

1-1 By: West S.B. No. 999
1-2 (In the Senate - Filed March 7, 2003; March 13, 2003, read
1-3 first time and referred to Committee on Intergovernmental
1-4 Relations; April 30, 2003, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;
1-6 April 30, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 999 By: Wentworth

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the establishment of reserve accounts to fund necessary
1-11 repairs for certain multifamily rental housing developments
1-12 assisted by the Texas Department of Housing and Community Affairs;
1-13 providing an administrative penalty.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Subchapter H, Chapter 2306, Government Code, is
1-16 amended by adding Section 2306.186 to read as follows:

1-17 Sec. 2306.186. MANDATORY DEPOSITS TO FUND NECESSARY
1-18 REPAIRS. (a) In this section:

1-19 (1) "Cost-of-living adjustment" means the
1-20 cost-of-living adjustment determined for the applicable year under
1-21 Section 1(f)(3), Internal Revenue Code of 1986, as amended, by
1-22 substituting "calendar year 2004" for "calendar year 1992" in
1-23 Subsection (f)(3)(B) of that section.

1-24 (2) "Bank trustee" means a bank authorized to do
1-25 business in this state, with the power to act as trustee.

1-26 (3) "Department assistance" means any state or federal
1-27 assistance administered by or through the department, including
1-28 low-income housing tax credits.

1-29 (4) "First lien lender" means a lender whose lien has
1-30 first priority.

1-31 (5) "Reserve account" means an individual account:
1-32 (A) created to fund any necessary repairs for a
1-33 multifamily rental housing development; and

1-34 (B) maintained by a first lien lender or bank
1-35 trustee.

1-36 (b) If the department is the first lien lender with respect
1-37 to the development, each owner who receives department assistance
1-38 for a multifamily rental housing development that contains 25 or
1-39 more rental units shall deposit annually into a reserve account:

1-40 (1) for the year 2004:
1-41 (A) \$250 per unit per year for units one to five
1-42 years old; and

1-43 (B) \$300 per unit per year for units six or more
1-44 years old; and

1-45 (2) for each year following the year 2004, the amounts
1-46 per unit per year as described by Subdivision (1), plus a
1-47 cost-of-living adjustment.

1-48 (c) A land use restriction agreement or restrictive
1-49 covenant between the owner and the department must require the
1-50 owner to begin making annual deposits to the reserve account on the
1-51 date that occupancy of the multifamily rental housing development
1-52 stabilizes or the date that permanent financing for the development
1-53 is completely in place, whichever occurs later, and shall continue
1-54 making deposits until the earliest of the following dates:

1-55 (1) the date of any involuntary change in ownership of
1-56 the development;

1-57 (2) the date on which the owner suffers a total
1-58 casualty loss with respect to the development or the date on which
1-59 the development becomes functionally obsolete, if the development
1-60 cannot be or is not restored;

1-61 (3) the date on which the development is demolished;

1-62 (4) the date on which the development ceases to be used
1-63 as multifamily rental property; or

2-1 (5) the end of the affordability period specified by
 2-2 the land use restriction agreement or restrictive covenant.

2-3 (d) With respect to multifamily rental developments, if the
 2-4 establishment of a reserve fund for repairs has not been required by
 2-5 the first lien lender, the development owner shall set aside the
 2-6 repair reserve amount as a reserve for capital improvements. The
 2-7 reserve must be established for each unit in the development,
 2-8 regardless of the amount of rent charged for the unit. The reserve
 2-9 must be continually maintained, with withdrawals permitted only to
 2-10 pay for the cost of capital improvements needed for the development
 2-11 to maintain habitability according to federal standards or local
 2-12 codes, whichever are more restrictive. Evidence of an appropriate
 2-13 level of funding in the reserve accounts must be established by an
 2-14 annual audit as described by Subsection (k).

2-15 (e) Beginning with the 11th year after the awarding of any
 2-16 financial assistance for the development by the department,
 2-17 including low-income housing tax credits, the owner of a
 2-18 multifamily rental housing development shall inspect the
 2-19 development at least once during each five-year period to assess
 2-20 the repair needs of the development. The owner shall submit the
 2-21 report to the department not later than the 30th day after the date
 2-22 of the inspection and after submission of the report shall complete
 2-23 the identified repairs in a timely manner.

2-24 (f) The department may complete necessary repairs if the
 2-25 owner fails to complete the repairs as required by Subsection (e).
 2-26 Payment for those repairs must be made directly by the owner of the
 2-27 development or through a reserve account established for the
 2-28 development under this section.

2-29 (g) If notified of the development owner's failure to comply
 2-30 with a local health, safety, or building code, the department may
 2-31 complete any repairs necessary to correct a violation of that code,
 2-32 as identified in the applicable violation report, and may pay for
 2-33 those repairs through a reserve account established for the
 2-34 development under this section.

2-35 (h) If the amount in the reserve account is considered by
 2-36 the department to be inadequate to fund the costs of the necessary
 2-37 repairs, the department shall reassess and, if appropriate, revise
 2-38 the deposit amount required of the owner and the level of department
 2-39 assistance provided for the development.

2-40 (i) The duties of the owner of a multifamily rental housing
 2-41 development under this section cease on the date of a voluntary
 2-42 change in ownership of the development, but the subsequent owner of
 2-43 the development is subject to the deposit, inspection, and
 2-44 notification requirements of Subsections (b), (c), (d), and (e).

2-45 (j) The first lien lender shall maintain the reserve
 2-46 account. On the satisfaction of its lien, the first lien lender may
 2-47 continue to maintain the reserve account. If the first lien lender
 2-48 does not elect to continue maintaining the reserve account, the
 2-49 department shall appoint a bank trustee to continue maintenance of
 2-50 the account.

2-51 (k) An audit to establish the appropriate level of funding
 2-52 in the reserve accounts must conform to auditing standards in
 2-53 common use and generally accepted by the federal government,
 2-54 including standards specified by the government auditing standards
 2-55 issued by the comptroller general of the United States and the
 2-56 standards specified by the provisions of the Office of Management
 2-57 and Budget Circular A-133.

2-58 (l) The department shall adopt rules that:

2-59 (1) establish requirements and standards regarding:

2-60 (A) for first lien lenders and bank trustees:

2-61 (i) maintenance of reserve accounts and
 2-62 reasonable costs of that maintenance;

2-63 (ii) asset management;

2-64 (iii) transfer of money in reserve accounts
 2-65 to the department to fund necessary repairs; and

2-66 (iv) oversight of reserve accounts and the
 2-67 provision of financial data and other information to the
 2-68 department; and

2-69 (B) for owners, inspections of the multifamily

3-1 rental housing developments and identification of necessary
3-2 repairs, including requirements and standards regarding
3-3 construction, rehabilitation, and occupancy that may enable
3-4 quicker identification of those repairs;

3-5 (2) identify circumstances in which money in the
3-6 reserve accounts may:

3-7 (A) be used for expenses other than necessary
3-8 repairs, including property taxes or insurance; and

3-9 (B) fall below mandatory deposit levels without
3-10 resulting in department action;

3-11 (3) define the scope of department oversight of
3-12 reserve accounts and the repair process;

3-13 (4) provide the consequences of any failure to make a
3-14 required deposit, including a definition of good cause, if any, for
3-15 a failure to make a required deposit;

3-16 (5) specify or create processes and standards to be
3-17 used by the department to obtain repairs for developments;

3-18 (6) define for purposes of Subsection (c) the date on
3-19 which occupancy of a development is considered to have stabilized
3-20 and the date on which permanent financing is considered to be
3-21 completely in place; and

3-22 (7) provide for appointment of a bank trustee as
3-23 necessary under this section.

3-24 (m) The department shall assess an administrative penalty
3-25 on development owners who fail to conduct the inspection and make
3-26 the identified repairs as required by Subsection (e). The
3-27 department may assess the administrative penalty in the same manner
3-28 as an administrative penalty assessed under Section 2306.6023. The
3-29 penalty is computed by multiplying \$200 by the number of dwelling
3-30 units in the development and must be paid to the department. The
3-31 office of the attorney general shall assist the department in the
3-32 collection of the penalty and the enforcement of this subsection.

3-33 (n) This section does not apply to a multifamily rental
3-34 housing development supported by qualified 501(c)(3) bonds.

3-35 SECTION 2. Section 2306.185, Government Code, is amended by
3-36 amending Subsection (a) and adding Subsection (h) to read as
3-37 follows:

3-38 (a) The department shall adopt policies and procedures to
3-39 ensure that, for a multifamily rental housing development funded
3-40 through loans, grants, or tax credits under this chapter, the owner
3-41 of the development:

3-42 (1) keeps the rents affordable for low income tenants
3-43 for the longest period that is economically feasible; and

3-44 (2) provides regular maintenance to keep the
3-45 development sanitary, decent, and safe and otherwise complies with
3-46 the requirements of Section 2306.186.

3-47 (h) The department shall monitor a development owner's
3-48 compliance with this section.

3-49 SECTION 3. (a) The Texas Department of Housing and
3-50 Community Affairs shall adopt the rules required by Section
3-51 2306.186, Government Code, as added by this Act, not later than
3-52 December 1, 2003.

3-53 (b) The change in law made by Section 2306.186, Government
3-54 Code, as added by this Act, applies only to multifamily rental
3-55 housing developments that receive assistance from the Texas
3-56 Department of Housing and Community Affairs on or after January 1,
3-57 2004.

3-58 SECTION 4. This Act takes effect September 1, 2003.

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