



LEGISLATIVE BRIEF: SAFE ARTIFICIAL SLOPE CONSTRUCTION

Background

This proposal is a study committee recommendation to “(1) require local governments to adopt ordinances to regulate site planning, design, and construction of artificial slopes in mountainous areas to promote safe and stable slopes for development, to reduce the likelihood of slope failures on developed or disturbed land, and to protect human safety and property; and (2) direct the Sedimentation Control Commission to assist local governments in development and implementation of safe slope construction programs and to develop a model ordinance.” The bill would apply to development in an “affected area,” defined as an area located on a slope or hillside that has a slope of 40 percent or greater or “is designated with a slide hazard ranking of ‘moderate’ or ‘high’ on a Stability Index Map prepared by the North Carolina Geological Survey.”

The Sedimentation Control Commission would identify jurisdictions that would be required to adopt ordinances controlling development in affected areas. The Commission would be required to prepare a model ordinance and would review and approve (or not) local ordinances. The bill prescribes hearing requirements, documents to be filed with the state, authorized fees (for review of slope construction plans), designation of agencies to implement joint plans and other elements of “mandatory local programs.”

Outlook for 2010

The Association has not taken a position on this proposal. We are, however, concerned about the degree to which approval of the bill would preempt local ability to regulate development, impose costs within planning departments that would not be covered by authorized fees and discourage development in western and northwestern counties. The bill would make the determination by the State Commission of “affected areas ... conclusive in the absence of fraud,” and thus all but impossible to challenge. The combination of the Commission’s authority to develop a “model safe artificial slope construction ordinance,” and its authority to review each local ordinance and then “notify the local government submitting the ordinance that the ordinance has been approved, approved with modifications, or disapproved,” gives the state commission the authority to dictate and modify the language of a “local” ordinance.