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## FISCAL IMPACT REPORT

SPONSOR Griego DATE TYPED 02/28/05 HB \_\_\_\_\_

SHORT TITLE Construction Industries Enterprise Fund SB 712

ANALYST McSherry

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
NFI	(\$6,200.0)	(\$6,200.0)	Recurring	General Fund
NFI	\$6,200.0	\$6,200.0	Recurring	Proposed Construction Industries Enterprise Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates House Bill 736

### SOURCES OF INFORMATION

LFC Files  
 Regulations and Licensing Department  
 Department of Finance and Administration  
 State Treasury

### SUMMARY

#### Synopsis of Bill

Senate Bill 712 proposes to amend section 9-16-14 NMSA 1978, the "Regulations and Licensing Operating Fund," by creating a separate fund for the Construction Industries Division, the "Construction Industries Enterprise Fund."

The proposed fund would receive any funds appropriated by the Legislature, fees collected by the Division (except fees subject to 60-13-8.1 NMSA 1978), funds received from other agencies, any gifts, grants, donation or bequests made to the fund, and any income from investment of the fund. The fund would be non-reverting and for the purpose of carrying out the provisions of the Construction Industries Licensing Act. The money in the fund would be appropriated to the Division and administrated by the Division.

The effective date of the proposed changes would be July 1, 2005.

Significant Issues

The Construction Industries Division (CID) generates approximately \$6.2 million in revenues per year according to Department of Finance and Administration reports. All CID revenues are currently deposited into the general fund and the CID budget is appropriated from the General Fund. The Divisions FY05 budget is \$6,687.6 thousand in general fund, which is currently the division's only revenue source. The proposed bill, should it be enacted, would cause less scrutiny during the division's budget appropriation process as the division's budget would be primarily "other state funds" rather than general funds.

The proposed enterprise fund would not revert any of the division's funds at the end of a given fiscal year including any appropriations by the legislature.

The Division asserts that the significant issue raised by this bill is whether consumers of CID's services should have all revenue collected from them retained by CID so that it can be applied directly to services offered and performed by CID pursuant to the Construction Industries Act.

The agency contends that this bill could alleviate financial difficulties, however, the revenues generated by the division are not currently of the level that would allow the Division to cover expenses. If the Division were to operate using the proposed enterprise fund with current revenues, additional appropriations from the general fund would be necessary to continue the current level of Division services.

CID asserts that in order for the division to provide a quality response to its demand and to support the economic development and growth in New Mexico's infrastructures, it needs sufficient, competent staff. It is not clear how the proposed enterprise fund would allow new or improved hiring for the division.

The Department of Finance Administration (DFA) speculates that this bill may be submitted with the assumption that revenues will eventually exceed the current operating budget; if not, DFA continues, in FY 06 CID may have a \$500.0 shortfall in revenues, assuming current expenditures and revenues. DFA predicts that this bill may also assume that the Legislature would allow CID to spend all generated revenues, which is not necessarily true.

DFA points out that the State Budget Division has the ability to increase the operating budget of an agency from self generated revenues, but cannot circumvent the Legislative appropriations process.

The legislature would still appropriate funds to the Division from the proposed enterprise fund through the yearly budgeting process, even if no Division revenues were deposited in the general fund.

**PERFORMANCE IMPLICATIONS**

It is not clear how an enterprise revenue fund would allow the division to hire additional staff and overcome budget shortages if currently the Division's revenues are less than the Division's operating budget.

According to RLD, allowing the Division to retain all revenues, would cause more revenues to be collected and that thus the Division would be functioning better.

CID asserts that the Division is understaffed and that a shortage of qualified people is manifested in three ways: field operations, information technology, professionalism and reciprocity.

CID asserts that because the CID budget is dependent on appropriations from the general fund, it is limited in staff, such as plan reviewers inspectors and investigators, and that funding limitations can result in delayed permits and inspections, under-prosecution of unlicensed contracting, undermining of Division continuing education and the understaffing of new projects such as the electronic permitting services offered at the state-level.

CID contends that new businesses are being attracted to New Mexico and school construction renovations are being funded causing the demands for CID's services to increase. The Division asserts that an enterprise fund would allow the division to hire critically needed additional staff members who are well qualified to respond to the need for CID's services. Revenues to the division would be directly related to the number of inspections being performed by the division.

Currently, all revenue generated by the Construction Industries Division must be deposited to the general fund. The Division does not have control over the appropriations out of the general fund, and there is no set correlation between increase in revenues through higher fees or other revenue sources and the application of CID's services.

### **FISCAL IMPLICATIONS**

The appropriation of all Construction Industries program revenues, grants, gifts, bequests, income investments, agency transfers, and legislative appropriations (currently \$6.2 million) contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 would not revert to the general fund.

CID asserts that because the Division does not have control over appropriations out of the general fund, there is no assurance that any increase in revenues realized through higher fees or other revenue generating initiatives would be used for the purposes of supporting CID's services. However, the Division continues, if assurance were given through the creation of an enterprise fund, revenue generation could be expected to increase.

The Division proposes that with an enterprise fund CID could: develop external sources of funding through such activities as pursuing grants, inter-agency cooperative agreements, and federal funds; and raise fees in proportion to quality of services rendered so that its fees reflect value for service. It is not clear if there are currently prohibitory circumstances that disallow the Division to garner funds from cooperative agreements, federal funds and grants.

CID maintains that the creation of the enterprise fund would not reduce the revenues currently available to the legislature and would enable the state to provide a higher level of services to support its burgeoning economic development. However, this bill would create a recurring appropriation and the LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

**ADMINISTRATIVE IMPLICATIONS**

CID maintains that the Division has the staff to undertake the administration of the proposed fund.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Senate Bill 712 duplicates House Bill 736.

**TECHNICAL ISSUES**

Currently CID and the Manufactured Housing Division are funded as a single program, in one appropriation. The appropriations structure in House Bill 2 for FY-06 as it applies to CID and the Manufactured Housing Division would have to be amended to be in accord with the funding structure proposed by this legislation.

House Bill 2 includes an appropriation for the Division in fiscal year 2006 and this proposed statute would go into effect at the beginning of fiscal year 2006. Should this bill be enacted, the appropriation for the division would have to be amended to reflect the change in division revenues to be primarily program revenues and the Division's general fund appropriation would need to be decreased.

**ALTERNATIVES**

The Division could pursue grants and awards as suggested by the Department.

Division revenues in part or as a percentage could be returned to the Division. In this scenario, both the general fund and Division would benefit through the Divisions predictions of increased revenues.

DFA offers that the alternative to this bill would be to increase the legislative appropriation to CID.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

The Legislature would continue to appropriate the operating funds for the Division and the Division's revenues would continue to be deposited in the general fund.

CID asserts that the division will continue to be under funded and under staffed and that it will be required to meet rising demands on its services without the resources necessary to meet those demands.

**POSSIBLE QUESTIONS**

1. Does the Division project generating enough revenues to cover expenditures in fiscal year 2006?
2. Does the Division not currently have the ability to apply for grants and awards and/or raise fees as is suggested by the Division should this bill be enacted?

**EM/lg**