States as Railroads

States for Passenger Rail Coalition, Inc.
AASHTO Rail Resource Center

Thursday, May 21, 2015
2:00-3:00 PM
State Rail Activities

- State Rail Planning
- Manage crossing safety programs
- Freight, corridor preservation and economic development
- Rail Safety Inspections
- FTA System Safety Oversight
- Manage state and federal grant programs
- Sponsor intercity passenger rail services
Interim FRA Passenger Rail Safety Policy

Late Spring
- Publish interim policy in the Federal Register
- Open a docket and 60-day comment period
- *We want to get this right – provide feedback and comments*

Summer
- Close comment period
- Develop final policy

Late Summer/Fall
- Issue final policy
States as Railroads?


• FRA exercises jurisdiction over all intercity passenger operations

• Railroad, railroad carrier or railroad of record
Tier I Passenger New Starts Deliverables

• FRA checklist of 134 items for compliance
• Civil Rights ADA provisions
• Track—continuous welded rail procedures
• Maintenance—roadway worker safety
• Operations—operating rules
• Drug and alcohol program administration
• Qualify and license engineers
• Dispatch records
Civil penalties are applicable to any “person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad)” who fails to comply with the regulations or statutes.
Conflicts

• Places public employees in railroad environment (right to work)
• Responsibilities are not matched with authority
• Railroad skills differ from that of public employees
• Added liability impacts sovereign immunity
• Many states have statutes prohibiting employees from operating railroads
NC, IN and Beyond?

• 2008 FRA determined NCDOT was a railroad
• Litigation resolved when USDOT moved dismissal on grounds of competency
• 2014 IN competitive procurement => engagement with FRA
• States contract with railroads for intercity passenger services—what about other contracts?
Status

• Acting Administrator says, “not gonna do it”
• Staff says, “we're not sure we are ready to say that…”
• Clearly we need closer engagement between sponsors of IPR and FRA
• How to improve safety?
• Congressional intent?
• States as Grantees approach?
Status

• INDOT FRA letter agreement precedent
• Added costs
• Now what?
  • contracts with Amtrak
  • contracts with alternate operators
  • contracts with multiple operators
  • contracts with railroads for non-IPR services
• Will any of this improved safety?
• Notwithstanding legislation?
Proposed Legislation

Notwithstanding any other provision of law, neither the United States Department of Transportation nor the Federal Railroad Administration shall determine that a State, a group of States, or a political subdivision of a State who contracts for intercity passenger rail services is a railroad, a railroad carrier nor a railroad of record.