

SB159 ENGROSSED



1 GY8QC6-2
2 By Senator Scofield
3 RFD: Judiciary
4 First Read: 04-Apr-23
5
6 2023 Regular Session



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3 A BILL

4 TO BE ENTITLED

5 AN ACT

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7 Relating to civil liability; to amend Sections 6-5-700,
8 6-5-701, 6-5-702, 6-5-703, 6-5-704, 6-5-705, and 6-5-708, Code
9 of Alabama 1975, to further provide for the liability of a
10 public awarding authority and its contractors regarding the
11 construction and maintenance of public roads; to delete an
12 exception to the statutory protection from liability of a
13 contractor; to create a rebuttable presumption of nonliability
14 of the awarding authority and its contractors when certain
15 circumstances apply; and to provide certain pleading
16 requirements in the filing of a complaint for injury or death
17 arising from the construction or maintenance of a public road.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Sections 6-5-700, 6-5-701, 6-5-702, 6-5-703,
20 6-5-704, 6-5-705, and 6-5-708, Code of Alabama 1975, are
21 amended to read as follows:

22 "§6-5-700

23 For the purposes of this article, the following terms
24 ~~shall~~ have the following meanings:

25 (1) AWARDING AUTHORITY. If the contractor enters into a
26 contract to construct, repair, or maintain a highway, road,
27 bridge, or street, then the awarding authority shall be any of
28 the following, as applicable:



29 a. The Alabama Department of Transportation, ~~if the~~
30 ~~contractor enters into a contract with the State of Alabama to~~
31 ~~construct, repair, or maintain a highway, a road, or a street~~
32 ~~for or the State of Alabama; or state.~~

33 b. The county governing body, ~~if the contractor enters~~
34 ~~into a contract with that county to construct, repair, or~~
35 ~~maintain a highway, a road, or a street for that the county~~
36 ~~where the project is bid and let to contract by the county~~
37 ~~commission; or.~~

38 c. The municipal governing body ~~of any other local~~
39 ~~government, if the contractor enters into a contract with that~~
40 ~~local government to construct, repair, or maintain a highway,~~
41 ~~a road, or a street for that local government for the~~
42 ~~municipality where the project is bid and let to contract by~~
43 ~~the municipal governing body.~~

44 d. Any other governmental entity, board, commission,
45 agency, body, authority, instrumentality, department,
46 subdivision of the state, or public two-year or four-year
47 institution of higher education, if the contractor enters into
48 a contract with the entity to perform a project. This term
49 shall exclude the State Docks Department and any entity
50 exempted from the competitive bid laws of the state by
51 statute.

52 (2) CONCLUSION OF PROJECT. The earlier of the
53 following:

54 a. The date that the awarding authority notifies the
55 contractor, in writing, that the awarding authority has
56 assumed maintenance responsibilities for the~~roadway~~ project.



57 b. or 60 days after the contractor has notified, in
58 writing, the awarding authority that the contractor's work on
59 the project is completed, whichever is earlier. The date
60 following the expiration of 45 days after the contractor
61 provides, by certified mail return receipt requested, notice
62 of presumptive conclusion of the project to the awarding
63 authority and the awarding authority fails to respond.

64 c. The awarding authority has made the final payment
65 due and payable to the contractor and the contractor has
66 completed the advertising requirements of Title 39. The date
67 following the expiration of 90 days after the contractor has
68 completed the advertising requirements of Title 39 and the
69 awarding authority has made the final payment to the
70 contractor.

71 (3) CONTRACTOR. Any person or entity individual,
72 corporation, limited liability company, partnership, or other
73 legal entity, or any combination thereof, and any
74 subcontractor, director, officer, or employee of such a person
75 or entity the individual or legal entity, that contracts with
76 the State of Alabama, a county, or other local government an
77 awarding authority to construct, repair, or maintain a
78 highway, a road, a bridge, or a street perform a project.

79 (4) DANGEROUS CONDITION. A condition that is not
80 reasonably safe for the intended use of the roadway and is
81 capable of causing a person an individual physical injury or
82 death under the anticipated use of the roadway.

83 (5) LATENT DEFECT. A defect or omission resulting from
84 the work conducted or materials provided by the contractor



85 under the contract which was not discoverable, visible, or
86 apparent.

87 (6) PROJECT. The construction, repair, or maintenance
88 by a contractor of a section of highway, road, bridge, or
89 street together with all appurtenances, as specified in a
90 contract with an awarding authority.

91 ~~(5)~~ (7) SPECIFICATIONS. Specifications, plans, traffic
92 control requirements, communication requirements, drawings,
93 bid documents, or any other written or electronically stored
94 requirements and details the contractor agrees to perform."

95 "§6-5-701

96 A contractor is justified ordinarily in relying upon
97 the plans and specifications that are contained in the
98 contract with an awarding authority. No contractor shall be
99 held civilly liable for work performed on ~~a highway, road,~~
100 ~~bridge, or street~~ the project, including repairs,
101 construction, or maintenance on behalf of the awarding
102 authority, unless it is shown by a preponderance of the
103 evidence that physical injury, property damage, or death is
104 proximately caused by ~~any either~~ of the following:

105 (1) A failure by the contractor to follow the plans and
106 specifications resulting in a dangerous condition.

107 ~~(2) The contractor's performance of the contract in~~
108 ~~compliance with the plans and specifications creates a~~
109 ~~condition that should have appeared, to a reasonably prudent~~
110 ~~contractor, to be a dangerous condition.~~

111 ~~(3)~~ (2) A latent defect which creates a dangerous
112 condition that is the result of the work of the contractor."



113 "§6-5-702

114 (a) In any action for injury, damages, or wrongful
115 death, whether in contract or in tort, against an awarding
116 authority or its contractors arising from any negligent act or
117 omission in the construction or maintenance of a public road,
118 when it is established by a preponderance of the evidence that
119 the operator of the vehicle engaged in conduct that would have
120 supported a violation of Sections 32-5A-191 or 32-5A-350, or
121 that the vehicle was traveling at a rate of 25 or more miles
122 per hour over the applicable speed limit, there shall be
123 established a rebuttable presumption that the prohibited
124 conduct was the proximate cause of the injury, damages, or
125 wrongful death.

126 (b) The rebuttable presumption established in
127 subsection (a) may be overcome by the plaintiff establishing,
128 by a preponderance of the evidence, that the prohibited
129 conduct was not the proximate cause of the injury, damages, or
130 wrongful death. ~~During the course of construction, a contractor~~
131 ~~who constructs, maintains, or repairs a highway, road, street,~~
132 ~~or bridge for the awarding authority is not liable to a~~
133 ~~claimant for personal injury, property damage, or death~~
134 ~~arising from the performance of such construction,~~
135 ~~maintenance, or repair, if, at the time of the personal~~
136 ~~injury, property damage, or death, the contractor was in~~
137 ~~compliance with contract documents material to the condition,~~
138 ~~including the traffic control plan, that was the proximate~~
139 ~~cause of the personal injury, property damage, or death unless~~
140 ~~following the plans and specifications would result in a~~



141 ~~dangerous condition that should have appeared to be defective~~
142 ~~to a reasonably prudent contractor or that the contractor~~
143 ~~should have known that following the plans and specifications~~
144 ~~could create a dangerous condition that caused the injury or~~
145 ~~death."~~

146 "§6-5-703

147 In any action for injury, damages, or wrongful death,
148 whether in contract or in tort, against an awarding authority
149 or its contractors arising from any negligent act or omission
150 in the construction or maintenance of a public road, the
151 plaintiff shall include in the complaint filed in the action a
152 detailed specification and factual description of each act and
153 omission alleged by the plaintiff, and shall include when
154 feasible and ascertainable the date, time, and place of the
155 act or acts. The plaintiff shall amend the complaint timely
156 upon ascertainment of new or different acts or omissions upon
157 which the claim is based; provided, however, that any such
158 amendment must be made at least 90 days before trial. Any
159 complaint that fails to include such detailed specification
160 and factual description of each act and omission shall be
161 subject to dismissal for failure to state a claim upon which
162 relief may be granted. This section shall not apply to claims
163 by the awarding authority or contractor against each other.~~If,~~
164 ~~prior to or during the course of construction, a contractor~~
165 ~~discovers or determines that following the plans and~~
166 ~~specifications could result in a potentially dangerous~~
167 ~~condition, then the contractor shall, with specificity of such~~
168 ~~condition, expressly notify the Chief Engineer of the Alabama~~



169 ~~Department of Transportation in writing by certified mail,~~
170 ~~return receipt requested. The Alabama Department of~~
171 ~~Transportation, or the awarding authority, shall respond to~~
172 ~~the specific condition raised within 14 days in writing as to~~
173 ~~its decision as to the appropriate response to the dangerous~~
174 ~~condition. The contractor shall not be liable for any claim~~
175 ~~relating to any decision made by the Alabama Department of~~
176 ~~Transportation or awarding authority as to the appropriate~~
177 ~~response, design decisions, or engineering decision, if any,~~
178 ~~to respond to the potentially dangerous condition identified."~~

179 "§6-5-704

180 The contractor shall bear no civil liability for any
181 alleged property damage, personal injury, death, or other
182 civil claims made by noncontractual third parties arising from
183 the design decisions or professional engineering judgment,
184 including decisions relating to the proper scope or inspection
185 of the project, by the awarding authority. This section shall
186 not apply to either of the following situations:

187 (1) The contractor contracts in whole or in part to
188 design the ~~roadway or~~ project or to provide professional
189 engineering services as to the design of the roadway project.

190 (2) The contractor undertakes to provide design or
191 professional engineering services as to the ~~roadway or~~
192 project."

193 "§6-5-705

194 The contractor shall bear no civil liability for any
195 dangerous condition that is outside of the scope of the
196 project or that is in excess of any requirement of the



197 governing plans and specifications provided by the awarding
198 authority. This section shall not apply to either of the
199 following situations:

200 (1) The contractor contracts to design in whole or in
201 part the ~~roadway or~~ project or to provide professional
202 engineering services as to the design of the ~~roadway project~~.

203 (2) The contractor undertakes to provide services as to
204 the ~~roadway or~~ project that are outside the scope of the
205 project or that are in excess of any requirement of the
206 governing plans and specifications."

207 "§6-5-708

208 This article shall only apply to a cause of action
209 which accrues after April 24, 2012. The amendatory provisions
210 of the act amending this section shall only apply to causes of
211 action which accrue after the effective date of the act
212 amending this section. Pursuant to this article, a cause of
213 action accrues at the time of property damage or the
214 occurrence of the personal injury or death that is made the
215 basis of the civil action."

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



219
220
221 Senate

222 Read for the first time and referred 04-Apr-23
223 to the Senate committee on Judiciary
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225 Read for the second time and placed 03-May-23
226 on the calendar:
227 0 amendments
228
229 Read for the third time and passed 11-May-23
230 as amended
231 Yeas 34
232 Nays 0
233 Abstains 0
234
235
236 Patrick Harris,
237 Secretary.
238