

HOUSE BILL 202

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Nathan P. Small

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

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.--

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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 construction, and in subsequent maintenance, of any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area.

B. The liability for which immunity has been waived pursuant to Subsection A of this section shall not include liability for damages caused by:

(1) a defect in plan or design of any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area;

(2) the failure to construct or reconstruct any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area; or

(3) a deviation from standard geometric design practices for any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area allowed on a case-by-case basis for appropriate cultural, ecological, economic, environmental, right-of-way through Indian lands, historical or technical reasons; provided that the deviation:

(a) is required by extraordinary circumstances;

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

(c) is reasonable and necessary as determined by the application of sound engineering principles taking into consideration the appropriate cultural, ecological, economic, environmental, right-of-way through Indian lands, historical or technical circumstances.

C. All irrigation and conservancy districts that authorize Hfl→~~any part~~←Hfl Hfl→a portion←Hfl of their property to be used as a road available for use by the general public, and their employees acting lawfully and within the scope of their duties, are excluded from the waiver of immunity under Subsection A of this section Hfl→in regard to that portion of property←Hfl; provided that the:

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

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

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