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3 HOUSE STATE GOVERNMENT COMMITTEE SUBSTITUTE FOR HB234
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8 SYNOPSIS: This bill would prohibit a public works
9 contract or subcontract for roads and bridges from
10 containing a provision requiring a party to
11 indemnify another entity for damages caused by the
12 conduct of the other party.
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14 A BILL
15 TO BE ENTITLED
16 AN ACT
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18 Relating to public works contracts for roads and
19 bridges; to prohibit certain indemnification provisions in the
20 contracts requiring a party to indemnify another party for
21 damages caused by the conduct of the other party.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. The Legislature finds that it is in the
24 best interests of this state and its residents to ensure that
25 any private business or individual entering into a road or
26 bridge contract is financially responsible under the tort
27 liability system for damages that the private party may cause

1 while performing under the contract. It is the intent of this
2 act to promote competition and safety relating to road or
3 bridge contracts by requiring a party to be responsible for
4 any and all damages, losses, or injuries, including, but not
5 limited to, attorney's fees and other litigation costs, caused
6 by the party.

7 Section 2. As used in this act, the following words
8 have the following meanings:

9 (1) PARTY. A private business or individual that is
10 a party to a road and bridge contract. The term does not
11 include the Department of Transportation, a county commission,
12 or any other governmental awarding authority.

13 (2) ROAD OR BRIDGE CONTRACT. A contract or a
14 subcontract for the planning, construction, repair,
15 reconstruction, replacement, rehabilitation, or improvement of
16 any road or bridge and financed in whole or in part by state,
17 county, municipal, or federal funds. This definition does not
18 include any contract for the installation, construction,
19 repair, replacement, relocation, or maintenance of facilities
20 or equipment of a utility or located on utility infrastructure
21 in public road or bridge rights-of-way.

22 Section 3. A road or bridge contract may not require
23 a party to the contract to indemnify, hold harmless, or defend
24 another party for liability, damages, losses, or costs caused
25 by the negligence, wantonness, recklessness, or intentional
26 misconduct of the party to be indemnified or its officers,
27 employees, or agents. Any such requirement contained in a

1 contract entered into after the effective date of this act
2 containing such a requirement is void and unenforceable.

3 Section 4. A road or bridge contract may contain a
4 provision requiring a party to the contract to indemnify, hold
5 harmless, or defend another party, but only to the extent that
6 liability, damages, losses, or costs are caused by the
7 negligence, wantonness, recklessness, or intentional conduct
8 of the indemnifying party or the indemnifying party's
9 officers, employees, or agents.

10 Section 5. A road or bridge contract may not require
11 a party to the contract to provide insurance coverage to
12 another party as an additional insured for claims that arise
13 out of or are caused by the second party's own negligent,
14 reckless, wanton, or intentional conduct or that of its
15 officers, employees, or agents. Any additional insured
16 coverage required under a road or bridge contract may not be
17 broader than the scope of indemnity provided for in Section 3
18 or Section 4.

19 Section 6. This act does not apply to indemnity of a
20 surety by a principal on a construction contract bond or to
21 indemnity of an insurer's obligations to its insureds.

22 Section 7. This act only applies to indemnity
23 contracts between private parties to public works projects for
24 roads or bridges and has no effect on third-party tort claims.

25 Section 8. Any provision of law to the contrary
26 notwithstanding, this act shall not be interpreted or

1 construed to affect joint and several liability or workers'
2 compensation laws.

3 Section 9. This act does not affect contractual
4 obligations owed by any contracting party to the Department of
5 Transportation, a county commission, or any other awarding
6 entity.

7 Section 10. This act shall become effective
8 immediately following its passage and approval by the
9 Governor, or its otherwise becoming law.