Public-Private Partnerships in Transit: Tennessee Should Reconsider

Introduction

The *Public-Private Transportation Act of 2016* (Tennessee SB 2093/HB 2407), regulating the private development, redevelopment, and operation of transportation facilities such as roads, bridges, tunnels, and mass transit facilities, should be thoroughly analyzed before legislators move forward. As drafted, the bill is not in the best interest of Tennessee residents who will rely upon transit projects created through the act.

While there has been a significant increase in public private partnerships (P3s) in connection with highway projects in recent years, P3s are still rare in transit, due to the unique nature of the industry. Furthermore, where privatization schemes have been tried on the operations and maintenance side of transit, the experiments have failed miserably, literally leaving passengers stranded in the cold.

Cost savings in other transit P3s are questionable, and it is clear that States derive much of their savings by putting in place contractors that will hold down labor costs through lower wages and health benefits. In this case, such actions will hurt the Tennessee citizens who would ultimately work on the system.

The Amalgamated Transit Union (ATU), representing nearly 1,300 workers in five Tennessee cities, including Chattanooga, Jackson, Knoxville, Memphis, and Nashville, strongly urges the legislature to **delete mass transit from the provisions of this bill**. Alternatively, it should include language that ensures that eligible projects will be operated and maintained by employees of an existing public provider of fixed guideway or bus rapid transit public transportation in the service area of the project, or if none exists, by employees of an existing public transportation provider in the service area.

P3s in Transit: Unproven and Risky

P3s in transit vary in degree of involvement by the private sector. While there have been instances where private investment and financing has been instrumental in the "design" and/or "build" (DB) stage of recent transit projects, when private companies are given the reigns at the "operations" and "maintenance" (OM) stage, transit passengers suffer the consequences.

New Jersey's Hudson-Bergen Line: Too Good to Be True

The Hudson-Bergen light rail line has often been touted as a model of success in the world of transit P3s. Trains are said to run on schedule 99% of the time -- a remarkable record. However, there have been problems in operations, including the contractor's use of a commercial/financial approach to risk management affecting safety issues, and slow response times.

The private company that runs the line for NJ Transit has been accused of cheating to boost its on-time performance. To stay on time and earn bonuses from NJ Transit, late-running trains have been ordered to bypass stations and dump passengers, and train operators have been pushed to drive through "stop" signals where the tracks cross local streets, said operators. Under its contract with NJ Transit, **21st Century Rail** gets bonuses if more than 96% of its trains are on

schedule each month. If the company's performance falls below that 96% mark, it is penalized. The complaints had state officials asking questions. "The issues they raise concern us, and we're going to investigate this thoroughly," said Joe North, NJ Transit's general manager for light rail operating contracts.[1]

Train drivers say that when they are running late, they have been told to drop off all their passengers and run as if they're out of service - even if nothing is wrong with the train.[2] These issues of course raise mobility as well as safety questions for the passengers.

In addition, in 2006, a federal complaint was filed against the private operators of the Hudson-Bergen Light Rail Line alleging the firms discriminate against women in promotions to supervisory positions. The complaint alleged that 21st Century Rail passed over women light rail train operators who had applied for supervisory positions. Instead, the firms gave the supervisor jobs to men who had less experience. The failure to promote the women is indicative of overall company policy over the past several years that discriminates against women for promotions to supervisor. Of the roughly 15 to 20 supervisory positions at 21st Century, only one or two have been held by a woman.[3]

Greed, Neglect, Disregard for the General Public

In other areas where privatization has been tried in passenger rail operations and maintenance in the U.S. in recent years, contractors have shown a disturbing pattern, taking extreme measures to pad their bottom line, qualify for bonuses, and cut corners – impacting safety and quality of service.

Maryland Bails out Massachusetts in Experiment Gone Horribly Wrong

The Boston area commuter rail system is currently operated privately by Massachusetts Bay Commuter Rail (MBCR) under a contract with the Massachusetts Bay Transportation Authority (MBTA) that expires in 2013. It is a privatization scheme that has failed passengers time and time again since the very beginning. Rider frustration reached a peak in January of 2011 when commuter trains across the rail system were perpetually late -- fewer than 73% of trains arrived on time at their final destinations. Locomotives broke down, as did communications between the private carrier and the riding public. In one instance, a locomotive was repaired, and then used on an evening rush-hour train. It broke down again, forcing passengers to sit on the train for four hours. That month alone, the state fined MBCR $567,000 for late trains. In 2010, MBCR paid $2.9 million in fines.

MBCR's solution: **lease 15-year old MARC locomotives from the Maryland MTA!** Massachusetts State officials are considering having the State take charge of running commuter rail service after the current contract with MBCR expires in 2013.[4]

---

[1] Run out of town on a rail? The Newark Star-Ledger, October 1, 2004.

[2] Operators: Trains skip stops, dump passengers to be on time. The Associated Press State & Local Wire, September 26, 2004.

[3] Women accuse rail line of discrimination. The Newark Star-Ledger, June 15, 2006.

[4] Delays all too familiar; Frustrated rail riders give officials an earful. TELEGRAM & GAZETTE, March 3, 2011.

Veolia Tries Bait and Switch in Austin; Capital Metro Says No More

In 2009, the Capital Metropolitan Transportation Authority in Texas severed its $105.4 million rail operations and maintenance contract with **Veolia Transportation** following a bitter contract dispute. "During recent contract negotiations, Veolia demanded changes to the terms of the existing contract as a condition for completing the remaining work," Capital Metro announced in a press release. "Capital Metro could not agree to these changes because they would have exposed the Authority and the community to additional costs and risks." The changes reportedly concerned insurance issues, as Veolia sought to shift costs and liabilities to the transit provider.

Divisions between Veolia and Capital Metro appeared in the past as the commuter rail line, originally set to launch in the fall of 2008, was pushed to 2010. Earlier in 2009, the Federal Railroad Administration and the Texas Department of Transportation notified Capital Metro that the agency would begin an investigation of Veolia following failed system tests. A few days later, Capital Metro publicly urged Veolia to replace its safety director.[5]

Contractor Works Drivers to Brink of Exhaustion in Phoenix, Exposes Passengers to Biohazards

Alternate Concepts Inc. (ACI), the low bidder promising high quality transit service on the new light rail system in Phoenix, has demanded that operators work so many overtime hours that they worry about falling asleep at the wheel. Sixteen hour shifts are relatively common. Operators have been asked to take on 12-hour shifts, and then sleep in their cars for just two or three hours before reporting back to duty for more work. Drivers forgo bathroom breaks at the end of the line.

The private company also ignored biohazards on the trains. If someone bleeds, vomits, or urinates, on a train, responsible companies have policies to handle these all-too-common issues. ACI had no system in place for what to do next. Operators weren't even given yellow "caution" tape to rope off the offending area — despite begging the company to provide it. Nor were they given signs to notify passengers of a contaminated car. Typically, operators say, passengers kept piling right into the contaminated area as the train continued on under company orders.[6]

San Diego, CA – Happy Anniversary Sprinter!

In Escondido, CA, San Diego North County's Sprinter train had to be taken out of service for more than two months in the spring of 2013 after a state inspection revealed that accelerated wear patterns were discovered on rotors in their central disc braking systems. Railcar maker **Bombardier** and contract operator **Veolia** were required to install new split-disc rotors on center axles. The private companies shut down the system between March and May, inconveniencing thousands of passengers. Buses carried passengers along the route during the suspension of train

[5] Cap Metro axes rail contract with Veolia. Austin Business Journal, December 9, 2009.

[6] Metro Light Rail Operators Don't Have a Contract — Just Grueling Schedules and Smelly Passengers. Phoenix New Times, April 23, 2009.

service, which came one day before the agency was going to celebrate the Sprinter's five-year anniversary.[7]

The Right Choice: Public Operation

Los Angeles: Subway to the Sea Requires Public Operator, Union Labor

In 2008, a plan allowing private investors to pay for and extend the Metro Purple Line subway under Wilshire Boulevard to Santa Monica (the "Subway to the Sea") moved forward with the full support of the Metro Board of Directors. Then-Mayor Antonio Villaraigosa introduced a motion that would establish a public-private partnership to pay for 23 identified-but-unfunded transit projects.

Significantly, Villaraigosa's proposal, while calling for private investment in the design-build stage, mandated that LA Metro employees, and their designated unions would operate and maintain the rail system.[8]

Eight years later, great progress has been made in Metro's plans to extend the Metro Purple Line to the Westside. After years of planning, environmental analysis, technical studies, and community input, the Metro Board of Directors in 2013 certified the final environmental impact statement/environmental impact report for the extension.

Minneapolis: Maryland-based Private Operator is Rejected

In 2003, the Metropolitan Council, which oversees Metro Transit in Minneapolis, unanimously decided to keep management of the Minneapolis-to-Bloomington rail line within its control. While the work was put out for bid, Metro Transit won the contract to manage the Hiawatha light-rail line, beating out three private-sector businesses. The work initially went out for bid due to the efforts of then-Governor Pawlenty who claimed that privatization translates into lower costs to the taxpayers, but in the Hiawatha example that did not prove true.

The next cheapest bid, by **Maryland-based Connex Corporation (now Veolia),** was $4 million more over the three years of the proposal. Metro Transit won because its insurance costs are lower and, as a government agency, it need not earn a profit. In addition, since it is a public entity, Metro Transit cannot be sued the same way a private operator could. That difference alone counted for $2.6 million in added costs to Connex. The lower legal liability given to government entities all but sealed the deal for Metro Transit.[9]

Ten years later, the council's decision to reject private operation of the line looks like the smart choice: the Hiawatha line, recently renamed the Blue Line, is operated directly by Metro Transit and accounts for about 13% of the agency's total ridership. **Less than two years after opening,**

---

[7] http://fox5sandiego.com/local-news/stories/brake-problems-stop-sprinter/#ixzz2h9a1Y7C3

[8] Villaraigosa Seeks Public-Private Financing For Subway Extension. City News Service, April 24, 2008.

[9] Metro Transit Gets Light-Rail Contract; Lower Insurance Costs Help to seal the Deal. Saint Paul Pioneer Press, December 2, 2003.

the line had already exceeded its 2020 weekday ridership goal of 24,800. The line carried 10.4 million riders in 2011.[10] **It is one of the most successful light rail projects in the nation.**

Norfolk, Virginia Sees Through Lofty Promises

A few years ago, Hampton Roads Transit (HRT) found that a private proposal to extend light rail to Virginia Beach contains "**as many questions as answers,**" doesn't address the regulatory complications it could trigger and features a questionable choice for its lead design firm. Hampton Roads Transit is also challenging the completeness of cost estimates and says the proposal's financing structure may not relieve the city of as much risk as it purports to.

In the proposal, the development team says it could design and build a 5.2-mile extension of the current line by the end of 2016 for $235 million. They put their cost-per-mile at $45 million - $20 million less per mile than one estimate by HRT, which is studying a Virginia Beach extension.

The group also proposes to privately maintain the light-rail system and its vehicles for 25 years. That drew concern from HRT that **the trains, track and other assets would be at the end of their useful life when the contract expires.** HRT also called attention to the private team's rapid schedule, which is not slowed by federal approvals because it does not rely on federal funding.[11]

Conclusion

Private Bus and Rail Operators: No Accountability, Motivated Only by Greed

When transit systems privatize operations and maintenance, they lose control of their ability to respond to riders' concerns about quality of service issues. Moreover, no one in the private sector would contract out a crucial internal operation without knowing the full scope of management issues. The public sector deserves the same respect. Private firms don't typically contract out work that involves their core customer base directly nor do they give control of their capital equipment to outsiders. For contracting out to work in public transit, that is precisely what is required.

Lower wages and reduced benefits are the game plan of private transit providers, leading to dissatisfied workers. This culminates in major turnover issues, resulting in training problems, safety issues, etc.

Hidden costs involved in transit privatization, including the cost to retrain workers, and monitor contractors are all part of the downside when rail transit service goes private. Finally, the competitive environment purported to exist is difficult to maintain as just a handful of private companies provide transit service, especially on the rail side. Huge foreign corporations have absorbed small private providers, leaving few major players left. As such, these companies have actually created a monopoly of their own, with no incentives to provide high quality service and no accountability. They are motivated only by profit rather than the provision of quality, affordable service for people who rely on transit.

---

[10] American Public Transportation Association (APTA) Ridership Report archives.

[11] Private plan for light rail won't add up, HRT says. The Virginian-Pilot, May 24, 2013.

Tennessee residents deserve better. If we have learned anything from our experiences in New Jersey, Massachusetts, Phoenix, other cities across the U.S. and countless others around the world not mentioned above, SB 2093/HB 2407 will without question result in cutting corners, stranding passengers, and increasing safety risks. Unfortunately, there is no way around this. The private consortiums will not enter into P3 agreements without incentive or bonus clauses worked into the deal. Their mission is to make a profit, and history has shown that in order to do so, over the long haul they will go to great lengths to shift liabilities and costs to public transit systems, negating any purported savings.