

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

1 SB139

2
3
4 ENROLLED, An Act,

5 To adopt the existing common law of Alabama as it
6 relates to abating the civil liability of a person or entity
7 that contracts with the State of Alabama, a county, or a local
8 government to construct, repair, or maintain a highway, a
9 road, or a street.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

13 (1) AWARDING AUTHORITY.

14 a. The Alabama Department of Transportation, if the
15 contractor enters into a contract with the State of Alabama to
16 construct, repair, or maintain a highway, a road, or a street
17 for the State of Alabama; or

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

21 c. The governing body of any other local government,
22 if the contractor enters into a contract with that local
23 government to construct, repair, or maintain a highway, a
24 road, or a street for that local government.

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

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

13 (4) DANGEROUS CONDITION. A condition that is not
14 reasonably safe for the intended use of the roadway and is
15 capable of causing a person physical injury or death under the
16 anticipated use of the roadway.

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

20 Section 2. A contractor is justified ordinarily in
21 relying upon the specifications that are contained in the
22 contract with an awarding authority. No contractor shall be
23 held civilly liable for work performed on a highway, road,
24 bridge, or street including repairs, construction, or
25 maintenance on behalf of the awarding authority unless it is

1 shown by a preponderance of the evidence that physical injury,
2 property damage, or death is proximately caused by:

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

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

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

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

1 authority. This section shall not apply to situations in
2 which:

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

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

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

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

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

22 Section 7. A contractor shall bear no civil
23 liability to a claimant for personal injury, property damage,
24 or death which occurs subsequent to the conclusion of the
25 project where the proximate cause of the personal injury,

1 property damage, or death is occasioned by a failure of the
2 awarding authority to properly maintain the roadway or any of
3 its features, including shoulders, unless:

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

7 (2) The contractor undertakes, independent of a
8 contract, to maintain a roadway or any of its features,
9 including shoulders.

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

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

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

1 Section 11. Nothing in this law shall be interpreted
2 or construed to alter or affect the rights of any awarding
3 authority to make a claim against a contractor or to exempt a
4 contractor from compliance with all provisions of contracts
5 between such contractors and an awarding authority.

6 Section 12. This act shall become effective
7 immediately following its passage and approval by the
8 Governor, or its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB139

Senate 08-MAR-12

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris
Secretary

House of Representatives

Passed: 12-APR-12

By: Senator Scofield