

SB159 ENROLLED



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



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1 Enrolled, An Act,

2 Relating to civil liability; to amend Sections 6-5-700,
3 6-5-701, 6-5-702, 6-5-703, 6-5-704, 6-5-705, and 6-5-708, Code
4 of Alabama 1975, to further provide for the liability of a
5 public awarding authority and its contractors regarding the
6 construction and maintenance of public roads; to delete an
7 exception to the statutory protection from liability of a
8 contractor; to create a rebuttable presumption of nonliability
9 of the awarding authority and its contractors when certain
10 circumstances apply; and to provide certain pleading
11 requirements in the filing of a complaint for injury or death
12 arising from the construction or maintenance of a public road.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 6-5-700, 6-5-701, 6-5-702, 6-5-703,
15 6-5-704, 6-5-705, and 6-5-708, Code of Alabama 1975, are
16 amended to read as follows:

17 "§6-5-700

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

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

24 a. The Alabama Department of Transportation, ~~if the~~
25 ~~contractor enters into a contract with the State of Alabama to~~
26 ~~construct, repair, or maintain a highway, a road, or a street~~
27 ~~for~~ or the ~~State of Alabama; or~~ state.

28 b. The county governing body, ~~if the contractor enters~~



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29 ~~into a contract with that county to construct, repair, or~~
30 ~~maintain a highway, a road, or a street~~ for that the county
31 where the project is bid and let to contract by the county
32 commission; or.

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

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

47 (2) CONCLUSION OF PROJECT. The earlier of the
48 following:

49 a. The date that the awarding authority notifies the
50 contractor, in writing, that the awarding authority has
51 assumed maintenance responsibilities for the ~~roadway project.~~

52 ~~b. or 60 days after the contractor has notified, in~~
53 ~~writing, the awarding authority that the contractor's work on~~
54 ~~the project is completed, whichever is earlier.~~ The date
55 following the expiration of 45 days after the contractor
56 provides, by certified mail return receipt requested, notice



57 of presumptive conclusion of the project to the awarding
58 authority and the awarding authority fails to respond.

59 ~~c. The awarding authority has made the final payment~~
60 ~~due and payable to the contractor and the contractor has~~
61 ~~completed the advertising requirements of Title 39. The date~~
62 following the expiration of 90 days after the contractor has
63 completed the advertising requirements of Title 39 and the
64 awarding authority has made the final payment to the
65 contractor.

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

74 (4) DANGEROUS CONDITION. A condition that is not
75 reasonably safe for the intended use of the roadway and is
76 capable of causing ~~a person~~ an individual physical injury or
77 death under the anticipated use of the roadway.

78 (5) LATENT DEFECT. A defect or omission resulting from
79 the work conducted or materials provided by the contractor
80 under the contract which was not discoverable, visible, or
81 apparent.

82 (6) PROJECT. The construction, repair, or maintenance
83 by a contractor of a section of highway, road, bridge, or
84 street together with all appurtenances, as specified in a



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85 contract with an awarding authority.

86 ~~(5)~~ (7) SPECIFICATIONS. Specifications, plans, traffic
87 control requirements, communication requirements, drawings,
88 bid documents, or any other written or electronically stored
89 requirements and details the contractor agrees to perform."

90 "§6-5-701

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

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

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

106 ~~(3)~~ (2) A latent defect which creates a dangerous
107 condition that is the result of the work of the contractor."

108 "§6-5-702

109 (a) In any action for injury, damages, or wrongful
110 death, whether in contract or in tort, against an awarding
111 authority or its contractors arising from any negligent act or
112 omission in the construction or maintenance of a public road,



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113 when it is established by a preponderance of the evidence that
114 the operator of the vehicle engaged in conduct that would have
115 supported a violation of Sections 32-5A-191 or 32-5A-350, or
116 that the vehicle was traveling at a rate of 25 or more miles
117 per hour over the applicable speed limit, there shall be
118 established a rebuttable presumption that the prohibited
119 conduct was the proximate cause of the injury, damages, or
120 wrongful death.

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



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141 "§6-5-703

142 In any action for injury, damages, or wrongful death,
143 whether in contract or in tort, against an awarding authority
144 or its contractors arising from any negligent act or omission
145 in the construction or maintenance of a public road, the
146 plaintiff shall include in the complaint filed in the action a
147 detailed specification and factual description of each act and
148 omission alleged by the plaintiff, and shall include when
149 feasible and ascertainable the date, time, and place of the
150 act or acts. The plaintiff shall amend the complaint timely
151 upon ascertainment of new or different acts or omissions upon
152 which the claim is based; provided, however, that any such
153 amendment must be made at least 90 days before trial. Any
154 complaint that fails to include such detailed specification
155 and factual description of each act and omission shall be
156 subject to dismissal for failure to state a claim upon which
157 relief may be granted. This section shall not apply to claims
158 by the awarding authority or contractor against each other.~~If,~~
159 ~~prior to or during the course of construction, a contractor~~
160 ~~discovers or determines that following the plans and~~
161 ~~specifications could result in a potentially dangerous~~
162 ~~condition, then the contractor shall, with specificity of such~~
163 ~~condition, expressly notify the Chief Engineer of the Alabama~~
164 ~~Department of Transportation in writing by certified mail,~~
165 ~~return receipt requested. The Alabama Department of~~
166 ~~Transportation, or the awarding authority, shall respond to~~
167 ~~the specific condition raised within 14 days in writing as to~~
168 ~~its decision as to the appropriate response to the dangerous~~



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169 ~~condition. The contractor shall not be liable for any claim~~
170 ~~relating to any decision made by the Alabama Department of~~
171 ~~Transportation or awarding authority as to the appropriate~~
172 ~~response, design decisions, or engineering decision, if any,~~
173 ~~to respond to the potentially dangerous condition identified."~~

174 "§6-5-704

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

182 (1) The contractor contracts in whole or in part to
183 design the ~~roadway or~~ project or to provide professional
184 engineering services as to the design of the ~~roadway~~ project.

185 (2) The contractor undertakes to provide design or
186 professional engineering services as to the ~~roadway or~~
187 project."

188 "§6-5-705

189 The contractor shall bear no civil liability for any
190 dangerous condition that is outside of the scope of the
191 project or that is in excess of any requirement of the
192 governing plans and specifications provided by the awarding
193 authority. This section shall not apply to either of the
194 following situations:

195 (1) The contractor contracts to design in whole or in
196 part the ~~roadway or~~ project or to provide professional



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197 engineering services as to the design of the ~~roadway~~ project.

198 (2) The contractor undertakes to provide services as to
199 the ~~roadway or~~ project that are outside the scope of the
200 project or that are in excess of any requirement of the
201 governing plans and specifications."

202 "§6-5-708

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

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



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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB159
Senate 11-May-23
I hereby certify that the within Act originated in and passed
the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Passed: 23-May-23

By: Senator Scofield