

1 **RESIDENCE LIEN RESTRICTION AND LIEN**
2 **RECOVERY FUND AMENDMENTS**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: David L. Thomas**

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions relating to legislative review and approval of special
10 assessments for the Residence Lien Restriction and Lien Recovery Fund.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ eliminates the requirement that the Division of Occupational and Professional
14 Licensing obtain legislative approval for special assessments made for the benefit of
15 the Residence Lien Restriction and Lien Recovery Fund; and
16 ▶ requires the division to report any special assessments made as part of their budget
17 submission to the governor and the Legislature.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **38-11-201**, as last amended by Chapter 256, Laws of Utah 2002

25 **38-11-206**, as last amended by Chapters 28 and 172, Laws of Utah 1995

26 **38-11-301**, as last amended by Chapter 198, Laws of Utah 2001

27 **63-38-3.2**, as last amended by Chapter 16, Laws of Utah 2003



28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58

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

Section 1. Section **38-11-201** is amended to read:

38-11-201. Residence Lien Recovery Fund.

(1) There is created a restricted special revenue fund called the "Residence Lien Recovery Fund."

(2) (a) The fund consists of all amounts collected by the division in accordance with Section 38-11-202.

(b) (i) The division shall deposit the funds in an account with the state treasurer.

(ii) The division shall record the funds in the Residence Lien Recovery Fund.

(c) The fund shall earn interest.

(3) The division shall employ personnel and resources necessary to administer the fund and shall use fund monies in accordance with Sections 38-11-203 and 38-11-204 and to pay the costs charged to the fund by the attorney general.

(4) Costs incurred by the division for administering the fund shall be paid out of fund monies.

(5) The Division of Finance shall report annually to the Legislature, the division, and the board. The report shall state:

- (a) amounts received by the fund;
- (b) disbursements from the fund;
- (c) interest earned and credited to the fund; and
- (d) the fund balance.

~~[(6) (a) For purposes of establishing and assessing regulatory fees under Subsection 63-38-3.2(5), the provisions of this chapter are considered a new program for fiscal year 1995-96.]~~

~~[(b) The department shall submit its fee schedule to the Legislature for its approval at the 1996 Annual General Session.]~~

Section 2. Section **38-11-206** is amended to read:

38-11-206. Limitations on fund balance -- Payment of special assessments.

(1) (a) If on December 31 of any year the balance in the fund is less than \$1,500,000, the division shall make a special assessment against all qualified beneficiaries in an amount

59 that will restore the unencumbered fund balance to not less than \$2,000,000 or more than
60 \$2,500,000.

61 (b) The amount of the special assessment shall be determined by the division [~~under~~
62 ~~Subsection 63-38-3.2(5)~~] after consultation with the board.

63 (2) Special assessments made under this section shall be due and payable on May 1
64 following assessment.

65 (3) The fund balance limitations set forth in Subsection (1)(a) shall be used by the
66 division only for the purpose of determining the amount of any special assessment and do not
67 prohibit the fund balance from exceeding \$2,500,000 or falling below \$2,000,000.

68 (4) The division shall report the amount of any special assessment imposed under this
69 section to the ~~H~~ → [governor and the Legislature as part of its budget request] Revenue and
69a Taxation Interim Committee within 30 calendar days of the date that the assessment is
69b imposed ←H .

70 Section 3. Section **38-11-301** is amended to read:

71 **38-11-301. Registration as a qualified beneficiary -- Initial regular assessment --**
72 **Affidavit.**

73 (1) A person licensed as of July 1, 1995, as a contractor under the provisions of Title
74 58, Chapter 55, Utah Construction Trades Licensing Act, in license classifications that
75 regularly engage in providing qualified services shall be automatically registered as a qualified
76 beneficiary upon payment of the initial assessment.

77 (2) A person applying for licensure as a contractor after July 1, 1995, in license
78 classifications that regularly engage in providing qualified services shall be automatically
79 registered as a qualified beneficiary upon issuance of a license and payment of the initial
80 assessment.

81 (3) (a) After July 1, 1995, any person providing qualified services as other than a
82 contractor as provided in Subsection (1) or any person exempt from licensure under the
83 provisions of Title 58, Chapter 55, Utah Construction Trades Licensing Act, may register as a
84 qualified beneficiary by:

- 85 (i) submitting an application in a form prescribed by the division;
- 86 (ii) demonstrating registration with the Division of Corporations and Commercial Code
87 as required by state law;
- 88 (iii) paying a registration fee determined by the division under Section 63-38-3.2; and
- 89 (iv) paying the initial assessment established under Subsection (4), and any special

90 assessment determined by the division under Subsection 38-11-206(1).

91 (b) A person who does not register under Subsection (1), (2), or (3)(a) shall be
92 prohibited from recovering under the fund as a qualified beneficiary for work performed as
93 qualified services while not registered with the fund.

94 (4) (a) An applicant shall pay an initial assessment determined by the division [~~under~~
95 ~~Section 63-38-3.2~~].

96 (b) The initial assessment to qualified registrants under Subsection (1) shall be made
97 not later than July 15, 1995, and shall be paid no later than November 1, 1995.

98 (c) The initial assessment to qualified registrants under Subsections (2) and (3) shall be
99 paid at the time of application for license or registration, however, beginning on May 1, 1996,
100 only one initial assessment or special assessments thereafter shall be required for persons
101 having multiple licenses under this section.

102 (5) A person shall be considered to have been registered as a qualified beneficiary on
103 January 1, 1995, for purposes of meeting the requirements of Subsection 38-11-204(1)(c)(ii) if
104 the person:

105 (a) (i) is licensed on or before July 1, 1995, as a contractor under the provisions of Title
106 58, Chapter 55, Utah Construction Trades Licensing Act, in license classifications that
107 regularly engage in providing qualified services; or

108 (ii) provides qualified services after July 1, 1995, as other than a contractor as provided
109 in Subsection (5)(a)(i) or is exempt from licensure under the provisions of Title 58, Chapter 55,
110 Utah Construction Trades Licensing Act; and

111 (b) registers as a qualified beneficiary under Subsection (1) or (3) on or before
112 November 1, 1995.

113 Section 4. Section ~~63-38-3.2~~ is amended to read:

114 **63-38-3.2. Fees -- Adoption, procedure, and approval -- Establishing and**
115 **assessing fees without legislative approval.**

116 (1) As used in this section:

117 (a) (i) "Agency" means each department, commission, board, council, agency,
118 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
119 unit, bureau, panel, or other administrative unit of the state.

120 (ii) "Agency" does not mean the Legislature or its committees.

121 (b) "Fee agency" means any agency that is authorized to establish regulatory fees.

122 (c) "Fee schedule" means the complete list of regulatory fees charged by a fee agency
123 and the amount of those fees.

124 (d) (i) "Regulatory fees" means fees established for licensure, registration, or
125 certification.

126 (ii) "Regulatory fees" does not mean special assessments imposed by the Division of
127 Occupational and Professional Licensing against qualified beneficiaries under the Residence
128 Lien Restriction and Lien Recovery Fund Act as provided in Subsection 38-11-206(1).

129 (2) Each fee agency shall:

130 (a) adopt a schedule of fees assessed for services provided by the fee agency that are:

131 (i) reasonable, fair, and reflect the cost of services provided; and

132 (ii) established according to a cost formula determined by the director of the
133 Governor's Office of Planning and Budget and the director of the Division of Finance in
134 conjunction with the agency seeking to establish the regulatory fee;

135 (b) conduct a public hearing on any proposed regulatory fee and increase or decrease
136 the proposed regulatory fee based upon the results of the public hearing;

137 (c) except as provided in Subsection (6), submit the fee schedule to the Legislature as
138 part of the agency's annual appropriations request;

139 (d) where necessary, modify the fee schedule to implement the Legislature's actions;
140 and

141 (e) deposit all regulatory fees collected under the fee schedule into the General Fund.

142 (3) A fee agency may not:

143 (a) set regulatory fees by rule; or

144 (b) charge or collect any regulatory fee without approval by the Legislature unless the
145 fee agency has complied with the procedures and requirements of Subsection (5).

146 (4) The Legislature may approve, increase or decrease and approve, or reject any
147 regulatory fee submitted to it by a fee agency.

148 (5) (a) After the public hearing required by this section, a fee agency may establish and
149 assess regulatory fees without legislative approval if:

150 (i) the Legislature creates a new program that is to be funded by regulatory fees to be
151 set by the Legislature; and

152 (ii) the new program's effective date is before the Legislature's next annual general
153 session[~~;~~or].

154 [~~(iii) the Division of Occupational and Professional licensing makes a special~~
155 ~~assessment against qualified beneficiaries under the Residence Lien Restriction and Lien~~
156 ~~Recovery Fund Act as provided in Subsection 38-11-206(1).]~~

157 (b) Each fee agency shall submit its fee schedule [~~or special assessment amount~~] to the
158 Legislature for its approval at a special session, if allowed in the governor's call, or at the next
159 annual general session of the Legislature, whichever is sooner.

160 (c) Unless the fee schedule is approved by the Legislature, the fee agency may not
161 collect a regulatory fee set according to this subsection after the adjournment of the annual
162 general session following the session that established the new program.

163 (6) (a) Each fee agency that wishes to increase any regulatory fee by 5% or more shall
164 obtain legislative approval for the fee increase as provided in this subsection before assessing
165 the new regulatory fee.

166 (b) Each fee agency that wishes to increase any regulatory fee by 5% or more shall
167 submit to the governor as part of the agency's annual appropriation request a list that identifies:

168 (i) the title or purpose of the regulatory fee;

169 (ii) the present amount of the regulatory fee;

170 (iii) the proposed new amount of the regulatory fee;

171 (iv) the percent that the regulatory fee will have increased if the Legislature approves
172 the higher fee; and

173 (v) the reason for the increase in the regulatory fee.

174 (c) (i) The governor may review and approve, modify and approve, or reject the
175 regulatory fee increases.

176 (ii) The governor shall transmit the list required by Subsection (6)(b), with any
177 modifications, to the Legislative Fiscal Analyst with the governor's budget recommendations.

178 (d) Bills approving any regulatory fee increases of 5% or more shall be filed before the
179 beginning of the Legislature's annual general session, if possible.

Legislative Review Note

as of 11-27-04 2:28 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0087

Residence Lien Restriction and Lien Recovery Fund Amendments *12-Jan-05*
2:44 PM

State Impact

No fiscal impact

Individual and Business Impact

No fiscal impact

Office of the Legislative Fiscal Analyst