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SENATE BILL 221

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

INTRODUCED BY

Mary Kay Papen

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 GOVERNMENT 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

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underscored material = new
~~[bracketed material] = delete~~

underscored material = new
[bracketed material] = delete

1 construction, and in subsequent maintenance, of any bridge,
2 culvert, highway, roadway, street, alley, sidewalk or parking
3 area.

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

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

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

13 (3) a deviation from standard geometric design
14 practices for any bridge, culvert, highway, roadway, street,
15 alley, sidewalk or parking area allowed on a case-by-case basis
16 for appropriate cultural, ecological, economic, environmental,
17 ~~[right-of-way through Indian lands]~~ historical or technical
18 reasons or rights of way through Indian lands; provided that
19 the deviation:

20 (a) is required by extraordinary
21 circumstances;

22 (b) has been approved by the governing
23 authority; and

24 (c) is reasonable and necessary as
25 determined by the application of sound engineering principles

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underscored material = new
[bracketed material] = delete

1 taking into consideration the appropriate cultural, ecological,
2 economic, environmental, [~~right-of-way through Indian lands~~]
3 historical or technical circumstances or rights of way through
4 Indian lands.

5 C. Irrigation and conservancy districts that
6 authorize any part of their property to be used as a road
7 available for use by the general public, and their employees
8 acting lawfully and within the scope of their duties, are
9 excluded from the waiver of immunity under Subsection A of this
10 section; provided that:

11 (1) the irrigation or conservancy district has
12 entered into a written agreement with the state agency or
13 governmental entity operating and maintaining that road; and

14 (2) the state agency or governmental entity
15 has agreed to assume the operation and maintenance of that
16 portion of the irrigation or conservancy district's property
17 used for that road.

18 D. A state agency or governmental entity operating
19 and maintaining a road available for use by the general public
20 pursuant to Subsection C of this section shall be subject to
21 liability as provided in the Tort Claims Act."