or other interested person can request from the person who
560 filed the preliminary notice evidence establishing the validity of the notice of completion.

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

564 (c) If the person that filed the notice of completion ~~[cannot]~~ does not provide proof of
565 the validity of the notice of completion, that person shall immediately ~~[remove]~~ cancel the
566 notice of completion from the database in any manner prescribed by the division pursuant to
567 rule.

568 Section 10. Section **38-1-37 (Effective 05/01/05)** is amended to read:

569 **38-1-37 (Effective 05/01/05). Application of Section 38-1-27 and Sections 38-1-30**
570 **through 38-1-36.**

571 (1) Except as provided in Subsection (3), Section 38-1-27 and Sections 38-1-30
572 through 38-1-36 in effect as of May 1, 2005 shall apply to construction projects [commenced]
573 for which a notice of commencement is filed on or after May 1, 2005.

574 (2) A construction project ~~[commenced]~~ for which a notice of commencement is filed
575 before May 1, 2005 is subject to the provisions of this chapter in effect prior to May 1, 2005.

576 (3) (a) Section 38-1-27 and Sections 38-1-30 through 38-1-36 in effect as of May 1,
577 2005, shall apply to a construction project for which a notice of commencement is filed on or
578 after November 1, 2005 involving a residence, as defined in Subsection 38-11-102(22).

579 (b) For a construction project for which a notice of commencement is filed before
580 November 1, 2005 involving a residence, as defined in Subsection 38-11-102(22), the law in
581 effect on April 30, 2005 shall govern.

582 Section 11. Section **38-11-204** is amended to read:

583 **38-11-204. Claims against the fund -- Requirement to make a claim --**

584 **Qualifications to receive compensation -- Qualifications to receive a certificate of**
585 **compliance.**

586 (1) To claim recovery from the fund a person shall:

587 (a) meet the requirements of either Subsection (4) or (7);

588 (b) pay an application fee determined by the division under Section 63-38-3.2; and

589 (c) file with the division a completed application on a form provided by the division
590 accompanied by supporting documents establishing:

591 (i) that the person meets the requirements of either Subsection (4) or (7);

592 (ii) that the person was a qualified beneficiary or laborer during the construction on the
593 owner-occupied residence; and

594 (iii) the basis for the claim.

595 (2) To recover from the fund, the application required by Subsection (1) shall be filed
596 no later than one year:

597 (a) from the date the judgment required by Subsection (4)(d) is entered;

598 (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded
599 from obtaining a judgment or from satisfying the requirements of Subsection (4)(d) because the
600 nonpaying party filed bankruptcy within one year after the entry of judgment; or

601 (c) from the date the laborer, trying to recover from the fund, completed the laborer's
602 qualified services.

603 (3) To obtain a certificate of compliance an owner or agent of the owner shall establish
604 with the division that the owner meets the requirements of Subsections (4)(a) and (4)(b).

605 (4) To recover from the fund, regardless of whether the residence is occupied by the
606 owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified
607 beneficiary shall establish that:

608 (a) (i) the owner of the owner-occupied residence or the owner's agent entered into a
609 written contract with an original contractor licensed or exempt from licensure under Title 58,
610 Chapter 55, Utah Construction Trades Licensing Act:

611 (A) for the performance of qualified services;

612 (B) to obtain the performance of qualified services by others; or

613 (C) for the supervision of the performance by others of qualified services in
614 construction on that residence;

615 (ii) the owner of the owner-occupied residence or the owner's agent entered into a
616 written contract with a real estate developer for the purchase of an owner-occupied residence;
617 or

618 (iii) the owner of the owner-occupied residence or the owner's agent entered into a
619 written contract with a factory built housing retailer for the purchase of an owner-occupied
620 residence;

621 (b) the owner has paid in full the original contractor, licensed or exempt from licensure
622 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or
623 factory built housing retailer under Subsection (4)(a) with whom the owner has a written
624 contract in accordance with the written contract and any amendments to the contract;

625 (c) (i) the original contractor, licensed or exempt from licensure under Title 58,
626 Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory
627 built housing retailer subsequently failed to pay a qualified beneficiary who is entitled to
628 payment under an agreement with that original contractor or real estate developer licensed or
629 exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for
630 services performed or materials supplied by the qualified beneficiary;

631 (ii) a subcontractor who contracts with the original contractor, licensed or exempt from
632 licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate
633 developer, or the factory built housing retailer failed to pay a qualified beneficiary who is
634 entitled to payment under an agreement with that subcontractor or supplier; or

635 (iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a
636 qualified beneficiary who is entitled to payment under an agreement with that subcontractor or
637 supplier;

638 (d) (i) the qualified beneficiary filed:

639 (A) an action against the nonpaying party to recover monies owed to the qualified
640 beneficiary within 180 days from the date the qualified beneficiary [~~last provided qualified~~
641 ~~services~~] filed a notice of claim under Section 38-1-7, unless precluded from doing so by the
642 nonpaying party's bankruptcy filing within the 180 days [~~after completion of services~~] from the
643 date the qualified beneficiary filed the notice of claim; and

644 (B) a notice of commencement of action with the division within 30 days from the date
645 the qualified beneficiary filed the civil action if a civil action was filed as required by

646 Subsection (4)(d)(i)(A);

647 (ii) the qualified beneficiary has obtained a judgment against the nonpaying party who
648 failed to pay the qualified beneficiary under an agreement to provide qualified services for
649 construction of that owner-occupied residence;

650 (iii) (A) the qualified beneficiary has:

651 (I) obtained from a court of competent jurisdiction the issuance of an order requiring
652 the judgment debtor, or if a corporation any officer of the corporation, to appear before the
653 court at a specified time and place to answer concerning the debtor's or corporation's property;

654 (II) received return of service of the order from a person qualified to serve documents
655 under the Utah Rules of Civil Procedure, Rule 4(b); and

656 (III) made reasonable efforts to obtain asset information from the supplemental
657 proceedings; and

658 (B) if assets subject to execution are discovered as a result of the order required under
659 Subsection (4)(d)(iii)(A) or for any other reason, to obtain the issuance of a writ of execution
660 from a court of competent jurisdiction; or

661 (iv) the qualified beneficiary timely filed a proof of claim where permitted in the
662 bankruptcy action, if the nonpaying party has filed bankruptcy;

663 (e) the qualified beneficiary is not entitled to reimbursement from any other person;
664 and

665 (f) the qualified beneficiary provided qualified services to a contractor, licensed or
666 exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

667 (5) The requirements of Subsections (4)(d)(i), (ii), and (iii) need not be met if the
668 qualified beneficiary has been precluded from obtaining a judgment against the nonpaying
669 party or from satisfying the requirements of Subsections (4)(d)(i), (ii), and (iii) because the
670 nonpaying party filed bankruptcy.

671 (6) If a qualified beneficiary fails to file the notice with the division required under
672 Subsection (4)(d)(i)(B), the claim of the qualified beneficiary shall be paid:

673 (a) if otherwise qualified under this chapter;

674 (b) to the extent that the limit of Subsection 38-11-203(4)(a) has not been reached by
675 payments from the fund to qualified beneficiaries who have complied with the notice
676 requirements of Subsection (4)(d)(i)(B); and

677 (c) in the order that the claims are filed by persons who fail to comply with Subsection
678 (4)(d)(i)(B), not to exceed the limit of Subsection 38-11-203(4)(a).

679 (7) To recover from the fund a laborer shall:

680 (a) establish that the laborer has not been paid wages due for the work performed at the
681 site of a construction on an owner-occupied residence; and

682 (b) provide any supporting documents or information required by rule by the division.

683 (8) A fee determined by the division under Section 63-38-3.2 shall be deducted from
684 any recovery from the fund received by a laborer.

685 (9) The requirements of Subsections (4)(a) and (4)(b) may be satisfied if an owner or
686 agent of the owner establishes to the satisfaction of the director that the owner of the
687 owner-occupied residence or the owner's agent entered into a written contract with an original
688 contractor who:

689 (a) was a business entity that was not licensed under Title 58, Chapter 55, Utah
690 Construction Trades Licensing Act, but was solely or partly owned by an individual who was
691 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act; or

692 (b) was a natural person who was not licensed under Title 58, Chapter 55, Utah
693 Construction Trades Licensing Act, but who was the sole or partial owner and qualifier of a
694 business entity that was licensed under Title 58, Chapter 55, Utah Construction Trades
695 Licensing Act.

696 (10) The director shall have equitable power to determine if the requirements of
697 Subsections (4)(a) and (4)(b) have been met, but any decision by the director under [~~Title 38;~~
698 ~~Chapter 11;~~] this chapter shall not alter or have any effect on any other decision by the division
699 under Title 58, Occupations and Professions.

700 Section 12. Section **63-56-38.1 (Superseded 05/01/05)** is amended to read:

701 **63-56-38.1 (Superseded 05/01/05). Preliminary notice requirement.**

702 (1) Any person furnishing labor, service, equipment, or material for which a payment
703 bond claim may be made under this chapter shall provide preliminary notice to the payment
704 bond principal as prescribed by Section 38-1-27, except that this section does not apply:

705 (a) to a person who is in privity of contract with the payment bond principal;

706 (b) to a person who contracts directly with the payment bond principal;

707 [~~(b)~~] (c) to a person performing labor for wages; or

708 [~~e~~] (d) if a notice of commencement is not filed as prescribed in Section 38-1-27 for
709 the project or improvement for which labor, service, equipment, or material is furnished.

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

712 (3) The preliminary notice required by Subsection (1) must be provided prior to
713 commencement of any action on the payment bond.

714 Section 13. **Retrospective operation.**

715 (1) The amendments to Section 38-1-37 (Effective 05/01/05) have retrospective
716 operation to May 1, 2005.

717 (2) The amendments to Sections 14-1-20 (Superseded 05/01/05), 14-2-5 (Superseded
718 05/01/05), and 63-56-38.1 (Superseded 05/01/05) have retrospective operation to April 30,
719 2005.

Fiscal Note
Bill Number HB0105S01

Construction Filing Amendments

08-Feb-05

7:15 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst