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SENATE BILL 178

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

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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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 that 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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underscored material = new  
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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 that  
4 authorize any part of their property to be used as a road  
5 available for use by the general public, and their employees  
6 acting lawfully and within the scope of their duties, are  
7 excluded from the waiver of immunity under Subsection A of this  
8 section; provided that:

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

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

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