

Original sponsors: Moss, Rogers, Brown
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Offered: 5/18/81
Referred: Rules

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 12 (Finance)

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."

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 fiction 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 holders

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

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

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

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

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

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

Sec. 44.87.095. ANNUAL REPORT. Before March 1 of each year, the authority shall submit to the governor and the legislature a comprehensive report describing operations, income and expenditures for the preceding fiscal year.

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

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

ARTICLE 4. GENERAL PROVISIONS.

Sec. 44.87.105. DEFINITIONS. In this chapter

- (1) "authority" means the Alaska Railroad Authority;
- (2) "board" means the board of directors of the authority;
- (3) "bonds" means revenue bonds of the authority issued 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 * Sec. 7. ALASKA RAILROAD AUTHORITY TASK FORCE. (a) There is created

1 an Alaska Railroad Authority Task Force. The task force shall study the
2 options for transfer of the Alaska Railroad to nonfederal control and shall
3 report its findings and recommendations to the Twelfth Legislature by March 1,
4 1982.

5 (b) The Alaska Railroad Authority Task Force consists of the following
6 members: the directors of the Alaska Railroad Authority created in AS 44.-
7 87.010 - 44.87.015 added by sec. 2 of this Act; a representative from the
8 Department of Commerce and Economic Development, the Department of Natural
9 Resources, the Department of Community and Regional Affairs, the Department
10 of Law, the Department of Labor, the division of policy development and
11 planning in the Office of the Governor, and the University of Alaska, ap-
12 pointed by the head of each agency; and three public members appointed by
13 the governor.