

# 1st Sub. S.B. 168

## CONSTRUCTION TRADE RELATED AMENDMENTS

Senator **Scott K. Jenkins** proposes the following amendments:

1. *Page 1, Lines 19 through 20*

*Senate 2nd Reading Amendments*

2-22-2005:

19           ▶        ~~{ changes the amount of interest and attorney fees allowable under the Residence Lien~~  
20    **Recovery Fund; }**

2. *Page 7, Line 195*

*Senate 2nd Reading Amendments*

2-22-2005:

195   person to send a preliminary notice does not ~~{ effect }~~   **affect**   that person's right to:

3. *Page 9, Line 244 through Page 10, Line 294*

*Senate 2nd Reading Amendments*

2-22-2005:

244           ~~{ Section 38-11-203 is amended to read:~~  
245    ~~38-11-203. Disbursements from the fund -- Limitations.~~  
246    ~~(1) A payment of any claim upon the fund by a qualified beneficiary shall be made only~~  
247    ~~upon an order issued by the director finding that:~~  
248    ~~(a) the claimant was a qualified beneficiary during the construction on a residence;~~  
249    ~~(b) the claimant complied with the requirements of Section 38-11-204; and~~  
250    ~~(c) there is adequate money in the fund to pay the amount ordered.~~  
251    ~~(2) A payment of a claim upon the fund by a laborer shall be made only upon an order~~  
252    ~~issued by the director finding that:~~  
253    ~~(a) the laborer complied with the requirements of Subsection 38-11-204(7); and~~  
254    ~~(b) there is adequate money in the fund to pay the amount ordered.~~  
255    ~~(3) (a) An order under this section may be issued only after the division has complied~~  
256    ~~with the procedures established by rule under Section 38-11-105.~~  
257    ~~(b) The director shall order payment of the qualified services as established by~~  
258    ~~evidence, or if the claimant has obtained a judgment, then in the amount awarded for qualified~~  
259    ~~services in the judgment to the extent the qualified services are attributable to the~~  
260    ~~owner-occupied residence at issue in the claim.~~  
261    ~~(c) The director shall order payment of interest on amounts claimed for qualified~~

262 services [~~based on the current prime interest rate at the time payment was due to the date the~~  
263 ~~claim is approved for payment except for delays attributable to the claimant but not more than~~  
264 ~~10% per annum].~~  
265 ~~—— (d) The rate shall be the sum of the Prime Lending Rate as published in the Wall Street~~  
266 ~~Journal on the first business day of each calendar year adjusted annually and 2% per annum.~~  
267 ~~—— [(e) The]~~  
268 ~~—— (e) (i) Subject to the other provisions of this Subsection (3)(d), the director shall order~~  
269 ~~payment of costs in the amount stated in the judgment.~~  
270 ~~—— (ii) If the judgment does not state a sum certain for costs, or if no judgment has been~~  
271 ~~obtained, the director shall order payment of reasonable costs as supported by evidence.~~  
272 ~~—— (iii) The claim application fee as established by the division pursuant to Subsection~~  
273 ~~38-11-204(1)(b) is not a reimbursable cost.~~  
274 ~~—— (f) (i) If a judgment has been obtained with attorneys' fees, notwithstanding the amount~~  
275 ~~stated in a judgment, or if no judgment has been obtained but the contract provides for~~  
276 ~~attorneys' fees, the director shall order payment of attorneys' fees [not to exceed 15% of~~  
277 ~~qualified services.] equal to the lesser of:~~  
278 ~~—— (A) the amount of attorneys' fees actually incurred; or~~  
279 ~~—— (B) the sum of:~~  
280 ~~—— (I) 33% of the first \$5,000 of qualified services; and~~  
281 ~~—— (II) 15% of the amount of qualified services in excess of \$5,000.~~  
282 ~~—— (ii) If the judgment does not state a sum for attorneys' fees, no attorneys' fees will be~~  
283 ~~paid by the director.~~  
284 ~~—— (4) (a) Payments made from the fund may not exceed \$75,000 per construction project~~  
285 ~~to qualified beneficiaries and laborers who have claim against the fund for that construction~~  
286 ~~project.~~  
287 ~~—— (b) If claims against the fund for a construction project exceed \$75,000, the \$75,000~~  
288 ~~shall be awarded proportionately so that each qualified beneficiary and laborer awarded~~  
289 ~~compensation from the fund for qualified services shall receive an identical percentage of the~~  
290 ~~qualified beneficiary's or laborer's award.~~  
291 ~~—— (5) Subject to the limitations of Subsection (4), if on the day the order is issued there~~  
292 ~~are inadequate funds to pay the entire claim and the director determines that the claimant has~~  
293 ~~otherwise met the requirements of Subsection (1) or (2), the director shall order additional~~  
294 ~~payments once the fund meets the balance limitations of Section 38-11-206. }~~