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## City has much to lose if rail is halted

Stopping the project now would wipe out jobs, incur huge costs and invite cynicism, transit officials say.

By Kevin Dayton / [kdayton@staradvertiser.com](mailto:kdayton@staradvertiser.com)

Honolulu will find itself in uncharted territory if former Gov. Ben Cayetano is elected mayor and actually cancels the city's \$5.27 billion rail project.

There are few, if any, examples of rail projects in the United States that were shut down this late in the development and funding process, and many observers predict a messy, expensive and drawn-out closure process if Honolulu scraps the planned 20-mile train system.

The rail project is the most expensive public works project in state history, and the Honolulu Authority for Rapid Transportation reports the city has spent \$503 million since 2006 on planning, design, buying property and some construction work for the system.

The city has also awarded \$2.18 billion in contracts to companies for activities such as building the first 10 miles of elevated guideway, producing rail cars and operating the rail system.

Daniel Grabauskas, executive director of HART, said he can't guess how much it would cost to stop the project and cancel those contracts.

"I know this much. I know we would pay lawyers a boatload of cash to either try to settle or litigate the claims," Grabauskas said. "I don't know what that number is. Honestly, you could come up with a whole range."

Cayetano said he doesn't believe the city has spent more than \$500 million on the rail project, and said the "big question" is why the city awarded billions of dollars in contracts and started construction before obtaining a formal guarantee that the federal government will help pay for it.

"Didn't the city understand this risk when they prematurely awarded contracts and started construction?" Cayetano asked.

Longtime rail opponent Cliff Slater agreed that terminating the project at this late stage would be expensive, but he contends that continuing with rail would be even worse.

Slater suggested taxpayers take a businesslike view and treat the money spent on rail like an investment that went bad. Don't dwell on the money that has already been invested because "you'll drive yourself nuts," he said.

"Going forward, is it worth spending now another \$5 billion, or \$6 billion, or \$7 billion, or whatever it is, to finish this off?" Slater said. Slater and Cayetano don't think so, and they are part of a group that is suing in federal court to try to stop the rail project.

Cayetano also filed to run for Honolulu mayor, and has promised to halt the project if he is elected. Cayetano is running against Mayor Peter Carlisle and former city Managing Director Kirk Caldwell, who both support rail. Early polling suggests Cayetano is in the lead.

Perhaps the closest parallel to a potential Honolulu rail project shutdown was the cancellation of the Access to the Region's Core project.

ARC was supposed to provide a new rail tunnel under the Hudson River for commuters between New Jersey and midtown Manhattan. New Jersey Gov. Chris Christie in 2010 scrapped the ARC project, which at the time was the largest public works project in the history of the Federal Transit Administration.

The FTA then canceled plans to provide \$3 billion in federal funding for the ARC project, and an audit of New Jersey's transit agency later concluded the state agency lost \$297 million on the project, most of it on engineering and design work or payments to contractors.

Martin Robins, director emeritus of the Alan M. Voorhees Transportation Center at Rutgers University, said the Honolulu project is actually more advanced than the New Jersey project was when it was canceled.

The ARC project was involved in only limited construction activities under a single contract in 2010, and had not signed a contract similar to Honolulu's \$1.4 billion agreement with Ansaldo Honolulu JV to manufacture cars and build and operate the train system, he said.

By contrast, Honolulu has begun construction on the first 10 miles of rail line and will begin grading work this summer on a maintenance and storage facility for rail cars under more than \$1 billion in construction contracts with Kiewit Infrastructure Group.

"The unraveling of that is going to be very, very costly," said Robins, who was project director for ARC from 1994 to 1998. "Companies have mobilized to do all this contracting."

"If the mayor comes in (and) pulls the plug on the project, all the work is going to have to stop, and the companies are going to have incurred costs," Robins said. "They have moved people and did a huge number of things. They organized offices, they have leases, they have all kinds of financial reliance that they placed on the process, and that's another level of contractual liability that the city has."

Cayetano acknowledged there will be claims by contractors, but said the companies with rail contracts will only be entitled to payment for work they did, or for costs the contractors actually incurred. That will be a small fraction of the \$2.18 billion in contracts awarded, Cayetano predicted.

As for the possibility that contractors might sue the city, Cayetano asked: "If a reasonable agreement can be reached based on actual costs and work performed, why would a local contractor sue the city and then expect future work?"

The city's contracts with Kiewit allow for termination for convenience, but also allow Kiewit "to be compensated for any and all costs expended in pursuit of the project's completion," said Lance Wilhelm, senior vice president of Kiewit.

The contractor would also be entitled to a percentage markup on certain costs, and Kiewit's subcontractors would also have the right to file claims to recoup their costs, Wilhelm said.

However, Wilhelm said the company is not planning for the "remote possibility" that the rail project could be canceled. He said he cannot recall any public works project in Hawaii that was ever canceled after construction began.

Enrico Fontana, senior project manager for Ansaldo Honolulu, said Ansaldo has incurred significant costs in establishing offices in Honolulu and working for almost five months on design of the rail systems.

"To assume that you can stop everything without a cost would be a mistake," Fontana said in an emailed response to questions. "The city needs transportation solutions. Cutting the project off at this point would mean wasting millions of dollars and having nothing to show for it."

Fontana said Ansaldo has never had one of its rail projects canceled after work started.

The city also contends that canceling will wipe out thousands of local jobs at a time when the local construction industry remains stuck in what has been a long slump.

"The men and women that I meet who are unemployed and are looking for jobs, that's not insignificant, either," Grabauskas said.

Cayetano responded that the 500 jobs that have been generated by rail so far falls far short of the thousands of jobs the rail project's environmental impact statement predicted would be created each year.

The 500 jobs the rail project did create would be replaced by new jobs Cayetano plans to generate by diverting funding from the rail project into a program of accelerated sewer, water system and road work across Oahu, he said.

Those water, sewer and road projects will provide "jobs that local construction workers can do," Cayetano said.

The city points out that if Cayetano does scrap rail, the \$1.55 billion in federal funding the city is counting on to help pay for it will never arrive.

Grabauskas predicted the FTA will redistribute that money to projects in other states, which means there will be that much less money available in Hawaii for Cayetano's plans or any kind of public works projects.

Federal funds that have already been spent on the Honolulu project could also be an issue.

After the ARC project was canceled, the FTA demanded that New Jersey repay \$271 million that the federal government had spent. New Jersey officials finally agreed to a settlement with the FTA last year to repay \$95 million of that amount.

Honolulu has spent \$65 million in federal funds on planning and engineering work so far, but would not necessarily have to repay those funds in the event of a shutdown here.

New Jersey officials had signed an early system work agreement with the FTA that legally required that federal funds be repaid if New Jersey terminated the project for reasons within the control of the state.

Honolulu has no such agreement with the FTA, meaning it is less likely the FTA would require that the federal funds spent in Honolulu be repaid.

Apart from the financial and legal implications of canceling the Honolulu rail project are the obvious implications for commuters who are stalled in city traffic.

Cayetano has proposed reviving and modifying the bus rapid transit, or BRT, project the city studied a decade ago to try to ease traffic congestion, but city officials warn it would take years and a "significant amount" of money to start over with a new traffic solution.

If the rail project is canceled, "no matter what other transit project might be in the works, it is many, many years down the road," Grabauskas said. The Honolulu rail project took more than six years to get to this point in the federal approval process, and that was relatively fast, he said.

Cayetano disagreed, saying that "Honolulu has the No. 1 bus system in the nation, and BRT additions to it will sail through the FTA process."

"Readiness to deploy transit and political muscle is all that matters," Cayetano said.

Robins, who worked on the New Jersey ARC project, said it is more complicated than that. Canceling the rail project would be "a very, very serious action," he said.

"What this is going to do is lose the confidence of the people in Washington that Honolulu is really serious, so that at a future time when you have a different political initiative, people are not going to take Honolulu seriously," he said.

"I think that the public in Honolulu is also going to become cynical about the whole process, and it's going to be very, very difficult to start this process up again, to assemble the political leadership and support, and the financial contribution," Robins said. "It's an enormous undertaking, and it's going to be extremely difficult to put back together again. It's like a Humpty Dumpty situation."