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## H.B. 260 Enrolled

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### MECHANICS' LIENS REVISIONS

2

2011 GENERAL SESSION

3

STATE OF UTAH

4

**Chief Sponsor: David Clark**

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Senate Sponsor: John L. Valentine

6

7 **LONG TITLE**

8 **General Description:**

9     This bill modifies provisions relating to mechanics' liens.

10 **Highlighted Provisions:**

11     This bill:

- 12     . provides priority between construction loans and mechanics' liens;
- 13     . modifies provisions related to the State Construction Registry;
- 14     . modifies the information by which the State Construction Registry is to be

indexed;

15     . requires each notice or document submitted for inclusion in the State Construction  
 16 Registry to contain specified information;

17     . modifies provisions related to building permits and notices of commencement;

18     . modifies requirements related to the filing of a preliminary notice;

19     . eliminates the requirement to file a notice of commencement on a private project;

20     . requires the original contractor and each subcontractor on a private project to file

a

21 preliminary notice;

22     . prohibits an original contractor or subcontractor who fails to file a preliminary  
 23 notice on a private project from claiming a mechanics' lien;

24     . requires a construction lender to file with the database a notice of construction

loan

- 25 and, if a default occurs, a notice of default relating to a construction loan;  
 26 . repeals obsolete language;  
 27 . modifies the requirements for a notice of completion;  
 28 . modifies the requirements related to a standardized building permit form; and  
 29 . makes technical changes.

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30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill takes effect on August 1, 2011.

34 This bill coordinates with H.B. 203, Codification of State Construction and Fire

Codes,

35 to technically merge substantive amendments.

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

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **14-1-20**, as last amended by Laws of Utah 2010, Chapter 378

41 **14-2-5**, as last amended by Laws of Utah 2010, Chapter 378

42 **38-1-1**, Utah Code Annotated 1953

43 **38-1-5**, Utah Code Annotated 1953

44 **38-1-27**, as last amended by Laws of Utah 2009, Chapters 183 and 239

45 **38-1-30**, as last amended by Laws of Utah 2008, Chapter 382

46 **38-1-31**, as last amended by Laws of Utah 2009, Chapter 50

47 **38-1-32**, as last amended by Laws of Utah 2009, Chapter 50

48 **38-1-33**, as last amended by Laws of Utah 2010, Chapter 76

49 **58-56-20**, as last amended by Laws of Utah 2010, Chapter 310

50 **63G-6-506**, as renumbered and amended by Laws of Utah 2008, Chapter 382

51 ENACTS:

52 **38-1-30.5**, Utah Code Annotated 1953

53 **38-1-31.5**, Utah Code Annotated 1953

54 **38-1-32.5**, Utah Code Annotated 1953

55 **38-1-32.7**, Utah Code Annotated 1953

56 REPEALS:

57 **38-1-37**, as last amended by Laws of Utah 2005, Chapter 64

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58 **Utah Code Sections Affected by Coordination Clause:**

59 **15A-1-209**, Utah Code Annotated 1953

60 **30-1-30.5**, Utah Code Annotated 1953

61 **38-1-2**, as last amended by Laws of Utah 2006, Chapter 297

62 **38-1-5**, Utah Code Annotated 1953

63 **38-1-19**, Utah Code Annotated 1953

64 **38-1-27**, as last amended by Laws of Utah 2009, Chapters 183 and 239

65 **38-1-32**, as last amended by Laws of Utah 2009, Chapter 50

66 **Uncodified Material Affected:**

67 ENACTS UNCODIFIED MATERIAL

68

69 *Be it enacted by the Legislature of the state of Utah:*70 Section 1. Section **14-1-20** is amended to read:71 **14-1-20. Preliminary notice requirement.**

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

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

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

77 38-1-31.5 for the project or improvement for which labor, service, equipment, or  
 material is  
 78 furnished.

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

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

83 Section 2. Section **14-2-5** is amended to read:84 **14-2-5. Preliminary notice requirement.**

85 (1) Any person furnishing labor, service, equipment, or material for which a payment

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86 bond claim may be made under this chapter shall provide preliminary notice to the  
 designated  
 87 agent as prescribed by Section 38-1-32 , except that this section does not apply[~~:(a)~~] to  
 a person  
 88 performing labor for wages[~~;~~or].

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

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

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

95 Section 3. Section **38-1-1** is amended to read:96 **38-1-1. Public buildings not subject to act.**

97 [~~The provisions of this~~] Except as provided in Sections 38-1-27 , 38-1-30 through  
 98 38-1-37 , and 38-1-40 relating to the State Construction Registry, this chapter [~~shall~~]  
 does not

99 apply to any public building, structure, or improvement.

100 Section 4. Section **38-1-5** is amended to read:101 **38-1-5. Relation back and priority of liens.**

102 ~~[The liens herein provided for shall relate]~~  
 103 (1) As used in this section:  
 104 (a) "First preliminary notice filing" means the filing of a preliminary notice that is:  
 105 (i) the earliest preliminary notice filed on a private project, as defined in Section  
 106 38-1-27 ;  
 107 (ii) filed on or after August 1, 2011;  
 108 (iii) not filed on a project that, according to the law in effect before August 1, 2011,  
 109 commenced before August 1, 2011;  
 110 (iv) not canceled under Subsection 38-1-32 (6); and  
 111 (v) not withdrawn under Subsection 38-1-32 (8).  
 112 (b) "Project property" means the real property on which a building or structure is  
being  
 113 constructed or altered or on which an improvement is made.

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114 (2) A lien under this chapter relates back to, and [take] takes effect as of, the time of  
 115 the [commencement to do work or furnish materials on the ground for the structure or  
 116 improvement, and shall have] first preliminary notice filing.  
 117 (3) (a) Subject to Subsection (3)(b), a lien under this chapter has priority over:  
 118 (i) any lien, mortgage, or other encumbrance [which may have attached  
subsequently to  
 119 the time when the building, improvement or structure was commenced, work begun,  
or first  
 120 material furnished on the ground; also over] that attaches after the first preliminary  
notice  
 121 filing; and  
 122 (ii) any lien, mortgage, or other encumbrance of which the lien holder had no notice  
 123 and which was unrecorded at the time [the building, structure or improvement was  
 124 commenced, work begun, or first material furnished on the ground] of the first  
preliminary  
 125 notice filing.  
 126 (b) A recorded mortgage or trust deed of a construction lender, as defined in Section  
 127 38-1-27 , has priority over each lien under this chapter of a claimant who files a  
preliminary  
 128 notice in accordance with Section 38-1-32 before the mortgage or trust deed is  
recorded if the  
 129 claimant:  
 130 (i) accepts payment in full for labor, service, equipment, and material that the  
claimant  
 131 furnishes to the project before the mortgage or trust deed is recorded; and  
 132 (ii) withdraws the claimant's preliminary notice by filing a notice of withdrawal  
under  
 133 Subsection 38-1-32 (8).  
 134 Section 5. Section **38-1-27** is amended to read:  
 135 **38-1-27. State Construction Registry.**  
 136 (1) As used in this section, Sections 38-1-30 through 38-1-37 , and Section 38-1-40

:  
 137 (a) "Alternate filing" means a legible and complete filing made in a manner  
 established  
 138 by the division under Subsection (2)(e) other than an electronic filing.  
 139 (b) "Cancel" means to indicate that a filing is no longer given effect.  
 140 (c) "Construction lender" means a lender who provides construction financing for a  
 141 private project.

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142 [~~(e)~~] (d) "Construction project[;]" or "project[;]" [~~or "improvement"~~] means all  
 labor,  
 143 service, equipment, and materials provided[;-(i)] under an original contract[;-(i)].  
 144 [~~(ii) by, or under contracts with, an owner-builder.~~]  
 145 [~~(d)~~] (e) "Database" means the State Construction Registry created in this section.  
 146 [~~(e)~~] (f) (i) "Designated agent" means the third party the [~~Division of Occupational~~  
 and  
 147 ~~Professional Licensing~~] division contracts with to create and maintain the State  
 Construction  
 148 Registry.  
 149 (ii) The designated agent is not an agency, instrumentality, or a political subdivision  
 of  
 150 the state.  
 151 [~~(f)~~] (g) "Division" means the Division of Occupational and Professional Licensing.  
 152 (h) "Entry number" means the reference number that:  
 153 (i) the designated agent assigns to each notice or other document filed with the  
 154 database; and  
 155 (ii) is unique for each notice or other document.  
 156 (i) "Government project" means a construction project undertaken by or for:  
 157 (i) the state, including a department, division, or other agency of the state; or  
 158 (ii) a county, city, town, school district, local district, special service district,  
 159 community development and renewal agency, or other political subdivision of the  
state.  
 160 (j) "Government project-identifying information" means:  
 161 (i) the lot or parcel number of each lot included in the project property that has a  
lot or  
 162 parcel number; and  
 163 (ii) the unique project number assigned by the designated agent.  
 164 [~~(g)~~] (k) "Interested person" means a person who may be affected by a construction  
 165 project.  
 166 (l) "Private project" means a construction project that is not a government project.  
 167 [~~(h)~~] (m) "Program" means the State Construction Registry Program created in this  
 168 section.  
 169 (n) "Project property" means the real property on which a construction project  
occurs

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170 or will occur.

171 (2) Subject to receiving adequate funding through a legislative appropriation and  
 172 contracting with an approved third party vendor who meets the requirements of  
 Sections  
 173 38-1-30 through 38-1-37 , there is created the State Construction Registry Program  
 that shall:  
 174 (a) (i) assist in protecting public health, safety, and welfare; and  
 175 (ii) promote a fair working environment;  
 176 (b) be overseen by the division with the assistance of the designated agent;  
 177 (c) provide a central repository for ~~[notices of commencement, preliminary notices,~~  
 and  
 178 ~~notices of completion filed in connection with all privately owned construction~~  
~~projects as well~~  
 179 ~~as all state and local government owned construction projects throughout Utah] all~~  
notices filed  
 180 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 ,  
 181 or 38-1-40 ;  
 182 (d) ~~[be]~~ make accessible ~~[for filing and review]~~, by way of the program Internet  
 183 website ~~[of]~~:  
 184 (i) the filing and reviewing of notices described in Subsection (2)(c); and  
 185 ~~[(i) notices of commencement;]~~  
 186 ~~[(ii) preliminary notices;]~~  
 187 ~~[(iii) a notice of intent to file notice of final completion;]~~  
 188 ~~[(iv) a notice for remaining amounts due to complete the contract; and]~~  
 189 ~~[(v) notices of completion;]~~  
 190 (ii) the transmitting of building permit information under Subsection 38-1-31 (2)(a)  
 and  
 191 the reviewing of that information;  
 192 (e) accommodate:  
 193 (i) electronic filing of the notices described in Subsection (2)~~(d)~~(c) and electronic  
 194 transmitting of building permit information described in Subsection (2)(d)(ii); and  
 195 (ii) alternate filing of the notices described in Subsection (2)(d) by U.S. mail,  
 telefax,  
 196 or any other alternate method as provided by rule made by the division in accordance  
 with Title  
 197 63G, Chapter 3, Utah Administrative Rulemaking Act;

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198 (f) (i) provide electronic notification for up to three email addresses for each  
 interested  
 199 person or company who requests notice from the construction notice registry; and  
 200 (ii) provide alternate means of notification for a person who makes an alternate  
 filing,  
 201 including U.S. mail, telefax, or any other method as prescribed by rule made by the  
 division in  
 202 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

203 (g) provide hard-copy printing of electronic receipts for an individual filing  
 evidencing  
 204 the date and time of the individual filing and the content of the individual filing.  
 205 (3) (a) The designated agent shall provide notice of all other filings for a project to  
 any  
 206 person who files a notice of commencement, preliminary notice, or notice of  
 completion for  
 207 that project, unless the person:  
 208 (i) requests that the person not receive notice of other filings; or  
 209 (ii) does not provide the designated agent with the person's contact information in a  
 210 manner that adequately informs the designated agent.  
 211 (b) An interested person may request notice of filings related to a project.  
 212 (c) The database shall be indexed by:  
 213 (i) the name of the property owner [~~name~~];  
 214 (ii) the name of the original contractor [~~name~~];  
 215 (iii) subdivision, development, or other project name, if any;  
 216 [~~(iv) project address;~~]  
 217 [~~(v)~~] (iv) lot or parcel number;  
 218 [~~(vi) unique project number assigned by the designated agent; and~~]  
 219 (v) the address of the project property;  
 220 (vi) entry number;  
 221 (vii) the name of the county in which the project property is located;  
 222 (viii) for private projects;  
 223 (A) the tax parcel identification number of each parcel included in the project  
property;  
 224 and  
 225 (B) the building permit number;

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226 (ix) for government projects, the government project-identifying information; and  
 227 [~~(vii)~~] (x) any other identifier that the division considers reasonably appropriate in  
 228 collaboration with the designated agent.  
 229 (4) (a) In accordance with the process required by Section 63J-1-504 , the division  
 shall  
 230 establish the fees for:  
 231 [~~(i) a notice of commencement;~~]  
 232 [~~(ii) a preliminary notice;~~]  
 233 [~~(iii) a notice of intent to file notice of final completion;~~]  
 234 [~~(iv) a notice for remaining amounts due to complete the contract;~~]  
 235 [~~(v) a notice of completion;~~]  
 236 (i) notices described in Subsection (2)(c);  
 237 [~~(vi)~~] (ii) a request for notice;  
 238 [~~(vii)~~] (iii) providing a required notice by an alternate [~~method of delivery~~] filing;  
 239 [~~(viii)~~] (iv) a duplicate receipt of a filing; and  
 240 [~~(ix)~~] (v) account setup for a person who wishes to be billed periodically for filings  
 241 with the database.

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

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

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

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

251 (b) A request for information submitted to the designated agent is not subject to  
 Title  
 252 63G, Chapter 2, Government Records Access and Management Act.

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

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

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

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

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

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

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

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

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

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



4,  
 277 Administrative Procedures Act.  
 278 (c) Any order issued in a proceeding described in Subsection (8)(b) may prescribe  
 the  
 279 method of that person's payment of fees for filing notices with the database after  
 issuance of the  
 280 order.  
 281 (9) If a notice is filed by a third party on behalf of another, the notice is considered  
 to

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282 be filed by the person on whose behalf the notice is filed.  
 283 (10) A person filing a notice of commencement, preliminary notice, or notice of  
 284 completion is responsible for verifying the accuracy of information entered into the  
 database,  
 285 whether the person files electronically or by alternate or third party filing.  
 286 (11) Each notice or other document submitted for inclusion in the database and for  
 287 which this chapter does not specify information required to be included in the notice  
or other  
 288 document shall contain:  
 289 (a) the name of the county in which the project property to which the notice or other  
 290 document applies is located;  
 291 (b) for a private project:  
 292 (i) the tax parcel identification number of each parcel included in the project  
property;  
 293 or  
 294 (ii) the number of the building permit for the construction project on the project  
 295 property; and  
 296 (c) for a government project, the government project-identifying information.  
 297 Section 6. Section **38-1-30** is amended to read:  
 298 **38-1-30. Third party contract -- Designated agent.**  
 299 (1) The division shall contract in accordance with Title 63G, Chapter 6, Utah  
 300 Procurement Code, with a third party to establish and maintain the database for the  
 purposes  
 301 established under this section, Section 38-1-27 , and Sections 38-1-31 through 38-1-37  
 .  
 302 (2) (a) The third party under contract under this section is the division's designated  
 303 agent, and shall develop and maintain a database from the information provided by:  
 304 (i) local government entities issuing building permits;  
 305 (ii) original contractors;  
 306 (iii) subcontractors; and  
 307 (iv) other interested persons.  
 308 (b) The database shall accommodate filings by third parties on behalf of clients.  
 309 (c) The division and the designated agent shall design, develop, and test the  
 database

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310 for full implementation on May 1, 2005.  
 311 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
 the  
 312 division shall make rules and develop procedures for:  
 313 (a) the division to oversee and enforce this section, Section 38-1-27 , and Sections  
 314 38-1-31 through 38-1-37 ;  
 315 (b) the designated agent to administer this section, Section 38-1-27 , and Sections  
 316 38-1-31 through 38-1-37 ; and  
 317 (c) the form of submission of an alternate filing, which may include procedures for  
 318 rejecting an illegible or incomplete filing.  
 319 (4) (a) The designated agent shall archive computer data files at least semiannually  
 for  
 320 auditing purposes.  
 321 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
 the  
 322 division shall make rules to allow the designated agent to periodically archive projects  
 from the  
 323 database.  
 324 (c) A project shall be archived no earlier than:  
 325 (i) one year after the day on which a notice of completion is filed for a project;  
 326 (ii) if no notice of completion is filed, two years after the last filing activity for a  
 327 project; or  
 328 (iii) one year after the day on which a filing is cancelled under Subsection  
 329 38-1-32 [~~(3)~~](6)(c) or 38-1-33 (2)(c).  
 330 (d) The division may audit the designated agent's administration of the database as  
 331 often as the division considers necessary.  
 332 (5) The designated agent shall carry errors and omissions insurance in the amounts  
 333 established by rule made by the division in accordance with Title 63G, Chapter 3,  
 Utah  
 334 Administrative Rulemaking Act.  
 335 (6) (a) The designated agent shall make reasonable efforts to assure the accurate  
 entry  
 336 into the database of information provided in alternate filings.  
 337 (b) The designated agent shall meet or exceed standards established by the division  
 for  
 338 the accuracy of data entry for alternate filings.  
 339 (7) The designated agent is not liable for the correctness of the information  
 contained  
 340 in an alternate filing it enters into the database.  
 341 Section 7. Section **38-1-30.5** is enacted to read:  
 342 **38-1-30.5. Notice of construction loan.**  
 343 (1) As used in this section, "construction loan" does not include a consumer loan  
 344 secured by the equity in the consumer's home.  
 345 (2) After recording a mortgage or trust deed securing a construction loan on a

private

346 project, the construction lender on the loan shall promptly, in conjunction with the

closing of

347 the construction loan, file with the database a notice of construction loan.

348 (3) A notice under Subsection (2) shall accurately state:

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

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

351 (c) the tax parcel identification number of each parcel included or to be included in

the

352 construction project for which the loan was given;

353 (d) the address of the project property; and

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

355 (4) A construction lender that files a notice of construction loan containing

incomplete

356 or inaccurate information may not be held liable for damages suffered by any other

person who

357 relies on the inaccurate or incomplete information in filing a preliminary notice.

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

359 **38-1-31. Building permit -- Transmission to database -- Posting at project site.**

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

building

362 ~~permit:]~~

363 ~~[(I) the local government entity issuing that]~~

364 (1)(a) A county, city, or town issuing a building permit for a private project:

365 (i) shall, no later than 15 days after issuing the permit, input the building permit

366 application and transmit the building permit information to the database electronically

by way

367 of the Internet or computer modem or by any other means; ~~[or]~~ and

368 (ii) may collect a building permit fee related to the issuance of the building permit,

but

369 may not spend or otherwise use the building permit fee until the county, city, or town

complies

370 with Subsection (1)(a)(i) with respect to the building permit for which the fee is

charged.

371 ~~[(H) the original contractor, owner, or owner builder may file a notice of~~

372 ~~commencement with the database whether or not a building permit is issued or a~~

notice of

373 ~~commencement is filed under Subsection (1)(a)(i)(A)(I).]~~

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

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

378 ~~[(iii)]~~ (c) For the purposes of classifying a record under Title 63G, Chapter 2,

379 Government Records Access and Management Act, building permit information  
transmitted  
380 from a ~~[local governmental entity]~~ county, city, or town to the database shall be  
classified in  
381 the database by the division notwithstanding the ~~[local governmental entity's]~~  
classification of  
382 the building permit information by the county, city, or town.  
383 ~~[(b) No later than 15 days after commencement of physical construction work at the~~  
384 ~~project site, the original contractor, owner, or owner builder may file a notice of~~  
385 ~~commencement with the database whether or not a building permit is issued or a~~  
notice of  
386 ~~commencement is filed under Subsection (1)(a).]~~  
387 ~~[(c) An original contractor, owner, or owner builder may file a notice of~~  
388 ~~commencement with the designated agent prior to the time frames established in~~  
Subsections  
389 ~~(1)(a) and (b).]~~  
390 ~~[(d) An owner of construction or an original contractor may file a notice of~~  
391 ~~commencement with the designated agent within the time prescribed by Subsections~~  
(1)(a) and  
392 ~~(b).]~~  
393 ~~[(e) (i) If duplicate notices of commencement are filed, they shall be combined into~~  
one  


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394 ~~notice for each project and any notices filed relate back to the date of the earliest filed~~  
notice of  
395 ~~commencement for the project.]~~  
396 ~~[(ii) A duplicate notice of commencement that is untimely filed relates back under~~  
397 ~~Subsection (1)(e)(i) if the earlier filed notice of commencement is timely filed.]~~  
398 ~~[(iii) Duplicate notices of commencement shall be automatically linked by the~~  
399 ~~designated agent.]~~  
400 ~~[(f) The designated agent shall assign each construction project a unique project~~  
401 ~~number that:]~~  
402 ~~[(i) identifies each construction project; and]~~  
403 ~~[(ii) can be associated with all notices of commencement, preliminary notices, and~~  
404 ~~notices of completion.]~~  
405 ~~[(g) A notice of commencement is effective only as to any labor, service,~~  
equipment,  
406 ~~and material furnished to the construction project that is furnished subsequent to the~~  
filing of  
407 ~~the notice of commencement.]~~  
408 ~~[(2) (a) A notice of commencement shall include the following:]~~  
409 ~~[(i) the name and address of the owner of the project;]~~  
410 ~~[(ii) the name and address of the:]~~  
411 ~~[(A) original contractor; and]~~  
412 ~~[(B) surety providing any payment bond for the project, or if none exists, a~~

statement

413 ~~that a payment bond was not required for the work being performed; and]~~

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

address;

415 ~~or]~~

416 ~~[(B) the name and general description of the location of the project if the project~~

cannot

417 ~~be reasonably identified by an address.]~~

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

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

420 ~~[(ii) the lot or parcel number, and any subdivision, development, or other project~~

name,

421 ~~of the real property upon which the project is to be constructed if the project is subject~~

to

422 ~~mechanics' liens.]~~

423 ~~[(c) A notice of commencement need not include all of the items listed in~~

Subsection

424 ~~(2)(a) if:]~~

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

426 ~~[(ii) all items listed in Subsection (2)(a) that are available on the building permit are~~

427 ~~included in the notice of commencement.]~~

428 ~~[(3) If a notice of commencement for a construction project is not filed within the~~

time

429 ~~set forth in Subsections(1)(a) and (b), the following do not apply:]~~

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

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

432 ~~[(4) (a) Unless a person indicates to the division or designated agent that the person~~

433 ~~does not wish to receive a notice under this section, electronic notice of the filing of a~~

notice of

434 ~~commencement or alternate notice as prescribed in Subsection (1), shall be provided~~

to:]

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

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

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

for:]

438 ~~[(A) providing an e-mail address, mailing address, or telefax number to which a~~

notice

439 ~~required by Subsection (4)(a) is to be sent; and]~~

440 ~~[(B) the accuracy of any e-mail address, mailing address, or telefax number to~~

which

441 ~~notice is to be sent.]~~

442 ~~[(ii) The designated agent fulfills the notice requirement of Subsection (4)(a) when~~

it

443 ~~sends the notice to the e-mail address, mailing address, or telefax number provided to~~

the

444 ~~designated agent whether or not the notice is actually received.]~~

445 ~~[(5) (a) The burden is upon any person seeking to enforce a notice of~~

commencement

446 ~~to verify the accuracy of information in the notice of commencement and prove that~~

the notice

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

448 ~~[(b) A substantial inaccuracy in a notice of commencement renders the notice of~~

449 ~~commencement unenforceable.]~~

450 ~~[(c) A person filing a notice of commencement by alternate filing is responsible for~~

451 ~~verifying and changing any incorrect information in the notice of commencement~~

before the

452 ~~expiration of the time period during which the notice is required to be filed.]~~

453 ~~[(6)] (2) At the time a building permit is obtained, each original contractor shall~~

454 ~~conspicuously post at the project site a copy of the building permit obtained for the~~

project.

455 Section 9. Section **38-1-31.5** is enacted to read:

456 **38-1-31.5. Notice of commencement for a government project.**

457 (1) No later than 15 days after commencement of physical construction work at a

458 government project site, the original contractor, owner, or owner-builder shall file a

notice of

459 commencement with the database.

460 (2) An original contractor, owner, or owner-builder on a government project may

file a

461 notice of commencement with the designated agent before the commencement of

physical

462 construction work on the project property.

463 (3) (a) If duplicate notices of commencement are filed, they shall be combined into

one

464 notice for each government project, and any notices filed relate back to the date of the

465 earliest-filed notice of commencement for the project.

466 (b) A duplicate notice of commencement that is untimely filed relates back under

467 Subsection (3)(a) if the earlier filed notice of commencement is timely filed.

468 (c) Duplicate notices of commencement shall be automatically linked by the

designated

469 agent.

470 (4) The designated agent shall assign each government project a unique project

number

471 that:

472 (a) identifies the project; and

473 (b) can be associated with all notices of commencement, preliminary notices, and

474 notices of completion filed in connection with the project.

475 (5) A notice of commencement is effective only as to any labor, service, equipment,

476 and material that is furnished after the notice of commencement is filed.

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

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

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

480 (iii) the name, address, and email address of the surety providing any payment bond

for

481 the project or, if none exists, a statement that a payment bond was not required for the

work

482 being performed;

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

or

484 (B) the name and general description of the location of the project, if the project

cannot

485 be reasonably identified by an address; and

486 (v) the government project-identifying information.

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

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

489 set forth in Subsection (1), Sections 38-1-32.5 and 38-1-33 do not apply.

490 (8) (a) Notwithstanding any other provision of this chapter, a notice of

commencement

491 need not be filed for a private project.

492 (b) A provision of this chapter does not apply to a private project if the provision

493 depends for its effectiveness upon the filing of a notice of commencement.

494 (9) (a) Unless a person indicates to the division or designated agent that the person

495 does not wish to receive a notice under this section, the designated agent shall provide

496 electronic notice of the filing of a notice of commencement or alternate filing to:

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

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

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

500 (i) providing an email address, mailing address, or telefax number to which a notice

501 required by Subsection (9)(a) is to be sent; and

502 (ii) the accuracy of any email address, mailing address, or telefax number to which

503 notice is to be sent.

504 (c) The designated agent fulfills the notice requirement of Subsection (9)(a) by

sending

505 the notice to the email address, mailing address, or telefax number provided to the

designated

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506 agent, whether or not the notice is actually received.

507 (10) (a) The burden is upon any person seeking to enforce a notice of

commencement

508 to verify the accuracy of information in the notice of commencement and prove that

the notice

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

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

511 commencement invalid.  
512 (c) A person filing a notice of commencement by alternate filing is responsible for  
513 verifying and changing any incorrect information in the notice of commencement  
before the  
514 expiration of the time period during which the notice is required to be filed.  
515 Section 10. Section **38-1-32** is amended to read:  
516 **38-1-32. Preliminary notice for a private project.**  
517 (1) As used in this section:  
518 (a) "Pre-lender claimant" means a person whose lien under this chapter is made  
subject  
519 to a construction lender's mortgage or trust deed, as provided in Subsection 38-1-5  
(3)(b), by the  
520 person's acceptance of payment in full and the person's withdrawal of the person's  
preliminary  
521 notice.  
522 (b) "Refiled preliminary notice" means a preliminary notice that a pre-lender  
claimant  
523 files under Subsection (2)(a)(ii) with the database on a project after withdrawing a  
preliminary  
524 notice that the claimant previously filed for the same project.  
525 ~~[(1)] (2) (a) (i) [Except for a person who has a contract with an owner or an~~  
526 ~~owner-builder or a laborer compensated with wages, a subcontractor] A person who,~~  
under  
527 Section 38-1-3 , is entitled to a lien under this chapter with respect to a private project  
shall file  
528 a preliminary notice with the database ~~[by the]~~ no later ~~[of: (A)]~~ than 20 days after  
529 ~~[commencement of its own work or the commencement of]~~ the person commences  
furnishing  
530 labor, service, equipment, ~~[and]~~ or material to ~~[a construction]~~ the project~~[-or]~~.  
531 (ii) A pre-lender claimant who, under Section 38-1-3 , is entitled to claim a lien  
under  
532 this chapter for labor, service, equipment, or material the claimant furnishes to a  
private project  
533 after the recording of a construction lender's mortgage or trust deed on the project  
property

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534 shall file a preliminary notice within 20 days after the recording of the mortgage or  
trust deed.  
535 ~~[(B) 20 days after the filing of a notice of commencement if the subcontractor's~~  
work  
536 ~~commences before the filing of the first notice of commencement.]~~  
537 ~~[(ii)] (b) [A] Subject to Subsection (2)(c), a preliminary notice [filed within the~~  
period  
538 ~~described in Subsection (1)(a)(i)] is effective as to all labor, service, equipment, and~~  
material



539 ~~[furnished]~~ that the person filing the notice furnishes to the ~~[construction]~~ private  
project,  
540 including labor, service, equipment, and material ~~[provided]~~ that the person furnishes  
to more  
541 than one contractor or subcontractor on that same project.  
542 ~~[(iii) (A) If more than one notice of commencement is filed for a project, a person~~  
may  
543 ~~attach a preliminary notice to any notice of commencement filed for the project by a~~  
party  
544 ~~authorized in Section 38-1-31.]~~  
545 ~~[(B) A preliminary notice attached to an untimely notice of commencement is valid~~  
if  
546 ~~there is also a valid and timely notice of commencement for the project filed by a party~~  
547 ~~authorized in Section 38-1-31.]~~  
548 ~~[(b) (c) [If a person files a] A preliminary notice filed after the period [prescribed~~  
by]  
549 provided in Subsection ~~[(1) (2)(a)]~~, ~~the preliminary notice~~];  
550 (i) becomes effective five days after the day ~~[on which]~~ the preliminary notice is  
551 filed[-]; and  
552 (ii) is not effective for labor, service, equipment, or material that the person who  
files  
553 the preliminary notice furnishes to the construction project before five days after the  
554 preliminary notice is filed.  
555 ~~[(e) Except as provided in Subsection (1)(e), failure to file a preliminary notice~~  
within  
556 ~~the period required by Subsection (1)(a) precludes a person from maintaining any~~  
claim for  
557 ~~compensation earned for performance of labor or service or supply of materials or~~  
equipment  
558 ~~furnished to the construction project before the expiration of five days after the late~~  
filing of a  
559 ~~preliminary notice, except as against the person with whom the person contracted.]~~  
560 (d) (i) (A) ~~[If a] A person who [is required to file a preliminary notice under this~~  
561 ~~chapter] fails to file [the] a preliminary notice[-, that person] as required in this section  
may not~~

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562 hold a valid lien under this chapter.  
563 (B) A person who files a preliminary notice after the period provided in Subsection  
564 (2)(a) may not hold a valid lien under this chapter for labor, service, equipment, or  
material the  
565 person furnishes to the construction project before five days after the preliminary  
notice is  
566 filed.  
567 ~~[(B)]~~ (ii) A county recorder need not verify that a valid preliminary notice is filed  
when

568 a person files a notice to hold and claim a lien under Section 38-1-7 .  
569 ~~[(ii) The content of a]~~  
570 (e) (i) Except as provided in Subsection (2)(e)(ii), a preliminary notice that is timely  
571 filed with the database with respect to a private project is considered to be filed at the  
time of  
572 the first preliminary notice filing, as defined in Section 38-1-5.  
573 (ii) A timely filed preliminary notice that is a refiled preliminary notice is considered  
to  
574 be filed immediately after the recording of a mortgage or trust deed of the construction  
lender  
575 that paid the pre-lender claimant in full for labor, service, equipment, or material the  
claimant  
576 furnished before the recording of the mortgage or trust deed.  
577 (f) If a preliminary notice filed with the database includes the tax parcel  
identification  
578 number of a parcel not previously associated in the database with a private project,  
the  
579 designated agent shall promptly notify the person who filed the preliminary notice  
that:  
580 (i) the preliminary notice includes a tax parcel identification number of a parcel not  
581 previously associated in the database with a private project; and  
582 (ii) the likely explanation is that:  
583 (A) the preliminary notice is the first filing for the project; or  
584 (B) the tax parcel identification number is incorrectly stated in the preliminary  
notice.  
585 (g) A preliminary notice for a private project shall include:  
586 ~~[(A) the building permit number for the project, or the number assigned to the~~  
project  
587 ~~by the designated agent;]~~  
588 ~~[(B)]~~ (i) the name, address, [and] telephone number, and email address of the  
person  
589 furnishing the labor, service, equipment, or material for which the preliminary notice  
is filed;

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590 ~~[(C)]~~ (ii) the name and address of the person who contracted with the claimant for  
the  
591 furnishing of the labor, service, equipment, or material;  
592 ~~[(D)]~~ (iii) the name of the record or reputed owner of the project property;  
593 ~~[(E)]~~ (iv) the name of the original contractor under which the claimant is  
[performing]  
594 furnishing or will [perform its work; and] furnish labor, service, equipment, or  
material;  
595 ~~[(F)]~~ (v) the address of the project property or a description of the location of the  
596 project[-];  
597 ~~[(iii) Upon request by person identified in Subsection (1)(a)(i), an original~~

~~contractor~~  
 598 shall provide the person with the building permit number for the project, or the  
~~number~~  
 599 assigned to the project by the designated agent.]  
 600 [(e) If a person provides labor, service, equipment, or material before the filing of a  
 601 notice of commencement and the notice of commencement is filed more than 15 days  
~~after the~~  
 602 day on which the person providing labor, service, equipment, or material begins work  
~~on the~~  
 603 project, the person providing labor, service, equipment, or material need not file a  
~~preliminary~~  
 604 notice to maintain the person's right to hold a lien under this chapter or any other right,  
 605 including a right referenced under Subsection (1)(e).]  
 606 (vi) the name of the county in which the project property is located; and  
 607 (vii) (A) the tax parcel identification number of each parcel included in the project  
 608 property;  
 609 (B) the entry number of a previously filed notice of construction loan under Section  
 610 38-1-30.5 on the same project;  
 611 (C) the entry number of a previously filed preliminary notice on the same project  
~~that~~  
 612 includes the tax parcel identification number of each parcel included in the project  
~~property; or~~  
 613 (D) the entry number of the building permit issued for the project.  
 614 (h) A preliminary notice for a private project may include:  
 615 (i) the subdivision, development, or other project name applicable to the  
~~construction~~  
 616 project for which the preliminary notice is filed; and  
 617 (ii) the lot or parcel number of each lot or parcel that is included in the project  


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 618 property.  
 619 [(2)] (3) (a) [(i)] Unless a person indicates to the division or designated agent that  
~~the~~  
 620 person does not wish to receive a notice under this section, electronic notification of  
~~the filing~~  
 621 of a preliminary notice or alternate [notice as prescribed in Subsection (1);] filing shall  
~~be~~  
 622 provided to:  
 623 [(A)] (i) the person filing the preliminary notice; and  
 624 [(B)] each person that filed a notice of commencement for the project; and]  
 625 [(C)] all interested persons who have requested notices]  
 626 (ii) each person who has requested a notice concerning the project.  
 627 [(ii)] (b) A person to whom notice is required to be provided under Subsection  
 628 (2)(a)[(i)] is responsible for:  
 629 [(A)] (i) providing an email address, mailing address, or telefax number to which a  
 630 notice required by Subsection (2)(a) is to be sent; and

631 ~~[(B)]~~ (ii) the accuracy of any email address, mailing address, or telefax number to  
 632 which notice is to be sent.  
 633 ~~[(iii)]~~ (c) The designated agent fulfills the notice requirement of Subsection  
 (2)(a)~~[(i)]~~  
 634 ~~when it sends]~~ by sending the notice to the email address, mailing address, or telefax  
 number  
 635 provided to the designated agent, whether or not the notice is actually received.  
 636 ~~[(b)]~~ (4) (a) The burden is upon the person filing the preliminary notice to prove  
 that  
 637 the person has substantially complied with the requirements of this section.  
 638 (b) Substantial compliance with the requirements of Subsection (2)(g) may be  
 639 established by a person's reasonable reliance on information in the database provided  
by a  
 640 previously filed:  
 641 (i) notice of construction loan under Section 38-1-30.5 ;  
 642 (ii) preliminary notice; or  
 643 (iii) building permit.  
 644 ~~[(e)]~~ (5) (a) Subject to Subsection ~~[(2)(d)]~~ (5)(b), a person required by this section  
 to  
 645 give preliminary notice is only required to give one notice for each project.

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646 ~~[(d)]~~ (b) If the labor, service, equipment, or material is furnished pursuant to  
 contracts  
 647 under more than one original contract, the notice requirements ~~[must]~~ shall be met  
 with respect  
 648 to the labor, service, equipment, or material furnished under each original contract.  
 649 ~~[(3)]~~ (6) (a) ~~[If a]~~ A construction project owner, original contractor, subcontractor, or  
 650 other interested person who believes that a preliminary notice has been filed  
 erroneously~~[, that~~  
 651 ~~owner, original contractor, subcontractor, or other interested person can]~~ may request  
 from the  
 652 person who filed the preliminary notice evidence establishing the validity of the  
 preliminary  
 653 notice.  
 654 (b) Within 10 days after the request described in Subsection ~~[(3)]~~ (6)(a), the person  
 or  
 655 entity that filed the preliminary notice shall provide the requesting person or entity  
 proof that  
 656 the preliminary notice is valid.  
 657 (c) If the person or entity that filed the preliminary notice does not provide proof of  
 the  
 658 validity of the preliminary notice, that person or entity shall immediately cancel the  
 preliminary  
 659 notice from the database in any manner prescribed by the division pursuant to rule.  
 660 ~~[(4)]~~ (7) A person filing a preliminary notice by alternate filing is responsible for

661 verifying and changing any incorrect information in the preliminary notice before the  
 662 expiration of the time period during which the notice is required to be filed.  
 663 ~~[(5) Until June 1, 2008, nothing in this section affects a person's rights under Title~~  
 38,  
 664 ~~Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.]~~  
 665 (8) (a) A person who files a preliminary notice before the recording of a  
construction  
 666 lender's mortgage or trust deed may withdraw the preliminary notice by filing with the  
database  
 667 a notice of withdrawal as provided in Subsection (8)(b).  
 668 (b) A notice of withdrawal shall include:  
 669 (i) the information required for a preliminary notice under Subsection (2)(g); and  
 670 (ii) the entry number of the preliminary notice being withdrawn.  
 671 (9) A person who files a preliminary notice that contains inaccurate or incomplete  
 672 information may not be held liable for damages suffered by any other person who  
relies on the  
 673 inaccurate or incomplete information in filing a preliminary notice.

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674 Section 11. Section **38-1-32.5** is enacted to read:  
 675 **38-1-32.5. Preliminary notice on government project.**  
 676 (1) Except for a person who has a contract with an owner or an owner-builder or a  
 677 laborer compensated with wages, a subcontractor on a government project shall file a  
 678 preliminary notice with the database by the later of:  
 679 (a) 20 days after the subcontractor commences the subcontractor's own work or  
 680 commences furnishing labor, service, equipment, or material to the construction  
project; and  
 681 (b) 20 days after the filing of a notice of commencement, if the subcontractor's work  
 682 commences before the filing of the first notice of commencement.  
 683 (2) A preliminary notice filed within the period described in Subsection (1) is  
effective  
 684 as to all labor, service, equipment, and material that the subcontractor furnishes to the  
 685 construction project, including labor, service, equipment, and material provided that  
the  
 686 subcontractor furnishes to more than one contractor or subcontractor.  
 687 (3) (a) If more than one notice of commencement is filed for a project, a person may  
 688 attach a preliminary notice to any notice of commencement filed for the project.  
 689 (b) A preliminary notice attached to an untimely notice of commencement is valid if  
 690 there is also a valid and timely notice of commencement for the project.  
 691 (4) If a person files a preliminary notice after the period prescribed by Subsection  
(1),  
 692 the preliminary notice becomes effective five days after the day on which the  
preliminary  
 693 notice is filed.  
 694 (5) Except as provided in Subsection (8), failure to file a preliminary notice within  
the

695 period required by Subsection (1) precludes a person from maintaining any claim for  
 696 compensation earned for labor, service, material, or equipment furnished to the  
construction  
 697 project before the expiration of five days after the late filing of a preliminary notice,  
except as  
 698 against the person with whom the person contracted.  
 699 (6) A preliminary notice on a government project shall include:  
 700 (a) the government project-identifying information;  
 701 (b) the name, address, and telephone number of the person furnishing the labor,

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702 service, equipment, or material;  
 703 (c) the name and address of the person who contracted with the claimant for the  
 704 furnishing of the labor, service, equipment, or material;  
 705 (d) the name of the record or reputed owner of the project;  
 706 (e) the name of the original contractor under which the claimant is performing or  
will  
 707 perform its work; and  
 708 (f) the address of the project or a description of the location of the project.  
 709 (7) Upon request, an original contractor shall provide a subcontractor with the  
number  
 710 assigned to the project by the designated agent.  
 711 (8) A person who provides labor, service, equipment, or material before the filing of  
a  
 712 notice of commencement need not file a preliminary notice to maintain any right the  
person  
 713 would otherwise have, if the notice of commencement is filed more than 15 days after  
the day  
 714 on which the person begins work on the project.  
 715 (9) Subsections 38-1-32 (2), (3), (4), (5), and (6) apply to a preliminary notice on a  
 716 government project under this section to the same extent that those subsections apply  
to a  
 717 preliminary notice on a private project under Section 38-1-32 .  
 718 Section 12. Section **38-1-32.7** is enacted to read:  
 719 **38-1-32.7. Notice concerning construction loan default.**  
 720 (1) Within five business days after a notice of default is filed for recording under  
 721 Section 57-1-24 with respect to a trust deed on the project property securing a  
construction  
 722 loan, the construction lender under the loan shall file a notice with the database.  
 723 (2) A notice under Subsection (1) shall:  
 724 (a) include:  
 725 (i) the information required to be included in a notice of construction loan under  
 726 Subsections 38-1-30.5 (3)(a), (b), (c), (d), and (e); and  
 727 (ii) the entry number of the notice of construction loan;  
 728 (b) state that a notice of default with respect to the construction loan has been  
recorded;

729 *and*

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730 (c) state the date that the notice of default was recorded.  
 731 Section 13. Section **38-1-33** is amended to read:  
 732 **38-1-33. Notice of completion.**  
 733 (1) (a) Upon final completion of a construction project, and in accordance with  
 Section  
 734 38-1-40 , the following with a construction project registered with the database may  
 file a notice  
 735 of completion with the database:  
 736 (i) an owner of the construction project;  
 737 (ii) an original contractor of the construction project;  
 738 (iii) a lender that has provided financing for the construction project;  
 739 (iv) a surety that has provided bonding for the construction project; or  
 740 (v) a title company issuing a title insurance policy on the construction project.  
 741 (b) Notwithstanding Section 38-1-2 , if a subcontractor performs substantial work  
 after  
 742 the applicable dates established by Subsection (1)(a), that subcontractor's subcontract  
 is  
 743 considered an original contract for the sole purpose of determining:  
 744 (i) the subcontractor's time frame to file a notice to hold and claim a lien under  
 745 Subsection 38-1-7 (1); and  
 746 (ii) the original contractor's time frame to file a notice to hold and claim a lien under  
 747 Subsection 38-1-7 (1) for that subcontractor's work.  
 748 (c) A notice of completion shall include:  
 749 ~~[(i) the building permit number for the project, or the number assigned to the project~~  
 by  
 750 ~~the designated agent;]~~  
 751 ~~[(ii)]~~ (i) the name, address, ~~[and]~~ telephone number, and email address of the  
 person  
 752 filing the notice of completion;  
 753 ~~[(iii) the name of the original contractor for the project;]~~  
 754 ~~[(iv) the address of the project or a description of the location of the project;]~~  
 755 (ii) the name of the county in which the project property is located;  
 756 (iii) for a private project:  
 757 (A) the tax parcel identification number of each parcel included in the project  
property;

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758 (B) the entry number of a preliminary notice on the same project that includes the  
tax  
 759 parcel identification number of each parcel included in the project property; or  
 760 (C) the entry number of the building permit issued for the project;  
 761 (iv) for a government project, the government project-identifying information;  
 762 (v) the date on which final completion is alleged to have occurred; and  
 763 (vi) the method used to determine final completion.

764 (d) For purposes of this section, final completion of the original contract does not  
 occur  
 765 if work remains to be completed for which the owner is holding payment to ensure  
 completion  
 766 of the work.  
 767 (e) (i) Unless a person indicates to the division or designated agent that the person  
 does  
 768 not wish to receive a notice under this section, electronic notification of the filing of a  
 notice of  
 769 completion or alternate [~~notice as prescribed in Subsection (1)(a),~~] filing shall be  
 provided to:  
 770 (A) each person that filed a notice of commencement for the project;  
 771 (B) each person that filed preliminary notice for the project; and  
 772 (C) all interested persons who have requested notices concerning the project.  
 773 (ii) A person to whom notice is required under this Subsection (1)(e) is responsible  
 for:  
 774 (A) providing an email address, mailing address, or telefax number to which a  
 notice  
 775 required by this Subsection (1)(e) is to be sent; and  
 776 (B) the accuracy of any email address, mailing address, or telefax number to which  
 777 notice is to be sent.  
 778 (iii) The designated agent fulfills the notice requirement of Subsection (1)(e)(i)  
 when it  
 779 sends the notice to the email address, mailing address, or telefax number provided to  
 the  
 780 designated agent, whether or not the notice is actually received.  
 781 (iv) Upon the filing of a notice of completion, the time periods for filing a  
 preliminary  
 782 [~~notices~~] notice stated in Section [~~38-1-27~~] 38-1-32 or 38-1-32.5 are modified such  
 that all  
 783 preliminary notices shall be filed subsequent to the notice of completion and within 10  
 days  
 784 from the day on which the notice of completion is filed.  
 785 (f) A subcontract that is considered an original contract for purposes of this section

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786 does not create a requirement for an additional preliminary notice if a preliminary  
 notice has  
 787 already been given for the labor, service, equipment, and material furnished to the  
 788 subcontractor who performs substantial work.  
 789 (2) (a) If a construction project owner, original contractor, subcontractor, or other  
 790 interested person believes that a notice of completion has been filed erroneously, that  
 owner,  
 791 original contractor, subcontractor, or other interested person can request from the  
 person who  
 792 filed the notice of completion evidence establishing the validity of the notice of



completion.

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

of

795 completion is valid.

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

rule.

799 (3) A person filing a notice of completion by alternate filing is responsible for

verifying

800 and changing any incorrect information in the notice of completion before the

expiration of the

801 time period during which the notice is required to be filed.

802 Section 14. Section **58-56-20** is amended to read:

803 **58-56-20. Standardized building permit content.**

804 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

the

805 division shall adopt a standardized building permit form by rule.

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

808 (i) the name and address of the owner of [~~or contractor for the~~] each parcel of

property

809 on which the project will occur;

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

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

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

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

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

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

816 (b) The standardized building permit form created under Subsection (1) may

include

817 any other information the division considers useful.

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

820 (b) A permit for construction issued by a compliance agency under Subsection

(3)(a)

821 shall print the standardized building permit number assigned under Section 58-56-19

in the

822 upper right-hand corner of the building permit form in at least 12-point type.

823 (c) (i) Except as provided in Subsection (3)(c)(ii), a compliance agency may not

issue a

824 permit for construction if the information required by Subsection (2)(a) is not

completed on the

825 building permit form.  
 826 (ii) If a compliance agency does not issue a separate permit for different aspects of  
 the  
 827 same project, the compliance agency may issue a permit for construction without the  
 828 information required by Subsection (2)(a)[~~(iii)~~](vi).  
 829 (d) A compliance agency may require additional information for the issuance of a  
 830 permit for construction.  
 831 (4) A local regulator issuing a single-family residential building permit application  
 832 shall include in the application or attach to the building permit the following notice  
 833 prominently placed in at least 14 point font: "Decisions relative to this application are  
 subject  
 834 to review by the chief executive officer of the municipal or county entity issuing the  
 835 single-family residential building permit and appeal under the International  
 Residential Code as  
 836 adopted by the Legislature."  
 837 Section 15. Section **63G-6-506** is amended to read:  
 838 **63G-6-506. Preliminary notice requirement.**  
 839 (1) Any person furnishing labor, service, equipment, or material for which a  
 payment  
 840 bond claim may be made under this chapter shall provide preliminary notice to the  
 designated  
 841 agent as prescribed by Section [~~38-1-32~~] 38-1-32.5, except that this section does not  
 apply:

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842 (a) to a person performing labor for wages; or  
 843 (b) if a notice of commencement is not filed as prescribed in Section [~~38-1-31~~]  
 844 38-1-31.5 for the project or improvement for which labor, service, equipment, or  
 material is  
 845 furnished.  
 846 (2) Any person who fails to provide the preliminary notice required by Subsection  
 (1)  
 847 may not make a payment bond claim under this chapter.  
 848 (3) The preliminary notice required by Subsection (1) must be provided [~~prior to~~]  
 849 before commencement of any action on the payment bond.  
 850 Section 16. **Repealer.**  
 851 This bill repeals:  
 852 Section **38-1-37, Application of Section 38-1-27 and Sections 38-1-30 through**  
 853 **38-1-36.**  
 854 Section 17. **Legislative intent.**  
 855 It is the intent of the Legislature that:  
 856 (1) the changes to the law made by this bill apply only to construction projects that  
 857 commence on or after August 1, 2011; and  
 858 (2) during the 2012 and 2013 interim periods, before the November interim  
committee  
 859 meeting each year, the Business and Labor Interim Committee review and evaluate the

860 implementation of this bill, determine whether the provisions of this bill should be  
modified or  
 861 repealed, and make a recommendation accordingly to the Legislative Management  
Committee.

862 Section 18. **Effective date.**

863 This bill takes effect on August 1, 2011.

864 Section 19. **Coordinating H.B. 260 with H.B. 203 -- Technically merging**  
 865 **substantive amendments.**

866 If this H.B. 260 and H.B. 203, Codification of State Construction and Fire Codes,

both

867 pass, it is the intent of the Legislature that:

868 (1) the coordination clause in this H.B. 260 supersedes the coordination clause  
 869 contained in H.B. 203; and

---

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

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

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

875 (i) the name and address of the owner of each parcel of property on which the

project

876 will occur;

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

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

879 (B) a general description of the project;

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

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

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

883 (b) change the citation in Subsection 15A-1-209 (3)(f)(ii), as enacted in H.B. 203,

from

884 "Subsection (3)(b)(iii)" to "Subsection (3)(b)(vi)."

885 Section 20. **Coordinating H.B. 260 with H.B. 115 -- Technically merging**

886 **substantive amendments.**

887 If this H.B. 260 and H.B. 115, Mechanics' Lien Amendments, both pass, it is the

intent

888 of the Legislature that:

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

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

892 "(6) "Construction service":

893 (a) means to furnish labor, service, material, or equipment for the purpose and

during

894 the process of constructing, altering, or repairing an improvement; and

895 (b) includes the scheduling, estimating, staking, supervising, managing, materials  
 896 testing, inspection, observation, and quality control or assurance involved in

constructing,

897 altering, or repairing an improvement.";

---

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

899 " **38-1-5. Relation back and priority of liens.**

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

901 (1) As used in this section:

902 (a) "First preliminary notice filing" means the filing of a preliminary notice that is:

903 (i) the earliest preliminary notice filed on a private project, as defined in Section

904 38-1-27 ;

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

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

907 commenced before August 1, 2011;

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

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

910 (b) "Project property" means the real property on which an improvement is being

911 constructed or made.

912 (2) A construction service lien relates back to, and [~~take~~] takes effect as of, the time

of

913 the [~~commencement to do work or furnish materials on the ground for the structure or~~

914 ~~improvement, and shall have~~] first preliminary notice filing.

915 (3) (a) Subject to Subsection (3)(b), a construction service lien has priority over:

916 (i) any lien, mortgage, or other encumbrance [~~which may have attached~~

subsequently to

917 ~~the time when the building, improvement or structure was commenced, work begun,~~

or first

918 ~~material furnished on the ground; also over~~] that attaches after the first preliminary

notice

919 filing; and

920 (ii) any lien, mortgage, or other encumbrance of which the lien holder had no notice

921 and which was unrecorded at the time [~~the building, structure or improvement was~~

922 ~~commenced, work begun, or first material furnished on the ground~~] of the first

preliminary

923 notice filing.

924 (b) A recorded mortgage or trust deed of a construction lender has priority over

each

925 construction service lien of a claimant who files a preliminary notice in accordance

with

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926 Section 38-1-32 before the mortgage or trust deed is recorded if the claimant:

927 (i) accepts payment in full for construction service that the claimant furnishes to the

928 project before the mortgage or trust deed is recorded; and

929 (ii) withdraws the claimant's preliminary notice by filing a notice of withdrawal

under

930 Subsection 38-1-32 (8).";

931 (c) modify Subsection 38-1-19 (1) to read:  
 932 ~~"[When any] (1) If a subcontractor [shall have] has actually begun to [furnish labor~~  
 or  
 933 ~~materials] perform preconstruction service or furnish construction service for which~~  
 [he] the  
 934 ~~subcontractor~~ is entitled to a lien ~~[no]~~, a payment to the original contractor ~~[shall]~~ may  
 not  
 935 impair or defeat ~~[such] the lien[; and no].~~";  
 936 (d) modify Subsection 38-1-27 (2)(c) to read:  
 937 ~~"(c) provide a central repository for [notices of commencement, preliminary~~  
 notices,  
 938 ~~and notices of completion filed in connection with all privately owned construction~~  
 projects as  
 939 ~~well as all state and local government owned construction projects throughout Utah]~~  
all notices  
 940 filed with the database under Section 38-1-30.5 , 38-1-30.7 , 38-1-31.5 , 38-1-32 ,  
38-1-32.5 ,  
 941 38-1-32.7 , 38-1-33 , or 38-1-40 .";  
 942 (e) modify Subsection 38-1-32 (2) to read:  
 943 ~~"[(1)] (2) (a) (i) [Except for a person who has a contract with an owner or an~~  
 944 ~~owner builder or a laborer compensated with wages, a subcontractor] A person who,~~  
under  
 945 Section 38-1-3 , is entitled to a construction service lien with respect to a private  
project shall  
 946 file a preliminary notice with the database ~~[by the] no~~ later ~~[of: (A)] than~~ 20 days after  
 947 ~~[commencement of its own work or the commencement of] the person commences~~  
 furnishing  
 948 ~~[labor, service, equipment, and material] construction service~~ to ~~[a construction] the~~  
 project[;  
 949 or].  
 950 (ii) A pre-lender claimant who, under Section 38-1-3 , is entitled to claim a  
construction  
 951 service lien for construction service the claimant furnishes to a private project after  
the  
 952 recording of a construction lender's mortgage or trust deed on the project property  
shall file a  
 953 preliminary notice within 20 days after the recording of the mortgage or trust deed.

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954 ~~[(B) 20 days after the filing of a notice of commencement if the subcontractor's~~  
 work  
 955 ~~commences before the filing of the first notice of commencement.]~~  
 956 ~~[(ii)] (b) [A] Subject to Subsection (2)(c), a preliminary notice [filed within the~~  
 period  
 957 ~~described in Subsection (1)(a)(i)] is effective as to all [labor, service, equipment, and~~  
 material

958 ~~furnished~~ construction service that the person filing the notice furnishes to the  
 [construction]  
 959 private project, including ~~[labor, service, equipment, and material provided]~~  
construction  
 960 service that the person furnishes to more than one contractor or subcontractor on that  
same  
 961 project.  
 962 ~~[(iii) (A) If more than one notice of commencement is filed for a project, a person~~  
 may  
 963 ~~attach a preliminary notice to any notice of commencement filed for the project by a~~  
 party  
 964 ~~authorized in Section 38-1-31.]~~  
 965 ~~[(B) A preliminary notice attached to an untimely notice of commencement is valid~~  
 if  
 966 ~~there is also a valid and timely notice of commencement for the project filed by a party~~  
 967 ~~authorized in Section 38-1-31.]~~  
 968 ~~[(b) (c) [If a person files a] A preliminary notice filed after the period [prescribed~~  
 by]  
 969 provided in Subsection ~~[(1) (2)(a) [the preliminary notice]:~~  
 970 (i) becomes effective five days after the day ~~[on which]~~ the preliminary notice is  
 971 filed~~[-]; and~~  
 972 (ii) is not effective for construction service that the person who files the preliminary  
 973 notice furnishes to the construction project before five days after the preliminary  
notice is filed.  
 974 ~~[(c) Except as provided in Subsection (1)(e), failure to file a preliminary notice~~  
 within  
 975 ~~the period required by Subsection (1)(a) precludes a person from maintaining any~~  
 claim for  
 976 ~~compensation earned for performance of labor or service or supply of materials or~~  
 equipment  
 977 ~~furnished to the construction project before the expiration of five days after the late~~  
 filing of a  
 978 ~~preliminary notice, except as against the person with whom the person contracted.]~~  
 979 ~~(d) (i) (A) [If a] A person who [is required to file a preliminary notice under this~~  
 980 ~~chapter] fails to file [the] a preliminary notice~~[-, that person] as required in this section~~  
 may not  
 981 hold a valid construction service lien under this chapter.~~

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982 (B) A person who files a preliminary notice after the period provided in Subsection  
 983 (2)(a) may not hold a valid construction service lien for construction service the  
person  
 984 furnishes to the construction project before five days after the preliminary notice is  
filed.  
 985 ~~[(B) (ii) A county recorder need not verify that a valid preliminary notice is filed~~  
 when

986 a person files a notice to hold and claim a lien under Section 38-1-7 .  
 987 ~~[(ii) The content of a]~~  
 988 (e) (i) Except as provided in Subsection (2)(e)(ii), a preliminary notice that is timely  
 989 filed with the database with respect to a private project is considered to be filed at the  
time of  
 990 the first preliminary notice filing, as defined in Section 38-1-5.  
 991 (ii) A timely filed preliminary notice that is a refiled preliminary notice is considered  
to  
 992 be filed immediately after the recording of a mortgage or trust deed of the construction  
lender  
 993 that paid the pre-lender claimant in full for construction service the claimant  
furnished before  
 994 the recording of the mortgage or trust deed.  
 995 (f) If a preliminary notice filed with the database includes the tax parcel  
identification  
 996 number of a parcel not previously associated in the database with a private project,  
the  
 997 designated agent shall promptly notify the person who filed the preliminary notice  
that:  
 998 (i) the preliminary notice includes a tax parcel identification number of a parcel not  
 999 previously associated in the database with a private project; and  
 1000 (ii) the likely explanation is that:  
 1001 (A) the preliminary notice is the first filing for the project; or  
 1002 (B) the tax parcel identification number is incorrectly stated in the preliminary  
notice.  
 1003 (g) A preliminary notice for a private project shall include:  
 1004 [(A) the building permit number for the project, or the number assigned to the  
project  
 1005 by the designated agent;]  
 1006 [(B) (i) the name, address, [and] telephone number, and email address of the  
person  
 1007 furnishing the [labor, service, equipment, or material] construction service for which  
the  
 1008 preliminary notice is filed;  
 1009 [(C) (ii) the name and address of the person who contracted with the claimant for  
the  


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 1010 furnishing of the [labor, service, equipment, or material] construction service;  
 1011 [(D) (iii) the name of the record or reputed owner of the project property;  
 1012 [(E) (iv) the name of the original contractor for construction service under which  
the  
 1013 claimant is [performing] furnishing or will [perform its work; and] furnish  
construction  
 1014 service;  
 1015 [(F) (v) the address of the project property or a description of the location of the

1016 project[-];  
 1017 [(iii) Upon request by person identified in Subsection (1)(a)(i), an original  
 contractor  
 1018 shall provide the person with the building permit number for the project, or the  
 number  
 1019 assigned to the project by the designated agent.]  
 1020 [(e) If a person provides labor, service, equipment, or material before the filing of a  
 1021 notice of commencement and the notice of commencement is filed more than 15 days  
 after the  
 1022 day on which the person providing labor, service, equipment, or material begins work  
 on the  
 1023 project, the person providing labor, service, equipment, or material need not file a  
 preliminary  
 1024 notice to maintain the person's right to hold a lien under this chapter or any other  
 right,  
 1025 including a right referenced under Subsection (1)(c).]  
 1026 (vi) the name of the county in which the project property is located; and  
 1027 (vii) (A) the tax parcel identification number of each parcel included in the project  
 1028 property;  
 1029 (B) the entry number of a previously filed notice of construction loan under Section  
 1030 38-1-30.7 on the same project;  
 1031 (C) the entry number of a previously filed preliminary notice on the same project  
 that  
 1032 includes the tax parcel identification number of each parcel included in the project  
property; or  
 1033 (D) the entry number of the building permit issued for the project.  
 1034 (h) A preliminary notice for a private project may include:  
 1035 (i) the subdivision, development, or other project name applicable to the  
construction  
 1036 project for which the preliminary notice is filed; and  
 1037 (ii) the lot or parcel number of each lot or parcel that is included in the project  


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 1038 property."; and  
 1039 (f) modify Subsection 38-1-32 (5) to read:  
 1040 "[(e)] (5) (a) Subject to Subsection [(2)(d)] (5)(b), a person required by this section  
 to  
 1041 give preliminary notice is only required to give one notice for each project.  
 1042 [(d)] (b) If the [labor, service, equipment, or material] construction service is  
 furnished  
 1043 pursuant to contracts under more than one original contract for construction service,  
 the notice  
 1044 requirements [must] shall be met with respect to the [labor, service, equipment, or  
 material]  
 1045 construction service furnished under each original contract."  
 1046 (2) the amendments to Subsection 38-1-27 (2)(d) in this H.B. 260 supersede the



1047 amendments to Subsection 38-1-27 (2)(d) in H.B. 115;  
1048 (3) the amendments to Subsection 38-1-27 (4)(a) in this H.B. 260 supersede the  
1049 amendments to Subsection 38-1-27 (4)(a) in H.B. 115; and  
1050 (4) (a) Section 30-1-30.5 , as enacted in this H.B. 260, be renumbered to Section  
1051 30-1-30.7 ; and  
1052 (b) all references in this H.B. 260 to Section 30-1-30.5 be changed to Section  
1053 30-1-30.7 .

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