

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 999
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Intergovernmental Relations
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Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, the Texas Department of Housing and Community Affairs (TDHCA) does not require applicants for TDHCA assisted projects for multifamily rental projects to establish and maintain reserve fund accounts for the maintenance and repair of the property. C.S.S.B. 999 requires TDHCA to make reserve funds mandatory for any multifamily housing project it approves.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Housing and Community Affairs in SECTION 1 (Section 2306.186, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter H, Chapter 2306, Government Code, by adding Section 2306.186, as follows:

Sec. 2306.186. MANDATORY DEPOSITS TO FUND NECESSARY REPAIRS. (a) Defines “cost-of-living adjustment,” “bank trustee,” “department assistance,” “first lien lender,” and “reserve account.”

(b) Requires each owner who receives Texas Department of Housing and Community Affairs (TDHCA) assistance for a multifamily rental housing development that contains 25 or more rental units, if TDHCA is the first lien lender with respect to the development, to deposit annually for the year 2004 and for each year following the year 2004, into a reserve account certain amounts.

(c) Requires a land use restriction agreement or restrictive covenant between the owner and TDHCA to require the owner to begin making annual deposits to the reserve account on the date that occupancy of the multifamily rental housing development stabilizes or the date that permanent financing for the development is completely in place, whichever occurs later, and to continue making deposits until the earliest of certain dates.

(d) Requires the development owner, with respect to multifamily rental developments, if the establishment of a reserve fund for repairs has not been required by the first lien lender, to set aside the repair reserve amount as a reserve for capital improvements. Requires the reserve to be established for each unit in the development, regardless of the amount of rent charged for the unit. Requires the reserve to be continually maintained, with withdrawals permitted only to pay for the cost of capital improvements needed for the development to maintain habitability according to federal standards or local codes, whichever are more restrictive. Requires evidence of an appropriate level of funding in the reserve accounts to be established by an annual audit as described by Subsection (k).

(e) Requires the owner of a multifamily rental housing development, beginning with the 11th year after the awarding of any financial assistance for the development by TDHCA, to inspect the development at least once during each five-year period to assess the repair needs of the development. Requires the

owner to submit the report to TDHCA not later than the 30th day after the date of the inspection and after submission of the report to complete the identified repairs in a timely manner.

(f) Authorizes TDHCA to complete necessary repairs if the owner fails to complete the repairs as required by Subsection (e). Requires payment for those repairs to be made directly by the owner of the development or through a reserve account established for the development under this section.

(g) Authorizes TDHCA, if notified of the development owner's failure to comply with a local health, safety, or building code, to complete any repairs necessary to correct a violation of that code, as identified in the applicable violation report, and to pay for those repairs through a reserve account established for the development under this section.

(h) Requires TDHCA, if the amount in the reserve account is considered by TDHCA to be inadequate to fund the costs of the necessary repairs, to reassess and, if appropriate, revise the deposit amount required of the owner and the level of TDHCA assistance provided for the development.

(i) Provides that the duties of the owner of a multifamily rental housing development under this section cease on the date of a voluntary change in ownership of the development, but the subsequent owner of the development is subject to the deposit, inspection, and notification requirements of Subsections (b), (c), and (d) and (e).

(j) Requires the first lien lender to maintain the reserve account. Authorizes the first lien holder, on the satisfaction of its lien, to continue to maintain the reserve account. Requires TDHCA, if the first lien lender does not elect to continue maintaining the reserve account, to appoint a state bank trustee to continue maintenance of the account.

(k) Requires an audit to establish the appropriate level of funding in the reserve accounts to conform to auditing standards in common use and generally accepted by the federal government, including standards specified by the government auditing standards issued by the comptroller general of the United States and the standards specified by the provisions of the office of Management and Budget Circular A-133.

(l) Requires TDHCA to adopt certain rules.

(m) Requires TDHCA to assess an administrative penalty on development owners who fail to conduct the inspection and make the identified repairs as required by Subsection (a). Authorizes TDHCA to assess the administrative penalty in the same manner as an administrative penalty assessed under Section 2306.6023. Provides that the penalty is computed by multiplying \$200 by the number of dwelling units in the development and must be paid to TDHCA. Requires the office of the attorney general to assist TDHCA in the collection of the penalty and the enforcement of this subsection.

(n) Provides that this section does not apply to a multifamily rental housing development supported by qualified 501(c)(3) bonds.

SECTION 2. Amends Section 2306.185, Government Code, by amending Subsection (a) and adding Subsection (h), as follows:

(a) Makes a conforming change.

(h) Requires TDHCA to monitor a development owner's compliance with this section.

SECTION 3. (a) Requires TDHCA to adopt the rules required by Section 2306.186, Government Code, as added by this Act, not later than December 1, 2003.

(b) Makes application of the change in law made by Section 2306.186, Government Code, as added by this Act, prospective to January 1, 2004.

SECTION 4. This Act takes effect September 1, 2003.