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SENATE BILL 100

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

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 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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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, provided the deviation:

19 (a) is required by extraordinary  
20 circumstances;

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

23 (c) is reasonable and necessary as  
24 determined by the application of sound engineering principles  
25 taking into consideration the appropriate cultural, ecological,

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1 economic, environmental, right-of-way through Indian lands,  
2 historical or technical circumstances.

3 C. All irrigation and conservancy districts and  
4 their public employees acting lawfully and within the scope of  
5 their duties that authorize any part of their property to be  
6 used as a road available for use by the general public by a  
7 state agency or local public body are excluded from the waiver  
8 of immunity under Subsection A of this section for damages  
9 arising out of the operation and maintenance of such roads  
10 available for use by the general public if the irrigation or  
11 conservancy district has entered into a written agreement with  
12 the state agency or local public body operating or maintaining  
13 such a road and that state agency or local public body has  
14 agreed to assume the operation and maintenance of that portion  
15 of the district's property used for such a road; provided that  
16 the state agency or local public body operating or maintaining  
17 the road available for use by the general public shall be  
18 subject to liability as provided in the Tort Claims Act."

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