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

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

(1) requires one party to the contract to indemnify, hold harmless or insure the other party to the

HJC/HB 1104 Page 1 contract, including its officers, employees or agents, against liability, claims, damages, losses or expenses, including attorney fees, only to the extent that the liability, damages, losses or costs are caused by, or arise out of, the acts or omissions of the indemnitor or its officers, employees or agents; or

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

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

D. The state, a state agency or a political subdivision of the state may enter into a contract for the construction, operation or maintenance of a public transportation system, including a railroad and related facilities, that includes a continuous obligation to procure an insurance policy, including an owner's, operator's or contractor's protective or liability insurance, project management protective liability insurance, builder's risk insurance, railroad protective insurance or other policy of insurance against the negligence of another party to the contract. If the state, a state agency or a political

HJC/HB 1104 Page 2 subdivision of the state insured by the risk management division of the general services department enters into a contract to procure insurance as permitted by this section, the cost of any insurance shall be paid by the risk management division of the general services department and shall not be a general obligation of the state, the state agency or the political subdivision of the state.

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

F. As used in this section, "indemnify" or "hold harmless" includes any requirement to name the indemnified party as an additional insured in the indemnitor's insurance coverage for the purpose of providing indemnification for any liability not otherwise allowed in this section."

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