Infrastructure Partnerships: Labor's Evolving Experience

Bill Barnhart March 2013

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.

The Center for American Progress is a nonpartisan research and educational institute dedicated to promoting a strong, just, and free America that ensures opportunity for all. We believe that Americans are bound together by a common commitment to these values and we aspire to ensure that our national policies reflect these values. We work to find progressive and pragmatic solutions to significant domestic and international problems and develop policy proposals that foster a government that is "of the people, by the people, and for the people."

Center for American Progress

1333 H STREET, NW, 10TH FLOOR, WASHINGTON, DC 20005 • TEL: 202-682-1611 • FAX: 202-682-1867 • WWW.AMERICANPROGRESS.ORG