



## Executive Summary

State sovereign immunity statutes across the CSG South region generally protect the state from liability but do not extend that protection to Department of Transportation (DOT) contractors. Instead, contractor liability is primarily determined through judicial doctrines that distinguish between state-controlled design decisions and contractor-controlled execution of work. Across states, courts consistently limit contractor liability when work is performed in accordance with state plans and specifications, while holding contractors responsible for negligence, deviation from plans, or independent decision-making.

## Research Methods

Statutory review of sovereign immunity and state-contractor protections.

## Findings and Analysis

While some CSG South states have sovereign immunity laws that protect the state from being sued, they typically do not have statutes that extend sovereign immunity to government contractors, including those working with a state Department of Transportation (DOT).<sup>1,2,3,4,5</sup> Instead, judicial doctrines define contractor liability and specify when contractors may avoid liability, specifically when they perform work on behalf of the state and when they adhere to state-provided plans.<sup>6,7,8</sup>

The key legal principle regarding liability falls on who is responsible for the condition that caused harm during a project.<sup>9</sup> If the issues for the project are from design, planning, or policy decisions made by the state, the liability falls on the state.<sup>10,11</sup> If the issues are due to construction or execution, or to individuals failing to follow state-directed plans, the liability falls on the contractor.<sup>12,13,14</sup>

There are situations in which the courts may limit contractors' liability:

- The contractor follows state-approved plans and specifications.
- Contractors work on the project under state oversight.
- The issue with the project stems from the state's design decisions.<sup>15</sup>

Situations where contractors may remain liable for issues occur when:

- Contractors do not follow state-directed plans and specifications.
- Contractors are negligent when working.
- Contractors demonstrate independent designs or engineering judgment.
- The issue with the project stems from construction methods, not state-approved design.<sup>16</sup>

## CSG South State Contractor Protections Examples



## Georgia

Contractors in Georgia may avoid liability under the acquired immunity doctrine.<sup>17</sup> The framework of this model centers on whether the contractor follows the state-approved plans and specifications.<sup>18</sup> If the issue with the project is design-related, the liability falls on the state.<sup>19</sup> If the issue with the project stems from a negligent executive, the contractor is liable.<sup>20</sup> The acquired immunity doctrine depicts a clear distinction between the design responsibility and construction performance.<sup>21</sup>

## Louisiana

Contractors in Louisiana may avoid liability under the design-based liability distinction.<sup>22</sup> The framework of this model centers on whether the courts attribute liability to the state for Louisiana Department of Transportation and Development-approved design decisions.<sup>23</sup> Contracts are generally not liable for defects in state-approved plans but may be liable for improper implementation.<sup>24</sup> The key consideration of this framework is whether the contractor deviated from approved plans during execution.<sup>25</sup>

## Missouri

Contractors in Missouri may avoid liability if they comply with state specifications.<sup>26</sup> The framework of this model states that the contractor's protection is tied to their adherence to the Missouri Department of Transportation project specifications.<sup>27</sup> Courts evaluate whether the contractor was executing a state-directed project, with contractor protection less likely when the contractor exercises independent judgment.<sup>28</sup> Ultimately, contractor protection relies on the degree to which the contractor's actions align with the state-provided specifications.<sup>29</sup>

## North Carolina

Contractors in North Carolina may avoid liability under the public contractor defense.<sup>30</sup> The framework of this model is that contractors may rely on a defense when their work follows government-approved plans.<sup>31</sup> Responsibility for design-related defects remains with the state, while workmanship issues fall to the contractors.<sup>32</sup> The public contractor defense relies on the accurate execution of state-approved plans.<sup>33</sup>

## Tennessee

Contractors in Tennessee may avoid liability under the contractor compliance standard.<sup>34</sup> Like neighboring states, this framework focuses on contractors' compliance with state directives.<sup>35</sup> Protection applies when contractors follow specifications without negligence, with liability arising from improper performance.<sup>36</sup> Consideration of liability protection depends on whether the contractor introduced an independent design or an error separate from the state-approved plans.<sup>37</sup>

## Virginia

Contractors in Virginia may avoid liability under a structured multi-factor analysis.<sup>38</sup> The framework of this model involves the courts applying a multi-factor test that evaluates state control, the nature of the directed function, and the contractor's discretion.<sup>39</sup> Contractors are more likely to receive protection when the act is under close state direction.<sup>40</sup> The level of independence in project decision-making directs the level of protection a contract receives from liability.<sup>41</sup>

The table below summarizes the statutory frameworks governing sovereign immunity across CSG South states and how those frameworks apply to Department of Transportation (DOT) contractors. While states vary in how they structure



sovereign immunity, the table highlights that contractor liability is generally not addressed in statute and is instead shaped through judicial doctrines and case-specific analysis.

State	Governing Statute / Constitutional Provision	State Sovereign Immunity Framework	Treatment of DOT Contractors
Alabama	<a href="#">Ala. Const. Art. I, §14</a>	Absolute sovereign immunity; the state cannot be made a defendant in court	No statutory immunity; contractors generally liable, though courts may recognize limited derivative immunity when acting under state direction and in strict compliance with specifications.
Arkansas	<a href="#">Ark. Const. Art. 5, §20</a> ; <a href="#">AR Code § 19-10-201</a>	Constitutional sovereign immunity; claims handled through the State Claims Commission	No statutory immunity; contractors treated as separate entities and generally subject to liability, with limited recognition of acquired immunity when following state specifications.
Florida	<a href="#">Fla. Stat. §768.28</a>	Waiver of immunity with damages caps	Immunity may extend to contractors only when they are deemed agents of the state; independent contractors are generally excluded unless acting under detailed state control.
Georgia	<a href="#">O.C.G.A. § 50-21-20 et seq.</a>	Waiver under the Tort Claims Act with exceptions	No statutory immunity; courts recognize the acquired immunity doctrine when contractors strictly follow state plans and specifications.
Kentucky	<a href="#">Ky. Rev. Stat. §44.001 et seq.</a>	Claims processed through the Board of Claims under the statutory waiver	No statutory immunity; contractors generally liable, with limited derivative immunity recognized when performing work under state direction without negligence.
Louisiana	<a href="#">La. Const. Art. XII, §10</a> ; <a href="#">La. Rev. Stat. §13:5106</a>	Waiver of sovereign immunity with liability limits	No statutory immunity; courts recognize derivative immunity when contractors adhere to DOTD plans and do not exercise independent negligence.
Mississippi	<a href="#">Miss. Code Ann. §11-46-1 et seq.</a>	Tort Claims Act with defined exemptions	Independent contractors excluded from “employee” definition; no statutory immunity, though limited protection may apply when acting as an instrumentality of the state under close control.
Missouri	<a href="#">Mo. Rev. Stat. §537.600</a>	Sovereign immunity is retained except for motor vehicle operation by public employees and dangerous conditions of public property.	No statutory immunity; courts recognize derivative sovereign immunity when contractors perform work in accordance with



			MoDOT specifications without negligence.
<b>North Carolina</b>	<a href="#">N.C. Gen. Stat. §143-291</a>	Claims handled by the Industrial Commission	No statutory immunity; courts apply the public contractor defense when contractors follow DOT specifications without deviation.
<b>Oklahoma</b>	<a href="#">Okla. Stat. tit. 51, § 151 et seq.</a>	Governmental Tort Claims Act with enumerated exemptions	Independent contractors are explicitly excluded from statutory immunity; contractors remain fully liable for their own negligence.
<b>South Carolina</b>	<a href="#">S.C. Code Ann. §15-78-10 et seq.</a>	Tort Claims Act with caps and exceptions	Contractors excluded from “employee” definition; no statutory immunity, though limited judicial doctrines may apply when contractors follow government specifications.
<b>Tennessee</b>	<a href="#">Tenn. Code Ann. §9-8-301 et seq.</a>	Claims Commission jurisdiction	No statutory immunity; courts recognize a limited government contractor defense when contractors comply with state specifications and exercise no independent negligence.
<b>Texas</b>	<a href="#">Tex. Civ. Prac. &amp; Rem. Code § 101.001 et seq.</a>	Limited waiver (vehicles, premises defects)	Independent contractors are excluded from statutory immunity; contract terms and common law defenses typically govern non-sovereign immunity and liability.
<b>Virginia</b>	<a href="#">Va. Code § 8.01-195.1 et seq.</a>	Limited waiver with caps	No statutory immunity; courts apply a structured derivative sovereign immunity test based on state control, discretion, and compliance with specifications.
<b>West Virginia</b>	<a href="#">W. Va. Code §29-12A-1 et seq.</a>	State retains constitutional immunity; statute applies mainly to political subdivisions.	No statutory immunity; courts may extend derivative immunity when contractors act under state direction and comply with specifications without negligence.

<sup>1</sup> [Fla. Stat. § 768.28\(9\)\(a\).](#)

<sup>2</sup> [Okla. Stat. tit. 51, § 152\(7\)\(b\).](#)

<sup>3</sup> [S.C. Code Ann. § 15-78-30\(c\).](#)

<sup>4</sup> [Tenn. Code Ann. § 9-8-307.](#)

<sup>5</sup> [Tex. Civ. Prac. & Rem. Code § 101.001\(2\).](#)

<sup>6</sup> [Hennessy v. Webb, 245 Ga. 329 \(1980\).](#)

<sup>7</sup> [Clark v. Asheville Contracting Co., 316 N.C. 475 \(1986\).](#)

<sup>8</sup> [Wood v. Foster & Creighton Co., 191 Tenn. 478 \(1950\).](#)

<sup>9</sup> Hennessy v. Webb, 1



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<sup>10</sup> [Simmons v. State, Through Department of Transportation and Development, 368 So. 2d 1039 \(La. 1979\).](#)

<sup>11</sup> [Messina v. Burden, 321 S.E.2d 657 \(Va. 1984\).](#)

<sup>12</sup> Clark v. Asheville Contracting Co., 1

<sup>13</sup> Wood v. Foster & Creighton Co., 1

<sup>14</sup> [State ex rel. Missouri Highway & Transportation Commission v. Dierker, 961 S.W.2d 58 \(Mo. 1998\).](#)

<sup>15</sup> Hennessy v. Webb, 1

<sup>16</sup> Clark v. Asheville Contracting Co., 1

<sup>17</sup> Hennessy v. Webb, 1

<sup>18</sup> Ibid.

<sup>19</sup> [Department of Transportation v. Brown, 267 Ga. 6 \(1996\).](#)

<sup>20</sup> Hennessy v. Webb, 1

<sup>21</sup> Ibid.

<sup>22</sup> Simmons v. State, Through Department of Transportation and Development, 1

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> State ex rel. Missouri Highway & Transportation Commission v. Dierker, 1

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Clark v. Asheville Contracting Co., 1

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Wood v. Foster & Creighton Co., 1

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Messina v. Burden, 1

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.