Center for American Progress

Infrastructure Partnerships: Labor's Evolving Experience

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COVER PHOTO

In this Sept. 14, 2009, file photo, road workers begin construction along California interstate 215 north in San Bernadino County. Officials say it's the largest stimulus funded freeway project to begin construction. Businesses that received federal contracts under the economic stimulus are reporting more than 30,000 jobs saved or created in the first months of the program. AP PHOTO/NICK UT

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Introduction and summary

A 2,500-ton, German-made, highway-tunnel-boring machine nicknamed "Harriet" first bit into the soft earth of Miami, Florida, in November 2011. Since then the so-called sidewalk superintendents have been a varied lot, to say the least. Among those near and far watching the $1 billion effort to connect Interstate 395 with the Port of Miami cargo terminal are visitors to the Miami Children's Museum adjacent to the tunnel; Florida environmentalists; cruise-ship operators; European retirees; Wall Street dealmakers; and hundreds of state and local public officials who see similar opportunities for economic growth.

No group has been more interested than the construction workers in Miami-Dade County, where the monthly unemployment rate averaged 12.5 percent on the day in late 2011 when the French construction company operating "Harriet" started the boring machine's 40-foot-wide cutter head turning in earnest.[1]

The tunnel project was born in controversy, when in 1987 then-President Ronald Reagan deemed the idea of connecting the expressway to the Miami cargo terminal "pork-barrel" waste.[2] When work began on the project in 2010, local writers compared it to Boston's once contentious "Big Dig" and Alaska's "Bridge to Nowhere"—both extreme examples of so-called pork-barrel projects.[3] Today, as Harriet chews through earth for a second, parallel tunnel, doubts have taken a back seat to eager anticipation that Miami-Dade County will emerge as a major destination for goods moving through the recently widened Panama Canal.[4]

Whether this work—and a handful of similar projects currently underway—can contribute to meeting America's infrastructure needs depends on translating hard-won local success into a national policy. A major roadblock to the effort to improve and expand the nation's infrastructure is money—not just the availability of money but also its source. The Port of Miami tunnel—from design to eventual operation—is being built and operated through a long-term lease to private investors. Meridiam Infrastructure, a European-based infrastructure fund deploying pension dollars from across the pond, and Bouygues Civil Works, the French firm responsible for the tunnel's construction, are the project's owners. Government—the Florida Department of Transportation, Miami-Dade County, and the City of Miami—is a collaborator on the project and will, in effect, rent the facility from Meridiam and Bouygues.

This type of financial structure to pay for public works—the teaming of government with private actors—is known as a public-private partnership, or P3. While common in Canada, Australia, Britain, and Europe and increasingly common in South America, it is novel in the United States. Public-private partnerships enable private investors—notably pension funds, insurance companies, and other long-term investors—to invest in public assets, including highways and tunnels, courthouses, water systems, and other public facilities. By working through an infrastructure fund such as Meridiam or by investing directly in a project and assuming some direct ownership, investors may assume roles in designing, building, maintaining, and/or operating a facility in return for payments through tolls, dedicated taxes, or regular payments from state or local treasuries. The project may already exist—referred to as "brownfield"—or it may be on the drawing boards—referred to as "greenfield." In these types of arrangements, a state or local government typically signs a long-term lease with the private investors.

Despite the familiarity P3s have achieved in other parts of the world, real concerns are slowing down the formation of these public-private partnerships in the United States. Both the general public and organized labor have raised valid questions about having private, profit-seeking entities manage public infrastructure such as roads and bridges—and about the degree to which that ownership structure will diminish public accountability and favor short-term business expediencies over long-term public interests such as those of workers and the unemployed.

A 2012 study[5] by the Congressional Budget Office, or CBO, based on data from 76 public-private-partnership highway projects from 1989 through mid-2011, found that the bottom-line dollar cost to taxpayers and the traveling public for a major highway is little different between a P3 financial structure and traditional public-works financing. In other words, private dollars for public infrastructure may be a welcome new funding source, but promoters of P3s on Wall Street and elsewhere must address broader public concerns—including job-related issues—if P3s are to grow as a financing alternative.[6]

The CBO study found that on a case-by-case basis, certain highway public-private partnerships have done a better job than traditional public financing in obtaining capital, getting projects completed quickly, and better aligning the work of designers, builders, and maintenance crews in producing quality roads and bridges. In addition, state legislation and contract language affecting certain P3s have in some cases addressed labor concerns that inevitably arise when public control of jobs shifts to the private sector. These experiences need to be collated into a national policy that maximizes the public benefits of P3s and minimizes the risks.

As the CBO analysis concludes, "For a public-private partnership to be successful, the public and private partners should be better off having entered the partnership than they would have been if they had chosen an alternative approach or project."[7]

With this report, the Center for American Progress extends its recent analysis and recommendations on closing America's infrastructure gap through public-private collaboration, which were included in CAP's recent report, "Accelerating Infrastructure Improvements with Better Public Policies that Tap Private Investment."[8]

In this report we look at employment issues surrounding public-private partnerships. P3 projects potentially present a dual opportunity to workers: jobs today and retirement income tomorrow. As part of their structure, P3s apply privately raised, profit-seeking investment dollars—often from pension funds—to the task of building, maintaining, and operating public roads, bridges, and tunnels.[9]

According to the Political Economy Research Institute at the University of Massachusetts, 18,000 jobs are created directly and indirectly for every $1 billion invested in infrastructure.[10] In turn, as a 2008 report by the Government Accountability Office noted, professional investors—including pension-fund managers—have identified highway-infrastructure projects as a viable option for long-term investment programs.[11]

Public-private partnerships have been an established infrastructure-funding mechanism in many parts of the world. Yet no national consensus on a positive role for P3s will occur in the United States until labor fully signs on. To bring labor on board, here's what the federal government needs to ensure:

- The U.S. Department of Transportation needs to accelerate the completion of model P3 contracts, putting an emphasis on responsible-contractor policies that level the playing field for all P3 project bidders—union and nonunion alike.[12]

- Model contract language needs to provide for risk sharing among private investors and governments, including risk-disclosure rules for pension funds and other P3 equity investors.

- The recommended contract language needs to make clear that best value and quality workmanship—not lowest cost—is the primary driver of employment practices governing private-sector and public employees associated with building and operating P3 projects.

- The Transportation Department needs to actively work with states to draft statewide laws enabling a broad range of surface-infrastructure P3s, rather than project-by project statutes.

- The White House needs to direct the Treasury Department to convene pension-fund managers and advisors to identify federal policies that can increase pension-fund investment and participation in P3 infrastructure projects.

In making the argument to expand the use of public-private-partnership financing of U.S. infrastructure, we first present a brief history of American labor's engagement with P3 infrastructure work. Next, we look at some of the statutory and less formal rules that address labor concerns about the P3 concept. We then report on specific labor issues that arose in three projects: the Port of Miami Tunnel, the Presidio Parkway in California, and the proposed Illiana Corridor, a toll road linking Illinois and Indiana south of the Chicago area. After a look at the P3 legislating process in one state—Pennsylvania—we revisit our recommendations.

Background and history

America's surface-transportation infrastructure—better known as roads and bridges—must be massively repaired and upgraded if those living in America are to be prosperous and safe.[13] It is a task requiring thousands of jobs in construction, operation, and maintenance. Yet a political consensus on how to meet this pressing need is missing. Contempt on the right toward taxes and pork-barrel spending[14] is matched on the left by anger toward Wall Street "schemes" to steer profit-seeking private money into public infrastructure.[15]

The concept of public-private partnership is hardly unprecedented in America. Private ownership of surface-transportation facilities is as old as America. Audiences of the recent movie "Lincoln" saw one of the president's constituents arguing for his family's right to collect a private toll road's receipts, just as a P3 ownership consortium might do today. Before 1800 private turnpike companies financed much of America's westward expansion.[16] Congress authorized the Cumberland Road, America's first public highway, in 1806.[17] Federally subsidized highways became a national program in 1916.[18]

America's fledgling organized-labor movement entered the highway program in 1896, when the operators of the giant steam-powered equipment used to build highways and railroads met in Chicago to form what today is the International Union of Operating Engineers.[19] Not long thereafter the Laborers International Union of North America—representing many construction trades—was organized in 1903.[20]

The nation's roads have been essentially a public enterprise for nearly a century,[21] and they are represented best by the iconic Interstate Highway System. But in the years immediately before the 2008 financial crisis, private investors re-entered the picture.

Infrastructure investment funds emerged as a novel "asset class" being sold globally to U.S. pension funds—including union-sponsored pension funds—and other institutional investors. Infrastructure funds are created by Wall Street banks and other international investment pools and collect contributions from institutional investors—mostly pension funds and insurance companies. They then direct that cash to projects such as road and bridge construction.[22] In recent years most of the projects financed by these funds were overseas.

Advocates of surface-transportation P3s for American roads and bridges took the stage at the Federal Highway Administration in 2004. Mary Peters, head of the Federal Highway Administration at the time—before becoming secretary of transportation—declared, "The time has come to let the free market and public-private partnerships deliver the innovation, cost savings and quality they have brought to every other industry."[23] This sentiment extended into the Obama administration, which advanced federal leadership in the P3 arena through new language in the transportation-funding bill MAP-21, which was enacted in 2012.

Indeed, discussion of the P3 mechanism has evolved since 2004. When Peters first talked of public-private partnerships, labor interests in Washington heard "private," not "partnerships." At a 2006 congressional hearing, John Adler, director of the retirement-security campaign at the 1.8 million-member Service Employees International Union, or SEIU, which represents toll collectors and other toll-road workers, said that the sale of existing toll roads to private investors was "equivalent to the Native Americans who sold Manhattan Island to Peter Minuit for the equivalent of $24 in beads and trinkets."[24]

This and other labor critiques of surface-transportation public-private partnerships reflected the pre-financial crisis era, when the small boom in infrastructure-fund investments in America erupted, with investors looking for homegrown deals and certain mayors and governors hoping to turn public-infrastructure assets into ready cash. Two highly publicized P3s of that period are the long-term leases made to private investors in the Chicago Skyway toll road and the Indiana Toll Road.

Both lease programs generated large one-time cash payoffs to local and state governments and higher tolls for users.[25] After the Great Recession of 2007–2009 shrank toll revenues, analysts concluded that—at least in the early years—these P3 private entities, led by Australian bank Macquarie, overpaid and that the taxpayers in Chicago and Indiana received a windfall.[26] Equity investors were stuck with highly leveraged investments yielding weak returns.

The P3 investors in the Chicago and Indiana brownfield toll-road projects targeted labor savings in making their bids. In effect, Chicago and Indiana received a larger windfall because the P3 consortiums planned to cut jobs. As part of the

Chicago Skyway lease agreement, displaced workers in the Skyway privatization were offered city jobs. But existing jobs at the Indiana Toll Road were not protected under the terms of its lease. In spite of the absence of job projections, the International Union of Operating Engineers endorsed the privatization and won the right to represent certain workers on the facility.[27]

Two pre-financial crisis P3 debacles in California frequently cited by public-private-partnership critics are the Riverside Freeway express toll lanes in Orange County and the South Bay Expressway near San Diego. The Riverside Freeway express lanes were built and operated by private developers, but they were taken over by the Orange County Transportation Authority in 2002, after public outrage over unexpected tolls on so-called high-occupancy vehicles and a noncompete clause in the contract with the private operators that barred the state from improving the expressway's parallel nontolled lanes.[28] The South Bay Expressway near San Diego, a greenfield toll road completed by private interests in 2007, filed for bankruptcy protection just three years later, reflecting construction delays, litigation with contractors, and less-than-expected usage. In the bankruptcy process the principal amount of a $172 million federal loan to the project was written down, and the interest rate charged on the loan was increased.[29] Private-equity investors—including Australian infrastructure investment firm Macquarie—lost their entire stake.[30]

Citing controversies tied to those and other pre-financial crisis deals, many labor leaders and union-pension-fund advisers don't believe that P3s crafted by profit-seeking investors make economic sense for pension beneficiaries, current workers in the infrastructure sector, or the general public.

"If you call it a public-private partnership, you're signaling to the world that you're putting a lot of money in the pockets of Wall Street guys, privatizing a public asset and the project is likely to go bankrupt," says Damon Silvers, policy director and special counsel to the American Federation of Labor-Congress of Industrial Organizations, or AFL-CIO, which represents more than 12 million workers.[31] Silver says that infrastructure projects should be financed by the federal government—which has unmatched borrowing power at historically low interest rates—in combination with financially capable states and cities.

In terms of pension investments, "We have not recommended [P3s] to any of our clients to date," says Jack Marco, chief executive officer of Marco Consulting, a Chicago-based investment adviser to 350 multiemployer union pension plans known as Taft-Hartley plans, with $120 billion in combined assets.[32] Marco argues that the P3 concept was tarred when private investors bought control of existing public facilities, raised tolls, and—in the case of roads—trimmed employment.

Even today, when private interests seek union pension money for new construction—or greenfield projects—the payoff is dubious, asserts Marco. He says that P3 sponsors offer union-affiliated pension plans subpar investment returns in exchange for a promise of jobs. "That's something we face all the time," Marco notes. "The pension money is a lighter shade of green" if it receives below-market investment returns.

Several large U.S. institutional investors with pro-labor sympathies are responding by drafting plans to invest directly—instead of through funds—in American infrastructure. These include the $243 billion in assets of the California Public Employees' Retirement System, better known as CalPERS; the $5 billion in assets of the Union Labor Life Insurance Company, or Ullico, America's only labor-owned insurance and investment company; and the $3 billion in assets of the Dallas Police and Fire Pension System in Texas, which has equity stakes in two Dallas-area P3 highway projects.

The target of these U.S. institutional investors is greenfield projects, which balance the risk of investing in untried public-infrastructure facilities against the promise of immediate job growth and future economic development.

According to Richard Tettament, administrator of the Dallas Police and Fire Pension System, investing in greenfield projects "creates jobs and returns for the pension fund. … It's a win-win."[33] And Sonia Axter, managing director of infrastructure investments at Ullico, puts it this way: "Labor working and living in the communities—that's been the missing element. We're making the pie bigger by spending more on infrastructure. We're part of the political solution; we're also part of the private solution."[34]

Today, infrastructure funds are trying to raise far more money than is justified by global demand for such investments among institutional investors, Geoffrey Dohrmann, chief executive officer of the research and consultancy firm Institutional Real Estate, told a recent infrastructure-investing conference in Chicago.[35]

According to Dohrman, infrastructure investment is "a relatively new idea" for many American pension funds and other institutional investors. "What are best practices? No one really knows. … The issue [for institutional investors] is control. They want a more democratic process."

For a large slice of institutional investors—especially pension funds for public employees and private-sector union members—the allure of direct or fund-based public-private partnerships in infrastructure might improve if "best practices" included labor interests.

Government policy, pension-fund rules

Understanding the potential of labor's dual involvement with P3s—as both employees and investors—is vital to linking labor interests to broader public interests. The "private" side of a public-private partnership may involve pension money that, under federal law, must be invested prudently for the benefit of the employee-beneficiaries. Where they hold P3 investments, pension funds can help shape workplace practices alongside laws, government regulations, and the collective bargaining of unions.

Moving Ahead for Progress in the 21st Century Act—the 2012 federal highway bill better known as MAP-21—codifies for the first time a federal role in integrating public and private interests. The funding statute requires the secretary of transportation to develop "best practices"—including model P3 contracts—for states and other government agencies that are working with the private sector on surface-transportation projects.

For P3s receiving federal dollar subsidies, the secretary's guidance must include disclosures by P3 designers of "changes in the workforce and wages, benefits, or rules as a result of a public-private partnership."[36] MAP-21 thereby recognizes a principal concern of organized labor when it comes to P3s.

In traditional infrastructure funding, the federal government has understood that quality work, fair hiring and wages, safe working conditions, and job-training opportunities are essential elements of public works—notwithstanding the requirements for a low-bid competitive process. MAP-21 is a welcome start at making it clear that the entry of private funding through the public-private-partnership mechanism does not erode that national interest.

At the construction site, the Davis-Bacon Act of 1931 can be the strongest job-protection tool for construction workers in P3 projects. The law requires nearly all construction contractors performing federally funded or assisted road projects to pay no less than the wages and benefits paid for similar construction work being performed in the area—a rule known as the prevailing wage.[37] Davis-Bacon does not require union hiring, but it does help to equalize bidding conditions for union- and nonunion construction contractors.

The applicability of the law to P3 highway projects depends on a P3's use of federal funds. In addition to direct federal support, the Transportation Infrastructure Finance and Innovation Act of 1998, or TIFIA—a popular source of federal loans, loan guarantees, and lines of credit for P3s—includes the Davis-Bacon mandate.[38]

Public-private-partnership employment related to the design, maintenance, operation, and administration of a P3 facility—as opposed to its construction—is not covered by Davis-Bacon. MAP-21, however, opens the door for a broader federal interest in protecting all labor constituents involved with a P3 infrastructure project.

Thirty-two states and Puerto Rico have enacted laws governing P3 projects generally or specific public-private-partnership projects. Language addressing labor interests is evident in the P3-enabling laws of certain states such as Illinois and Pennsylvania, but it is absent in others, including Virginia and Texas, two of the most active P3 states.

Perhaps the most aggressive example of P3s addressing labor interests is an Illinois statute authorizing a brownfield P3 refinancing just for Chicago's Midway International Airport.[39] The statute contains specific pro-labor provisions, including a prevailing-wage rule and a requirement that a private entity leasing the airport must negotiate with any union seeking to represent workers and provide procedures for union organizing in return for a ban on strikes. A prospective Midway-airport P3 lessee and the City of Chicago must offer alternative jobs to those employees working at the airport who decline P3 employment.[40]

"Maybe that's why they've been unable to unload Midway," points out Henry Bayer, executive director of the 75,000-member Illinois chapter of the American Federation of State, County, and Municipal Employees, or AFSCME.[41] On the other hand, says Bayer, "There's no inherent reason why the City of Chicago can't run Midway Airport as well as any private entity that might take it over."

A less prescriptive document establishing progressive labor relations for P3s is known as a responsible-contractor policy, or RCP. This language exists mostly in requirements imposed on P3 operators by pension funds such as CalPERS.[42]

The precise terms vary from one P3 contract to the next. Enforcement language is often vague, but as a rule, it includes the right of a pension fund to cancel investment contracts and deny a violator of the responsible-contractor policy further access to the fund. In effect, these policies move beyond prevailing-wage laws to encompass other labor concerns and cover workers outside the construction trades. The CalPERS policy, for example, urges an employer to offer worker-apprenticeship programs, avoid firing existing workers, and maintain neutrality in union organizing campaigns. The Center for American Progress in 2010 offered a best practices toolkit for contracting by state and local governments.[43]

Responsible-contractor agreements don't supplant the collective-bargaining process, notes Michael Likosky, director of the Center on Law and Public Policy at New York University and an authority on public-private partnerships: "No, they strengthen it. That is a main value of P3s."[44]

Using the CalPERS responsible-contractor policy as a model,[45] the overarching principle of any such policy is an affirmative commitment to "the condition of workers" as part of the "prudent and careful" duty of P3 groups in bidding for and in execution of P3 contracts using pension-fund dollars on the one hand and the pension fund's fiduciary interests to its beneficiaries on the other. The responsible-contractor-policy program is couched in terms of "flexibility in controlling investment risks." As part of its process to control investment risk, "CalPERS has a deep interest in the conditions of workers employed by CalPERS and its managers and delegates," according to the CalPERS policy statement.

Such language embodies a unique public-interest contribution of pension-fund participation in P3 infrastructure development. The document states that, "This policy is an important CalPERS policy."

In addition to seeking prudent and profitable pension investments through worker-friendly policies, the CalPERS responsible-contractor policy contains specific protections for organized labor. The CalPERS policy "supports many of the ideals espoused by labor unions and encourages participation by labor unions … in the development and management of CalPERS … infrastructure investments." Moreover, "CalPERS will itself remain neutral, and it supports Manager neutrality, in the event a labor organization lawfully attempts to organize workers providing construction, maintenance, operation, or services at a RCP investment."

But exactly how can responsible-contractor policies work at the ground level? Ideally, responsible-contractor policies can weed out bad actors before they receive contracts by pre-screening for responsibility. A few years ago a giant rotor being hoisted on a wind-energy tower in California's Mojave Desert broke loose and crushed a nearby truck, which—fortunately—two workers had just exited. The Laborers International Union of North American, or LIUNA, learned of the incident at the jobsite, which was employing nonunion day workers. LIUNA had invested in a global infrastructure investment fund that in turn owned a large equity stake in the wind farm's development company.

Recalling the incident, Richard Metcalf, LIUNA's director of corporate affairs, said that his union "has a responsible-contractor policy that the fund had agreed to get our money." He further said that, "We had our folks pick up the phone and say, 'You have an investment contract with us and you need to sit down with us and find out what happened.'" The result was a new construction contractor and the implementation of high-grade employment practices at the site.[46]

Case studies

Conversations about P3s in surface-infrastructure development from the Wall Street perspective often sound like a chapter out of Michael Lewis's 2003 book *Moneyball*, which is about Billy Beane, the general manager of the Oakland Athletics who tried to impose cold-blooded statistical analysis and unfamiliar performance metrics on the tobacco-juice-stained business of Major League Baseball.

With P3s, the story goes like this: An expert team of financiers, engineers, construction contractors, and operations managers from somewhere out there in the cold-blooded business world descend on a community to build and operate a highly efficient public conveyance as greedy, bribe-seeking politicians and clueless citizens stand around shuffling their feet in awe. The storyline is a clear case of smart private capitalism trumping bumbling public works. As is the case in the game of baseball, however, the reality is quite different.

Port of Miami Tunnel, Florida

Nothing depicts bold private capitalism better than Harriet, the mammoth tunnel-boring machine born of German wizardry and with an imposing four-story height. But the Port of Miami project belies the "Moneyball" theory of outside expertise and no substantive local input. Chris Hodgkins, vice president of Miami Access Tunnel—the formal name of the P3 project—knows why. He calls Miami-Dade County "a very hyper county—hyper politics and hyper media."[47]

The project had quite a mix of players: Five often competing units of state and local government; Florida residents desperate for jobs in the wake of the state's construction bust; political leaders who feared that jobs would not go to their constituents; and local construction unions, constrained by Florida's status as a right-to-work state, that were suspicious of the union sentiments of Bouygues, the French general contractor.

"We tried to sit down with Bouygues and they wouldn't talk to us," recalls Mark Schaunaman, business manager of Local 487 of the International Union of Operating Engineers.[48]

Hodgkins' solution: "I pledged that the project would mirror the community." Independent of Bouygues, he set up a hiring-hall process sponsored by LIUNA Local 1652. He named the program "Build 305," Miami's area code, after he complained to Bouygues about a truck he had spotted at the jobsite that had a Georgia area code painted on its side.

The result of those efforts, as Hodgkins puts it, were as follows: "We're union, we're non-union. We're a conglomerate of all the neighborhoods." Eighty-three percent of the first 430 workers hired were from Miami-Dade County. "Whenever I brought local political leaders to the site, they saw their neighbors," Hodgkins says.

Union-jurisdiction issues nagged Build 305. Operating engineers—who run heavy construction equipment—were not involved in setting up the hiring program. In the end, however, two union-contracting companies were hired for pre-tunneling work performed by the local LIUNA chapter.

Nevertheless, securing specific work for union contractors wasn't the only achievement in Florida's right-to-work culture. Amid optimism surrounding the tunnel project, Miami-Dade County commissioners enacted a prevailing-wage ordinance, which leveled the general playing field for union contractors bidding for work.

Presidio Parkway, California

Jane Garvey—a former Federal Highway Administration official, member of the first Obama transition team, and currently the North American chairman for global infrastructure investor Meridiam—has a unique perspective on P3s. Meridiam Infrastructure, founded in 2005 by French bankers and engineers, holds major equity stakes in the Port of Miami Tunnel in Florida, the North Tarrant and LBJ Expressways in Texas, and the Presidio Parkway in California.

As Garvey points out, "Each place is somewhat different. … A lot depends on the culture and the nature of the state."[49] Unlike the union cultures in Florida and Texas, California's union culture is strong, especially among public employees.

Not all jobs at P3 road projects involve digging, tunneling, and laying asphalt. The project involved hundreds of white-collar jobs, including design and administrative jobs that could have easily been outsourced from the community—and, for that matter, from the United States.

In 2010, against the recommendation of its staff, the California Transportation Commission voted 6 to 5 for the first time to seek P3 funding for a $1 billion, 1.6-mile road project to rebuild the section of San Francisco's Doyle Drive that leads to the Golden Gate Bridge. Meridiam won the contract—called the Presidio Parkway—a nontoll expressway. The Professional Engineers in California Government union, representing 13,000 state employees, sued in state court to kill the deal.

According to Garvey, "California is one of the few states where they still design projects in house." But the state's construction unions endorsed the project.

In their suit, state engineers complained not specifically about job loss but about the project's excessive cost to state taxpayers and the prospect that the private developers would supplant public engineers in conducting safety inspections of their own work. The court, however, ruled against the state engineers.

Bruce Blanning, executive director of the state engineers union, says that the fight against the project "wasn't so much a job issue"[50] as it was about the project's excessive $1 billion price tag for a 1.6-mile roadway. He claims that the project robs California and its workers of other more productive highway projects.

The Illiana Corridor – Indiana and Illinois

A political odd couple—Gov. Pat Quinn (IL), a liberal Democrat, and former Gov. Mitch Daniels (IN), a conservative Republican—enthusiastically joined forces two years ago in support of a new toll road that connects their two states south of Chicago.

New statutes in both states enable the proposed Illiana Corridor—also called the Illiana Expressway—to be built through a public-private partnership. The statutes include prevailing- wage mandates drawn from separate state laws—the Illinois Procurement Code and the Indiana Common Construction Wage Act—but no additional labor-friendly language such as a requirement for management neutrality in union organizing efforts.[51]

The state statutes, in effect, will result in unionized construction workers building the road. According to a union official, however, AFSCME in Illinois wanted protections for any post-construction toll-road employees, similar to the Chicago Midway airport P3 statute. The union ultimately gave in after the building trades—eager for the construction work—prevailed on AFSCME to take the deal.

James Sweeney, president of the International Union of Operating Engineers Local 150, whose jurisdiction includes Illinois and Indiana, agrees that getting the project was paramount. Union protections that might have won approval in the Democrat-dominated Illinois legislature would never have cleared the Republican-controlled Indiana legislature, he says. "It would have been a poison pill in the legislature in Indiana."

The proposed highway would connect North-South Interstates 65 in Indiana and 55 in Illinois. The MAP-21 federal highway bill expedites the project, which would divert interstate truck traffic away from Chicago and northwest Indiana and enhance both states as international centers of commerce. Given their experience with the brownfield Indiana Toll Road and Chicago Skyway P3 projects, highway experts in both states have a chance to demonstrate the latest thinking in greenfield P3s as it applies to all public and private interests.

"I look at [P3s] in greenfield situations favorably," says union president Sweeney. "In selling an established public asset, I frown upon it. … We must add road capacity. There are [institutional investor] dollars out there searching for projects. Illinois is the big cherry on the cake for infrastructure in this country because we are the crossroads for all the major railroads, all the major interstates and airports."[52]

A distinguishing feature of the Illiana Corridor project is that one of its biggest behind-the-scenes boosters is not a highway developer, a private investor, or a unit of government, but a public-employee, union-owned business. CenterPoint Properties—the largest industrial real estate developer in the Chicago area and a key player in writing the Illiana Corridor project's P3 laws—is owned by CalPERS, which manages the largest pension fund in the United States. CenterPoint builds and operates intermodal rail/truck facilities, including the largest master-planned inland port in North America on 10-square miles at the intersection of Interstates 80 and 55 southwest of Chicago.

"Illiana is an essential piece of infrastructure for the region," notes Paul Fisher, CenterPoint's chief executive officer. "We've long advocated for CalPERS to be part of this." Fisher says that he'd like to see the highway extended eastward from Interstate 65 into the manufacturing regions of eastern Indiana and Ohio. "It's all about truck movement allied with our rail system. Without this, the attractiveness of our huge business park [west of Chicago] would be less."[53]

CenterPoint is a labor-friendly company, Fisher says. "I'm a big believer that you get what you pay for. We take seriously our responsibility that our mission isn't just making money. As an affiliate of CalPERS, we have a responsible-contractor policy."

Legislating P3s in Pennsylvania

Despite CalPERS's policy leadership, the fate of existing public-service employees remains in doubt when a public-private-partnership project is coming to a community. This problem was addressed in 2006 by an official of P3 advocate Goldman Sachs, who told a congressional hearing that, "It is also important to consider the future of the municipal employees as a result of a [P3] concession. It is possible for concession contracts to be written so a concessionaire must use municipal employees for all or a portion of toll collection, maintenance, administration, etc."[54]

In 2008 the Pennsylvania legislature rebuffed then-Gov. Ed Rendell's (D) effort to sell a long-term lease of the Pennsylvania Turnpike to a P3 investor in return for an up-front payment of $12.8 billion. An analysis by the Pew Center on the States[55] found that—in addition to its overly optimistic financial projection and doubts about how it would manage the windfall—the Rendell administration failed to explain the long-term effects of the deal on state residents and to codify public interests—including labor interests—in its P3-enabling legislation.

Last summer Pennsylvania enacted progressive-enabling legislation that set parameters for transportation-infrastructure P3s. With respect to labor interests, the law steps well beyond most similar state P3 statutes by requiring a P3 developer to offer "substantially identical" salaries and benefits to public workers covered by collective-bargaining agreements who might otherwise be displaced—or requiring the state to offer comparable jobs to workers who refuse employment with the P3. The law—known as House Bill 3—also extends Pennsylvania's prevailing-wage statute to P3 transportation projects. Despite strong Republican opposition to the bill's labor-friendly elements, business and labor interests ultimately joined in urging final passage of the measure.[56]

Conclusion

When Abraham Lincoln first ran for public office, the centerpiece of his campaign was "local improvements" for his community near Springfield, Illinois. Later, amid the tumult of the Civil War, President Lincoln undertook establishing the nation's railroad system. The system was financed largely by private investors using government land subsidies. But the needs of workers building and operating the railroads played almost no formal role in the process of creating one of America's greatest public resources.

In a sign of radical progress since Lincoln's time, ordinary workers through their pension funds today have a chance through public-private partnerships, or P3s, to invest formally in upgrading surface infrastructure and obtain formal protections for their standard of living as project workers. Government policy must nurture both outcomes as America rebuilds itself to prevail in global economic competition.

Thus far, labor interactions with P3s as investors and workers have been anecdotes limited to local circumstances. These experiences aren't yet reflected in a national dialogue about infrastructure. Lessons learned from the experiences examined in this report and others must be culled at the federal level, analyzed, and made part of the infrastructure planning process across the nation.

Equally important to recognize is the fact that labor concerns vary. Construction workers want the work and necessarily support new construction, or greenfield projects. Yet the recent eight-day strike by clerical workers at the ports of Los Angeles and Long Beach, California, highlight the separate issues faced by post-construction workers who are integral to keeping public infrastructure functioning in the public interest.[57] From project designers to toll collectors, public and private workers who are not yet covered by Davis-Bacon or state laws with similar worker protections must be heard when it comes to P3 projects.

At the federal level, the way forward is clear:

- The Department of Transportation needs to plant its flag squarely on the side of responsible-contractor policies that enable union and nonunion workers to compete equally in all phases of a P3 project's life cycle. The Davis-Bacon Act alone is insufficient to protect the array of labor interests in a shift from public works to private works.

- The government must guard against the danger of short-term P3 profit seeking by publishing best-practice guidelines for P3-financed infrastructure construction and operation in the national interest. Low-bid work cannot mean low-quality work on P3 projects. As the CalPERS responsible-contractor policy says, the "private" element of public-private partnerships cannot be allowed to mean "unaccountable."

- Despite the necessary role of state and local governments in shaping P3 infrastructure projects, the federal government must discourage project-by-project lawmaking and push for a national template that sets a floor. Piecemeal rules such as the Midway Airport P3-enabling statute discourage investors. Even differences in state laws discourage global infrastructure investors and create uncertainty about labor collaboration on the national task of upgrading America's infrastructure.

- Given the potential dual role for labor—as employees and investors—federal policy must insist that the risks faced by all P3 stakeholders are clear. In particular, pension investors representing the interests of retirees must know the pros and cons embedded in long-term, relatively illiquid infrastructure investments. Financial regulators must play a role alongside the Department of Transportation.

Public-private partnerships for building roads and bridges are engrained in America's distant history and are re-emerging in our contemporary debate about infrastructure modernization. Private dollars can serve the public interest in developing a globally competitive ground-transportation network. With the right agreements in place when the first shovels of dirt are turned, those who build, operate, and maintain that network can benefit from jobs today and retirement income tomorrow.

About the author

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