

## BAD FAITH LOOTING OF RAIL FUNDING BY THE STATE LEGISLATURE

Perhaps it was inevitable that the multi-billion dollar rail transit endeavor, *Hawaii's largest-ever public works project*, would bring out the greedy side of our otherwise dedicated state politicians. But the predictability of that greed can't possibly make it acceptable . . . especially when the #1 funding mechanism for the rail project is being exploited through systematic fleecing of rail tax collections before any money even makes it to the City.

The fleecing ploy was set into motion when the Hawaii State Legislature in 2005 passed HB1309 (ACT 247) to allow the rail project to advance on Oahu. Beginning in 2007, the half-percent increase in the General Excise Tax (GET), known as the 'rail surcharge', has been improperly used to balance the state budget. For the last four years, the state has been collecting an *administrative services fee* to process the surcharge levied on purchases within Oahu.

While a staffer at the legislature who then helped to advance the rail tax authorization bill, I remember like it was yesterday that when the original legislation was adopted the State had little-to-no idea what the cost would be to administer this tax. As a result, the overly generous, yet arbitrary 'guesstimate' of 10% was applied against the gross revenues as an administrative assessment. Averaging \$16 million per year above and beyond the real cost to collect the rail surcharge, this administrative fee surplus is being deposited into the state's general fund and is expected to shortchange the voter-approved rail project and City taxpayers by \$300 million during the life of the rail tax that expires in 2022.

Every reader of the Star Advertiser can probably surmise that the State doesn't need nearly that big a cut to collect and process taxes for the City. Indeed, highly informed sources tell me that the state only needs to retain three-percent or less to break even on the favor it's doing for the City.

But 'greed' is the operative word here. And sadly 'bad faith' is the by-product. That's why one of the first bills killed by the 2011 Legislature was a measure I helped craft to drive the profit motive out of this arrangement to inject a dose of fairness. The status quo is still alive and the rail fund is still being used to finance pet projects statewide. But there's still time to fix this arrangement by amending an existing bill before the House and Senate adjourn for the year.

Here's the plan. The House Finance Committee has a bill currently being considered -- SB1426 SD2 -- which unwarrantedly proposes to take \$200 million from the rail fund in a borrowing scheme. I suggest the House do a 'gut and replace' maneuver to SB1426 SD2 by removing the language that takes \$200 million for another money grab. Then, insert new language that allows for an administrative fee to withhold only that amount which is needed to process the rail surcharge.

An [upcoming special meeting](#) of the full City Council (8:30am on Wednesday, April 13) is being called exclusively to send a message to the State Legislature about this issue.

It is hoped that my colleagues will unanimously adopt my [Resolution 11-91 CD1](#) which strongly urges the State of Hawaii to only withhold the amount of money it actually needs to administer the rail surcharge.

To be clear, under no circumstances was ACT 247 sold to the public to be a profiteering scheme for the State to make money off of the rail endeavor. Yet, year after year, both the Democrats and Republicans at the State Legislature continue to approve budgets that siphon crucial millions from rail transit construction.

Now that the \$3.7 billion price tag narrowly approved by voters in 2008 has exploded to \$5.5 billion, the rail project's financial plan is in big trouble. Tax collections are down. Federal funding for rail from a penny-pinching Republican congress during this still plummeting economy is uncertain to say the least. And City officials are being told by the Feds and by City Council members to keep their hands off the budget for TheBus in order to find monies for rail. Worse yet, City officials have notified the Council that we will need to approve issuing of bonds to make up the cash flow shortfall.

That's how bad things are looking. So if we are still going to do rail, we need to do it right. The Legislature needs to stop raiding the City's rail fund and taxpayers need to rise up and demand that they get their money's worth from a broken system.

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