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HOUSE BILL 226

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

INTRODUCED BY

Nathan P. Small

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

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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,

underscoring 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 and 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 district's property used for that road.

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

