

**MECHANICS' LIENS REVISIONS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David Clark**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to mechanics' liens.

**Highlighted Provisions:**

This bill:

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



28           ▶ makes technical changes.

29 **Money Appropriated in this Bill:**

30           None

31 **Other Special Clauses:**

32           None

33 **Utah Code Sections Affected:**

34 AMENDS:

35           **14-1-20**, as last amended by Laws of Utah 2010, Chapter 378

36           **14-2-5**, as last amended by Laws of Utah 2010, Chapter 378

37           **38-1-1**, Utah Code Annotated 1953

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

39           **38-1-27**, as last amended by Laws of Utah 2009, Chapters 183 and 239

40           **38-1-30**, as last amended by Laws of Utah 2008, Chapter 382

41           **38-1-31**, as last amended by Laws of Utah 2009, Chapter 50

42           **38-1-32**, as last amended by Laws of Utah 2009, Chapter 50

43           **38-1-33**, as last amended by Laws of Utah 2010, Chapter 76

44           **58-56-20**, as last amended by Laws of Utah 2010, Chapter 310

45           **63G-6-506**, as renumbered and amended by Laws of Utah 2008, Chapter 382

46 ENACTS:

47           **38-1-31.5**, Utah Code Annotated 1953

48           **38-1-32.5**, Utah Code Annotated 1953

49 REPEALS:

50           **38-1-37**, as last amended by Laws of Utah 2005, Chapter 64

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

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

54           **14-1-20. Preliminary notice requirement.**

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

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

59 (b) if a notice of commencement is not filed as prescribed in Section [38-1-31]  
60 38-1-31.5 for the project or improvement for which labor, service, equipment, or material is  
61 furnished.

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

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

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

67 **14-2-5. Preliminary notice requirement.**

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

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

72 (b) if a notice of commencement is not filed as prescribed in Section [38-1-31]  
73 38-1-31.5 for the project or improvement for which labor, service, equipment, or material is  
74 furnished.

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

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

79 Section 3. Section **38-1-1** is amended to read:

80 **38-1-1. Public buildings not subject to act.**

81 [~~The provisions of this~~] Except as provided in Sections 38-1-27, 38-1-30 through  
82 38-1-37, and 38-1-40 relating to the State Construction Registry, this chapter [shall] does not  
83 apply to any public building, structure, or improvement.

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

85 **38-1-5. Lien relates back to first preliminary notice filing -- Priority of lien --**  
86 **Priority of construction loan.**

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

88 (1) As used in this section:

89 (a) "Construction loan" means a loan:

90 (i) that is secured by a mortgage or trust deed on the project property;  
91 (ii) the proceeds of which are used to pay the costs of constructing or improving a  
92 building or structure on or making an improvement to the project property; and  
93 (iii) that is intended to be replaced, upon completion of the construction or  
94 improvement, with a mortgage or trust deed securing permanent financing, some or all of the  
95 proceeds of which are used to pay those entitled to claim a lien under this chapter on the  
96 project property.

97 (b) "First preliminary notice filing" means the filing of the earliest timely filed  
98 preliminary notice under Section 38-1-32 for a construction project, as defined in Section  
99 38-1-27.

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

102 (2) A lien under this chapter:

103 (a) relates back to, and [take] takes effect as of, the time of the [commencement to do  
104 work or furnish materials on the ground for the structure or improvement, and shall have] first  
105 preliminary notice filing; and

106 (b) except as provided in Subsection (3), has priority over:

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

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

115 (3) A construction loan has priority over each lien under this chapter, whether the  
116 construction loan is recorded before or after the lien.

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

118 **38-1-27. State Construction Registry.**

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

120 (a) "Alternate filing" means a legible and complete filing made in a manner established

121 by the division under Subsection (2)(e) other than an electronic filing.

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

123 (c) "Construction project," "project," or "improvement" means all labor, equipment,  
124 and materials provided:

125 (i) under an original contract; or

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

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

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

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

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

133 (g) "Government project" means a construction project undertaken by or for:

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

135 (ii) a county, city, town, school district, local district, special service district,

136 community development and renewal agency, or other political subdivision of the state.

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

139 (i) "Private project" means a construction project that is not a government project.

140 [~~h~~] (j) "Program" means the State Construction Registry Program created in this  
141 section.

142 (k) "Project-identifying information" means:

143 (i) for a government project:

144 (A) the name of the county in which the property on which the project occurs or will  
145 occur is located; and

146 (B) the unique project number assigned by the designated agent under Subsection  
147 38-1-31.5(4); and

148 (ii) for a private project:

149 (A) the name of the county in which the property on which the project occurs or will  
150 occur is located;

151 (B) the tax parcel identification number of that property; and

152 (C) if applicable, the building permit number for the project.

153 (2) Subject to receiving adequate funding through a legislative appropriation and  
154 contracting with an approved third party vendor who meets the requirements of Sections  
155 38-1-30 through 38-1-37, there is created the State Construction Registry Program that shall:

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

157 (ii) promote a fair working environment;

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

159 (c) provide a central repository for ~~[notices of commencement,];~~

160 (i) preliminary notices[;] and notices of completion filed in connection with all

161 ~~[privately owned construction] private projects [as well as] in the state; and~~

162 (ii) notices of commencement, preliminary notices, and notices of completion for all

163 ~~[state and local] government [owned construction] projects [throughout Utah] in the state;~~

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

166 (i) notices of commencement;

167 (ii) building permits;

168 ~~[(ii)]~~ (iii) preliminary notices;

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

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

171 ~~[(v)]~~ (vi) notices of completion;

172 (e) accommodate:

173 (i) electronic filing of the building permits and notices described in Subsection (2)(d);

174 and

175 (ii) alternate filing of the notices described in Subsection (2)(d) by U.S. mail, telefax,  
176 or any other alternate method as provided by rule made by the division in accordance with Title  
177 63G, Chapter 3, Utah Administrative Rulemaking Act;

178 (f) (i) provide electronic notification for up to three email addresses for each interested  
179 person or company who requests notice from the construction notice registry; and

180 (ii) provide alternate means of notification for a person who makes an alternate filing,  
181 including U.S. mail, telefax, or any other method as prescribed by rule made by the division in  
182 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

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

185 (3) (a) The designated agent shall provide notice of all other filings for a project to any  
186 person who files a notice of commencement, preliminary notice, or notice of completion for  
187 that project, unless the person:

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

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

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

192 (c) The database shall be indexed by:

193 (i) the name of the property owner [name];

194 (ii) the name of the original contractor [name];

195 [~~(iii) subdivision, development, or other project name, if any;~~]

196 [~~(iv) project address;~~]

197 [~~(v) lot or parcel number;~~]

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

199 (iii) the project-identifying information; and

200 [~~(vii)~~] (iv) any other identifier that the division considers reasonably appropriate in  
201 collaboration with the designated agent.

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

204 (i) a notice of commencement on a government project;

205 (ii) a preliminary notice;

206 (iii) a notice of intent to file notice of final completion;

207 (iv) a notice for remaining amounts due to complete the contract;

208 (v) a notice of completion;

209 (vi) a request for notice;

210 (vii) providing a required notice by an alternate method of delivery;

211 (viii) a duplicate receipt of a filing; and

212 (ix) account setup for a person who wishes to be billed periodically for filings with the  
213 database.

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

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

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

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

223 (b) A request for information submitted to the designated agent is not subject to Title  
224 63G, Chapter 2, Government Records Access and Management Act.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

255 (10) A person filing a [~~notice of commencement,~~] preliminary notice, or notice of  
256 completion is responsible for verifying the accuracy of information entered into the database,  
257 whether the person files electronically or by alternate or third party filing.

258 (11) Each notice or other document that relates to a construction project and is  
259 submitted for inclusion in the database shall contain the project-identifying information for the  
260 construction project to which the notice or other document relates.

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

262 **38-1-30. Third-party contract -- Designated agent.**

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

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

268 (i) local government entities issuing building permits;

269 (ii) original contractors;

270 (iii) subcontractors; and

271 (iv) other interested persons.

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

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

275 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

276 division shall make rules and develop procedures for:

277 (a) the division to oversee and enforce this section, Section 38-1-27, and Sections  
278 38-1-31 through 38-1-37;

279 (b) the designated agent to administer this section, Section 38-1-27, and Sections  
280 38-1-31 through 38-1-37; and

281 (c) the form of submission of an alternate filing, which may include procedures for  
282 rejecting an illegible or incomplete filing.

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

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

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

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

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

292 (iii) one year after the day on which a filing is cancelled under Subsection  
293 38-1-32~~(3)~~(5)(c) or 38-1-33(2)(c).

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

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

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

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

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

305 Section 7. Section **38-1-31** is amended to read:

306 **38-1-31. Building permit -- Transmission to database -- Posting at project site.**

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

310 ~~[(1) the] (1) (a) A local government entity issuing [that] a building permit for a private~~  
311 ~~project shall, no later than 15 days after issuing the permit, input the building permit~~  
312 ~~application and transmit the building permit information to the database electronically by way~~  
313 ~~of the Internet or computer modem or by any other means[; or].~~

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

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

319 ~~[(1) (b) The person to whom a building permit, filed under Subsection (1)(a)(1), is~~  
320 ~~issued is responsible for the accuracy of the information in the building permit.~~

321 ~~[(1) (c) For the purposes of classifying a record under Title 63G, Chapter 2,~~  
322 ~~Government Records Access and Management Act, building permit information transmitted~~  
323 ~~from a local governmental entity to the database shall be classified in the database by the~~  
324 ~~division notwithstanding the local governmental entity's classification of the building permit~~  
325 ~~information.~~

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

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

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

336 ~~[(1) (i) If duplicate notices of commencement are filed, they shall be combined into one~~  
337 ~~notice for each project and any notices filed relate back to the date of the earliest-filed notice of~~

338 commencement for the project.]

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

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

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

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

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

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

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

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

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

354       ~~[(A) original contractor; and]~~

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

357       ~~[(iii) (A) the project address if the project can be reasonably identified by an address;~~  
358 ~~or]~~

359       ~~[(B) the name and general description of the location of the project if the project cannot~~  
360 ~~be reasonably identified by an address.]~~

361       ~~[(b) A notice of commencement may include:]~~

362       ~~[(i) a general description of the project; or]~~

363       ~~[(ii) the lot or parcel number, and any subdivision, development, or other project name,~~  
364 ~~of the real property upon which the project is to be constructed if the project is subject to~~  
365 ~~mechanics' liens.]~~

366       ~~[(c) A notice of commencement need not include all of the items listed in Subsection~~  
367 ~~(2)(a) if:]~~

368       ~~[(i) a building permit is issued for the project; and]~~

369           ~~[(ii) all items listed in Subsection (2)(a) that are available on the building permit are~~  
370 ~~included in the notice of commencement.]~~

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

373           ~~[(a) Section 38-1-32; and]~~

374           ~~[(b) Section 38-1-33.]~~

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

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

379           ~~[(ii) all interested persons who have requested notices concerning the project.]~~

380           ~~[(b) (i) A person to whom notice is required under Subsection (4)(a) is responsible for:]~~

381           ~~[(A) providing an e-mail address, mailing address, or telefax number to which a notice~~  
382 ~~required by Subsection (4)(a) is to be sent; and]~~

383           ~~[(B) the accuracy of any e-mail address, mailing address, or telefax number to which~~  
384 ~~notice is to be sent.]~~

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

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

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

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

396           ~~[(6)]~~ (2) At the time a building permit is obtained, each original contractor shall  
397 conspicuously post at the project site a copy of the building permit obtained for the project.

398           Section 8. Section **38-1-31.5** is enacted to read:

399           **38-1-31.5. Notice of commencement for a government project.**

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

403 (2) An original contractor, owner, or owner-builder on a government project may file a  
404 notice of commencement with the designated agent before the commencement of physical  
405 construction work at the project site.

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

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

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

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

415 (a) identifies the project; and

416 (b) can be associated with all notices of commencement, preliminary notices, and  
417 notices of completion filed in connection with the project.

418 (5) A notice of commencement is effective only as to any labor, service, equipment,  
419 and material that is furnished after the notice of commencement is filed.

420 (6) (a) A notice of commencement shall include:

421 (i) the name, address, and email address of the owner of the project;

422 (ii) the name, address, and email address of the original contractor;

423 (iii) the name, address, and email address of the surety providing any payment bond for  
424 the project or, if none exists, a statement that a payment bond was not required for the work  
425 being performed; and

426 (iv) (A) the project address if the project can be reasonably identified by an address; or

427 (B) the name and general description of the location of the project, if the project cannot  
428 be reasonably identified by an address.

429 (b) A notice of commencement may include a general description of the project.

430 (7) If a notice of commencement for a government project is not filed within the time

431 set forth in Subsection (1), Sections 38-1-32 and 38-1-33 do not apply.

432 (8) (a) Notwithstanding any other provision of this chapter, a notice of commencement  
433 need not be filed for a private project.

434 (b) A provision of this chapter does not apply to a private project if the provision  
435 depends for its effectiveness upon the filing of a notice of commencement.

436 (9) (a) Unless a person indicates to the division or designated agent that the person  
437 does not wish to receive a notice under this section, the designated agent shall provide  
438 electronic notice of the filing of a notice of commencement or alternate filing to:

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

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

441 (b) A person to whom notice is required under Subsection (9)(a) is responsible for:

442 (i) providing an email address, mailing address, or telefax number to which a notice  
443 required by Subsection (9)(a) is to be sent; and

444 (ii) the accuracy of any email address, mailing address, or telefax number to which  
445 notice is to be sent.

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

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

452 (b) A substantial inaccuracy in a notice of commencement renders the notice of  
453 commencement invalid.

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

457 Section 9. Section **38-1-32** is amended to read:

458 **38-1-32. Preliminary notice for a private project.**

459 (1) (a) [~~(i) Except for a person who has a contract with an owner or an owner-builder~~  
460 ~~or a laborer compensated with wages, a subcontractor]~~ A person who, under Section 38-1-3, is  
461 entitled to a lien under this chapter with respect to a private project shall file a preliminary

462 notice with the database ~~[by the]~~ no later ~~[of: (A)]~~ than 20 days after ~~[commencement of its~~  
463 ~~own work or the commencement of]~~ the person commences furnishing labor, service,  
464 equipment, ~~[and]~~ or material to a construction project~~[; or].~~

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

467 ~~[(ii)]~~ (b) A preliminary notice filed within the period ~~[described]~~ provided in  
468 Subsection (1)(a)~~[(i)]~~ is effective as to all labor, service, equipment, and material ~~[furnished]~~  
469 that the person filing the notice furnishes to the construction project, including labor, service,  
470 equipment, and material ~~[provided]~~ that the person furnishes to more than one contractor or  
471 subcontractor.

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

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

478 ~~[(b) If a person files a preliminary notice after the period prescribed by Subsection~~  
479 ~~(1)(a), the preliminary notice becomes effective five days after the day on which the~~  
480 ~~preliminary notice is filed.]~~

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

486 (c) For purposes of this section, a construction project to construct infrastructure and  
487 other improvements that benefit the development as a whole and that are preparatory to  
488 construction on individual lots is separate from a construction project to construct a building or  
489 other improvement on an individual lot within the development.

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



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

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

496           (e) A preliminary notice that is timely filed with the database with respect to a  
497 construction project is considered to have been filed at the same time as the earliest timely filed  
498 preliminary notice for that project.

499           (f) A preliminary notice shall include:

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

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

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

506           ~~[(D)]~~ (ii) the name of the record or reputed owner of the property on which the project  
507 is occurring or will occur; and

508           ~~[(E) the name of the original contractor under which the claimant is performing or will~~  
509 ~~perform its work; and]~~

510           ~~[(F) the address of the project or a description of the location of the project.]~~

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

514           ~~[(e) If a person provides labor, service, equipment, or material before the filing of a~~  
515 ~~notice of commencement and the notice of commencement is filed more than 15 days after the~~  
516 ~~day on which the person providing labor, service, equipment, or material begins work on the~~  
517 ~~project, the person providing labor, service, equipment, or material need not file a preliminary~~  
518 ~~notice to maintain the person's right to hold a lien under this chapter or any other right,~~  
519 ~~including a right referenced under Subsection (1)(c).]~~

520           (iii) the project-identifying information.

521           (2) (a) ~~[(†)]~~ Unless a person indicates to the division or designated agent that the person  
522 does not wish to receive a notice under this section, electronic notification of the filing of a  
523 preliminary notice or alternate ~~[notice as prescribed in Subsection (1);]~~ filing shall be provided

524 to:

525 ~~[(A)]~~ (i) the person filing the preliminary notice; and  
526 ~~[(B)]~~ each person that filed a notice of commencement for the project; and]  
527 ~~[(C)]~~ all interested persons who have requested notices]

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

529 ~~[(ii)]~~ (b) A person to whom notice is required to be provided under Subsection  
530 (2)(a)~~[(i)]~~ is responsible for:

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

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

535 ~~[(iii)]~~ (c) The designated agent fulfills the notice requirement of Subsection (2)(a)~~[(i)]~~  
536 ~~when it sends]~~ by sending the notice to the email address, mailing address, or telefax number  
537 provided to the designated agent, whether or not the notice is actually received.

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

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

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

545 ~~[(3)]~~ (5) (a) ~~[If a]~~ A construction project owner, original contractor, subcontractor, or  
546 other interested person who believes that a preliminary notice has been filed erroneously~~[-that~~  
547 ~~owner, original contractor, subcontractor, or other interested person can]~~ may request from the  
548 person who filed the preliminary notice evidence establishing the validity of the preliminary  
549 notice.

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

553 (c) If the person or entity that filed the preliminary notice does not provide proof of the  
554 validity of the preliminary notice, that person or entity shall immediately cancel the preliminary

555 notice from the database in any manner prescribed by the division pursuant to rule.

556 ~~[(4)]~~ (6) A person filing a preliminary notice by alternate filing is responsible for  
557 verifying and changing any incorrect information in the preliminary notice before the  
558 expiration of the time period during which the notice is required to be filed.

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

561 Section 10. Section **38-1-32.5** is enacted to read:

562 **38-1-32.5. Preliminary notice on government project.**

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

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

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

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

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

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

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

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

- 586           (6) A preliminary notice on a government project shall include:  
587           (a) the unique identifying number assigned to the project by the designated agent;  
588           (b) the name, address, and telephone number of the person furnishing the labor,  
589 service, equipment, or material;  
590           (c) the name and address of the person who contracted with the claimant for the  
591 furnishing of the labor, service, equipment, or material;  
592           (d) the name of the record or reputed owner of the project;  
593           (e) the name of the original contractor under which the claimant is performing or will  
594 perform its work; and  
595           (f) the address of the project or a description of the location of the project.  
596           (7) Upon request, an original contractor shall provide a subcontractor with the number  
597 assigned to the project by the designated agent.  
598           (8) If a person provides labor, service, equipment, or material before the filing of a  
599 notice of commencement and the notice of commencement is filed more than 15 days after the  
600 day on which the person providing labor, service, equipment, or material begins work on the  
601 project, the person providing labor, service, equipment, or material need not file a preliminary  
602 notice to maintain any right the person would otherwise have.  
603           (9) Subsections 38-1-32(2), (3), (4), (5), and (6) apply to a preliminary notice on a  
604 government project under this section to the same extent as those subsections apply to a  
605 preliminary notice on a private project under Section 38-1-32.  
606           Section 11. Section **38-1-33** is amended to read:  
607           **38-1-33. Notice of completion.**  
608           (1) (a) Upon final completion of a construction project, and in accordance with Section  
609 38-1-40, the following with a construction project registered with the database may file a notice  
610 of completion with the database:  
611           (i) an owner of the construction project;  
612           (ii) an original contractor of the construction project;  
613           (iii) a lender that has provided financing for the construction project;  
614           (iv) a surety that has provided bonding for the construction project; or  
615           (v) a title company issuing a title insurance policy on the construction project.  
616           (b) Notwithstanding Section 38-1-2, if a subcontractor performs substantial work after

617 the applicable dates established by Subsection (1)(a), that subcontractor's subcontract is  
618 considered an original contract for the sole purpose of determining:

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

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

623 (c) A notice of completion shall include:

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

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

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

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

630 (ii) the project-identifying information;

631 [~~(v)~~ (iii) the date on which final completion is alleged to have occurred; and

632 [~~(vi)~~ (iv) the method used to determine final completion.

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

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

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

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

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

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

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

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

647 (iii) The designated agent fulfills the notice requirement of Subsection (1)(e)(i) when it

648 sends the notice to the email address, mailing address, or telefax number provided to the  
649 designated agent, whether or not the notice is actually received.

650 (iv) Upon the filing of a notice of completion, the time periods for filing a preliminary  
651 ~~[notices]~~ notice stated in Section ~~[38-1-27]~~ 38-1-32 or 38-1-32.5 are modified such that all  
652 preliminary notices shall be filed subsequent to the notice of completion and within 10 days  
653 from the day on which the notice of completion is filed.

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

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

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

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

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

671 Section 12. Section **58-56-20** is amended to read:

672 **58-56-20. Standardized building permit content.**

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

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

677 (i) the name and address of the owner of ~~[or contractor for]~~ the property on which the  
678 project will occur;

679 (ii) the name and address of the contractor for the project;  
 680 [~~(ii)~~] (iii) (A) the address of the project; or  
 681 (B) a general description of the project; [~~and~~]  
 682 (iv) the county in which the property on which the project will occur is located;  
 683 (v) the tax parcel identification number of the property; and  
 684 [~~(iii)~~] (vi) whether the permit applicant is an original contractor or owner-builder.  
 685 (b) The standardized building permit form created under Subsection (1) may include  
 686 any other information the division considers useful.

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

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

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

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

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

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

706 Section 13. Section **63G-6-506** is amended to read:

707 **63G-6-506. Preliminary notice requirement.**

708 (1) Any person furnishing labor, service, equipment, or material for which a payment  
 709 bond claim may be made under this chapter shall provide preliminary notice to the designated

710 agent as prescribed by Section [~~38-1-32~~] 38-1-32.5, except that this section does not apply:

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

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

713 38-1-31.5 for the project or improvement for which labor, service, equipment, or material is

714 furnished.

715 (2) Any person who fails to provide the preliminary notice required by Subsection (1)

716 may not make a payment bond claim under this chapter.

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

718 before commencement of any action on the payment bond.

719 Section 14. **Repealer.**

720 This bill repeals:

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

722 **38-1-36.**

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**Legislative Review Note**

**as of 1-28-11 8:42 AM**

**Office of Legislative Research and General Counsel**



# FISCAL NOTE

H.B. 260

SHORT TITLE: **Mechanics' Liens Revisions**

SPONSOR: **Clark, D.**

2011 GENERAL SESSION, STATE OF UTAH

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

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

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

Enactment of this bill likely will not result in direct, measurable costs and/or benefits 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.