

Senator Michael K. McKell proposes the following substitute bill:

PRECONSTRUCTION AND CONSTRUCTION LIENS

AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions relating to preconstruction and construction liens.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ removes the requirement that an owner file a notice of intent to obtain final completion;
- ▶ amends provisions regarding a notice of intent to finance;
- ▶ enacts provisions related to a notice of progress;
- ▶ amends provisions regarding a notice of final lien;
- ▶ amends provisions regarding a failure to provide notice; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:



26 AMENDS:

27 **38-1a-102**, as last amended by Laws of Utah 2019, Chapter 250

28 **38-1a-506**, as renumbered and amended by Laws of Utah 2012, Chapter 278

29 **38-1a-603**, as enacted by Laws of Utah 2019, Chapter 250

30 **38-1a-604**, as enacted by Laws of Utah 2019, Chapter 250

31 **38-1a-802**, as last amended by Laws of Utah 2012, Chapter 347 and renumbered and
32 amended by Laws of Utah 2012, Chapter 278

33 **38-1a-805**, as enacted by Laws of Utah 2015, Chapter 303

34 ENACTS:

35 **38-1a-605**, Utah Code Annotated 1953



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

38 Section 1. Section **38-1a-102** is amended to read:

39 **38-1a-102. Definitions.**

40 As used in this chapter:

41 (1) "Alternate means" means a method of filing a legible and complete notice or other
42 document with the registry other than electronically, as established by the division by rule.

43 (2) "Anticipated improvement" means the improvement:

44 (a) for which preconstruction service is performed; and

45 (b) that is anticipated to follow the performing of preconstruction service.

46 (3) "Applicable county recorder" means the office of the recorder of each county in
47 which any part of the property on which a claimant claims or intends to claim a preconstruction
48 or construction lien is located.

49 (4) "Bona fide loan" means a loan to an owner or owner-builder by a lender in which
50 the owner or owner-builder has no financial or beneficial interest greater than 5% of the voting
51 shares or other ownership interest.

52 (5) "Claimant" means a person entitled to claim a preconstruction or construction lien.

53 (6) "Compensation" means the payment of money for a service rendered or an expense
54 incurred, whether based on:

55 (a) time and expense, lump sum, stipulated sum, percentage of cost, cost plus fixed or
56 percentage fee, or commission; or

- 57 (b) a combination of the bases listed in Subsection (6)(a).
- 58 (7) "Construction lender" means a person who makes a construction loan.
- 59 (8) "Construction lien" means a lien under this chapter for construction work.
- 60 (9) "Construction loan" does not include a consumer loan secured by the equity in the
61 consumer's home.
- 62 (10) "Construction project" means an improvement that is constructed pursuant to an
63 original contract.
- 64 (11) "Construction work":
 - 65 (a) means labor, service, material, or equipment provided for the purpose and during
66 the process of constructing, altering, or repairing an improvement; and
 - 67 (b) includes scheduling, estimating, staking, supervising, managing, materials testing,
68 inspection, observation, and quality control or assurance involved in constructing, altering, or
69 repairing an improvement.
- 70 (12) "Contestable notice" means a notice of preconstruction service under Section
71 [38-1a-401](#), a preliminary notice under Section [38-1a-501](#), or a notice of completion under
72 Section [38-1a-506](#).
- 73 (13) "Contesting person" means an owner, original contractor, subcontractor, or other
74 interested person.
- 75 (14) "Designated agent" means the third party the division contracts with as provided
76 in Section [38-1a-202](#) to create and maintain the registry.
- 77 (15) "Division" means the Division of Occupational and Professional Licensing created
78 in Section [58-1-103](#).
- 79 (16) "Entry number" means the reference number that:
 - 80 (a) the designated agent assigns to each notice or other document filed with the
81 registry; and
 - 82 (b) is unique for each notice or other document.
- 83 (17) "Final completion" means:
 - 84 (a) the date of issuance of a permanent certificate of occupancy by the local
85 government entity having jurisdiction over the construction project, if a permanent certificate
86 of occupancy is required;
 - 87 (b) the date of the final inspection of the construction work by the local government

88 entity having jurisdiction over the construction project, if an inspection is required under a
89 state-adopted building code applicable to the construction work, but no certificate of occupancy
90 is required;

91 (c) unless the owner is holding payment to ensure completion of construction work, the
92 date on which there remains no substantial work to be completed to finish the construction
93 work under the original contract, if a certificate of occupancy is not required and a final
94 inspection is not required under an applicable state-adopted building code; or

95 (d) the last date on which substantial work was performed under the original contract,
96 if, because the original contract is terminated before completion of the construction work
97 defined by the original contract, the local government entity having jurisdiction over the
98 construction project does not issue a certificate of occupancy or perform a final inspection.

99 (18) "Final lien waiver" means a form that complies with Subsection 38-1a-802(4)(c).

100 (19) "First preliminary notice filing" means a preliminary notice that:

101 (a) is the earliest preliminary notice filed on the construction project for which the
102 preliminary notice is filed;

103 (b) is filed on a construction project that, at the time the preliminary notice is filed, has
104 not reached final completion; and

105 (c) is not cancelled under Section 38-1a-307.

106 (20) "Government project-identifying information" has the same meaning as defined in
107 Section 38-1b-102.

108 (21) "Improvement" means:

109 (a) a building, infrastructure, utility, or other human-made structure or object
110 constructed on or for and affixed to real property; or

111 (b) a repair, modification, or alteration of a building, infrastructure, utility, or object
112 referred to in Subsection (21)(a).

113 (22) "Interested person" means a person that may be affected by a construction project.

114 (23) "Notice of commencement" means a notice required under Section 38-1b-201 for
115 a government project, as defined in Section 38-1b-102.

116 (24) "Original contract":

117 (a) means a contract between an owner and an original contractor for preconstruction
118 service or construction work; and

- 119 (b) does not include a contract between an owner-builder and another person.
- 120 (25) "Original contractor" means a person, including an owner-builder, that contracts
121 with an owner to provide preconstruction service or construction work.
- 122 (26) "Owner" means the person that owns the project property.
- 123 (27) "Owner-builder" means an owner, including an owner who is also an original
124 contractor, who:
- 125 (a) contracts with one or more other persons for preconstruction service or construction
126 work for an improvement on the owner's real property; and
- 127 (b) obtains a building permit for the improvement.
- 128 (28) "Preconstruction lien" means a lien under this chapter for a preconstruction
129 service.
- 130 (29) "Preconstruction service":
- 131 (a) means to plan or design, or to assist in the planning or design of, an improvement or
132 a proposed improvement:
- 133 (i) before construction of the improvement commences; and
- 134 (ii) for compensation separate from any compensation paid or to be paid for
135 construction work for the improvement; and
- 136 (b) includes consulting, conducting a site investigation or assessment, programming,
137 preconstruction cost or quantity estimating, preconstruction scheduling, performing a
138 preconstruction construction feasibility review, procuring construction services, and preparing
139 a study, report, rendering, model, boundary or topographic survey, plat, map, design, plan,
140 drawing, specification, or contract document.
- 141 (30) "Private project" means a construction project that is not a government project.
- 142 (31) "Progress waiver" means a form that complies with Subsection 38-1a-802(4)(b).
- 143 [~~(31)~~] (32) "Project property" means the real property on or for which preconstruction
144 service or construction work is or will be provided.
- 145 [~~(32)~~] (33) "Registry" means the State Construction Registry under Part 2, State
146 Construction Registry.
- 147 [~~(33)~~] (34) "Required notice" means:
- 148 (a) a notice of preconstruction service under Section 38-1a-401;
- 149 (b) a preliminary notice under Section 38-1a-501 or Section 38-1b-202;

- 150 (c) a notice of commencement;
- 151 (d) a notice of construction loan under Section 38-1a-601;
- 152 (e) a notice under Section 38-1a-602 concerning a construction loan default;
- 153 (f) a notice of intent to obtain final completion under Section 38-1a-506; or
- 154 (g) a notice of completion under Section 38-1a-507.

155 [~~34~~] (35) "Subcontractor" means a person that contracts to provide preconstruction
156 service or construction work to:

- 157 (a) a person other than the owner; or
- 158 (b) the owner, if the owner is an owner-builder.

159 [~~35~~] (36) "Substantial work" does not include repair work or warranty work.

160 [~~36~~] (37) "Supervisory subcontractor" means a person that:

- 161 (a) is a subcontractor under contract to provide preconstruction service or construction
162 work; and
- 163 (b) contracts with one or more other subcontractors for the other subcontractor or
164 subcontractors to provide preconstruction service or construction work that the person is under
165 contract to provide.

166 Section 2. Section 38-1a-506 is amended to read:

167 **38-1a-506. Notice of intent to obtain final completion.**

168 (1) An owner, as defined in Section 14-2-1, of a nonresidential construction project
169 that is registered with the registry, or an original contractor of a commercial nonresidential
170 construction project that is registered with the registry under Section 38-1a-501, [~~shall~~] may
171 file with the registry a notice of intent to obtain final completion as provided in this section if:

- 172 (a) the completion of performance time under the original contract for construction
173 work is greater than 120 days;
- 174 (b) the total original construction contract price exceeds \$500,000; and
- 175 (c) the original contractor or owner has not obtained a payment bond in accordance
176 with Section 14-2-1.

177 (2) The notice of intent described in Subsection (1) shall be filed at least 45 days before
178 the day on which the owner or original contractor of a commercial nonresidential construction
179 project files or could have filed a notice of completion under Section 38-1a-507.

180 (3) A person who provides construction work to an owner or original contractor who

181 files a notice of intent in accordance with Subsection (1) shall file an amendment to the
182 person's preliminary notice previously filed by the person as required in Section 38-1a-501:

183 (a) that includes:

184 (i) a good faith estimate of the total amount remaining due to complete the contract,
185 purchase order, or agreement relating to the person's approved construction work;

186 (ii) the identification of each original contractor or subcontractor with whom the
187 person has a contract or contracts for providing construction work; and

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

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

191 (4) (a) A person described in Subsection (3) may demand a statement of adequate
192 assurance from the owner, contractor, or subcontractor with whom the person has privity of
193 contract no later than 10 days after the day on which the person files a balance statement in
194 accordance with Subsection (3) from an owner, contractor, or subcontractor who is in privity of
195 contract with the person.

196 (b) A demand for adequate assurance as described in Subsection (4)(a) may include a
197 request for a statement from the owner, contractor, or subcontractor that the owner, contractor,
198 or subcontractor has sufficient funds dedicated and available to pay for all sums due to the
199 person filing for the adequate assurances or that will become due in order to complete a
200 construction project.

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

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

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

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

206 (5) (a) A person described in Subsection (3) may bring a legal action against a party
207 with whom the person is in privity of contract, including a request for injunctive or declaratory
208 relief, to determine the adequacy of the funds of the owner, contractor, or subcontractor with
209 whom the demanding person contracted if, after the person demands adequate assurance in
210 accordance with the requirements of this section:

211 (i) the owner, contractor, or subcontractor fails to provide adequate assurance that the

212 owner, contractor, or subcontractor has sufficient available funds, or access to financing or
213 other sufficient available funds, to pay for the completion of the demanding person's approved
214 work on the construction project; or

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

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

- 223 (i) cash;
- 224 (ii) a bond;
- 225 (iii) an irrevocable letter of credit;
- 226 (iv) property;
- 227 (v) financing; or
- 228 (vi) another form of security approved by the court.

229 (6) (a) A person is subject to the civil penalty described in Subsection (6)(b), if the
230 person files a balance statement described in Subsection (3) that misrepresents the amount due
231 under the contract with the intent to:

- 232 (i) charge an owner, contractor, or subcontractor more than the actual amount due; or
- 233 (ii) procure any other unfair advantage or benefit on the person's behalf.

234 (b) The civil penalty described in Subsection (6)(a) is the greater of:

- 235 (i) twice the amount by which the balance statement filed under Subsection (3) exceeds
236 the amount actually remaining due under the contract for completion of construction; and
- 237 (ii) the actual damages incurred by the owner, contractor, or subcontractor.

238 (7) A court shall award reasonable attorney fees to a prevailing party for an action
239 brought under this section.

240 (8) Failure to comply with the requirements established in this section does not affect
241 any other requirement or right under this chapter.

242 (9) A person who has not filed a preliminary notice as required under Section

243 38-1a-501 is not entitled to a right or a remedy provided in this section.

244 (10) This section does not create a cause of action against a person with whom the
245 demanding party is not in privity of contract.

246 Section 3. Section 38-1a-603 is amended to read:

247 **38-1a-603. Notice of intent to finance -- Construction and non-construction work.**

248 (1) An owner or owner's agent may file with the registry a notice of intent to finance.

249 (2) A notice of intent to finance under Subsection (1) shall state:

250 (a) the anticipated date on which the financing or advance of funds will occur;

251 (b) the anticipated lender's name, address, and telephone number;

252 (c) the name of the trustor on the trust deed securing the [~~anticipated loan~~] financing;

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

254 [~~and~~]

255 (e) the name of the county in which the project property is located[~~;~~]; and

256 (f) whether the financing or advance of funds is for construction work.

257 (3) If an owner or owner's agent chooses to file a notice of intent to finance described
258 in Subsection (2), the owner or owner's agent shall file the notice of intent to finance no less
259 than 14 days before the date on which the financing is anticipated to occur.

260 (4) If the financing or advance of funds does not occur within 30 days after the
261 anticipated date specified in the notice of intent to finance[~~;~~];

262 (a) the notice of intent to finance shall automatically have no effect and shall be
263 removed from the registry[~~;~~]; and

264 (b) a final lien waiver or progress waiver filed in connection with the notice of intent to
265 finance shall automatically have no effect.

266 Section 4. Section 38-1a-604 is amended to read:

267 **38-1a-604. Notice of final lien waiver.**

268 (1) [~~After a notice of intent to finance is filed under Section 38-1a-603 on a project~~
269 ~~property, each] A~~ subcontractor that has filed a preliminary notice pertaining to [~~the~~] a project
270 property may file with the registry a final lien waiver[~~;~~];

271 (a) within five days after the day on which the project property's owner or owner's
272 agent files a notice of intent to finance under Section 38-1a-603; or

273 (b) at any time before the project property's owner or owner's agent files a notice

274 described in Subsection (1)(a).

275 (2) The final lien waiver described in Subsection (1) may [~~be filed on the registry even~~
276 ~~if no notice of intent to finance was filed on the registry]~~ state that no amount is owed.

277 Section 5. Section **38-1a-605** is enacted to read:

278 **38-1a-605. Notice of progress waiver.**

279 A subcontractor that files a preliminary notice pertaining to a project property may file
280 with the registry a progress waiver:

281 (1) within five days after the day on which the project property's owner or owner's
282 agent files a notice of intent to finance under Section [38-1a-603](#) on the project property; and

283 (2) if the subcontractor:

284 (a) is owed money under the original contract; or

285 (b) anticipates performing additional services under the original contract.

286 Section 6. Section **38-1a-802** is amended to read:

287 **38-1a-802. Waiver or limitation of a lien right -- Forms -- Scope.**

288 (1) As used in this section:

289 (a) "Check" means a payment instrument on a depository institution including:

290 (i) a check;

291 (ii) a draft;

292 (iii) an order; or

293 (iv) other instrument.

294 (b) "Depository institution" is as defined in Section [7-1-103](#).

295 (c) "Receives payment" means, in the case of a restrictive endorsement, a payee has
296 endorsed a check and the check is presented to and paid by the depository institution on which
297 ~~[it]~~ the check is drawn.

298 (2) Notwithstanding Section [38-1a-105](#), a claimant's written consent that waives or
299 limits the claimant's lien rights is enforceable only if the claimant:

300 (a) (i) executes a waiver and release that is signed by the claimant or the claimant's
301 authorized agent; or

302 (ii) for a restrictive endorsement on a check, includes a restrictive endorsement on a
303 check that is:

304 (A) signed by the claimant or the claimant's authorized agent; and

305 (B) in substantially the same form set forth in Subsection (4)(d); and
306 (b) receives payment of the amount identified in the waiver and release or check that
307 includes the restrictive endorsement:

- 308 (i) including payment by a joint payee check; and
- 309 (ii) for a progress payment, only to the extent of the payment.

310 (3) (a) Notwithstanding the language of a waiver and release described in Subsection
311 (2), Subsection (3)(b) applies if:

- 312 (i) the payment given in exchange for any waiver and release of lien is made by check;
313 and
- 314 (ii) the check fails to clear the depository institution on which it is drawn for any
315 reason.

316 (b) If the conditions of Subsection (3)(a) are met:

- 317 (i) the waiver and release described in Subsection (3)(a) is void; and
- 318 (ii) the following will not be affected by the claimant's execution of the waiver and
319 release:

- 320 (A) any lien;
- 321 (B) any lien right;
- 322 (C) any bond right;
- 323 (D) any contract right; or
- 324 (E) any other right to recover payment afforded to the claimant in law or equity.

325 (4) (a) A waiver and release given by a claimant meets the requirements of this section
326 if it is in substantially the same form provided in this Subsection (4) for the circumstance provided in
327 this Subsection (4).

328 (b) A waiver and release may be in substantially the following form if the claimant is
329 required to execute a waiver and release in exchange for or to induce the payment of a progress
330 billing, and shall be in the following form if the waiver is a progress waiver filed under Section
331 [38-1a-605](#):

332 "UTAH CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT
333 Property Name: _____
334 Property Location: _____
335 Undersigned's Customer: _____

336 Invoice/Payment Application Number: _____

337 Payment Amount: _____

338 Payment Period: _____

339 To the extent provided below, this document becomes effective to release and the
340 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,
341 Chapter 1a, Preconstruction and Construction Liens, or any bond right under Utah Code Ann.,
342 Title 14, Contractors' Bonds, or Section 63G-6a-1103 related to payment rights the undersigned
343 has on the above described Property once:

344 (1) the undersigned endorses a check in the above referenced Payment Amount payable
345 to the undersigned; and

346 (2) the check is paid by the depository institution on which it is drawn.

347 This waiver and release applies to a progress payment for the work, materials,
348 equipment, or a combination of work, materials, and equipment furnished by the undersigned
349 to the Property or to the Undersigned's Customer which are the subject of the Invoice or
350 Payment Application, but only to the extent of the Payment Amount. This waiver and release
351 does not apply to any retention withheld; any items, modifications, or changes pending
352 approval; disputed items and claims; or items furnished or invoiced after the Payment Period.

353 The undersigned warrants that the undersigned either has already paid or will use the
354 money the undersigned receives from this progress payment promptly to pay in full all the
355 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials,
356 equipment, or combination of work, materials, and equipment that are the subject of this
357 waiver and release.

358 Dated: _____

359 _____ (Company Name)

360 _____ By: _____

361 _____ Its: _____ "

362 (c) A waiver and release may be in substantially the following form if the lien claimant
363 is required to execute a waiver and release in exchange for or to induce the payment of a final
364 billing, and shall be in the following form if the waiver is a final lien waiver filed under
365 Section 38-1a-604:

366 "UTAH WAIVER AND RELEASE UPON FINAL PAYMENT

367 Property Name: _____

368 Property Location: _____

369 Undersigned's Customer: _____

370 Invoice/Payment Application Number: _____

371 Payment Amount: _____

372 To the extent provided below, this document becomes effective to release and the
373 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,
374 Chapter 1a, Preconstruction and Construction Liens, or any bond right under Utah Code Ann.,
375 Title 14, Contractors' Bonds, or Section 63G-6a-1103 related to payment rights the undersigned
376 has on the above described Property once:

377 (1) the undersigned endorses a check in the above referenced Payment Amount payable
378 to the undersigned; and

379 (2) the check is paid by the depository institution on which it is drawn.

380 This waiver and release applies to the final payment for the work, materials, equipment,
381 or combination of work, materials, and equipment furnished by the undersigned to the Property
382 or to the Undersigned's Customer.

383 The undersigned warrants that the undersigned either has already paid or will use the
384 money the undersigned receives from the final payment promptly to pay in full all the
385 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials,
386 equipment, or combination of work, materials, and equipment that are the subject of this
387 waiver and release.

388 Dated: _____

389 _____ (Company Name)

390 _____ By: _____

391 _____ Its: _____ "

392 (d) A restrictive endorsement placed on a check to effectuate a waiver and release
393 described in this Subsection (4) meets the requirements of this section if it is in substantially
394 the following form:

395 "This check is a progress/ final payment for property described on this check sufficient
396 for identification. Endorsement of this check is an acknowledgment by the endorser that the
397 waiver and release to which the payment applies is effective to the extent provided in Utah

398 Code Ann. Subsection 38-1a-802(4)(b) or (c) respectively."

399 (e) (i) If using a restrictive endorsement under Subsection (4)(d), the person preparing
400 the check shall indicate whether the check is for a progress payment or a final payment by
401 circling the word "progress" if the check is for a progress payment, or the word "final" if the
402 check is for a final payment.

403 (ii) If a restrictive endorsement does not indicate whether the check is for a progress
404 payment or a final payment, it is considered to be for a progress payment.

405 (5) (a) If the conditions of Subsection (5)(b) are met, this section does not affect the
406 enforcement of:

407 (i) an accord and satisfaction regarding a bona fide dispute; or

408 (ii) an agreement made in settlement of an action pending in any court or arbitration.

409 (b) Pursuant to Subsection (5)(a), this section does not affect enforcement of an accord
410 and satisfaction or settlement described in Subsection (5)(a) if the accord and satisfaction or
411 settlement:

412 (i) is in a writing signed by the claimant; and

413 (ii) specifically references the lien rights waived or impaired.

414 Section 7. Section 38-1a-805 is amended to read:

415 **38-1a-805. Failure to file notice -- Petition to nullify preconstruction or**
416 **construction lien -- Expedited proceeding.**

417 (1) An owner of an interest in a project property that is subject to a recorded
418 preconstruction lien or a recorded construction lien may petition the district court in the county
419 in which the project property is located for summary relief to nullify the preconstruction lien or
420 the construction lien if:

421 (a) the owner claims that the preconstruction lien or the construction lien is invalid
422 because:

423 (i) the lien claimant did not timely file a notice of preconstruction service under
424 Section 38-1a-401; or

425 (ii) the lien claimant did not timely file a preliminary notice under Section 38-1a-501;

426 (b) the owner sent the lien claimant a written request to withdraw in accordance with
427 Subsection (2); and

428 (c) the lien claimant did not withdraw the preconstruction lien or the construction lien

429 within 10 business days after the day on which the owner sent the written request to withdraw.

430 (2) A written request to withdraw described in Subsection (1) shall:

431 (a) be delivered by certified mail to the lien claimant at the lien claimant's address
432 provided in the recorded preconstruction lien or the recorded construction lien;

433 (b) state the owner's name, address, and telephone number;

434 (c) contain:

435 (i) (A) the name of the county in which the property that is subject to the
436 preconstruction lien or the construction lien is located; and

437 (B) the tax parcel identification number of each parcel that is subject to the
438 preconstruction lien or the construction lien; or

439 (ii) a legal description of the property that is subject to the preconstruction lien or the
440 construction lien;

441 (d) state that the lien claimant has failed to timely file:

442 (i) a notice of preconstruction service under Section 38-1a-401; or

443 (ii) a preliminary notice under Section 38-1a-501;

444 (e) request that the lien claimant withdraw the lien claimant's preconstruction lien or
445 construction lien within 10 business days after the day on which the written request to
446 withdraw is sent; and

447 (f) state that if the lien claimant does not withdraw the preconstruction lien or the
448 construction lien within 10 business days after the day on which the written request to
449 withdraw is sent, the owner may petition a court to nullify the lien in an expedited proceeding
450 under this section.

451 (3) A petition under Subsection (1) shall:

452 (a) state with specificity that:

453 (i) the lien claimant's preconstruction lien or the lien claimant's construction lien is
454 invalid because the lien claimant did not file a notice of preconstruction service or a
455 preliminary notice, as applicable;

456 (ii) the petitioner sent the lien claimant a written request to withdraw in accordance
457 with Subsection (2); and

458 (iii) the lien claimant did not withdraw the preconstruction lien or the construction lien
459 within 10 business days after the day on which the owner sent the written request to withdraw;

460 (b) be supported by a sworn affidavit of the petitioner; and

461 (c) be served on the lien claimant, in accordance with the Rules of Civil Procedure,
462 within three business days after the day on which the petitioner files the petition in the district
463 court.

464 (4) (a) If the court finds that a petition does not meet the requirements described in
465 Subsection (3), the court may dismiss the petition without a hearing.

466 (b) If the court finds that a petition meets the requirements described in Subsection (3),
467 the court shall schedule an expedited hearing to determine whether the preconstruction lien or
468 the construction lien is invalid because [~~the lien claimant failed to file a notice of~~
469 ~~preconstruction service or a preliminary notice;~~] the notice of preconstruction service or
470 preliminary notice is not filed within the time period described in Subsection [38-1a-401\(1\)](#) or
471 [38-1a-501\(1\)](#), as applicable.

472 (5) (a) If the court grants a hearing, within three business days after the day on which
473 the court schedules the hearing and at least seven business days before the day on which the
474 hearing is scheduled, the petitioner shall serve on the lien claimant, in accordance with the
475 Rules of Civil Procedure, a copy of the petition, notice of the hearing, and a copy of the court's
476 order granting the expedited hearing.

477 (b) The lien claimant may attend the hearing and contest the petition.

478 (6) An expedited proceeding under this section may only determine:

479 (a) whether the lien claimant filed a notice of preconstruction service or a preliminary
480 notice; and

481 (b) if the lien claimant failed to file a notice of preconstruction service or a preliminary
482 notice, whether the lien claimant's preconstruction lien or construction lien is valid.

483 (7) (a) If, following a hearing, the court determines that the preconstruction lien or the
484 construction lien is invalid, the court shall issue an order that:

485 (i) contains a legal description of the property;

486 (ii) declares the preconstruction lien or the construction lien void ab initio;

487 (iii) releases the property from the lien; and

488 (iv) awards costs and reasonable attorney fees to the petitioner.

489 (b) The petitioner may submit a copy of an order issued under Subsection (7)(a) to the
490 county recorder for recording.

491 (8) (a) If, following a hearing, the court determines that the preconstruction lien or the
492 construction lien is valid, the court shall:

493 (i) dismiss the petition; and

494 (ii) award costs and reasonable attorney fees to the lien claimant.

495 (b) The dismissal order shall contain a legal description of the property.

496 (c) The lien claimant may submit a copy of the dismissal order to the county recorder
497 for recording.

498 (9) If a petition under this section contains a claim for damages, the proceedings related
499 to the claim for damages may not be expedited under this section.

500 Section 8. **Effective date.**

501 This bill takes effect on January 1, 2022.