



Florida House of Representatives

Representative Erin Grall

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May 23, 2018

The Honorable Mark Meadows
U.S. House of Representatives
1024 Longworth House Office Building
Washington, DC 20515

RE: Examining Tax-Exempt Private Activity Bonds for All Aboard Florida's Brightline Passenger Rail System

Dear Congressman Meadows,

Your diligent search for the truth surrounding the availability of private activity bonds ("PABs") for All Aboard Florida's Brightline project ("Brightline") is admirable and necessary. As the State Representative for Indian River County and portions of St. Lucie County, the inherent safety risks of the Brightline service and the financial burden this proposed project places on all taxpayers compels me to provide additional information at this time.

Like you, I am deeply concerned by the testimony of the United States Department of Transportation ("USDOT") that acknowledged merely one dollar in Title 23 funds spent on a highway-railroad crossing project allows for a passenger railroad to be eligible for a \$1.15 billion allocation of PABs. I am also perplexed by USDOT's decision to allocate \$1.15 billion in PABs to All Aboard Florida ("AAF"), as the law makes it clear that the condition precedent for an allocation of PABs is to receive Title 23 funds. According to the sworn testimony of both USDOT and AAF, there is no evidence of Title 23 funds being awarded directly to AAF. Rather the funds were awarded to Florida East Coast Railway ("FECR"), a separately-owned company that owns the underlying railroad corridor AAF intends to use to operate its passenger service.

On April 19, 2018, I attended the U.S. House Subcommittee on Government Operations ("Subcommittee") hearing titled "Examining Tax-Exempt Private Activity Bonds for All Aboard Florida's Brightline Passenger Rail System" and was impressed by both the line of questioning and your leadership as Chairman. However, during the Subcommittee hearing, and later in correspondence dated

April 30, 2018, AAF made several misrepresentations related to its ownership interest, its past interactions with local governments, and the overall financial burden this proposed project will have on my constituents.

In my capacity as a State Representative, I have sponsored legislation for the last two years which seeks to limit AAF's ability to shift the cost of its "private" Brightline project onto the taxpayers of my community as well as the taxpayers across the State of Florida. In doing so, I have become well-versed on the language of the underlying agreements local governments and the State of Florida have with FECR. I am also acutely aware of AAF's easement with FECR and the tactics AAF has taken with a number of local governments to try to use public funds to pay for the long-term maintenance.

As Mr. Patrick Goddard, CEO of AAF, stated during his testimony before the Subcommittee, AAF has a permanent easement to run a passenger service on the FECR corridor. While an easement is simply the right to use a piece of property of another for a special purpose, AAF has consistently overstated the rights affiliated with such an easement by calling FECR's corridor a "shared corridor" and often acting as the fee simple property owner.¹ As an attorney, I recognize this posturing has been used as means to intimidate local governments along the FECR corridor and as a threat to never-ending litigation for local governments merely seeking to minimize the costs of this private enterprise on its citizens. In the past, AAF has sought to place the obligation for necessary safety upgrades and maintenance on local government through existing crossing agreements with FECR. While AAF is now promising to pay for the costs of the initial safety upgrades, it still alleges local governments are responsible for the maintenance of these upgrades based upon the referenced easement. If AAF is successful, it will not have to pay for the maintenance of the safety improvements necessary to operate a high-speed passenger train along the FECR corridor in perpetuity. This type of manipulation in order to gain access to multiple layers of taxpayer dollars is despicable.

While AAF's General Counsel casually dismissed this issue as a simple contractual dispute in his letter dated April 30, 2018, I respectfully disagree. The actions of AAF with regard to taking advantage of the existing crossing agreements with FECR is consistent with their position that due to FECR's receipt of Title 23 funds, AAF should be eligible for funding under the PAB program. This precedent would allow for any number of entities to join forces to take advantage of government incentives unavailable to those entities following the rules and respecting the intent of Congress. Congress should not reward AAF's business model, one in which AAF wrongfully steps into the shoes of FECR when convenient and to exploit any financial benefits available under our laws to FECR, not AAF.

Regarding one final point, the testimony by Mr. Goddard and the USDOT alleging Title 23 funds were used in preparation for Phase II of the Brightline between 2012 and 2014 cannot be accurate because AAF's highway-railroad crossing design plans were not approved by the Federal Railroad Administration until 2016. For your convenience, I have attached a letter from the Federal Railroad Administration confirming this date. This argument made by AAF, and supported by USDOT, is simply one more example of the web of misrepresentations made by AAF.

¹ "Shared Corridor" is defined by AAF in its Preliminary Limited Offering Memorandum for \$600 million in private activity bonds for Phase 1 as FECR's existing Miami to Cocoa rail corridor over which AAF has been granted a permanent, perpetual and exclusive easement for the operation of passenger train services."

In closing, I hope you find my letter to be a useful tool as you proceed forward with your analysis of AAF eligibility for PAB allocations. I appreciate your continued diligence with regard to this issue and the way in which you have conducted this inquiry. From my perspective, and those that I am honored to represent, words have meaning, and while each of us are entitled to our own opinions, we are not entitled to our own facts. I look forward to reviewing the facts.

Should you need anything further from me or my office, please do not hesitate to contact me.

Best personal regards,

A handwritten signature in blue ink that reads "Erin K. Grall". The signature is written in a cursive, flowing style.

Representative Erin Grall
Florida House of Representatives, District 54

Cc: Governor Rick Scott
Congressman Bill Posey
Congressman Brian Mast
Congressman Matt Gaetz
Congressman Ron DeSantis
Florida Senate President Joe Negron
State Senator Debbie Mayfield
State Representative Mary Lynn Magar
State Representative Gayle Harrell
State Representative Larry Lee
Indian River County Board of County Commissioners
St. Lucie County Board of County Commissioners
Martin County Board of County Commissioners



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

MAY - 3 2016

Mr. Adrian B. Share, P.E.
Executive Vice President, Rail Infrastructure
All Aboard Florida
8529 South Park Circle, Suite 190
Orlando, FL 32819

Dear Mr. Share:

The Federal Railroad Administration (FRA) has completed its review of All Aboard Florida's (AAF) grade crossing design plans submitted to FRA on March 9 and 17, 2016, for the Florida counties of Palm Beach, Martin, St. Lucie, Indian River, and Brevard (Counties). These plans comply with the grade crossing mitigation requirements in FRA's Final Environmental Impact Statement (FEIS). Please provide the Counties and officials at the Florida Department of Transportation (FDOT) with the crossing plans that AAF submitted to FRA for their review. Once the Counties and FDOT conclude their review, FRA will be available to meet with the Counties and AAF to assist with a definitive crossing layout for AAF's final 100 percent design consistent with the FEIS.

With respect to sidewalk safety along the entire passenger rail route, AAF must bear the cost of the equipment and installation of pedestrian gates wherever sidewalks exist as provided in the FEIS. This also includes locations where no crossing license agreements exist. Where a sidewalk does not exist, AAF is not required to install a pedestrian gate assembly.

Should you have any questions or need further clarification, please contact Mr. Frank A. Frey, General Engineer, at (202) 493-0130 or Frank.Frey@dot.gov.

Sincerely,

Patrick T. Warren
Deputy Associate Administrator for Safety Compliance
and Program Implementation

Jamie Rennert
Director, Office of Program Delivery