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AN ACT

RELATING TO TORTS; AMENDING A SECTION OF THE TORT CLAIMS ACT TO PROVIDE FOR AN EXCLUSION FROM THE WAIVER OF IMMUNITY FOR IRRIGATION AND CONSERVANCY DISTRICTS THAT AUTHORIZE PART OF THEIR PROPERTY FOR USE AS A ROADWAY BY THE PUBLIC OR A GOVERNMENTAL ENTITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 41-4-11 NMSA 1978 (being Laws 1976, Chapter 58, Section 11, as amended) is amended to read:

"41-4-11. LIABILITY--HIGHWAYS AND STREETS.--

A. The immunity granted pursuant to Subsection A of Section 41-4-4 NMSA 1978 does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties during the construction, and in subsequent maintenance, of any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area.

B. The liability for which immunity has been waived pursuant to Subsection A of this section shall not include liability for damages caused by:

(1) a defect in plan or design of any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area;

1 (2) the failure to construct or reconstruct
2 any bridge, culvert, highway, roadway, street, alley,
3 sidewalk or parking area; or

4 (3) a deviation from standard geometric
5 design practices for any bridge, culvert, highway, roadway,
6 street, alley, sidewalk or parking area allowed on a case-by-
7 case basis for appropriate cultural, ecological, economic,
8 environmental, right-of-way through Indian lands, historical
9 or technical reasons; provided that the deviation:

10 (a) is required by extraordinary
11 circumstances;

12 (b) has been approved by the governing
13 authority; and

14 (c) is reasonable and necessary as
15 determined by the application of sound engineering principles
16 taking into consideration the appropriate cultural,
17 ecological, economic, environmental, right-of-way through
18 Indian lands, historical or technical circumstances.

19 C. All irrigation and conservancy districts that
20 authorize any part of their property to be used as a road
21 available for use by the general public, and their employees
22 acting lawfully and within the scope of their duties, are
23 excluded from the waiver of immunity under Subsection A of
24 this section; provided that:

25 (1) the irrigation or conservancy district

1 has entered into a written agreement with the state agency or
2 governmental entity operating and maintaining that road; and

3 (2) the state agency or governmental entity
4 has agreed to assume the operation and maintenance of that
5 portion of the district's property used for that road.

6 D. The state agency or governmental entity
7 operating and maintaining the road available for use by the
8 general public pursuant to Subsection C of this section shall
9 be subject to liability as provided in the Tort Claims Act."

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