



RESOLUTION

INITIATING AN AMENDMENT TO THE REVISED CHARTER OF THE CITY AND COUNTY OF HONOLULU 1973, AS AMENDED, RELATING TO THE PUBLIC TRANSIT AUTHORITY.

WHEREAS, in 2005, the Hawaii State Legislature enacted Act 247 (SLH 2005) which allowed counties to levy a county surcharge through the general excise and use taxes ("GET surcharge") to fund public transportation systems in the county; and

WHEREAS, Act 247 mandated that in counties with a population exceeding 500,000 the surcharge be used for the operation and capital costs of building and operating the county's selected locally preferred alternative ("LPA"); and

WHEREAS, Act 247 expressly prohibited use of the surcharge fund "to build or repair public roads or highways, bicycles paths, or support public transportation systems in existence prior to July 12, 2005", thereby restricting the City and County of Honolulu ("City"); and

WHEREAS, in 2006, to comply with the federal process to obtain federal funds to implement the Project, four transportation options were evaluated in the City's Alternative Analysis Report:

- (1) No Build Alternative;
- (2) Transportation System Management Alternative (expanded bus service);
- (3) Managed Lane Alternative (i.e. elevated two-lane highways for buses and toll paying for HOV and single-occupant vehicles; and
- (4) Fixed Guideway Alternative;

and

WHEREAS, in 2007, the Honolulu City Council enacted Ordinance 07-001 selecting a fixed guideway system as the City's locally preferred alternative ("LPA"); and

WHEREAS, notwithstanding the selected LPA, highway technology which was not selected due to its ineligibility for GET surcharge funds, would have a greater impact on relieving traffic congestion in Honolulu; and



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WHEREAS, the City has begun work on the Honolulu High-Capacity Corridor Project ("Project"), the purpose of which is to design and build a steel-wheel on steel-rail fixed guideway mass transit system for Honolulu; and

WHEREAS, on October 29, 2008, the Federal Transit Administration and the City Administration approved the Draft Environmental Impact Statement ("DEIS") for the Project; and

WHEREAS, on November 4, 2008, Honolulu voters approved, by a narrow margin, an amendment to the Revised Charter of the City and County of Honolulu 1973, as amended ("Revised Charter"), to authorize the City's Director of Transportation Services to, "[e]stablish a steel wheel on steel rail transit system"; and

WHEREAS, on general election day, November 2, 2010, over 63 percent of those casting votes supported amending the Revised Charter to create a semi-autonomous public transit authority to be known as the Honolulu Authority for Rapid Transportation ("HART") to be responsible for the planning, construction, operation, maintenance, and expansion of the City's fixed guideway mass transit system; and

WHEREAS, on July 1, 2011, management of the Project was transferred from the Department of Transportation Services ("DTS") to HART; and

WHEREAS, HART is governed by a ten-member Board of Directors ("Board"), which consists of nine voting members (six appointed, two ex-officio and one selected by the other voting members) and one ex-officio non-voting member; and

WHEREAS, the Board is required or authorized to:

- (1) Determine the policy for the planning, construction, operation, maintenance, and expansion of the fixed guideway system (Section 17-103(3)(g), Revised Charter); and
- (2) Prescribe and enforce rules and regulations having the force and effect of law to carry out Charter provisions (Section 17-103(3)(h), Revised Charter);

and

WHEREAS, the City recently awarded a contract to Ansaldo Honolulu ("Ansaldo") to design, build, operate and maintain the Project's "core systems," which include 80 train cars, a system control center, and other train control elements; and



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WHEREAS, Ansaldo, a joint venture between AnsaldoBreda and Ansaldo STS, was awarded the contract over two competitive proposals, one by Sumitomo Corporation of America ("Sumitomo"), and the other by Bombardier Transportation ("Bombardier"), the latter of which would have saved the City hundreds of millions of dollars in operating costs in future years; and

WHEREAS, Ansaldo's winning proposal would cost the City \$574 million to design and build the core systems, \$167 million to operate and maintain the train on the completed portion of the rail project during an interim period through 2019 ("interim period"), \$339 million for the first five years of full operation and maintenance of the systems, and \$317.6 million for an option to extend the operation and maintenance of the systems ("optional extension") for another five years; and

WHEREAS, Bombardier's proposal if accepted would have cost the City \$697.3 million to design and build the core systems, the costs for the interim period would have been \$86.6 million, the first five-year costs for operation and maintenance of the systems would have been \$176.2 million, and the optional extension was priced at \$203.4 million; and

WHEREAS, HART had the ability to save the taxpayers over \$200 million by rejecting the procurement award to Ansaldo Honolulu, but HART stood quietly by even though Bombardier was better qualified and offered a better price over the expected life of the Project; and

WHEREAS, the City is defending against a lawsuit filed in federal court alleging that the Project EIS is inadequate; and

WHEREAS, in addition, the City is fighting a separate lawsuit pending in the Hawaii courts that seeks to halt all work on the Project until the City completes an archaeological survey along the entire rail route; and

WHEREAS, it has been reported in the *Honolulu Star Advertiser* on January 26, 2012, that the City's legal fees have totaled \$1.87 million to hire seven private law firms to do legal work related to the Project; and

WHEREAS, by supporting rail despite the pending lawsuits, HART has engaged in reckless behavior to the detriment of the City by:

- (1) Fast-tracking the signing of the contract with Ansaldo while an administrative appeal by Bombardier to the contract award to Ansaldo was ongoing and while the award could have been nullified;



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- (2) Failing to conduct research and provide forums to review and scrutinize the selection of steel-wheel on steel-rail technology, even while litigation is pending to stop rail;
- (3) Failing to review the alternative analysis process or claims by petitioners that the environmental impact statement ("EIS") was faulty, on the basis that it failed to consider seriously other reasonable alternatives to steel-wheel on steel-rail technology such as monorail, urban magnetic levitation ("MagLev"), and other technologies; and
- (4) Moving forward with construction without considering the waste that will occur if the litigants seeking to invalidate the transit project's EIS were to prevail, and to make contingency plans for the preparation of a supplemental EIS if one becomes necessary;

and

WHEREAS, because HART is a semi-autonomous agency with essentially an appointed board, the public has no means to object to or to hold HART accountable for its policy decisions, including matters relating to conflicts of interest; and

WHEREAS, HART has already demonstrated lack of prudence and disregard for taxpayer resources by:

- (1) Renting out office space in an overpriced prime downtown location when it could have rented less expensive office space in the Kapolei area where the bulk of the early work on the Project is taking place;
- (2) Continuing to spread propaganda to the public that steel-wheel on steel-rail is the only viable alternative to relieve traffic congestion in Honolulu when rail is the most expensive, archaic, and noisiest alternative available;
- (3) Enabling an unjust process to proceed which will cause great financial distress and irrevocable harm to the landscape;
- (4) Failing to educate the public that superior traffic relief methodologies, such as Bus Rapid Transit, High Occupancy Toll Lanes, or Managed Lanes were not fairly considered in the alternative analysis for the Project due to the state law restrictions on how Honolulu may use GET surcharge proceeds;



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- (5) Continuing to promote rail as the technology that will have the greatest impact on relieving traffic congestion in Honolulu notwithstanding that highway technology is superior to rail technology in relieving traffic congestion;
- (6) By hiring a Chief Executive Officer ("CEO") whose proposed three-year contract includes an annual base salary of \$245,000, a \$36,000 a year housing allowance, a transportation allowance of \$6,000 a year, and the potential for a \$35,000 annual performance bonus; and
- (7) Giving away trinkets such as lanyards, key chains, and coloring books to promote rail at events, which items have no value or relevance to the operation or construction of the rail project;

and

WHEREAS, HART should be terminated because DTS has the capability to carry out the Project or any preferred alternative project in-house and save the taxpayers millions of dollars each year; and

WHEREAS, in addition, the public will save monies and end propaganda by HART that has sought to condone and facilitate steel-wheel on steel-rail technology which will not relieve traffic congestion; and

WHEREAS, by repealing HART and placing its decision-making authority to advance rail with DTS, the public will have the opportunity to object to rail decisions directly to the elected Mayor and take appropriate action to remove or support the Mayor at election time; and

WHEREAS, the voters, after having had an opportunity to see how HART operates, should be given the opportunity to repeal HART; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu:

1. That it propose, and it is hereby proposed that the following question be placed on the 2012 general election ballot:

"Shall the Revised City Charter be amended to repeal the public transit authority, also known as the Honolulu Authority for Rapid Transportation?"



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2. That it propose and it is hereby proposed, that Article XVII, Revised Charter of the City and County of Honolulu 1973, as amended ("Public Transit Authority"), be repealed;
3. That it propose and it is hereby proposed, that Section 16-129, Revised Charter of the City and County of Honolulu 1973, as amended ("Transition Provisions Concerning the Establishment of the Honolulu Authority for Rapid Transportation --"), be repealed;
4. That it propose and it is hereby proposed, that Section 6-203, Revised Charter of the City and County of Honolulu 1973, as amended, be amended to read as follows:

"Section 6-203. Powers, Duties and Functions --

The director of budget and fiscal services shall be the chief accounting officer of the city and shall:

- (a) Prepare bills for the collection of moneys due the city or authorize the preparation thereof by other executive agencies of the city government under the director's general supervision.
- (b) Collect and receive moneys due to or receivable by the city and issue receipts therefor or authorize other executive agencies to do so under conditions prescribed by the director of budget and fiscal services.
- (c) Keep accurate and complete account of receipts and disbursements.
- (d) Maintain the treasury and, with the approval of the mayor, deposit moneys belonging to the city in depositories authorized by law which fulfill all conditions prescribed for them by law.
- (e) Contract for services of independent contractors, purchase materials, supplies and equipment and permit disbursements to be made only pursuant to rules and regulations adopted under the terms of this charter.
- (f) Have the responsibility for issuing, selling, paying interest on and redeeming bonds of the city.



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- (g) Prepare and issue warrants.
- (h) Prepare payrolls and pension rolls.
- (i) Be responsible for the management of city funds.
- (j) Sell real property upon which improvement assessments are not paid within the period prescribed pursuant to policies established by the council, and dispose of personal property not needed by any agency of the city.
- (k) Rent or lease city property, except property controlled by the board of water supply [and the public transit authority,] and award concessions, pursuant to law and to policies established by the council.
- (l) Prepare and maintain a perpetual inventory of all lands owned, leased, rented or controlled by the city.
- (m) Prepare and maintain a perpetual inventory of equipment owned or controlled by the city and materials and supplies.
- (n) Review assessment rolls for assessable public improvements prior to approval by the council and issue bills therefor after such approval has been given.
- (o) Have custody of all official bonds, except the bond of the budget and fiscal services director, which shall be in the custody of the mayor.
- (p) Review the manner in which public funds are received and expended and report to the mayor on the integrity with which said funds are accounted for and on the financial responsibility of officers and employees administering said funds.
- (q) Provide information pertaining to the financial affairs of the city and make financial reports at least quarterly to the mayor and the council.
- (r) Prepare the operating and capital program and budget and necessary budget ordinances and amendments or supplements thereto under the direction of the mayor.



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(s) Review the operating and capital budget program schedules of each executive agency and make budgetary allotments for their accomplishment with the approval of the mayor.

(t) Review all executive agency requests for the creation of new positions.”

5. That it propose and it is hereby proposed, that Section 6-1103, Revised Charter of the City and County of Honolulu 1973, as amended, be amended to read as follows:

“Section 6-1103. Civil Service and Executive Branch Exemptions --

The provisions of this chapter of the charter shall apply to all positions in the service of the executive branch. This section shall apply to semi-autonomous agencies as though they are departments of the executive branch. The following positions shall be exempt from the provisions of this chapter of the charter:

(a) Positions of officers elected by public vote; positions of heads of departments; the position of the band director of the Royal Hawaiian Band; the position of the executive for housing; the position of the manager and chief engineer of the board of water supply and the manager of any semi-autonomous agency created by ordinance.

(b) Positions in the office of the mayor, but such positions shall be included in the position classification plan. Employees of the civil defense agency and Royal Hawaiian Band, other than the band director, shall not be exempted from civil service.

(c) Positions of deputies of the corporation counsel, deputies and administrative or executive assistants of the prosecuting attorney and law clerks.

(d) Positions of members of any board, commission or equivalent body.

(e) Positions of a temporary nature filled by students.

(f) Personal services obtained by contract where the director has certified that the service is special or unique, is essential to the public



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interest and that, because of circumstances surrounding its fulfillment, personnel to perform such service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year.

(g) Personal services of a temporary nature needed in the public interest where the need for the same does not exceed one year, but before any person may be employed to render such temporary service, the director of human resources shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable.

(h) Personal services performed on a fee, contract or piecework basis by persons who may lawfully perform their duties concurrently with their private business or profession or other private employment, if any, and whose duties require only a portion of their time, where it is impracticable to ascertain or anticipate the portion of time devoted to the service of the city and when such fact is certified to by the director of human resources.

(i) Positions of one first deputy; and for the Honolulu Police Department one additional deputy; private secretaries to heads of departments and their deputies; and to the executive for housing; and the position of managing director, one first deputy and private secretaries to each; but private secretarial positions shall be included in the position classification plan. The first deputy in the department of human resources, however, shall not be exempt from civil service.

(j) Positions or personal services in demonstration programs and joint participation and special projects which serve the community; provided that such exemptions are required by federal law or rules and regulations and then in accordance with procedures established by ordinance.

(k) [The following positions of the public transit authority:

(1) The executive director, deputy director(s), private secretaries to the executive director and deputy director(s); and

(2) Positions certified by the director of human resources that require specialized knowledge and experience in fixed



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guideway system planning, development, operations, maintenance, and management, or transit-oriented development;

provided that, except for private secretarial positions, such positions shall not be included in the position classification plan and salaries for such positions shall be set by the public transit authority.

(l) Positions in the liquor commission of the liquor administrator and the deputy liquor administrator, but such positions shall be included in the position classification plan.

The director of human resources shall determine the applicability of this section of the charter to specific employment or services in the executive branch."

6. That it propose and it is hereby proposed, that Section 6-1703, Revised Charter of the City and County of Honolulu 1973, as amended, be amended to read as follows:

"Section 6-1703. Powers, Duties and Functions --

[1.] The director of transportation services shall:

(a) Plan, operate and maintain transportation systems, including bikeways, [except for activities relating to the fixed guideway mass transit system,] to meet public transportation needs, in accordance with the general plan and development plans, and advise on the design and construction thereof.

(b) Locate, select, install and maintain traffic control facilities and devices.

(c) Provide educational programs to promote traffic safety.

[(d) Establish a steel wheel on steel rail transit system, provided that nothing in this subsection shall preclude the director from utilizing technologies other than steel wheel on steel rail technology to complement or extend the rail transit system.]



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[(e)] (d) Promulgate rules and regulations pursuant to standards established by law.

[2. The director of transportation services shall have no power, duty, or function with respect to transportation systems, facilities, or programs which are under the jurisdiction of the public transit authority.]”

- 7. That it propose and it is hereby proposed, that a new section be added to Article XVI of the Revised Charter of the City and County of Honolulu 1973, as amended, to read as follows:

“Section 16- . Transition Provisions Concerning the Dissolution of Honolulu Authority for Rapid Transportation --

1. All civil service officers and employees holding positions with the Honolulu Authority for Rapid Transportation on June 30, 2013, shall be transferred to the department of transportation services on July 1, 2013. The civil service officers and employees shall suffer no loss of vacation allowance, sick leave, service credits, retirement benefits, or other rights and privileges because of the transfer. Nothing in this subsection, however, shall be construed as preventing future changes in status pursuant to the civil service provisions of this charter.

2. All lawful obligations and liabilities owed by or to the Honolulu Authority for Rapid Transportation relating to the fixed guideway system on June 30, 2013 shall remain in effect on July 1, 2013. The obligations and liabilities shall be assumed by the department of transportation services.

3. All records, property, and equipment held by the Honolulu Authority for Rapid Transportation as of June 30, 2013, shall be transferred and delivered to the department of transportation services on July 1, 2013.”

- 8. That in Sections 4 through 7 of this resolution, charter material to be repealed is bracketed and new charter material is underscored. When revising, compiling, or printing these charter provisions for inclusion in the Revised Charter of the City and County of Honolulu 1973, as amended, the revisor of the Charter need not include the brackets, the bracketed material, or the underscoring.
- 9. That if these Charter provisions are amended by any other Charter amendment(s) approved by the electors in the 2012 general election, the revisor of the Charter, in revising, compiling or printing the Charter: (1) may designate or



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redesignate articles, chapters, sections or parts of sections, and rearrange references thereto; and (2) shall, except as otherwise expressly provided in this resolution or in the other resolution(s) amending these Charter provisions, give effect, to the extent possible, to all of the amendments approved. The revisor of the Charter may also change capitalization or the forms of numbers and monetary sums for the sake of uniformity.

10. That the City Clerk be and is hereby directed:
 - A. To prepare the necessary ballots with the question contained in this Resolution and with spaces for "yes" and "no" votes on the question for presentation to the electors at the 2012 general election. The City Clerk may make technical and non-substantive changes to the form of the question presented in order to conform it to the form of other charter amendment questions presented to the electors at the same election; and
 - B. To publish the above-proposed charter amendments at length in a daily newspaper of general circulation in the City and County of Honolulu at least 45 days prior to its submission to the electors at the 2012 general election.



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- 11. That upon approval of the charter amendment question posed in this Resolution by a majority of the electors voting thereon, as duly certified, the charter amendments proposed herein shall take effect on July 1, 2013.

INTRODUCED BY:

TOM BERG

DATE OF INTRODUCTION:

MAR 06 2012

Honolulu, Hawaii

Councilmembers