

HB0260S01 compared with HB0260

~~{deleted text}~~ shows text that was in HB0260 but was deleted in HB0260S01.

inserted text shows text that was not in HB0260 but was inserted into HB0260S01.

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Representative David Clark proposes the following substitute bill:

MECHANICS' LIENS REVISIONS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David Clark

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to mechanics' liens.

Highlighted Provisions:

This bill:

- ▶ provides ~~{that}~~ priority between construction loans ~~{have priority over earlier or later filed}~~ and mechanics' liens;
- ▶ modifies provisions related to the State Construction Registry;
- ▶ modifies the information by which the State Construction Registry is to be indexed;
- ▶ requires each notice or document submitted for inclusion in the State Construction Registry to contain specified information;
- ▶ modifies provisions related to building permits and notices of commencement;
- ▶ modifies requirements related to the filing of a preliminary notice;

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- ▶ 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
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides an effective date.

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

Utah Code Sections Affected:

AMENDS:

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

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

38-1-1, Utah Code Annotated 1953

38-1-5, Utah Code Annotated 1953

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

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

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

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

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

38-9-2, as last amended by Laws of Utah 2008, Chapters 3 and 223

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

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

ENACTS:

38-1-30.5, Utah Code Annotated 1953

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38-1-31.5, Utah Code Annotated 1953

38-1-32.5, Utah Code Annotated 1953

REPEALS:

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

Utah Code Sections Affected by Coordination Clause:

15A-1-209, Utah Code Annotated 1953

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

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

14-1-20. Preliminary notice requirement.

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

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

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

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

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

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

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

14-2-5. Preliminary notice requirement.

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

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

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

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

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

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may not make a payment bond claim under this chapter.

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

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

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

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

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

38-1-5. ~~{Lien relates back to first preliminary notice filing--}~~ Priority ~~{of lien}--~~ ~~{Priority of construction loan}~~ Over other encumbrances.

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

(1) As used in this section:

(a) "Construction loan" means a loan:

(i) that is secured by a mortgage or trust deed on ~~{the }~~project property;

(ii) the proceeds of which are used to pay the costs of constructing or improving a building or structure on or making an improvement to the project property; and

(iii) that is intended to be replaced, upon completion of the construction or improvement, with a mortgage or trust deed securing permanent financing, some or all of the proceeds of which are used to pay those entitled to claim a lien under this chapter on the project property.

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

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

(2) A lien under this chapter ~~;~~

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

~~(~~b~~)~~ (a) ~~{except}~~ Except as provided in Subsection (3) ~~(b)~~, a lien under this chapter

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has priority over:

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

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

~~(3) A}~~

(b) A recorded mortgage or trust deed on the project property to secure a construction loan has priority over:

(i) each lien under this chapter {, whether} of a claimant who files a preliminary notice under Section 38-1-32 before the mortgage or trust deed is recorded:

(A) if the claimant is paid in full for labor, service, equipment, or material that the claimant furnishes to the construction {loan is recorded before or after the lien} project before the mortgage or trust deed is recorded; and

(B) to the extent that the claimant's lien covers labor, service, equipment, or material that the claimant furnishes after the mortgage or trust deed is recorded; and

(ii) each lien under this chapter of a claimant who first files a preliminary notice under Section 38-1-32 after the mortgage or trust deed is recorded.

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

38-1-27. State Construction Registry.

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

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

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

(c) "Construction project[-]" or "project[-]" ~~[or "improvement"]~~ means all labor, service, equipment, and materials provided[-]†

~~{(i){}} under an original contract[-; or]~~

~~[(ii) by, or under contracts with, an owner-builder.]~~

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

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

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

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

(g) "Entry number" means the reference number that the designated agent assigns to each notice or other document filed with the database that is unique for each notice or other document.

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

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

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

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

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

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

~~(k) "Project-identifying"~~ (i) "Government project-identifying information" means:

~~(i) for a government project:~~

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

~~(B) the lot or parcel number of each lot included in project property that has a lot or parcel number; and~~

~~(ii) the unique project number assigned by the designated agent under Subsection 38-1-31.5(4); and~~

~~(ii) for a private project:~~

~~(A) the name of the county in which the~~.

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

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

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

(m) "Project property" means the real property on which ~~the~~ a construction project occurs or will occur ~~is located~~;

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

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

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

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

(ii) promote a fair working environment;

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

(c) provide a central repository for ~~notices of commencement~~;

(i) preliminary notices and notices of completion filed in connection with all ~~privately owned construction~~ private projects ~~as well as~~ in the state; and

(ii) notices of commencement, preliminary notices, and notices of completion for all ~~state and local~~ government ~~owned construction~~ projects ~~throughout Utah~~ in the state;

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

~~(i)~~ (i) the filing and reviewing of:

~~(A)~~ (A) notices of commencement

~~(ii) building permits~~ on a government project;

~~(B)~~ (B) preliminary notices;

~~(C)~~ (C) ~~a notice~~ notices of intent to file notice of final completion;

~~(D)~~ (D) ~~a notice~~ notices for remaining amounts due to complete the contract;

and

~~(E)~~ (E) notices of completion; and

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

(e) accommodate:

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(i) electronic filing of the ~~building permits and~~ notices described in Subsection (2)(d)(i) and electronic transmitting of building permit information described in Subsection (2)(d)(ii); and

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

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

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

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

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

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

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

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

(c) The database shall be indexed by:

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

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

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

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

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

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

(iii) the address of the project property;

(iv) entry number;

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

(vi) for private projects;

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(A) the tax parcel identification number of each parcel included in the project property;
and

(B) the building permit number;

(vii) for government projects, the government project-identifying information; and

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

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

- (i) a notice of commencement on a government project;
- (ii) ~~{}~~ a preliminary notice;
- (iii) ~~{}~~ a notice of intent to file notice of final completion;
- (iv) ~~{}~~ a notice for remaining amounts due to complete the contract;
- (v) ~~{}~~ a notice of completion;
- (vi) ~~{}~~ a request for notice;
- (vii) ~~{}~~ providing a required notice by an alternate method of delivery;
- (viii) ~~{}~~ a duplicate receipt of a filing; and
- (ix) ~~{}~~ account setup for a person who wishes to be billed periodically for filings with the database.

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

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

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

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

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

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

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

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

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

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

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

- (a) the filing of a notice permitted by this chapter;
- (b) the rejection of a filing permitted by this chapter; or
- (c) other action by the designated agent in connection with a filing of any notice permitted by this chapter.

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

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

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

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

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

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

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(11) Each notice or other document ~~{that relates to a construction project and is}~~ submitted for inclusion in the database ~~{shall contain the project-identifying information for the construction project}~~ and for which this chapter does not specify information required to be included in the notice or other document shall contain:

(a) the name of the county in which the project property to which the notice or other document ~~{relates}~~ applies is located:

(b) for a private project:

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

or

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

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

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

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

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

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

(i) local government entities issuing building permits;

(ii) original contractors;

(iii) subcontractors; and

(iv) other interested persons.

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

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

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

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

(b) the designated agent to administer this section, Section 38-1-27, and Sections

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38-1-31 through 38-1-37; and

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

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

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

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

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

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

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

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

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

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

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

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

Section 7. Section ~~{38-1-31}~~38-1-30.5 is ~~{amended to read:~~
enacted to read:

38-1-30.5. Notice of construction loan.

(1) Promptly after recording a mortgage or trust deed securing a construction loan, as defined in Section 38-1-5, the lender on the loan shall file with the database a notice of construction loan.

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(2) A notice under Subsection (1) shall include:

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

(b) the name of the trustor on the trust deed securing the loan;

(c) the tax parcel identification number of each parcel included or to be included in the construction project for which the loan was given;

(d) the address of the project property; and

(e) the name of the county in which the project property is located.

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

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

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

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

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

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

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

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

~~[(iii)]~~ (c) For the purposes of classifying a record under Title 63G, Chapter 2, Government Records Access and Management Act, building permit information transmitted from a ~~[local governmental entity]~~ county, city, or town to the database shall be classified in the database by the division notwithstanding the ~~[local governmental entity's]~~ classification of the building permit information by the county, city, or town.

~~[(b) No later than 15 days after commencement of physical construction work at the project site, the original contractor, owner, or owner-builder may file a notice of~~

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~~commencement with the database whether or not a building permit is issued or a notice of commencement is filed under Subsection (1)(a).]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(5) (a) The burden is upon any person seeking to enforce a notice of commencement to verify the accuracy of information in the notice of commencement and prove that the notice~~

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of commencement is filed timely and meets all of the requirements in this section.]

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

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

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

Section ~~{8}9~~. Section **38-1-31.5** is enacted to read:

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

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

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

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

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

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

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

(a) identifies the project; and

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

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

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

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(i) the name, address, and email address of the owner of the project;
(ii) the name, address, and email address of the original contractor;
(iii) the name, address, and email address of the surety providing any payment bond for the project or, if none exists, a statement that a payment bond was not required for the work being performed;~~f and~~

(iv) (A) the project address if the project can be reasonably identified by an address; or
(B) the name and general description of the location of the project, if the project cannot be reasonably identified by an address;~~f;~~ and

(v) the government project identifying information.

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

(7) If a notice of commencement for a government project is not filed within the time set forth in Subsection (1), Sections 38-1-32 and 38-1-33 do not apply.

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

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

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

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

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

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

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

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

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

(10) (a) The burden is upon any person seeking to enforce a notice of commencement to verify the accuracy of information in the notice of commencement and prove that the notice

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of commencement is filed timely and meets all of the requirements of this section.

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

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

Section ~~{9}~~10. Section **38-1-32** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

~~— (d) (i) [(A)]d) A preliminary notice filed for labor, service, equipment, or material furnished to real property for a private project under an original contract is not valid for labor, service, equipment, or material furnished to the same real property for another private project under a separate original contract.~~

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

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

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

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

~~[(e)] f) A preliminary notice that is timely filed with the database with respect to a {construction} private project is considered to have been filed at the {same} time {as} of the {earliest timely filed} first preliminary notice {for that project}.~~

~~— (f) filing, as defined in Section 38-1-5.~~

(g) If a preliminary notice filed with the database includes the tax parcel identification

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number of a parcel not previously associated in the database with a private project, the designated agent shall promptly notify the person who filed the preliminary notice that:

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

(ii) the likely explanation is that:

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

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

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

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

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

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

~~[(D)]~~ (~~{iii}~~ ~~iii~~) the name of the record or reputed owner of the project property ~~on which the project is occurring or will occur~~; ~~{ and }~~

~~[(E)]~~ (iv) the name of the original contractor under which the claimant is ~~[performing]~~ furnishing or will ~~[perform its work; and]~~ furnish labor, service, equipment, or material;

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

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

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

~~(~~{iii}~~ the project-identifying information)~~ (vi) the name of the county in which the project property is located; and

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(vii) (A) the tax parcel identification number of each parcel included in the project property;

(B) the entry number of a previously filed notice of construction loan under Section 38-1-30.5 on the same project;

(C) the entry number of a previously filed preliminary notice on the same project that includes the tax parcel identification number of each parcel included in the project property; or

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

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

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

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

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

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

[(††)] (b) A person to whom notice is required to be provided under Subsection (2)(a)[(†)] is responsible for:

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

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

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

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

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

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

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

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

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

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

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

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

Section ~~{10}~~11. Section **38-1-32.5** is enacted to read:

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

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

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

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

(2) A preliminary notice filed within the period described in Subsection (1) is effective as to all labor, service, equipment, and material that the subcontractor furnishes to the construction project, including labor, service, equipment, and material provided that the

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subcontractor furnishes to more than one contractor or subcontractor.

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

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

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

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

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

(a) the ~~{unique}~~government project identifying ~~{number assigned to the project by the designated agent}~~information;

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

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

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

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

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

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

(8) ~~{ffa}~~A person who provides labor, service, equipment, or material before the filing of a notice of commencement ~~{and}~~need not file a preliminary notice to maintain any right the person would otherwise have, if the notice of commencement is filed more than 15 days after the day on which the person ~~{providing labor, service, equipment, or material}~~begins work on the project~~{, the person providing labor, service, equipment, or material need not file a~~

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~~preliminary notice to maintain any right the person would otherwise have.~~

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

Section ~~{11}~~ 12. Section **38-1-33** is amended to read:

38-1-33. Notice of completion.

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

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

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

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

(c) A notice of completion shall include:

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

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

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

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

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

(iii) for a private project:

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

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(B) the entry number of a preliminary notice on the same project that includes the tax parcel identification number of each parcel included in the project property; or

(C) the entry number of the building permit issued for the project;

(iv) for a government project, the government project-identifying information;

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

~~{(vi)}~~ ~~{(iv)}~~ the method used to determine final completion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 13. Section 38-9-2 is amended to read:

38-9-2. Scope.

(1) (a) The provisions of Sections 38-9-1, 38-9-3, 38-9-4, and 38-9-6 apply to any recording or filing or any rejected recording or filing of a lien pursuant to this chapter on or after May 5, 1997.

(b) The provisions of Sections 38-9-1 and 38-9-7 apply to all liens of record regardless of the date the lien was recorded or filed.

(c) Notwithstanding Subsections (1)(a) and (b), the provisions of this chapter applicable to the filing of a notice of interest do not apply to a notice of interest filed before May 5, 2008.

(2) The provisions of this chapter shall not prevent a person from filing a lis pendens in accordance with Section 78B-6-1303 or seeking any other relief permitted by law.

~~[(3) This chapter does not apply to a person entitled to a lien under Section 38-1-3 who files a lien pursuant to Title 38, Chapter 1, Mechanics' Liens.]~~

Section ~~{12}~~14. Section 58-56-20 is amended to read:

58-56-20. Standardized building permit content.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Section ~~{13}~~15. Section **63G-6-506** is amended to read:

63G-6-506. Preliminary notice requirement.

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

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

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

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

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

Section ~~{14}~~16. **Repealer.**

This bill repeals:

Section **38-1-37, Application of Section 38-1-27 and Sections 38-1-30 through 38-1-36.**

†

Legislative Review Note

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

} Section 17. Effective date.

This bill takes effect on August 1, 2011.

Section 18. Coordinating H.B. 260 with H.B. 203 -- Technically merging substantive amendments.

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

(1) the coordination clause in this H.B. 260 supersede the coordination clause

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contained in H.B. 203; and

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

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

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

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

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

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

(B) a general description of the project;

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

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

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

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