

**CONSTRUCTION TRADE RELATED  
AMENDMENTS**

2005 GENERAL SESSION  
STATE OF UTAH

**Sponsor: Scott K. Jenkins**

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**LONG TITLE**

**General Description:**

This bill amends provisions related to the construction trade and delays the effective date of Chapter 250, Laws of Utah 2004.

**Highlighted Provisions:**

This bill:

- ▶ exempts from the preliminary notice requirement that is a prerequisite to filing a mechanics' lien a person contracting directly with the payment bond principal;
- ▶ provides that there is no final completion of a project if work remains undone for which the owner holds payment to ensure completion of the work;
- ▶ addresses the provision of notice to lien claimants when an owner seeks a certificate of compliance;
- ▶ exempts from the preliminary notice prerequisite to lien filing, and from other provisions, a person with privity of contract with the original contractor;
- ▶ provides that failure to file a notice of commencement for a construction project negates the operation of Sections 38-1-32 and 38-1-33;
- ▶ provides that failure by an original contractor to conspicuously post a building permit on property to be improved within 15 days of the day on which the original contractor obtains the building permit negates the operation of Sections 38-1-32 and 38-1-33;
- ▶ provides dates for implementation of Sections 38-1-27 and 38-1-30 through



- 28 38-1-36;
- 29       ▶ allows as a reimbursable cost the claim application fee required under the Residence
- 30 Lien Recovery Fund;
- 31       ▶ changes the amount of attorney fees allowable under the Residence Lien Recovery
- 32 Fund;
- 33       ▶ eliminates the requirement that a qualified beneficiary under the Residence Lien
- 34 Recovery Fund establish that the qualified beneficiary provided qualified service to
- 35 a contractor who is licensed or exempt from licensing;
- 36       ▶ eliminates the requirement under the Residence Lien Recovery Fund that a qualified
- 37 beneficiary file a notice of commencement of action;
- 38       ▶ establishes as unlawful conduct under Title 58, Chapter 55, Utah Construction
- 39 Trades Licensing Act, an original contractor's failure to conspicuously post a copy
- 40 of a building permit at the project site for which it is issued within 15 days of the
- 41 day on which it is issued; and
- 42       ▶ makes technical changes.

43 **Monies Appropriated in this Bill:**

44       None

45 **Other Special Clauses:**

46       This bill provides retrospective operation.

47 **Utah Code Sections Affected:**

48 AMENDS:

- 49       **13-8-4**, as enacted by Chapter 86, Laws of Utah 1997
- 50       **14-1-20 (Effective 05/01/05)**, as last amended by Chapters 30 and 250, Laws of Utah
- 51 2004
- 52       **14-2-5 (Effective 05/01/05)**, as last amended by Chapters 30 and 250, Laws of Utah
- 53 2004
- 54       **38-1-7 (Superseded 05/01/05)**, as last amended by Chapter 85, Laws of Utah 2004
- 55       **38-1-7 (Effective 05/01/05)**, as last amended by Chapters 85 and 250, Laws of Utah
- 56 2004
- 57       **38-1-11**, as last amended by Chapters 42, 85 and 188, Laws of Utah 2004
- 58       **38-1-27 (Superseded 05/01/05)**, as last amended by Chapter 85, Laws of Utah 2004

- 59           **38-1-27 (Effective 05/01/05)**, as repealed and reenacted by Chapter 250, Laws of Utah
- 60 2004
- 61           **38-1-31 (Effective 05/01/05)**, as enacted by Chapter 250, Laws of Utah 2004
- 62           **38-1-37 (Effective 05/01/05)**, as enacted by Chapter 250, Laws of Utah 2004
- 63           **38-11-203**, as last amended by Chapter 42, Laws of Utah 2004
- 64           **38-11-204**, as last amended by Chapter 42, Laws of Utah 2004
- 65           **58-55-501 (Effective 07/01/05)**, as last amended by Chapter 45, Laws of Utah 2004

66 REPEALS:

- 67           **38-1-38**, as enacted by Chapter 188, Laws of Utah 2004



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

70           Section 1. Section **13-8-4** is amended to read:

71           **13-8-4. Obligation to pay under construction contracts -- Rights of parties under**  
 72 **contingent payment provisions.**

73           (1) For purposes of this section:

74           (a) "Construction contract" means a contract or agreement to provide services, labor,  
 75 equipment, or materials for the design, construction, installation, or repair of an improvement  
 76 to real property located in Utah.

77           (b) "Contingent payment contract" means a construction contract between a contractor  
 78 and a subcontractor that makes a payment from the contractor to the subcontractor contingent  
 79 on the contractor receiving a corresponding payment from any other public or private party,  
 80 including a private owner.

81           (c) "Contractor" means a person who is or may be awarded a contract for the  
 82 construction, alteration, or repair of any building, structure, or improvement to real property.

83           (d) "Subcontractor" means any person engaged by a contractor to provide services,  
 84 labor, equipment, or materials for the design, construction, installation, or repair of an  
 85 improvement to real property and includes a trade contractor or specialty contractor.

86           (2) A party to a construction contract shall make all scheduled payments under the  
87 terms of the construction contract.

88           (3) (a) The existence of a contingent payment contract is not a defense to a claim to  
89 enforce a mechanics' lien filed under Title 38, Chapter 1, Mechanics' Liens.

90 (b) This Subsection (3) does not apply to [~~contracts~~] a contract for private construction  
91 work for the building, improvement, repair, or remodeling of residential property consisting of  
92 four units or less.

93 (4) If a construction contract is a contingent payment contract:

94 (a) the subcontractor may request from the contractor the financial information that the  
95 contractor has received from the public or private party regarding:

96 (i) the project financing; and

97 (ii) the public or private party; and

98 (b) if information is requested by the subcontractor under Subsection (4)(a), the  
99 contractor shall provide the information prior to the subcontractor signing the construction  
100 contract between the contractor and the subcontractor.

101 (5) This section applies to a contract executed on or after May 5, 1997.

102 Section 2. Section **14-1-20 (Effective 05/01/05)** is amended to read:

103 **14-1-20 (Effective 05/01/05). Preliminary notice requirement.**

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

107 (a) to a person performing labor for wages; [~~or~~]

108 (b) to a person who contracts directly with the payment bond principal; or

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

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

113 (3) The preliminary notice required by Subsection (1) must be provided prior to  
114 commencement of any action on the payment bond.

115 Section 3. Section **14-2-5 (Effective 05/01/05)** is amended to read:

116 **14-2-5 (Effective 05/01/05). Preliminary notice requirement.**

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

120 (a) to a person performing labor for wages; [~~or~~]

121 (b) to a person who contracts directly with the payment bond principal; or  
 122 [~~(b)~~] (c) if a notice of commencement is not filed as prescribed in Section 38-1-31 for  
 123 the project or improvement for which labor, service, equipment, or material is furnished.

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

126 (3) The preliminary notice required by Subsection (1) must be provided prior to  
 127 commencement of any action on the payment bond.

128 Section 4. Section **38-1-7 (Superseded 05/01/05)** is amended to read:

129 **38-1-7 (Superseded 05/01/05). Notice of claim -- Contents -- Recording -- Service**  
 130 **on owner of property.**

131 (1) (a) A person claiming benefits under this chapter shall file for record with the  
 132 county recorder of the county in which the property, or some part of the property, is situated, a  
 133 written notice to hold and claim a lien within 90 days from the date of final completion of the  
 134 original contract under which the claimant claims a lien under this chapter.

135 (b) For purposes of this Subsection (1) and except as provided in Subsection (1)(e),  
 136 final completion of the original contract means:

137 (i) if as a result of work performed under the original contract a permanent certificate  
 138 of occupancy is required for such work, the date of issuance of a permanent certificate of  
 139 occupancy by the local government entity having jurisdiction over the construction project;

140 (ii) if no certificate of occupancy is required by the local government entity having  
 141 jurisdiction over the construction project, but as a result of the work performed under the  
 142 original contract an inspection is required for such work, the date of the final inspection for  
 143 such work by the local government entity having jurisdiction over the construction project; or

144 (iii) if with regard to work performed under the original contract no certificate of  
 145 occupancy and no final inspection are required by the local government entity having  
 146 jurisdiction over the construction project, the date on which there remains no substantial work  
 147 to be completed to finish such work on the original contract.

148 [~~(b)~~] (c) Notwithstanding Section 38-1-2, where a subcontractor performs substantial  
 149 work after the applicable dates established by Subsections (1)[~~(a)~~](b)(i) and (ii), that  
 150 subcontractor's subcontract shall be considered an original contract for the sole purpose of  
 151 determining:

152 (i) the subcontractor's time frame to file a notice of intent to hold and claim a lien  
153 under this Subsection (1); and

154 (ii) the original contractor's time frame to file a notice of intent to hold and claim a lien  
155 under this Subsection (1) for that subcontractor's work.

156 [~~(c)~~] (d) For purposes of this section, the term "substantial work" does not include:

157 (i) repair work; or

158 (ii) warranty work[~~; or~~].

159 [~~(iii) work for which the project owner is not holding payment to ensure completion of~~  
160 ~~that work.~~]

161 (e) Notwithstanding Subsection (1)(b)(iii), final completion of the original contract  
162 does not occur if work remains to be completed for which the owner is holding payment to  
163 ensure completion of that work.

164 (2) (a) The notice required by Subsection (1) shall contain a statement setting forth:

165 (i) the name of the reputed owner if known or, if not known, the name of the record  
166 owner;

167 (ii) the name of the person:

168 (A) by whom the lien claimant was employed; or

169 (B) to whom the lien claimant furnished the equipment or material;

170 (iii) the time when:

171 (A) the first and last labor or service was performed; or

172 (B) the first and last equipment or material was furnished;

173 (iv) a description of the property, sufficient for identification;

174 (v) the name, current address, and current phone number of the lien claimant;

175 (vi) the amount of the lien claim;

176 (vii) the signature of the lien claimant or the lien claimant's authorized agent;

177 (viii) an acknowledgment or certificate as required under Title 57, Chapter 3,

178 Recording of Documents; and

179 (ix) if the lien is on an owner-occupied residence, as defined in Section 38-11-102, a  
180 statement describing what steps an owner, as defined in Section 38-11-102, may take to require  
181 a lien claimant to remove the lien in accordance with Section 38-11-107.

182 (b) Substantial compliance with the requirements of this Subsection (2) is sufficient to

183 hold and claim a lien.

184 (3) (a) Within 30 days after filing the notice of lien, the lien claimant shall deliver or  
185 mail by certified mail a copy of the notice of lien to:

186 (i) the reputed owner of the real property; or

187 (ii) the record owner of the real property.

188 (b) If the record owner's current address is not readily available to the lien claimant, the  
189 copy of the claim may be mailed to the last-known address of the record owner, using the  
190 names and addresses appearing on the last completed real property assessment rolls of the  
191 county where the affected property is located.

192 (c) Failure to deliver or mail the notice of lien to the reputed owner or record owner  
193 precludes the lien claimant from an award of costs and attorneys' fees against the reputed  
194 owner or record owner in an action to enforce the lien.

195 (4) The Division of Occupational and Professional Licensing shall make rules  
196 governing the form of the statement required under Subsection (2)(a)(ix).

197 Section 5. Section **38-1-7 (Effective 05/01/05)** is amended to read:

198 **38-1-7 (Effective 05/01/05). Notice of claim -- Contents -- Recording -- Service on**  
199 **owner of property.**

200 (1) (a) Except as modified in Section 38-1-27, a person claiming benefits under this  
201 chapter shall file for record with the county recorder of the county in which the property, or  
202 some part of the property, is situated, a written notice to hold and claim a lien within 90 days  
203 from the date of final completion of the original contract under which the claimant claims a  
204 lien under this chapter.

205 (b) For purposes of this Subsection (1) and except as provided in Subsection (1)(e),  
206 final completion of the original contract means:

207 (i) if as a result of work performed under the original contract a permanent certificate  
208 of occupancy is required for such work, the date of issuance of a permanent certificate of  
209 occupancy by the local government entity having jurisdiction over the construction project;

210 (ii) if no certificate of occupancy is required by the local government entity having  
211 jurisdiction over the construction project, but as a result of the work performed under the  
212 original contract an inspection is required for such work, the date of the final inspection for  
213 such work by the local government entity having jurisdiction over the construction project; or

214 (iii) if with regard to work performed under the original contract no certificate of  
215 occupancy and no final inspection are required by the local government entity having  
216 jurisdiction over the construction project, the date on which there remains no substantial work  
217 to be completed to finish such work on the original contract.

218 ~~[(b)]~~ (c) Notwithstanding Section 38-1-2, where a subcontractor performs substantial  
219 work after the applicable dates established by Subsections (1)~~[(a)]~~(b)(i) and (ii), that  
220 subcontractor's subcontract shall be considered an original contract for the sole purpose of  
221 determining:

222 (i) the subcontractor's time frame to file a notice of intent to hold and claim a lien  
223 under this Subsection (1); and

224 (ii) the original contractor's time frame to file a notice of intent to hold and claim a lien  
225 under this Subsection (1) for that subcontractor's work.

226 ~~[(c)]~~ (d) For purposes of this section, the term "substantial work" does not include:

227 (i) repair work; or

228 (ii) warranty work~~[-or]~~.

229 ~~[(iii) work for which the project owner is not holding payment to ensure completion of  
230 that work.]~~

231 (e) Notwithstanding Subsection (1)(b)(iii), final completion of the original contract  
232 does not occur if work remains to be completed for which the owner is holding payment to  
233 ensure completion of that work.

234 (2) (a) The notice required by Subsection (1) shall contain a statement setting forth:

235 (i) the name of the reputed owner if known or, if not known, the name of the record  
236 owner;

237 (ii) the name of the person:

238 (A) by whom the lien claimant was employed; or

239 (B) to whom the lien claimant furnished the equipment or material;

240 (iii) the time when:

241 (A) the first and last labor or service was performed; or

242 (B) the first and last equipment or material was furnished;

243 (iv) a description of the property, sufficient for identification;

244 (v) the name, current address, and current phone number of the lien claimant;



- 245 (vi) the amount of the lien claim;
- 246 (vii) the signature of the lien claimant or the lien claimant's authorized agent;
- 247 (viii) an acknowledgment or certificate as required under Title 57, Chapter 3,
- 248 Recording of Documents; and
- 249 (ix) if the lien is on an owner-occupied residence, as defined in Section 38-11-102, a
- 250 statement describing what steps an owner, as defined in Section 38-11-102, may take to require
- 251 a lien claimant to remove the lien in accordance with Section 38-11-107.
- 252 (b) Substantial compliance with the requirements of this Subsection (2) is sufficient to
- 253 hold and claim a lien.
- 254 (3) (a) Within 30 days after filing the notice of lien, the lien claimant shall deliver or
- 255 mail by certified mail a copy of the notice of lien to:
- 256 (i) the reputed owner of the real property; or
- 257 (ii) the record owner of the real property.
- 258 (b) If the record owner's current address is not readily available to the lien claimant, the
- 259 copy of the claim may be mailed to the last-known address of the record owner, using the
- 260 names and addresses appearing on the last completed real property assessment rolls of the
- 261 county where the affected property is located.
- 262 (c) Failure to deliver or mail the notice of lien to the reputed owner or record owner
- 263 precludes the lien claimant from an award of costs and attorneys' fees against the reputed
- 264 owner or record owner in an action to enforce the lien.
- 265 (4) The Division of Occupational and Professional Licensing shall make rules
- 266 governing the form of the statement required under Subsection (2)(a)(ix).
- 267 Section 6. Section **38-1-11** is amended to read:
- 268 **38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected --**
- 269 **Instructions and form affidavit and motion.**
- 270 (1) A lien claimant shall file an action to enforce the lien filed under this chapter within
- 271 180 days from the day on which the lien claimant filed a notice of claim under Section 38-1-7.
- 272 (2) (a) Within the time period provided for filing in Subsection (1) the lien claimant
- 273 shall file for record with the county recorder of each county in which the lien is recorded a
- 274 notice of the pendency of the action, in the manner provided in actions affecting the title or
- 275 right to possession of real property, or the lien shall be void, except as to persons:

276 (i) who have been made parties to the action; and [persons]

277 (ii) having actual knowledge of the commencement of the action.

278 (b) The burden of proof shall be upon the lien claimant and those claiming under the  
279 lien claimant to show actual knowledge.

280 (3) This section may not be interpreted to impair or affect the right of any person to  
281 whom a debt may be due for any work done or materials furnished to maintain a personal  
282 action to recover the same.

283 (4) (a) If a lien claimant files an action to enforce a lien filed under this chapter  
284 involving a residence, as defined in Section 38-11-102, the lien claimant shall include with the  
285 service of the complaint on the owner of the residence:

286 (i) instructions to the owner of the residence relating to the owner's rights under [~~Title~~  
287 ~~38;~~] Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

288 (ii) a form affidavit to enable the owner of the residence to specify the grounds upon  
289 which the owner may exercise available rights under [~~Title 38;~~] Chapter 11, Residence Lien  
290 Restriction and Lien Recovery Fund Act.

291 (b) The instructions and form affidavit required by Subsection (4)(a) shall meet the  
292 requirements established by rule by the Division of Occupational and Professional Licensing in  
293 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

294 (c) If a lien claimant fails to provide to the owner of the residence the instructions and  
295 form affidavit required by Subsection (4)(a), the lien claimant shall be barred from maintaining  
296 or enforcing the lien upon the residence.

297 (d) Judicial determination of the rights and liabilities of the owner of the residence  
298 under [~~Title 38;~~] Chapters 1, Mechanics' Lien, and 11, Residence Lien Restriction and Lien  
299 Recovery Act, and Title 14, Chapter 2, Private Contracts shall be stayed until after the owner  
300 has been given a reasonable period of time to establish compliance with Subsections  
301 38-11-204(4)(a) and (4)(b) through an informal proceeding, as set forth in Title 63, Chapter  
302 46b, Administrative Procedures Act[;]:

303 (i) that is commenced within 30 days of the owner being served summons in the  
304 foreclosure action[;];

305 (ii) that is held at the Division of Occupational and Professional Licensing; and  
306 [obtain]

307 (iii) at which the owner obtains a certificate of compliance or denial of certificate of  
308 compliance, as defined in Section 38-11-102.

309 (e) An owner applying for a certificate of compliance under Subsection (4)(d) shall  
310 send by certified mail to all lien claimants:

311 (i) a copy of the application for a certificate of compliance; and

312 (ii) all materials filed in connection with the application.

313 (f) The Division of Occupational and Professional Licensing shall notify all lien  
314 claimants listed in an owner's application for a certificate of compliance under Subsection  
315 (4)(d) of the issuance or denial of a certificate of compliance.

316 (5) The written notice requirement applies to liens filed on or after July 1, 2004.

317 Section 7. Section **38-1-27 (Superseded 05/01/05)** is amended to read:

318 **38-1-27 (Superseded 05/01/05). Preliminary notice to original contractor -- Form**  
319 **and contents -- Service -- Notice of commencement of project or improvement.**

320 (1) (a) This section relating to preliminary notices does not apply to residential  
321 construction or to work performed in the development of subdivisions whose end use is for  
322 residential construction.

323 (b) (i) For the purposes of this section, residential construction means:

324 (A) single family detached housing; and

325 (B) multifamily attached housing up to and including fourplexes.

326 (ii) Residential construction includes rental housing.

327 (2) (a) Any person claiming, reserving the right to claim, or intending to claim a  
328 mechanic's lien under this chapter for labor, service, equipment, or material shall provide  
329 preliminary notice to the original contractor as prescribed by this section except this Subsection  
330 (2) does not apply to:

331 (i) a person who is in privity of contract with an original contractor; or

332 (ii) a person performing labor for wages.

333 (b) ~~[Any]~~ Except as provided in Subsection (2)(c), a person who fails to provide the  
334 preliminary notice required by this Subsection (2) has no right to claim a mechanic's lien under  
335 this chapter.

336 (c) If a person has privity of contract with the original contractor, the failure of that  
337 person to send a preliminary notice does not effect that person's right to:

- 338            (i) claim a mechanic's lien under this chapter; or
- 339            (ii) make a claim under:
- 340            (A) Title 14, Chapter 1, Public Contracts;
- 341            (B) Title 14, Chapter 2, Private Contracts; or
- 342            (C) Section 63-56-38.1.
- 343            (3) The preliminary notice required by this section:
- 344            (a) shall be in writing; and
- 345            (b) may be given at any time during the course of the project or improvement.
- 346            (4) A person required by this section to give preliminary notice is only required to give
- 347 one notice for each project or improvement, which may include an entire structure or a scheme
- 348 of improvements.
- 349            (5) If the labor, service, equipment, or material is furnished pursuant to contracts with
- 350 more than one subcontractor or with more than one original contractor, the notice requirements
- 351 must be met with respect to the labor, service, equipment, or materials furnished to each such
- 352 subcontractor or original contractor.
- 353            (6) (a) The person required by this section to give preliminary notice is precluded from
- 354 making a claim for any labor, service, equipment, or material [~~which~~] that was provided more
- 355 than 45 days prior to the date the preliminary notice is given.
- 356            (b) The preliminary notice must be given before a notice of lien is filed with the county
- 357 recorder pursuant to Section 38-1-7.
- 358            (7) The preliminary notice under this section shall include:
- 359            (a) the name, address, and telephone number of the person furnishing the labor,
- 360 service, equipment, or material;
- 361            (b) the name and address of the person who contracted for the furnishing of the labor,
- 362 service, equipment, or material; and
- 363            (c) the address of the project or improvement or a drawing sufficient to describe the
- 364 location of the project or improvement.
- 365            (8) (a) Service of a preliminary notice is sufficient if the notice is deposited in the
- 366 United States mail, certified or registered, return receipt requested, postage prepaid. Service of
- 367 the preliminary notice by mail is complete upon deposit of the certified or registered mail.
- 368            (b) A preliminary notice served by mail may be addressed to:

369 (i) the original contractor at the original contractor's place of business[=]; or  
 370 (ii) the original contractor's address as shown on the notice of commencement on  
 371 record with the county recorder as required by Subsection (9).

372 (9) (a) Any right to assert a defense of failure to comply with the preliminary notice  
 373 requirements of this section is void unless the original contractor records a notice of  
 374 commencement of the project or improvement with the county recorder for the county or  
 375 counties where the project is located within 30 days after commencement of the project.

376 (b) The notice of commencement described in Subsection (9)(a) shall include the  
 377 following:

- 378 (i) the name and address of the owner of the project or improvement;
- 379 (ii) the name and address of the original contractor;
- 380 (iii) (A) the name and address of the surety providing any payment bond for the project  
 381 or improvement; or
- 382 (B) if a surety does not exist, a statement that a payment bond was not required for the  
 383 work being performed;
- 384 (iv) the name and address of the project; and
- 385 (v) a legal description of the property on which the project is located.

386 Section 8. Section **38-1-27 (Effective 05/01/05)** is amended to read:

387 **38-1-27 (Effective 05/01/05). Construction notice registry database -- Form and**  
 388 **contents of notice of commencement, preliminary notice, and notice of completion.**

389 (1) As used in this section and Sections 38-1-30 through 38-1-37:

390 (a) "Database" means the Construction Notice Registry Database created in this  
 391 section.

392 (b) (i) "Designated agent" means the third party the Division of Occupational and  
 393 Professional Licensing contracts with to create and maintain the Construction Notice Registry  
 394 Database.

395 (ii) The designated agent is not an agency, instrumentality, or a political subdivision of  
 396 the state.

397 (c) "Division" means the Division of Occupational and Professional Licensing.

398 (d) "Program" means the Construction Notice Registry Database Program created in  
 399 this section.

400 (2) Subject to receiving adequate funding through a legislative appropriation and  
401 contracting with an approved third party vendor who meets the requirements of Sections  
402 38-1-30 through 38-1-37, there is created the Construction Notice Registry Database Program  
403 which shall:

404 (a) (i) assist in protecting public health, safety, and welfare; and

405 (ii) promote a fair working environment;

406 (b) be overseen by the division with the assistance of the designated agent;

407 (c) provide a central repository for notices of commencement, preliminary notices, and  
408 notices of completion filed in connection with all privately owned construction projects as well  
409 as all state and local government owned construction projects throughout Utah;

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

411 (i) notices of commencement[;];

412 (ii) preliminary notices[;]; and

413 (iii) notices of completion ~~[via the program Internet website];~~

414 (e) accommodate;

415 (i) electronic filing of ~~[such notices as well as provide for]~~ the notices described in  
416 Subsection (2)(d); and

417 (ii) alternate filing of the notices described in Subsection (2)(d) by U.S. mail, telefax,  
418 telephone, or any other alternate method as provided by rule made by the division in  
419 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

420 (f) (i) provide electronic notification for up to three e-mail addresses for each interested  
421 person or company who requests notice from the construction notice registry ~~[as well as]; and~~

422 (ii) provide alternate means of notification for those persons who make alternate  
423 filings, including U.S. mail, telefax, or any other method as prescribed by rule made by the  
424 division in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

425 (g) provide hard-copy printing of electronic receipts for individual filings evidencing  
426 the date and time of individual filings as well as the content of individual filings.

427 (3) ~~[Persons]~~ (a) A person interested in a construction project may request notice of  
428 filings related to the project.

429 (b) The database shall be indexed by;

430 (i) owner name[;];

431           (ii) original contractor name[;];  
 432           (iii) project name[;];  
 433           (iv) project address[;];  
 434           (v) parcel number[;];  
 435           (vi) project number[;]; and  
 436           (vii) any other identifier that the division considers reasonably appropriate and  
 437 established by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative  
 438 Rulemaking Act.

439           (4) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,  
 440 the division shall establish by rule the filing fees for:

441           (i) notices of commencement[;];  
 442           (ii) preliminary notices[;];  
 443           (iii) notices of completion[;]; and  
 444           (iv) requests for notice[, which].

445           (b) The fees established under this Subsection (4) may not exceed the amount  
 446 reasonably necessary to create and maintain the database.

447           ~~(b)~~ (c) The fees established by the division may vary by method of filing if one form  
 448 of filing is more costly than other forms of filing.

449           Section 9. Section **38-1-31 (Effective 05/01/05)** is amended to read:

450           **38-1-31 (Effective 05/01/05). Building permit -- Construction -- Notice registry --**  
 451 **Notice of commencement of work.**

452           (1) (a) For a construction project where a building permit is issued, within 15 days after  
 453 the issuance of the building permit[;];

454           (i) the local government entity issuing that building permit shall input the data and  
 455 transmit the building permit information to the database electronically [via];

456           (A) by way of the Internet or computer modem; or

457           (B) by any other means; and [~~such information~~]

458           (ii) the information transmitted to the database under this Subsection (1)(a) shall form  
 459 the basis of a notice of commencement.

460           (b) For a construction project where a building permit is not issued, within 15 days  
 461 after commencement of physical construction work at the project site, the original contractor

462 shall file a notice of commencement with the database.

463 (c) An owner of construction, a lender, surety, or other interested party may file a  
464 notice of commencement with the designated agent within the prescribed time set forth in  
465 Subsection (1)(a).

466 (d) (i) If duplicate notices of commencement are filed, they shall be combined into one  
467 notice for each project.

468 (ii) The designated agent shall assign each construction project a unique project  
469 number ~~[which]~~ that identifies each construction project and can be associated with all:

470 (A) notices of commencement[;];

471 (B) preliminary notices[;]; and

472 (C) notices of completion.

473 (e) (i) A notice of commencement is effective as to all work, materials, and equipment  
474 furnished to the construction project after the filing of the notice of commencement.

475 (ii) A notice of commencement is effective only as to the work, materials, or  
476 equipment furnished to the construction project that is provided subsequent to the filing of the  
477 notice of commencement.

478 (2) The content of a notice of commencement shall include the following if available  
479 on a building permit:

480 (a) the name and address of the owner of the project or improvement;

481 (b) the name and address of the:

482 (i) original contractor; and

483 (ii) surety providing any payment bond for the project or improvement, or if none  
484 exists, a statement that a payment bond was not required for the work being performed;

485 (c) (i) the project address if the project can be reasonably identified by an address; or

486 (ii) the name and general description of the location of the project if the project cannot  
487 be reasonably identified by an address;

488 (d) a general description of the project;

489 (e) the parcel number of the real property upon which the project is to be constructed if  
490 the project is subject to mechanics' liens; and

491 (f) a legal description of the property on which the project is located if the project is  
492 subject to mechanics' liens.



493 (3) ~~[Failure to file any]~~ If a notice of commencement for a construction project  
494 [suspends the operation of] is not filed within 15 days after issuance of a building permit, the  
495 following sections do not apply:

496 (a) ~~[the preliminary notice provisions of Section]~~ Subsection 38-1-32(1)(d); and

497 (b) ~~[the notice of completion provisions of]~~ Section 38-1-33.

498 (4) Electronic notice of the filing of a notice of commencement or alternate notice as  
499 prescribed in Subsection (1), shall be provided to:

500 (a) all persons who have filed notices of commencement for the project; and

501 (b) all interested parties who have requested such notice for the project.

502 (5) The burden is upon any person seeking to enforce the notice of commencement to  
503 prove that the notice of commencement is filed timely and meets all of the requirements in this  
504 section.

505 (6) At the time a building permit is obtained, each original contractor shall  
506 conspicuously post at the project site a copy of each building permit obtained for the project  
507 improvement.

508 Section 10. Section **38-1-37 (Effective 05/01/05)** is amended to read:

509 **38-1-37 (Effective 05/01/05). Application of Section 38-1-27 and Sections 38-1-30**  
510 **through 38-1-36.**

511 (1) Except as provided in Subsection (3), Section 38-1-27 and Sections 38-1-30  
512 through 38-1-36 in effect as of May 1, 2005 shall apply to construction projects [commenced]  
513 for which a notice of commencement is filed on or after May 1, 2005.

514 (2) A construction project ~~[commenced]~~ for which a notice of commencement is filed  
515 before May 1, 2005 is subject to the provisions of this chapter in effect prior to May 1, 2005.

516 (3) (a) Section 38-1-27 and Sections 38-1-30 through 38-1-36 in effect as of May 1,  
517 2005, shall apply to a construction project for which a notice of commencement is filed on or  
518 after November 1, 2005 involving a residence, as defined in Subsection 38-11-102(22).

519 (b) For a construction project for which a notice of commencement is filed before  
520 November 1, 2005 involving a residence, as defined in Subsection 38-11-102(22), the law in  
521 effect on April 30, 2005 shall govern.

522 Section 11. Section **38-11-203** is amended to read:

523 **38-11-203. Disbursements from the fund -- Limitations.**

524 (1) A payment of any claim upon the fund by a qualified beneficiary shall be made only  
525 upon an order issued by the director finding that:

526 (a) the claimant was a qualified beneficiary during the construction on a residence;

527 (b) the claimant complied with the requirements of Section 38-11-204; and

528 (c) there is adequate money in the fund to pay the amount ordered.

529 (2) A payment of a claim upon the fund by a laborer shall be made only upon an order  
530 issued by the director finding that:

531 (a) the laborer complied with the requirements of Subsection 38-11-204(7); and

532 (b) there is adequate money in the fund to pay the amount ordered.

533 (3) (a) An order under this section may be issued only after the division has complied  
534 with the procedures established by rule under Section 38-11-105.

535 (b) The director shall order payment of the qualified services as established by  
536 evidence, or if the claimant has obtained a judgment, then in the amount awarded for qualified  
537 services in the judgment to the extent the qualified services are attributable to the  
538 owner-occupied residence at issue in the claim.

539 (c) The director shall order payment of interest on amounts claimed for qualified  
540 services [~~based on the current prime interest rate at the time payment was due to the date the~~  
541 ~~claim is approved for payment except for delays attributable to the claimant but not more than~~  
542 ~~10% per annum].~~

543 [~~(d) The rate shall be the Prime Lending Rate as published in the Wall Street Journal~~  
544 ~~on the first business day of each calendar year adjusted annually.]~~

545 [~~(e) The~~

546 (d) (i) Subject to the other provisions of this Subsection (3)(d), the director shall order  
547 payment of costs in the amount stated in the judgment.

548 (ii) If the judgment does not state a sum certain for costs, or if no judgment has been  
549 obtained, the director shall order payment of reasonable costs as supported by evidence.

550 (iii) The claim application fee as established by the division pursuant to Subsection  
551 38-11-204(1)(b) is [~~not~~] a reimbursable cost.

552 [~~(f)~~] (e) (i) If a judgment has been obtained with attorneys' fees, notwithstanding the  
553 amount stated in a judgment, or if no judgment has been obtained but the contract provides for  
554 attorneys' fees, the director shall order payment of attorneys' fees [~~not to exceed 15% of~~

555 ~~qualified services.]~~ equal to the lesser of:

556 (A) the amount of attorneys' fees actually incurred; or

557 (B) the sum of:

558 (I) 33% of the first \$5,000 of qualified services; and

559 (II) 15% of the amount of qualified services in excess of \$5,000.

560 (ii) If the judgment does not state a sum for attorneys' fees, no attorneys' fees will be  
561 paid by the director.

562 (4) (a) Payments made from the fund may not exceed \$75,000 per construction project  
563 to qualified beneficiaries and laborers who have claim against the fund for that construction  
564 project.

565 (b) If claims against the fund for a construction project exceed \$75,000, the \$75,000  
566 shall be awarded proportionately so that each qualified beneficiary and laborer awarded  
567 compensation from the fund for qualified services shall receive an identical percentage of the  
568 qualified beneficiary's or laborer's award.

569 (5) Subject to the limitations of Subsection (4), if on the day the order is issued there  
570 are inadequate funds to pay the entire claim and the director determines that the claimant has  
571 otherwise met the requirements of Subsection (1) or (2), the director shall order additional  
572 payments once the fund meets the balance limitations of Section 38-11-206.

573 Section 12. Section **38-11-204** is amended to read:

574 **38-11-204. Claims against the fund -- Requirement to make a claim --**

575 **Qualifications to receive compensation -- Qualifications to receive a certificate of**  
576 **compliance.**

577 (1) To claim recovery from the fund a person shall:

578 (a) meet the requirements of either Subsection (4) or (7);

579 (b) pay an application fee determined by the division under Section 63-38-3.2; and

580 (c) file with the division a completed application on a form provided by the division  
581 accompanied by supporting documents establishing:

582 (i) that the person meets the requirements of either Subsection (4) or (7);

583 (ii) that the person was a qualified beneficiary or laborer during the construction on the  
584 owner-occupied residence; and

585 (iii) the basis for the claim.

586 (2) To recover from the fund, the application required by Subsection (1) shall be filed  
587 no later than one year:

588 (a) from the date the judgment required by Subsection (4)(d) is entered;

589 (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded  
590 from obtaining a judgment or from satisfying the requirements of Subsection (4)(d) because the  
591 nonpaying party filed bankruptcy within one year after the entry of judgment; or

592 (c) from the date the laborer, trying to recover from the fund, completed the laborer's  
593 qualified services.

594 (3) To obtain a certificate of compliance an owner or agent of the owner shall establish  
595 with the division that the owner meets the requirements of Subsections (4)(a) and (4)(b).

596 (4) To recover from the fund, regardless of whether the residence is occupied by the  
597 owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified  
598 beneficiary shall establish that:

599 (a) (i) the owner of the owner-occupied residence or the owner's agent entered into a  
600 written contract with an original contractor licensed or exempt from licensure under Title 58,  
601 Chapter 55, Utah Construction Trades Licensing Act:

602 (A) for the performance of qualified services;

603 (B) to obtain the performance of qualified services by others; or

604 (C) for the supervision of the performance by others of qualified services in  
605 construction on that residence;

606 (ii) the owner of the owner-occupied residence or the owner's agent entered into a  
607 written contract with a real estate developer for the purchase of an owner-occupied residence;

608 or

609 (iii) the owner of the owner-occupied residence or the owner's agent entered into a  
610 written contract with a factory built housing retailer for the purchase of an owner-occupied  
611 residence;

612 (b) the owner has paid in full the original contractor, licensed or exempt from licensure  
613 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or  
614 factory built housing retailer under Subsection (4)(a) with whom the owner has a written  
615 contract in accordance with the written contract and any amendments to the contract;

616 (c) (i) the original contractor, licensed or exempt from licensure under Title 58,

617 Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory  
618 built housing retailer subsequently failed to pay a qualified beneficiary who is entitled to  
619 payment under an agreement with that original contractor or real estate developer licensed or  
620 exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for  
621 services performed or materials supplied by the qualified beneficiary;

622 (ii) a subcontractor who contracts with the original contractor, licensed or exempt from  
623 licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate  
624 developer, or the factory built housing retailer failed to pay a qualified beneficiary who is  
625 entitled to payment under an agreement with that subcontractor or supplier; or

626 (iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a  
627 qualified beneficiary who is entitled to payment under an agreement with that subcontractor or  
628 supplier;

629 (d) (i) the qualified beneficiary filed~~[-(A)]~~ an action against the nonpaying party to  
630 recover monies owed to the qualified beneficiary within 180 days from the date the qualified  
631 beneficiary last provided qualified services, unless precluded from doing so by the nonpaying  
632 party's bankruptcy filing within the 180 days after completion of services; ~~[and]~~

633 ~~[(B) a notice of commencement of action with the division within 30 days from the~~  
634 ~~date the qualified beneficiary filed the civil action if a civil action was filed as required by~~  
635 ~~Subsection (4)(d)(i)(A);]~~

636 (ii) the qualified beneficiary has obtained a judgment against the nonpaying party who  
637 failed to pay the qualified beneficiary under an agreement to provide qualified services for  
638 construction of that owner-occupied residence;

639 (iii) (A) the qualified beneficiary has:

640 (I) obtained from a court of competent jurisdiction the issuance of an order requiring  
641 the judgment debtor, or if a corporation any officer of the corporation, to appear before the  
642 court at a specified time and place to answer concerning the debtor's or corporation's property;

643 (II) received return of service of the order from a person qualified to serve documents  
644 under the Utah Rules of Civil Procedure, Rule 4(b); and

645 (III) made reasonable efforts to obtain asset information from the supplemental  
646 proceedings; and

647 (B) if assets subject to execution are discovered as a result of the order required under

648 Subsection (4)(d)(iii)(A) or for any other reason, to obtain the issuance of a writ of execution  
649 from a court of competent jurisdiction; or

650 (iv) the qualified beneficiary timely filed a proof of claim where permitted in the  
651 bankruptcy action, if the nonpaying party has filed bankruptcy; and

652 (e) the qualified beneficiary is not entitled to reimbursement from any other person[;  
653 and].

654 [~~(f) the qualified beneficiary provided qualified services to a contractor, licensed or  
655 exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act.]~~

656 (5) The requirements of Subsections (4)(d)(i), (ii), and (iii) need not be met if the  
657 qualified beneficiary has been precluded from obtaining a judgment against the nonpaying  
658 party or from satisfying the requirements of Subsections (4)(d)(i), (ii), and (iii) because the  
659 nonpaying party filed bankruptcy.

660 [~~(6) If a qualified beneficiary fails to file the notice with the division required under  
661 Subsection (4)(d)(i)(B), the claim of the qualified beneficiary shall be paid:]~~

662 [~~(a) if otherwise qualified under this chapter;~~]

663 [~~(b) to the extent that the limit of Subsection 38-11-203(4)(a) has not been reached by  
664 payments from the fund to qualified beneficiaries who have complied with the notice  
665 requirements of Subsection (4)(d)(i)(B); and]~~

666 [~~(c) in the order that the claims are filed by persons who fail to comply with Subsection  
667 (4)(d)(i)(B), not to exceed the limit of Subsection 38-11-203(4)(a).]~~

668 [~~(7)~~] (6) To recover from the fund a laborer shall:

669 (a) establish that the laborer has not been paid wages due for the work performed at the  
670 site of a construction on an owner-occupied residence; and

671 (b) provide any supporting documents or information required by rule by the division.

672 [~~(8)~~] (7) A fee determined by the division under Section 63-38-3.2 shall be deducted  
673 from any recovery from the fund received by a laborer.

674 [~~(9)~~] (8) The requirements of Subsections (4)(a) and (4)(b) may be satisfied if an owner  
675 or agent of the owner establishes to the satisfaction of the director that the owner of the  
676 owner-occupied residence or the owner's agent entered into a written contract with an original  
677 contractor who:

678 (a) was a business entity that was not licensed under Title 58, Chapter 55, Utah

679 Construction Trades Licensing Act, but was solely or partly owned by an individual who was  
680 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act; or

681 (b) was a natural person who was not licensed under Title 58, Chapter 55, Utah  
682 Construction Trades Licensing Act, but who was the sole or partial owner and qualifier of a  
683 business entity that was licensed under Title 58, Chapter 55, Utah Construction Trades  
684 Licensing Act.

685 ~~[(10)]~~ (9) The director shall have equitable power to determine if the requirements of  
686 Subsections (4)(a) and (4)(b) have been met, but any decision by the director under Title 38,  
687 Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act, shall not alter or have  
688 any effect on any other decision by the division under Title 58, Occupations and Professions.

689 Section 13. Section **58-55-501 (Effective 07/01/05)** is amended to read:

690 **58-55-501 (Effective 07/01/05). Unlawful conduct.**

691 Unlawful conduct includes:

692 (1) engaging in a construction trade, acting as a contractor, an alarm business or  
693 company, or an alarm company agent, or representing oneself to be engaged in a construction  
694 trade or to be acting as a contractor in a construction trade requiring licensure, unless the  
695 person doing any of these is appropriately licensed or exempted from licensure under this  
696 chapter;

697 (2) acting in a construction trade, as an alarm business or company, or as an alarm  
698 company agent beyond the scope of the license held;

699 (3) hiring or employing in any manner an unlicensed person, other than an employee  
700 for wages who is not required to be licensed under this chapter, to engage in a construction  
701 trade for which licensure is required or to act as a contractor or subcontractor in a construction  
702 trade requiring licensure;

703 (4) applying for or obtaining a building permit either for oneself or another when not  
704 licensed or exempted from licensure as a contractor under this chapter;

705 (5) issuing a building permit to any person for whom there is no evidence of a current  
706 license or exemption from licensure as a contractor under this chapter;

707 (6) applying for or obtaining a building permit for the benefit of or on behalf of any  
708 other person who is required to be licensed under this chapter but who is not licensed or is  
709 otherwise not entitled to obtain or receive the benefit of the building permit;

- 710 (7) failing to obtain a building permit when required by law or rule;
- 711 (8) submitting a bid for any work for which a license is required under this chapter by a  
712 person not licensed or exempted from licensure as a contractor under this chapter;
- 713 (9) willfully or deliberately misrepresenting or omitting a material fact in connection  
714 with an application to obtain or renew a license under this chapter;
- 715 (10) allowing one's license to be used by another except as provided by statute or rule;
- 716 (11) doing business under a name other than the name appearing on the license, except  
717 as permitted by statute or rule;
- 718 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,  
719 journeyman plumber, residential journeyman plumber, journeyman electrician, master  
720 electrician, or residential electrician, failing to directly supervise an apprentice under one's  
721 supervision or exceeding the number of apprentices one is allowed to have under his  
722 supervision;
- 723 (13) if licensed as a contractor or representing oneself to be a contractor, receiving any  
724 funds in payment for a specific project from an owner or any other person, which funds are to  
725 pay for work performed or materials and services furnished for that specific project, and after  
726 receiving the funds to exercise unauthorized control over the funds by failing to pay the full  
727 amounts due and payable to persons who performed work or furnished materials or services  
728 within a reasonable period of time;
- 729 (14) employing as an alarm company an unlicensed individual as an alarm company  
730 agent, except as permitted under the exemption from licensure provisions under Section  
731 58-1-307;
- 732 (15) if licensed as an alarm company or alarm company agent, filing with the division  
733 fingerprint cards for an applicant which are not those of the applicant, or are in any other way  
734 false or fraudulent and intended to mislead the division in its consideration of the applicant for  
735 licensure;
- 736 (16) if licensed under this chapter, willfully or deliberately disregarding or violating:  
737 (a) the building or construction laws of this state or any political subdivision;  
738 (b) the safety and labor laws applicable to a project;  
739 (c) any provision of the health laws applicable to a project;  
740 (d) the workers' compensation insurance laws of the state applicable to a project;



741 (e) the laws governing withholdings for employee state and federal income taxes,  
742 unemployment taxes, FICA, or other required withholdings; or  
743 (f) reporting, notification, and filing laws of this state or the federal government;  
744 (17) aiding or abetting any person in evading the provisions of this chapter or rules  
745 established under the authority of the division to govern this chapter;  
746 (18) engaging in the construction trade or as a contractor for the construction of  
747 residences of up to two units when not currently registered or exempt from registration as a  
748 qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery  
749 Fund Act;  
750 (19) failing, as an original contractor, as defined in Section 38-11-102, to:  
751 (a) include in a written contract the notification required in Section 38-11-108; and  
752 (b) when a building permit is required, conspicuously post at a project site the building  
753 permit obtained for an improvement at the project site within 15 days of obtaining the permit;  
754 (20) wrongfully filing a mechanics' lien in violation of Section 38-1-25; or  
755 (21) if licensed as a contractor, not completing a three-hour core education class and an  
756 additional three hours of professional education approved by the division and the Construction  
757 Services Commission within each two-year renewal cycle, beginning with the two-year renewal  
758 cycle that starts July 1, 2005, and ends June 30, 2007 unless an exemption has been granted to  
759 the licensee by the Construction Services Commission, with the concurrence of the division,  
760 except that this Subsection (21) is repealed effective July 1, 2010 and its implementation is  
761 subject to the division receiving adequate funding for its implementation through a legislative  
762 appropriation.

763 **Section 14. Repealer.**

764 This bill repeals:

765 **Section 38-1-38, Lien notification.**

766 **Section 15. Retrospective operation.**

767 The amendments to Section 38-1-37 (Effective 05/01/05) have retrospective operation  
768 to May 1, 2005.

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**Legislative Review Note**

**as of 2-10-05 2:21 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**

**State Impact**

This bill would reduce revenues to the Residence Lien Recovery Fund by \$23,000 in refunded application processing fees for approved claims. It would also increase expenditures on attorney fees by \$139,700 and on interest by \$123,000. The Legislature does not appropriate these funds.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
Restricted Funds	\$0	\$0	(\$285,700)	(\$285,700)
<b>TOTAL</b>	<b>\$0</b>	<b>\$0</b>	<b>(\$285,700)</b>	<b>(\$285,700)</b>

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**Individual and Business Impact**

The bill would increase the amount of the average payout and accelerate future assessments.

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