

1 HB234
2 204484-2
3 By Representative McMillan
4 RFD: State Government
5 First Read: 02-FEB-21
6 PFD: 02/01/2021

SYNOPSIS: This bill would prohibit a public works contract or subcontract for roads and bridges from containing a provision requiring a party to indemnify another entity for damages caused by the conduct of the other party.

A BILL
TO BE ENTITLED
AN ACT

Relating to public works contracts for roads and bridges; to prohibit certain indemnification provisions in the contracts requiring a party to indemnify another party for damages caused by the conduct of the other party.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. (a) The Legislature finds that it is in the best interests of this state and its residents to ensure that any business or individual entering into a contract for a public works project for roads or bridges is financially responsible under the tort liability system for damages that

1 the business or individual may cause in performing under the
2 contract. It is the intent of this act to promote competition
3 and safety relating to public works contracts for roads or
4 bridges by requiring a contracting party to be responsible for
5 any and all damages, losses, or injuries, including, but not
6 limited to, attorney's fees and other litigation costs, caused
7 by the contracting party.

8 Section 2. As used in this act, "public works
9 contract for roads and bridges" means a contract or a
10 subcontract for the planning, acquisition, construction,
11 repair, reconstruction, replacement, rehabilitation, or
12 improvement of any road or bridge and financed in whole or in
13 part by state, county, municipal, or federal funds.

14 Section 3. A public works contract for roads and
15 bridges may not require a party to the contract to indemnify,
16 hold harmless, or defend another party for liability, damages,
17 losses, or costs caused by the negligence, wantonness,
18 recklessness, or intentional misconduct of the party to be
19 indemnified or its officers, employees, or agents. Any contract
20 entered into after the effective date of this act containing
21 such a requirement is void.

22 Section 4. A public works contract for roads and
23 bridges may contain a provision requiring a party to the
24 contract to indemnify, hold harmless, or defend another party,
25 but only to the extent that liability, damages, losses, or
26 costs are caused by the negligence, wantonness, recklessness,

1 or intentional conduct of the indemnifying party or the
2 indemnifying party's officers, employees, or agents.

3 Section 5. A public works contract for roads and
4 bridges may not require a party to the contract to provide
5 insurance coverage to another party as an additional insured
6 for claims that arise out of or are caused by the second
7 party's own negligent, reckless, wanton, or intentional
8 conduct or that of its officers, employees, or agents. Any
9 additional insured coverage required under a contract may not
10 be broader than the scope of indemnity allowed under Sections
11 3 and 4 of this act.

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

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

18 Section 8. This act does not affect contractual
19 obligations owed by any contracting party to the Department of
20 Transportation or any other awarding entity.

21 Section 9. Any provision of law to the contrary
22 notwithstanding, this act may not be interpreted or construed
23 to affect joint and several liability or workers' compensation
24 laws.

25 Section 10. This act shall become effective
26 immediately following its passage and approval by the
27 Governor, or its otherwise becoming law.

