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3 SUBSTITUTE FOR HB335  
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8 SYNOPSIS: This bill would codify the existing common  
9 law of Alabama that, under prescribed  
10 circumstances, abates the civil liability of a  
11 person or entity that contracts with an awarding  
12 authority for the review of construction or other  
13 design products for the purpose of monitoring  
14 compliance with drawings and specifications on  
15 behalf of the awarding authority.  
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17 A BILL  
18 TO BE ENTITLED  
19 AN ACT  
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21 To codify the existing common law of Alabama as it  
22 relates to the civil liability of a person or entity that  
23 contracts with an awarding authority to perform construction  
24 monitoring services relating to the construction, repair,  
25 resurfacing, refurbishment, replacement, removal,  
26 modification, alteration, or other improvement of any public

1 or private infrastructure located within the borders of the  
2 State of Alabama.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

6 (1) AWARDING AUTHORITY.

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

14 b. A county, city, town, or municipality that  
15 appropriates public funds for the construction, repair,  
16 resurfacing, refurbishment, replacement, removal,  
17 modification, alteration, or other improvement of any public  
18 or private infrastructure, including any public-private  
19 partnership project, for which construction monitoring  
20 services are contracted.

21 c. All other state, county, or municipal boards,  
22 bodies, commissions, agencies, departments, institutions, and  
23 instrumentalities, and their political subdivisions, that  
24 appropriate public funds for the construction, repair,  
25 resurfacing, refurbishment, replacement, removal,  
26 modification, alteration, or other improvement of any public  
27 or private infrastructure, including any public-private

1 partnership project, for which construction monitoring  
2 services are contracted.

3 (2) CONSTRUCTION MONITORING SERVICES. The  
4 monitoring, review, observation, or inspection of the  
5 contractor's work on behalf of the awarding authority to  
6 determine the contractor's compliance with the plans and  
7 specifications issued for that project, sometimes referenced  
8 in the industry as "construction engineering inspection."

9 (3) PLANS AND SPECIFICATIONS. Engineering designs,  
10 drawings, plans and specifications, or other design products  
11 prepared by or on behalf of an awarding authority by a  
12 licensed and registered professional engineer, and issued to a  
13 contractor by the awarding authority for the purpose of  
14 constructing, repairing, resurfacing, refurbishing, removing,  
15 replacing, modifying, altering, or otherwise improving any  
16 public or private infrastructure.

17 (4) PROFESSIONAL FIRM. A corporation, company,  
18 partnership, sole proprietorship, professional corporation,  
19 limited liability company, or other entity that is duly  
20 qualified by the Secretary of State to conduct business in  
21 Alabama, and that has been issued a certificate of  
22 authorization by the State of Alabama Board of Licensure for  
23 Professional Engineers and Land Surveyors pursuant to Title  
24 34, Chapter 11, Code of Alabama 1975, to engage in the  
25 practice of engineering.

26 (5) PUBLIC OR PRIVATE INFRASTRUCTURE. Shall include  
27 but not be limited to highways, roads, streets, overpasses,

1 bridges, utilities, rights-of-way, airports, runways and  
2 taxiways, water ports, waterways, bays, rivers, and streams,  
3 railways, and all other assets or conveyances of convenience,  
4 safety or transportation, including all appurtenances thereto,  
5 located in whole or in part within the borders of the State of  
6 Alabama, whether publicly or privately owned.

7 Section 2. The provisions of Section 34-11-9(a)(3),  
8 Code of Alabama 1975, notwithstanding, neither a professional  
9 firm nor any of its employees that provide construction  
10 monitoring services on behalf of an awarding authority  
11 relating to the construction, repair, resurfacing,  
12 refurbishment, replacement, removal, modification, alteration,  
13 or other improvement of any public or private infrastructure  
14 shall be civilly liable in tort or otherwise for property  
15 damage, personal injury, or death resulting from construction  
16 monitoring services that substantially comply with the  
17 professional firm's construction monitoring services  
18 requirements for the awarding authority related to the plans  
19 and specifications in determining compliance of the  
20 contractor's work with the plans and specifications.

21 Section 3. (a) This act is not applicable to the  
22 extent that a professional firm or its employees are engaged  
23 by an awarding authority solely to design and/or prepare the  
24 engineering plans and specifications for a public or private  
25 infrastructure.

26 (b) This act is not applicable to the extent that a  
27 professional firm or its employees performing construction

1 monitoring services are also engaged by an awarding authority  
2 to prepare the engineering plans for that project, or are  
3 otherwise providing additional services on that project, and  
4 to the extent that a deficiency in such plans or additional  
5 services proximately causes property damage, personal injury,  
6 or death to a third party with whom the professional firm is  
7 not in privity of contract.

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

11 Section 4. This act shall become effective  
12 immediately following its passage and approval by the  
13 Governor, or its otherwise becoming law.