

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 1104

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
PROVIDING FOR INSURANCE OF RAILROAD OPERATIONS OF THE STATE.

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 by Laws 2003, Chapter 309,  
Section 1 and by Laws 2003, Chapter 421, Section 1) 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

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underscored material = new  
[bracketed material] = delete

1 out of bodily injury to persons or damage to property caused by  
2 or resulting from, in whole or in part, the negligence, act or  
3 omission of the indemnitee, its officers, employees or agents,  
4 is void, unenforceable and against the public policy of the  
5 state.

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

8 (1) requires one party to the contract to  
9 indemnify, hold harmless or insure the other party to the  
10 contract, including its officers, employees or agents, against  
11 liability, claims, damages, losses or expenses, including  
12 attorney fees, only to the extent that the liability, damages,  
13 losses or costs are caused by, or arise out of, the acts or  
14 omissions of the indemnitor or its officers, employees or  
15 agents; or

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

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

24 D. The state, a state agency or a political  
25 subdivision of the state may enter into a contract for the

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

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

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