

HONOLULU
CIVIL BEAT

Could Honolulu's Mayor Stop Rail Project?

By Michael Levine 01/12/2012

Former Hawaii Gov. Ben Cayetano is considering a run for Honolulu mayor at age 72 for one main reason: to stop the rail project.

Could he do it?

No, we don't mean "Can Cayetano win?" That's a question for another day. Instead, we ask: Can the mayor — any mayor — stop rail singlehandedly at this stage?



Cayetano says yes.

"Do you really think that if you have a mayor that is opposed, he couldn't stop the project?" he asked Civil Beat this week. "Do you think this is a done deal?"

Asked how he'd go about killing the project, Cayetano said, "Well, you just stop it. The mayor has to give authorization for certain things. You go to the City Council and say we want to stop it. It's that simple."

Although Cayetano says it's "simple," there are complications. We looked at some of them in previous

Fact Checks of statements made by Mayor Peter Carlisle: In July, City Government and Rail Part Ways (half true) and Decision-Making For Rail Has Been in My Hands (barely true).

But the landscape has changed considerably since then.

HART Is 'Semi-Autonomous'

Unlike other city agencies that are directly under the mayor's control, the public authority responsible for the rail project is "semi-autonomous," much like the Board of Water Supply.

In response to Civil Beat's questions, Carlisle's office on Wednesday provided a written statement from Managing Director Doug Chin:

"By a large margin, the voters approved a charter amendment setting up the Honolulu Authority for Rapid Transportation as a semi-autonomous agency. The HART board was sworn in July 2011, and the powers and responsibilities of HART, the mayor and City Council are all described in the City Charter."

Voters approved the amendment, 63.6 percent to 29.1 percent, in the 2010 general election.

The newly-created Article 17 of the City Charter gives the Honolulu Authority for Rapid Transportation a wide range of powers, duties and functions. It's in charge of building and running the fixed guideway train system, and that means it can execute contracts, buy land, charge fees, apply for federal grants, issue bonds and collect and spend tax surcharge funds.

HART's executive director and CEO answers to the HART board, not to the mayor. And a mayor opposed to rail would never be able to directly appoint enough members to constitute a voting majority on the board, as long as the governor and City Council remained in support of the project. He or she could only hope to create a stalemate.

The board has 10 members, nine of whom vote. As of today, all can be safely described as in favor of the project.

The mayor appoints five of the members, though only four voting ones.

The city director of Transportation Services is a voting member, and could be replaced by a new mayor — though he or she would have to be confirmed by the Council. The non-voting member is the director of the Department of Planning and Permitting, who also serves at the pleasure of the mayor.

Three other HART members — retired union representative William "Buzzy" Hong, First Hawaiian Bank Chairman Don Horner and former Corporation Counsel Carrie Okinaga — were appointed by Carlisle. Their staggered terms end in 2014, 2015 and 2016, respectively.

Of the five other members, three were appointed by the Council and one is the director of the Hawaii Department of Transportation, appointed by the governor. The ninth voting member is chosen by the eight other voting members. Former Sen. Robert Bunda's two-year term expires in 2013, and the ninth voting member would continue to have two-year terms thereafter.

A four-four split among pro-rail Council and governor appointees and anti-rail mayoral appointees could create gridlock eventually, but without widespread resignations it could take years.

City Council Has a Role, Too

"HART may be semi-autonomous, but the mayor has to approve certain things, and the City Council has to approve certain things," Cayetano said. "I would cut off all funding to HART."

It's not that simple. The mayor and Council have a role in the annual HART budget, but the mayor can't just "cut off all funding."

Carlisle and the Council wrestled last year over who had the power to write up HART's *initial* budget before the agency actually got off the ground. Now that HART is established, the budget process is laid out in the Charter, and it's pretty clear.

This comes from Section 17-106:

The authority shall submit a line-item appropriation request for each of its proposed operating and capital budgets for the ensuing fiscal year to the council through the office of the mayor by December 1st of each year. The office of the mayor shall submit the authority's line-item appropriation requests without alteration or amendment. The council shall, with or without amendments, approve the authority's appropriation requests.

In other words, no mayor — anti-rail or not — can alter or amend HART's budget request, let alone axe it altogether.

It should also be pointed out that the half-cent surcharge on the state's General Excise Tax can only be spent to finance rail. More than \$700 million has already been collected.

That said, there are other ways in which HART and the mayor interact. This week, for example, the Department of Corporation Counsel, which is under the mayor's control and also serves HART, came to the Council to ask for permission to spend more city money fighting the rail lawsuit. Having an anti-rail mayor would certainly complicate those already-convoluted relationships, and would create serious problems.

A mayor who opposed rail could throw a wrench into rail in a number of different ways, creating potentially damaging uncertainty about the project. The mayor could direct city employees, some 10,000 strong, not to cooperate with HART or rail contractors except as required by law.

He could use his bully pulpit and hold regular press conferences criticizing the project and the actions of rail supporters. He could punish project proponents politically, by vetoing any legislation they put forward. He could hold up permits, at least to some degree. He could stop planners from working on transit-oriented development, a key component of the project.

In short, there's no doubt that the mayor's support is valuable to the project, and the other key players know it.

"The future of rail depends on a consensus of the governing authorities which includes the Mayor, the Council and the HART board," Honolulu City Council Chair [Ernie Martin](#) told Civil Beat in a written statement Wednesday.

"Lacking support from any one of these powers would not necessarily stop rail cold," Martin said, "but it would definitely impede advancement of the project and drive the cost up prohibitively."

Indefinite support from the legislative branch is hardly guaranteed. Four Council members — Martin, [Stanley Chang](#), [Breene Harimoto](#) and [Tulsi Gabbard](#) — were elected to new terms in 2010 and won't have to run for re-election until 2014.

That leaves five seats up in 2012, including vacancies when [Nestor Garcia](#) and [Romy Cachola](#) are term-limited out of office. If anti-railers were to sweep the five seats, an anti-rail mayor would have a strong ally in his quest.

Next Mayor Won't Take Office Until 2013

Even if Cayetano were to run for mayor — he might decide as soon as this weekend — and if he were to prevail over Carlisle, whom he supported in 2010, he would not be sworn in as the 14th mayor of Honolulu [until January 2013](#).

By then, the rail project will likely have either cleared the final two major hurdles or succumbed to one or both of them.

The first major test for the project this year is a federal funding deadline. The city is counting on the Federal Transit Administration to chip in \$1.55 billion in New Starts funding, enough to cover about 30 percent of construction.

In November, Congress said [Honolulu had 13 months](#) to enter into a Full Funding Grant Agreement or it would lose out. That Dec. 31, 2012, deadline is days before Cayetano would take office if elected.

Of course Cayetano could be elected as early as August, if he were to get more than half the votes in the primary. That would give him plenty of time to raise concerns in Washington about the wisdom of funding a project opposed by the future mayor.

"I would go to the FTA and I would say we have another plan," Cayetano said. "It has to do with the plan that Parsons Brinckerhoff said was equal or better."

That's a reference to the Bus Rapid Transit plan that [would accomplish many of rail's goals](#) at a lower price.

"I wouldn't just kill the project without having some sort of alternative plan," he said.

The other major roadblock is the federal lawsuit against rail in which Cayetano is one of the plaintiffs. Opponents say rail planners in the city and federal governments did not follow environmental law because they didn't adequately consider all alternatives.

The [new timeline](#) approved this week by federal judge A. Wallace Tashima projects that arguments in the case could be held in August.

A new mayor could order the city's attorneys to stop defending the lawsuit. If that happened, it's hard to imagine that the federal co-defendants would continue to fight for a project that didn't even have the support of the mayor.

Will Cayetano Run?

All these questions about whether Cayetano could have an impact on the viability of the rail project wouldn't stop him from using rail as a campaign issue. Nor would they stop voters from making the 2012 mayoral election a de facto referendum on rail.

Other potential anti-rail candidates have bowed out of the race for 2012, clearing the way for Cayetano to court every Honolulu citizen with doubts about the project.

Engineering professor Panos Prevedouros, who ran for mayor in 2008 and 2010 and previously said on his website that he intended to run in 2012, informed supporters last month that he won't run this year.

And Hawaii Sen. Clayton Hee, who has voiced concerns about the rail project in his opposition to the Hoopili development, said he intends to support his longtime friend's mayoral campaign rather than run himself.

"I've had a lot of discussion with a lot of people about that. But I believe Gov. Cayetano will run for mayor, and that being so, I intend to support him," Hee told Civil Beat Wednesday.

What if Cayetano doesn't run for mayor? Would Hee reconsider?

"It's a possibility, but I'm confident enough that he's going to run that I feel that I can give you that statement," said Hee, who has already raised more than \$300,000 that could be used for a mayoral run and held another fundraiser Tuesday in Chinatown. "I know he hasn't announced, but I feel like he will run based on the way I've seen him behave."

Cayetano said becoming mayor wasn't something he had expected to be considering.

"I never thought I'd be running for this office. I was hoping that someone else would run, but he decided against it." Cayetano declined to answer whether he was talking about Hee or Prevedouros.