

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. }~~