

1 HB335  
2 152999-4  
3 By Representatives Ison, McClurkin, Sanderford, Fincher,  
4 Sessions, Nordgren, Collins, Carns, Clouse and Hammon  
5 RFD: State Government  
6 First Read: 21-FEB-13

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

ENROLLED, An Act,

To codify the existing common law of Alabama as it relates to the civil liability of a person or entity that contracts with an awarding authority to perform construction monitoring services relating to the construction, repair, resurfacing, refurbishment, replacement, removal, modification, alteration, or other improvement of any public or private infrastructure located within the borders of the State of Alabama.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

(1) AWARDING AUTHORITY.

a. The Alabama Department of Transportation, if the project is either for, or is funded in whole or in part by, the State of Alabama to construct, repair, resurface, refurbish, replace, remove, modify, alter, or otherwise improve any public or private infrastructure, including any public-private partnership project, for which construction monitoring services are contracted.

b. A county, city, town, or municipality that appropriates public funds for the construction, repair, resurfacing, refurbishment, replacement, removal, modification, alteration, or other improvement of any public

1 or private infrastructure, including any public-private  
2 partnership project, for which construction monitoring  
3 services are contracted.

4 c. All other state, county, or municipal boards,  
5 bodies, commissions, agencies, departments, institutions, and  
6 instrumentalities, and their political subdivisions, that  
7 appropriate public funds for the construction, repair,  
8 resurfacing, refurbishment, replacement, removal,  
9 modification, alteration, or other improvement of any public  
10 or private infrastructure, including any public-private  
11 partnership project, for which construction monitoring  
12 services are contracted.

13 (2) CONSTRUCTION MONITORING SERVICES. The  
14 monitoring, review, observation, or inspection of the  
15 contractor's work on behalf of the awarding authority to  
16 determine the contractor's compliance with the plans and  
17 specifications issued for that project, sometimes referenced  
18 in the industry as "construction engineering inspection."

19 (3) PLANS AND SPECIFICATIONS. Engineering designs,  
20 drawings, plans and specifications, or other design products  
21 prepared by or on behalf of an awarding authority by a  
22 licensed and registered professional engineer, and issued to a  
23 contractor by the awarding authority for the purpose of  
24 constructing, repairing, resurfacing, refurbishing, removing,

1 replacing, modifying, altering, or otherwise improving any  
2 public or private infrastructure.

3 (4) PROFESSIONAL FIRM. A corporation, company,  
4 partnership, sole proprietorship, professional corporation,  
5 limited liability company, or other entity that is duly  
6 qualified by the Secretary of State to conduct business in  
7 Alabama, and that has been issued a certificate of  
8 authorization by the State of Alabama Board of Licensure for  
9 Professional Engineers and Land Surveyors pursuant to Title  
10 34, Chapter 11, Code of Alabama 1975, to engage in the  
11 practice of engineering.

12 (5) PUBLIC OR PRIVATE INFRASTRUCTURE. Shall include  
13 but not be limited to highways, roads, streets, overpasses,  
14 bridges, utilities, rights-of-way, airports, runways and  
15 taxiways, water ports, waterways, bays, rivers, and streams,  
16 railways, and all other assets or conveyances of convenience,  
17 safety or transportation, including all appurtenances thereto,  
18 located in whole or in part within the borders of the State of  
19 Alabama, whether publicly or privately owned.

20 Section 2. The provisions of Section 34-11-9(a) (3),  
21 Code of Alabama 1975, notwithstanding, neither a professional  
22 firm nor any of its employees that provide construction  
23 monitoring services on behalf of an awarding authority  
24 relating to the construction, repair, resurfacing,  
25 refurbishment, replacement, removal, modification, alteration,

1 or other improvement of any public or private infrastructure  
2 shall be civilly liable in tort or otherwise for property  
3 damage, personal injury, or death resulting from construction  
4 monitoring services that substantially comply with the  
5 professional firm's construction monitoring services  
6 requirements for the awarding authority related to the plans  
7 and specifications in determining compliance of the  
8 contractor's work with the plans and specifications.

9 Section 3. (a) This act is not applicable to the  
10 extent that a professional firm or its employees are engaged  
11 by an awarding authority solely to design and/or prepare the  
12 engineering plans and specifications for a public or private  
13 infrastructure.

14 (b) This act is not applicable to the extent that a  
15 professional firm or its employees performing construction  
16 monitoring services are also engaged by an awarding authority  
17 to prepare the engineering plans for that project, or are  
18 otherwise providing additional services on that project, and  
19 to the extent that a deficiency in such plans or additional  
20 services proximately causes property damage, personal injury,  
21 or death to a third party with whom the professional firm is  
22 not in privity of contract.

23 (c) This act does not replace or supersede existing  
24 burdens of proof or defenses in professional liability actions  
25 concerning construction monitoring services.

1                   Section 4. This act shall become effective  
2 immediately following its passage and approval by the  
3 Governor, or its otherwise becoming law.

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

---

Speaker of the House of Representatives

---

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 02-MAY-13, as amended.

Jeff Woodard  
Clerk

Senate

---

20-MAY-13

Passed