

ACT 2013 - 401

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



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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.

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Speaker of the House of Representatives

Kay Ivey

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

APPROVED May 23, 2013

TIME 5:41 pm

Robert Bentley

GOVERNOR

Alabama Secretary Of State

Act Num....: 2013-401
Bill Num...: H-335

Recv'd 05/24/13 12:49pmSLF

-SPONSORS
 e. Clark
 Anderson
 Fletcher
 ...
 ...
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 ...
 ...
 ...

I HEREBY CERTIFY THAT THE
 RESOLUTION AS REQUIRED IN
 SECTION C OF ACT NO. 81-889
 WAS ADOPTED AND IS ATTACHED
 TO THE BILL, H.B. 335
 YEARS 100 NAYS 0
 JEFF WOODARD, Clerk

I HEREBY CERTIFY THAT THE
 NOTICE & PROOF IS ATTACHED
 TO THE BILL, H.B. _____
 AS REQUIRED IN THE GENERAL
 ACTS OF ALABAMA, 1975 ACT NO.
 919.
 JEFF WOODARD, Clerk

CONFERENCE COMMITTEE
 House Conferees _____

DATE: 5-7 2013
 RD 1 RFD SA

This Bill was referred to the Standing
 Committee of the Senate on SA
 and was acted upon by such Committee in
 session and is by order of the Committee
 returned therefrom with a favorable report
 w/amend(s) 0 w/sub C by a vote of
 years 8 nays 0 abstain 0
 this 8th day of May 2013
James H. Kelly Chairperson

DATE: 5-9 2013
 RF SA RD 2 CAL

DATE: _____ 20____
 RE-REFERRED RE-COMMITTED
 Committee _____

I hereby certify that the Resolution as
 required in Section C of Act No. 81-889
 was adopted and is attached to the Bill,
 HB _____
 YEAS _____ NAYS _____
 PATRICK HARRIS,
 Secretary