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HOUSE BILL 307

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Larry A. Larrañaga

AN ACT

RELATING TO CONSTRUCTION CONTRACTS; MODIFYING ACCEPTABLE TERMS
IN INDEMNIFICATION PROVISIONS OF CONSTRUCTION CONTRACTS.

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

SECTION 1. Section 56-7-1 NMSA 1978 (being Laws 1971,
Chapter 107, Section 1, as amended) is amended to read:

"56-7-1. REAL PROPERTY--INDEMNITY AGREEMENTS--AGREEMENTS
VOID.--

A. A provision in a construction contract that
requires one party to the contract to indemnify, hold harmless,
insure or defend the other party to the contract, including the
other party's employees or agents, against liability, claims,
damages, losses or expenses, including attorney fees, arising
out of bodily injury to persons or damage to property caused by
or resulting from, in whole or in part, the negligence, act or

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1 omission of the indemnitee, its officers, employees or agents,
2 is void, unenforceable and against the public policy of the
3 state.

4 B. A construction contract may contain a provision
5 that, or shall be enforced only to the extent that, it:

6 (1) requires one party to the contract to
7 indemnify or hold harmless [~~or insure~~] the other party to the
8 contract, including its officers or employees [~~or agents~~],
9 against liability, claims, damages, losses or expenses,
10 including reasonable attorney fees and court costs, only to the
11 extent that the liability, damages, losses or costs are caused
12 by [~~or arise out of~~] the negligent acts or omissions of the
13 indemnitor or its officers or employees or [~~agents~~] a person
14 for whom the indemnitor is liable; or

15 (2) requires a party to the contract to
16 purchase a project-specific insurance policy, including an
17 owner's or contractor's protective insurance, project
18 management protective liability insurance or builder's risk
19 insurance.

20 C. This section does not apply to indemnity of a
21 surety by a principal on any surety bond or to an insurer's
22 obligation to its insureds.

23 D. The state, a state agency or a political
24 subdivision of the state may enter into a contract for the
25 construction, operation or maintenance of a public

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1 transportation system, including a railroad and related
2 facilities, that includes a continuous obligation to procure an
3 insurance policy, including an owner's, operator's or
4 contractor's protective or liability insurance, project
5 management protective liability insurance, builder's risk
6 insurance, railroad protective insurance or other policy of
7 insurance against the negligence of another party to the
8 contract. If the state, a state agency or a political
9 subdivision of the state insured by the risk management
10 division of the general services department enters into a
11 contract to procure insurance as permitted by this section, the
12 cost of any insurance shall be paid by the risk management
13 division of the general services department and shall not be a
14 general obligation of the state, the state agency or the
15 political subdivision of the state.

16 E. As used in this section, "construction contract"
17 means a public, private, foreign or domestic contract or
18 agreement relating to construction, alteration, repair or
19 maintenance of any real property in New Mexico and includes
20 agreements for architectural services, demolition, design
21 services, development, engineering services, excavation or
22 other improvement to real property, including buildings,
23 shafts, wells and structures, whether on, above or under real
24 property.

25 F. As used in this section, "indemnify" or "hold

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1 harmless" includes any requirement to name the indemnified
2 party as an additional insured in the indemnitor's insurance
3 coverage for the purpose of providing indemnification for any
4 liability not otherwise allowed in this section."

5 SECTION 2. TEMPORARY PROVISION.--This act shall not
6 affect a construction contract, as defined in Section 56-7-1
7 NMSA 1978, that is existing or that may be entered into
8 pursuant to invitations to bid, requests for proposals or other
9 solicitations that are in process as of June 30, 2018.

10 SECTION 3. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2018.