

1 SB458
2 139219-2
3 By Senator Taylor
4 RFD: Judiciary
5 First Read: 22-MAR-12

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8 SYNOPSIS: This bill would adopt the existing common
9 law of Alabama that, under prescribed
10 circumstances, abates the civil liability of a
11 person or entity that contracts with the State of
12 Alabama, a county, or a local government to
13 construct, repair, or maintain a highway, a road,
14 or a street.

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT
19

20 To adopt the existing common law of Alabama as it
21 relates to abating the civil liability of a person or entity
22 that contracts with the State of Alabama, a county, or a local
23 government to construct, repair, or maintain a highway, a
24 road, or a street.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

1 (1) AWARDING AUTHORITY.

2 a. The Alabama Department of Transportation, if the
3 project is for the State of Alabama to construct, repair, or
4 maintain a highway, a road, or a street for the State of
5 Alabama.

6 b. The county governing body, if the contractor
7 enters into a contract with that county to construct, repair,
8 or maintain a highway, a road, or a street for that county.

9 c. The county governing body, of any local
10 government, if the project is for a county to construct,
11 repair, or maintain a highway, a road, or a street for that
12 local government.

13 (2) CONCLUSION OF PROJECT. The date that the
14 awarding authority notifies the contractor, in writing, that
15 the awarding authority has assumed maintenance
16 responsibilities for the roadway, or 60 days after the
17 contractor has notified, in writing, the awarding authority
18 that the contractor's work on the project is completed,
19 whichever is earlier.

20 (3) CONSTRUCTION ENGINEERING AND INSPECTION. The
21 review, use, and application of specifications by an engineer
22 for the purpose of monitoring, observing, and/or inspecting
23 the work of a project on behalf of the awarding authority.

24 (4) DANGEROUS CONDITION. A condition that is not
25 reasonably safe for the intended use of the roadway and is
26 capable of causing a person physical injury or death under the
27 anticipated use of the roadway.

1 (5) ENGINEER. Any person, corporation, partnership
2 or firm, and any officer, director, employee, manager, member,
3 owner, successor, assign and sub-consultant thereof, that
4 contracts with the State of Alabama, a county, or other local
5 government to engage in the practice of engineering, as that
6 term is defined by Title 34, Chapter 11 of the Code of Alabama
7 1975, regarding a project to construct, repair, or maintain a
8 highway, a road, a bridge, or a street.

9 (6) SPECIFICATIONS. Specifications, plans, drawings,
10 bid documents, directives, or any other written or
11 electronically stored requirements and details issued by the
12 awarding authority for the project and for which the engineer
13 did not have design responsibility under a contract with the
14 awarding authority.

15 Section 2. In the furnishing of construction
16 engineering and inspection services, an engineer shall be
17 justified in relying upon the specifications that are issued
18 by the awarding authority for the project. Thus, no engineer
19 shall be held civilly liable for work performed on a highway,
20 road, bridge, or street including repairs, construction, or
21 maintenance on behalf of the awarding authority, or for the
22 monitoring and/or inspection thereof on behalf of the awarding
23 authority unless it is shown by a preponderance of the
24 evidence that physical injury, property damage, or death is
25 proximately caused by a failure of the engineer to
26 substantially follow the specifications of the awarding
27 authority, proximately causing a dangerous condition.

1 Section 3. During the course of construction, an
2 engineer who performs construction engineering and inspection
3 services for the awarding authority shall not be liable to a
4 claimant for personal injury, property damage, or death
5 arising from the performance of such construction,
6 maintenance, or repair, or from the monitoring inspection
7 thereof, or both, if at the time of the personal injury,
8 property damage, or death, the engineer was substantially
9 following the specifications material to the condition,
10 including the Traffic Control Plan, that was the proximate
11 cause of the personal injury, property, or death unless the
12 engineer knew that following the specifications could create a
13 dangerous condition that caused the injury or death.

14 Section 4. If, prior to or during the course of
15 construction, an engineer discovers or determines that
16 following the specifications would likely result in a
17 potentially dangerous condition the engineer with specificity
18 of such condition or conditions shall expressly and promptly
19 notify the awarding authority in writing. The notification
20 shall relieve the engineer of any further liability to
21 non-contractual third parties with regard to the reported
22 dangerous condition. The awarding authority shall respond to
23 the specific condition or conditions raised within 14 days in
24 writing of its decision response to the dangerous condition.
25 The engineer shall not be liable for any claim relating to any
26 decision made by the Alabama Department of Transportation or
27 awarding authority response, design decisions, or engineering

1 decision, if any, to respond to the potentially dangerous
2 condition identified.

3 Section 5. The engineer shall bear no civil
4 liability for any alleged property damage, personal injury,
5 death, or other civil claims made by non-contractual third
6 parties arising from the design decisions or professional
7 engineering judgment, including decisions relating to the
8 proper scope or inspection of the project, by the awarding
9 authority. This section shall not apply to the extent the
10 engineer contracts to design the roadway, highway, street, or
11 bridge and its design proximately causes the property damage,
12 personal injury, or death of a non-contractual third party.

13 Section 6. The engineer shall bear no civil
14 liability for any dangerous condition that is outside of the
15 scope of the project or that is in excess of any requirement
16 of the specifications provided by the awarding authority. This
17 section shall not apply to situations in which the engineer
18 undertakes to provide services that are outside the scope of
19 the project or that are in excess of any requirement of the
20 specifications.

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

1 Section 8. The provisions of this act are severable.
2 If any part of this act is declared invalid or
3 unconstitutional, that declaration shall not affect the part
4 which remains.

5 Section 9. This act shall only apply to a cause of
6 action which accrues after the effective date of this act.
7 Pursuant to this act, a cause of action accrues at the time of
8 property damage or the occurrence of the personal injury or
9 death that is made the basis of the civil action.

10 Section 10. Nothing in this act shall be interpreted
11 or construed to alter or affect the rights of any awarding
12 authority to make a claim against an engineer, except for an
13 indemnity claim for personal injury, death, or property damage
14 experienced by a non-contractual third party.

15 Section 11. This act shall become effective
16 immediately following its passage and approval by the
17 Governor, or its otherwise becoming law.