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1 IN THE SENATE

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2

SENATE BILL NO. 212

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; establishing
7 the Alaska Railroad Authority; and providing for an
8 effective date."

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

10

* Section 1. AS 42 is amended by adding a new chapter to read:

11

CHAPTER 40. ALASKA RAILROAD ACT.

12

ARTICLE 1. CREATION AND ORGANIZATION.

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Sec. 42.40.010. ALASKA RAILROAD AUTHORITY. The Alaska Railroad
14 Authority is established as a public corporation of the state. The
15 authority is an instrumentality of the state in the Department of
16 Transportation and Public Facilities, but has a legal existence indepen-
17 dent of and separate from the state.

18

Sec. 42.40.020. GOVERNING BODY. The board of directors of the
19 authority shall conduct the business of the authority.

20

Sec. 42.40.030. APPOINTMENT AND COMPOSITION OF BOARD. (a) The
21 board of directors of the authority consists of the commissioner of
22 transportation and public facilities and six public members appointed
23 by the governor. The public members may not be public officers or
24 employees.

25

(b) Public members appointed to the board must include at least
26 one banker, one attorney, one economist, one person with a background
27 in the transportation industry, and one person engaged in private
28 business.

29

(c) The public members of the board must be confirmed by a major-

1 ity of the membership of the legislature in joint session.

2 Sec. 42.40.040. TERM OF OFFICE; VACANCIES. (a) The public
3 members of the board serve for a term of four years.

4 (b) A vacancy on the board shall be filled by appointment by the
5 governor and the appointment must be confirmed by the legislature in
6 joint session. A member selected to fill a vacancy holds office for
7 the balance of the full term for which his predecessor on the board was
8 appointed.

9 (c) A vacancy on the board does not impair the authority of a
10 quorum of members to exercise all the powers and perform all the duties
11 of the board.

12 Sec. 42.40.050. CONFLICT OF INTERESTS. Upon appointment and
13 annually during his term of office, a board member shall declare pri-
14 vately in writing to the governor and the board any financial or
15 business interest he has which might conflict with the public nature of
16 his membership on the board. If there is a conflict, the board may ask
17 the member to abstain from decisions resulting in a conflict or to
18 resign from the board.

19 Sec. 42.40.060. COMPENSATION AND EXPENSES. Members of the board
20 receive no salary, but are entitled to per diem and travel expenses
21 authorized by law for state boards and commissions under AS 39.20.180.

22 Sec. 42.40.070. QUORUM AND NOTICE OF MEETINGS. Four members are
23 a quorum for the transaction of business unless the bylaws require a
24 larger number. Notice of a meeting of the board must be given to each
25 member.

26 Sec. 42.40.080. PUBLIC BOARD MEETINGS. The meetings of the board
27 are public.

28 Sec. 42.40.090. MINUTES OF MEETINGS. The board shall keep minutes
29 of each meeting and send a certified copy to the governor.

1 Sec. 42.40.100. PRESIDENT. The board may employ a president to
2 manage the authority. The president must be professionally trained and
3 experienced in the performance of his duties. His selection is subject
4 to the approval of the governor. The president may not have any finan-
5 cial or business interest that might conflict with the management of
6 the authority in the public interest. The board may delegate powers
7 and duties to the president.

8 ARTICLE 2. POWERS AND DUTIES.

9 Sec. 42.40.110. GENERAL POWERS. The authority may

- 10 (1) exist continuously as an authority;
- 11 (2) adopt a seal;
- 12 (3) adopt bylaws and regulations governing the business of
13 the authority;
- 14 (4) sue and be sued;
- 15 (5) appoint officers, employees, trustees, and agents, and
16 prescribe their powers and duties;
- 17 (6) hire legal counsel to represent the authority;
- 18 (7) make contracts and execute instruments necessary or con-
19 venient in the exercise of its powers and duties;
- 20 (8) acquire by purchase, lease, bequest, devise, gift, the
21 satisfaction of debts, the foreclosure of mortgages, or eminent domain
22 under AS 09.55.240 - 09.55.460, and hold, maintain, use, operate,
23 lease, alienate, dispose of, and convey real or personal property;
- 24 (9) borrow money and issue its negotiable bonds or notes and
25 provide for and secure their payment, provide for the rights of their
26 holders and purchase, hold, or dispose of any of its bonds or notes;
- 27 (10) secure the payment of its obligations by pledge or mort-
28 gage or other lien on its contracts, revenues, income, or property, ex-
29 cept that it may not incur secondary liability by guaranty or endorse-

1 ment of the obligations of another corporation or legal entity, except
2 endorsement of checks, bank drafts, or other commercial paper in the
3 ordinary course of business;

4 (11) accept grants or loans from and contract with the federal
5 government, the state, or its political subdivisions, and to that end
6 comply with the provisions of federal, state, or local programs when
7 necessary;

8 (12) acquire, hold and dispose of stocks, memberships, con-
9 tracts, bonds, or other interests in another corporation or legal
10 entity, and exercise the powers or rights in connection with these
11 interests which are provided in contracts or agreements and which are
12 allowed by law concerning the satisfaction of debts;

13 (13) provide for the operation, maintenance, and control of
14 the tracks and equipment transferred to it by the federal government or
15 by any person, and be governed by the rules and regulations of the
16 Interstate Commerce Commission as a rail carrier;

17 (14) acquire, construct, maintain, equip, and operate connect-
18 ing, switching, terminal, or other railroads and railroad facilities in
19 the state;

20 (15) do what is necessary to carry out its powers and duties
21 under this chapter or other laws of the state, or the laws and regula-
22 tions of the federal government.

23 Sec. 42.40.120. OPERATION OF ALASKA RAILROAD. The authority
24 shall provide for the operation of the Alaska Railroad after it is
25 transferred to the authority by the federal government, and may extend
26 the operations of the Alaska Railroad to the extent that the authority
27 considers desirable in order to promote economic growth and development
28 in the state.

29 Sec. 42.40.130. REGULATIONS. The board shall adopt regulations

1 in accordance with the Administrative Procedure Act (AS 44.62) to
2 implement this chapter.

3 Sec. 42.40.140. ANNUAL REPORT. The board shall prepare and dis-
4 tribute to the governor and to each legislator by December 30 of each
5 year a report describing the operations, financial condition, and
6 short- and long-term plans of the authority. The board may include in
7 the report suggestions for legislation relating to the structure,
8 powers, or duties of the authority or relating to the operation of
9 railroad facilities of the authority.

10 Sec. 42.40.150. ANNUAL AUDITS. The board shall have the finan-
11 cial records of the authority audited annually by the legislative
12 auditor. If an audit is conducted by a private certified public accoun-
13 tant, the legislative auditor may accept that audit in satisfaction of
14 the requirements of this section. The legislative auditor may pre-
15 scribe the form and content of the financial records of the authority
16 and may have access to those records at any time.

17 ARTICLE 3. FINANCIAL PROVISIONS.

18 Sec. 42.40.160. BONDS AND NOTES. (a) The authority, by reso-
19 lution, may issue bonds and bond anticipation notes to provide money to
20 carry out its purposes.

21 (b) The principal and interest on the bonds or notes of the
22 authority is payable from money or assets of the authority. Bond
23 anticipation notes may be payable from the proceeds of the sale of
24 bonds or from the proceeds of sale of other bond anticipation notes or,
25 if bond or bond anticipation note proceeds are not available, the notes
26 may be paid from other money or assets of the authority. Bonds or
27 notes may be additionally secured by a pledge of a grant or contribution
28 from the federal government, or a corporation, association, institution
29 or person, or a pledge of money, income, or revenues of the authority

1 from any source.

2 (c) Bonds or bond anticipation notes may be issued in one or more
3 series and shall be dated, bear interest at the rate or rates per year
4 or within the maximum rate, be in the denomination, be in the form,
5 either coupon or registered, carry the conversion or registration pro-
6 visions, have the rank or priority, be executed in the manner and form,
7 be payable from the sources in the medium of payment and place or
8 places inside or outside the state, be subject to authentication by a
9 trustee or fiscal agent, and be subject to the terms of redemption with
10 or without premium, as the resolution of the board may provide. Bond
11 anticipation notes shall mature at the time or times as may be deter-
12 mined by the board. Bonds shall mature at the time, not exceeding 50
13 years from their date, as may be determined by the board. Before the
14 preparation of definitive bonds or bond anticipation notes, the author-
15 ity may issue interim receipts or temporary bonds or bond anticipation
16 notes, with or without coupons, exchangeable for bonds or bond anticipa-
17 tion notes when these definitive bonds or bond anticipation notes have
18 been executed and are available for delivery.

19 (d) Bonds or bond anticipation notes may be sold in the manner,
20 on the terms, and at the price the board determines.

21 (e) If an officer whose signature or a facsimile of whose sig-
22 nature appears on bonds or notes or coupons attached to them ceases to
23 be an officer before the delivery of the bond, note or coupon, his
24 signature or facsimile is valid the same as if he had remained in
25 office until delivery.

26 (f) In a resolution of the authority authorizing or relating to
27 the issuance of bonds or bond anticipation notes, the authority has
28 power by provisions in the resolution which will constitute covenants
29 of the authority, and contracts with the holders of the bonds or bond

1 anticipation notes

2 (1) to pledge to any payment or purpose all or any part of
3 its revenues to which its right then exists or may thereafter exist,
4 and the money derived from the revenues, and the proceeds of its bonds
5 or notes;

6 (2) to covenant against pledging all or any part of its rev-
7 enues, or against permitting or suffering a lien on the revenues or its
8 property;

9 (3) to covenant as to establishment of reserves or sinking
10 funds and the provision for and the regulation and disposition of the
11 reserves or sinking funds;

12 (4) to covenant with respect to or against limitations on a
13 right to sell or otherwise dispose of property of any kind;

14 (5) to covenant as to bonds and notes to be issued, and
15 their limitations, terms and conditions, and as to the custody, applica-
16 tion and disposition of the proceeds of the bonds and notes;

17 (6) to covenant as to the issuance of additional bonds or
18 notes, or as to limitations on the issuance of additional bonds or
19 notes and the incurring of other debts;

20 (7) to covenant as to the payment of the principal of or in-
21 terest on the bonds or notes, as to the sources and methods of payment,
22 as to the rank or priority of the bonds or notes with respect to a lien
23 or security, or as to the acceleration of the maturity of the bonds or
24 notes;

25 (8) to provide for the replacement of lost, stolen, de-
26 stroyed or mutilated bonds or notes;

27 (9) to covenant against extending the time for the payment
28 of bonds or notes or interest on the bonds or notes;

29 (10) to covenant as to the redemption of bonds or notes and

1 privileges of their exchange for other bonds or notes of the authority;

2 (11) to covenant to create or authorize the creation of
3 special funds of money to be held in pledge or otherwise for operating
4 expenses, payment or redemption of bonds or notes, reserves or other
5 purposes, and as to the use and disposition of the money held in the
6 funds;

7 (12) to establish the procedure, if any, by which the terms
8 of a contract or covenant with or for the benefit of the holders of
9 bonds or notes may be amended or abrogated, the amount of bonds or
10 notes the holders of which must consent to amendment or abrogation, and
11 the manner in which the consent may be given;

12 (13) to covenant as to the custody of any of its properties
13 or investments, their safekeeping and insurance, and the use and dis-
14 position of insurance money;

15 (14) to vest in a trustee or trustees inside or outside the
16 state property, rights, powers, and duties in trust as the authority
17 may determine, which may include any or all of the rights, powers and
18 duties of any trustee appointed by the holders of bonds or notes of the
19 authority, and to limit or abrogate the rights of the holders of the
20 bonds or notes of the authority to appoint a trustee under this chapter
21 or limit the rights, powers and duties of the trustee;

22 (15) to pay the costs or expenses incident to the enforcement
23 of the bonds or notes or of the provisions of the resolution or of a
24 covenant or agreement of the authority with the holders of its bonds or
25 notes;

26 (16) to agree with an authority trustee which may be a trust
27 company or bank having the powers of a trust company inside or outside
28 the state as to the pledging or assigning of revenues or funds which or
29 in which the authority has any rights or interest; the agreement may

1 further provide for other rights and remedies exercisable by the trustee
2 as may be proper for the protection of the holders of bonds or notes of
3 the authority and not otherwise in violation of law and may provide for
4 the restriction of the rights of an individual holder of bonds or notes
5 of the authority;

6 (17) to appoint and provide for the duties and obligations of
7 a paying agent or paying agents, or other fiduciaries as the resolution
8 may provide inside or outside the state;

9 (18) to limit the rights of the holders of bonds or notes of
10 the authority to enforce a pledge or covenant securing the bonds or
11 notes; and

12 (19) to make covenants other than and in addition to the
13 covenants expressly authorized in this section, of like or different
14 character, and to make the covenants to do or refrain from doing the
15 acts and things as may be necessary, or convenient and desirable, in
16 order to better secure bonds or notes or which, in the absolute discre-
17 tion of the board will tend to make bonds or notes more marketable,
18 notwithstanding that the covenants, acts or things may not be enumerated
19 in this section.

20 Sec. 42.40.170. INDEPENDENT FINANCIAL ADVISOR. In negotiating
21 the private sale of bonds or bond anticipation notes to an underwriter,
22 the board shall retain a financial advisor who is independent from the
23 underwriter.

24 Sec. 42.40.180. VALIDITY OF PLEDGE. The pledge of assets or
25 revenues of the authority to the payment of the principal or interest
26 on bonds or notes of the authority is valid and binding from the time
27 the pledge is made and the assets or revenues are immediately subject
28 to the lien of the pledge without physical delivery or further act.
29 The lien of a pledge is valid and binding against all parties having

1 claims of any kind in tort, contract, or otherwise against the author-
2 ity, irrespective of whether those parties have notice of the lien of
3 the pledge. Nothing in this section prohibits the authority from
4 selling assets subject to a pledge, except that a sale may be restrict-
5 ed by the trust agreement or resolution providing for the issuance of
6 the bonds or notes.

7 Sec. 42.40.190. REMEDIES. A holder of bonds or notes or of
8 coupons attached to them issued under this chapter, and a trustee under
9 a trust agreement or resolution authorizing the issuance of the bonds
10 or notes, except as restricted by a trust agreement or resolution,
11 either at law or in equity, may enforce all rights granted under this
12 chapter or under the trust agreement or resolution, or under any other
13 contract executed by the authority under this chapter, and may enforce
14 and compel the performance of all duties required by this chapter or by
15 the trust agreement or resolution to be performed by the authority or
16 by an officer of it.

17 Sec. 42.40.200. NEGOTIABLE INSTRUMENTS. Bonds and notes and
18 interest coupons attached to them issued under this chapter are nego-
19 tiable instruments under the laws of this state, subject only to appli-
20 cable provisions for registration.

21 Sec. 42.40.210. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds
22 and notes issued under this chapter are securities in which all public
23 officers and public bodies of the state and its political subdivisions,
24 all insurance companies, trust companies, banking associations, invest-
25 ment companies, executors, administrators, trustees and other fiduciar-
26 ies may properly and legally invest funds, including capital in their
27 control or belonging to them. These bonds and notes may be deposited
28 with a state or municipal officer of any agency or political subdivi-
29 sion of the state for any purpose for which the deposit of bonds or

1 notes of the state is authorized by law.

2 Sec. 42.40.220. REFUNDING BONDS. (a) The authority may provide
3 for the issuance of refunding bonds for the purpose of refunding any
4 bonds then outstanding which have been issued under this chapter,
5 including the payment of any redemption premium on them and any inter-
6 est accrued or to accrue to the date of redemption of the bonds. The
7 issuance of the refunding bonds, the maturities and other details of
8 them, the rights of the holders of them, and the rights, duties and
9 obligations of the authority in respect of them are governed by the
10 provisions of this chapter which relate to the issuance of bonds,
11 insofar as those provisions may be appropriate.

12 (b) Refunding bonds may be sold or exchanged for outstanding
13 bonds issued under this chapter and, if sold, the proceeds may be
14 applied, in addition to any other authorized purposes, to the purchase,
15 redemption or payment of the outstanding bonds. Pending the applica-
16 tion of the proceeds of refunding bonds, with any other available
17 money, to the payment of the principal, accrued interest and any redemp-
18 tion premium on the bonds being refunded, and, if so provided or per-
19 mitted in the resolution authorizing the issuance of the refunding
20 bonds or in the trust agreement securing them, to the payment of any
21 interest on the refunding bonds and any expenses in connection with the
22 refunding, the proceeds may be invested in direct obligations of, or
23 obligations the principal of and the interest on which are uncondition-
24 ally guaranteed by, the United States of America which mature or which
25 will be subject to redemption, at the option of the holders of them,
26 not later than the respective dates when the proceeds, together with
27 the interest accruing on them, will be required for the purposes in-
28 tended.

29 Sec. 42.40.230. CREDIT OF STATE NOT PLEDGED. (a) The authority

1 may not pledge the credit or the taxing power of the state or its
2 political subdivisions. The state and its political subdivisions are
3 not liable for the debts of the authority.

4 (b) Bonds and notes issued under this chapter do not constitute a
5 debt, liability, or obligation of the state or of a political subdivi-
6 sion of the state or a pledge of the faith and credit of the state or
7 of a political subdivision but are payable solely from the revenues or
8 assets of the authority. Each bond and note issued under this chapter
9 shall contain on its face a statement that the authority is not obli-
10 gated to pay it nor the interest on it except from the revenues or
11 assets pledged for it and that neither the faith and credit nor the
12 taxing power of the state or of a political subdivision of the state is
13 pledged to the payment of the principal of or the interest on the bond
14 or note.

15 Sec. 42.40.240. OFFICERS NOT LIABLE. An officer or employee of
16 the authority is not subject to personal liability or accountability
17 because of his execution of bonds or notes or the issuance of them.

18 Sec. 42.40.250. TAX EXEMPTION. (a) The exercise of the powers
19 granted by this chapter will be in all respects for the benefit of the
20 people of the state, for their well-being and prosperity, and for the
21 improvement of their social and economic conditions, and the authority
22 is not required to pay a tax or assessment on any property owned by the
23 authority under the provisions of this chapter or on the income from
24 the property.

25 (b) Bonds and notes issued under this chapter are declared to be
26 issued by a body corporate and public of the state and for an essential
27 public and governmental purpose, and the bonds and notes, and the
28 interest and income on and from the bonds and notes, and all fees,
29 charges, funds, revenues, income and other money pledged or available

1 to pay or secure the payment of the bonds and notes, or interest on the
2 bonds and notes, are exempt from taxation except for inheritance,
3 transfer and estate taxes.

4 ARTICLE 4. GENERAL PROVISIONS.

5 Sec. 42.40.270. DISSOLUTION. After payment in full of its bonds
6 and notes, or after depositing in a trust sufficient money to secure
7 the payment of its bonds and notes, the board may dissolve the authority
8 by the majority vote of its directors. Dissolution is not effective
9 until the legislature confirms it by law. The effective date of dis-
10 solution is the date the legislature confirms the dissolution or a date
11 determined by the legislature at the time of confirmation. Assets
12 remaining after satisfaction of liabilities and obligations of the
13 authority shall be deposited to the credit of the general fund of the
14 state.

15 Sec. 42.40.280. PERSONNEL EXEMPT FROM STATE PERSONNEL ACT. The
16 personnel of the authority are in the exempt state service under AS 39.-
17 25.110.

18 Sec. 42.40.990. DEFINITIONS. In this chapter, unless the context
19 clearly indicates otherwise,

20 (1) "authority" means the Alaska Railroad Authority;

21 (2) "board" means the board of directors of the Alaska Rail-
22 road Authority;

23 (3) "railroad and railroad facilities" includes, but is not
24 limited to, tracks, spurs, switches, terminals, terminal facilities,
25 road beds, rights-of-way, bridges, stations, railroad cars, locomotives
26 or other vehicles constructed for operation over railroad tracks,
27 crossing signs, lights, signals, storage buildings, administration
28 buildings, repair buildings, and all structures and equipment which are
29 necessary for the operation of a railroad.

1 * Sec. 2. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD
2 AUTHORITY. The governor shall designate the terms of the members of the
3 board of directors of the Alaska Railroad Authority first appointed under
4 AS 42.40.030 enacted in sec. 1 of this Act. Of the six members first ap-
5 pointed:

- 6 (1) one shall serve a term of one year;
7 (2) two shall serve a term of two years;
8 (3) one shall serve a term of three years; and
9 (4) two shall serve a term of four years.

10 * Sec. 3. NEGOTIATION FOR TRANSFER OF ALASKA RAILROAD. (a) The board
11 of directors of the Alaska Railroad Authority established in AS 42.40.010
12 enacted in sec. 1 of this Act shall enter into negotiations with the appro-
13 priate officers and agencies of the federal government at the earliest time
14 practicable for the transfer of ownership of the Alaska Railroad to the
15 authority and may enter into agreements necessary to accomplish the transfer
16 subject to money available from appropriations for the purpose.

17 (b) An agreement entered into under (a) of this section may include,
18 but is not limited to, provisions under which the Alaska Railroad Authority
19 agrees to

- 20 (1) accept all real and personal property transferred to it by
21 the federal government;
22 (2) assume rights and obligations of the Alaska Railroad at the
23 time of the transfer of ownership.

24 (c) In this section, "Alaska Railroad" means the railroad and proper-
25 ties owned by the federal government under the authority of 43 U.S.C. secs.
26 975 - 975g.

27 * Sec. 4. This Act takes effect July 1, 1981.
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29