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SENATE BILL 280

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO INDEMNIFICATION; MAKING VOID CERTAIN
INDEMNIFICATION AGREEMENTS.

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) is amended to read:

"56-7-1. REAL PROPERTY--INDEMNITY AGREEMENTS--AGREEMENTS
VOID. -- [~~Any provision contained in any agreement, relating to~~
~~the construction, installation, alteration, modification,~~
~~repair, maintenance, servicing, demolition, excavation,~~
~~drilling, reworking, grading, paving, clearing, site~~
~~preparation or development of any real property or any~~
~~improvement of any kind whether on, above or under real~~
~~property, including without limitation, buildings, shafts,~~
~~wells and structures, by which any party to the agreement~~

underscored material = new
[bracketed material] = delete

1 ~~agrees to indemnify the indemnitee or the agents and employees~~
2 ~~of the indemnitee against liability, claims, damages, losses or~~
3 ~~expenses, including attorney fees, arising out of bodily injury~~
4 ~~to persons or damage to property caused by or resulting from,~~
5 ~~in whole or in part, the negligence, act or omission of the~~
6 ~~indemnitee or the agents or employees of the indemnitee or any~~
7 ~~legal entity for whose negligence, acts or omissions any of~~
8 ~~them may be liable is against public policy and is void and~~
9 ~~unenforceable unless such provision shall provide that the~~
10 ~~agreement to indemnify shall not extend to liability, claims,~~
11 ~~damages, losses or expenses, including attorney fees, arising~~
12 ~~out of:-~~

13 ~~A. the preparation or approval of maps, drawings,~~
14 ~~opinions, reports, surveys, change orders, designs or~~
15 ~~specifications by the indemnitee or the agents or employees of~~
16 ~~the indemnitee; or~~

17 ~~B. the giving of or the failure to give directions~~
18 ~~or instructions by the indemnitee or the agents or employees of~~
19 ~~the indemnitee where such giving or failure to give directions~~
20 ~~or instructions is the primary cause of bodily injury to~~
21 ~~persons or damage to property.~~

22 ~~The word "indemnify" as used in this section~~
23 ~~includes without limitation an agreement to remedy damage or~~
24 ~~loss caused in whole or in part by the negligence, act or~~
25 ~~omission of the indemnitee, the agents or employees of the~~

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underscored material = new
[bracketed material] = delete

1 ~~indemnitee or any legal entity for whose negligence, acts or~~
2 ~~omissions any of the foregoing may be liable.]~~

3 A. A provision in a construction contract that
4 requires one party to the contract to indemnify, hold harmless,
5 insure or defend the other party to the contract, including the
6 other party's employees or agents, against liability, claims,
7 damages, losses or expenses, including attorney fees, arising
8 out of bodily injury to persons or damage to property caused by
9 or resulting from, in whole or in part, the negligence, act or
10 omission of the indemnitee, its officers, employees or agents,
11 is void, unenforceable and against the public policy of the
12 state.

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

15 (1) requires one party to the contract to
16 indemnify, hold harmless or insure the other party to the
17 contract, including its officers, employees or agents, against
18 liability, claims, damages, losses or expenses, including
19 attorney fees, only to the extent that the liability, damages,
20 losses or costs are caused by, or arise out of, the acts or
21 omissions of the indemnitor or its officers, employees or
22 agents; or

23 (2) requires a party to the contract to
24 purchase a project-specific insurance policy, including an
25 owner's or contractor's protective insurance, a project

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1 management protective liability insurance or a builder's risk
2 insurance.

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

6 D. As used in this section, "construction contract"
7 means a public, private, foreign or domestic contract or
8 agreement relating to construction, alteration, repair or
9 maintenance of any real property in New Mexico and includes
10 agreements for architectural services, alterations,
11 construction, demolition, design services, development,
12 engineering services, excavation, maintenance, repairs or other
13 improvement to real property, including without limitation
14 buildings, shafts, wells and structures, whether on, above or
15 under real property.

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

21 Section 2. Section 56-7-2 NMSA 1978 (being Laws 1971,
22 Chapter 205, Section 1, as amended) is amended to read:

23 "56-7-2. OIL, GAS OR WATER WELLS AND MINERAL MINES--
24 AGREEMENTS, COVENANTS AND PROMISES TO INDEMNIFY VOID.--

25 A. An agreement, covenant or promise, foreign or

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1 domestic, contained in, collateral to or affecting an agreement
2 pertaining to a well for oil, gas or water, or mine for a
3 mineral, within New Mexico, that purports to indemnify the
4 indemnitee against loss or liability for damages arising from
5 the circumstances specified in [~~Paragraphs~~] Paragraph (1), (2)
6 or (3) of this subsection is against public policy and is void:

7 (1) the sole or concurrent negligence of the
8 indemnitee or the agents or employees of the indemnitee;

9 (2) the sole or concurrent negligence of an
10 independent contractor who is directly responsible to the
11 indemnitee; or

12 (3) an accident that occurs in operations
13 carried on at the direction or under the supervision of the
14 indemnitee, an employee or representative of the indemnitee or
15 in accordance with methods and means specified by the
16 indemnitee or employees or representatives of the indemnitee.

17 B. As used in this section, "agreement pertaining
18 to a well for oil, gas or water, or mine for a mineral" means
19 an agreement:

20 (1) concerning any operations related to
21 drilling, deepening, reworking, repairing, improving, testing,
22 treating, perforating, acidizing, logging, conditioning,
23 altering, plugging or otherwise rendering services in
24 connection with a well drilled for the purpose of producing or
25 disposing of oil, gas or other minerals or water;

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[bracketed material] = delete

1 (2) for rendering services in connection with
2 a mine shaft, drift or other structure intended for use in the
3 exploration for or production of a mineral; or

4 (3) to perform a portion of the work or
5 services described in [~~Paragraphs~~] Paragraph (1) or (2) of this
6 subsection or an act collateral thereto.

7 C. A provision in an insurance contract indemnity
8 agreement naming a person as an additional insured or a
9 provision in an insurance contract or any other contract
10 requiring a waiver of rights of subrogation or otherwise having
11 the effect of imposing a duty of indemnification on the primary
12 insured party that would, if it were a direct or collateral
13 agreement described in Subsections A and B of this section, be
14 void, is against public policy and void.

15 D. Nothing in this section:

16 (1) deprives an owner of the surface estate of
17 the right to secure indemnity from a lessee, operator,
18 contractor or other person conducting operations for the
19 exploration of minerals on the owner's land; or

20 (2) affects the validity of a benefit
21 conferred by the Workers' Compensation Act. "

22 Section 3. EFFECTIVE DATE. --The effective date of the
23 provisions of this act is July 1, 2003.