

1 SB139
2 138390-3
3 By Senator Scofield
4 RFD: Commerce, Transportation, and Utilities
5 First Read: 07-FEB-12
6 PFD: 02/02/2012

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To adopt the existing common law of Alabama as it
12 relates to abating the civil liability of a person or entity
13 that contracts with the State of Alabama, a county, or a local
14 government to construct, repair, or maintain a highway, a
15 road, or a street.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. For the purposes of this act, the
18 following terms shall have the following meanings:

19 (1) AWARDING AUTHORITY.

20 a. The Alabama Department of Transportation, if the
21 contractor enters into a contract with the State of Alabama to
22 construct, repair, or maintain a highway, a road, or a street
23 for the State of Alabama; or

24 b. The county governing body, if the contractor
25 enters into a contract with that county to construct, repair,
26 or maintain a highway, a road, or a street for that county; or

1 c. The governing body of any other local government,
2 if the contractor enters into a contract with that local
3 government to construct, repair, or maintain a highway, a
4 road, or a street for that local government.

5 (2) CONCLUSION OF PROJECT. The date that the
6 awarding authority notifies the contractor, in writing, that
7 the awarding authority has assumed maintenance
8 responsibilities for the roadway or 60 days after the
9 contractor has notified, in writing, the awarding authority
10 that the contractor's work on the project is completed,
11 whichever is earlier.

12 (3) CONTRACTOR. Any person or entity, and any
13 subcontractor, director, officer, or employee of such a person
14 or entity, that contracts with the State of Alabama, a county,
15 or other local government to construct, repair, or maintain a
16 highway, a road, a bridge, or a street.

17 (4) DANGEROUS CONDITION. A condition that is not
18 reasonably safe for the intended use of the roadway and is
19 capable of causing a person physical injury or death under the
20 anticipated use of the roadway.

21 (5) SPECIFICATIONS. Specifications, plans, drawings,
22 bid documents, or any other written or electronically stored
23 requirements and details the contractor agrees to perform.

24 Section 2. A contractor is justified ordinarily in
25 relying upon the specifications that are contained in the
26 contract with an awarding authority. No contractor shall be
27 held civilly liable for work performed on a highway, road,

1 bridge, or street including repairs, construction, or
2 maintenance on behalf of the awarding authority unless it is
3 shown by a preponderance of the evidence that physical injury,
4 property damage, or death is proximately caused by:

5 (1) A failure by the contractor to follow the plans
6 and specifications resulting in a dangerous condition; or

7 (2) The contractor's performance of the contract in
8 compliance with the plans and specifications creates a
9 condition that should have appeared, to a reasonably prudent
10 contractor, to be a dangerous condition; or

11 (3) A latent defect which creates a dangerous
12 condition that is the result of the work of the contractor.

13 Section 3. During the course of construction, a
14 contractor who constructs, maintains, or repairs a highway,
15 road, street, or bridge for the awarding authority is not
16 liable to a claimant for personal injury, property damage, or
17 death arising from the performance of such construction,
18 maintenance, or repair, if, at the time of the personal
19 injury, property damage, or death, the contractor was in
20 compliance with contract documents material to the condition,
21 including the traffic control plan, that was the proximate
22 cause of the personal injury, property damage, or death unless
23 following the plans and specifications would result in a
24 dangerous condition that should have appeared to be defective
25 to a reasonably prudent contractor or that the contractor
26 should have known that following the plans and specifications

1 could create a dangerous condition that caused the injury or
2 death.

3 Section 4. If, prior to or during the course of
4 construction, a contractor discovers or determines that
5 following the plans and specifications could result in a
6 potentially dangerous condition, then the contractor shall,
7 with specificity of such condition, expressly notify the Chief
8 Engineer of the Alabama Department of Transportation in
9 writing by certified mail, return receipt requested. The
10 Alabama Department of Transportation, or the awarding
11 authority, shall respond to the specific condition raised
12 within 14 days in writing as to its decision as to the
13 appropriate response to the dangerous condition. The
14 contractor shall not be liable for any claim relating to any
15 decision made by the Alabama Department of Transportation or
16 awarding authority as to the appropriate response, design
17 decisions, or engineering decision, if any, to respond to the
18 potentially dangerous condition identified.

19 Section 5. The contractor shall bear no civil
20 liability for any alleged property damage, personal injury,
21 death, or other civil claims made by noncontractual third
22 parties arising from the design decisions or professional
23 engineering judgment, including decisions relating to the
24 proper scope or inspection of the project, by the awarding
25 authority. This section shall not apply to situations in
26 which:

1 (1) The contractor contracts in whole or in part to
2 design the roadway or project or to provide professional
3 engineering services as to the design of the roadway; or

4 (2) The contractor undertakes to provide design or
5 professional engineering services as to the roadway or
6 project.

7 Section 6. The contractor shall bear no civil
8 liability for any dangerous condition that is outside of the
9 scope of the project or that is in excess of any requirement
10 of the governing plans and specifications provided by the
11 awarding authority. This section shall not apply to situations
12 in which:

13 (1) The contractor contracts to design in whole or
14 in part the roadway or project or to provide professional
15 engineering services as to the design of the roadway; or

16 (2) The contractor undertakes to provide services as
17 to the roadway or project that are outside the scope of the
18 project or that are in excess of any requirement of the
19 governing plans and specifications.

20 Section 7. A contractor shall bear no civil
21 liability to a claimant for personal injury, property damage,
22 or death which occurs subsequent to the conclusion of the
23 project where the proximate cause of the personal injury,
24 property damage, or death is occasioned by a failure of the
25 awarding authority to properly maintain the roadway or any of
26 its features, including shoulders, unless:

1 (1) A contractor contracts in whole or in part with
2 the awarding authority to maintain the roadway, or any of its
3 features, including shoulders, or project in question; or

4 (2) The contractor undertakes, independent of a
5 contract, to maintain a roadway or any of its features,
6 including shoulders.

7 Section 8. Nothing in this act shall limit or
8 eliminate the liability of a contractor for any civil action
9 based on any alleged loss of or damage to the property of a
10 utility that is rightfully located on, or adjacent to, the
11 right-of-way of any highway, road, or street on which the
12 contractor performed the construction, repair, or maintenance.

13 Section 9. The provisions of this act are severable.
14 If any part of this act is declared invalid or
15 unconstitutional, that declaration shall not affect the part
16 which remains.

17 Section 10. This act shall only apply to a cause of
18 action which accrues after the effective date of this act.
19 Pursuant to this act, a cause of action accrues at the time of
20 property damage or the occurrence of the personal injury or
21 death that is made the basis of the civil action.

22 Section 11. Nothing in this law shall be interpreted
23 or construed to alter or affect the rights of any awarding
24 authority to make a claim against a contractor or to exempt a
25 contractor from compliance with all provisions of contracts
26 between such contractors and an awarding authority.

1 Section 12. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Commerce, Transportation, and Utili-
ties..... 07-FEB-12

Read for the second time and placed on the calen-
dar with 1 substitute and..... 01-MAR-12

Read for the third time and passed as amended 08-MAR-12

Yeas 31
Nays 0

Patrick Harris
Secretary