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FISCAL IMPACT REPORT

SPONSOR: Garcia DATE TYPED: 3/15/03 HB _____
 SHORT TITLE: Flood Hazardous Area Requirements SB 286/aSJC
 ANALYST: Maloy

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Narrative	Recurring	GF/OSF/Local

Duplicates HB 77.

SOURCES OF INFORMATION

Responses Received From
 General Services Department
 Regulation and Licensing Department, Construction Industries Division
 Department of Finance and Administration
 Department of Public Safety

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amended Senate Bill 286 to clarify that local counties and municipalities have exclusive jurisdiction over flood plain permits issued pursuant to their flood plain ordinances, as long as the construction is subject to inspection and approval in accordance with the Construction Industries Licensing Act.

This amendment assures that construction in flood plains is to be performed in accordance with the same minimum safety standards and regulatory checks as established for other types of construction in the state.

Synopsis of Original Bill

Senate Bill 286 proposes to:

Require counties and municipalities to individually regulate construction in flood and mudslide hazard areas through the adoption of construction standards that conform to the regulations prescribed by the federal insurance administration;

Require any county or municipality with an area that has been designated “flood-prone” by the Federal Emergency Management Agency (FEMA) to participate in the national flood insurance program;

Eliminate the enforcement/inspection jurisdiction of the Construction Industries Division over flood or mudslide area permits; and

Identify the department of public safety as the “state coordinating agency” for the national flood insurance program.

Finally, SB 286 requires all buildings receiving state funding for construction, repair or improvement in an amount equal to, or in excess of, 50% of the building’s value (before the repair or improvement) to comply with the standards of the national flood insurance program.

Significant Issues

1. The Risk Management Division of the General Services Department provides flood insurance coverage for all state agencies and university properties. Four universities have been identified as having high-risk exposure areas (NMHU, NMSU, ENMMU, UNM). Currently, the Risk Management Division has separate, enhanced policies for these properties. The high-risk premiums are costly.

It is expected that, as other high-risk properties are identified, Risk Management will see an increase in other properties’ premiums.

The Property Control Division’s FY04 budget request for property insurance does not include enhanced insurance for the additional state properties that will be identified as high-risk exposure areas.

2. Section 60-13-10 of the Construction Industries Licensing Act provides that the Construction Industries Division (CID) shall issue regulations specifically addressing construction in flood or mudslide areas. Section 60-13-44(F) of the Act also provides: “all political subdivisions of the state are subject to the provisions of codes adopted and approved under the Construction Industries Licensing Act . . . Such codes constitute a minimum requirement for the codes of political subdivisions.”

Having a uniform, consistent minimum code for the state is a great asset. Contractors can move freely throughout the state without having to continually rework their trades to accommodate numerous differing code jurisdictions. Having each county and municipality adopt its own codes to govern the hazardous areas within its boundaries may result in problematic, inconsistent building practices, compliance and enforcement. It will likely be most beneficial to have one uniform “hazardous areas code” promulgated at the state level.

3. SB 286 states that a county or municipality shall have exclusive jurisdiction over flood and mudslide hazard permits. The bill strikes language relating to enforcement through an inspector who is certified by the Construction Industries Division. This raises three issues:
 - a. Many rural counties and municipalities do not have personnel with the construction

expertise necessary to enforce these codes. These counties and municipalities will need assistance from the Construction Industries Division (CID).

- b. CID already performs statewide inspection services. These services are concentrated in areas of the state where there exists no local building department, or where the existing department is limited in its scope of expertise (e.g., general construction only, no electrical or mechanical). If such a county or municipality hires a hazardous area inspector, it will most likely find it is duplicating efforts that could have been accomplished in one inspection by a CID certified inspector (whether local or state).
- c. Currently, the Construction Industries Division has certification and oversight authority over all construction inspectors. Is it reasonable to exempt this one category of inspector from the authority of the division, particularly in light of the complex construction and safety issues related to building in a hazardous area?

FISCAL IMPLICATIONS

1. The Risk Management and Property Control Divisions of the General Services Department will encounter higher insurance premiums until the codes are fully implemented.
2. Counties and municipalities will need to budget for additional personnel.
3. The state does not currently issue hazardous-area-specific permits. Thus, the state is not generating revenue from such building circumstances.

However, if, because of the grant of exclusive jurisdiction to counties and municipalities, a structure that would normally have been permitted by the state Construction Industries Division became the responsibility of the local county or municipality (e.g., a public building in a flood plain), the general fund could receive less revenue.

4. The public will pay higher permit fees for construction.

ADMINISTRATIVE IMPLICATIONS

SB 286's administrative impact on the General Services Department and the Construction Industries Division will be minimal.

Local county and municipalities would see an increase in their responsibilities, including: drafting and adopting codes, permitting and inspection.

CONFLICT OR RELATIONSHIP

SB 286 gives rise to jurisdictional ambiguities, if not conflicts, with the Construction Industries Licensing Act.

AMENDMENTS

Consistency between laws governing construction may be achieved through having the state Construction Industries Division promulgate and adopt the minimum hazardous area code, and through having the hazardous-area inspectors under the certification jurisdiction of the Division.

SJM/njw:sb:yr