

**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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A BILL  
TO BE ENTITLED  
AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§6-5-700

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

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

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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.



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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



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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."



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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~~



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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~~

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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





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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.

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219  
220  
221 Senate

222 Read for the first time and referred .....04-Apr-23  
223 to the Senate committee on Judiciary

224  
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.

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