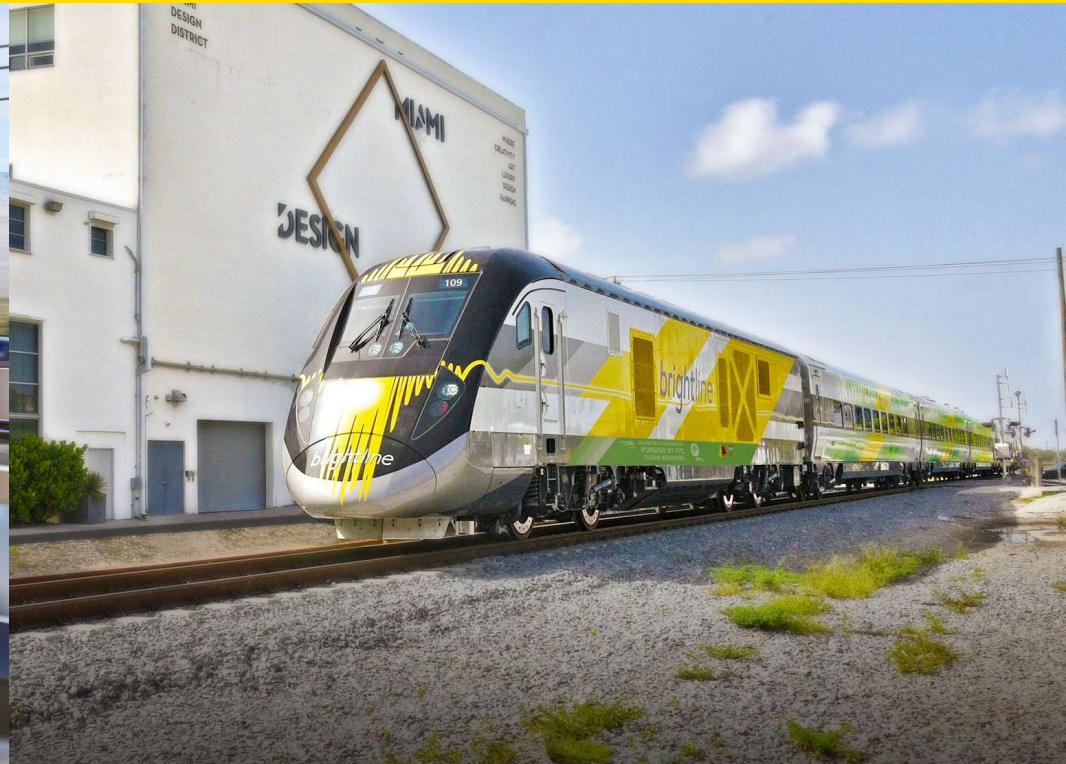


brightline
west



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FLORIDA



Legal Issues with Railroad Crossings

David Pickett

Associate General Counsel
Brightline West

Lisa Gatchell

VP Risk Management & Associate General Counsel
Brightline Florida

Agenda

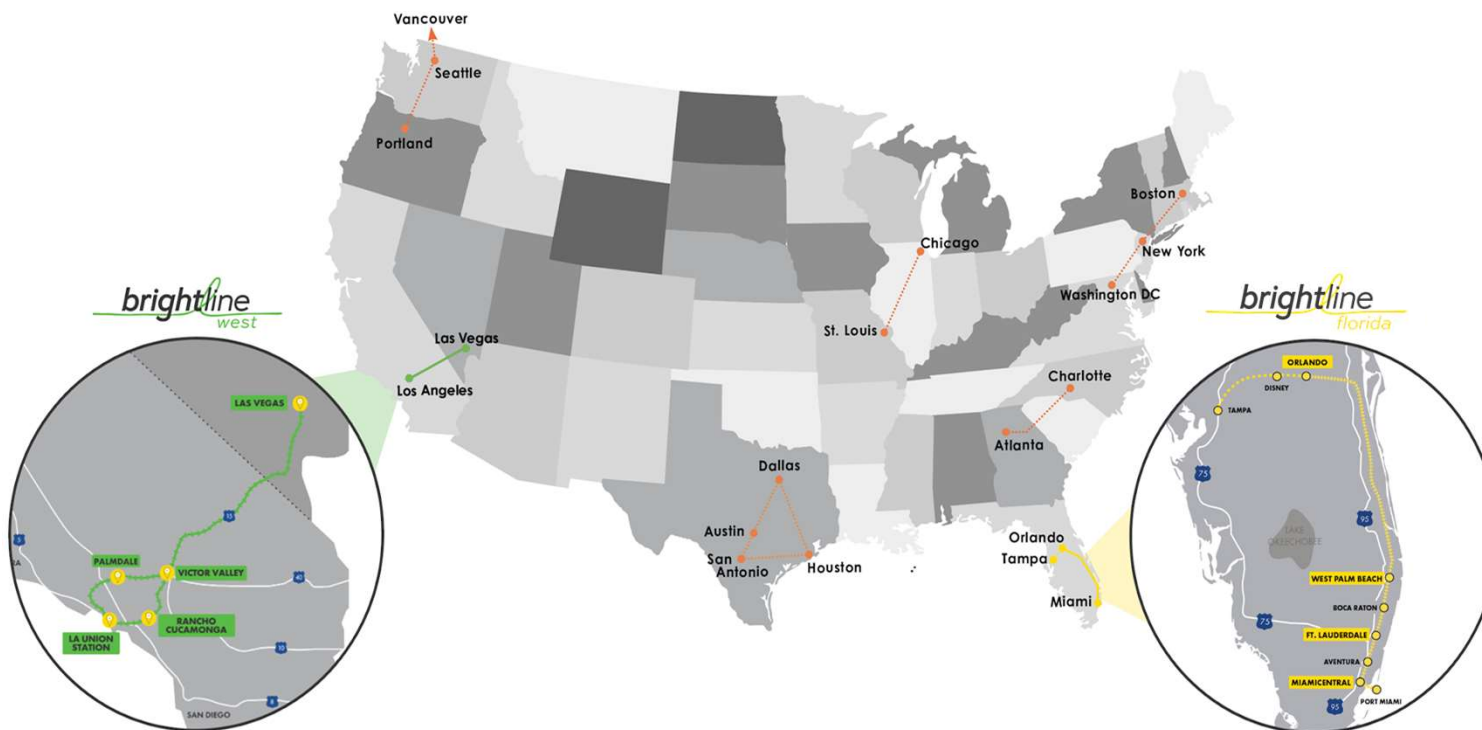
1 Introduction of Panelists

2 Overview of Brightline Florida and Brightline West

3 Legal Issues Related to Railroad Crossings

- A. When and how can we compel the closure of a crossing?
- B. What legal defenses are there for the features of a crossing?
- C. Use of technology and communication best practices
- D. Additional tools to enhance crossing safety - enforcement

Focused on Bringing Modern, Eco-Friendly Passenger Rail to America



COMPANY GOAL IS TO CONNECT CITY PAIRS THAT ARE
"TOO LONG TO DRIVE AND TOO SHORT TO FLY"

Brightline Milestones in Florida

Fall 2014 – Construction on Phase I (67 miles and \$1.1B of CV) began and was completed in late 2017

January – May 2018 – S. Florida revenue service began between WPB, FLL and MIA (174 xings)

April 2019 – Construction began on Phase II (169 miles and \$2.7B of CV) – WPB to Orlando

November 8, 2021 – Revenue service resumes on Brightline between Miami and West Palm Beach after 19-month shutdown due to Covid-19. Phase II construction was ongoing.

December 2022- Start of revenue service at 2 new rail stations in Aventura and Boca Raton

February 2023 – Delivery of final train set of new fleet to increase total to 10 trains

September 22, 2023 – Revenue Service begins from Miami to Orlando (157 xings WPB – Cocoa)



Rail ROW & Crossing Overview Brightline Florida

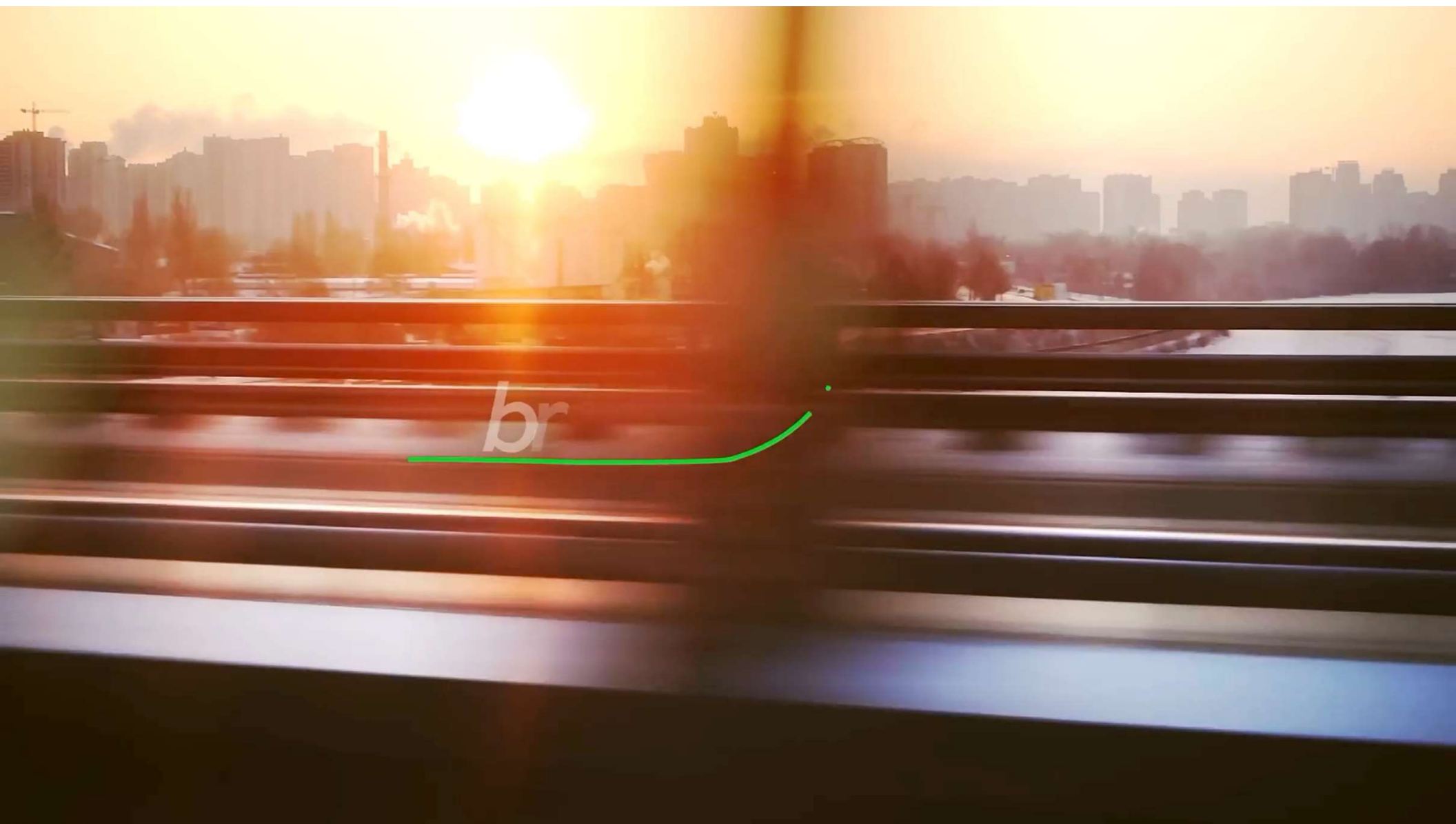
- All crossings upgraded to meet standards set by FRA and FDOT
- New roadway profiles (double track +)
- New gate mechanisms
- Auxiliary flasher lights
- Enhanced signage, signals, and pavement markings
- FRA sealed corridors where speeds exceed 79 mph
- New sidewalks & curbs & pedestrian gates
- 100% ROW is Positive Train Control (PTC)



Rail Crossing Overview – Brightline Florida

- ✓ Rail Infrastructure: Comprehensive improvements to all grade crossings & upgrade of signaling systems
- ✓ Total number of crossings: 331
- ✓ No crossings for 40 mi from Cocoa to Orlando
- ✓ Percentage of crossings with protection (lights, gates, bells): 100%
- ✓ Percentage of “sealed” crossings (quad/exit gates and/or raised concrete medians and/or one-way road): 69%
- ✓ Percentage of crossings with quad gates: 49%
- ✓ Additional safety enhancements include pedestrian gates, roadway profile optimizations, rail dynamic envelopes, traffic signals and preemption, etc. added on a case-by-case basis





Brightline West - Connecting Las Vegas and Southern California

All-electric trains
in a protected corridor
with **zero** at-grade
crossings

218-mile trip
Las Vegas to Rancho Cucamonga

Up to 200 mph
true high-speed rail

+11 million
one-way passengers/year

Brightline West System Map



California Stations

Victor Valley (similar Hesperia) in-line station



Rancho Cucamonga Station



Rancho Cucamonga Station



COORDINATION WITH METROLINK

- TIMETABLE SCHEDULING
- SEAMLESS TRANSFERS
- TICKETING
- BRANDING

Groundbreaking – April 22, 2024



Positioned for Service in 2028

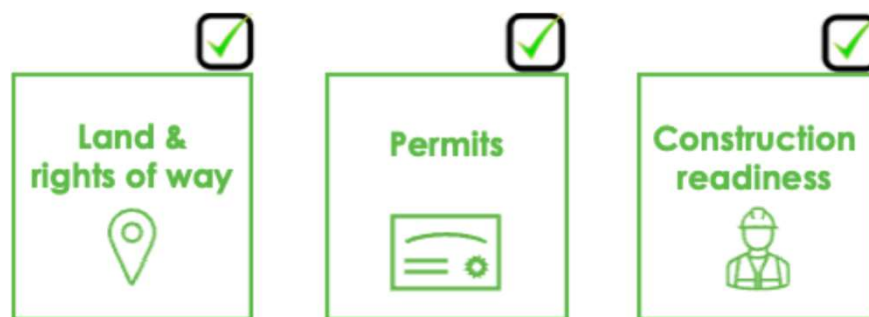
\$12B project, mostly to be funded by private dollars

Already invested **~\$600M**

Awarded **\$3B** federal grant through NDOT

Received **\$25M** RAISE grant through SBCTA for Hesperia and Victor Valley Stations

Open in **~4 years**



How Can We Compel the Closure of a Crossing?



General Considerations

- What agency has jurisdiction over grade crossings?
- Is it a public crossing or private crossing?
- Is there an agreement related to the crossing?
- Will property be landlocked without the crossing?
- Are there other unique factual or legal circumstances?
- Is there a bigger picture to leverage to negotiate for the closure of a crossing?

Prescriptive Rights – Challenge Them



**An accident has happened – how
can the features of the crossing be
defended?**



Design Immunity – Tort Claims Pursuant to State Laws

- i. Available for public agencies, not private entities
- ii. NJSA Title 59, Section 59:4-6 - *Neither the public entity nor a public employee is liable for an injury caused by the plan or design of public property, where such plan or design has been approved in advance of the construction or improvement by a public entity or where such plan or design is prepared in conformity with standards previously so approved.*

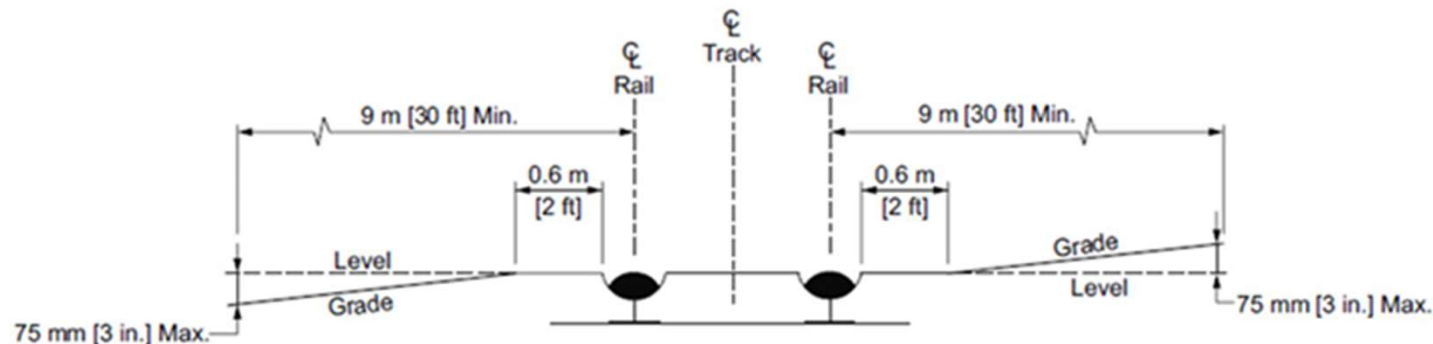
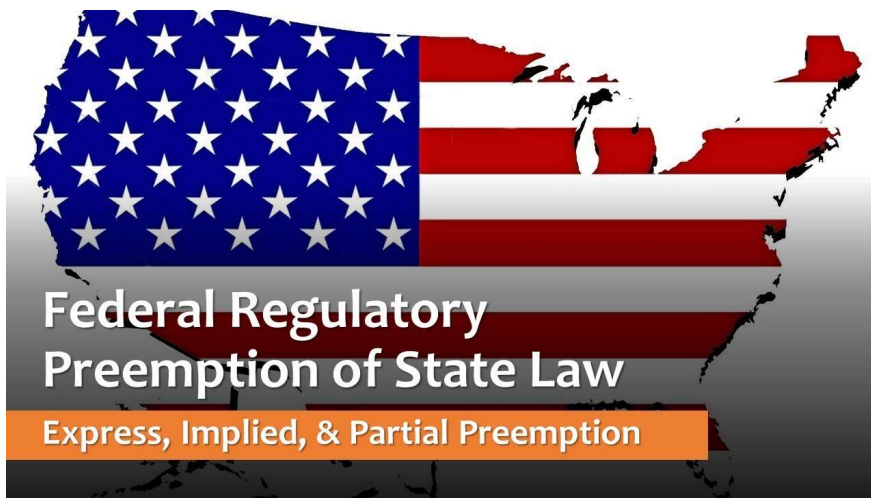


Figure 1. Highway-Rail Crossing Cross Section

Legal Doctrine of Preemption



- a. Federal Preemption of State Law Claims
- b. What is Preemption?
- c. Federal Preemption Statutes in General (most relevant to railroad crossings)
 - a. Federal Rail Safety Act (FRSA) 49 U.S.C. § 20101, et seq. (ie. Adequacy of warning devices at a rail crossing)
 - b. Interstate Commerce Commission Termination Act of 1995 (ICCTA) 49 U.S.C. § 10501, et seq. (ie. Challenges to design, construction and maintenance of xing/and related structures)

Admissibility of Information in Subsequent Lawsuits

Federal laws that protect use of information against railroad provided to a government entity pursuant to regulatory requirement:

- a. 49 USC § 20903 – “No part of an accident or incident report filed by a railroad carrier under section 20901 of this title or made by the Secretary of Transportation under section 20902 of this title may be used in a civil action for damages resulting from a matter mentioned in the report.” Statements made in FRA incident reports cannot be used against the railroad in a subsequent lawsuit.
- b. 23 U.S.C. § 409 (“Section 409”) expressly forbids the discovery or admission into evidence of reports, data, or other information compiled or collected for activities required pursuant to several Federal highway safety programs (Sections 130, and 152 (now 148)), or for the purpose of developing any high-way safety construction improvement project, which may be implemented utilizing federal aid highway funds, in tort litigation arising from occurrences at the locations addressed in such documents or data. Some States consider information covered by Section 409 as an exemption to its public disclosure laws, but courts may not agree with this interpretation. Example is information gathered and contained in diagnostic assessment reports of rail crossings that are conducted pursuant to FHWA.

Legal Considerations Related to Use of Technology

“Railroads use technology to increase safety, service and sustainability.”

<https://www.aar.org/topic/freight-rail-tech>

“Metrolink introduces ‘smart crossing’ technology at Orange County grade crossing”

<https://www.trains.com/trn/news-reviews/news-wire/metrolink-introduces-smart-crossing-technology-at-orange-county-grade-crossing/>

“Technology update: Monitoring solutions 2024”

<https://www.progressiverailroading.com/mow/article/Technology-update-Monitoring-solutions-2024--71612>

- Contract terms
 - Whose data is it? (ie. Camera system with AI software; Customer data vs. data generated through AI software)
 - Restrictions on use by 3rd party of railroad data
- Preservation of data – Records Retention Policy needs to include all sources of data
 - How long will data be kept? Should be no less than statute of limitations or records retention policy
 - Who has access to the data?
- What processes are in place for the railroad to act on info it receives through technology?
 - Legal implications of notice of a defect, dangerous condition and failure to act
 - Analytics are increasing opportunities for railroad to be aware of an issue – how are issues elevated within the railroad? Who receives notice?

Considerations for Communications between Public and Private Entities



Electronic communication protocols

- Baseline – all information provided to a public entity is subject to one or more public records laws (ie. FOIA)
- Private railroads and companies need to be able to communicate with various public entities but should consider the content and method of communications



Just the **FACTS**

- **F**ACTUAL
- **A**CCURATE
- **C**ONCISE
- **T**ARGETED
- **S**ENSITIVE

Smoking Gun



Considerations for Communications between Public and Private Entities

Electronic communication protocols

- Methods of communication between private company and public entity (DOT, FRA, etc.)
 - Negotiate terms within an applicable MOU with the public entity to include notice provisions
 - Ways of sharing information without creating a public “record” as per FOIA and state public record laws
 - Ensuring the “Confidential” is stamped on documents/records provided to public entity



Enhancing Safety through Enforcement - Red Light Cameras



RLC Data Leveraged to Further Engage Police

- Pilot program started in 2021; 3 cameras along the ROW
- Mobile units that can be moved based on intel
- Sharing data with local PDs led to several departments deploying decoy vehicles, messaging boards, and safety patrols
- FRA Trespasser Enforcement Grants

This program has been initiated to increase roadway safety and to reduce accidents, injuries and fatalities.

WARNING NOTICE OF RAILROAD CROSSING VIOLATION

Automated Enforcement Division
PO Box 593095
Orlando, FL 32839-3095

Plate Number: LZ [REDACTED]
Password: H7 [REDACTED]
View your violation at www.ZeroFatality.com

THIS IS NOT A NOTICE OF VIOLATION. YOU ARE NOT REQUIRED TO PAY A PENALTY, GO TO COURT OR RESPOND IN ANY WAY. In the future, please exercise caution when approaching an active railroad

Your vehicle was recorded traveling through the active rail crossing at:

Location: 141st Street Railroad Crossing
Date: 11/30/2021 Time: 08:06:48
Plate Number: [REDACTED] Vehicle Make: AUDI
Red Time: 16.5

This warning letter is part of an educational effort led by Brightline Trains LLC, Florida East Coast Railway Police, and NovoaGlobal to advise you of a serious potential safety issue. The pictures on this notice taken by our railroad crossing security camera show a vehicle registered to you that appears to have violated F.S. 316.1575



Enhancing Safety Through Enforcement - New Florida Law

Florida bill increases penalties for driver, pedestrian grade-crossing violations.

"We applaud the Florida Legislature and Governor DeSantis for taking action to keep Floridians safe by passing HB 1301, which includes updated penalties for infractions around active railroad tracks. These legislative changes combined with continued education, engineering and enforcement, are meant to encourage people to think twice about engaging in dangerous and risky behavior that can have deadly consequences. Stay safe – and stay off railroad tracks."

– The Florida Rail Alliance



- New Florida Statute HB 1301
 - Section 316.1575 (traffic control devices at railroad crossings)
 - Section 316.1576 (insufficient clearance at railroad crossings)
 - First offense increased to \$500.00 or 25 hours of community service AND 6 points assessed against driver's license.
 - Second or subsequent offenses increased to \$1000.00 AND an additional 6 points assessed against driver's license.
 - Section 316.1576 (insufficient clearance at railroad crossings) shall have their driver's license suspended for 6 months.

Questions?

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