

1 HB335
2 139219-3
3 By Representatives Ison, McClurkin, Sanderford, Fincher,
4 Sessions, Nordgren, Collins, Carns, Clouse and Hammon
5 RFD: State Government
6 First Read: 21-FEB-13

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8 SYNOPSIS: This bill would codify 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 inspect, monitor, or observe the construction,
14 repair, or maintenance of a highway, a road, or a
15 street.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT
20

21 To codify the existing common law of Alabama as it
22 relates to abating the civil liability of a person or entity
23 that contracts with the State of Alabama, a county, or a local
24 government to inspect, monitor, or observe the construction,
25 repair, or maintenance of a highway, a road, or a street.
26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

3 (1) AWARDING AUTHORITY.

4 a. The Alabama Department of Transportation, if the
5 project is either for or funded by, in whole or in part, the
6 State of Alabama, to construct, repair, or maintain a highway,
7 a road, or a street for the State of Alabama.

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

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

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

22 (3) CONSTRUCTION ENGINEERING AND INSPECTION. The
23 review of construction or other design products for the
24 purpose of monitoring compliance with drawings and
25 specifications on behalf of the awarding authority.

26 (4) DANGEROUS CONDITION. A condition that is not
27 reasonably safe for the intended use of the roadway and is

1 capable of causing a person physical injury or death under the
2 anticipated use of the roadway.

3 (5) ENGINEER. Any person, corporation, partnership
4 or firm, and any officer, director, employee, manager, member,
5 owner, successor, assign, and sub-consultant thereof, that
6 contracts with the State of Alabama, a county, or other local
7 government to engage in the practice of engineering, as that
8 term is defined by Title 34, Chapter 11 of the Code of Alabama
9 1975, in connection with a project to construct, repair, or
10 maintain a highway, a road, a bridge, or a street.

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

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

1 substantially follow the specifications of the awarding
2 authority, proximately causing a dangerous condition.

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

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

1 relating to any decision made by the Alabama Department of
2 Transportation's or other awarding authority's response,
3 design decisions, or engineering decision, if any, to respond
4 to the potentially dangerous condition identified.

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

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

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

1 to properly maintain the roadway or any of its features,
2 including, but not limited to, shoulders.

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

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

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

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