

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

MARTIN COUNTY; INDIAN RIVER COUNTY;	)	Case No. 1:18-cv-00333-CRC
CITIZENS AGAINST RAIL EXPANSION IN	)	
FLORIDA; and INDIAN RIVER COUNTY	)	<b>DECLARATION OF</b>
EMERGENCY SERVICES DISTRICT;	)	<b>KATE PINGOLT COTNER</b>
	)	<b>IN SUPPORT OF</b>
<i>Plaintiffs,</i>	)	<b>PLAINTIFFS' MOTION FOR</b>
	)	<b>SUMMARY JUDGMENT</b>
v.	)	
	)	
U.S. DEPARTMENT OF TRANSPORTATION, <i>et al.</i>	)	
	)	
<i>Defendants,</i>	)	
	)	

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KATE PINGOLT COTNER affirms and declares under penalty of perjury:

1. I am the Assistant County Attorney of Indian River County, Florida.
2. I submit the information below based on my own personal knowledge.
3. On April 25, 2018, Senator Debbie Mayfield sent the Florida Department

of Transportation (“FDOT”) a public records request pursuant to Chapter 119, Florida Statutes (a.k.a. Public Records Law). The public records request pertained to Title 23 funds and specifically requested, among other things, for the following information:

(a) Any and all documents including, but not limited to, letters, emails, communications, meeting minutes, and reports related to FDOT awarding Title 23 funds to Florida East Coast Railway between 2012 and 2018, and

(b) Any and all documents including, but not limited to, letters, emails, communications, meeting minutes, and reports related to FDOT awarding Title 23 funds to All Aboard Florida between 2012 and 2018.

4. On July 17, 2018, FDOT responded to Senator Mayfield’s public records request and provided over 1300 emails with documents attached.

5. On the same date, Senator Mayfield's office provided FDOT's public records response to Indian River County.

6. Attached as Exhibit 1 is a true and correct copy of a document (email chain) received from FDOT. It is dated January 14, 2015, and it includes correspondence between Richard M. Biter, the Assistant Secretary for Intermodal Systems Development for FDOT, Todd Gruenemeier, the Rail Manager for Freight, Logistics, and Passenger Rail Operations for FDOT, Annette Lapkowski, Intermodal Systems Development Finance for FDOT, and Dick Kane, Communications Director for FDOT. The email also cc'd the following people: Secretary Jim Boxold (Secretary of FDOT effective January 3, 2015), Mike Dew (then Chief-of-Staff for FDOT and current Secretary of FDOT as of June 5, 2017), and Fred Wise (while his title at the time of the email is unclear, he was the former Executive Director of FDOT's Rail Enterprise and current employee of HNTB since which is a listed consultant for All Aboard Florida).

7. In the email document, Richard Biter, Todd Gruenemeier and Annette Lapkowski all agree that any crossing improvements made to the Florida East Coast Railway corridor using Title 23 funds to date would have been to Florida East Coast Railway ("FEC") and not All Aboard Florida.

8. Additionally, the email document states,  
... it should be noted that grade crossing improvements are being done to improve safety, increase rail movement efficiency and provide capacity for future growth. The track and all grade crossing specs are built to accommodate the heavy weight requirements of rail freight not passenger. Intercity passenger, e.g.

Tri-Rail, can operate over freight track but modern freight trains  
cannot operate over rail built only to passenger specs.

9. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Marco Island, Florida  
on July 18, 2018

  
KATE PINGOLT COTNER

# **EXHIBIT 1**

**From:** Lapkowski, Annette <Annette.Lapkowski@dot.state.fl.us>  
**Sent:** Wednesday, January 14, 2015 5:09 PM  
**To:** Gruenemeier, Todd; Biter, Richard; Kane, Dick  
**Cc:** Boxold, Jim; Dew, Mike; Wise, Fred  
**Subject:** RE: All Aboard Florida document

I concur. Highway-Rail Grade Crossing improvements on the FEC ROW would have been awarded to the FEC.

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Annette Lapkowski, P.E., CTL  
Intermodal Systems Development Finance  
Florida Department of Transportation  
Work: 850-414-4541; Cell: 850-688-6117 M-Th 7:30-5; F 7:30-11:30  
[annette.lapkowski@dot.state.fl.us](mailto:annette.lapkowski@dot.state.fl.us)

**From:** Gruenemeier, Todd  
**Sent:** Wednesday, January 14, 2015 3:49 PM  
**To:** Biter, Richard; Kane, Dick  
**Cc:** Boxold, Jim; Dew, Mike; Wise, Fred; Lapkowski, Annette  
**Subject:** RE: All Aboard Florida document

Rich  
You are correct sir - any crossing improvements that have been updated, have been done so for FEC.

Annette - do you concur?

Todd Gruenemeier, Rail Manager  
Freight, Logistics, and Passenger Operations - Rail Office  
605 Suwannee Street, M.S. 25  
Tallahassee, Florida 32399-0450  
850-414-4511 (Office) 850-414-4508 (FAX)  
850-363-0201 (Cell)  
[todd.gruenemeier@dot.state.fl.us](mailto:todd.gruenemeier@dot.state.fl.us)

"Biter, Richard" <[Richard.Biter@dot.state.fl.us](mailto:Richard.Biter@dot.state.fl.us)> wrote:

Dick,

Section 130 of U.S. Code Title 23 is, as the cite so states, a section of the **U.S. (Federal) Title 23 code** which basically governs federal policy, programs and expenditures from the Federal Highway Trust Fund. By Federal legal delegation, FDOT administers the Federal funding allocations of Section 130 within Florida on behalf of the U.S. DOT. So the quick answer to the reporter's question is, no...it's Federal money, not state money.

Additionally, it should be noted that grade crossing improvements are being done to improve safety, increase rail movement efficiency and provide capacity for future growth. The track and all grade crossing specs are built to accommodate the heavy weight requirements of rail freight not passenger. Intercity passenger, e.g. Tri-Rail, can operate over freight track but modern freight trains cannot operate over rail built only to passenger specs.

Lastly (and Todd/Annette please verify), any grade crossing improvements on the FEC ROW would have been awarded to the FEC, not ABF.

Rich

Richard M. Biter  
Assistant Secretary for Intermodal Systems Development  
Florida Department of Transportation  
605 Suwannee Street  
Tallahassee, FL 32399  
Phone: (850) 414-5235  
Fax: (850) 414-5201  
Cell: (850) 508-5637  
Email: [richard.biter@dot.state.fl.us](mailto:richard.biter@dot.state.fl.us)

@ItsWorkingFL



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**From:** Kane, Dick  
**Sent:** Wednesday, January 14, 2015 1:45 PM  
**To:** Gruenemeier, Todd  
**Cc:** Boxold, Jim; Biter, Richard; Dew, Mike; Wise, Fred  
**Subject:** FW: All Aboard Florida document

Todd,

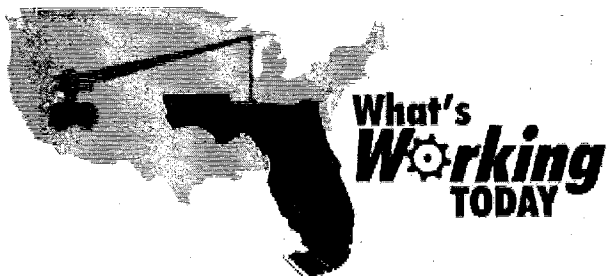
Regarding the following section of AAF's PAB application:

**10. Description of Title 23 / 49 funding:** The Project has already received financial assistance under Title 23 of the U.S. Code. The planning process for All Aboard Florida started in December 2011. Since then, approximately \$9.3 million in funds from Section 130 of U.S. Code Title 23 has been invested in the corridor to improve railway-highway grade crossings and to prepare the corridor for growth in rail traffic, including the introduction of passenger service. Future investments from the Section 130 program are planned for future calendar years. The Florida Department of Transportation administers the Section 130 program on behalf of the State of Florida.

Reporter Arnie Rosenberg is asking EOG: does this mean that AAF is getting money from the state?

Thank you,

Dick Kane  
Communications Director  
Florida Department of Transportation  
605 Suwannee Street, MS 54  
Tallahassee, FL 32399-0450  
850-414-4595  
[dick.kane@dot.state.fl.us](mailto:dick.kane@dot.state.fl.us)



**From:** Schenone, Lauren [mailto:Lauren.Schenone@eog.myflorida.com]  
**Sent:** Wednesday, January 14, 2015 11:36 AM  
**To:** Kane, Dick  
**Subject:** FW: All Aboard Florida document

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**From:** Rosenberg, Arnie [mailto:arnie.rosenberg@TcPalm.com]  
**Sent:** Wednesday, January 14, 2015 11:35 AM  
**To:** Schenone, Lauren  
**Subject:** All Aboard Florida document

Lauren:

Here's the document we discussed. I've included the cover page, which explains what it is.

Thanks for your help.

Arnie

**Arnie Rosenberg**  
*Growth and Development enterprise reporter*  
Scripps Treasure Coast Newspapers  
772-221-4137  
@TCPalmArnie  
\*Note my new address: [Arnie.Rosenberg@tcpalm.com](mailto:Arnie.Rosenberg@tcpalm.com)