

STAND. COM. REP. NO.

265

Honolulu, Hawaii

FEB 20 2009

RE: S.B. No. 154  
S.D. 1

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 154 entitled:

"A BILL FOR AN ACT RELATING TO TORTS,"

begs leave to report as follows:

The purpose of this measure is to limit liability in tort actions relating to the maintenance and design of public highways to the actual percentage share of damages for design professionals whose degree of negligence is determined to be twenty-five per cent or less.

Your Committee received testimony in support of this measure from Austin, Tsutsumi & Associates; ECS, Inc.; Pacific Geotechnical Engineers, Inc.; Coalition of Hawaii Engineering and Architectural Professionals; American Institute of Architects; American Council of Engineering Companies; Fukunaga & Associates, Inc.; Engineering Solutions, Inc.; and Gray, Hong, Nojima & Associates, Inc. Testimony in opposition to this measure was received from Hawaii Association for Justice. Testimony with comments was received from Hawaiian Electric Company and Hawaiian Telcom. Written testimony presented to the Committee may be reviewed on the Legislature's website.

Your Committee acknowledges the concerns voiced in testimony by members of the small business community that the potential for tort liability may influence the choice of some small businesses to not participate in contracts for the design and maintenance of public highways. However, your Committee disagrees with some

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testifiers' conflation of tort liability with contractual indemnification of the contracting government entity for damages. Your Committee also notes the concerns of the public utilities that this measure would shift liability from design professionals to public utilities even though public utilities are bound by state and local government laws as to the placement of utility poles along highways but do not participate in highway design, planning, or construction.

Your Committee has amended this measure by:

- (1) Adding a new section to exempt public utilities from liability in tort actions involving damages related to the design and maintenance of public highways unless the public utility's degree of negligence is determined to be twenty-five per cent or more; and
- (2) Deferring the effective date of this measure to July 1, 2030.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 154, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 154, S.D. 1, and be referred to the Committee on Judiciary and Government Operations.

Respectfully submitted on  
behalf of the members of the  
Committee on Commerce and  
Consumer Protection,

  
\_\_\_\_\_  
ROSALYN H. BAKER, Chair



The Senate  
Twenty-Fifth Legislature  
State of Hawaii

**Record of Votes**  
**Committee on Commerce and Consumer Protection**  
**CPN**

Bill / Resolution No.:* <i>SB 154</i>	Committee Referral: <i>CPN, J90</i>	Date: <i>2/17/2009</i>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	✓			
IGE, David Y. (VC)	✓			
ESPERO, Will	✓			
GREEN, M.D., Josh	✓			
IHARA, Jr., Les	✓			
SAKAMOTO, Norman	✓			
HEMMINGS, Fred				✓
<b>TOTAL</b>	<i>6</i>	<i>0</i>	<i>0</i>	<i>1</i>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align: center; font-family: cursive; font-size: 1.2em;"><i>David Y Ige</i></div>				
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\*Only one measure per Record of Votes