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1 IN THE SENATE

BY THE TRANSPORTATION COMMITTEE

2

CS FOR SENATE BILL NO. 212 (Transportation)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TWELFTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the Alaska Railroad; and providing
7 for an effective date."

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

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* Section 1. LEGISLATIVE FINDINGS, POLICY, AND DECLARATIONS. (a) The
10 legislature finds that

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(1) the United States government has expressed its determination
12 to discontinue federal operation of the Alaska Railroad at the earliest
13 possible date;

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(2) for the time being, private acquisition and operation of the
15 railroad in a manner consistent with the federal transfer legislation and
16 this Act is not presently considered to be a reasonable possibility or in the
17 best interests of the citizens of the state;

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(3) continued operation of the railroad is possible only if the
19 state acquires the railroad from the federal government and provides for
20 operation of the railroad;

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(4) continued operation and development of the Alaska Railroad is
22 essential to the long-term economic growth and development of the state and
23 its natural resources and will serve an important public purpose; and

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(5) continued operation of the Alaska Railroad will promote the
25 general welfare of the people of the state by providing important freight and
26 passenger service to residents of the state, businesses, visitors, and mili-
27 tary installations in the state.

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(b) It is the policy of the state to

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(1) foster and promote the development of the state's lands and

1 natural resources;

2 (2) foster and promote the long-term economic growth and develop-
3 ment of the state;

4 (3) provide necessary and desirable freight and passenger rail
5 transportation services to residents, businesses, visitors, and military
6 installations in the state;

7 (4) develop and implement plans for a transportation network that
8 effect the policies set out in this subsection; and

9 (5) provide safe, economical, and efficient transportation to
10 residents, businesses, visitors, and military installations in the state.

11 (c) The legislature declares that

12 (1) the exercise of the powers of the state in the interest of the
13 people of the state is necessary to accomplish the policy set out in (b) of
14 this section by authorizing the creation of a public authority with the
15 powers, duties, and functions as provided in this Act to operate the Alaska
16 Railroad and to manage its rail, industrial, port and other properties;

17 (2) it is in the best interests of the people of the state for the
18 public authority created by this Act to operate and manage in a prudent
19 manner the Alaska Railroad

20 (A) to be exclusively responsible for the management of the
21 financial and legal obligations of the Alaska Railroad;

22 (B) with the railroad authority, and not the state, consti-
23 tuting a common carrier subject to the jurisdiction of the United States
24 Interstate Commerce Commission;

25 (C) with the ability to raise capital by issuing obligations
26 exempt from federal and state taxation;

27 (D) to carry out its responsibilities on a self-sustaining
28 basis;

29 (E) to provide the best possible combination of types and

2 levels of safe, efficient, and economical transportation that is neces-
3 sary to meet the overall needs of the state, supported when necessary by
4 state investment;

5 (F) according to sound business management practices;

6 (G) to provide the level of service that best satisfies the
7 needs of the people of the state;

8 (H) in a fiscally sound manner; and

9 (I) to ensure that borrowing by the authority does not
10 directly or indirectly endanger the state's own borrowing capacity;

11 (3) the continued operation of the railroad will assure greater
12 use, development, reclamation, and settlement of the state's land for the
13 maximum benefit of the people; and

14 (4) the important public purposes to be served by the railroad
15 authority require the authority to have all of the powers and duties granted
16 to it by this Act; the legislature intends that the authority, consistent
17 with sound business management practices, exercise its powers and duties as a
18 public service on behalf of the state and recognizes that the exercise of the
19 powers and duties granted by this Act requires the authority to engage in the
20 wide range of conduct authorized by this Act.

21 * Sec. 2. AS 42 is amended by adding a new chapter to read:

22 CHAPTER 40. ALASKA RAILROAD AUTHORITY.

23 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

24 Sec. 42.40.010. ESTABLISHMENT OF AUTHORITY. There is established
25 the Alaska Railroad Authority. The authority is a public corporation
26 and, for purposes of art. III, sec. 22, Constitution of the State of
27 Alaska, is an instrumentality of the state within the Department of
28 Transportation and Public Facilities, but the authority has a legal
29 existence independent of and separate from the state. The exercise by
the authority of the powers provided in this chapter is considered an

1 essential governmental function of the state. The existence of the
2 authority is perpetual.

3 Sec. 42.40.020. LIMITATION OF LIABILITY. A liability incurred by
4 the authority must be satisfied exclusively from the assets and credit
5 of the authority and no creditor or other person has a right of action
6 against the state on account of a debt, obligation, or liability of the
7 authority.

8 Sec. 42.40.030. BOARD OF COMMISSIONERS. (a) The powers of the
9 authority are vested in the Board of Commissioners. The board consists
10 of the commissioner of transportation and public facilities, who serves
11 as a voting member; the chief executive officer of the authority, who
12 serves as an ex officio nonvoting member; an authority employee appointed
13 by the governor, who serves as a nonvoting member and represents the
14 labor organizations that are certified to represent authority employees;
15 and six voting public members appointed by the governor. The public
16 members must have substantial experience or professional training and
17 expertise in fields relevant to the purposes of this chapter, including,
18 but not limited to transportation, business, and finance and have the
19 standing in their communities to command the respect of their fellow
20 citizens. Unless prohibited by law, one public member shall be or have
21 been an executive official of an American railroad that is not now or
22 was never a connecting carrier of the Alaska railroad. At least four
23 public members must be selected from areas served by the railroad. The
24 public members may not be state officers or employees.

25 (b) The public members of the board shall be confirmed by a major-
26 ity of the membership of the legislature in joint session. A public
27 member appointed by the governor, unless and until the member has been
28 rejected by the legislature, has the full powers and responsibilities of
29 a confirmed board member.

1 (c) The board shall elect from its membership a chairman, a vice-
2 chairman, a treasurer, and a secretary and prescribe their specific
3 duties by rule.

4 (d) The chairman shall call meetings of the board at least once
5 every three months. The chairman may call other meetings of the board
6 as he considers necessary. The chairman shall preside at meetings of
7 the board.

8 (e) The governor by written notice to the member may remove a
9 public member from the board for

10 (1) incapacitation caused by injury or sickness that leaves
11 the member unable to perform his duties under this chapter;

12 (2) continued refusal or inability to attend meetings of the
13 board;

14 (3) conviction of a misdemeanor involving moral turpitude or
15 a felony; or

16 (4) any conduct that was intended to harm the authority
17 whether or not it constitutes a crime.

18 Sec. 42.40.040. TERM OF OFFICE; VACANCIES. (a) The public members
19 of the board serve for staggered terms of five years each.

20 (b) A vacancy on the board is filled by appointment by the governor
21 and the appointment must be confirmed by the legislature in joint ses-
22 sion. A member selected to fill a vacancy holds office for the balance
23 of the term for which his predecessor is appointed.

24 (c) A vacancy on the board does not impair the authority of a
25 quorum of members to exercise the powers and perform the duties of the
26 board.

27 (d) A member whose term has expired shall serve until his succes-
28 sor has been appointed.

29 Sec. 42.40.050. COMPENSATION AND EXPENSES. A public member of the

1 board is entitled to compensation at the rate of \$300 for each day the
2 member is engaged in actual performance of duties as a member of the
3 board. The board shall provide by rule for compensation for partial days
4 during which a member is engaged in actual performance of his duties. A
5 member is entitled to per diem and travel expenses authorized by law for
6 state boards and commissions under AS 39.20.180.

7 Sec. 42.40.060. QUORUM AND NOTICE OF MEETINGS. Four voting members
8 of the board constitute a quorum for the transaction of business. In
9 addition to the notice requirements of AS 44.62, notice of a meeting of
10 the board, including an agenda for the meeting, must be given to

- 11 (1) each member of the board;
- 12 (2) the governor;
- 13 (3) the leadership of the legislature;
- 14 (4) at least two newspapers of statewide circulation; and
- 15 (5) members of the general public upon request.

16 Sec. 42.40.070. VOTING. The board shall provide by rule for the
17 manner of voting and any representation of persons absent from meetings.
18 The rules may provide for voting and conferring by means of telecommuni-
19 cation devices or by mail or for voting as directed in a written proxy
20 taking a position on a particular issue so long as voting is consistent
21 with AS 44.62.310. However, no proxy is allowed that delegates to the
22 holder discretion to act for a principal on undisclosed or general
23 matters.

24 Sec. 42.40.080. MANAGEMENT OF AUTHORITY. (a) Unless the board
25 provides for management of the authority by a third-party contractor
26 under (b) of this section,

27 (1) the board shall appoint and fix compensation for the chief
28 executive officer and legal counsel of the authority; the appointment of
29 legal counsel is subject to the approval, for competence, of the governor

1 (2) the chief executive officer shall appoint and fix compen-
2 sation for the other executive officials; the appointments and compensa-
3 tion are subject to board approval;

4 (3) officials appointed under (1) and (2) of this subsection
5 serve at the pleasure of the board;

6 (4) the chief executive officer may appoint and fix compensa-
7 tion for any additional personnel necessary to carry out the purposes of
8 this chapter;

9 (5) except as may be required by federal law, no executive
10 official of the authority may be compensated at a rate in excess of that
11 established under AS 39.20.080 for the heads of principal executive
12 departments of the state.

13 (b) The board may provide for, in a manner consistent with the
14 purposes of this chapter and subject to the approval of the state as
15 provided in AS 42.40.600(g), the management and operation of the rail-
16 road by a third-party contractor. Subject to the limitations in (a) of
17 this section, the board may provide for appointment and compensation of
18 any executive official, including but not limited to those provided for
19 in (a) of this section, necessary to augment the management and opera-
20 tion of the railroad by the third-party contractor.

21 Sec. 42.40.090. DELEGATION. (a) The board shall by rule delegate
22 powers and duties necessary and appropriate for the management of the
23 daily affairs and operations of the authority to the chief executive
24 officer, subject to any requirement of board concurrence or authoriza-
25 tion imposed by the rules.

26 (b) Within 180 days of its establishment, the board shall by rule
27 delegate the following activities of the authority to the chief executive
28 officer or other executive official designated by the board, subject to
29 any board review of the activities as may be specified in the rules:

1 (1) leasing, granting easements in, issuing permits for the
2 use of, or conveying other interests that do not constitute a transfer
3 of the authority's entire interest in real property of the authority;

4 (2) establishment of specific rates, tariffs, divisions and
5 contract rate agreements;

6 (3) routine changes in service levels; and

7 (4) procurement.

8 (c) General or particular board authorization or concurrence is
9 required for the following:

10 (1) transfer of the authority's entire interest in real
11 property other than the execution of a release of a lien or satisfac-
12 tion of a mortgage after payment has been received;

13 (2) issuance of notes, debentures, or bonds;

14 (3) mortgaging or pledging of authority assets;

15 (4) donation of money, property, or other assets belonging to
16 the authority;

17 (5) an action by the authority as a surety or guarantor;

18 (6) capital projects with an estimated completion cost in
19 excess of \$250,000 or an estimated completion time of more than one year;

20 (7) adoption of the long-range program and capital improve-
21 ment plans under AS 42.40.325;

22 (8) certification of annual reports under AS 42.40.310;

23 (9) generally applicable, comprehensive increases and de-
24 creases in rates other than those periodically approved by the United
25 States Interstate Commerce Commission for application to rail carriers
26 generally;

27 (10) diversification and major expansion or reduction of
28 services beyond those provided on the date of transfer or as provided
29 under this chapter;

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(11) the exercise of the power of eminent domain;

(12) expansion of main or branch lines, other than routine track realignment as necessary to maintain service levels in effect on the date of transfer; and

(13) selection of independent auditors and accountants.

ARTICLE 2. ADMINISTRATIVE PROVISIONS.

Sec. 42.40.200. CONFLICTS OF INTEREST. (a) Except as provided in this section, a board member or employee of the authority may not participate in a decision of the authority in which he or a member of his immediate family has a direct or indirect financial interest unless the financial interest is a remote financial interest and participation is approved under (b) of this section. For purposes of this section, "participate in a decision" includes all discussions, deliberations, preliminary negotiations, and votes concerning a matter that is the subject of formal action by the board.

(b) A board member or employee may participate in a decision if he or a member of his immediate family has only a remote interest and if the fact and extent of the interest is disclosed to the board in a public meeting and is noted in the minutes of the board before any participation by the member or employee in the decision, and thereafter in a public meeting the board authorizes or approves the participation by a vote of its membership excluding the interested member or employee. As used in this subsection, "remote interest" means

(1) that of a nonsalaried officer of a nonprofit corporation;

(2) that of an employee or agent of a contracting party when the compensation of the employee or agent consists entirely of fixed wages or salary and the contract is awarded by bid or by other competitive process;

(3) that of a landlord or tenant of a contracting party,

1 except when the property subject to the lease or sublease is owned or
2 managed by the authority;

3 (4) that of a holder of less than one percent of the shares
4 of the corporation or cooperative that is the contracting party;

5 (5) that of an owner of a savings and loan account or bank
6 savings or share account or credit union deposit account if the interest
7 represented by the account is less than two percent of the total de-
8 posits held by the institution; or

9 (6) other interests that in good faith are defined as remote
10 by rules or regulations adopted by the authority.

11 (c) A board member or employee is not considered to be financially
12 interested in a decision when the decision could not affect him in a
13 manner different from its effect on the public or community.

14 (d) An action, including the award of a contract, in which a board
15 member or employee participates in violation of this section or AS 39.-
16 50.090 is void if the board member's vote or employee's participation
17 was necessary to the decision. If a board member votes or an employee
18 participates in a decision in violation of this section or AS 39.50.090
19 and his vote or participation is not necessary to the decision, the
20 board may ratify the action after disclosure of the violation in a
21 public meeting of the board and without participation by the interested
22 member or employee in the decision to ratify. A board member or employee
23 who violates a prohibition contained in this section or in AS 39.50
24 forfeits his office upon a determination by the board in a public meeting
25 that the violation was intentional.

26 (e) The executive officials and board members of the authority are
27 subject to AS 39.50.

28 (f) Within 120 days of the first meeting of the board, the board
29 shall adopt and may subsequently amend rules and regulations implementing

1 this section, providing additional conflict of interest and ethical
2 rules and regulations as it considers appropriate, and providing for the
3 removal by the board of a board member or employee who intentionally
4 violates a prohibition contained in this section or in AS 39.50.

5 Sec. 42.40.210. PUBLIC BOARD MEETINGS. (a) The meetings of the
6 board are public, with the exception of executive sessions permitted by
7 AS 44.62.310 and (b) of this section.

8 (b) In addition to those subjects which may be discussed in execu-
9 tive session under AS 44.62.310, the board may consider in executive
10 session matters that pertain to personnel, the authority's legal posi-
11 tion, land acquisition or disposal, or proprietary information, as
12 defined in a manner consistent with the standards and practices of the
13 United States Interstate Commerce Commission for protection of the
14 information including but not limited to proprietary information associ-
15 ated with specific shippers, divisions, and contract rate agreements.

16 Sec. 42.40.220. MINUTES OF MEETINGS. The board shall keep minutes
17 of each meeting and shall send a certified copy of the minutes of the
18 public portion of each meeting to the governor and the leadership of the
19 legislature.

20 Sec. 42.40.230. ADMINISTRATIVE PROCEDURE. (a) Except for AS 44.-
21 62.310 regarding public meetings, as limited by AS 42.40.210(b), the
22 Administrative Procedure Act (AS 44.62) does not apply to the authority,
23 its rules, regulations, or actions taken under this chapter. The author-
24 ity shall make available to members of the public copies of the rules
25 and regulations adopted under this section. Within 45 days after adop-
26 tion, the chairman of the board shall submit a regulation adopted under
27 this section to the chairman of the Administrative Regulation Review
28 Committee under AS 24.20.400 - 24.20.460. The legislature may annul or
29 temporarily suspend a regulation adopted by the authority.

1 (b) The board shall adopt rules and regulations to govern its pro-
2 cedures and to carry out the purposes of this chapter. Within 90 days
3 after its first meeting the board shall adopt rules establishing a pro-
4 cedure for giving advance public notice and an opportunity for the public
5 to comment on proposed regulations of the authority that, in the deter-
6 mination of the board, will have a substantial impact on the public or
7 be used in the authority's dealings with a significant segment of the
8 public. The rules shall also provide for the adoption of emergency
9 regulations without public notice and comment when the immediate adoption
10 or repeal of a regulation is necessary to continue or reinstate the
11 orderly operation of the authority's facilities or programs. However,
12 emergency regulations may not remain in effect more than 120 days unless
13 during that period the board complies with the public notice and comment
14 procedure required for regulations that are not of an emergency nature.

15 (c) The rules adopted under (b) of this section establishing a
16 regulation-making procedure and all rules or regulations relating to
17 procurement of property by the authority, conflicts of interest, dis-
18 closure of information in the possession of the authority, or the regula-
19 tion of persons outside the authority through the exercise of police
20 power shall be submitted to the attorney general for review and approval
21 before becoming effective. The attorney general shall respond to the
22 authority within 60 days after receipt of the rules or regulations
23 either approving them as consistent with or disapproving them as in
24 conflict with the Alaska Statutes and the Constitution of the State of
25 Alaska. A disapproval of rules or regulations must be accompanied by a
26 memorandum of law explaining the conflict with existing law and a recom-
27 mendation for revisions to cure the defect. Rules or regulations sub-
28 mitted to the attorney general are considered approved if the attorney
29 general fails to approve or disapprove the rules or regulations, as pro-

1 vided in this subsection, within 60 days after receipt.

2 (d) A regulation is not subject to the procedures in (b) of this
3 section if it is one that

4 (1) relates to the use of public works, including terminal
5 areas, industrial reserves, rights-of-way and streets, under the juris-
6 diction of the authority if the effect of the regulation is indicated to
7 the public by means of signs or signals;

8 (2) is directed to a specifically named person or to a group
9 of persons and does not apply generally throughout the state;

10 (3) concerns service schedules of the railroad; or

11 (4) relates to specific tariffs, divisions, and contract rate
12 agreements.

13 (e) The authority is an agency of the state for purposes of juris-
14 dictional determinations and judicial review of the authority's action.

15 Sec. 42.40.240. PUBLIC DISCLOSURE OF INFORMATION. (a) Except as
16 provided by rule or regulation of the authority under this section,
17 facts and information in the possession of the authority are public and
18 communications, reports, files, books, accounts, and papers of every
19 nature in its possession are open to public inspection at reasonable
20 times.

21 (b) The authority may by rule or regulation designate and withhold
22 disclosure of matters of a nonpublic, privileged, or proprietary nature.
23 Those matters include but are not limited to personnel records, communi-
24 cations with and work product of counsel and, consistent with the stan-
25 dards and practices of the United States Interstate Commerce Commission
26 for the protection of these matters, other information including but not
27 limited to proprietary information associated with specific shippers,
28 divisions, and contract rate agreements.

29 (c) A person may make written objections to the public disclosure

1 of information contained in an application, report, or document filed
2 with the authority, stating the grounds for the objection. When an
3 objection is made, the board may order the information withheld from
4 public disclosure if the information

5 (1) would adversely affect the interest of that person and is
6 not required in the interest of the public; or

7 (2) may be protected from disclosure consistent with the
8 standards and practices of the United States Interstate Commerce Commis-
9 sion including but not limited to proprietary information associated
10 with specific shippers, divisions and contract rate agreements.

11 ARTICLE 3. POWERS AND DUTIES.

12 Sec. 42.40.300. GENERAL POWERS. The authority may

13 (1) adopt a seal;

14 (2) adopt rules and regulations;

15 (3) sue and be sued;

16 (4) appoint officers, employees, trustees, and agents, and
17 prescribe their powers and duties;

18 (5) hire legal counsel to represent the authority;

19 (6) make contracts and execute instruments necessary or
20 convenient in the exercise of its powers and duties;

21 (7) acquire by purchase, lease, bequest, devise, gift, ex-
22 change, the satisfaction of debts, the foreclosure of mortgages, or
23 otherwise, real or personal property, rights, rights-of-way, franchises,
24 easements, and other interests in land, including land lying under water
25 and appropriation of water rights that are located in the state, taking
26 title to the property in the name of the authority;

27 (8) acquire property by eminent domain or by declaration of
28 taking;

29 (9) hold, maintain, use, operate, lease, exchange, donate,

1 improve, convey, alienate, dispose of, mortgage, encumber, and otherwise
2 grant security interests in or transfer any real or personal property
3 including without limitation facilities and equipment;

4 (10) borrow money and issue its bonds or notes and provide for
5 and secure their payment, provide for the rights of their holders and
6 purchase, hold, or dispose of its bonds or notes;

7 (11) secure the payment of its obligations by pledge or mort-
8 gage or other lien on its contracts, revenues, income, or property;

9 (12) contract with and accept transfers, gifts, grants or
10 loans of funds or property from the United States, the state, and its
11 political subdivisions, subject to the provisions of federal, state, or
12 local programs;

13 (13) acquire, hold and dispose of stocks, memberships, con-
14 tracts, bonds, general or limited partnership interests or other inter-
15 ests in another corporation, association, partnership, joint venture or
16 other legal entity, and exercise the powers or rights in connection with
17 these interests which are provided in contracts or agreements and that
18 are allowed by law concerning the satisfaction of debts;

19 (14) undertake or provide for the management, operation,
20 maintenance, use, and control of all of the properties of the Alaska
21 Railroad including without limitation, the tracks, equipment and other
22 property transferred to it by the federal government or by any person;

23 (15) undertake or provide for the acquisition, construction,
24 maintenance, equipping, and operation of connecting, switching, term-
25 inal, or other railroads and railroad facilities in the state;

26 (16) recommend to the legislature and the governor any tax,
27 financing, or security measure the authority considers appropriate for
28 maximizing the public interest in the operation of the railroad;

29 (17) lend its funds, property, credit or services for author-

1 ity purposes;

2 (18) consent to the modification of the rate of interest, time
3 of payment of an installment of principal or interest, or other term of
4 a loan, contract, or agreement to which the authority is a party;

5 (19) include in any borrowing the amounts necessary to estab-
6 lish reasonable reserves and pay financing charges and interest on the
7 obligations for a reasonable period after which the authority estimates
8 funds will be otherwise available to pay the interest, consultant,
9 advisory, and legal fees, and other expenses necessary or incident to
10 borrowing;

11 (20) maintain offices and facilities at places it designates;

12 (21) purchase the authority's bonds at a price not more than
13 the principal amount of them plus interest;

14 (22) cancel bonds purchased under (21) of this section;

15 (23) apply to the appropriate agencies of the state, the
16 United States, and to a foreign country and other proper agencies for
17 the permits, licenses, or approvals necessary to construct, maintain,
18 and operate transportation services, and to obtain, hold, and reuse the
19 licenses and permits in the same manner as other operating units or
20 persons;

21 (24) prescribe rates to be charged for services provided by
22 the Alaska Railroad;

23 (25) determine the routes, schedules, and types of service to
24 be provided by the Alaska Railroad;

25 (26) enter into contracts, leases, and other agreements with
26 connecting carriers, shippers, and other persons concerning the ser-
27 vices, activities, operations, properties and facilities of the rail-
28 road, including contracts, leases and other agreements that contain
29 provisions intended to preserve and expand the railroad's traffic base;

1 (27) plan for and undertake expansion of the railroad and
2 railroad activities, including extension of the Alaska Railroad's rail
3 system and acquisition and operation of other modes of transportation
4 service connecting to the railroad's rail service;

5 (28) adopt regulations having the force of law that are de-
6 signed to safeguard property owned, managed, or transported by the
7 authority, to protect employees and persons using the authority's prop-
8 erty or services, and to promote safe, healthy, secure, and effective
9 railroad operations;

10 (29) maintain a security force to enforce state law and the
11 authority's regulations;

12 (30) adopt rules and regulations having the force of law that
13 require designated classes of proprietary and personnel information and
14 communications to be confidential;

15 (31) hire and discharge railroad personnel and determine
16 benefits and other terms and conditions of employment established in
17 accordance with obligations that may be imposed by the federal transfer
18 legislation;

19 (32) assume and satisfy liabilities of the United States or
20 its agencies as provided by the federal transfer legislation and the
21 closing report, or its substantive equivalent, as accepted by the legis-
22 lature; and

23 (33) do all things necessary, convenient or desirable to carry
24 out the powers and duties expressly granted or necessarily implied in
25 this chapter or under other laws of the state or the laws and regula-
26 tions of the federal government.

27 Sec. 42.40.310. ANNUAL REPORT. The board shall direct preparation
28 of, certify and distribute to the governor and to each member of the
29 legislature by February 1 of each year a report generally describing the

1 operations and financial condition of the authority. The board may
2 include in the report suggestions for legislation relating to the struc-
3 ture, powers, or duties of the authority or relating to the operation of
4 facilities of the authority.

5 Sec. 42.40.320. ANNUAL AUDIT. The board shall have the financial
6 records of the authority audited annually by an independent certified
7 public accountant experienced in railroad accounting. The authority
8 shall, at all times during normal business hours and as often as the
9 governor's auditor or the legislative audit division considers neces-
10 sary, make available to an auditor appointed by the governor or to the
11 legislative audit division for examination all of its financial records,
12 and shall permit the auditor appointed by the governor or the legislative
13 audit division to audit, examine and make excerpts or transcripts from
14 the records, and to make audits of all contracts, invoices, materials,
15 payrolls, records of personnel, conditions of employment, provision of
16 services and the rates at which the services are provided and other
17 relevant data; disclosure of this information is subject to AS 42.40.240
18 and rules and regulations implementing that section.

19 Sec. 42.40.325. LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT PLANS.

20 (a) The authority shall prepare and the board shall adopt a long-range
21 program plan and a capital improvement plan in accordance with sec. 10
22 of this Act.

23 (b) The long-range program plan must delineate the manner in which
24 the authority intends to accomplish the purposes of and fulfill its
25 responsibilities under this chapter during each of the five years after
26 the plan is adopted. The long-range program plan shall provide infor-
27 mation substantially consistent with the requirements of AS 37.07.050;
28 the format of the plan must be jointly determined by the authority, the
29 legislative audit division, and the division of budget and management,

1 Office of the Governor.

2 (c) The long-range capital improvement plan must present and
3 explain the authority's anticipated capital improvements for each of the
4 five years after the plan is adopted. The long-range capital improve-
5 ment plan must include the information required by AS 42.40.600(b)
6 together with any other information prescribed by the governor or the
7 legislative audit division.

8 (d) The authority shall annually revise and the board shall adopt
9 the plans required in this section.

10 (e) The authority shall provide copies of its plans to the gover-
11 nor and the leadership of the legislature.

12 (f) The governor and the legislative audit division may conduct an
13 annual performance and efficiency audit in accordance with sec. 10 of
14 this Act.

15 Sec. 42.40.330. USE OF AUTHORITY ASSETS. (a) The authority shall
16 apply all money, property, other assets, and credit of the authority
17 toward activities authorized by this chapter. The authority may not
18 issue shares of stock, pay dividends, make private distribution of
19 assets, make loans to board members or employees, or engage in business
20 for private benefit. The use of authority money, property, other assets,
21 or credit for purposes not authorized by law by persons having the
22 possession or control of it is prohibited.

23 (b) Notwithstanding the provisions of this section, the authority
24 may

25 (1) assist board members and employees as members of a general
26 class of persons to be assisted by an activity to the same extent as
27 other members of the class and as long as no special privileges or
28 treatment accrues to the member or employee by reason of his status or
29 position in the authority;

1 (2) return to board members and employees fees, dues, or
2 service charges originally contributed by them and surplus to the pur-
3 poses for which collected;

4 (3) defend and indemnify a current or former employee, agent,
5 or board member of the authority and their successors against all costs,
6 expenses, judgments, and liabilities, including attorney fees, reasonably
7 incurred by or imposed upon him in connection with a civil or criminal
8 action in which he is involved because of his affiliation with the
9 authority, if he was acting in good faith on behalf of the authority and
10 within the scope of his duties or powers; and

11 (4) purchase insurance to protect and hold personally harm-
12 less its employees, agents, and board members from an action, claim, or
13 proceeding instituted against these individuals arising out of the
14 performance, purported performance, or failure of performance, in good
15 faith, of duties for, or employment with, the authority and to hold
16 these individuals harmless from expenses connected with the defense,
17 settlement, or monetary judgments from that action, claim, or proceed-
18 ing; the purchase of insurance and its policy limits are discretionary
19 with the board and insurance is not considered to be compensation to the
20 insured individual.

21 ARTICLE 4. RAIL PROPERTIES.

22 Sec. 42.40.400. RAIL PROPERTIES. (a) The authority shall receive
23 from the United States and, in its own name, take title to all rail
24 properties transferred under the federal transfer legislation. All land
25 among the rail properties so transferred or otherwise acquired by the
26 authority is subject to AS 38.95.010 and is not subject to classifi-
27 cation, control or disposal under AS 38 or other state law, except as
28 otherwise specifically provided in this chapter.

29 (b) Within 120 days after transfer of the rail properties, the

1 authority shall convey to the state the subsurface estate of and the
2 mineral rights in the land among the rail properties. The conveyance
3 shall be made by one or more quitclaim deeds executed by the chief execu-
4 tive officer and delivered to the commissioner of natural resources. The
5 authority may reserve in each quitclaim deed the right to extract and use
6 for the authority's purposes sand, gravel, other construction materials,
7 and, in accordance with AS 42.40.410(g), coal on the subject land. The
8 interest retained by the authority after conveyance to the state under
9 this subsection entitles it to exclusive use and control of the surface,
10 complete subjacent and lateral support of the surface, and the right to
11 tunnel, ditch, recontour, excavate and otherwise use the subsurface for
12 railroad, transportation, transmission, and related purposes.

13 (c) The authority may litigate, compromise, and otherwise settle
14 claims related to the transfer of rail properties from the United States
15 and to recover for breach of warranties made or other obligations assumed
16 by the United States or other party in relation to the transfer or
17 status of the rail properties.

18 (d) The authority may submit applications on its own behalf as an
19 instrumentality of the state for acquisition of interests in federal
20 land available under federal law that will enhance the operations of the
21 authority and may receive conveyances of all interests in its own name.

22 (e) The authority, as an agency of the state, may acquire in its
23 own name from the United States under the Surplus Property Act (50 App.
24 U.S.C. 1622 et seq.), the Federal Property and Administrative Services
25 Act of 1949 as amended (40 U.S.C. 471 et seq.), or other law, property
26 under the control of a federal department or agency that is useful for
27 the authority's purposes and may acquire from the Department of Admin-
28 istration property of the state made available under AS 44.71.010 -
29 44.71.040.

1 (f) Before disposing of an interest in real property, other than a
2 leasehold, a utility or access easement, or a land use permit, to a party
3 other than the state, the authority shall give public notice of the dis-
4 position in two newspapers of general circulation. The authority shall
5 make copies of the notice available to the public at its administrative
6 office, and mail copies of the notice to the commissioner of natural
7 resources, the governor, and the leadership of the legislature.

8 Sec. 42.40.410. CLASSIFICATION, ACQUISITION, AND USE OF STATE LAND
9 FOR RAILROAD PURPOSES. (a) The board by resolution may identify land
10 owned by or subject to selection by the state, including tide and sub-
11 merged land, as necessary or useful for present or intended railroad
12 purposes. The resolution must include a statement of and justification
13 for the present or intended railroad use and the date when the use
14 should begin. Upon submission of the resolution and a request for
15 classification and conveyance to the commissioner of natural resources,
16 the commissioner may temporarily classify and reserve the land identi-
17 fied in the request for railroad purposes and may temporarily vacate a
18 classification allowing disposal or lease of that land under laws or
19 programs of the state. A temporary classification and vacation is
20 subject to valid existing rights.

21 (b) Within 180 days after receiving the request, the commissioner
22 of natural resources by departmental order shall

23 (1) permanently classify the surface estate of that land for
24 railroad purposes and, subject to valid existing rights, convey the
25 state's interests in and to the surface estate of the land to the autho-
26 rity;

27 (2) deny the classification and conveyance as not in the best
28 interest of the state; or

29 (3) approve in part and deny in part the request for classi-

1 fication under this section.

2 (c) In the absence of a reservation to the contrary, a conveyance
3 under (b) of this section vests in the authority the exclusive right to
4 extract and use for its purposes sand, gravel, other construction mater-
5 ials, and, in accordance with (g) of this section, coal on the land con-
6 veyed without regard to the classification of the resources as part of
7 the surface or subsurface estate.

8 (d) The authority and the commissioner of natural resources may
9 agree to joint management of railroad land and to conditions for classi-
10 fication of railroad land. The authority and the commissioner of natural
11 resources may agree to periodic joint review of state land to determine
12 suitability for railroad purposes and periodic joint review of the
13 status of railroad land to determine the necessity for continued owner-
14 ship by the authority. The authority may reconvey to the state land
15 that the authority and the commissioner of natural resources jointly
16 identify as unnecessary or unsuitable for the authority's purposes.

17 (e) The authority's ownership of a surface interest in state land
18 entitles it to exclusive use and control of the surface, complete sub-
19 jacent and lateral support of the surface, and the right to tunnel,
20 ditch, recontour, excavate or otherwise use the subsurface for railroad,
21 transportation, transmission, and related purposes.

22 (f) When physical conditions require that track or other right-of-
23 way fixtures of the authority be moved from the existing location and
24 relocated on state-owned land adjacent to or in the vicinity of the
25 existing right-of-way, and the chief executive officer determines that
26 relocation is necessary to maintain safe and adequate rail operations,
27 the authority may effect the relocation after notice to the Department
28 of Natural Resources. The relocation must be limited to land adequate
29 to restore or continue safe rail operations at a normal level. Within

1 45 days after a relocation under this subsection, the authority shall
2 request classification and conveyance of the land for railroad purposes
3 in accordance with (a) of this section.

4 (g) Before the authority extracts coal on lands in which it owns
5 an interest, as authorized by AS 42.40.400(b) and (c) of this section,
6 it shall submit a request for authorization to do so to the Department
7 of Natural Resources. Within 45 days after receiving the request, the
8 Department of Natural Resources shall approve the request if it deter-
9 mines that the coal to be extracted is located on lands in which the
10 authority owns an interest and is not subject to existing rights of a
11 third party. The state holds title to all coal on lands in which the
12 authority owns an interest until the coal is extracted from the land by
13 the authority under this subsection or otherwise disposed of in accor-
14 dance with AS 38.05.150 and AS 42.40.415. The authority may use coal
15 made available to it under this chapter for operational, non-income
16 producing purposes only, including the generation of power to support
17 operations and in-kind compensation to a person with whom the authority
18 contracts to extract coal.

19 Sec. 42.40.415. DEVELOPMENT OF OIL, GAS, MINERALS, AND GEOTHERMAL
20 RESOURCES ON AUTHORITY LAND. (a) The Department of Natural Resources,
21 in accordance with AS 38.05, may lease or otherwise develop oil, gas,
22 minerals, and geothermal resources located on land in which the author-
23 ity owns an interest, including a surface interest, only upon satisfac-
24 tion of the following conditions:

25 (1) the Department of Natural Resources submits to the author-
26 ity a request for authorization identifying the interest to be developed
27 and describing with specificity the proposed plan for development of the
28 interest, potential negative effects the proposed development may have
29 on the authority's operations, and measures that will be used to avert

1 or mitigate the effects;

2 (2) the authority reviews the request for authorization and,
3 after considering potential negative effects and proposed mitigation
4 measures, determines that the plan of development presents no appreci-
5 able risk of interference with the operations of the authority;

6 (3) the Department of Natural Resources and the authority
7 agree upon a suitable requirement that the lessee or party other than
8 the state undertaking the development reimburse the authority from the
9 proceeds of the development for costs incurred by the authority and
10 materials lost by the authority as a result of the development; and

11 (4) the authority issues to the Department of Natural Re-
12 sources a written authorization to proceed with the plan for lease or
13 development; the authority may not unreasonably withhold its consent to
14 a request for authorization submitted by the Department of Natural
15 Resources under this section.

16 (b) The Department of Natural Resources shall require a party
17 other than the state exercising rights under this section to post a
18 surety bond in an amount sufficient to secure the authority against
19 potential detrimental effects of the activity undertaken.

20 (c) The Department of Natural Resources shall maintain an accurate
21 record of all income received by the state from the land in which the
22 authority has an interest and of the value of all subsurface estates con-
23 veyed by the authority to the state. The Department of Natural Resources
24 shall prepare a yearly summary of the income and subsurface value and sub-
25 mit it to the legislature and the authority before March 15 of each year.

26 (d) There is established in the state treasury the Alaska Railroad
27 income fund. All income received by the state from lands in which the
28 authority has an interest shall be deposited into the fund. The fund is
29 subject to appropriation by the legislature.

1 tion of the board, may issue bonds and bond anticipation notes to provide
2 money to carry out its purposes.

3 (b) The principal and interest on the bonds or notes of the autho-
4 rity are payable from money or assets of the authority. Bond anticipa-
5 tion notes may be payable from the proceeds of the sale of bonds or from
6 the proceeds of sale of other bond anticipation notes or, if bond or
7 bond anticipation note proceeds are not available, the notes may be paid
8 from other money or assets of the authority. Bonds or notes may be
9 additionally secured by a pledge of a grant or contribution or other
10 property from the federal government, the state or any of its political
11 subdivisions, or a corporation, association, institution, or person, or
12 a pledge of money, income, or revenues of the authority from any source.

13 (c) Bonds or bond anticipation notes may be issued in one or more
14 series and shall be dated, bear interest (fixed or variable) at the rate
15 or rates per year or within the maximum rate, be in the denomination, be
16 in the form, either coupon or registered, carry the conversion or regis-
17 tration provisions, have the rank of priority, be executed in the manner
18 and form, be payable from the sources in the medium of payment and place
19 or places inside or outside the state, be subject to authentication by a
20 trustee or fiscal agent, and be subject to the terms of redemption with
21 or without premium, as the resolution of the board may provide. Bond
22 anticipation notes mature at the time or times determined by the board.
23 Bonds mature at the time, not exceeding 50 years from their date,
24 determined by the board. Before the preparation of definitive bonds or
25 bond anticipation notes, the authority may issue interim receipts or
26 temporary bonds or bond anticipation notes, with or without coupons,
27 exchangeable for bonds or bond anticipation notes when these definitive
28 bonds or bond anticipation notes have been executed and are available
29 for delivery.

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

3 (e) If an officer whose signature or a facsimile of whose signa-
4 ture appears on bonds or notes or coupons attached to them ceases to be
5 an officer before the delivery of the bond, note, or coupon, his signa-
6 ture or facsimile is valid as if he had remained in office until deliv-
7 ery.

8 (f) Bond or bond anticipation note proceeds may not be dedicated to
9 activities other than those the board reasonably determines to be speci-
10 fically related to the purposes for which the instruments are issued.

11 (g) In a resolution of the board authorizing or relating to the is-
12 suance of bonds or bond anticipation notes, the board has power by provi-
13 sions in the resolution that will constitute covenants of the authority,
14 and contracts with the holders of the bonds or bond anticipation notes

15 (1) to pledge to a payment or purpose all or a part of its
16 revenues to which its right then exists or may later exist, and the
17 money derived from the revenues, and the proceeds of its bonds or notes;

18 (2) to covenant against pledging all or part of its revenues,
19 or against permitting or suffering a lien on the revenues or its prop-
20 erty;

21 (3) to covenant as to establishment of reserves or sinking
22 funds and the provision for and the regulation and disposition of the
23 reserves or sinking funds;

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

26 (5) to covenant as to bonds and notes to be issued, and their
27 limitations, terms and conditions, and as to the custody, application
28 and disposition of the proceeds of the bonds and notes;

29 (6) to covenant as to the issuance of additional bonds or

1 notes, or as to limitations on the issuance of additional bonds or
2 notes and the incurring of other debts;

3 (7) to covenant as to the payment of the principal of or
4 interest on the bonds or notes, as to the sources and methods of pay-
5 ment, as to the rank or priority of the bonds or notes with respect to
6 a lien or security, or as to the acceleration of the maturity of the
7 bonds or notes;

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

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

12 (10) to covenant as to the redemption of bonds or notes and
13 privileges of their exchange for other bonds or notes of the authority;

14 (11) to covenant to create or authorize the creation of
15 special funds of money to be held in pledge or otherwise for operating
16 expenses, payment or redemption of bonds or notes, reserves or other
17 purposes, and as to the use and disposition of the money held in the
18 funds;

19 (12) to establish the procedure, if any, by which the terms
20 of a contract or covenant with or for the benefit of the holders of
21 bonds or notes may be amended or abrogated, the amount of bonds or
22 notes the holders of which must consent to amendment or abrogation, and
23 the manner in which the consent may be given;

24 (13) to covenant as to the custody of its properties or
25 investments, their safekeeping and insurance, and the use and disposi-
26 tion of insurance money;

27 (14) to vest in a trustee or trustees inside or outside the
28 state property, rights, powers, and duties in trust as the authority
29 may determine, that may include any or all of the rights, powers, and

1 duties of a trustee appointed by the holders of bonds or notes of the
2 authority, and to limit or abrogate the rights of the holders of the
3 bonds or notes of the authority to appoint a trustee under this chapter
4 or limit the rights, powers, and duties of the trustee;

5 (15) to pay the costs or expenses incident to the enforcement
6 of the bonds or notes or of the provisions of the resolution or of a
7 covenant or agreement of the authority with the holders of its bonds or
8 notes;

9 (16) to agree with an authority trustee that may be a trust
10 company or bank having the powers of a trust company inside or outside
11 the state as to the pledging or assigning of revenues or funds in which
12 the authority has any rights or interest; the agreement may further
13 provide for other rights and remedies exercisable by the trustee as may
14 be proper for the protection of the holders of bonds or notes of the
15 authority and not otherwise in violation of law and may provide for the
16 restriction of the rights of an individual holder of bonds or notes of
17 the authority;

18 (17) to appoint and provide for the duties and obligations of
19 a paying agent or other fiduciary as the resolution may provide inside
20 or outside the state;

21 (18) to limit the rights of the holders of bonds or notes of
22 the authority to enforce a pledge or covenant securing the bonds or
23 notes; and

24 (19) to make covenants other than and in addition to the
25 covenants expressly authorized in this section, of like or different
26 character, and to make the covenants to do or refrain from doing the
27 acts and things as may be necessary, or convenient and desirable, in
28 order to better secure bonds or notes or which, in the absolute dis-
29 cretion of the board, will tend to make bonds or notes more

1 marketable, notwithstanding that the covenants, acts, or things may not
2 be enumerated in this section.

3 Sec. 42.40.510. INDEPENDENT FINANCIAL ADVISOR. In negotiating the
4 private sale of bonds or bond anticipation notes to an underwriter, the
5 board shall retain a financial advisor who is independent from the under-
6 writer.

7 Sec. 42.40.515. VALIDITY OF PLEDGE. The pledge of assets or
8 revenues of the authority to the payment of the principal or interest on
9 bonds or notes of the authority is valid and binding from the time the
10 pledge is made, and the assets or revenues are immediately subject to
11 the lien of the pledge without physical delivery or further act. The
12 lien of a pledge is valid and binding against all parties having claims
13 of any kind in tort, contract, or otherwise against the authority,
14 irrespective of whether those parties have notice of the lien of the
15 pledge. Nothing in this section prohibits the authority from selling
16 assets subject to a pledge, except that a sale may be restricted by the
17 trust agreement or resolution providing for the issuance of the bonds or
18 notes.

19 Sec. 42.40.520. REMEDIES. A holder of bonds or notes or of coupons
20 attached to them issued under this chapter, and a trustee under a trust
21 agreement or resolution authorizing the issuance of the bonds or notes,
22 except as restricted by a trust agreement or resolution, either at law
23 or in equity, may enforce all rights granted under this chapter or under
24 the trust agreement or resolution, or under any other contract executed
25 by the authority under this chapter, and may enforce and compel the
26 performance of all duties required by this chapter or by the trust
27 agreement or resolution to be performed by the authority or by its board
28 members or employees.

29 Sec. 42.40.525. NEGOTIABLE INSTRUMENTS. Bonds and notes and

1 interest coupons attached to them issued under this chapter are nego-
2 tiable instruments under the laws of this state, subject only to appli-
3 cable provisions for registration.

4 Sec. 42.40.530. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds
5 and notes issued under this chapter are securities in which all public
6 officers and public bodies of the state and its political subdivisions,
7 all insurance companies, trust companies, banking associations, invest-
8 ment companies, executors, administrators, trustees, and other fiduci-
9 aries may properly and legally invest money, including capital in their
10 control or belonging to them. These bonds and notes may be deposited
11 with a state or municipal officer of an agency or political subdivision
12 of the state for any purpose for which the deposit of bonds or notes of
13 the state is authorized by law.

14 Sec. 42.40.535. REFUNDING BONDS. (a) The authority may provide
15 for the issuance of refunding bonds for the purpose of refunding any
16 bonds then outstanding that have been issued under this chapter, in-
17 cluding the payment of any redemption premium on them and any interest
18 accrued or to accrue to the date of redemption of the bonds. The issu-
19 ance of the refunding bonds, the maturities and other details of them,
20 the rights of the holders of them, and the rights, duties, and obliga-
21 tions of the authority in respect to them are governed by the applicable
22 provisions of this chapter that relate to the issuance of bonds.

23 (b) Refunding bonds may be sold or exchanged for outstanding bonds
24 issued under this chapter and, if sold, the proceeds may be applied, in
25 addition to other authorized purposes, to the purchase, redemption, or
26 payment of the outstanding bonds. Pending the application of the pro-
27 ceeds of refunding bonds, with any other available money, to the payment
28 of the principal, accrued interest, and any redemption premium on the
29 bonds being refunded, and, if so provided or permitted in the resolution

1 authorizing the issuance of the refunding bonds or in the trust agree-
2 ment securing them, to the payment of any interest on the refunding
3 bonds and any expenses in connection with the refunding, the proceeds
4 may be invested in direct obligations of, or obligations the principal
5 of and the interest on which are unconditionally guaranteed by, the
6 United States of America, the State of Alaska, or other entities with
7 comparably rated credit that mature or that will be subject to redemp-
8 tion, at the option of the holders of them, not later than the respec-
9 tive dates when the proceeds, together with the interest accruing on
10 them, will be required for the purposes intended.

11 Sec. 42.40.540. CREDIT OF STATE NOT PLEDGED; REQUIRED DISCLAIMER.

12 Bonds and notes issued under this chapter do not constitute a debt,
13 liability, or obligation of the state or a pledge of the faith and
14 credit of the state or of a political subdivision of the state other
15 than the authority but are payable solely from the revenues or assets of
16 the authority. Each bond and note issued under this chapter must
17 contain on its face a statement that the authority is not obligated to
18 pay it nor the interest on it except from the revenues or assets pledged
19 for it and that neither the faith and credit nor the taxing power of the
20 state or of a political subdivision of the state other than the autho-
21 rity is pledged to the payment of the principal of or the interest on
22 the bond or note.

23 Sec. 42.40.545. NO PERSONAL LIABILITY. A board member or employee
24 of the authority is not subject to personal liability or accountability
25 because of his execution of bonds or notes or their issuance.

26 Sec. 42.40.550. REVENUES. Revenues generated by the authority do
27 not become part of the general fund of the state but are kept and
28 managed by the authority for purposes authorized by this chapter.

29 Sec. 42.40.555. INSURANCE. The authority shall keep in force

1 public liability insurance in an amount reasonably calculated to cover
2 potential claims for bodily injury, death or disability, and property
3 damage that may arise from or be related to its operations and activi-
4 ties, naming the state as an additional insured.

5 Sec. 42.40.560. SAFEGUARDING OF MONEY. The authority shall maxi-
6 mize revenues from and deposit all money in depositories acceptable to
7 the governor and otherwise safeguard the money under instructions as the
8 governor may from time to time issue.

9 Sec. 42.40.565. FIDELITY BOND. The authority shall obtain a
10 fidelity bond in an amount determined by the board for its members and
11 any official responsible for accounts and finances. A bond must be in
12 effect for the tenure in office of the bonded person.

13 Sec. 42.40.570. REVERSION OF ASSETS. If the authority ceases to
14 exist, for whatever reason, its assets revert to the state.

15 ARTICLE 6. STATE OVERSIGHT.

16 Sec. 42.40.600. STATE REVIEW. (a) The board shall notify the
17 governor and the leadership of the legislature before undertaking

18 (1) expansion, reduction, or diversification of services
19 provided by the railroad upon the date of transfer to the authority or
20 as provided under this chapter that the board determines would represent
21 a significant and permanent change in the level and nature of services
22 provided;

23 (2) extension of main or branch lines by more than 25 miles
24 or five percent of the railroad's total track mileage, whichever is
25 greater; or

26 (3) the issuance of securities, notes, bonds or contracts for
27 other borrowings with a term in excess of one year and in an amount
28 exceeding \$5,000,000.

29 (b) The notice required by (a) of this section must be in writing

1 and describe the proposed undertaking in detail, specifying

2 (1) its financial impact on the authority;

3 (2) its impact on the level and nature of services provided
4 by the authority;

5 (3) why the project is necessary or desirable to achieve the
6 purposes of this chapter; and

7 (4) whether and when the undertaking will be self-sustaining
8 financially.

9 (c) The notice required by (a) of this section shall be published
10 and given in the same manner as notice required under AS 42.40.060.

11 (d) Within 45 days after receipt of the notice required by (a) of
12 this section, the governor, in his sole discretion, may

13 (1) disapprove the proposed undertaking;

14 (2) suspend the proposed undertaking and direct that it not
15 be implemented until the legislature has reviewed it under (f) of this
16 section; or

17 (3) approve the proposed undertaking, in which case the
18 authority may proceed with the undertaking.

19 (e) A decision by the governor disapproving the proposed under-
20 taking under (d) of this section is binding on the authority, unless the
21 authority is directed by the legislature under AS 42.40.610 to proceed
22 with the proposed undertaking. If the governor suspends the proposed
23 undertaking under (d) of this section, he shall promptly transmit his
24 decision to the board and the leadership of the legislature in the form
25 of a recommendation that the legislature acquiesce in the proposed
26 undertaking or that the legislature reject the proposed undertaking.
27 The authority's proposed undertaking is considered approved if the
28 governor fails to act under (d) of this section within the prescribed
29 time.

1 (f) During a legislative session, within 60 days after receipt of
2 the governor's recommendation the legislature may, by law, reject the
3 proposed undertaking. The legislation is binding on the authority. The
4 proposed undertaking is considered approved if the legislature fails to
5 pass legislation rejecting it within the prescribed time.

6 (g) Notwithstanding the provisions of (a) - (f) of this section, a
7 proposed extension of main or branch lines by more than 50 percent of
8 the railroad's total track mileage and requiring the issuance of securi-
9 ties, notes, bonds, or contracts for other borrowings of an amount in
10 excess of \$50,000,000 or provision for the management and operation of
11 the railroad by a third-party contractor must be specifically authorized
12 by law.

13 (h) An undertaking described in (a) or (g) of this section is
14 considered approved or rejected for purposes of this section if

15 (1) the authority has been directed to act or refrain from
16 acting in accordance with AS 42.40.610; or

17 (2) the legislature by law has specifically approved the
18 undertaking by authorizing, appropriating financing for, or guaranteeing
19 the authority's borrowing for the proposed undertaking.

20 Sec. 42.40.610. ACTION-FORCING MECHANISM. (a) The governor or
21 the legislature, by resolution, may request that the authority exercise
22 or refrain from exercising its powers and authorities. Notice of a
23 request shall be given to the legislature by the governor and to the
24 governor by the legislature.

25 (b) To the greatest extent practicable within 30 days after
26 receipt of a request the board shall respond to both the governor and
27 the leadership of the legislature in writing specifying

28 (1) the manner in which it proposes to take the requested
29 action or any modification to the requested action sought by the author-

1 ity; or

2 (2) the specific reasons, financial, legal or otherwise, why
3 the board declines to take the requested action.

4 (c) At the request of the governor or on its own initiative, the
5 legislature by law may then direct the authority to take the requested
6 action or the legislature may act to cure the problem precluding the
7 authority from taking the requested action. If the authority is unable
8 to take the requested action for financial reasons, it is obligated to
9 do so, even if directed, only upon provision by the legislature of
10 sufficient money to plan and implement the action.

11 Sec. 42.40.615. INTERVENTION. (a) When authorized by law, the
12 governor as provided in the legislation shall intervene and exercise
13 such control over the authority as is necessary and appropriate to
14 correct a deficiency or to assure that the purposes of this chapter may
15 be reasonably accomplished, including directing affirmative action when

16 (1) the board has requested intervention by resolution;

17 (2) the authority has represented to the public or to credi-
18 tors that recourse may be had to the assets, property, or credit of the
19 state on account of acts or omissions of the authority, unless the
20 secondary or direct liability has been expressly assumed by the state;

21 (3) the authority has failed to file an annual report as
22 required by AS 42.40.310 within 120 days after receipt of formal notice
23 of the omission or has filed an annual report that is false or mislead-
24 ing on a material matter;

25 (4) a deadlock has occurred in the board, or the membership
26 of the board is insufficient to constitute a quorum for conduct of
27 affairs so that the authority is unable to conduct its operations or
28 perform its activities; or

29 (5) the assets of the authority have been or are committed to

1 be misapplied or wasted or illegally expended, or the authority has
2 committed or is about to commit a material violation of this chapter.

3 (b) The governor may take actions necessary to achieve the object
4 of the intervention stated in the legislation and make ancillary correc-
5 tions, and shall accomplish the purposes of the intervention as expedi-
6 tiously as reasonable. Board members and employees may not be dis-
7 placed nor the conduct of their duties impaired more than necessary to
8 accomplish the purposes of the intervention and the intervention must
9 cease as soon as the objective stated in the legislation and ancillary
10 corrections have been accomplished.

11 Sec. 42.40.620. TRUSTEESHIP. (a) When authorized by law, the
12 governor may petition the superior court of the State of Alaska for the
13 Third Judicial District at Anchorage to impose a trusteeship over the
14 authority and appoint the trustees if

15 (1) the board has requested imposition of the trusteeship by
16 resolution;

17 (2) the authority has become insolvent or otherwise unable to
18 carry out its contractual obligations to creditors and other persons;

19 (3) the authority has filed an annual report that is false or
20 deceptively misleading on a material matter;

21 (4) the authority has become incompetent or ineligible to
22 carry out the public purposes for which it was established;

23 (5) the authority has misused, abused, or continuously ex-
24 ceeded the power or authority conferred by this chapter or committed
25 repeated violations of this chapter;

26 (6) the assets of the authority have been or are committed to
27 be misapplied or wasted, or illegally expended, or a material violation
28 of this chapter has been committed or is about to be committed and the
29 governor has determined that intervention as provided in AS 42.40.615

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would not be feasible under the circumstances; or

(7) the credit-worthiness of the state has been directly or indirectly substantially impaired by actions of the authority.

(b) The trustees appointed by the superior court shall take reasonable actions necessary during the trusteeship to achieve its object. The trustees have the power and authority to reorganize the authority and amend its rules and regulations; suspend or remove board members and executive officials; manage the assets and affairs of the authority; and exercise all powers necessary or appropriate to fulfill outstanding agreements, to restore the capability of the authority to perform the functions and activities for which it was established, to reinstate its credit or credibility with its creditors or obligees or the credit of the state or its credibility with its creditors or obligees to the extent impaired by authority actions.

ARTICLE 7. MISCELLANEOUS PROVISIONS.

Sec. 42.40.700. PERSONNEL. (a) All personnel employed by the Alaska Railroad are personnel of the authority, and not of the state. The provisions of AS 39 do not apply to personnel employed by the authority.

(b) For the purposes of the Public Employment Relations Act (AS 23.40.070 - 23.40.260) the authority is considered a "public employer" within the meaning of that Act, except that AS 23.40.070(3) does not apply to the authority, and the authority's employees are classified as employees under AS 23.40.200(a)(1).

(c) The authority may not enter into any collective bargaining agreement concerning wages, hours, working conditions or other employment terms, conditions and benefits with any organization representing the authority's executive officials.

Sec. 42.40.710. POLITICAL ACTIVITIES. (a) Money, assets, or

1 property of the authority may not be used for partisan political activ-
2 ity or to further the election or defeat of a person seeking an elective
3 office. Money or a substantial part of the activities of the authority
4 may not be used for publicity or educational purposes designed to support
5 or defeat legislation pending before congress or the legislature.
6 However, board members and employees of the authority may communicate
7 with and appear before committees of congress or the legislature as well
8 as local legislative bodies in connection with financing and other
9 matters directly affecting the authority or its ability to carry out the
10 purposes for which it is established and respond to requests by members
11 of congress, the legislature, or local legislative bodies for informa-
12 tion, views, and testimony.

13 (b) A board member or employee who violates the provisions of this
14 section is personally subject to a civil penalty assessed by a judge of
15 the superior court in an amount not to exceed \$5,000. An action to
16 enforce this penalty may be brought by any person. A violation of this
17 chapter does not constitute a crime and assessment of the civil penalty
18 by a judge does not create any disability or legal disadvantage based on
19 conviction of a criminal offense.

20 Sec. 42.40.720. LICENSES AND PERMITS. Except as otherwise pro-
21 vided in this chapter, if the laws of a municipality, the state, or the
22 United States require a person to hold a license or permit to undertake
23 certain activities or perform an act, the authority, before under taking
24 the activity or performing the act, shall comply with the law to the
25 same extent the state is required to comply.

26 Sec. 42.40.730. UNAUTHORIZED REPRESENTATION. All persons who
27 assume to act for the authority without authority to do so are jointly
28 and severally liable for the debts and liabilities incurred.

29 Sec. 42.40.740. CLAIMS AGAINST THE AUTHORITY. (a) All claims and

1 lawsuits involving activities of the railroad, including without limita-
2 tion suits in contract, quasi-contract, or tort, shall be brought against
3 the authority, and not against the state.

4 (b) For the purposes of actionable claims, undertakings, payments
5 of judgments, execution, interest, punitive damages, statutes of limita-
6 tions, bonds, costs, and similar matters related to the presentation and
7 prosecution of claims by and against the authority, the authority and
8 its board members and employees enjoy the same rights, privileges, and
9 immunities as the state and state officers as provided in AS 09.10.120,
10 AS 09.50.250 - 09.50.290, AS 09.65.040, and other similar or related
11 statutes.

12 (c) Claims against the authority are not subject to the provisions
13 of AS 44.77.010 - 44.77.070 regarding claims against the state.

14 (d) The authority is not subject to the provisions of AS 44.80.-
15 010, regarding the state as a party to an action.

16 Sec. 42.40.755. EXEMPTION FROM TAXATION. (a) The real and per-
17 sonal property of the authority and its assets, income, and receipts are
18 declared to be the property of a political subdivision of the state and
19 devoted to an essential public and governmental function and purpose,
20 and the property, assets, income, and receipts are exempt from all taxes
21 and special assessments of the state or a political subdivision of the
22 state, including, without limitation, a borough, city, municipality,
23 school district, public utility district and other taxing unit. All
24 bonds of the authority are declared to be issued by a political sub-
25 division of the state and for an essential public and governmental
26 purpose and to be a public instrumentality and the bonds, and the
27 interest on them, the income from them and the transfer of the bonds,
28 and all assets, income, and receipts pledged to pay or secure the
29 payment of the bonds, or interest on them, are at all times exempt from

1 taxation by or under the authority of the state, except for inheritance
2 and estate taxes and taxes on transfers by or in contemplation of death.

3 (b) Nothing in this section affects or limits an exemption from
4 license fees, property taxes, or excise, income or other taxes, provided
5 under any other law, nor does it create a tax exemption with respect to
6 the interest of any business enterprise or other person, other than the
7 authority.

8 (c) For purposes of AS 14.17 relating to the computation of the
9 required local effort by a district as defined in AS 14.17.250(3),
10 property exempted from taxation by this chapter is considered taxable
11 real and personal property.

12 Sec. 42.40.770. PAYMENTS IN PLACE OF LOCAL REAL PROPERTY TAXATION
13 AND IMPACT AID. (a) To the extent feasible, without impairing the
14 authority's financial viability and consistent with sound business
15 principles, including but not limited to the operation of the railroad
16 on a self-sustaining basis, the need for capital accumulation, and
17 consistency with regulation by the United States Interstate Commerce
18 Commission, the authority may

19 (1) make voluntary payments to political subdivisions served
20 by the railroad or in which the authority has substantial land holdings
21 in place of local taxation of authority real property; and

22 (2) provide financial assistance to political subdivisions
23 and other local districts in the development of public education and
24 other facilities required to be developed as a result of expanded autho-
25 rity activities in the area.

26 (b) The board shall adopt regulations prescribing the conditions
27 under and the extent to which it will undertake to provide payments or
28 assistance, including, but not limited to

29 (1) the conditions cited in (a) of this section;

1 (2) the relative magnitude of the taxation effort deficit or
2 impact caused by authority activities in an area;

3 (3) the relative need among communities affected by authority
4 activities; and

5 (4) the present or anticipated benefits to the communities
6 attributable to authority activities.

7 ARTICLE 8. GENERAL PROVISIONS.

8 Sec. 42.40.870. ENFORCEMENT OF LAW AND AUTHORITY REGULATIONS BY
9 AUTHORITY SECURITY FORCE. Members of the security force maintained by
10 the authority under AS 42.40.300 may enforce state laws and regulations
11 adopted by the authority with respect to violations of the laws or
12 regulations that occur on or to property owned, managed or transported
13 by the authority. Members of the security force may exercise the same
14 enforcement powers granted by law to state law enforcement officers.

15 Sec. 42.40.880. PENALTY FOR VIOLATION OF DESIGNATED REGULATION.
16 A person who violates a regulation of the authority that has been desig-
17 nated by the authority as a regulation that is necessary to protect
18 life, health or property, is guilty of a class B misdemeanor.

19 Sec. 42.40.890. CONSTRUCTION. This chapter shall be liberally
20 construed to carry out its purposes.

21 Sec. 42.40.900. DEFINITIONS. In this chapter, unless the context
22 clearly indicates otherwise,

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

24 (2) "board" means the Board of Commissioners of the Alaska
25 Railroad Authority;

26 (3) "date of transfer" means the date on which the United
27 States Secretary of Transportation delivers the deed of conveyance for
28 the properties of the Alaska Railroad under the federal transfer legis-
29 lation;

1 (4) "employees" means all persons employed by the authority,
2 including executive officials;

3 (5) "executive officials" means the authority's chief execu-
4 tive officer, assistant chief executive officer, assistant to the chief
5 executive officer, chief of administration, superintendent of transpor-
6 tation, manager of marketing and sales, chief engineer, chief mechanical
7 officer, manager of industrial development and real estate, manager of
8 budget and accounting, manager of planning, manager of personnel,
9 manager of supply and procurement, chief of security, manager of operat-
10 ing rules, manager of data processing, or any employee of the authority
11 who fulfills these management functions under a different title or who
12 exercises a similar or comparable level of responsibility if so desig-
13 nated by the board;

14 (6) "federal transfer legislation" means that Act of Congress
15 authorizing transfer of the Alaska Railroad to the State of Alaska or
16 the authority;

17 (7) "immediate family" means

18 (A) spouse;

19 (B) dependent parent, parent-in-law, child, son-in-law,
20 or daughter-in-law; or

21 (C) a parent, parent-in-law, child, son-in-law, daugh-
22 ter-in-law, sibling, uncle, aunt, cousin, niece, or nephew residing
23 in the household of an officer or employee of the authority;

24 (8) "land" means all interests in real property, including
25 tide and submerged land;

26 (9) "leadership of the legislature" means the president of
27 the senate, the speaker of the house, the minority leaders of each
28 house, the chairmen of the senate and house transportation and finance
29 committees, the chairman of the legislative budget and audit committee

1 or jurisdictional successors or persons or offices designated by those
2 individuals;

3 (10) "rail properties" means all right, title, and interest of
4 the United States to real and personal property, tangible and intangible,
5 identified in the closing report prepared under the federal transfer
6 legislation and transferred to the authority under the legislation;

7 (11) "regulation" has the same meaning as under AS 44.62.640;

8 (12) "rules" means rules, standards, or written procedures
9 relating to the governance and internal management and affairs of the
10 authority or the board; rules may not be considered to be "regulations".

11 * Sec. 3. AS 09.55.310(a)(4) is amended to read:

12 (4) if the property sought to be condemned is for a railroad
13 other than one operated by the Alaska Railroad Authority, the cost of
14 good and sufficient fences along the line of the railroad, and the cost
15 of cattle guards where fences may cross the line of the railroad.

16 * Sec. 4. AS 09.55.350 is amended to read:

17 Sec. 09.55.350. TIME FOR PAYING COMPENSATION OR DAMAGES OR BOND TO
18 BUILD RAILROAD FENCES AND CATTLE GUARDS. The plaintiff shall, within 30
19 days after final judgment, pay the sum of money assessed. If the use is
20 for railroad purposes other than the purposes of the Alaska Railroad
21 Authority, the plaintiff may, at the time of or before the payment,
22 elect to build the fences and cattle guards. If he so elects, he shall
23 execute to the defendant a bond, with one or more sureties to be approved
24 by the court, in double the assessed cost of the same to build such
25 fences and cattle guards within eight months from the time the railroad
26 is built on the land taken. If the bond is given, the plaintiff need
27 not pay the cost of the fences and cattle guards. In an action on the
28 bond, the plaintiff may recover reasonable attorney fees.

29 * Sec. 5. AS 39.50.200(b) is amended by adding a new paragraph to read:

1 (46) members of the Board of Commissioners of the Alaska
2 Railroad Authority.

3 * Sec. 6. COMMENCEMENT OF LEGAL EXISTENCE OF ALASKA RAILROAD AUTHORITY.

4 The legal existence and authority of the Alaska Railroad Authority commences
5 upon appointment by the governor under AS 42.40.030 enacted in sec. 2 of this
6 Act of all members of the Board of Commissioners of the authority.

7 * Sec. 7. APPOINTMENT OF FIRST MEMBERS OF THE BOARD OF COMMISSIONERS.

8 (a) The governor shall designate the terms of the six public members of the
9 Board of Commissioners of the Alaska Railroad Authority first appointed under
10 AS 42.40.040. Of the six public members first appointed

11 (1) two shall serve a term of two years;

12 (2) one shall serve a term of three years;

13 (3) one shall serve a term of four years;

14 (4) two shall serve a term of five years.

15 (b) The governor may exercise the power of appointment under AS 42.-
16 40.030 only upon acceptance by the legislature by law of the closing report
17 or its substantive equivalent prepared and submitted under the federal trans-
18 fer legislation or upon approval by the legislature of operation of the
19 Federal Alaska Railroad by the authority.

20 * Sec. 8. CLOSING REPORT SUBMITTED UNDER FEDERAL TRANSFER LEGISLATION.

21 The closing report submitted under the federal transfer legislation must
22 include a statement of the assets and liabilities of the Alaska Railroad
23 proposed to be transferred to and assumed by the Alaska Railroad Authority or
24 the state which statement is as specific and definitive as practicable under
25 the federal transfer legislation. The legislature may accept or reject the
26 report and may not condition acceptance on its modification in any material
27 respect.

28 * Sec. 9. ASSETS AND LIABILITIES TO BE NOTED IN AUDIT. To the extent
29 practicable, for the five years following the date of transfer of the Alaska

1 Railroad to the state or the Alaska Railroad Authority the status of the
2 assets and liabilities specifically identified in the closing report sub-
3 mitted under the federal transfer legislation must be noted in the annual
4 audit.

5 * Sec. 10. INITIAL LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT PLANS. (a)
6 Within 18 months of the date of transfer of the Alaska Railroad to the state
7 or the Alaska Railroad Authority, the authority shall prepare and the Board
8 of Commissioners of the authority shall adopt a long-range program plan and a
9 capital improvement plan in accordance with AS 42.40.325.

10 (b) Beginning three years after the preparation of the long-range
11 program plan described in (a) of this section, the governor and the legisla-
12 tive audit division may conduct an annual performance and efficiency audit of
13 the authority's compliance with the plan.

14 * Sec. 11. PRE-EXISTING RULES, REGULATIONS AND ORDERS OF THE ALASKA
15 RAILROAD. The Board of Commissioners of the Alaska Railroad Authority, by
16 resolution, may continue in force for a period of not more than two years
17 after date of transfer all or part of the rules, regulations, and orders of
18 the Alaska Railroad which were in effect one day before the date of transfer
19 and are not inconsistent with this chapter or other state law. All authori-
20 ties continued in force under this section shall expire on the second
21 anniversary of the date of transfer. The Board of Commissioners may adopt in
22 its rules, regulations, and orders the substance of former federal authori-
23 ties relating to the Alaska Railroad. This adoption is not considered a
24 continuation of the federal authorities if made in compliance with the pro-
25 cedural requirements of this chapter and other applicable law.

26 * Sec. 12. COLLECTIVE BARGAINING AGREEMENT BETWEEN THE ALASKA RAILROAD
27 AUTHORITY AND EMPLOYEES. As soon as practicable after transfer of the
28 Alaska Railroad, the Alaska Railroad Authority and its employees shall
29 adopt collective bargaining agreements that continue the provisions of the

1 agreements in effect between the Alaska Railroad and its employees immediately
2 before transfer of the Alaska Railroad. The collective bargaining agreements
3 between the authority and its employees shall remain in effect until they
4 expire by their terms or, as required under the federal transfer legislation,
5 they are renegotiated, subject to the approval of the Board of Commissioners
6 of the Alaska Railroad Authority.

7 * Sec. 13. CONFLICTING LAWS INAPPLICABLE. If provisions of this Act are
8 in conflict with the provisions of other law, the provisions of this Act
9 prevail.

10 * Sec. 14. APPLICATION OF EXISTING STATUTES. (a) AS 19 does not apply
11 to the operations of the Alaska Railroad Authority.

12 (b) The Alaska Railroad Authority is considered a political subdivision
13 of the state for the purposes of AS 23.10.055.

14 (c) AS 23.10.420 does not apply to the operations of the Alaska Rail-
15 road Authority.

16 (d) AS 30.15 does not apply to the operations of the Alaska Railroad
17 Authority.

18 (e) AS Title 35 does not apply to the operation of the Alaska Railroad
19 Authority.

20 (f) The following provisions of AS 37 do not apply to the operations
21 and budgeting procedures of the Alaska Railroad Authority: AS 37.05; AS 37.-
22 07; AS 37.10.010 - 37.10.060, 37.10.085; AS 37.20; and AS 37.25.

23 (g) The Alaska Railroad Authority is not subject to the jurisdiction of
24 the Alaska Transportation Commission.

25 (h) No subsequently enacted statute shall be interpreted or construed
26 to apply to the Alaska Railroad Authority, the Alaska Railroad, or any of the
27 authority's activities unless it specifically so provides by its terms.

28 * Sec. 15. EFFECTIVE DATE. This Act takes effect upon acceptance by the
29 Alaska State Legislature of the closing report submitted under the federal

1 transfer legislation enacted by Congress authorizing transfer of the Alaska
2 Railroad to the State of Alaska or the Alaska Railroad Authority or upon
3 approval by the legislature of operation of the Federal Alaska Railroad by
4 the Alaska Railroad Authority.

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