

Representative Michael T. Morley proposes the following substitute bill:

CONSTRUCTION AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses construction related lien provisions.

Highlighted Provisions:

This bill:

- ▶ clarifies the time limits for filing a lien notice;
- ▶ addresses the effect of a notice of commencement on earlier work;
- ▶ exempts wage laborers from filing a preliminary notice with the State Construction Registry;
- ▶ addresses rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

38-1-7, as last amended by Chapters 205 and 297, Laws of Utah 2006



- 26 **38-1-31**, as last amended by Chapter 297, Laws of Utah 2006
- 27 **38-1-32**, as last amended by Chapter 297, Laws of Utah 2006
- 28 **38-1-33**, as last amended by Chapter 297, Laws of Utah 2006
- 29 **38-11-204**, as last amended by Chapter 64, Laws of Utah 2005



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

32 Section 1. Section **38-1-7** is amended to read:

33 **38-1-7. Notice of claim -- Contents -- Recording -- Service on owner of property.**

34 (1) (a) (i) Except as modified in Section 38-1-27, a person claiming benefits under this
35 chapter shall file for record with the county recorder of the county in which the property, or
36 some part of the property, is situated, a written notice to hold and claim a lien within [90]:

37 (A) 180 days after the [date of] day on which occurs final completion of the original
38 contract [under which the claimant claims a lien under this chapter.]; or

39 (B) 90 days after the day on which a notice of completion is filed under Section
40 38-1-33.

41 (ii) For purposes of this Subsection (1) and Section 38-1-33, final completion of the
42 original contract means:

43 (A) if as a result of work performed under the original contract a permanent certificate
44 of occupancy is required for the work, the date of issuance of a permanent certificate of
45 occupancy by the local government entity having jurisdiction over the construction project;

46 (B) if no certificate of occupancy is required by the local government entity having
47 jurisdiction over the construction project, but as a result of the work performed under the
48 original contract an inspection is required as per state-adopted building codes for the work, the
49 date of the final inspection for the work by the local government entity having jurisdiction over
50 the construction project; or

51 (C) if with regard to work performed under the original contract no certificate of
52 occupancy and no final inspection are required as per state-adopted building codes by the local
53 government entity having jurisdiction over the construction project, the date on which there
54 remains no substantial work to be completed to finish the work on the original contract.

55 (iii) For purposes of this determining final completion, the term "substantial work"
56 does not include:

57 (A) repair work; or

58 (B) warranty work.

59 (b) Notwithstanding Section 38-1-2, where a subcontractor performs substantial work
60 after the applicable dates established by Subsections (1)(a)(ii)(A) and (B), that subcontractor's
61 subcontract shall be considered an original contract for the sole purpose of determining:

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

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

66 (c) For purposes of this section, the term "substantial work" does not include:

67 (i) repair work; or

68 (ii) warranty work.

69 (d) Notwithstanding Subsection (1)(a)(ii), final completion of the original contract does
70 not occur if work remains to be completed for which the owner is holding payment to ensure
71 completion of that work.

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

73 (i) the name of the reputed owner if known or, if not known, the name of the record
74 owner;

75 (ii) the name of the person:

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

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

78 (iii) the time when:

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

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

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

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

83 (vi) the amount of the lien claim;

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

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

86 Recording of Documents; and

87 (ix) if the lien is on an owner-occupied residence, as defined in Section 38-11-102, a

88 statement describing what steps an owner, as defined in Section 38-11-102, may take to require
89 a lien claimant to remove the lien in accordance with Section 38-11-107.

90 (b) Substantial compliance with the requirements of this chapter is sufficient to hold
91 and claim a lien.

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

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

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

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

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

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

105 Section 2. Section **38-1-31** is amended to read:

106 **38-1-31. Building permit -- Construction -- Notice registry -- Notice of**
107 **commencement of work.**

108 (1) (a) (i) (A) For a construction project where a building permit is issued to an original
109 contractor or owner-builder, within 15 days after the issuance of the building permit, the local
110 government entity issuing that building permit shall input the building permit application and
111 transmit the building permit information to the database electronically by way of the Internet or
112 computer modem or by any other means [~~and such~~].

113 (B) The information [~~shall form~~] submitted under Subsection (1)(a)(i)(A) forms the
114 basis of a notice of commencement.

115 (ii) The person to whom a building permit, filed under Subsection (1)(a)(i), is issued is
116 responsible for the accuracy of the information in the building permit.

117 (iii) For the purposes of classifying a record under Title 63, Chapter 2, Government
118 Records Access and Management Act, building permit information transmitted from a local

119 governmental entity to the database shall be classified in the database by the division
120 notwithstanding the local governmental entity's classification of the building permit
121 information.

122 (b) For a construction project where a building permit is not issued, within 15 days
123 after commencement of physical construction work at the project site, the original contractor or
124 owner-builder may file a notice of commencement with the database.

125 (c) If a building permit is issued more than 15 days after commencement of physical
126 construction work at the project site, a notice of commencement based on that building permit
127 is effective only as to a person who did not provide labor, service, equipment, or material
128 before the filing of the notice of commencement.

129 ~~(c)~~ (d) An owner of construction or an original contractor may file a notice of
130 commencement with the designated agent within the time prescribed by Subsections (1)(a) and
131 (b).

132 ~~(d)~~ (e) (i) If duplicate notices of commencement are filed, they shall be combined into
133 one notice for each project and any notices filed relate back to the date of the earliest-filed
134 notice of commencement for the project.

135 (ii) A duplicate notice of commencement that is untimely filed relates back under
136 Subsection (1)~~(d)~~ (e)(i) if the earlier filed notice of commencement is timely filed.

137 ~~(e)~~ (iii) ~~[On January 1, 2007 and thereafter, duplicate]~~ Duplicate notices of
138 commencement shall be automatically linked by the designated agent.

139 ~~(e)~~ (f) The designated agent shall assign each construction project a unique project
140 number that:

141 (i) identifies each construction project; and

142 (ii) can be associated with all notices of commencement, preliminary notices, and
143 notices of completion.

144 ~~(f)~~ (g) A notice of commencement is effective only as to any labor, service,
145 equipment, and material furnished to the construction project that is furnished subsequent to
146 the filing of the notice of commencement.

147 (2) (a) ~~[The content of a]~~ A notice of commencement shall include the following:

148 (i) the name and address of the owner of the project;

149 (ii) the name and address of the:

- 150 (A) original contractor; and
- 151 (B) surety providing any payment bond for the project, or if none exists, a statement
152 that a payment bond was not required for the work being performed; and
- 153 (iii) (A) the project address if the project can be reasonably identified by an address; or
154 (B) the name and general description of the location of the project if the project cannot
155 be reasonably identified by an address.
- 156 (b) A notice of commencement may include:
- 157 (i) a general description of the project; or
158 (ii) the lot or parcel number, and any subdivision, development, or other project name,
159 of the real property upon which the project is to be constructed if the project is subject to
160 mechanics' liens.
- 161 (c) ~~[The content of a]~~ A notice of commencement need not include all of the items
162 listed in Subsection (2)(a) if:
- 163 (i) a building permit is issued for the project; and
164 (ii) all items listed in Subsection (2)(a) that are available on the building permit are
165 included in the notice of commencement.
- 166 (3) If a notice of commencement for a construction project is not filed within the time
167 set forth in Subsections ~~[38-1-31]~~(1)(a) and (b), the following do not apply:
- 168 (a) Section 38-1-32; and
169 (b) Section 38-1-33.
- 170 (4) (a) Unless a person indicates to the division or designated agent that the person
171 does not wish to receive a notice under this section, electronic notice of the filing of a notice of
172 commencement or alternate notice as prescribed in Subsection (1), shall be provided to:
- 173 (i) all persons who have filed notices of commencement for the project; and
174 (ii) all interested persons who have requested ~~[such notice for]~~ notices concerning the
175 project.
- 176 (b) (i) A person to whom notice is required under Subsection (4)(a) is responsible for:
- 177 (A) providing an e-mail address, mailing address, or telefax number to which a notice
178 required by Subsection (4)(a) is to be sent; and
179 (B) the accuracy of any e-mail address, mailing address, or telefax number to which
180 notice is to be sent.

181 (ii) The designated agent fulfills the notice requirement of Subsection (4)(a) when it
182 sends the notice to the e-mail address, mailing address, or telefax number provided to the
183 designated agent whether or not the notice is actually received.

184 (5) (a) The burden is upon any person seeking to enforce a notice of commencement to
185 verify the accuracy of information in the notice of commencement and prove that the notice of
186 commencement is filed timely and meets all of the requirements in this section.

187 (b) A substantial inaccuracy in a notice of commencement renders the notice of
188 commencement unenforceable.

189 (c) A person filing a notice of commencement by alternate filing is responsible for
190 verifying and changing any incorrect information in the notice of commencement before the
191 expiration of the time period during which the notice is required to be filed.

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

194 Section 3. Section **38-1-32** is amended to read:

195 **38-1-32. Preliminary notice by subcontractor.**

196 (1) (a) (i) Except for a person who has a contract with an owner or an owner-builder or
197 a laborer compensated with wages, a subcontractor shall file a preliminary notice with the
198 database within the later of:

199 (A) 20 days after commencement of its own work or the commencement of furnishing
200 labor, service, equipment, and material to a construction project; or

201 (B) 20 days after the filing of a notice of commencement.

202 (ii) A preliminary notice filed within the period described in Subsection (1)(a)(i) is
203 effective as to all labor, service, equipment, and material furnished to the construction project,
204 including labor, service, equipment, and material provided to more than one contractor or
205 subcontractor.

206 (iii) (A) If more than one notice of commencement is filed for a project, a person may
207 attach a preliminary notice to any of the notices of commencement filed for the project.

208 (B) A preliminary notice attached to an untimely notice of commencement is valid if
209 there is also a valid and timely notice of commencement for the project to which the
210 preliminary notice may attach.

211 (b) If a person files a preliminary notice after the period prescribed by Subsection

212 (1)(a), the preliminary notice becomes effective five days after the day on which the
213 preliminary notice is filed.

214 (c) [~~Failure~~] Except as provided in Subsection (1)(e), failure to file a preliminary notice
215 within the period required by Subsection (1)(a) precludes a person from maintaining any claim
216 for compensation earned for performance of labor or service or supply of materials or
217 equipment furnished to the construction project before the expiration of five days after the late
218 filing of a preliminary notice, except as against the person with whom the person contracted.

219 (d) (i) (A) If a person who is required to file a preliminary notice under this chapter
220 fails to file the preliminary notice, that person may not hold a valid lien under this chapter.

221 (B) A county recorder need not verify that a valid preliminary notice is filed when a
222 person files a notice to hold and claim a lien under Section [~~38-1-17~~] 38-1-7.

223 (ii) The content of a preliminary notice shall include:

224 (A) the building permit number for the project, or the number assigned to the project
225 by the designated agent;

226 (B) the name, address, and telephone number of the person furnishing the labor,
227 service, equipment, or material;

228 (C) the name and address of the person who contracted with the claimant for the
229 furnishing of the labor, service, equipment, or material;

230 (D) the name of the record or reputed owner of the project;

231 (E) the name of the original contractor under which the claimant is performing or will
232 perform its work; and

233 (F) the address of the project or a description of the location of the project.

234 (iii) Upon request by person identified in Subsection (1)(a)(i), an original contractor
235 shall provide the person with the building permit number for the project, or the number
236 assigned to the project by the designated agent.

237 (e) If a person provides labor, service, equipment, or material before the filing of a
238 notice of commencement and the notice of commencement is filed more than 15 days after the
239 day on which the person providing labor service, equipment, or material begins work on the
240 project, the person providing labor, service, equipment, or material need not file a preliminary
241 notice to maintain the person's right to hold a lien under this chapter.

242 (2) (a) (i) Unless a person indicates to the division or designated agent that the person

243 does not wish to receive a notice under this section, electronic notification of the filing of a
244 preliminary notice or alternate notice as prescribed in Subsection (1), shall be provided to:

- 245 (A) the person filing the preliminary notice;
246 (B) each person that filed a notice of commencement for the project; and
247 (C) all interested persons who have requested [~~such notice for~~] notices concerning the
248 project.

249 (ii) A person to whom notice is required under Subsection (2)(a)(i) is responsible for:

- 250 (A) providing an e-mail address, mailing address, or telefax number to which a notice
251 required by Subsection (2)(a) is to be sent; and
252 (B) the accuracy of any e-mail address, mailing address, or telefax number to which
253 notice is to be sent.

254 (iii) The designated agent fulfills the notice requirement of Subsection (2)(a)(i) when it
255 sends the notice to the e-mail address, mailing address, or telefax number provided to the
256 designated agent whether or not the notice is actually received.

257 (b) The burden is upon the person filing the preliminary notice to prove that the person
258 has substantially complied with the requirements of this section.

259 (c) Subject to Subsection (1)(d), a person required by this section to give preliminary
260 notice is only required to give one notice for each project.

261 (d) If the labor, service, equipment, or material is furnished pursuant to contracts under
262 more than one original contract, the notice requirements must be met with respect to the labor,
263 service, equipment, or material furnished under each original contract.

264 (3) (a) If a construction project owner, original contractor, subcontractor, or other
265 interested person believes that a preliminary notice has been filed erroneously, that owner,
266 original contractor, subcontractor, or other interested person can request from the person who
267 filed the preliminary notice evidence establishing the validity of the preliminary notice.

268 (b) Within ten days after the request described in Subsection (3)(a), the person or entity
269 that filed the preliminary notice shall provide the requesting person or entity proof that the
270 preliminary notice is valid.

271 (c) If the person or entity that filed the preliminary notice does not provide proof of the
272 validity of the preliminary notice, that person or entity shall immediately cancel the preliminary
273 notice from the database in any manner prescribed by the division pursuant to rule.

274 (4) A person filing a preliminary notice by alternate filing is responsible for verifying
275 and changing any incorrect information in the preliminary notice before the expiration of the
276 time period during which the notice is required to be filed.

277 (5) Until June 1, 2008, nothing in this section affects a person's rights under Title 38,
278 Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

279 Section 4. Section **38-1-33** is amended to read:

280 **38-1-33. Notice of completion.**

281 (1) (a) [(†)] Upon final completion of a construction project:

282 [(A)] (i) an owner of a construction project or an original contractor may file a notice
283 of completion with the database; and

284 [(B)] (ii) a lender that has provided financing for the construction project, a surety that
285 has provided bonding for the construction project, or a title company issuing a title insurance
286 policy on the construction project, may file a notice of completion.

287 [(ii) Final completion, for purposes of this Subsection (1), shall mean:]

288 [(A) if as a result of work performed under the original contract a permanent certificate
289 of occupancy is required for such work, the date of issuance of a permanent certificate of
290 occupancy by the local government entity having jurisdiction over the construction project;]

291 [(B) if no certificate of occupancy is required by the local government entity having
292 jurisdiction over the construction project, but as a result of the work performed under the
293 original contract an inspection is required for such work, the date of the final inspection for
294 such work by the local government entity having jurisdiction over the construction project; or]

295 [(C) if with regard to the work performed under the original contract no certificate of
296 occupancy and no final inspection are required by the local government entity having
297 jurisdiction over the construction project, the date on which there remains no substantial work
298 to be completed to finish such work on the original contract.]

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

302 (i) the subcontractor's time frame to file a notice to hold and claim a lien under
303 Subsection 38-1-7(1); and

304 (ii) the original contractor's time frame to file a notice to hold and claim a lien under

305 Subsection 38-1-7(1) for that subcontractor's work.

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

307 ~~[(i) repair work; or]~~

308 ~~[(ii) warranty work.]~~

309 ~~[(d)]~~ (c) A notice of completion shall include:

310 (i) the building permit number for the project, or the number assigned to the project by
311 the designated agent;

312 (ii) the name, address, and telephone number of the person filing the notice of
313 completion;

314 (iii) the name of the original contractor for the project;

315 (iv) the address of the project or a description of the location of the project;

316 (v) the date on which final completion is alleged to have occurred; and

317 (vi) the method used to determine final completion.

318 ~~[(e)]~~ (d) ~~[Notwithstanding Subsection (1)(a)(ii)]~~ For purposes of this section, final
319 completion of the original contract does not occur if work remains to be completed for which
320 the owner is holding payment to ensure completion of the work.

321 ~~[(f)]~~ (e) (i) Unless a person indicates to the division or designated agent that the person
322 does not wish to receive a notice under this section, electronic notification of the filing of a
323 notice of completion or alternate notice as prescribed in Subsection (1)(a), shall be provided to:

324 (A) each person that filed a notice of commencement for the project;

325 (B) each person that filed preliminary notice for the project; and

326 (C) all interested persons who have requested ~~[notice for]~~ notices concerning the
327 project.

328 (ii) A person to whom notice is required under this Subsection (1)~~[(f)]~~ (e) is
329 responsible for:

330 (A) providing an e-mail address, mailing address, or telefax number to which a notice
331 required by this Subsection (1)~~[(f)]~~ (e) is to be sent; and

332 (B) the accuracy of any e-mail address, mailing address, or telefax number to which
333 notice is to be sent.

334 (iii) The designated agent fulfills the notice requirement of Subsection (1)~~[(f)]~~ (e)(i)
335 when it sends the notice to the e-mail address, mailing address, or telefax number provided to

336 the designated agent, whether or not the notice is actually received.

337 (iv) Upon the filing of a notice of completion, the time periods for filing preliminary
338 notices stated in Section 38-1-27 are modified such that all preliminary notices shall be filed
339 subsequent to the notice of completion and within ten days from the day on which the notice of
340 completion is filed.

341 ~~[(g)]~~ (f) A subcontract that is considered an original contract for purposes of this
342 section ~~[shall]~~ does not create a requirement for an additional preliminary notice if a
343 preliminary notice has already been given for the labor, service, equipment, and material
344 furnished to the subcontractor who performs substantial work.

345 (2) (a) If a construction project owner, original contractor, subcontractor, or other
346 interested person believes that a notice of completion has been filed erroneously, that owner,
347 original contractor, subcontractor, or other interested person can request from the person who
348 filed the notice of completion evidence establishing the validity of the notice of completion.

349 (b) Within ten days after the request described in Subsection (2)(a), the person ~~[that]~~
350 who filed the notice of completion shall provide the requesting person proof that the notice of
351 completion is valid.

352 (c) If the person that filed the notice of completion does not provide proof of the
353 validity of the notice of completion, that person shall immediately cancel the notice of
354 completion from the database in any manner prescribed by the division pursuant to rule.

355 ~~[(3) Notwithstanding Subsection 38-1-7(1)(a)(i), a person claiming benefits under this
356 chapter shall file for record with the county recorder of the county in which the property, or
357 some part of the property is situated, a written notice to hold and claim a lien within:]~~

358 ~~[(a) 90 days after the day on which a notice of completion is filed under this section;~~
359 ~~or]~~

360 ~~[(b) 180 days after the day on which occurs final completion, if no notice of
361 completion is filed under this section.]~~

362 ~~[(4)]~~ (3) A person filing a notice of completion by alternate filing is responsible for
363 verifying and changing any incorrect information in the notice of completion before the
364 expiration of the time period during which the notice is required to be filed.

365 Section 5. Section **38-11-204** is amended to read:

366 **38-11-204. Claims against the fund -- Requirement to make a claim --**

367 **Qualifications to receive compensation -- Qualifications to receive a certificate of**
368 **compliance.**

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

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

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

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

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

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

377 (iii) the basis for the claim.

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

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

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

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

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

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

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

394 (A) for the performance of qualified services;

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

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

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

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

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

408 (c) (i) the original contractor, licensed or exempt from licensure under Title 58,
409 Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory
410 built housing retailer subsequently failed to pay a qualified beneficiary who is entitled to
411 payment under an agreement with that original contractor or real estate developer licensed or
412 exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for
413 services performed or materials supplied by the qualified beneficiary;

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

418 (iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a
419 qualified beneficiary who is entitled to payment under an agreement with that subcontractor or
420 supplier;

421 (d) (i) unless precluded from doing so by the nonpaying party's bankruptcy filing
422 within the applicable time, the qualified beneficiary filed an action against the nonpaying party
423 to recover monies owed to the qualified beneficiary within the earlier of:

424 (A) 180 days from the date the qualified beneficiary filed a notice of claim under
425 Section 38-1-7; or

426 (B) 270 days from the completion of the original contract pursuant to Subsection
427 38-1-7(1);

428 (ii) the qualified beneficiary has obtained a judgment against the nonpaying party who

429 failed to pay the qualified beneficiary under an agreement to provide qualified services for
430 construction of that owner-occupied residence;

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

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

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

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

439 (B) if assets subject to execution are discovered as a result of the order required under
440 Subsection (4)(d)(iii)(A) or for any other reason, to obtain the issuance of a writ of execution
441 from a court of competent jurisdiction; or

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

444 (e) the qualified beneficiary is not entitled to reimbursement from any other person;
445 and

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

448 (5) The requirements of Subsections (4)(d)(~~(i)~~) (ii)[~~;~~] and (iii) need not be met if the
449 qualified beneficiary [~~has been precluded from obtaining a judgment against the nonpaying~~
450 ~~party or~~ is prevented from satisfying the requirements of Subsections (4)(d)(~~(i)~~) (ii)[~~;~~] and (iii)
451 because the nonpaying party [~~filed~~] files bankruptcy.

452 (6) To recover from the fund a laborer shall:

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

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

456 (7) A fee determined by the division under Section 63-38-3.2 shall be deducted from
457 any recovery from the fund received by a laborer.

458 (8) The requirements of Subsections (4)(a) and (4)(b) may be satisfied if an owner or
459 agent of the owner establishes to the satisfaction of the director that the owner of the

460 owner-occupied residence or the owner's agent entered into a written contract with an original
461 contractor who:

462 (a) was a business entity that was not licensed under Title 58, Chapter 55, Utah
463 Construction Trades Licensing Act, but was solely or partly owned by an individual who was
464 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act; or

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

469 (9) The director shall have equitable power to determine if the requirements of
470 Subsections (4)(a) and (4)(b) have been met, but any decision by the director under this chapter
471 shall not alter or have any effect on any other decision by the division under Title 58,
472 Occupations and Professions.

H.B. 277 1st Sub. (Buff) - Construction Amendments

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/29/2007, 2:37:45 PM, Lead Analyst: Eckersley, S.

Office of the Legislative Fiscal Analyst