

Original sponsors: Moss, Rogers, Brown  
and Bettisworth

Offered: 4/7/81  
Referred: Finance

1 IN THE HOUSE

BY THE TRANSPORTATION COMMITTEE

2 CS FOR HOUSE BILL NO. 12 (Transportation)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Railroad Authority."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. LEGISLATIVE FINDINGS. The legislature finds that

9 (1) the federal government desires to relinquish its ownership  
10 and management of the Alaska Railroad and that it would be in the best  
11 interests of the State of Alaska to have greater control over the mainten-  
12 ance, operation, and expansion of the railroad;

13 (2) there is a vast potential in Alaska natural resources and  
14 extension of the Alaska railroad into natural resource areas is necessary  
15 for the achievement of the goals of lower freight costs and long-term  
16 economic growth; development of natural resources in the state will be  
17 accelerated and facilitated by the creation of an instrumentality of the  
18 state with power to incur debt for construction, and with power to own and  
19 operate railroads;

20 (3) there is a need for a railroad authority to develop a rail  
21 transportation plan, make recommendations to the legislature, plan and  
22 construct railroad facilities, including extensions, in the state, and act  
23 as a bonding authority for the financing of railroad facilities.

24 \* Sec. 2. AS 44 is amended by adding a new chapter to read:

25 CHAPTER 87. ALASKA RAILROAD AUTHORITY.

26 ARTICLE 1. CREATION AND ORGANIZATION.

27 Sec. 44.87.010. ALASKA RAILROAD AUTHORITY CREATED. There is  
28 created the Alaska Railroad Authority. The authority is a public cor-  
29 poration of the state in the Department of Transportation and Public

1 Facilities, but with a separate and independent legal existence.

2 Sec. 44.87.015. MEMBERSHIP OF THE AUTHORITY. The authority con-  
3 sists of the following board of directors: the commissioner of trans-  
4 portation and public facilities or his designee, and four members of  
5 the public appointed by the governor who represent petroleum, mining,  
6 agricultural, tourism industries, regional corporations, or other  
7 railroad user groups. The four members of the public appointed by the  
8 governor serve at his pleasure for four-year terms subject to confirma-  
9 tion by the legislature meeting in joint session. A director must be a  
10 resident and qualified voter of the state and shall comply with the  
11 requirements of AS 39.50 (conflict of interest) relating to members of  
12 state boards and commissions. A vacancy in a directorship occurring  
13 other than by expiration of a term shall be filled for the unexpired  
14 portion of the term only.

15 Sec. 44.87.020. EMPLOYMENT OF PERSONNEL. The authority shall  
16 employ an executive director who may, with the approval of the author-  
17 ity, employ additional staff as necessary. In addition to its staff of  
18 regular employees, the authority may contract for and engage the ser-  
19 vices of legal and bond counsel, consultants, experts, and financial  
20 and technical advisors the authority considers necessary for the purpose  
21 of conducting studies, investigations, hearings, or other proceedings.  
22 The board shall establish the compensation of the executive director.  
23 The executive director of the authority is subject to the provisions of  
24 AS 39.25.120.

25 Sec. 44.87.025. OFFICERS AND QUORUM. The board shall elect one  
26 of the public members as chairman. Other officers may be elected as  
27 the board determines. The powers of the authority are vested in the  
28 board. Three directors of the authority constitute a quorum. Action  
29 may be taken and motions and resolutions adopted by the authority at a

1 meeting by the affirmative vote of at least two directors. The direc-  
2 tors serve without compensation, but they are entitled to the same  
3 travel expenses and per diem provided for board members under AS 39.20.-  
4 180.

5 ARTICLE 2. PURPOSE AND POWERS.

6 Sec. 44.87.030. PURPOSE OF THE AUTHORITY. The purpose of the  
7 authority is to plan, finance, acquire, construct, operate, maintain,  
8 or sell railroad facilities and contract to provide rail service in the  
9 state as provided by this chapter.

10 Sec. 44.87.035. POWERS OF THE AUTHORITY. In furtherance of its  
11 corporate purposes, the authority may

- 12 (1) sue and be sued;
- 13 (2) have a seal and alter it at pleasure;
- 14 (3) make and alter bylaws for its organization and internal  
15 management;
- 16 (4) adopt regulations governing the exercise of its corporate  
17 powers;
- 18 (5) acquire by construction, purchase, gift, or lease facil-  
19 ities in the state, including but not limited to, terminals, rolling  
20 stock, storage, grain, and coal handling facilities;
- 21 (6) improve, equip, and operate railroad facilities in the  
22 state;
- 23 (7) consider additional railroad extensions in the state,  
24 explore possible rail routes to tidewater ports, and annually report  
25 its findings and recommendations to the legislature;
- 26 (8) issue revenue bonds for the acquisition, construction,  
27 or improvement of railroad facilities in the state;
- 28 (9) sell, lease as lessor or lessee, exchange, donate,  
29 convey, or encumber by mortgage or by creation of any other security

1 interest, real or personal property owned by it, or in which it has an  
2 interest, when, in the judgment of the authority, the action is in  
3 furtherance of its corporate purposes;

4 (10) accept gifts, grants or loans from, and enter into con-  
5 tracts with a federal agency or an agency of the state, a municipality,  
6 a private organization or other source;

7 (11) deposit or invest its funds, subject to agreements with  
8 bondholders;

9 (12) contract with any person for the improvement, construc-  
10 tion, acquisition, operation and maintenance of its railroad facilities,  
11 or for the security of bonds issued by the authority;

12 (13) establish, levy, and collect fares and other charges for  
13 the use of its railroad facilities;

14 (14) enter into contracts or agreements with respect to the  
15 exercise of any of its powers, and do all things necessary to carry out  
16 its corporate purposes and exercise the powers granted in this chapter;

17 (15) investigate and make recommendations to the legislature  
18 for the implementation of new rail technologies;

19 (16) exercise the power of eminent domain in accordance with  
20 AS 09.55.240 - 09.55.460;

21 (17) recommends to the legislature methods of expanding and  
22 improving railroad facilities in the state, and financing proposals if  
23 the authority finds that a project cannot be financed by revenue bonds  
24 of the authority;

25 (18) develop a long-range state rail transportation plan to  
26 assist development of the resources of the state and provide for trans-  
27 portation between communities.

28 **ARTICLE 3. FINANCIAL PROVISIONS.**

29 **Sec. 44.87.040. BONDS OF THE AUTHORITY. (a) The authority may**

1 issue bonds in accordance with AS 44.87.035(8) on which the principal  
2 and interest are payable

3 (1) exclusively from the income or other money derived from  
4 its railroad facilities; or

5 (2) from its income and receipts or other assets generally,  
6 or a designated part of them.

7 (b) The bonds may be issued as serial bonds, as term bonds, or  
8 bonds of both types. The authorizing bond resolution shall state the  
9 maturity date which may not exceed 40 years from the bond's date of  
10 issue, the rate of interest, the time of payment, the denomination,  
11 whether coupon or fully registered, whether transferable, exchangeable,  
12 or interchangeable, the registration and conversion privileges, if any,  
13 the covenant that payments are to be only in lawful money of the United  
14 States of America at the place the board authorizes, and the terms of  
15 redemption, if any. The bonds, notes, or attached interest coupons  
16 must be executed by manual or facsimile signatures of the officers of  
17 the authority designated by the board. Pending preparation of the  
18 definitive bonds, the authority may issue interim receipts or certifi-  
19 cates which shall be exchanged for the definitive bonds.

20 (c) The bond resolution shall provide for the establishment of  
21 one or more special funds, and those funds may be under the control of  
22 the board or one or more trustees. The bond resolution shall obligate  
23 the authority to deposit and expend the proceeds of the revenue bonds  
24 only into and from those funds. The authority may issue and sell  
25 revenue bonds payable as to interest and principal only out of those  
26 funds.

27 (d) All bonds, regardless of form or character, shall be negoti-  
28 able instruments for all the purposes of the Uniform Commercial Code.

29 (e) The authority may not issue bonds except after 60 days noti-

1       fication of its intent to issue bonds is given to the governor and to  
2       the legislature, if the legislature is in session, or to the Legisla-  
3       tive Budget and Audit Committee, if the legislature is not in session.

4       (f) All bonds may be sold at public or private sale in the  
5       manner, for the price or prices, and at the time or times which the  
6       authority may determine.

7       (g) A bond resolution may contain provisions, which constitute a  
8       part of the contract with the holders of the bonds, as to

9               (1) the setting aside of reserves or sinking funds, and the  
10       regulation, investment, and disposition of them;

11              (2) limitations on the issuance of additional bonds, the  
12       terms upon which additional bonds may be issued and secured, the terms  
13       upon which additional bonds may rank on a parity with, or be subordi-  
14       nate or superior to, other bonds;

15              (3) the refunding of outstanding bonds;

16              (4) the procedure, if any, by which the terms of any contract  
17       with bondholders may be amended or abrogated;

18              (5) any matters relating to the bonds which the authority  
19       considers desirable.

20       (h) The authority may contract for the future sale of revenue  
21       bonds by which contract purchasers shall be committed to the prices,  
22       terms, and conditions stated in each contract. The authority may pay  
23       the consideration it considers proper for those commitments.

24       (i) The superior court has jurisdiction to hear and determine  
25       actions or proceedings relating to the authority, including actions or  
26       proceedings brought by or for the benefit or security of a holder of  
27       its bonds or by a trustee for or other representative of the holders.

28       Sec. 44.87.045. BOND ANTICIPATION NOTES. The authority may issue  
29       and sell bond anticipation notes which shall be on the terms, bear the

1 date, mature at the time, be in the denomination and in the form,  
2 payable in the medium at the place and subject to the terms of redemp-  
3 tion as the authority considers necessary or advisable in the manner  
4 provided in this chapter.

5 Sec. 44.87.050. TRUST INDENTURES AND TRUST AGREEMENTS. In the  
6 discretion of the authority, an issue of bonds may be secured by a  
7 trust indenture or trust agreement between the authority and a corpor-  
8 ate trustee (which may be a trust company, bank, or national banking  
9 association, with corporate trust powers, located inside or outside the  
10 state) or by a secured loan agreement or other instrument or under a  
11 resolution giving powers to a corporate trustee by means of which the  
12 authority may

13 (1) make and enter into any covenants and agreements with  
14 the trustee or the holders of the bonds which the authority may deter-  
15 mine to be necessary or desirable, including, without limitation,  
16 covenants, provisions, limitations and agreements as to

17 (A) the application, investment, deposit, use and dis-  
18 position of the proceeds of the bonds of the authority or of money  
19 or other property of the authority or in which it has an interest;

20 (B) the terms and conditions upon which additional  
21 bonds of the authority may be issued;

22 (2) pledge, mortgage or assign money, leases, agreements,  
23 property or other assets of the authority; and

24 (3) provide for any other matters which affect the security  
25 or protection of the bonds.

26 Sec. 44.87.055. CONFLICT OF INTEREST. (a) A member of the board  
27 may not vote on a resolution of the board relating to a contract to be  
28 entered into by the authority under this chapter if the member or the  
29 member's spouse or the member's dependent or nondependent child is a

1 party to the contract or has a direct ownership or equity interest in a  
2 firm, partnership, corporation, or association which would be a party  
3 to the contract.

4 (b) A member of the board may not participate in a decision  
5 related to the authority's exercise of the power of eminent domain over  
6 real property when the real property is listed, or is required to be  
7 listed, in the member's financial disclosure statement under AS 39.50.-  
8 030.

9 (c) It is a conflict of interest for a person employed by the  
10 authority or a person on contract for hire, written or oral, at a fixed  
11 or hourly fee with the authority, to act in an advisory capacity to the  
12 authority or to support the use of the authority's funds in a manner  
13 that may or will result in benefit, directly or indirectly, to that  
14 employee, agent, or advisor, except upon full disclosure in writing and  
15 by oral presentation to the board of the details of the conflicting  
16 interest, including a dollar estimate of the direct and indirect mone-  
17 tary gain the employee, agent, or advisor may expect to derive. Public  
18 notice of the board meeting at which the written and oral disclosure of  
19 the conflict is to be given must specify a conflict-of-interest presen-  
20 tation is to be made at that meeting, the name of the person making the  
21 disclosure, and the position or title of the person disclosing the  
22 conflict of interest. The board's resolution that addresses the matter  
23 in which a conflict of interest exists must set out the details of the  
24 full disclosure.

25 (d) A person convicted of violating this section is

26 (1) guilty of a misdemeanor and in addition to other sen-  
27 tences provided by law may be sentenced to pay a fine equivalent to the  
28 total gain derived, including gain derived from a partially disclosed  
29 or misstated disclosure of monetary gain; and

1 (2) barred from further acting as an employee, agent, or  
2 advisor to the authority.

3 Sec. 44.87.060. VALIDITY OF PLEDGE. It is the intention of the  
4 legislature that a pledge made in respect of bonds be valid and binding  
5 from the time the pledge is made; that the money or property so pledged  
6 and thereafter received by the authority be immediately subject to the  
7 lien of the pledge without physical delivery or further act; and that  
8 the lien of the pledge be valid and binding as against all parties  
9 having claims of any kind in tort, contract or otherwise against the  
10 authority irrespective of whether the parties have notice. Neither the  
11 resolution, trust agreement nor any other instrument by which a pledge  
12 is created need be recorded or filed under the provisions of the Uniform  
13 Commercial Code to be valid, binding or effective against the parties.

14 Sec. 44.87.065. LIABILITY ON BONDS. (a) Neither the members of  
15 the authority nor a person executing the bonds is liable personally on  
16 the bonds or subject to personal liability or accountability by reason  
17 of the issuance of the bonds.

18 (b) The bonds issued by the authority do not constitute an in-  
19 debtedness or other liability of the state or of a political subdivision  
20 of the state, except the authority, but are payable solely from the  
21 income and receipts or other funds or property of the authority. The  
22 authority may not pledge the faith or credit of the state or of a  
23 political subdivision of the state (except the authority) to the payment  
24 of a bond. The issuance of a bond by the authority does not directly,  
25 indirectly or contingently obligate the state or a political subdivision  
26 of the state to levy or pledge any form of taxation to the payment of a  
27 bond.

28 Sec. 44.87.070. PLEDGE OF THE STATE. (a) The state pledges to  
29 fulfill the terms of any contract made by the authority with the holder

1 and agrees with the holders of bonds issued under this chapter that the  
2 state will not limit or alter the rights and powers vested in the  
3 authority by this chapter. The state also pledges and agrees not to  
4 impair the rights and remedies of the holders until the bonds, interest  
5 on them, interest on unpaid installments of interest on them, and all  
6 costs and expenses in connection with any action or proceeding by or on  
7 behalf of the holders, are fully met and discharged.

8 (b) The state pledges to and agrees with a federal agency that  
9 loans or contributes money for railroad facilities of the authority,  
10 that the state will not limit or alter the rights and powers vested in  
11 the authority by this chapter to fulfill the terms of any contract made  
12 by the authority with the federal agency.

13 (c) The authority is authorized to include the pledge and agree-  
14 ment of the state contained in (a) and (b) of this section, insofar as  
15 it refers to holders of bonds of the authority, in a contract with the  
16 holders, and insofar as it relates to a federal agency, in a contract  
17 with a federal agency.

18 Sec. 44.87.075. RIGHTS OF BONDHOLDERS. A holder of notes or  
19 revenue bonds issued under this chapter or a trustee under a trust  
20 agreement entered into under this chapter may, except to the extent his  
21 rights are restricted by the bond resolution, by any suitable form of  
22 legal proceedings, protect and enforce any rights under the laws of  
23 this state or granted by the bond resolution. Those rights include (1)  
24 the right to compel the performance of all duties of the authority  
25 required by this chapter or the bond resolution; (2) the right to  
26 enjoin unlawful activities; and (3) in the event of default (A) with  
27 respect to the payment of any principal of, or premium, if any, or  
28 interest on, any bond, or (B) in the performance of any covenant or  
29 agreement on the part of the authority in the bond resolution, the

right to apply to a court having jurisdiction of the cause to appoint a receiver to administer and operate the medical facility. The receiver may pay principal of, and premiums, if any, and interest on those bonds, and has the powers, subject to the direction of the court, which are permitted by law and are accorded receivers in general equity cases. However, the receiver may not pledge additional revenue of the authority to the payment of that principal, premium, and interest.

Sec. 44.87.080. EXEMPTION FROM TAXATION. The real and personal property of the authority and its assets, income and receipts are declared to be property of a political subdivision of the state and, together with the railroad facilities under the jurisdiction of the authority is exempt from all taxes and special assessments of the state or a political subdivision of the state. The bonds of the authority are declared to be issued by a political subdivision of the state for an essential public and governmental purpose and the bonds, and the interest on them, the income from them and the transfer of the bonds, and all assets, and income pledged to pay or secure the payment of the bonds, or interest on them, are exempt from taxation by or under the authority of the state, except for inheritance and estate taxes and taxes on transfers by or in contemplation of death.

Sec. 44.87.085. BONDS LEGAL INVESTMENTS FOR FIDUCIARIES. The bonds of the authority are securities in which all public officers and bodies of the state and all municipalities, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, savings associations, including savings and loan associations and building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons who are or who may be authorized to

1 invest in bonds or other obligations of the state, may properly and  
2 legally invest funds including capital in their control or belonging to  
3 them. The bonds of the authority are also securities which may be  
4 deposited with and may be received by all public officers of this state  
5 and all municipalities for any purpose for which the deposit of bonds  
6 or other obligations of the state is or may be authorized.

7 Sec. 44.87.090. ANNUAL AUDIT. The authority shall have its  
8 financial records audited annually by a certified public accountant.  
9 The legislative auditor shall prescribe the form and content of the  
10 financial records of the authority and shall have access to these  
11 records at any time.

12 Sec. 44.87.095. ANNUAL REPORT. Before March 1 of each year, the  
13 authority shall submit to the governor and the legislature a comprehen-  
14 sive report describing operations, income and expenditures for the  
15 preceding fiscal year.

16 Sec. 44.87.100. APPROPRIATIONS AND REPORTS. (a) Notwithstanding  
17 any other provision in this chapter, the authority is subject to the  
18 provisions of the Executive Budget Act (AS 37.07).

19 (b) The authority shall, by the 15th day of each regular legisla-  
20 tive session, present to the legislature a report detailing project  
21 status, original costs and projected costs, particularly highlighting  
22 any costs in excess of the original cost estimates submitted for each  
23 project when that project was originally approved by the legislature.

#### 24 ARTICLE 4. GENERAL PROVISIONS.

25 Sec. 44.87.105. DEFINITIONS. In this chapter

- 26 (1) "authority" means the Alaska Railroad Authority;  
27 (2) "board" means the board of directors of the authority;  
28 (3) "bonds" means revenue bonds of the authority issued  
29 under this chapter, including refunding and refinancing those bonds;

1 (4) "bond resolution" means a resolution authorizing the  
2 issuance of, or providing terms and conditions related to, revenue  
3 bonds issued under this chapter and includes any trust agreement, trust  
4 indenture, mortgage agreement, or deed of trust providing terms and  
5 conditions for those bonds;

6 (5) "fiscal year" means July 1 to June 30;

7 (6) "property" means any real, personal, or mixed property,  
8 or any interest in it, including without limitation any real estate,  
9 appurtenances, buildings, easements, equipment, furnishings, furniture,  
10 improvements, machinery, rights-of-way, and structures, or any interest  
11 in any of these items;

12 (7) "railroad facilities" includes rights-of-way, trackbed,  
13 engines, cars, freight and passenger terminals, and any other facili-  
14 ties or equipment used for the operation of a railroad;

15 (8) "revenue" means the rent, fees, charges, interest,  
16 principal repayments, and other income or profit received or to be  
17 received, either directly or indirectly, by the authority from any  
18 source.

19 \* Sec. 3. AS 39.25.120 is amended by adding a new paragraph to read:

20 (19) the executive director of the Alaska Railroad Authority.

21 \* Sec. 4. AS 39.50.200(b) is amended by adding a new paragraph to read:

22 (44) Alaska Railroad Authority.

23 \* Sec. 5. The terms of the four public members first appointed to the  
24 Board of Directors of the Alaska Railroad Authority under AS 44.87.015 shall  
25 be one, two, three, and four years, respectively.

26 \* Sec. 6. The legislative auditor shall prescribe the form and content  
27 of the financial records of the authority under AS 44.87.090 within 60 days  
28 of the effective date of this Act.

29