

Representative R. Curt Webb proposes the following substitute bill:

PROFESSIONAL LICENSING AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: David G. Buxton

LONG TITLE

General Description:

This bill modifies provisions of the Residence Lien Restriction and Lien Recovery Fund Act, the Building Inspector and Factory Built Housing Licensing Act, and other related provisions.

Highlighted Provisions:

This bill:

- ▶ modifies provisions related to the Residence Lien Restriction and Lien Recovery Fund Act, the Building Inspector and Factory Built Housing Licensing Act, and other related provisions;

- ▶ discontinues assessments to provide money for the continuing operation of the Residence Lien Recovery Fund;

- ▶ requires certain reporting requirements from the Division of Occupational and Professional Licensing to the Legislature regarding the Residence Lien Recovery Fund, including providing the Legislature with a recommendation of when provisions related to the fund should be repealed due to insufficient money in the fund to pay claims; and

- ▶ makes technical changes.

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **38-11-102**, as last amended by Laws of Utah 2014, Chapter 108

32 **38-11-104**, as last amended by Laws of Utah 2004, Chapter 42

33 **38-11-105**, as last amended by Laws of Utah 2008, Chapter 382

34 **38-11-106**, as last amended by Laws of Utah 2004, Chapter 42

35 **38-11-201**, as last amended by Laws of Utah 2013, Chapter 400

36 **38-11-202**, as last amended by Laws of Utah 2009, Chapter 183

37 **38-11-203**, as last amended by Laws of Utah 2016, Chapter 238

38 **38-11-204**, as last amended by Laws of Utah 2017, Chapter 373

39 **38-11-301**, as last amended by Laws of Utah 2009, Chapter 183

40 **58-56-9**, as last amended by Laws of Utah 2011, Chapter 14

41 **58-56-9.3**, as last amended by Laws of Utah 2010, Chapter 310

42 **58-56-9.5**, as last amended by Laws of Utah 2010, Chapter 278

43 **63J-1-504**, as last amended by Laws of Utah 2013, Chapter 310

44 ENACTS:

45 **58-56-9.4**, Utah Code Annotated 1953

46 REPEALS AND REENACTS:

47 **38-11-206**, as last amended by Laws of Utah 2011, Chapter 367

48 REPEALS:

49 **38-11-302**, as last amended by Laws of Utah 2009, Chapter 183



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

52 Section 1. Section **38-11-102** is amended to read:

53 **38-11-102. Definitions.**

54 (1) "Board" means the Residence Lien Recovery Fund Advisory Board established
55 under Section **38-11-104**.

56 (2) "Certificate of compliance" means an order issued by the director to the owner

57 finding that the owner is in compliance with the requirements of Subsections 38-11-204(4)(a)
58 and (4)(b) and is entitled to protection under Section 38-11-107.

59 (3) "Construction on an owner-occupied residence" means designing, engineering,
60 constructing, altering, remodeling, improving, repairing, or maintaining a new or existing
61 residence.

62 (4) "Department" means the Department of Commerce.

63 (5) "Director" means the director of the Division of Occupational and Professional
64 Licensing.

65 (6) "Division" means the Division of Occupational and Professional Licensing.

66 (7) "Duplex" means a single building having two separate living units.

67 (8) "Encumbered fund balance" means the aggregate amount of outstanding claims
68 against the fund. The remainder of the money in the fund is unencumbered funds.

69 (9) "Executive director" means the executive director of the Department of Commerce.

70 (10) "Factory built housing" is as defined in Section 15A-1-302.

71 (11) "Factory built housing retailer" means a person that sells factory built housing to
72 consumers.

73 (12) "Fund" means the Residence Lien Recovery Fund established under Section
74 38-11-201.

75 (13) "Laborer" means a person who provides services at the site of the construction on
76 an owner-occupied residence as an employee of an original contractor or other qualified
77 beneficiary performing qualified services on the residence.

78 (14) "Licensee" means any holder of a license issued under Title 58, Chapter 3a,
79 Architects Licensing Act; Chapter 22, Professional Engineers and Professional Land Surveyors
80 Licensing Act; Chapter 53, Landscape Architects Licensing Act; and Chapter 55, Utah
81 Construction Trades Licensing Act.

82 (15) "Nonpaying party" means the original contractor, subcontractor, or real estate
83 developer who has failed to pay the qualified beneficiary making a claim against the fund.

84 (16) "Original contractor" means a person who contracts with the owner of real
85 property or the owner's agent to provide services, labor, or material for the construction of an
86 owner-occupied residence.

87 (17) "Owner" means a person who:

88 (a) contracts with a person who is licensed as a contractor or is exempt from licensure
89 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction on an
90 owner-occupied residence upon real property that the person:

91 (i) owns; or

92 (ii) purchases after the person enters into a contract described in this Subsection (17)(a)
93 and before completion of the owner-occupied residence;

94 (b) contracts with a real estate developer to buy a residence upon completion of the
95 construction on the owner-occupied residence; or

96 (c) purchases a residence from a real estate developer after completion of the
97 construction on the owner-occupied residence.

98 (18) "Owner-occupied residence" means a residence that is, or after completion of the
99 construction on the residence will be, occupied by the owner or the owner's tenant or lessee as a
100 primary or secondary residence within 180 days after the day on which the construction on the
101 residence is complete.

102 (19) "Qualified beneficiary" means a person who:

103 (a) provides qualified services;

104 (b) pays necessary fees [~~or assessments~~] required under this chapter; and

105 (c) registers with the division:

106 (i) as a licensed contractor under Subsection 38-11-301(1) or (2), if that person seeks
107 recovery from the fund as a licensed contractor; or

108 (ii) as a person providing qualified services other than as a licensed contractor under
109 Subsection 38-11-301(3) if the person seeks recovery from the fund in a capacity other than as
110 a licensed contractor.

111 (20) (a) "Qualified services" means the following performed in construction on an
112 owner-occupied residence:

113 (i) contractor services provided by a contractor licensed or exempt from licensure
114 under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

115 (ii) architectural services provided by an architect licensed under Title 58, Chapter 3a,
116 Architects Licensing Act;

117 (iii) engineering and land surveying services provided by a professional engineer or
118 land surveyor licensed or exempt from licensure under Title 58, Chapter 22, Professional

119 Engineers and Professional Land Surveyors Licensing Act;

120 (iv) landscape architectural services by a landscape architect licensed or exempt from
121 licensure under Title 58, Chapter 53, Landscape Architects Licensing Act;

122 (v) design and specification services of mechanical or other systems;

123 (vi) other services related to the design, drawing, surveying, specification, cost
124 estimation, or other like professional services;

125 (vii) providing materials, supplies, components, or similar products;

126 (viii) renting equipment or materials;

127 (ix) labor at the site of the construction on the owner-occupied residence; and

128 (x) site preparation, set up, and installation of factory built housing.

129 (b) "Qualified services" does not include the construction of factory built housing in
130 the factory.

131 (21) "Real estate developer" means a person having an ownership interest in real
132 property who:

133 (a) contracts with a person who is licensed as a contractor or is exempt from licensure
134 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction of a
135 residence that is offered for sale to the public; or

136 (b) is a licensed contractor under Title 58, Chapter 55, Utah Construction Trades
137 Licensing Act, who engages in the construction of a residence that is offered for sale to the
138 public.

139 (22) (a) "Residence" means an improvement to real property used or occupied, to be
140 used or occupied as, or in conjunction with:

141 (i) a primary or secondary detached single-family dwelling; or

142 (ii) a multifamily dwelling up to and including duplexes.

143 (b) "Residence" includes factory built housing.

144 (23) "Subsequent owner" means a person who purchases a residence from an owner
145 within 180 days after the day on which the construction on the residence is completed.

146 Section 2. Section **38-11-104** is amended to read:

147 **38-11-104. Board.**

148 (1) There is created the Residence Lien Recovery Fund Advisory Board consisting of:

149 (a) three individuals licensed as a contractor who are actively engaged in construction

150 on owner-occupied residences;

151 (b) three individuals who are employed in responsible management positions with
152 major suppliers of materials or equipment used in the construction on owner-occupied
153 residences; and

154 (c) one member from the general public who has no interest in the construction on
155 owner-occupied residences, or supply of materials used in the construction on owner-occupied
156 residences.

157 (2) The board shall be appointed and members shall serve their respective terms in
158 accordance with Section 58-1-201.

159 (3) The duties and responsibilities of the board shall be to:

160 (a) advise the division with respect to informal adjudication of any claim for payment
161 from the fund and any request for a certificate of compliance received by the division;

162 (b) act as the presiding officer, as defined by rule, in formal adjudicative proceedings
163 held before the division with respect to any claim made for payment from the fund;

164 (c) advise the division with respect to:

165 (i) the general operation of the fund;

166 [~~(ii) the amount and frequency of any assessment under this chapter;~~]

167 [~~(iii)~~] (ii) the amount of any fees required under this chapter; and

168 [~~(iv) the availability and advisability of using funds for purchase of surety bonds to~~
169 ~~guarantee payment to qualified beneficiaries; and]~~

170 [~~(v)~~] (iii) the limitation on the fund balance under Section 38-11-206; and

171 (d) review the administrative expenditures made by the division pursuant to Subsection
172 38-11-201(4) and report its findings regarding those expenditures to the executive director on
173 or before the first Monday of December of each year.

174 (4) The attorney general shall render legal assistance as requested by the board.

175 Section 3. Section 38-11-105 is amended to read:

176 **38-11-105. Procedures established by rule.**

177 In compliance with Title 63G, Chapter 4, Administrative Procedures Act, the division
178 shall establish procedures by rule by which claims for compensation from the fund and requests
179 for certificates of compliance shall be adjudicated [~~and by which assessments shall be~~
180 ~~collected~~].

181 Section 4. Section **38-11-106** is amended to read:

182 **38-11-106. State not liable.**

183 The state and the state's agencies, instrumentalities, and political subdivisions are not
184 liable for:

185 (1) issuance or denial of any certificate of compliance;

186 (2) any claims made against the fund; or

187 (3) failure of the fund to pay any amounts ordered by the director to be paid from the

188 fund, including failure of the fund to pay any amounts ordered by the director to be paid

189 because there is insufficient money in the fund.

190 Section 5. Section **38-11-201** is amended to read:

191 **38-11-201. Residence Lien Recovery Fund.**

192 (1) There is created an expendable special revenue fund called the "Residence Lien
193 Recovery Fund."

194 [~~(2)(a) The fund consists of all amounts collected by the division in accordance with~~
195 ~~Section [38-11-202](#);~~]

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

197 [~~(ii) The division shall record the funds in the Residence Lien Recovery Fund.~~]

198 [~~(c)~~] (2) The fund shall earn interest.

199 (3) The division shall employ personnel and resources necessary to administer the fund

200 and shall use fund money in accordance with Sections [38-11-203](#) and [38-11-204](#) and to pay the

201 costs charged to the fund by the attorney general.

202 (4) Costs incurred by the division, on or after May 8, 2018, for administering the fund

203 ~~[shall]~~ may be paid out of fund money in an amount that may be no more than a total of

204 \$300,000 for the remaining existence of the fund.

205 (5) (a) The Division of Finance shall report annually to the Legislature, the division,
206 and the board.

207 (b) The report shall state:

208 [~~(a)~~] (i) amounts received by the fund;

209 [~~(b)~~] (ii) disbursements from the fund;

210 [~~(c)~~] (iii) interest earned and credited to the fund; and

211 [~~(d)~~] (iv) the fund balance.

212 ~~[(6) (a) For purposes of establishing and assessing fees under Section 63J-1-504, the~~
213 ~~provisions of this chapter are considered a new program for fiscal year 1995-96.]~~

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

216 Section 6. Section 38-11-202 is amended to read:

217 **38-11-202. Payments to the fund.**

218 ~~[The]~~ Beginning on May 8, 2018, the Residence Lien Recovery Fund ~~[shall be~~
219 ~~supported solely from]~~ will no longer be supported by special assessments and will be solely
220 supported by:

221 ~~[(1) initial and special assessments collected by the division from licensed contractors~~
222 ~~registered as qualified beneficiaries in accordance with Subsections 38-11-301(1) and (2) and~~
223 ~~Section 38-11-206;]~~

224 ~~[(2) initial and special assessments collected by the division from other qualified~~
225 ~~beneficiaries registering with the division in accordance with Subsection 38-11-301(3) and~~
226 ~~Section 38-11-206;]~~

227 ~~[(3)]~~ (1) fees determined by the division under Section 63J-1-504 collected from
228 laborers under Subsection 38-11-204(7) when the laborers obtain a recovery from the fund;

229 ~~[(4)]~~ (2) amounts collected by subrogation under Section 38-11-205 on behalf of the
230 fund following a payment from the fund;

231 ~~[(5)]~~ (3) application fees determined by the division under Section 63J-1-504 collected
232 from:

233 (a) qualified beneficiaries or laborers under Subsection 38-11-204(1)(b) when qualified
234 beneficiaries or laborers make a claim against the fund; or

235 (b) owners or agents of the owners seeking to obtain a certificate of compliance for the
236 owner;

237 ~~[(6)]~~ (4) registration fees determined by the division under Section 63J-1-504 collected
238 from other qualified beneficiaries registering with the department in accordance with
239 Subsection 38-11-301(3)(a)(iii);

240 ~~[(7)]~~ (5) reinstatement fees determined by the division under Section 63J-1-504
241 collected from registrants in accordance with Subsection 38-11-302(5)(b);

242 ~~[(8)]~~ (6) civil fines authorized under Subsection 38-11-205(2) collected by the attorney

243 general for failure to reimburse the fund; and

244 [~~(9)~~] (7) any interest earned by the fund.

245 Section 7. Section 38-11-203 is amended to read:

246 **38-11-203. Disbursements from the fund -- Limitations.**

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

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

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

251 (c) there is adequate money in the fund to pay the amount ordered; and

252 (d) the claimant provided the qualified services that are the basis of the claim.

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

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

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

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

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

263 (c) The director shall order payment of interest on amounts claimed for qualified
264 services based on the current prime interest rate at the time payment was due to the date the
265 claim is approved for payment except for delays attributable to the claimant but not more than
266 10% per annum.

267 (d) The rate shall be the prime lending rate as published in the Wall Street Journal on
268 the first business day of each calendar year adjusted annually.

269 (e) The director shall order payment of costs in the amount stated in the judgment. If
270 the judgment does not state a sum certain for costs, or if no judgment has been obtained, the
271 director shall order payment of reasonable costs as supported by evidence. The claim
272 application fee as established by the division pursuant to Subsection 38-11-204(1)(b) is not a
273 reimbursable cost.

274 (f) 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. If the judgment does not state a sum for attorneys' fees, no attorneys' fees
278 will be paid by the director.

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

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

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

290 [(6)] (5) (a) A payment of any claim upon the fund may not be made to an assignee or
291 transferee unless an order issued by the director finds that:

292 (i) the claim is assigned or transferred to a person who is a qualified beneficiary; and

293 (ii) the person assigning or transferring the claim:

294 (A) was a qualified beneficiary during the construction on a residence; and

295 (B) provided the qualified services that are the basis of the claim.

296 (b) A claimant who is an assignee or transferee of a claim upon the fund under this
297 Subsection (6) does not have to meet the requirements of Subsections 38-11-203(1)(a) and (d).

298 Section 8. Section 38-11-204 is amended to read:

299 **38-11-204. Claims against the fund -- Requirements to make a claim --**

300 **Qualifications to receive compensation -- Qualifications to receive a certificate of**
301 **compliance.**

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

303 (a) meet the requirements of Subsection (4) or (6);

304 (b) pay an application fee determined by the division under Section 63J-1-504; and

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

307 (i) that the person meets the requirements of Subsection (4) or (6);

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

310 (iii) the basis for the claim.

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

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

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

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

319 (3) The issuance of a certificate of compliance is governed by Section [38-11-110](#).

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

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

326 (A) for the performance of qualified services;

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

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

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

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

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

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

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

350 (iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a
351 qualified beneficiary who is entitled to payment under an agreement with that subcontractor or
352 supplier;

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

356 (A) 180 days from the date the qualified beneficiary filed a notice of claim under
357 Section 38-1a-502; or

358 (B) 270 days from the completion of the original contract pursuant to Subsection
359 38-1a-502(1);

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

363 (iii) the qualified beneficiary has:

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

367 (B) received return of service of the order from a person qualified to serve documents
368 under the Utah Rules of Civil Procedure, Rule 4(b);

369 (C) made reasonable efforts to obtain asset information from the supplemental
370 proceedings; and

371 (D) if assets subject to execution are discovered as a result of the order required under
372 this Subsection (4)(d)(iii) or for any other reason, obtained the issuance of a writ of execution
373 from a court of competent jurisdiction; and

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

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

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

380 (5) The requirements of Subsections (4)(d)(ii) and (iii) need not be met if the qualified
381 beneficiary is prevented from compliance because the nonpaying party files bankruptcy.

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

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

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

386 (7) A fee determined by the division under Section [63J-1-504](#) shall be deducted from
387 any recovery from the fund received by a laborer.

388 (8) The requirements of Subsections (4)(a) and (b) may be satisfied if an owner or
389 agent of the owner establishes to the satisfaction of the director that the owner of the
390 owner-occupied residence or the owner's agent entered into a written contract with an original
391 contractor who:

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

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

398 Licensing Act.

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

403 Section 9. Section **38-11-206** is repealed and reenacted to read:

404 **38-11-206. Limitations on fund balance.**

405 By October 1 of each year, the division shall provide a written report to the Legislature
406 and the Business and Labor Interim Committee that describes:

407 (1) the amount of money in the fund, including the encumbered fund balance;

408 (2) an estimate of when the fund will have insufficient money to continue to pay claims
409 under this chapter; and

410 (3) a recommendation to the Legislature of whether the substantive provisions of this
411 chapter should be repealed due to insufficient money in the fund.

412 Section 10. Section **38-11-301** is amended to read:

413 **38-11-301. Registration as a qualified beneficiary -- Initial regular assessment --**
414 **Affidavit.**

415 (1) A person licensed as of July 1, 1995, as a contractor under the provisions of Title
416 58, Chapter 55, Utah Construction Trades Licensing Act, in license classifications that
417 regularly engage in providing qualified services shall be automatically registered as a qualified
418 beneficiary [~~upon payment of the initial assessment~~].

419 (2) A person applying for licensure as a contractor after July 1, 1995, in license
420 classifications that regularly engage in providing qualified services shall be automatically
421 registered as a qualified beneficiary upon issuance of a license [~~and payment of the initial~~
422 ~~assessment~~].

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

427 (i) submitting an application in a form prescribed by the division;

428 (ii) demonstrating registration with the Division of Corporations and Commercial Code

429 as required by state law; and

430 (iii) paying a registration fee determined by the division under Section 63J-1-504[;
431 and].

432 [~~(iv) paying the initial assessment established under Subsection (4), and any special
433 assessment determined by the division under Subsection 38-11-206(1).~~]

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

437 [~~(4) (a) An applicant shall pay an initial assessment determined by the division under
438 Section 63J-1-504.~~]

439 [~~(b) The initial assessment to qualified registrants under Subsection (1) shall be made
440 not later than July 15, 1995, and shall be paid no later than November 1, 1995.~~]

441 [~~(c) The initial assessment to qualified registrants under Subsections (2) and (3) shall
442 be paid at the time of application for license or registration, however, beginning on May 1,
443 1996, only one initial assessment or special assessments thereafter shall be required for persons
444 having multiple licenses under this section.~~]

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

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

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

454 [~~(b) registers as a qualified beneficiary under Subsection (1) or (3) on or before
455 November 1, 1995.~~]

456 Section 11. Section 58-56-9 is amended to read:

457 **58-56-9. Qualifications of inspectors -- Contract for inspection services.**

458 (1) An inspector employed by a local regulator, state regulator, or compliance agency
459 to enforce the codes shall:

460 (a) (i) meet minimum qualifications as established by the division in collaboration with
461 the commission;

462 (ii) be certified by a nationally recognized organization which promulgates
463 construction codes; or

464 (iii) pass an examination developed by the division in collaboration with the
465 commission;

466 (b) be currently licensed by the division as meeting those minimum qualifications; and

467 (c) be subject to revocation or suspension of the inspector's license or being placed on
468 probation if found guilty of unlawful or unprofessional conduct.

469 (2) A local regulator, state regulator, or compliance agency may contract for the
470 services of a licensed inspector not regularly employed by the regulator or agency.

471 (3) In accordance with Section 58-1-401, the division may:

472 (a) refuse to issue a license to an applicant;

473 (b) refuse to renew the license of a licensee;

474 (c) revoke, suspend, restrict, or place on probation the license of a licensee;

475 (d) issue a public or private reprimand;

476 (e) issue a citation to a licensee; and

477 (f) issue a cease and desist order.

478 Section 12. Section 58-56-9.3 is amended to read:

479 **58-56-9.3. Unprofessional conduct.**

480 Unprofessional conduct is as defined in Subsection 58-1-501(2) and includes:

481 (1) knowingly failing to inspect or issue correction notices for code violations which
482 when left uncorrected would constitute a hazard to the public health and safety and knowingly
483 failing to require that correction notices are complied with as a building inspector;

484 (2) the use of alcohol or the illegal use of drugs while performing duties as a building
485 inspector or at any time to the extent that the inspector is physically or mentally impaired and
486 unable to effectively perform the duties of an inspector;

487 (3) gross negligence in the performance of official duties as a building inspector;

488 (4) the personal use of information or knowingly revealing information to unauthorized
489 persons when that information has been obtained by a building inspector as a result of the
490 inspector's employment, work, or position as an inspector;

491 (5) unlawful acts or practices which are clearly unethical under generally recognized
492 standards of conduct of a building inspector;

493 (6) engaging in fraud or knowingly misrepresenting a fact relating to the performance
494 of duties and responsibilities as a building inspector;

495 (7) a building inspector knowingly failing to require that all plans, specifications,
496 drawings, documents, and reports be stamped by architects, professional engineers, or both as
497 established by law;

498 (8) a building inspector knowingly failing to report to the division an act or omission of
499 a licensee under Title 58, Chapter 55, Utah Construction Trades Licensing Act, which when
500 left uncorrected constitutes a hazard to public health and safety;

501 (9) a building inspector knowingly failing to report to the division unlicensed practice
502 persons who are required to be licensed under Title 58, Chapter 55, Utah Construction Trades
503 Licensing Act;

504 (10) a building inspector's approval of work which materially varies from approved
505 documents that have been stamped by an architect, professional engineer, or both unless
506 authorized by the licensed architect, professional engineer, or both;

507 (11) a building inspector failing to produce verification of current licensure and current
508 certifications for the codes upon request of the division, a compliance agency, or a contractor
509 or property owner whose work is being inspected;

510 (12) a building inspector requiring work that materially varies from the building codes
511 adopted by the state;

512 [~~12~~] (13) nondelivery of goods or services by a registered dealer which constitutes a
513 breach of contract by the dealer;

514 [~~13~~] (14) the failure of a registered dealer to pay a subcontractor or supplier any
515 amounts to which that subcontractor or supplier is legally entitled; and

516 [~~14~~] (15) any other activity which is defined as unprofessional conduct by division
517 rule in accordance with the provisions of Title 63G, Chapter 3, Utah Administrative
518 Rulemaking Act.

519 Section 13. Section **58-56-9.4** is enacted to read:

520 **58-56-9.4. Investigation of regulated activity.**

521 (1) The division is responsible for the investigation of a person or an activity that

522 violates the provisions of this chapter.

523 (2) An investigation by the division may include:

524 (a) a requirement that potential administrative appeals described in Section [15A-1-207](#)
525 have been exhausted before conducting the investigation;

526 (b) an investigation of a person engaged in unlawful or unprofessional conduct; and

527 (c) a referral to the Uniform Building Code Commission to review a dispute involving
528 an application or interpretation of a building code or construction law by a licensee.

529 Section 14. Section **58-56-9.5** is amended to read:

530 **58-56-9.5. Penalty for unlawful conduct -- Citations.**

531 (1) A person who violates a provision of Section [58-56-9.1](#) or who fails to comply with
532 a citation issued under this section after it is final is guilty of a class A misdemeanor.

533 (2) Grounds for immediate suspension of a licensee's license by the division under this
534 chapter include:

535 (a) the issuance of a citation for violation of a provision of Section [58-56-9.1](#) or
536 [58-56-9.3](#); and

537 (b) failure by a licensee to make application to, report to, or notify the division with
538 respect to a matter for which application, notification, or reporting is required under this
539 chapter or rules made under this chapter by the division.

540 (3) (a) If upon inspection or investigation, the division concludes that a person has
541 violated a provision of Section [58-56-9.1](#) or [58-56-9.3](#), or a rule or order issued with respect to
542 that section, and that disciplinary action is appropriate, the director or the director's designee
543 from within the division shall:

544 (i) promptly issue a citation to the person according to this chapter and any pertinent
545 rules;

546 (ii) attempt to negotiate a stipulated settlement; or

547 (iii) notify the person to appear before an adjudicative proceeding conducted under
548 Title 63G, Chapter 4, Administrative Procedures Act.

549 (b) (i) A person who violates a provision of Section [58-56-9.1](#) or [58-56-9.3](#), as
550 evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an
551 adjudicative proceeding, may be assessed a fine under this Subsection (3)(b) and may, in
552 addition to or instead of the fine, be ordered by the division to cease from violating the

553 provision.

554 (ii) Except as otherwise provided in Subsection (2)(a), the division may not assess
555 licensure sanctions referred to in Subsection [58-56-9\(1\)\(c\)](#) through a citation.

556 (c) (i) Each citation shall be in writing and describe with particularity the nature of the
557 violation, including a reference to the provision of the chapter, rule, or order alleged to have
558 been violated.

559 (ii) The citation shall clearly state that the recipient must notify the division in writing
560 within 20 calendar days of service of the citation if the recipient wishes to contest the citation
561 at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

562 (iii) The citation shall clearly explain the consequences of failure to timely contest the
563 citation or to make payment of any fines assessed by the citation within the time specified in
564 the citation.

565 (d) Each citation issued under this section, or a copy of each citation, may be served
566 upon any person upon whom a summons may be served:

567 (i) in accordance with the Utah Rules of Civil Procedure;

568 (ii) personally or upon the person's agent by a division investigator or by any person
569 specially designated by the director; or

570 (iii) by mail.

571 (e) (i) If within 20 calendar days from the service of a citation, the person to whom the
572 citation was issued fails to request a hearing to contest the citation, the citation becomes the
573 final order of the division and is not subject to further agency review.

574 (ii) The period to contest a citation may be extended by the division for cause.

575 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
576 the license of a licensee who fails to comply with a citation after it becomes final.

577 (g) The failure of an applicant for licensure to comply with a citation after it becomes
578 final is a ground for denial of a license.

579 (h) No citation may be issued under this section after the expiration of six months
580 following the occurrence of the violation.

581 (i) The director or the director's designee may assess fines for violations of Section
582 [58-56-9.1](#) or [58-56-9.3](#) as follows:

583 (i) for a first offense determined under this Subsection (3), a fine of up to \$1,000;

584 (ii) for a second offense, a fine of up to \$2,000; and
585 (iii) for any subsequent offense, a fine of up to \$2,000 for each day of continued
586 offense.

587 (j) For the purposes of issuing a final order under this section and assessing a fine
588 under Subsection (3)(i), an offense constitutes a second or subsequent offense if:

589 (i) the division previously issued a final order determining that a person committed a
590 first or second offense in violation of a provision of Section 58-56-9.1; or

591 (ii) (A) the division initiated an action for a first or second offense;

592 (B) no final order has been issued by the division in the action initiated under
593 Subsection (3)(j)(ii)(A);

594 (C) the division determines during an investigation that occurred after the initiation of
595 the action under Subsection (3)(j)(ii)(A) that the person committed a second or subsequent
596 violation of a provision of Section 58-56-9.1; and

597 (D) after determining that the person committed a second or subsequent offense under
598 Subsection (3)(j)(ii)(C), the division issues a final order on the action initiated under
599 Subsection (3)(j)(ii)(A).

600 (k) In issuing a final order for a second or subsequent offense under Subsection (3)(j),
601 the division shall comply with the requirements of this section.

602 (4) (a) Proceeds from a fine imposed under Subsection (3)(i) shall be deposited in the
603 Commerce Service Account created by Section 13-1-2.

604 (b) The director may collect an unpaid fine by:

605 (i) referring the matter to a collection agency; or

606 (ii) bringing an action in the district court of the county in which the person resides or
607 in the county where the director's office is located.

608 (c) (i) The state's attorney general or a county attorney shall provide legal assistance
609 and advice to the director in an action brought under Subsection (4)(b).

610 (ii) Reasonable attorney fees and costs shall be awarded in an action brought to enforce
611 the provisions of this section.

612 Section 15. Section 63J-1-504 is amended to read:

613 **63J-1-504. Fees -- Adoption, procedure, and approval -- Establishing and**
614 **assessing fees without legislative approval.**

615 (1) As used in this section:

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

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

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

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

623 (2) Each fee agency shall adopt a schedule of fees assessed for services provided by the
624 fee agency that are:

625 (a) reasonable, fair, and reflect the cost of services provided; and

626 (b) established according to a cost formula determined by the executive director of the
627 Governor's Office of Management and Budget and the director of the Division of Finance in
628 conjunction with the agency seeking to establish the fee.

629 (3) Except as provided in Subsection (6), a fee agency may not:

630 (a) set fees by rule; or

631 (b) create, change, or collect any fee unless the fee has been established according to
632 the procedures and requirements of this section.

633 (4) Each fee agency that is proposing a new fee or proposing to change a fee shall:

634 (a) present each proposed fee at a public hearing, subject to the requirements of Title
635 52, Chapter 4, Open and Public Meetings Act;

636 (b) increase, decrease, or affirm each proposed fee based on the results of the public
637 hearing;

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

640 (d) where necessary, modify the fee schedule to implement the Legislature's actions.

641 (5) (a) Each fee agency shall submit its fee schedule or special assessment amount to
642 the Legislature for its approval on an annual basis.

643 (b) The Legislature may approve, increase or decrease and approve, or reject any fee
644 submitted to it by a fee agency.

645 (6) After conducting the public hearing required by this section, a fee agency may

646 establish and assess fees without first obtaining legislative approval if:

647 (a) (i) the Legislature creates a new program that is to be funded by fees to be set by the
648 Legislature;

649 (ii) the new program's effective date is before the Legislature's next annual general
650 session; and

651 (iii) the fee agency submits the fee schedule for the new program to the Legislature for
652 its approval at a special session, if allowed in the governor's call, or at the next annual general
653 session of the Legislature, whichever is sooner; or

654 ~~[(b) the Division of Occupational and Professional licensing makes a special
655 assessment against qualified beneficiaries under the Residence Lien Restriction and Lien
656 Recovery Fund Act as provided in Subsection 38-11-206(1); or]~~

657 ~~[(c)]~~ (b) (i) the fee agency proposes to increase or decrease an existing fee for the
658 purpose of adding or removing a transactional fee that is charged or assessed by a
659 non-governmental third party but is included as part of the fee charged by the fee agency;

660 (ii) the amount of the increase or decrease in the fee is equal to the amount of the
661 transactional fee charged or assessed by the non-governmental third party; and

662 (iii) the increased or decreased fee is submitted to the Legislature for its approval at a
663 special session, if allowed in the governor's call, or at the next annual session of the
664 Legislature, whichever is sooner.

665 (7) (a) Each fee agency that wishes to change any fee shall submit to the governor as
666 part of the agency's annual appropriation request a list that identifies:

667 (i) the title or purpose of the fee;

668 (ii) the present amount of the fee;

669 (iii) the proposed new amount of the fee;

670 (iv) the percent that the fee will have increased if the Legislature approves the higher
671 fee;

672 (v) the estimated total annual revenue change that will result from the change in the
673 fee;

674 (vi) the account or fund into which the fee will be deposited; and

675 (vii) the reason for the change in the fee.

676 (b) (i) The governor may review and approve, modify and approve, or reject the fee

677 increases.

678 (ii) The governor shall transmit the list required by Subsection (7)(a), with any
679 modifications, to the Legislative Fiscal Analyst with the governor's budget recommendations.

680 (c) Bills approving any fee change shall be filed before the beginning of the
681 Legislature's annual general session, if possible.

682 (8) (a) Except as provided in Subsection (8)(b), the School and Institutional Trust
683 Lands Administration, established in Section 53C-1-201, is exempt from the requirements of
684 this section.

685 (b) The following fees of the School and Institutional Trust Lands Administration are
686 subject to the requirements of this section: application, assignment, amendment, affidavit for
687 lost documents, name change, reinstatement, grazing nonuse, extension of time, partial
688 conveyance, patent reissue, collateral assignment, electronic payment, and processing.

689 Section 16. **Repealer.**

690 This bill repeals:

691 Section 38-11-302, **Effective date and term of registration -- Penalty for failure to**
692 **pay assessments -- Reinstatement.**