

Representative Michael T. Morley proposes the following substitute bill:

MECHANICS' LIENS AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies provisions relating to mechanics' liens.

Highlighted Provisions:

This bill:

- ▶ clarifies the applicability of mechanics' liens provisions;
- ▶ modifies definitions;
- ▶ provides for liens for preconstruction service, establishes a procedure for perfecting and enforcing the liens, and provides for the priority of the liens;
- ▶ modifies a provision relating to the waiver or limitation of lien rights;
- ▶ provides that a person who knowingly falsifies information for the purpose of obtaining priority of a preconstruction service lien is guilty of a misdemeanor; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 26 **38-1-1**, Utah Code Annotated 1953
- 27 **38-1-4**, as last amended by Laws of Utah 1987, Chapter 170
- 28 **38-1-5**, Utah Code Annotated 1953
- 29 **38-1-7**, as last amended by Laws of Utah 2009, Chapter 50
- 30 **38-1-9**, as last amended by Laws of Utah 1987, Chapter 50
- 31 **38-1-11**, as last amended by Laws of Utah 2010, Chapter 31
- 32 **38-1-19**, Utah Code Annotated 1953
- 33 **38-1-27**, as last amended by Laws of Utah 2009, Chapters 183 and 239
- 34 **38-1-31**, as last amended by Laws of Utah 2009, Chapter 50
- 35 **38-1-32**, as last amended by Laws of Utah 2009, Chapter 50
- 36 **38-1-33**, as last amended by Laws of Utah 2010, Chapter 76
- 37 **38-1-40**, as last amended by Laws of Utah 2010, Chapter 31

38 ENACTS:

- 39 **38-1-2.1**, Utah Code Annotated 1953
- 40 **38-1-4.7**, Utah Code Annotated 1953
- 41 **38-1-6.7**, Utah Code Annotated 1953
- 42 **38-1-30.5**, Utah Code Annotated 1953
- 43 **76-6-524**, Utah Code Annotated 1953

44 REPEALS AND REENACTS:

- 45 **38-1-2**, as last amended by Laws of Utah 2006, Chapter 297
- 46 **38-1-3**, as last amended by Laws of Utah 1994, Chapter 308
- 47 **38-1-29**, as enacted by Laws of Utah 2001, Chapter 229



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

50 Section 1. Section **38-1-1** is amended to read:

51 **38-1-1. Public improvements not subject to chapter -- Exception.**

52 [The provisions of this]

53 Except as provided in Sections 38-1-27, 38-1-30 through 38-1-37, and 38-1-40 relating
54 to the State Construction Registry, this chapter [shall] does not apply to any public [building;
55 structure or] improvement.

56 Section 2. Section **38-1-2** is repealed and reenacted to read:

57 38-1-2. Definitions.58 As used in this chapter:59 (1) "Anticipated improvement" means the improvement:60 (a) for which a preconstruction service is performed; and61 (b) that is anticipated to follow the performing of the preconstruction service.62 (2) "Applicable county recorder" means the office of the recorder of each county in63 which any part of the property on which a claimant claims or intends to claim a lien under this
64 chapter is located.65 (3) "Bona fide loan" means a loan to an owner or owner-builder by a lender in which
66 the owner or owner-builder has no financial or beneficial interest greater than 5% of the voting
67 shares or other ownership interest.68 (4) "Claimant" means a person entitled to claim a lien under this chapter.69 (5) "Compensation" means the payment of money for a service rendered or an expense
70 incurred, whether based on:71 (a) time and expense, lump sum, stipulated sum, percentage of cost, cost plus fixed or
72 percentage fee, or commission; or73 (b) a combination of the bases listed in Subsection (5)(a).74 (6) "Construction service":75 (a) means to provide labor, material, or equipment for the purpose and during the
76 process of constructing, altering, or repairing an improvement; and77 (b) includes the scheduling, estimating, staking, supervising, managing, materials
78 testing, inspection, observation, and quality control or assurance involved in constructing,
79 altering, or repairing an improvement.80 (7) "Construction service lien" means a lien under this chapter for construction service.81 (8) "General preconstruction contractor" means a claimant,81a ↯ [whether] other than ↯ an original82 contractor ↯ [or subcontractor] ↯ , who contracts with one or more subcontractors for the
83 subcontractor or subcontractors to provide preconstruction service that the claimant is under
84 contract to provide.85 (9) "Improvement" means:86 (a) a building, infrastructure, utility, or other human-made structure or object
87 constructed on or for and affixed to real property; or

88 (b) a repair, modification, or alteration of a building, infrastructure, utility, or object
89 referred to in Subsection (9)(a).

90 (10) "Original contract":

91 (a) means a contract between an owner of real property and an original contractor for
92 preconstruction service or construction service; and

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

94 (11) "Original contractor" means a person who contracts with an owner of real property
95 to provide preconstruction service or construction service.

96 (12) "Owner-builder" means an owner of real property who:

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

99 (b) obtains a building permit for the improvement.

100 (13) "Preconstruction service":

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

103 (i) before construction of the improvement commences; and

104 (ii) for compensation separate from any compensation paid or to be paid for
105 construction service for the improvement; and

106 (b) includes consulting, conducting a site investigation or assessment, programming,
107 preconstruction cost or quantity estimating, preconstruction scheduling, performing a
108 preconstruction construction feasibility review, procuring construction services, and preparing
109 a study, report, rendering, model, boundary or topographic survey, plat, map, design, plan,
110 drawing, specification, or contract document.

111 (14) "Preconstruction service lien" means a lien under this chapter for a
112 preconstruction service.

113 (15) "Subcontractor" means a person who contracts to provide preconstruction service
114 or construction service to a person other than the owner of the real property for which the
115 preconstruction service or construction service is provided.

116 Section 3. Section **38-1-2.1** is enacted to read:

117 **38-1-2.1. Owner-builder original contract.**

118 For purposes of this chapter, an original contract is considered to exist between an

119 owner-builder as owner and the owner-builder as original contractor.

120 Section 4. Section **38-1-3** is repealed and reenacted to read:

121 **38-1-3. Those entitled to lien -- What may be attached.**

122 (1) Subject to the provisions of this chapter, a person who performs preconstruction
123 service or construction service on or for real property has a lien on the real property for the
124 reasonable value of the preconstruction service or construction service, respectively, except as
125 provided in Section 38-11-107.

126 (2) A person may claim a preconstruction service lien and a separate construction
127 service lien on the same real property.

128 (3) (a) A construction service lien may include an amount claimed for a
129 preconstruction service.

130 (b) A preconstruction service lien may not include an amount claimed for construction
131 service.

132 (4) A lien under this chapter attaches only to the interest that the owner or
133 owner-builder has in the real property that is the subject of the lien.

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

135 **38-1-4. Land covered by lien -- Multiple lots occupied by improvement -- What a**
136 **lien attaches to.**

137 [~~The liens granted by~~]

138 (1) A lien under this chapter [~~shall extend~~] extends to and [~~cover so~~] covers as much of
139 the land [~~whereon such building, structure, or~~] on which the improvement [~~shall be~~] is made as
140 [~~may be~~] necessary for the convenient use and occupation of the land. [~~In case any such~~
141 building shall occupy]

142 (2) If an improvement occupies two or more lots or other subdivisions of land, [~~such~~]
143 the lots or subdivisions [~~shall be~~] are considered as one for the purposes of this chapter. [~~The~~
144 liens provided for in]

145 (3) A lien under this chapter [~~shall attach~~] attaches to all franchises, privileges,
146 appurtenances, [~~and to all~~] machinery, and fixtures[;] pertaining to or used in connection with
147 [any such lands, buildings, structures, or improvements] the improvement.

148 Section 6. Section **38-1-4.7** is enacted to read:

149 **38-1-4.7. Preconstruction service lien -- Priority.**

- 150 (1) Except as otherwise provided in this chapter, a preconstruction service lien:
151 (a) relates back to and takes effect as of the time a notice of retention under Section
152 38-1-30.5 is filed; and
153 (b) has priority over:
154 (i) any lien, mortgage, or other encumbrance that attaches after the notice of retention
155 is filed; and
156 (ii) any lien, mortgage, or other encumbrance of which the claimant had no notice and
157 that was unrecorded at the time the notice of retention is filed.

158 (2) A preconstruction service lien is subordinate to an interest securing a bona fide loan
159 if and to the extent that the lien covers preconstruction service provided after the interest
160 securing a bona fide loan is recorded.

161 (3) Preconstruction service is considered complete for any project, project phase, or bid
162 package as of the date that construction service for that project, project phase, or bid package,
163 respectively, commences.

164 Section 7. Section **38-1-5** is amended to read:

165 **38-1-5. Construction service lien -- Priority.**

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

167 A construction service lien:

168 (1) relates back to, and [~~take~~] takes effect as of, the time of the commencement [~~to do~~
169 work or furnish materials] of construction service on the ground for the [~~structure or~~
170 improvement[;]; and [~~shall have~~]

171 (2) has priority over:

172 (a) any lien, mortgage, or other encumbrance [~~which may have attached subsequently~~
173 to the time when the building, improvement or structure was commenced, work begun, or first
174 material furnished] that attaches after the construction service for the improvement commences
175 on the ground; [~~also over~~] and

176 (b) any lien, mortgage, or other encumbrance of which the [~~lien holder~~] claimant had
177 no notice and [~~which~~] that was unrecorded at the time the [~~building, structure or~~] construction
178 service for the improvement [~~was commenced, work begun, or first material furnished~~
179 commences on the ground.

180 Section 8. Section **38-1-6.7** is enacted to read:

181 **38-1-6.7. Notice of preconstruction service lien -- Requirements.**

182 (1) Within 90 days after completing a preconstruction service for which a claimant is
183 not paid in full, the claimant shall submit for recording with the applicable county recorder a
184 notice of preconstruction service lien.

185 (2) A claimant who fails to submit a notice of preconstruction service lien as provided
186 in Subsection (1) may not claim a preconstruction service lien.

187 (3) (a) A notice of preconstruction service lien shall include:

188 (i) the claimant's name, mailing address, and telephone number;

189 (ii) a statement that the claimant claims a preconstruction service lien;

190 (iii) the date the claimant's notice of retention was filed;

191 (iv) the name of the person who employed the claimant;

192 (v) a general description of the preconstruction service provided by the claimant;

193 (vi) the date that the claimant last provided preconstruction service;

194 (vii) the name, if known, of the reputed owner of the property on which the
195 preconstruction service lien is claimed or, if not known, the name of the record owner of the
196 property;

197 (viii) a description of the property sufficient for identification;

198 (ix) the principal amount, excluding interest, costs, and attorney fees, claimed by the
199 claimant;

200 (x) the claimant's signature or the signature of the claimant's authorized agent;

201 (xi) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording
202 of Documents; and

203 (xii) if the lien is against an owner-occupied residence, as defined in Section
204 38-11-102, a statement meeting the requirements that the Division of Occupational and
205 Professional Licensing has established in accordance with Title 63G, Chapter 3, Utah
206 Administrative Rulemaking Act, describing the steps an owner may take to require a claimant
207 to remove the lien as provided in Section 38-11-107.

208 (b) (i) A claimant who is a general preconstruction contractor may include in a notice
209 of preconstruction service lien the name, address, and telephone number of each subcontractor
210 who is under contract with the claimant to provide preconstruction service that the claimant is
211 under contract to provide.

212 (ii) The inclusion of a subcontractor in a notice of preconstruction service lien filed by
213 another claimant is not a substitute for the subcontractor's own submission of a notice of
214 preconstruction service lien.

215 (4) (a) Within 30 days after a claimant's notice of preconstruction service lien is
216 recorded, the claimant shall send by certified mail a copy of the notice to the reputed or record
217 owner of the real property.

218 (b) If the record owner's address is not readily available to the claimant, the claimant
219 may mail a copy of the notice to the owner's last-known address as it appears on the last
220 completed assessment roll of the county in which the property is located.

221 (c) A claimant's failure to mail a copy of the notice as required in this Subsection (4)
222 precludes the claimant from being awarded costs and attorney fees against the reputed or record
223 owner in an action to enforce the lien.

224 (5) Nothing in this section may be construed to prohibit a claimant from recording a
225 notice of preconstruction services lien before completing the preconstruction service the
226 claimant contracted to provide.

227 Section 9. Section **38-1-7** is amended to read:

228 **38-1-7. Notice of claim for construction service lien -- Contents -- Recording --**
229 **Service on owner of property.**

230 (1) (a) (i) Except as modified in Section 38-1-27, a person claiming [~~benefits under this~~
231 ~~chapter~~] a construction service lien shall file for record with the applicable county recorder [~~of~~
232 ~~the county in which the property, or some part of the property, is situated,~~] a written notice to
233 hold and claim a lien no later than:

234 (A) 180 days after the day on which occurs final completion of the original contract if
235 no notice of completion is filed under Section 38-1-33; or

236 (B) 90 days after the day on which a notice of completion is filed under Section
237 38-1-33 but not later than the time frame established in Subsection (1)(a)(i)(A).

238 (ii) For purposes of this Subsection (1), final completion of the original contract, and
239 for purposes of Section 38-1-33, final completion of the project, means:

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

243 (B) if no certificate of occupancy is required by the local government entity having
244 jurisdiction over the construction project, but as a result of the work performed under the
245 original contract an inspection is required as per state-adopted building codes for the work, the
246 date of the final inspection for the work by the local government entity having jurisdiction over
247 the construction project;

248 (C) if with regard to work performed under the original contract no certificate of
249 occupancy and no final inspection are required as per state-adopted building codes by the local
250 government entity having jurisdiction over the construction project, the date on which there
251 remains no substantial work to be completed to finish the work on the original contract; or

252 (D) if as a result of termination of the original contract prior to the completion of the
253 work defined by the original contract, the compliance agency does not issue a certificate of
254 occupancy or final inspection, the last date on which substantial work was performed under the
255 original contract.

256 (b) Notwithstanding Section 38-1-2, ~~where~~ if a subcontractor performs substantial
257 work after the applicable dates established by Subsections (1)(a)(ii)(A) and (B), that
258 subcontractor's subcontract shall be considered an original contract for the sole purpose of
259 determining:

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

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

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

265 (i) repair work; or

266 (ii) warranty work.

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

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

271 (i) the name of the reputed owner if known or, if not known, the name of the record
272 owner;

273 (ii) the name of the person:

- 274 (A) by whom the [lien] claimant was employed; or
- 275 (B) to whom the [lien] claimant furnished the equipment or material;
- 276 (iii) the time when:
 - 277 (A) the first and last labor or service was performed; or
 - 278 (B) the first and last equipment or material was furnished;
- 279 (iv) a description of the property, sufficient for identification;
- 280 (v) the name, current address, and current phone number of the [lien] claimant;
- 281 (vi) the amount of the lien claim;
- 282 (vii) the signature of the [lien] claimant or the [lien] claimant's authorized agent;
- 283 (viii) an acknowledgment or certificate as required under Title 57, Chapter 3,
- 284 Recording of Documents; and
 - 285 (ix) if the lien is on an owner-occupied residence, as defined in Section 38-11-102, a
 - 286 statement describing what steps an owner, as defined in Section 38-11-102, may take to require
 - 287 a lien claimant to remove the lien in accordance with Section 38-11-107.
- 288 (b) Substantial compliance with the requirements of this chapter is sufficient to hold
- 289 and claim a lien.
 - 290 (3) (a) Within 30 days after filing the notice of lien, the [lien] claimant shall deliver or
 - 291 mail by certified mail a copy of the notice of lien to:
 - 292 (i) the reputed owner of the real property; or
 - 293 (ii) the record owner of the real property.
 - 294 (b) If the record owner's current address is not readily available to the [lien] claimant,
 - 295 the copy of the claim may be mailed to the last-known address of the record owner, using the
 - 296 names and addresses appearing on the last completed real property assessment rolls of the
 - 297 county where the affected property is located.
 - 298 (c) Failure to deliver or mail the notice of lien to the reputed owner or record owner
 - 299 precludes the [lien] claimant from an award of costs and [attorneys'] attorney fees against the
 - 300 reputed owner or record owner in an action to enforce the lien.
 - 301 (4) The Division of Occupational and Professional Licensing shall make rules
 - 302 governing the form of the statement required under Subsection (2)(a)(ix).
 - 303 Section 10. Section 38-1-9 is amended to read:
 - 304 **38-1-9. Notice imparted by record.**

305 (1) The recorder [~~must~~] shall record [~~the claim~~] each notice of preconstruction service
306 lien under Section 38-1-6.7 and notice to hold and claim a construction service lien under
307 Section 38-1-7 in an index maintained for that purpose.

308 (2) From the time [~~the claim~~] a notice described in Subsection (1) is filed for record, all
309 persons are considered to have notice of [~~the claim~~] it.

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

311 **38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected --**
312 **Instructions and form affidavit and motion.**

313 (1) As used in this section:

314 (a) "Owner" is as defined in Section 38-11-102.

315 (b) "Residence" is as defined in Section 38-11-102.

316 (2) A [~~lien~~] claimant shall file an action to enforce the lien filed under this chapter:

317 (a) except as provided in Subsection (2)(b), within 180 days after the day on which the
318 [~~lien~~] claimant [~~filed~~] files:

319 (i) a notice of preconstruction service lien under Section 38-1-6.7, for a preconstruction
320 service lien; or

321 (ii) a notice of claim under Section 38-1-7, for a construction service lien; or

322 (b) if an owner files for protection under the bankruptcy laws of the United States
323 before the expiration of the 180-day period under Subsection (2)(a), within 90 days after the
324 automatic stay under the bankruptcy proceeding is lifted or expires.

325 (3) (a) Within the time period provided for filing in Subsection (2) the [~~lien~~] claimant
326 shall file for record with the county recorder of each county in which the lien is recorded a
327 notice of the pendency of the action, in the manner provided in actions affecting the title or
328 right to possession of real property, or the lien shall be void, except as to persons who have
329 been made parties to the action and persons having actual knowledge of the commencement of
330 the action.

331 (b) The burden of proof is upon the [~~lien~~] claimant and those claiming under the [~~lien~~]
332 claimant to show actual knowledge under Subsection (3)(a).

333 (4) (a) A lien filed under this chapter is automatically and immediately void if an action
334 to enforce the lien is not filed within the time required by this section.

335 (b) Notwithstanding Section 78B-2-111, a court has no subject matter jurisdiction to

336 adjudicate a lien that becomes void under Subsection (4)(a).

337 (5) This section may not be interpreted to impair or affect the right of any person to
338 whom a debt may be due for any work done or materials furnished to maintain a personal
339 action to recover the debt.

340 (6) (a) If a [~~lien~~] claimant files an action to enforce a lien filed under this chapter
341 involving a residence, the lien claimant shall include with the service of the complaint on the
342 owner of the residence:

343 (i) instructions to the owner of the residence relating to the owner's rights under Title
344 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

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

348 (b) The instructions and form required by Subsection (6)(a) shall meet the requirements
349 established by rule by the Division of Occupational and Professional Licensing in accordance
350 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

351 (c) If a [~~lien~~] claimant fails to provide to the owner of the residence the instructions
352 and form required by Subsection (6)(a), the [~~lien~~] claimant [~~shall be~~] is barred from
353 maintaining or enforcing the lien upon the residence.

354 (d) Judicial determination of the rights and liabilities of the owner of the residence
355 under this chapter and Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery
356 Fund Act, and Title 14, Chapter 2, Private Contracts, shall be stayed until after the owner is
357 given a reasonable period of time to establish compliance with Subsections 38-11-204(4)(a)
358 and (4)(b) through an informal proceeding, as set forth in Title 63G, Chapter 4, Administrative
359 Procedures Act, commenced within 30 days of the owner being served summons in the
360 foreclosure action, at the Division of Occupational and Professional Licensing and obtain a
361 certificate of compliance or denial of certificate of compliance, as defined in Section
362 38-11-102.

363 (e) An owner applying for a certificate of compliance under Subsection (6)(d) shall
364 send by certified mail to all lien claimants:

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

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

367 (f) The Division of Occupational and Professional Licensing shall notify all [~~lien~~
 368 claimants listed in an owner's application for a certificate of compliance under Subsection
 369 (6)(d) of the issuance or denial of a certificate of compliance.

370 (7) The written notice requirement applies to liens filed on or after July 1, 2004.
 371 Section 12. Section **38-1-19** is amended to read:

372 **38-1-19. Payment by owner to contractor -- Subcontractor's lien not affected.**

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

377 (2) An alteration of [~~any~~] a contract [~~shall~~] may not affect [~~any~~] a lien acquired under
 378 [~~the provisions of~~] this chapter.

379 Section 13. Section **38-1-27** is amended to read:

380 **38-1-27. State Construction Registry -- Form and contents of notice of**
 381 **commencement, preliminary notice, and notice of completion.**

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

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

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

386 (c) "Construction project ~~↔~~ [;] ~~↔~~ " ~~↔~~ or ~~↔~~ "project ~~↔~~ [;] ~~↔~~ "

386a ~~↔~~ [~~or "improvement"~~] ~~↔~~ means all labor, equipment,
 387 and materials provided:

388 (i) under an original contract; or

389 (ii) by, or under contracts with, an owner-builder.

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

391 (e) (i) "Designated agent" means the third party the Division of Occupational and
 392 Professional Licensing contracts with to create and maintain the State Construction Registry.

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

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

395a ~~↔~~ (g) **"Entry number" means the reference number that:**

395b **(i) the designated agent assigns to each notice or other document filed with the**
 395c **database; and**

395d **(ii) is unique for each notice or other document.**

396 [~~(g)~~] (h) ~~↔~~ "Interested person" means a person who may be affected by a
 396a construction project.

397 ~~↔~~ [~~(h)~~] (i) ~~↔~~ "Program" means the State Construction Registry Program
 397a created in this section.

398 (2) Subject to receiving adequate funding through a legislative appropriation and
399 contracting with an approved third party vendor who meets the requirements of Sections
400 38-1-30 through 38-1-37, there is created the State Construction Registry Program that shall:
401 (a) (i) assist in protecting public health, safety, and welfare; and
402 (ii) promote a fair working environment;
403 (b) be overseen by the division with the assistance of the designated agent;
404 (c) provide a central repository for notices of commencement, preliminary notices, and
405 notices of completion filed in connection with all privately owned construction projects as well
406 as all state and local government owned construction projects throughout Utah;
407 (d) ~~[be] make accessible [for filing and review]~~, by way of the program Internet
408 website, the filing and review of:
409 (i) notices of retention;
410 ~~[(i)]~~ (ii) notices of commencement;
411 ~~[(ii)]~~ (iii) preliminary notices;
412 ~~[(iii)]~~ (iv) a notice of intent to file notice of final completion;
413 ~~[(iv)]~~ (v) a notice for remaining amounts due to complete the contract; and
414 ~~[(v)]~~ (vi) notices of completion;
415 (e) accommodate:
416 (i) electronic filing of the notices described in Subsection (2)(d); and
417 (ii) alternate filing of the notices described in Subsection (2)(d) by U.S. mail, telefax,
418 or any other alternate method as provided by rule made by the division in accordance with Title
419 63G, Chapter 3, Utah Administrative Rulemaking Act;
420 (f) (i) provide electronic notification for up to three email addresses for each interested
421 person or company who requests notice from the construction notice registry; and
422 (ii) provide alternate means of notification for a person who makes an alternate filing,
423 including U.S. mail, telefax, or any other method as prescribed by rule made by the division in
424 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
425 (g) provide hard-copy printing of electronic receipts for an individual filing evidencing
426 the date and time of the individual filing and the content of the individual filing.
427 (3) (a) The designated agent shall provide notice of all other filings for a project to any
428 person who files a notice of commencement, preliminary notice, or notice of completion for

429 that project, unless the person:

430 (i) requests that the person not receive notice of other filings; or

431 (ii) does not provide the designated agent with the person's contact information in a
432 manner that adequately informs the designated agent.

433 (b) An interested person may request notice of filings related to a project.

434 (c) The database shall be indexed by:

435 (i) owner name;

436 (ii) original contractor name;

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

438 (iv) project address;

439 (v) lot or parcel number;

440 (vi) unique project number assigned by the designated agent; and

441 (vii) any other identifier that the division considers reasonably appropriate in
442 collaboration with the designated agent.

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

445 (i) a notice of retention;

446 [~~(i)~~] (ii) a notice of commencement;

447 [~~(ii)~~] (iii) a preliminary notice;

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

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

450 [~~(v)~~] (vi) a notice of completion;

451 [~~(vi)~~] (vii) a request for notice;

452 [~~(vii)~~] (viii) providing a required notice by an alternate method of delivery;

453 [~~(viii)~~] (ix) a duplicate receipt of a filing; and

454 [~~(ix)~~] (x) account setup for a person who wishes to be billed periodically for filings
455 with the database.

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

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

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

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

465 (b) A request for information submitted to the designated agent is not subject to Title
466 63G, Chapter 2, Government Records Access and Management Act.

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

469 (d) The designated agent may charge a commercially reasonable fee allowed by the
470 designated agent's contract with the division for providing information under Subsection (5)(c).

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

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

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

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

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

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

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

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

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

489 (b) A determination that a person is delinquent on the payment of a fee for filing
490 established under Subsection (4) shall be made in accordance with Title 63G, Chapter 4,

491 Administrative Procedures Act.

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

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

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

500 Section 14. Section **38-1-29** is repealed and reenacted to read:

501 **38-1-29. No waiver of rights.**

502 (1) (a) A right or privilege under this chapter may not be waived or limited by contract.

503 (b) A provision of a contract purporting to waive or limit a right or privilege under this
504 chapter is void.

505 (2) Notwithstanding Subsection (1), a claimant may waive or limit, in whole or in part,
506 a lien right under this chapter in consideration of payment as provided in Section 38-1-39.

507 (3) Unless an agreement waiving or limiting a lien right expressly provides that a
508 payment is required to be applied to a specific lien, mortgage, or encumbrance, a payment to a
509 person claiming or included within a preconstruction service lien and a construction service
510 lien shall be applied first to the preconstruction service lien until paid in full.

511 Section 15. Section **38-1-30.5** is enacted to read:

512 **38-1-30.5. Notice of retention.**

513 (1) (a) A person who, under Section 38-1-3, is entitled to a preconstruction service lien
514 on real property under this chapter shall file a notice of retention with the database no later than
515 20 days after the person commences performing preconstruction service for the anticipated
516 improvement on the real property.

517 (b) A person who fails to file a timely notice of retention as required in this section
518 may not hold a valid preconstruction service lien under this chapter.

519 (c) A timely filed notice of retention is effective as to each preconstruction service that
520 the person filing the notice performs for the anticipated improvement

520a ~~it~~ → **under an original contract** ← ~~it~~ , including
521 preconstruction service that the person performs for more than one general preconstruction

522 contractor ~~H→~~ **under the same original contract** ~~←H~~ .

523 ~~(d) H→ [For purposes of this section, an improvement that benefits the development as a~~
 524 ~~whole and is preparatory to the construction of an improvement on individual lots is separate~~
 525 ~~from an improvement on an individual lot within the development.] A notice of retention filed for~~
 525a ~~preconstruction service performed or to be performed under an original contract for an~~
 525b ~~anticipated improvement on real property is not valid for preconstruction service performed~~
 525c ~~or to be performed under a separate original contract for an anticipated improvement on the~~
 525d ~~same real property. ←H~~

526 ~~(e) A notice of retention that is timely filed with the database with respect to an~~
 527 ~~anticipated improvement is considered to have been filed at the same time as the earliest timely~~
 528 ~~filed preliminary notice for that anticipated improvement.~~

529 ~~(f) A notice of retention shall include:~~

530 ~~(i) the name, address, telephone number, and email address of the person performing~~
 531 ~~the preconstruction service;~~

532 ~~(ii) the name, address, telephone number, and email address of the person who~~
 533 ~~employed the person performing the preconstruction service;~~

534 ~~(iii) a general description of the preconstruction service the person provided or will~~
 535 ~~provide;~~

536 ~~(iv) the name of the record or reputed owner of the property for which the~~
 537 ~~preconstruction service is or will be provided;~~

538 ~~(v) the name of the county in which the property on which the anticipated improvement~~
 539 ~~will occur is located;~~

540 ~~(vi) H→ (A) ←H the tax parcel identification number of each parcel included in that~~
 540a ~~property; H→ or~~

540b ~~(B) the entry number of a previously filed notice of retention that includes the tax~~
 540c ~~parcel identification number of each parcel included in that property; ←H and~~

541 ~~(vii) a statement that the person filing the notice intends to hold and claim a~~
 542 ~~preconstruction service lien if the person is not paid for the preconstruction service the person~~
 543 ~~performs.~~

544 ~~(g) (i) A claimant who is a general preconstruction contractor may include in a notice~~
 545 ~~of retention the name, address, and telephone number of each subcontractor who is under~~
 546 ~~contract with the claimant to provide preconstruction service that the claimant is under contract~~
 547 ~~to provide.~~

548 ~~(ii) The inclusion of a subcontractor in a notice of retention filed by another claimant is~~
 549 ~~not a substitute for the subcontractor's own submission of a notice of retention.~~

550 ~~(2) (a) Unless a person indicates to the division or designated agent that the person~~
 551 ~~does not wish to receive a notice under this section, the designated agent shall provide~~
 552 ~~electronic notification of the filing of a notice of retention or alternate filing to:~~

- 553 (i) the person filing the notice of retention; ~~H~~→ and ←~~H~~
554 (ii) each person who has requested a notice concerning the anticipated improvement.
555 (b) A person to whom notice is required to be provided under Subsection (2)(a) is
556 responsible to provide an email address, mailing address, or telefax number to which notice
557 may be sent and for the accuracy of the email address, mailing address, or telefax number.
558 (c) The designated agent fulfills the notice requirement of Subsection (2)(a) by sending
559 the notice to the email address, mailing address, or telefax number provided to the designated
560 agent, whether or not the notice is actually received.
561 (3) The burden is on the person filing the notice of retention to prove that the person
562 has substantially complied with the requirements of this section.
563 (4) (a) Subject to Subsection (4)(b), a person required by this section to file a notice of
564 retention is required to give only one notice for each anticipated improvement.
565 (b) If a person performs preconstruction service under more than one original contract,
566 the person shall file a notice of retention for preconstruction service performed under each
567 original contract.
568 (5) (a) An owner of property that is the subject of an anticipated improvement, an
569 original contractor, a subcontractor, or another interested person who believes that a notice of
570 retention has been erroneously filed may request from the person who filed the notice evidence
571 establishing the validity of the notice of retention.
572 (b) Within 10 days after a request under Subsection (5)(a), the person who filed the
573 notice of retention shall provide the requesting person proof that the notice of retention is valid.
574 (c) If the person who filed the notice of retention does not provide timely proof of the
575 validity of the notice of retention, that person shall immediately cancel the notice of retention
576 from the database in the manner prescribed by the division by rule.
577 (6) A person filing a notice of retention by alternate filing is responsible for verifying
578 and changing any incorrect information in the notice of retention before the expiration of the
579 period during which the notice is required to be filed.
580 Section 16. Section **38-1-31** is amended to read:
581 **38-1-31. Building permit -- Construction -- Notice registry -- Notice of**
582 **commencement of work.**
583 (1) (a) (i) (A) For a construction project where a building permit is issued to an original

584 contractor or owner-builder, no later than 15 days after the issuance of the building permit:

585 (I) the local government entity issuing that building permit shall input the building
586 permit application and transmit the building permit information to the database electronically
587 by way of the Internet or computer modem or by any other means; or

588 (II) the original contractor for construction service, owner, or owner-builder may file a
589 notice of commencement with the database whether or not a building permit is issued or a
590 notice of commencement is filed under Subsection (1)(a)(i)(A)(I).

591 (B) The information submitted under Subsection (1)(a)(i)(A) forms the basis of a
592 notice of commencement.

593 (ii) The person to whom a building permit, filed under Subsection (1)(a)(i), is issued is
594 responsible for the accuracy of the information in the building permit.

595 (iii) For the purposes of classifying a record under Title 63G, Chapter 2, Government
596 Records Access and Management Act, building permit information transmitted from a local
597 governmental entity to the database shall be classified in the database by the division
598 notwithstanding the local governmental entity's classification of the building permit
599 information.

600 (b) No later than 15 days after commencement of physical construction work at the
601 project site, the original contractor for construction service, owner, or owner-builder may file a
602 notice of commencement with the database whether or not a building permit is issued or a
603 notice of commencement is filed under Subsection (1)(a).

604 (c) An original contractor for construction service, owner, or owner-builder may file a
605 notice of commencement with the designated agent prior to the time frames established in
606 Subsections (1)(a) and (b).

607 (d) An owner of construction or an original contractor for construction service may file
608 a notice of commencement with the designated agent within the time prescribed by Subsections
609 (1)(a) and (b).

610 (e) (i) If duplicate notices of commencement are filed, they shall be combined into one
611 notice for each project and any notices filed relate back to the date of the earliest-filed notice of
612 commencement for the project.

613 (ii) A duplicate notice of commencement that is untimely filed relates back under
614 Subsection (1)(e)(i) if the earlier filed notice of commencement is timely filed.

615 (iii) Duplicate notices of commencement shall be automatically linked by the
616 designated agent.

617 (f) The designated agent shall assign each construction project a unique project number
618 that:

619 (i) identifies each construction project; and
620 (ii) can be associated with all notices of commencement, preliminary notices, and
621 notices of completion.

622 (g) A notice of commencement is effective only as to any labor, service, equipment,
623 and material furnished to the construction project that is furnished subsequent to the filing of
624 the notice of commencement.

625 (2) (a) A notice of commencement shall include the following:

626 (i) the name and address of the owner of the project;
627 (ii) the name and address of the:

628 (A) original contractor for construction service; and
629 (B) surety providing any payment bond for the project, or if none exists, a statement
630 that a payment bond was not required for the work being performed; and

631 (iii) (A) the project address if the project can be reasonably identified by an address; or
632 (B) the name and general description of the location of the project if the project cannot
633 be reasonably identified by an address.

634 (b) A notice of commencement may include:

635 (i) a general description of the project; or
636 (ii) the lot or parcel number, and any subdivision, development, or other project name,
637 of the real property upon which the project is to be constructed if the project is subject to
638 mechanics' liens.

639 (c) A notice of commencement need not include all of the items listed in Subsection
640 (2)(a) if:

641 (i) a building permit is issued for the project; and
642 (ii) all items listed in Subsection (2)(a) that are available on the building permit are
643 included in the notice of commencement.

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

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

647 (b) Section 38-1-33.

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

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

652 (ii) all interested persons who have requested notices concerning the project.

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

654 (A) providing an email address, mailing address, or telefax number to which a notice
655 required by Subsection (4)(a) is to be sent; and

656 (B) the accuracy of any email address, mailing address, or telefax number to which
657 notice is to be sent.

658 (ii) The designated agent fulfills the notice requirement of Subsection (4)(a) when it
659 sends the notice to the email address, mailing address, or telefax number provided to the
660 designated agent whether or not the notice is actually received.

661 (5) (a) The burden is upon any person seeking to enforce a notice of commencement to
662 verify the accuracy of information in the notice of commencement and prove that the notice of
663 commencement is filed timely and meets all of the requirements in this section.

664 (b) A substantial inaccuracy in a notice of commencement renders the notice of
665 commencement unenforceable.

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

669 (6) At the time a building permit is obtained, each original contractor for construction
670 service shall conspicuously post at the project site a copy of the building permit obtained for
671 the project.

672 Section 17. Section **38-1-32** is amended to read:

673 **38-1-32. Preliminary notice by subcontractor.**

674 (1) (a) (i) Except for a person who has a contract with an owner or an owner-builder or
675 a laborer compensated with wages, a subcontractor for construction service shall file a
676 preliminary notice with the database by the later of:

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

679 (B) 20 days after the filing of a notice of commencement if the subcontractor's work
680 commences before the filing of the first notice of commencement.

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

685 (iii) (A) If more than one notice of commencement is filed for a project, a person may
686 attach a preliminary notice to any notice of commencement filed for the project by a party
687 authorized in Section 38-1-31.

688 (B) A preliminary notice attached to an untimely notice of commencement is valid if
689 there is also a valid and timely notice of commencement for the project filed by a party
690 authorized in Section 38-1-31.

691 (b) If a person files a preliminary notice after the period prescribed by Subsection
692 (1)(a), the preliminary notice becomes effective five days after the day on which the
693 preliminary notice is filed.

694 (c) Except as provided in Subsection (1)(e), failure to file a preliminary notice within
695 the period required by Subsection (1)(a) precludes a person from maintaining any claim for
696 compensation earned for performance of labor or service or supply of materials or equipment
697 furnished to the construction project before the expiration of five days after the late filing of a
698 preliminary notice, except as against the person with whom the person contracted.

699 (d) (i) (A) If a person who is required to file a preliminary notice under this chapter
700 fails to file the preliminary notice, that person may not hold a valid lien under this chapter.

701 (B) A county recorder need not verify that a valid preliminary notice is filed when a
702 person files a notice to hold and claim a lien under Section 38-1-7.

703 (ii) The content of a preliminary notice shall include:

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

706 (B) the name, address, and telephone number of the person furnishing the labor,
707 service, equipment, or material;

708 (C) the name and address of the person who contracted with the claimant for the
709 furnishing of the labor, service, equipment, or material;

710 (D) the name of the record or reputed owner of the project;

711 (E) the name of the original contractor for construction service under which the
712 claimant is performing or will perform its work; and

713 (F) the address of the project or a description of the location of the project.

714 (iii) Upon request by person identified in Subsection (1)(a)(i), an original contractor for
715 construction service shall provide the person with the building permit number for the project,
716 or the number assigned to the project by the designated agent.

717 (e) If a person provides labor, service, equipment, or material before the filing of a
718 notice of commencement and the notice of commencement is filed more than 15 days after the
719 day on which the person providing labor, service, equipment, or material begins work on the
720 project, the person providing labor, service, equipment, or material need not file a preliminary
721 notice to maintain the person's right to hold a lien under this chapter or any other right,
722 including a right referenced under Subsection (1)(c).

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

726 (A) the person filing the preliminary notice;

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

728 (C) all interested persons who have requested notices concerning the project.

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

730 (A) providing an email address, mailing address, or telefax number to which a notice
731 required by Subsection (2)(a) is to be sent; and

732 (B) the accuracy of any email address, mailing address, or telefax number to which
733 notice is to be sent.

734 (iii) The designated agent fulfills the notice requirement of Subsection (2)(a)(i) when it
735 sends the notice to the email address, mailing address, or telefax number provided to the
736 designated agent whether or not the notice is actually received.

737 (b) The burden is upon the person filing the preliminary notice to prove that the person
738 has substantially complied with the requirements of this section.

739 (c) Subject to Subsection (2)(d), a person required by this section to give preliminary
740 notice is only required to give one notice for each project.

741 (d) If the labor, service, equipment, or material is furnished pursuant to contracts under
742 more than one original contract for construction service, the notice requirements must be met
743 with respect to the labor, service, equipment, or material furnished under each original contract.

744 (3) (a) If a construction project owner, original contractor, or subcontractor for
745 construction service, or other interested person believes that a preliminary notice has been filed
746 erroneously, that owner, original contractor, subcontractor, or other interested person can
747 request from the person who filed the preliminary notice evidence establishing the validity of
748 the preliminary notice.

749 (b) Within 10 days after the request described in Subsection (3)(a), the person or entity
750 that filed the preliminary notice shall provide the requesting person or entity proof that the
751 preliminary notice is valid.

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

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

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

760 Section 18. Section **38-1-33** is amended to read:

761 **38-1-33. Notice of completion.**

762 (1) (a) Upon final completion of a construction project, and in accordance with Section
763 38-1-40, the following with a construction project registered with the database may file a notice
764 of completion with the database:

- 765 (i) an owner of the construction project;
- 766 (ii) an original contractor [~~of the~~] for construction [~~project~~] service;
- 767 (iii) a lender that has provided financing for the construction project;
- 768 (iv) a surety that has provided bonding for the construction project; or
- 769 (v) a title company issuing a title insurance policy on the construction project.

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

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

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

778 (c) A notice of completion shall include:

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

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

783 (iii) the name of the original contractor for [~~the project~~] construction service;

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

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

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

787 (d) For purposes of this section, final completion of the original contract does not occur
788 if work remains to be completed for which the owner is holding payment to ensure completion
789 of the work.

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

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

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

795 (C) all interested persons who have requested notices concerning the project.

796 (ii) A person to whom notice is required under this Subsection (1)(e) is responsible for:

797 (A) providing an email address, mailing address, or telefax number to which a notice
798 required by this Subsection (1)(e) is to be sent; and

799 (B) the accuracy of any email address, mailing address, or telefax number to which
800 notice is to be sent.

801 (iii) The designated agent fulfills the notice requirement of Subsection (1)(e)(i) when it
802 sends the notice to the email address, mailing address, or telefax number provided to the
803 designated agent, whether or not the notice is actually received.

804 (iv) Upon the filing of a notice of completion, the time periods for filing preliminary
805 notices stated in Section 38-1-27 are modified such that all preliminary notices shall be filed
806 subsequent to the notice of completion and within 10 days from the day on which the notice of
807 completion is filed.

808 (f) A subcontract that is considered an original contract for construction service for
809 purposes of this section does not create a requirement for an additional preliminary notice if a
810 preliminary notice has already been given for the labor, service, equipment, and material
811 furnished to the subcontractor who performs substantial work.

812 (2) (a) If a construction project owner, original contractor, or subcontractor for
813 construction service, or other interested person believes that a notice of completion has been
814 filed erroneously, that owner, original contractor, subcontractor, or other interested person can
815 request from the person who filed the notice of completion evidence establishing the validity of
816 the notice of completion.

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

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

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

826 Section 19. Section **38-1-40** is amended to read:

827 **38-1-40. Notice of intent to obtain final completion.**

828 (1) An owner, as defined in Section 14-2-1, of a nonresidential construction project
829 that is registered with the database, or a contractor of a commercial nonresidential construction
830 project that is registered with the database under Section 38-1-33, shall file with the database a
831 notice of intent to obtain final completion as provided in this section if:

832 (a) the completion of performance time under the original contract for construction
833 service is greater than 120 days;

834 (b) the total original construction contract price exceeds \$500,000; and

835 (c) the contractor or owner has not obtained a payment bond in accordance with
836 Section 14-2-1.

837 (2) The notice of intent described in Subsection (1) shall be filed at least 45 days before
838 the day on which the owner or contractor of a commercial nonresidential construction project
839 files or could have filed a notice of completion under Section 38-1-33.

840 (3) A person supplying labor, materials, or services to an owner, a contractor, or
841 subcontractor who files a notice of intent in accordance with Subsection (1) shall file an
842 amendment to the person's preliminary notice previously filed by the person as required in
843 Section 38-1-32:

844 (a) that includes:

845 (i) a good faith estimate of the total amount remaining due to complete the contract,
846 purchase order, or agreement relating to the person's approved labor, approved materials, and
847 approved services;

848 (ii) the identification of each contractor or subcontractor with whom the person has a
849 contract or contracts for supplying project labor, materials, or services; and

850 (iii) a separate statement of all known amounts or categories of work in dispute; and

851 (b) no later than 20 days after the day on which the owner or contractor files a notice of
852 intent.

853 (4) (a) A person identified in accordance with Subsection (3)(a)(i) who has complied
854 with, or is exempt from, the provisions of Section 38-1-22, may demand a statement of
855 adequate assurance from the owner, contractor, or subcontractor with whom the person has
856 privity of contract no later than 10 days after the day on which the person files a balance
857 statement in accordance with Subsection (3) from an owner, contractor, or subcontractor who is
858 in privity of contract with the person.

859 (b) A demand for adequate assurance as described in Subsection (4)(a) may include a
860 request for a statement from the owner, contractor, or subcontractor that the owner, contractor,
861 or subcontractor has sufficient funds dedicated and available to pay for all sums due to the
862 person filing for the adequate assurances or that will become due in order to complete a

863 construction project.

864 (c) A person who demands adequate assurance under Subsection (4)(a) shall deliver
865 copies of the demand to the owner and contractor:

866 (i) by hand delivery with a responsible party's acknowledgment of receipt;

867 (ii) by certified mail with a return receipt; or

868 (iii) as provided under Rule 4, Utah Rules of Civil Procedure.

869 (5) (a) A person identified in accordance with Subsection (3)(a)(i) who has complied
870 with, or is exempt from, the provisions of Section 38-1-32 may bring a legal action against a
871 party with whom the person is in privity of contract, including a request for injunctive or
872 declaratory relief, to determine the adequacy of an owner's, with whom the demanding person
873 contracted, contractor's, with whom the demanding person contracted, or subcontractor's, with
874 whom the demanding person contracted, funds if, after the person demands adequate assurance
875 in accordance with the requirements of this section:

876 (i) the owner, contractor, or subcontractor fails to provide adequate assurance that the
877 owner, contractor, or subcontractor has sufficient available funds, or access to financing or
878 other sufficient available funds, to pay for the completion of the demanding person's approved
879 work on the construction project; or

880 (ii) the parties disagree, in good faith, as to whether there are adequate funds, or access
881 to financing or other sufficient available funds, to pay for the completion of the demanding
882 person's approved work on the construction project.

883 (b) If a court finds that an owner, contractor, or subcontractor has failed to provide
884 adequate assurance in accordance with Subsection (4)(a), the court may require the owner,
885 contractor, or subcontractor to post adequate security with the court sufficient to assure timely
886 payment of the remaining contract balance for the approved work of the person seeking
887 adequate assurance, including:

888 (i) cash;

889 (ii) a bond;

890 (iii) an irrevocable letter of credit;

891 (iv) property;

892 (v) financing; or

893 (vi) another form of security approved by the court.

894 (6) (a) A person is subject to the civil penalty described in Subsection (6)(b), if the
895 person files a balance statement described in Subsection (3):
896 (i) that misrepresents the amount due under the contract; and
897 (ii) with the intent to:
898 (A) charge an owner, contractor, or subcontractor more than the actual amount due; or
899 (B) procure any other unfair advantage or benefit on the person's behalf.
900 (b) The civil penalty described in Subsection (6)(a) is the greater of:
901 (i) twice the amount by which the balance statement filed under Subsection (3) exceeds
902 the amount actually remaining due under the contract for completion of construction; or
903 (ii) the actual damages incurred by the owner, contractor, or subcontractor.
904 (7) A court shall award reasonable attorney fees to a prevailing party for an action
905 brought under this section.
906 (8) Failure to comply with the requirements established in this section does not affect
907 any other requirement or right under this chapter.
908 (9) A person who has not complied with, or is not exempt from, the provisions of
909 Section 38-1-32 may not be entitled to a right or a remedy provided in this section.
910 (10) This section does not create a cause of action against a person with whom the
911 demanding party is not in privity of contract.
912 Section 20. Section **76-6-524** is enacted to read:
913 **76-6-524. Falsifying information for preconstruction service lien purposes.**
914 A person who knowingly falsifies information for the purpose of obtaining priority of a
915 preconstruction service lien under Title 38, Chapter 1, Mechanics' Liens, is guilty of a class B
916 misdemeanor.

FISCAL NOTE

H.B. 115 1st Sub. (Buff)

SHORT TITLE: Mechanics' Liens Amendments

SPONSOR: Morley, M.

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.

2/15/2011, 06:38 PM, Lead Analyst: Lee, P.W./Attorney: RHR

Office of the Legislative Fiscal Analyst

