

HB0260S03 compared with HB0260S02

~~{deleted text}~~ shows text that was in HB0260S02 but was deleted in HB0260S03.

inserted text shows text that was not in HB0260S02 but was inserted into HB0260S03.

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~~{Representative David Clark}~~Senator Scott K. Jenkins proposes the following substitute bill:

MECHANICS' LIENS REVISIONS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David Clark

Senate Sponsor: ~~{~~John L. Valentine

LONG TITLE

General Description:

This bill modifies provisions relating to mechanics' liens.

Highlighted Provisions:

This bill:

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

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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;
- ▶ requires a construction lender to file with the database a notice of construction loan and, if a default occurs, a notice of default relating to a construction loan;
- ▶ 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:

This bill takes effect on August 1, 2011.

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

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

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

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

ENACTS:

38-1-30.5, Utah Code Annotated 1953

38-1-31.5, Utah Code Annotated 1953

38-1-32.5, Utah Code Annotated 1953

38-1-32.7, 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

30-1-30.5, Utah Code Annotated 1953

38-1-2, as last amended by Laws of Utah 2006, Chapter 297

38-1-5, Utah Code Annotated 1953

38-1-19, Utah Code Annotated 1953

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

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

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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.

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(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, 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 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 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. Priority -- Over other encumbrances.

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

~~{~~ (1) As used in this section:

~~{~~ (a) "First preliminary notice filing" means the filing of {the earliest filed valid}a preliminary notice{;

~~_____~~ (b) "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;

~~_____~~ (c) "Valid preliminary notice" means a} that is:

(i) the earliest preliminary notice filed {in accordance with Section 38-1-32 that has not been}on a private project, as defined in Section 38-1-27;

(ii) filed on or after August 1, 2011;

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(iii) not filed on a project that, according to the law in effect before August 1, 2011, commenced before August 1, 2011;

(iv) not canceled under Subsection 38-1-32(~~5~~6); and

(v) not withdrawn under Subsection 38-1-32(8).

(2) A lien under this chapter 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.

(3) (a) Subject to Subsection (3)(b), a lien under this chapter 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.

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

~~(ii) The mortgage or trust deed of a lender that provides financing for a project~~ construction lender has priority over each lien under this chapter of a claimant who files a preliminary notice ~~under~~ in accordance with Section 38-1-32 ~~after~~ before the mortgage or trust deed is recorded if ~~each claimant who files a preliminary notice before the recording of;~~ the claimant:

(i) accepts payment in full for labor, service, equipment, and material that the claimant furnishes to the project before the mortgage or trust deed ~~subordinates~~ is recorded; and

(ii) withdraws the claimant's ~~lien to the lender's mortgage or trust deed;~~ preliminary notice by filing a notice of withdrawal under Subsection 38-1-32(8).

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

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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 lender" means a lender who provides construction financing for a private project.

~~(e)~~ (d) "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.]~~

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

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

~~(g)~~ (h) "Entry number" means the reference number that:

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

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

~~(h)~~ (i) "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.

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

(i) 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.

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

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

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

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~~(f)(m)(n)~~ "Project property" means the real property on which a construction project occurs or will occur.

(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, preliminary notices, and notices of completion filed in connection with all privately owned construction projects as well as all state and local government owned construction projects throughout Utah]~~ all notices filed with the database under Section 38-1-30.5, 38-1-31.5, 38-1-32, 38-1-32.5, 38-1-32.7, 38-1-33, or 38-1-40;

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

- (i) the filing and reviewing of notices described in Subsection (2)(c); and
 - ~~[(i) notices of commencement;]~~
 - ~~[(ii) preliminary notices;]~~
 - ~~[(iii) a notice of intent to file notice of final completion;]~~
 - ~~[(iv) a notice for remaining amounts due to complete the contract; and]~~
 - ~~[(v) notices of completion;]~~
- (ii) the transmitting of building permit information under Subsection 38-1-31(2)(a) and the reviewing of that information;

(e) accommodate:

(i) electronic filing of the notices described in Subsection (2)~~(d)~~(c) 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

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(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]~~

(vi) the address of the project property;

(vii) entry number;

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

~~(~~vii~~ix)~~ for private projects;

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

and

(B) the building permit number;

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

~~(vii)~~ ~~(~~viii~~xi)~~ 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:

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

~~[(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;]~~

(i) notices described in Subsection (2)(c):

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

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

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

~~[(ix)]~~ (v) 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.

(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

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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 notice of commencement, 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.

(11) Each notice or other document submitted for inclusion in the database 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 applies is located;

(b) for a private project:

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

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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 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.

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(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)]~~(4)~~(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 **38-1-30.5** is enacted to read:

38-1-30.5. Notice of construction loan.

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

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

(3) A notice under Subsection (2) shall ~~include~~ **accurately state**:

(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 ~~;~~ **and**

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~~— (f) for each claimant who subordinates the claimant's lien to the lender's mortgage or trust deed as provided in Subsection 38-1-5(3)(b)(i):~~

~~— (i) the name of the claimant; and~~

~~— (ii) the entry number of the preliminary notice that the claimant filed with the database for the project}.~~

(4) A construction lender that files a notice of construction loan containing incomplete or inaccurate 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 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 county, city, or town issuing a building permit for a private project:

(i) 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; ~~[(f) or]~~ and

(ii) may collect a building permit fee related to the issuance of the building permit, but may not spend or otherwise use the building permit fee until the county, city, or town complies with Subsection (1)(a)(i) with respect to the building permit for which the fee is charged.

~~[(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~~

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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 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]~~

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~~[(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]~~

~~[(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~~

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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 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 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 on the project 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

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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:

(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;

(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; 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

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

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

~~{(1)(a){(i)}~~ (1) As used in this section:

(a) "Pre-lender claimant" means a person whose lien under this chapter is made subject to a construction lender's mortgage or trust deed, as provided in Subsection 38-1-5(3)(b), by the person's acceptance of payment in full and the person's withdrawal of the person's preliminary notice.

(b) "Refiled preliminary notice" means a preliminary notice that a pre-lender claimant files under Subsection (2)(a)(ii) with the database on a project after withdrawing a preliminary notice that the claimant previously filed for the same project.

~~[(1) (2) (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].~~

(ii) A pre-lender claimant who, under Section 38-1-3, is entitled to claim a lien under this chapter for labor, service, equipment, or material the claimant furnishes to a private project after the recording of a construction lender's mortgage or trust deed on the project property shall file a preliminary notice within 20 days after the recording of the mortgage or trust deed.

~~[(B) 20 days after the filing of a notice of commencement if the subcontractor's work~~

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~~[(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) ~~[(A)]~~(i) Except as provided in Subsection (2)(e)(ii), a preliminary notice that is timely filed with the database with respect to a private project is considered to ~~have been~~ be filed at the time of the first preliminary notice filing, as defined in Section 38-1-5.~~

(ii) A timely filed preliminary notice that is a refiled preliminary notice is considered to be filed immediately after the recording of a mortgage or trust deed of the construction lender that paid the pre-lender claimant in full for labor, service, equipment, or material the claimant furnished before the recording of the mortgage or trust deed.

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

(g) 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) the name of the record or reputed owner of the project property;

~~[(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~~

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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).]~~

~~(vi) the name of the county in which the project property is located; and~~

~~(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.~~

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

~~(i) the subdivision, development, or other project name applicable to the construction project for which the preliminary notice is filed; and~~

~~(ii) the lot or parcel number of each lot or parcel that is included in the project property.~~

~~[(2)]~~ (3) (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:

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~~[(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.

~~[(iii)]~~ (c) The designated agent fulfills the notice requirement of Subsection (2)(a)~~[(i)]~~ ~~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)]~~4 (a) The burden is upon the person filing the preliminary notice to prove that the person has substantially complied with the requirements of this section.

(b) Substantial compliance with the requirements of Subsection ~~[(1)]~~2(g) may be established by a person's reasonable reliance on information in the database provided by a previously filed:

(i) notice of construction loan under Section 38-1-30.5; ~~[(1)]~~ or

(ii) preliminary notice ~~[(1)]~~; or

(iii) building permit.

~~[(e)]~~ ~~[(4)]~~5 (a) Subject to Subsection ~~[(2)]~~~~[(d)]~~ ~~[(4)]~~5(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.

~~[(3)]~~ ~~[(5)]~~6 (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)]~~6(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.

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~~[(4)]~~ ~~(~~6~~7)~~ 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.]~~

(8) (a) A person who files a preliminary notice before the recording of a construction lender's mortgage or trust deed may withdraw the preliminary notice by filing with the database a notice of withdrawal as provided in Subsection (8)(b).

(b) A notice of withdrawal shall include:

(i) the information required for a preliminary notice under Subsection (2)(g); and

(ii) the entry number of the preliminary notice being withdrawn.

(~~7~~9) 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 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 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.

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(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}~~material, 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 government project-identifying 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) A person who provides labor, service, equipment, or material before the filing of a notice of commencement 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 begins work on the project.

(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 that those subsections apply to a preliminary notice on a private project under Section 38-1-32.

Section 12. Section ~~{38-1-33}~~38-1-32.7 is ~~{amended}~~enacted to read:

38-1-32.7. Notice concerning construction loan default.

(1) Within five business days after a notice of default is filed for recording under Section 57-1-24 with respect to a trust deed on the project property securing a construction

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loan, the construction lender under the loan shall file a notice with the database.

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

(a) include:

(i) the information required to be included in a notice of construction loan under Subsections 38-1-30.5(3)(a), (b), (c), (d), and (e); and

(ii) the entry number of the notice of construction loan;

(b) state that a notice of default with respect to the construction loan has been recorded;

and

(c) state the date that the notice of default was recorded.

Section 13. 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;

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~~[(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;

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

(vi) 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

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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.

(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}~~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.

(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 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

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~~[(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."

Section ~~{14}~~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.

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(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 ~~{15}~~16. Repealer.

This bill repeals:

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

Section 17. Legislative intent.

It is the intent of the Legislature that:

(1) the changes to the law made by this bill apply only to construction projects that commence on or after August 1, 2011; and

(2) during the 2012 and 2013 interim periods, before the November interim committee meeting each year, the Business and Labor Interim Committee review and evaluate the implementation of this bill, determine whether the provisions of this bill should be modified or repealed, and make a recommendation accordingly to the Legislative Management Committee.

Section ~~{16}~~18. Effective date.

This bill takes effect on August 1, 2011.

Section ~~{17}~~19. **Coordinating H.B. 260 with H.B. 203 -- Technically merging substantive amendments.**

If this H.B. 260 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 supersedes the coordination clause 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;

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(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)."

Section ~~{18}~~20. **Coordinating H.B. 260 with H.B. 115 -- Technically merging substantive amendments.**

If this H.B. 260 and H.B. 115, Mechanics' Lien Amendments, both pass, it is the intent of the Legislature that:

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

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

"(6) "Construction service":

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

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

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

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

[The liens herein provided for shall relate]

(1) As used in this section:

(a) "First preliminary notice filing" means the filing of ~~{the earliest filed valid}~~a preliminary notice~~};~~

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

~~—— (c) "Valid preliminary notice" means a~~};~~ that is:~~

(i) the earliest preliminary notice filed ~~{in accordance with Section 38-1-32 that has not~~

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~~been~~ on a private project, as defined in Section 38-1-27;

(ii) filed on or after August 1, 2011;

(iii) not filed on a project that, according to the law in effect before August 1, 2011,

commenced before August 1, 2011;

(iv) not canceled under Subsection 38-1-32(~~5~~6); and

(v) not withdrawn under Subsection 38-1-32(8).

(2) A construction service lien 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.

(3) (a) Subject to Subsection (3)(b), a construction service lien 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.

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

~~—— (ii) The mortgage or trust deed of a lender that provides financing for a project}~~ construction lender has priority over each construction service lien of a claimant who files a preliminary notice {under} in accordance with Section 38-1-32 {after} before the mortgage or trust deed is recorded if {each} the claimant:

(i) accepts payment in full for {a} construction service {lien who files a preliminary notice} that the claimant furnishes to the project before {the recording of} the mortgage or trust deed {subordinates} is recorded; and

(ii) withdraws the claimant's {lien to the lender's mortgage or trust deed} preliminary notice by filing a notice of withdrawal under Subsection 38-1-32(8)."

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

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

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

"(c) provide a central repository for [notices of commencement, preliminary notices, and notices of completion filed in connection with all privately owned construction projects as well as all state and local government owned construction projects throughout Utah] all notices filed with the database under Section 38-1-30.5, 38-1-30.7, 38-1-31.5, 38-1-32~~(1)~~, 38-1-32.5~~(1)~~, 38-1-32.7, 38-1-33, or 38-1-40;"

(e) modify Subsection 38-1-32(~~(1)~~2) to read:

"~~(1)~~(2) (a) ~~(1)~~(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 construction service lien 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 material] construction service to [a construction] the project[; or].

~~(ii) A pre-lender claimant who, under Section 38-1-3, is entitled to claim a construction service lien for construction service the claimant furnishes to a private project after the recording of a construction lender's mortgage or trust deed on the project property shall file a preliminary notice within 20 days after the recording of the mortgage or trust deed.~~

~~[(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)~~2)(c), a preliminary notice [filed within the period described in Subsection (1)(a)(i)] is effective as to all [labor, service, equipment, and material furnished] construction service that the person filing the notice furnishes to the [construction] private project, including [labor, service, equipment, and material provided] construction service 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

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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)]~~ (2)(a) ~~[, the preliminary notice]:~~~~

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

(ii) is not effective for construction service 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.]~~

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

(B) A person who files a preliminary notice after the period provided in Subsection ~~[(1)]~~ (2)(a) may not hold a valid construction service lien for construction service 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) ~~[(A)]~~ (i) Except as provided in Subsection (3)(e)(ii), a preliminary notice that is timely filed with the database with respect to a private project is considered to ~~[(have been)]~~ be filed at the time of the first preliminary notice filing, as defined in Section 38-1-5.

(ii) A timely filed preliminary notice that is a refiled preliminary notice is considered to be filed immediately after the recording of a mortgage or trust deed of the construction lender that paid the pre-lender claimant in full for construction service the claimant furnished before

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the recording of the mortgage or trust deed.

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

(g) 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] construction service 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] construction service;~~

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

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

~~[(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,~~

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~~including a right referenced under Subsection (1)(c):]~~

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

(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 38-1-30.7 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.

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

(i) the subdivision, development, or other project name applicable to the construction project for which the preliminary notice is filed; and

(ii) the lot or parcel number of each lot or parcel that is included in the project property."; ~~and~~

(f) modify Subsection 38-1-32(~~(4)~~5) to read:

"[(~~e~~)] (~~(4)~~5) (a) Subject to Subsection [(~~2~~)(~~d~~)] (~~(4)~~5)(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~~] construction service is furnished pursuant to contracts under more than one original contract for construction service, the notice requirements [~~must~~] shall be met with respect to the [~~labor, service, equipment, or material~~] construction service furnished under each original contract.";

(2) the amendments to Subsection 38-1-27(2)(d) in this H.B. 260 supersede the amendments to Subsection 38-1-27(2)(d) in H.B. 115;

(3) the amendments to Subsection 38-1-27(4)(a) in this H.B. 260 supersede the amendments to Subsection 38-1-27(4)(a) in H.B. 115; and

(4) (a) Section 30-1-30.5, as enacted in this H.B. 260, be renumbered to Section 30-1-30.7; and

(b) all references in this H.B. 260 to Section 30-1-30.5 be changed to Section 30-1-30.7.