

1 SB248  
2 209242-1  
3 By Senators Scofield, Whatley and Sessions  
4 RFD: Judiciary  
5 First Read: 23-FEB-21

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8       SYNOPSIS:               Under existing law, a contractor who  
9                               performs work on a road, bridge, or street, can be  
10                              held civilly liable if the contractor complies with  
11                              the contract plans and specifications, but creates  
12                              a dangerous condition that should have appeared  
13                              defective to a reasonably prudent contractor.

14                             This bill would no longer hold a contractor  
15                             civilly liable if the contractor performs work in  
16                             accordance with the contract specifications, but  
17                             creates a dangerous condition that should have  
18                             appeared defective to a reasonably prudent  
19                             contractor.

20                             Also under existing law, if a contractor  
21                             notifies the awarding authority that a dangerous  
22                             condition could arise by following the plans and  
23                             specifications and complies with decisions set  
24                             forth in the awarding authority's response, the  
25                             contractor cannot be held civilly liable for the  
26                             work he or she has performed.

1                   This bill would no longer require a public  
2                   works contractor, in order to be immune from civil  
3                   liability, to notify the awarding authority that a  
4                   dangerous condition could arise by following the  
5                   contract specifications.

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7                   A BILL  
8                   TO BE ENTITLED  
9                   AN ACT

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11                   Relating to civil liability; to amend Sections  
12                   6-5-701, 6-5-702, and 6-5-703, Code of Alabama 1975; to  
13                   eliminate certain conditions under which a contractor who  
14                   performs work on a road, bridge, or street may not be granted  
15                   civil immunity.

16                   BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17                   Section 1. Sections 6-5-701, 6-5-702, and 6-5-703  
18                   are amended to read as follows:

19                   "§6-5-701.

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

1 damage, or death is proximately caused by any of the  
2 following:

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

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.~~

9 ~~"(3)~~ (2) A latent defect ~~which~~ that creates a  
10 dangerous condition that is the result of the work of the  
11 contractor.

12 "§6-5-702.

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

1                   "§6-5-703.

2                   ~~"If, prior to or during the course of construction,~~  
3 ~~a contractor discovers or determines that following the plans~~  
4 ~~and specifications could result in a potentially dangerous~~  
5 ~~condition, then the contractor shall, with specificity of such~~  
6 ~~condition, expressly notify the Chief Engineer of the Alabama~~  
7 ~~Department of Transportation in writing by certified mail,~~  
8 ~~return receipt requested. The Alabama Department of~~  
9 ~~Transportation, or the awarding authority, shall respond to~~  
10 ~~the specific condition raised within 14 days in writing as to~~  
11 ~~its decision as to the appropriate response to the dangerous~~  
12 ~~condition. The contractor shall not be liable for any claim~~  
13 ~~relating to any decision made by the Alabama Department of~~  
14 ~~Transportation or awarding authority as to the appropriate~~  
15 ~~response, design decisions, or engineering decision, if any,~~  
16 ~~to respond to the potentially dangerous condition identified.~~  
17 Following the completion of any project, once the Alabama  
18 Department of Transportation or awarding authority has  
19 determined that the contractor's work substantially complies  
20 with the plans and specifications provided for the project,  
21 the contractor shall not be civilly liable to any third party  
22 for any condition related to the project or alleged to have  
23 arisen following the Alabama Department of Transportation's or  
24 awarding authority's acceptance of the project."

25                   Section 2. This act shall become effective on the  
26 first day of the third month following its passage and  
27 approval by the Governor, or its otherwise becoming law.

