

ALASKA LEGISLATURE COMMITTEE REPORTS

3184 ST SB 10 (FILE 2)

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should be structured as the permanent fund is structured, as a separate constitutional entity with corporate powers to conduct business independently, but with a political overview built into the structure so that the State of Alaska can implant on the Railroad the general desires of its people and can demand efficient businesslike service from Railroad personnel.

As we know, the permanent fund is part of our constitution and therefore to place the Railroad in the same posture, a vote of the public is required. This may be required at a later date, but for now it is my suggestion that a corporate structure as similar to the permanent fund as possible be devised.

The second type of structure available as an alternative is to make the Railroad a separate department of State Government under Article III, Sec. 22 of the State Constitution. The Constitution has set forth the availability of 20 departments of State Government. At present, there are 17 departments and I propose that the Railroad be the 18th. Certainly on the basis of importance to the destiny of this State, the Railroad should be afforded a separate place in State Government on a par with a number of other departments.

This structure would allow the Governor to appoint a Commissioner of the Railroad and the Commissioner would report directly to the Governor. The Legislature would have input in the budgetary process of the Railroad and all other State laws would apply. There would be no need to pass separate conflict of interest statutes, freedom of information statutes, administrative procedures acts or other phases of State laws merely to take care of the Railroad. It would certainly place the Railroad where it should be in importance to the State.

The third type of structure available is an independent corporation such as Commercial Fishing and Agriculture Bank (AS 44.81.010). The statute initially sets forth how the corporation should be structured and then allows the corporation the power to file its own articles of incorporation and its own bylaws with the State. This corporate framework would recognize that the Railroad is essentially a profit making organization, not a regulatory body, and the goals for this corporation should be one of enhancing the revenue producing aspects of the entity but allowing for governmental oversight. This method of corporate operation would seem to be an excellent matrix for the Railroad.

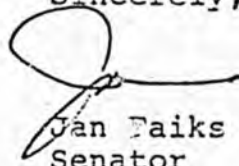
SB 212 had one solution, namely to place the Railroad under a division of State Government. This division, DOT/PF, is the same division that has presently more personnel, more jobs to do, and more problems than any other division in the State Government. It is the same division from which the Legislature has suggested an extrication of the ferry system.

By placing the Railroad under DOT/PF, I can almost guarantee an increase in confusion, an expansion of political involvement in

Railroad management, an enlarging of the problem of chain of command between the Governor and the Management of the Railroad, and a structure which overall will lead to much the same problems experienced by our ferry system over the years.

I look forward to further discussions with the committee on this very important issue.

Sincerely,

A handwritten signature in black ink, consisting of a large loop on the left and a horizontal line extending to the right, with a small flourish underneath.

Jan Paiks  
Senator

SENATE TRANSPORTATION COMMITTEE

Staff Analysis of SB 10

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September 30, 1983

# Alaska State Legislature

H. PAPPY MOSS, CHAIRMAN  
BETTYE FAHRENKAMP, VICE CHAIRMAN  
JAN FAIKS  
DON GILMAN  
JALMAR KERTTULA



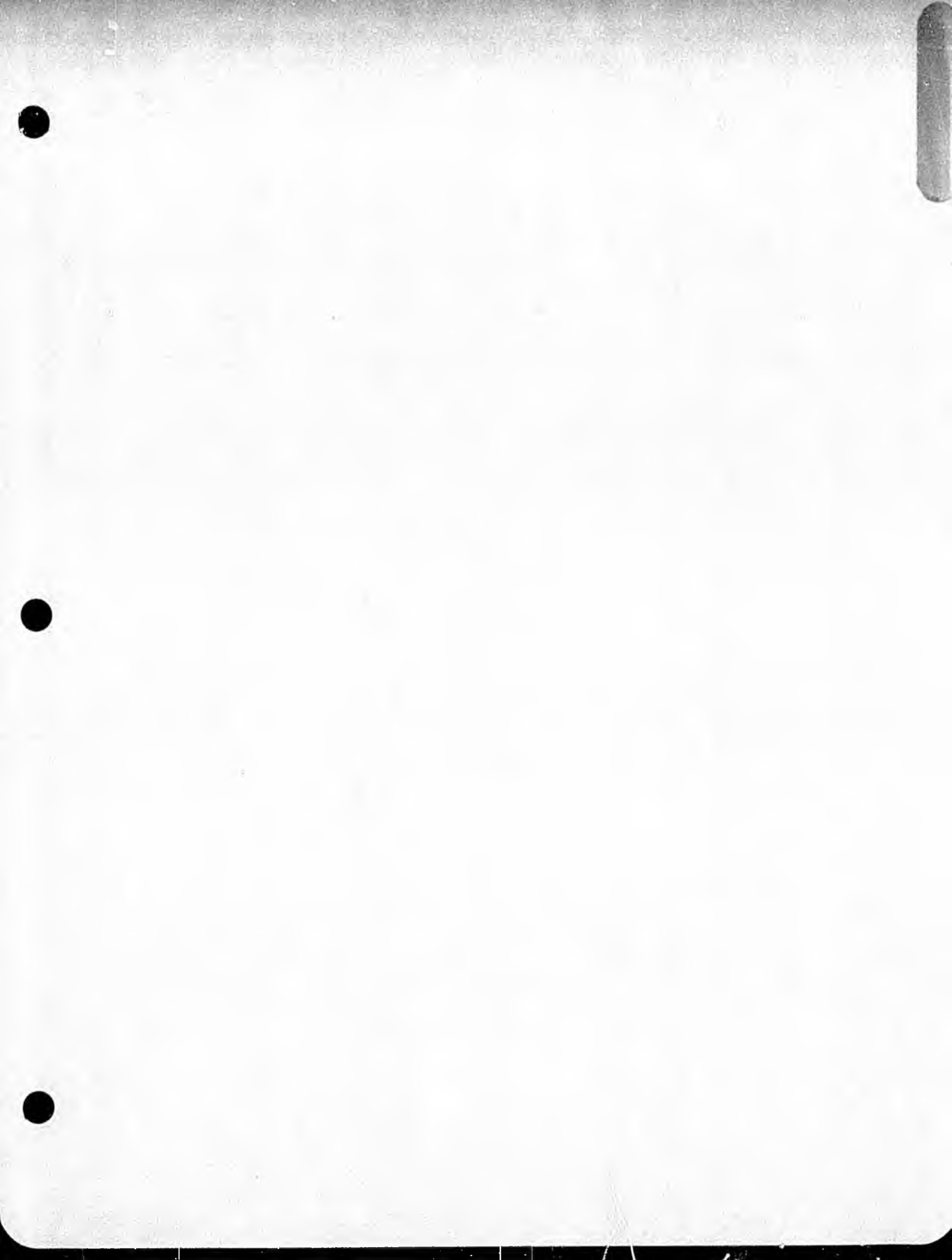
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## Senate Committee on Transportation

September 30, 1983

Attached please find a sectional analysis of SB 10 prepared by the Senate Transportation Committee Staff. Also enclosed are copies of important back-up documents which were instrumental in the development of SB 10. The section-by-section analysis is cross referenced to relevant portions of the originating memorandum. The cross references are indicated by brackets [ ] for your convenience.

The transcript of the December 15, 1982 meeting concerning SB 212 is enclosed because of the excellent discussion it provides concerning important provisions now also included in SB 10.



# Alaska State Legislature

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## Senate Committee on Transportation

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- IV. Appendix II. Excerpt from Statewide Rail Systems study for the State of Alaska, Department of Transportation and Public Facilities, Planning and Programming Division, December, 1980, prepared by Bivens & Associates, Inc.
- V. Appendix III. Transcript of the Alaska Railroad Transfer Advisory Commission, December 15, 1982, concerning Authority legislation.



September 30, 1983

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SENATE TRANSPORTATION COMMITTEE  
SECTION BY SECTION ANALYSIS  
of  
SENATE BILL NO. 10  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

Section 1. LEGISLATIVE FINDINGS, POLICY, AND DECLARATIONS.

Contains a statement of legislative findings regarding the status of the Alaska Railroad, a statement of state policy concerning the ownership of the Alaska Railroad and a statement of declarations regarding the management and fiscal responsibility of the railroad after state acquisition. The value of this section is to establish the legislature's expectations with respect to the Authority and how it will operate. In addition, some findings are required by the constitution while others may strengthen the ability of the Authority to obtain tax-exempt bonding.

CHAPTER 40. ALASKA RAILROAD AUTHORITY.  
ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

Sec. 42.40.010. ESTABLISHMENT OF AUTHORITY.

Establishes the Alaska Railroad Authority. To comply with Art.III, Sec.22, of the constitution, see page 32-38, VIII. CONSTITUTIONAL LIMITATIONS, the Authority is established as an instrumentality of the State by placing it within the Department of Transportation and Public Facilities but with legal existence independent of and separate from the state. [See page 6-7, Appendix I, II. I.C.C. JURISDICTION]

Sec. 42.40.020. LIMITATION OF LIABILITY.

Clearly states that the assets and liabilities of the Authority are exclusively its own and that creditors have no right to other state assets. [See page 5-6, Appendix I, I. STATE LIABILITY]

Sec. 42.40.030. BOARD OF COMMISSIONERS.

Sets out the membership of the Board of Directors, the method of appointment, and qualifications. There are seven voting members of the board including the Commissioner of DOT/PF. The public voting members are made up of at least four members from the geographic areas served by the

railroad and, if possible, one former railroad official from a railroad other than the Alaska Railroad.

There are two non-voting members of the board, the chief executive officer of the Authority and a labor representative who is appointed by the governor. All public members are appointed by the governor and confirmed by the legislature. [See page 20-21, Appendix I, V. INDEPENDENT AND EFFECTIVE RAILROAD MANAGEMENT]

Sec. 42.40.040. TERM OF OFFICE; VACANCIES.

Provides for staggered five year terms for all public board members and provisions for filling of vacancies.

Sec. 42.40.050. COMPENSATION AND EXPENSES.

Provides for a \$300 per day compensation for all public board members and per diem and travel expenses for all directors.

Sec. 42.40.060. QUORUM AND NOTICE OF MEETINGS.

Establishes the quorum for the Board of Commissioners and a required list of individuals and organizations to receive notice of a meeting. Members of the general public receive notice when it is requested.

Sec. 42.40.070. VOTING.

Sets out voting procedures and excludes proxy voting except where the proxy vote is for a specific topic.

Sec. 42.40.080. MANAGEMENT OF AUTHORITY.

This section provides for the appointment and compensation of the executive officers of the Authority by the board. The legal counsel is subject to a review of his or her competence by the governor. This section also provides for the management and the operation of the railroad by a third party subject to the approval of the governor whose decision is binding on the Authority unless the legislature acts to disapprove of the third party manager (See also Sec. 42.40.600). The board also has authority to appoint third party management assistants which are not subject to review of the governor or the legislature.

Sec. 42.40.090. DELEGATION.

Requires the board to delegate, within 180 days, certain of its powers necessary for the operation of the Authority to the chief executive officer or other officers, by formal rule.

ARTICLE 2. ADMINISTRATIVE PROVISIONS.

Sec. 42.40.200. CONFLICTS OF INTEREST.

Provides guidelines for determining a conflict of interest for a board member or an Authority employee. Generally, an employee or a board member may not participate in a decision making process where they, or their immediate family, gains more than the general public will gain unless their interest is remote. Remote is defined.

Sec. 42.40.210. PUBLIC BOARD MEETINGS.

With the exception of legally convened executive sessions, all board meeting must be open to the public.

Sec. 42.40.220. MINUTES OF MEETINGS.

Requires that minutes be kept of all public meetings and that copies of the minutes must be sent to the governor and the leadership of the legislature.

Sec. 42.40.230. ADMINISTRATIVE PROCEDURE.

This section removes the Authority from the requirement of the Administrative Procedure Act except that it must meet the requirements of holding open public meetings unless the meeting is a legally convened executive session of the Board of Commissioners. This makes the regulations promulgated by the Authority free from review by other state entities except in certain situations defined in section (c) where the Authority is required to submit proposed actions to the Attorney General for review and the Authority is required to submit its regulations 45 days after they are adopted to the Regulation Review Committee. Subsection (b) requires the Authority to adopt rules which will provide advance notice and opportunity for the public to comment on regulations that are likely to have a substantial impact on the public or which will be used by the Authority's dealings with a significant segment of the public. However, subsection (d) exempts certain specific subjects from the requirements of subsection (b). [See page 20-21, Appendix I, V. INDEPENDENT AND EFFECTIVE RAILROAD MANAGEMENT]

Sec. 42.40.240. PUBLIC DISCLOSURE OF INFORMATION.

Provides that information held by the Authority is public information except that the Authority may by rule or regulation designate and withhold disclosure of matters of a nonpublic, privileged, or proprietary nature.

ARTICLE 3. POWERS AND DUTIES

Sec. 42.40.300. GENERAL POWERS.

This section delineates the general powers conferred to the Authority to carry out duties, including obtaining state appropriations [see page 16-20, IV. STATE SUBSIDY, STATE CONTRACTS FOR RAILROAD SERVICE, AND STATE INVESTMENT IN RAILROAD CAPITAL IMPROVEMENTS], inherent in operating the railroad. The general powers include provisions associated with the powers of both government agencies and powers associated with corporate structures.

Sec. 42.40.310. ANNUAL REPORT.

Requires the board to prepare and submit for review by the governor and the legislature an annual report on the operations and financial condition of the Authority. The report may contain suggestions for revisions of the Authority or its operations.

Sec. 42.40.320. ANNUAL AUDIT.

Requires an annual audit by a certified auditor experienced in railroad accounting. The Authority is also required to make available its financial records for review by the governor or the legislature whenever necessary.

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

This section requires the Authority adopt both a five year operating and a five year capital plan be revised annually.

Sec. 42.40.330. USE OF AUTHORITY ASSETS.

This section restricts the use of the Authority's property or other assets to the the activities authorized by this Act. [See page 13, Appendix I, 3. Industrial Development Bond Prohibition]

ARTICLE 4. RAIL PROPERTIES.

Sec. 42.40.400. RAIL PROPERTIES.

This section gives the Authority clear authority to hold, transfer or legally litigate all rights to real property transferred as railroad property under federal transfer legislation, except that the subsurface estate and mineral rights must be transferred to DNR within 120 days of receipt. The Authority does, however, retain the right to use, for the purposes of the railroad, sand, gravel, and other construction material without further clearance, and coal if permission is granted by DNR and

it is used for non-income producing activity. The Authority may not obtain property by adverse possession or prescription. With certain exceptions, the Authority must give public notice when it intends to dispose of an interest in real property.

Sec. 42.40.410. CLASSIFICATION, ACQUISITION, AND USE OF STATE LAND FOR RAILROAD PURPOSES.

This section provides guidelines for the Authority to obtain land needed for its operations from the Department of Natural Resources.

Sec. 42.40.415. DEVELOPMENT OF OIL, GAS, MINERALS AND GEOTHERMAL RESOURCES ON AUTHORITY LAND.

Provides a mechanism whereby the Department of Natural Resources may lease or otherwise develop oil, gas, minerals and geothermal resources located on Authority lands. The conditions established by this section require consultation with the Authority regarding all negative impact the potential development may have and a joint agreement as to acceptable methods of mitigating the negative aspects of development. This section also creates an Alaska Railroad income fund into which all proceeds from development must go for later appropriation by the legislature. DNR is required to provide annual reports to the Legislature regarding income produced from the development of natural resources on Authority lands.

Sec. 42.40.420. LAND USE REGULATION.

This section give the Authority authorization to adopt regulation governing land use by private parties acquiring an interest in railroad property.

Sec. 42.40.430. EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND MATERIALS.

This section provides guidelines for acquisition by eminent domain. The Authority has full eminent domain powers but must relinquish all subsurface rights to the state. [See page 8-10, Appendix I, 1. Political Subdivision]

ARTICLE 5. FINANCIAL PROVISIONS.

Sec. 42.40.500. BONDS AND NOTES.<sup>1</sup>

Gives the Authority full bonding authority to issue bonds or bond anticipation notes to carry out its purpose. Money obtained by bonding must be used for the specific purpose for which it was issued. Bonds are .....

1. There are eight existing public corporations with bonding capability:
  - Alaska Gas Pipeline Financing Authority: A public corporation administratively located within the Department of Revenue but with a

not to exceed a 50 year maturity term. The board possess wide discretionary powers to enhance the marketability of bonds.

Sec. 42.40.510. INDEPENDENT FINANCIAL ADVISOR.

Requires the board to retain a financial advisor for negotiating private sale of bonds or notes independent from the underwriter.

.....  
legal existence separate from the State. It was created in 1978 for the purpose of financing the gas pipeline.

Alaska Commercial Fishing and Agriculture Bank: A public corporation administratively located within the Department of Commerce and Economic Development but with a legal existence separate from the State. It was created in 1978 for the purpose of loaning funds to commercial fishermen and farming industries.

Alaska State Housing Authority: A public corporation of the State authorized to: construct, operate and manage low income housing projects; finance rental housing projects; engage in urban renewal programs; and construct and acquire public buildings for lease to the State.

Alaska Municipal Bond Bank: A public corporation administratively located within the Department of Revenue but with a separate and independent legal existence. It was established in 1975 in order to loan funds for capital construction to cities and boroughs in the State.

Alaska Industrial Development Authority: A public corporation administratively located in the Department of Commerce and Economic Development but with a separate and independent legal existence. AIDA was created in 1980 as the successor to the Alaska State Development Authority. AIDA promotes economic development within the State by providing low interest loans to industrial and commercial projects.

Alaska Medical Facility Authority: A public authority administratively located in the Department of Revenue with a separate and independent legal existence. The Authority was created by the legislature in 1978 to finance construction and improvements to medical facilities in the State.

Alaska Housing Finance Corporation: A public corporation administratively located within the Department of Revenue but which has a separate and independent legal existence. AHFC was chartered in 1971 to provide financing for low- and moderate-income housing and housing located in remote, underdeveloped, or blighted areas of the State.

Alaska Power Authority: A public corporation of the State situated for administrative purposes in the Department of Commerce and Economic Development but with separate and independent legal existence. The APA was created to finance, construct, and operate power production and transmission facilities.

Sec. 42.40.515. VALIDITY OF PLEDGE.

This section establishes the validity of a pledge of assets or revenues for the sale of bonds. It also provides guidelines for the disposition of pledged assets if there are legal claims against the assets or if the pledged assets are subsequently sold.

Sec. 42.40.520. REMEDIES.

Establishes the right to legal recourse for any party at interest for transactions authorized by this Act either as a contractual agreement or a security agreement with the Authority.

Sec. 42.40.525. NEGOTIABLE INSTRUMENTS.

Subject to applicable state laws regarding proper registration, all bonds or notes authorized by this Chapter are negotiable interests.

Sec. 42.40.530. BONDS AND NOTES ELIGIBLE FOR INVESTMENT.

Investment in bonds or notes issued by the Authority by all state officials, public or private, is proper and does not constitute a conflict of interest.

Sec. 42.40.535. REFUNDING BONDS.

This section authorizes the sale of refunding bonds to pay back previously issued bonds.

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

Bonds or notes issued by the Authority are solely the liability of the Authority and do not constitute an obligation of the state. Words to this effect must appear on all bonds issued by the Authority.

Sec. 42.40.545. NO PERSONAL LIABILITY.

No officer or employee is personally liable for bonds issued by the Authority.

Sec. 42.40.550. REVENUES.

Revenues generated by the Authority are directly controlled by the Authority and not the State.

Sec. 42.40.550. INSURANCE.

Requires the Authority to carry reasonable insurance coverage naming the State as an additional insured.

Sec. 42.40.560. SAFEGUARDING OF MONEY.

The Authority is instructed to maximize revenue from deposited money which is to be deposited in depositories acceptable to the governor.

Sec. 42.40.565. FIDELITY BOND.

Requires the Authority to obtain a fidelity bond for all board members and officials.

Sec. 42.40.570. REVERSION OF ASSETS.

Assets of the Authority revert to the state if for any reason the Authority ceases to exist.

ARTICLE 6. STATE OVERSIGHT

Sec. 42.40.600. STATE REVIEW.

Requires the board to publish and give notice to the governor, leadership of the legislature, at least two newspapers of statewide circulation and members of the general public upon request, prior to undertaking a significant and permanent change in services or borrowing in excess of \$5 million for longer than a one year payback. The published report must detail the financial impact on the Authority, the impact on services, why the action is necessary or desirable, and whether the action is expected to support itself financially. The governor has 45 days to approve or disapprove or he may suspend and defer to the legislature for final disposition. In all cases the legislature has 60 days to enact legislation binding the Authority to either continue or cease the action. Extensions representing more than 50 percent of the railroad's total track mileage and requiring the issuance of securities in an amount greater than \$50 million requires specific authorization by the legislature. This section also requires state review of any proposal to contract management of the railroad to a third party (See Sec. 42.40.080). [See page 22-29, Appendix I, VI. STATE OVERSIGHT OF MAJOR FINANCIAL TRANSACTIONS AND POLICY DECISIONS]

Sec. 42.40.610. ACTION-FORCING MECHANISM.

Provides a mechanism for the governor or the legislature to either initiate or require cessation of Authority action by requiring a formal response outlining the Authority position. If they are compelled to initiate action, funding must be provided for both planning and implementation. [See page 29, Appendix I, Action Forcing Mechanism]

Sec. 42.40.615. INTERVENTION.

Under certain extreme circumstances, as delineated, this section provides that the governor may be directed by specific legislation to take control of the Authority to correct specific purposes of this Act. [See page 25-67, Appendix I, Financial Concerns]

Sec. 42.40.620. TRUSTEESHIP.

This section authorizes the governor to petition the Superior Court to appoint trustees when directed by legislation. The trusteeship would then possess unilateral powers enabling it to take whatever measures are necessary to restore the capability of the Authority to perform the functions and activities for which it was established.

ARTICLE 7. MISCELLANEOUS PROVISIONS

Sec. 42.40.700. PERSONNEL.

Employees of the Authority are not to be considered state employees but the Authority is considered a public employer under the Public Employment Relations Act except that the provisions for a merit system does not apply. The Authority's executive officials may not enter into a collective bargaining agreement with the Authority. [See page 30-31, Appendix I, VII. EMPLOYEE]

Sec. 42.40.710. POLITICAL ACTIVITIES.

Prohibits use of the Authority's resources for partisan political activities except where necessary to carry out the purposes of the Authority. Provides for civil liability for violation by individuals employed by the Authority.

Sec. 42.40.720. LICENSES AND PERMITS.

The Authority must comply with local, state, or federal licensing or permitting requirements to the same degree as the state must comply.

Sec. 42.40.730. UNAUTHORIZED REPRESENTATION.

Provides for personal liability for unauthorized persons acting on behalf of the Authority.

Sec. 42.40.740. CLAIMS AGAINST THE AUTHORITY.

The State may not be named a co-defendant in any railroad related claims against the Authority. Provisions for administrative appeal for claims against a state agency to the Department of Administration do not apply to the Authority.

Sec. 42.40.755. EXEMPTION FROM TAXATION.

Except for computing state aid to local school districts, the Authority's property and assets are considered the property of a political subdivision and are exempt from taxation. [See page 8-10, Appendix I, 1. Political Subdivision and page 38-41, Appendix I, 2. Financial Limitations - Article IX: Finance & Taxation]

Sec. 42.40.770. PAYMENTS IN PLACE OF LOCAL REAL PROPERTY TAXATION AND IMPACT AID.

The Authority may adopt regulations setting out criteria whereby it can give voluntary impact aid to local political subdivisions in lieu of real property taxes.

ARTICLE 8. GENERAL PROVISIONS

Sec. 42.40.870. ENFORCEMENT OF LAW AND AUTHORITY REGULATIONS BY AUTHORITY SECURITY FORCE.

Enforcement officers of the Authority may enforce regulations adopted by the Authority with the same authority as state law enforcement officers. [See page 8-10, Appendix I, 1. Political Subdivision]

Sec. 42.40.880. PENALTY FOR VIOLATION OF DESIGNATED REGULATION.

Violation of a regulation which is designated by the Authority as a regulation necessary to protect life, health or property is a Class B misdemeanor.

Sec. 42.40.890. CONSTRUCTION.

Provides for liberal interpretation of the provisions of this Chapter.

Sec. 42.40.900 DEFINITIONS.

Provides definitions for various delineated terms found in this Chapter.

Sec. 3. AS 09.55.310(a)(4).

Exempts the Alaska Railroad from paying for fences and cattle guards for property condemned by the Authority.

Sec. 4. AS 09.55.350.

Exempts the Alaska Railroad from the time limits provided for paying for railroad fences and cattle guards.

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

Deals with commencement of the Authority's legal existence, which occurs following appointment of all board members.

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

Details the term lengths for the first board members and gives the governor power to fill the positions to create the Authority after the legislature has acted to accept the transfer of the Alaska Railroad from the federal government.

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

Requires that the closing report submitted under federal legislation provide for all assets and liabilities to be transferred to the state which must be accepted in all material aspects by the state.

Sec. 9. ASSETS AND LIABILITIES TO BE NOTED IN AUDIT.

Requires that assets and liabilities identified by the closing report be noted in the annual audit for five years after transfer.

Sec. 10. INITIAL LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT PLANS.

Requires the preparation and adoption of a long range program and capital improvement plan 18 months after the transfer. Three years after the first long range plan an annual performance audit may be conducted.

Sec. 11. PRE-EXISTING RULES, REGULATIONS AND ORDERS OF THE ALASKA RAILROAD.

This section allows the Authority board to continue in effect the Alaska Railroad's existing rules, regulations and orders for a period not to exceed two years.

Sec. 12. COLLECTIVE BARGAINING AGREEMENT BETWEEN THE ALASKA RAILROAD AUTHORITY AND EMPLOYEES.

Requires the Authority to continue in effect the current collective bargaining agreements for a period of two years.

Sec. 13. CONFLICTING LAWS INAPPLICABLE.

Any laws which conflict with this Act are overruled by this Act.

Sec. 14. APPLICATION OF EXISTING STATUTES.

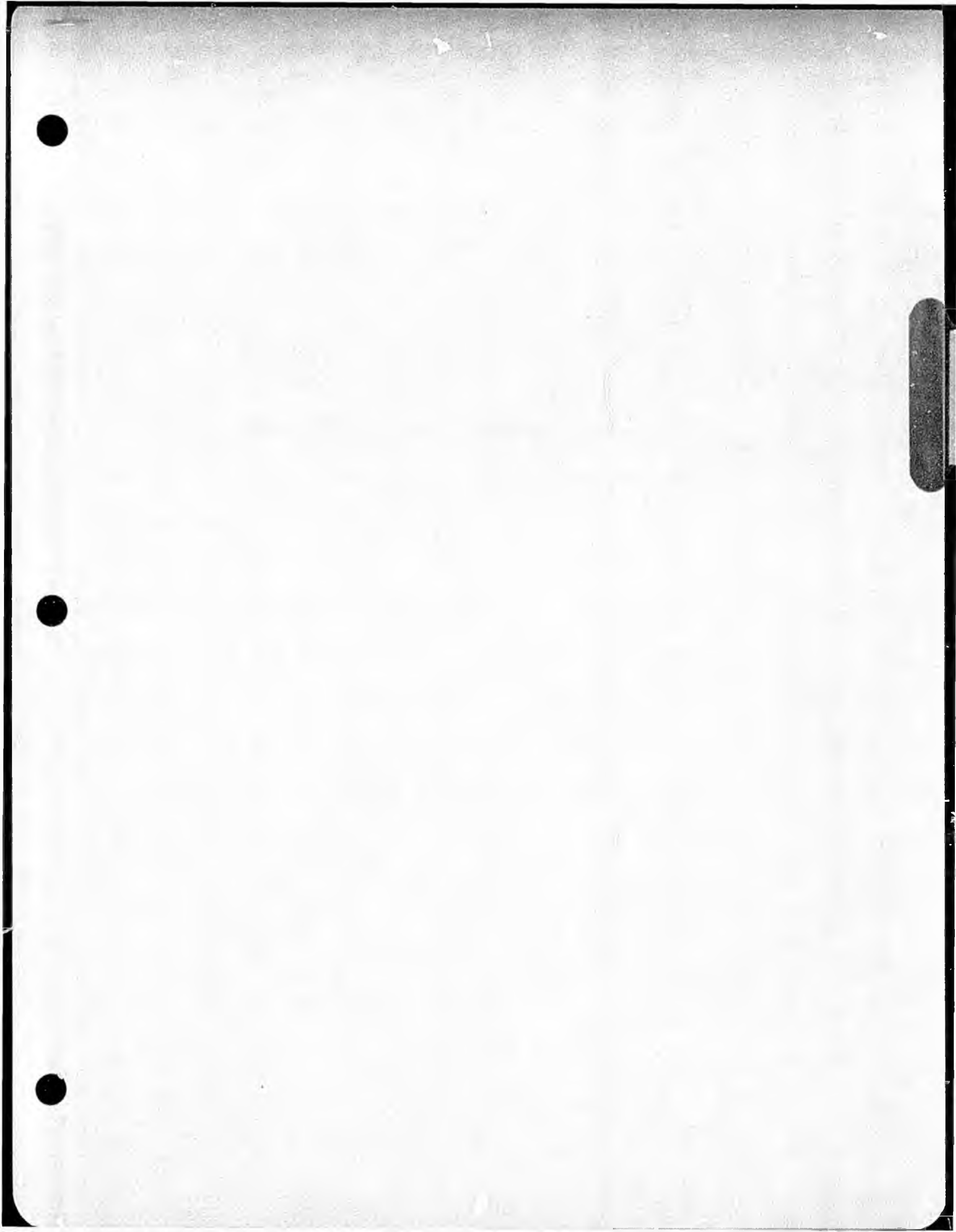
Deals with the application of existing statutes: for the purposes of state wage and hours the Authority is considered a political subdivision, the Authority is exempt from all regulations promulgated by DOT/PF concerning public buildings, works, and improvements, it is also exempt from the confines required to receive money for Port facilities construction. The following provisions of A.S. Title 37 do not apply to the Authority: The Fiscal Procedures Act, Executive Budget Act, and it is released from the prohibition forbidding lending from or for a corporation. In addition, the Department of Administration and the Department of Revenue do not have jurisdiction over the fiscal matters of the Authority. Moreover, the Authority may receive money directly from the federal government rather than through the governor's office. [See page 32-38, Appendix I, VIII. CONSTITUTIONAL LIMITATIONS and page 20-21, V. INDEPENDENT AND EFFECT RAILROAD MANAGEMENT]

Sec. 15. SUBSEQUENTLY ENACTED STATUTES.

Only subsequent statutes specifically stating its applicability to the Authority will be construed to apply to the Authority.

Sec. 16. EFFECTIVE DATE.

This Act takes effect upon acceptance of the transfer of the Alaska Railroad to the State of Alaska in whatever manner it is ratified by the legislature.



Introduced: 1/18/83  
Referred: Transportation  
and Finance

1 IN THE SENATE

BY KERTTULA

2

SENATE BILL NO. 10

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the Alaska Railroad; and provid-  
7 ing for an effective date."

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

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

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

14 (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  
17 the best interests of the citizens of the state;

18 (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;

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

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

28 (b) It is the policy of the state to

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

1 natural resources;

2 (2) foster and promote the long-term economic growth and devel-  
3 opment 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  
8 that 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  
13 the people of the state is necessary to accomplish the policy set out in  
14 (b) of this section by authorizing the creation of a public authority with  
15 the powers, duties, and functions as provided in this Act to operate the  
16 Alaska Railroad and to manage its rail, industrial, port and other proper-  
17 ties;

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

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

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

26 (C) with the ability to raise capital by issuing obliga-  
27 tions exempt from federal and state taxation;

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

1 (E) to provide the best possible combination of types and  
2 levels of safe, efficient, and economical transportation that is  
3 necessary to meet the overall needs of the state, supported when  
4 necessary by 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 financially 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  
16 granted to it by this Act; the legislature intends that the authority,  
17 consistent with sound business management practices, exercise its powers  
18 and duties as a public service on behalf of the state and recognize that  
19 the exercise of the powers and duties granted by this Act requires the  
20 authority to engage in the 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 estab-  
25 lished the Alaska Railroad Authority. The authority is a public  
26 corporation and, for purposes of art. III, sec. 22, Constitution of  
27 the State of Alaska, is an instrumentality of the state within the  
28 Department of Transportation and Public Facilities, but the authority  
29 has a legal existence independent of and separate from the state. The

1 exercise by the authority of the powers provided in this chapter is  
2 considered an essential governmental function of the state. The  
3 existence of the authority is perpetual.

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

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

27 (b) The public members of the board shall be confirmed by a  
28 majority of the membership of the legislature in joint session. A  
29 public member appointed by the governor, unless and until the member

1 has been rejected by the legislature, has the full powers and respon-  
2 sibilities of a confirmed board member.

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

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

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

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

14 (2) continued refusal or inability to attend meetings of  
15 the board;

16 (3) conviction of a misdemeanor involving moral turpitude  
17 or a felony; or

18 (4) any conduct that was intended to harm the authority  
19 whether or not it constituted a crime.

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

22 (b) A vacancy on the board is filled by appointment by the  
23 governor and the appointment must be confirmed by the legislature in  
24 joint session. A member selected to fill a vacancy holds office for  
25 the balance of the term for which the member's predecessor is appoint-  
26 ed.

27 (c) A vacancy on the board does not impair the authority of a  
28 quorum of members to exercise the powers and perform the duties of the  
29 board.

1 (d) A member whose term has expired shall serve until a succes-  
2 sor has been appointed.

3 Sec. 42.40.050. COMPENSATION AND EXPENSES. A public member of  
4 the board is entitled to compensation at the rate of \$300 for each day  
5 the member is engaged in actual performance of duties as a member of  
6 the board. The board shall provide by rule for compensation for  
7 partial days during which a member is engaged in the actual perfor-  
8 mance of duties. A member is entitled to per diem and travel expenses  
9 authorized by law for state boards and commissions under AS 39.20.180.

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

- 15 (1) each member of the board;
- 16 (2) the governor;
- 17 (3) the leadership of the legislature;
- 18 (4) at least two newspapers of statewide circulation; and
- 19 (5) members of the general public upon request.

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

28 Sec. 42.40.080. MANAGEMENT OF AUTHORITY. (a) Unless the board  
29 provides for management of the authority by a third-party contractor

1 under (b) of this section,

2 (1) the board shall appoint and fix compensation for the  
3 chief executive officer and legal counsel of the authority; the ap-  
4 pointment of legal counsel is subject to the approval, for competence,  
5 of the governor;

6 (2) the chief executive officer shall appoint and fix  
7 compensation for the other executive officials; the appointments and  
8 compensation are subject to board approval;

9 (3) officials appointed under (1) and (2) of this subsec-  
10 tion serve at the pleasure of the board;

11 (4) the chief executive officer may appoint and fix compen-  
12 sation for any additional personnel necessary to carry out the pur-  
13 poses of this chapter;

14 (5) except as may be required by federal law, no executive  
15 official of the authority may be compensated at a rate in excess of  
16 that established under AS 39.20.080 for the heads of principal execu-  
17 tive departments of the state.

18 (b) The board may provide for, in a manner consistent with the  
19 purposes of this chapter and subject to the approval of the state as  
20 provided in AS 42.40.600(g), the management and operation of the rail-  
21 road by a third-party contractor. Subject to the limitations in (a)  
22 of this section, the board may provide for appointment and compensa-  
23 tion of any executive official, including but not limited to those  
24 provided for in (a) of this section, necessary to augment the manage-  
25 ment and operation of the railroad by the third-party contractor.

26 Sec. 42.40.090. DELEGATION. (a) The board shall by rule dele-  
27 gate powers and duties necessary and appropriate for the management of  
28 the daily affairs and operations of the authority to the chief execu-  
29 tive officer, subject to any requirement of board concurrence or

1 authorization imposed by the rules.

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

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

10 (2) establishment of specific rates, tariffs, divisions and  
11 contract rate agreements;

12 (3) routine changes in service levels; and

13 (4) procurement.

14 (c) General or particular board authorization or concurrence is  
15 required for the following:

16 (1) transfer of the authority's entire interest in real  
17 property other than the execution of a release of a lien or satis-  
18 faction of a mortgage after payment has been received;

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

20 (3) mortgaging or pledging of authority assets;

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

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

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

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

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

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

5 (10) diversification and major expansion or reduction of  
6 services beyond those provided on the date of transfer or as provided  
7 under this chapter;

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

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

12 (13) selection of independent auditors and accountants.

13 ARTICLE 2. ADMINISTRATIVE PROVISIONS.

14 Sec. 42.40.200. CONFLICTS OF INTEREST. (a) Except as provided  
15 in this section, a board member or employee of the authority may not  
16 participate in a decision of the authority in which that person or a  
17 member of that person's immediate family has a direct or indirect  
18 financial interest unless the financial interest is a remote financial  
19 interest and participation is approved under (b) of this section. For  
20 purposes of this section, "participate in a decision" includes all  
21 discussions, deliberations, preliminary negotiations, and votes con-  
22 cerning a matter that is the subject of formal action by the board.

23 (b) A board member or employee may participate in a decision if  
24 that person or a member of that person's immediate family has only a  
25 remote interest and if the fact and extent of the interest is dis-  
26 closed to the board in a public meeting and is noted in the minutes of  
27 the board before any participation by the member or employee in the  
28 decision, and thereafter in a public meeting the board authorizes or  
29 approves the participation by a vote of its membership excluding the

1 interested member or employee. As used in this subsection, "remote  
2 interest" means

3 (1) that of a nonsalaried officer of a nonprofit corpora-  
4 tion;

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

9 (3) that of a landlord or tenant of a contracting party,  
10 except when the property subject to the lease or sublease is owned or  
11 managed by the authority;

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

14 (5) that of an owner of a savings and loan account or bank  
15 savings or share account or credit union deposit account if the inter-  
16 est represented by the account is less than two percent of the total  
17 deposits held by the institution; or

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

20 (c) A board member or employee is not considered to be finan-  
21 cially interested in a decision when the decision could not affect  
22 that person in a manner different from its effect on the public or  
23 community.

24 (d) An action, including the award of a contract, in which a  
25 board member or employee participates in violation of this section or  
26 AS 39.50.090 is void if the board member's vote or employee's partici-  
27 pation was necessary to the decision. If a board member votes or an  
28 employee participates in a decision in violation of this section or  
29 AS 39.50.090 and that vote or participation is not necessary to the

1 decision, the board may ratify the action after disclosure of the  
2 violation in a public meeting of the board and without participation  
3 by the interested member or employee in the decision to ratify. A  
4 board member or employee who violates a prohibition contained in this  
5 section or in AS 39.50 forfeits office upon a determination by the  
6 board in a public meeting that the violation was intentional.

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

9 (f) Within 120 days of the first meeting of the board, the board  
10 shall adopt and may subsequently amend rules and regulations imple-  
11 menting this section, providing additional conflict of interest and  
12 ethical rules and regulations as it considers appropriate, and provid-  
13 ing for the removal by the board of a board member or employee who  
14 intentionally violates a prohibition contained in this section or in  
15 AS 39.50.

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

19 (b) In addition to those subjects which may be discussed in  
20 executive session under AS 44.62.310, the board may consider in execu-  
21 tive session matters that pertain to personnel, the authority's legal  
22 position, land acquisition or disposal, or proprietary information, as  
23 defined in a manner consistent with the standards and practices of the  
24 United States Interstate Commerce Commission for protection of the  
25 information including but not limited to proprietary information  
26 associated with specific shippers, divisions, and contract rate agree-  
27 ments.

28 Sec. 42.40.220. MINUTES OF MEETINGS. The board shall keep  
29 minutes of each meeting and shall send a certified copy of the minutes

1 of the public portion of each meeting to the governor and the leader-  
2 ship of the legislature.

3 Sec. 42.40.230. ADMINISTRATIVE PROCEDURE. (a) Except for  
4 AS 44.62.310 regarding public meetings, as limited by AS 42.40.210(b),  
5 the Administrative Procedure Act (AS 44.62) does not apply to the  
6 authority, its rules, regulations, or actions taken under this chap-  
7 ter. The authority shall make available to members of the public  
8 copies of the rules and regulations adopted under this section.  
9 Within 45 days after adoption, the chairman of the board shall submit  
10 a regulation adopted under this section to the chairman of the Admin-  
11 istrative Regulation Review Committee under AS 24.20.400 - 24.20.460.  
12 The legislature may annul or temporarily suspend a regulation adopted  
13 by the authority.

14 (b) The board shall adopt rules and regulations to govern its  
15 procedures and to carry out the purposes of this chapter. Within 90  
16 days after its first meeting the board shall adopt rules establishing  
17 a procedure for giving advance public notice and an opportunity for  
18 the public to comment on proposed regulations of the authority that,  
19 in the determination of the board, will have a substantial impact on  
20 the public or be used in the authority's dealings with a significant  
21 segment of the public. The rules shall also provide for the adoption  
22 of emergency regulations without public notice and comment when the  
23 immediate adoption or repeal of a regulation is necessary to continue  
24 or reinstate the orderly operation of the authority's facilities or  
25 programs. However, emergency regulations may not remain in effect  
26 more than 120 days unless during that period the board complies with  
27 the public notice and comment procedure required for regulations that  
28 are not of an emergency nature.

29 (c) The rules adopted under (b) of this section establishing a

1 regulation-making procedure and all rules or regulations relating to  
2 procurement of property by the authority, conflicts of interest, dis-  
3 closure of information in the possession of the authority, or the  
4 regulation of persons outside the authority through the exercise of  
5 police power shall be submitted to the attorney general for review and  
6 approval before becoming effective. The attorney general shall re-  
7 spond to the authority within 60 days after receipt of the rules or  
8 regulations either approving them as consistent with or disapproving  
9 them as in conflict with the Alaska Statutes and the Constitution of  
10 the State of Alaska. A disapproval of rules or regulations must be  
11 accompanied by a memorandum of law explaining the conflict with exist-  
12 ing law and a recommendation for revisions to cure the defect. Rules  
13 or regulations submitted to the attorney general are considered ap-  
14 proved if the attorney general fails to approve or disapprove the  
15 rules or regulations, as provided in this subsection, within 60 days  
16 after receipt.

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

19 (1) relates to the use of public works, including terminal  
20 areas, industrial reserves, rights-of-way and streets, under the  
21 jurisdiction of the authority if the effect of the regulation is  
22 indicated to the public by means of signs or signals;

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

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

26 (4) relates to specific tariffs, divisions, and contract  
27 rate agreements.

28 (e) The authority is an agency of the state for purposes of  
29 jurisdictional determinations and judicial review of the authority's

1 action.

2 Sec. 42.40.240. PUBLIC DISCLOSURE OF INFORMATION. (a) Except  
3 as provided by rule or regulation of the authority under this section,  
4 facts and information in the possession of the authority are public  
5 and communications, reports, files, books, accounts, and papers of  
6 every nature in its possession are open to public inspection at  
7 reasonable times.

8 (b) The authority may by rule or regulation designate and with-  
9 hold disclosure of matters of a nonpublic, privileged, or proprietary  
10 nature. Those matters include but are not limited to personnel  
11 records, communications with and work product of counsel and, consis-  
12 tent with the standards and practices of the United States Interstate  
13 Commerce Commission for the protection of these matters, other infor-  
14 mation including but not limited to proprietary information associated  
15 with specific shippers, divisions, and contract rate agreements.

16 (c) A person may make written objections to the public disclo-  
17 sure of information contained in an application, report, or document  
18 filed with the authority, stating the grounds for the objection. When  
19 an objection is made, the board may order the information withheld  
20 from public disclosure if the information

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

23 (2) may be protected from disclosure consistent with the  
24 standards and practices of the United States Interstate Commerce  
25 Commission including but not limited to proprietary information asso-  
26 ciated with specific shippers, divisions and contract rate agreements.

27 ARTICLE 3. POWERS AND DUTIES.

28 Sec. 42.40.300. GENERAL POWERS. The authority may

29 (1) adopt a seal;

- 1                   (2) adopt rules and regulations;
- 2                   (3) sue and be sued;
- 3                   (4) appoint officers, employees, trustees, and agents, and  
4 prescribe their powers and duties;
- 5                   (5) hire legal counsel to represent the authority;
- 6                   (6) make contracts and execute instruments necessary or  
7 convenient in the exercise of its powers and duties;
- 8                   (7) acquire by purchase, lease, bequest, devise, gift, ex-  
9 change, the satisfaction of debts, the foreclosure of mortgages, or  
10 otherwise, real or personal property, rights, rights-of-way, fran-  
11 chises, easements, and other interests in land, including land lying  
12 under water and appropriation of water rights that are located in the  
13 state, taking title to the property in the name of the authority;
- 14                   (8) acquire property by eminent domain or by declaration of  
15 taking;
- 16                   (9) hold, maintain, use, operate, lease, exchange, donate,  
17 improve, convey, alienate, dispose of, mortgage, encumber, and other-  
18 wise grant security interests in or transfer any real or personal  
19 property including without limitation facilities and equipment;
- 20                   (10) borrow money and issue its bonds or notes and provide  
21 for and secure their payment, provide for the rights of their holders  
22 and purchase, hold, or dispose of its bonds or notes;
- 23                   (11) secure the payment of its obligations by pledge or  
24 mortgage or other lien on its contracts, revenues, income, or proper-  
25 ty;
- 26                   (12) contract with and accept transfers, gifts, grants or  
27 loans of funds or property from the United States, the state, and its  
28 political subdivisions, subject to the provisions of federal, state,  
29 or local programs;

1           (13) acquire, hold and dispose of stocks, memberships, con-  
2 tracts, bonds, general or limited partnership interests or other  
3 interests in another corporation, association, partnership, joint  
4 venture or other legal entity, and exercise the powers or rights in  
5 connection with these interests which are provided in contracts or  
6 agreements and that are allowed by law concerning the satisfaction of  
7 debts;

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

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

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

18           (17) lend its funds, property, credit or services for  
19 authority purposes;

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

24           (19) include in any borrowing the amounts necessary to  
25 establish reasonable reserves and pay financing charges and interest  
26 on the obligations for a reasonable period after which the authority  
27 estimates funds will be otherwise available to pay the interest,  
28 consultant, advisory, and legal fees, and other expenses necessary or  
29 incident to borrowing;

1                   (20) maintain offices and facilities at places it desig-  
2 nates;

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

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

6                   (23) apply to the appropriate agencies of the state, the  
7 United States, and to a foreign country and other proper agencies for  
8 the permits, licenses, or approvals necessary to construct, maintain,  
9 and operate transportation services, and to obtain, hold, and reuse  
10 the licenses and permits in the same manner as other operating units  
11 or persons;

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

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

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

22                   (27) plan for and undertake expansion of the railroad and  
23 railroad activities, including extension of the Alaska Railroad's rail  
24 system and acquisition and operation of other modes of transportation  
25 service connecting to the railroad's rail service;

26                   (28) adopt regulations having the force of law that are de-  
27 signed to safeguard property owned, managed, or transported by the  
28 authority, to protect employees and persons using the authority's  
29 property or services, and to promote safe, healthy, secure, and

1 effective railroad operations;

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

4 (30) adopt rules and regulations having the force of law  
5 that require designated classes of proprietary and personnel informa-  
6 tion and communications to be confidential;

7 (31) hire and discharge railroad personnel and determine  
8 benefits and other terms and conditions of employment established in  
9 accordance with obligations that may be imposed by the federal trans-  
10 fer legislation;

11 (32) assume and satisfy liabilities of the United States or  
12 its agencies as provided by the federal transfer legislation and the  
13 closing report, or its substantive equivalent, as accepted by the  
14 legislature; and

15 (33) do all things necessary, convenient or desirable to  
16 carry out the powers and duties expressly granted or necessarily  
17 implied in this chapter or under other laws of the state or the laws  
18 and regulations of the federal government.

19 Sec. 42.40.310. ANNUAL REPORT. The board shall direct prepara-  
20 tion of, certify and distribute to the governor and to each member of  
21 the legislature by February 1 of each year a report generally describ-  
22 ing the operations and financial condition of the authority. The  
23 board may include in the report suggestions for legislation relating  
24 to the structure, powers, or duties of the authority or relating to  
25 the operation of facilities of the authority.

26 Sec. 42.40.320. ANNUAL AUDIT. The board shall have the finan-  
27 cial records of the authority audited annually by an independent  
28 certified public accountant experienced in railroad accounting. The  
29 authority shall, at all times during normal business hours and as

1 often as the governor's auditor or the legislative audit division  
2 considers necessary, make available to an auditor appointed by the  
3 governor or to the legislative audit division for examination all of  
4 its financial records, and shall permit the auditor appointed by the  
5 governor or the legislative audit division to audit, examine and make  
6 excerpts or transcripts from the records, and to make audits of all  
7 contracts, invoices, materials, payrolls, records of personnel, con-  
8 ditions of employment, provision of services and the rates at which  
9 the services are provided and other relevant data; disclosure of this  
10 information is subject to AS 42.40.240 and rules and regulations  
11 implementing that section.

12 Sec. 42.40.325. LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT  
13 PLANS. (a) The authority shall prepare and the board shall adopt a  
14 long-range program plan and a capital improvement plan in accordance  
15 with sec. 10 of this Act.

16 (b) The long-range program plan must delineate the manner in  
17 which the authority intends to accomplish the purposes of and fulfill  
18 its responsibilities under this chapter during each of the five years  
19 after the plan is adopted. The long-range program plan shall provide  
20 information substantially consistent with the requirements of  
21 AS 57.07.050. The format of the long-range program plan must be  
22 jointly determined by the authority, the legislative audit division,  
23 and the division of budget and management, Office of the Governor.

24 (c) The long-range capital improvement plan must present and  
25 explain the authority's anticipated capital improvements for each of  
26 the five years after the plan is adopted. The long-range capital  
27 improvement plan must include the information required by AS 42.40.-  
28 600(b) together with any other information prescribed by the governor  
29 or the legislative audit division.

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

3 (e) The authority shall provide copies of its plans to the  
4 governor and the leadership of the legislature.

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

8 Sec. 42.40.330. USE OF AUTHORITY ASSETS. (a) The authority  
9 shall apply all money, property, other assets, and credit of the  
10 authority toward activities authorized by this chapter. The authority  
11 may not issue shares of stock, pay dividends, make private distribu-  
12 tion of assets, make loans to board members or employees, or engage in  
13 business for private benefit. The use of authority money, property,  
14 other assets, or credit for purposes not authorized by law by persons  
15 having the possession or control of it is prohibited.

16 (b) Notwithstanding the provisions of this section, the authori-  
17 ty may

18 (1) assist board members and employees as members of a  
19 general class of persons to be assisted by an activity to the same  
20 extent as other members of the class and as long as no special privi-  
21 leges or treatment accrues to the member or employee by reason of  
22 status or position held in the authority;

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

26 (3) defend and indemnify a current or former employee,  
27 agent, or board member of the authority and their successors against  
28 all costs, expenses, judgments, and liabilities, including attorney  
29 fees, reasonably incurred by or imposed upon that person in connection

1 with a civil or criminal action in which the person is involved by  
2 affiliation with the authority, if acting in good faith on behalf of  
3 the authority and within the scope of official duties or powers; and

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

14 ARTICLE 4. RAIL PROPERTIES.

15 Sec. 42.40.400. RAIL PROPERTIES. (a) The authority shall  
16 receive from the United States and, in its own name, take title to all  
17 rail properties transferred under the federal transfer legislation.  
18 All land among the rail properties so transferred or otherwise  
19 acquired by the authority is subject to AS 38.95.010 and is not sub-  
20 ject to classification, control or disposal under AS 38 or other state  
21 law, except as otherwise specifically provided in this chapter.

22 (b) Within 120 days after transfer of the rail properties, the  
23 authority shall convey to the state the subsurface estate of and the  
24 mineral rights in the land among the rail properties. The conveyance  
25 shall be made by one or more quitclaim deeds executed by the chief  
26 executive officer and delivered to the commissioner of natural re-  
27 sources. The authority may reserve in each quitclaim deed the right  
28 to extract and use for the authority's purposes sand, gravel, other  
29 construction materials, and, in accordance with AS 42.40.410(g), coal

1 on the subject land. The interest retained by the authority after  
2 conveyance to the state under this subsection entitles it to exclusive  
3 use and control of the surface, complete subjacent and lateral support  
4 of the surface, and the right to tunnel, ditch, recontour, excavate  
5 and otherwise use the subsurface for railroad, transportation, trans-  
6 mission, and related purposes.

7 (c) The authority may litigate, compromise, and otherwise settle  
8 claims related to the transfer of rail properties from the United  
9 States and to recover for breach of warranties made or other obliga-  
10 tions assumed by the United States or other party in relation to the  
11 transfer or status of the rail properties.

12 (d) The authority may submit applications on its own behalf as  
13 an instrumentality of the state for acquisition of interests in feder-  
14 al land available under federal law that will enhance the operations  
15 of the authority and may receive conveyances of all interests in its  
16 own name.

17 (e) The authority, as an agency of the state, may acquire in its  
18 own name from the United States under the Surplus Property Act  
19 (50 App. U.S.C. 1622 et seq.), the Federal Property and Administrative  
20 Services Act of 1949 as amended (40 U.S.C. 471 et seq.), or other law,  
21 property under the control of a federal department or agency that is  
22 useful for the authority's purposes and may acquire from the Depart-  
23 ment of Administration property of the state made available under  
24 AS 44.71.010 - 44.71.040.

25 (f) Before disposing of an interest in real property, other than  
26 a leasehold, a utility or access easement, or a land use permit, to a  
27 party other than the state, the authority shall give public notice of  
28 the disposition in two newspapers of general circulation. The author-  
29 ity shall make copies of the notice available to the public at its

1 administrative office, and mail copies of the notice to the commis-  
2 sioner of natural resources, the governor, and the leadership of the  
3 legislature.

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

17 (b) Within 180 days after receiving the request, the commis-  
18 sioner of natural resources by departmental order shall

19 (1) permanently classify the surface estate of that land  
20 for railroad purposes and, subject to valid existing rights, convey  
21 the state's interests in and to the surface estate of the land to the  
22 authority;

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

25 (3) approve in part and deny in part the request for  
26 classification under this section.

27 (c) In the absence of a reservation to the contrary, a convey-  
28 ance under (b) of this section vests in the authority the exclusive  
29 right to extract and use for its purposes sand, gravel, other

1 construction materials, and, in accordance with (g) of this section,  
2 coal on the land conveyed without regard to the classification of the  
3 resources as part of the surface or subsurface estate.

4 (d) The authority and the commissioner of natural resources may  
5 agree to joint management of railroad land and to conditions for  
6 classification of railroad land. The authority and the commissioner  
7 of natural resources may agree to periodic joint review of state land  
8 to determine suitability for railroad purposes and periodic joint  
9 review of the status of railroad land to determine the necessity for  
10 continued ownership by the authority. The authority may reconvey to  
11 the state land that the authority and the commissioner of natural  
12 resources jointly identify as unnecessary or unsuitable for the au-  
13 thority's purposes.

14 (e) The authority's ownership of a surface interest in state  
15 land entitles it to exclusive use and control of the surface, complete  
16 subjacent and lateral support of the surface, and the right to tunnel,  
17 ditch, recontour, excavate or otherwise use the subsurface for rail-  
18 road, transportation, transmission, and related purposes.

19 (f) When physical conditions require that track or other right-  
20 of-way fixtures of the authority be moved from the existing location  
21 and relocated on state-owned land adjacent to or in the vicinity of  
22 the existing right-of-way, and the chief executive officer determines  
23 that relocation is necessary to maintain safe and adequate rail op-  
24 erations, the authority may effect the relocation after notice to the  
25 Department of Natural Resources. The relocation must be limited to  
26 land adequate to restore or continue safe rail operations at a normal  
27 level. Within 45 days after a relocation under this subsection, the  
28 authority shall request classification and conveyance of the land for  
29 railroad purposes in accordance with (a) of this section.

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

16 Sec. 42.40.415. DEVELOPMENT OF OIL, GAS, MINERALS, AND GEO-  
17 THERMAL RESOURCES ON AUTHORITY LAND. (a) The Department of Natural  
18 Resources, in accordance with AS 38.05, may lease or otherwise develop  
19 oil, gas, minerals, and geothermal resources located on land in which  
20 the authority owns an interest, including a surface interest, only  
21 upon satisfaction of the following conditions:

22 (1) the Department of Natural Resources submits to the  
23 authority a request for authorization identifying the interest to be  
24 developed and describing with specificity the proposed plan for devel-  
25 opment of the interest, potential negative effects the proposed devel-  
26 opment may have on the authority's operations, and measures that will  
27 be used to avert or mitigate the effects;

28 (2) the authority reviews the request for authorization  
29 and, after considering potential negative effects and proposed

1 mitigation measures, determines that the plan of development presents  
2 no appreciable risk of interference with the operations of the author-  
3 ity;

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

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

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

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

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

29 Sec. 42.40.420. LAND USE REGULATION. The board may adopt

1 exclusive regulations governing land use by private parties having  
2 interests in or permits for land owned or managed by the authority.  
3 The power conferred by this section is exercised for the common  
4 health, safety, and welfare of the public and, to the extent constitu-  
5 tionally permissible, may not be limited by the terms and conditions  
6 of leases, contracts, or other transactions with private parties.

7 Sec. 42.40.430. EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND  
8 MATERIALS. (a) The authority may exercise the power of eminent  
9 domain under AS 09.55.240 - 09.55.460 to acquire land or an interest  
10 in land for lawful purposes consistent with this chapter.

11 (b) The authority may acquire a fee simple title whenever, in  
12 the judgment of the authority, ownership of a fee simple is necessary  
13 to carry out the authority's lawful purposes in condemning property.  
14 When the authority acquires a fee simple, it shall as soon as practi-  
15 cable reconvey the subsurface estate to the state by a quitclaim deed.

16 (c) The authority may file a declaration of taking, under  
17 AS 09.55.420 - 09.55.460, in the same manner and with the same effect  
18 as the state.

19 (d) The authority's power of eminent domain includes, without  
20 limitation, the power to obtain material, including clay, gravel,  
21 sand, or rock, the land necessary to obtain the material, and access  
22 to the land and material.

23 (e) The authority may vacate land, or part of it, or rights in  
24 land acquired for railroad purposes by executing and filing a deed in  
25 the appropriate recording district. Upon filing of the deed, title  
26 reverts to the state of Alaska, if compensation has been paid.

27 ARTICLE 5. FINANCIAL PROVISIONS.

28 Sec. 42.40.500. BONDS AND NOTES. (a) The authority, by resolu-  
29 tion of the board, may issue bonds and bond anticipation notes to

1 provide money to carry out its purposes.

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

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

1 (d) Bonds or bond anticipation notes may be sold in the manner,  
2 on 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  
5 be an officer before the delivery of the bond, note, or coupon, the  
6 signature or facsimile is valid as if the officer had remained in  
7 office until delivery.

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

12 (g) In a resolution of the board authorizing or relating to the  
13 issuance of bonds or bond anticipation notes, the board has power by  
14 provisions in the resolution that will constitute covenants of the  
15 authority, and contracts with the holders of the bonds or bond an-  
16 ticipation notes

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

21 (2) to covenant against pledging all or part of its reve-  
22 nues, or against permitting or suffering a lien on the revenues or its  
23 property;

24 (3) to covenant as to establishment of reserves or sinking  
25 funds and the provision for and the regulation and disposition of the  
26 reserves or sinking funds;

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

29 (5) to covenant as to bonds and notes to be issued, and

1 their limitations, terms and conditions, and as to the custody, appli-  
2 cation and disposition of the proceeds of the bonds and notes;

3 (6) to covenant as to the issuance of additional bonds or  
4 notes, or as to limitations on the issuance of additional bonds or  
5 notes and the incurring of other debts;

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

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

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

15 (10) to covenant as to the redemption of bonds or notes and  
16 privileges of their exchange for other bonds or notes of the authori-  
17 ty;

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

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

28 (13) to covenant as to the custody of its properties or  
29 investments, their safekeeping and insurance, and the use and

1 disposition of insurance money;

2 (14) to vest in a trustee or trustees inside or outside the  
3 state property, rights, powers, and duties in trust as the authority  
4 may determine, that may include any or all of the rights, powers, and  
5 duties of a trustee appointed by the holders of bonds or notes of the  
6 authority, and to limit or abrogate the rights of the holders of the  
7 bonds or notes of the authority to appoint a trustee under this chap-  
8 ter or limit the rights, powers, and duties of the trustee;

9 (15) to pay the costs or expenses incident to the enforce-  
10 ment of the bonds or notes or of the provisions of the resolution or  
11 of a covenant or agreement of the authority with the holders of its  
12 bonds or notes;

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

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

25 (18) to limit the rights of the holders of bonds or notes of  
26 the authority to enforce a pledge or covenant securing the bonds or  
27 notes; and

28 (19) to make covenants other than and in addition to the  
29 covenants expressly authorized in this section, of like or different

1 character, and to make the covenants to do or refrain from doing the  
2 acts and things as may be necessary, or convenient and desirable, in  
3 order to better secure bonds or notes or which, in the absolute dis-  
4 cretion of the board, will tend to make bonds or notes more market-  
5 able, notwithstanding that the covenants, acts, or things may not be  
6 enumerated in this section.

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

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

23 Sec. 42.40.520. REMEDIES. A holder of bonds or notes or of  
24 coupons attached to them issued under this chapter, and a trustee  
25 under a trust agreement or resolution authorizing the issuance of the  
26 bonds or notes, except as restricted by a trust agreement or resolu-  
27 tion, either at law or in equity, may enforce all rights granted under  
28 this chapter or under the trust agreement or resolution, or under any  
29 other contract executed by the authority under this chapter, and may

1 enforce and compel the performance of all duties required by this  
2 chapter or by the trust agreement or resolution to be performed by the  
3 authority or by its board members or employees.

4 Sec. 42.40.525. NEGOTIABLE INSTRUMENTS. Bonds and notes and  
5 interest coupons attached to them issued under this chapter are nego-  
6 tiable instruments under the laws of this state, subject only to  
7 applicable provisions for registration.

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

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

28 (b) Refunding bonds may be sold or exchanged for outstanding  
29 bonds issued under this chapter and, if sold, the proceeds may be

1 applied, in addition to other authorized purposes, to the purchase,  
2 redemption, or payment of the outstanding bonds. Pending the applica-  
3 tion of the proceeds of refunding bonds, with any other available  
4 money, to the payment of the principal, accrued interest, and any  
5 redemption premium on the bonds being refunded, and, if so provided or  
6 permitted in the resolution authorizing the issuance of the refunding  
7 bonds or in the trust agreement securing them, to the payment of any  
8 interest on the refunding bonds and any expenses in connection with  
9 the refunding, the proceeds may be invested in direct obligations of,  
10 or obligations the principal of and the interest on which are uncondi-  
11 tionally guaranteed by, the United States of America, the State of  
12 Alaska, or other entities with comparably rated credit that mature or  
13 that will be subject to redemption, at the option of the holders of  
14 them, not later than the respective dates when the proceeds, together  
15 with the interest accruing on them, will be required for the purposes  
16 intended.

17 Sec. 42.40.540. CREDIT OF STATE NOT PLEDGED; REQUIRED DISCLAIM-  
18 ER. Bonds and notes issued under this chapter do not constitute a  
19 debt, liability, or obligation of the state or a pledge of the faith  
20 and credit of the state or of a political subdivision of the state  
21 other than the authority but are payable solely from the revenues or  
22 assets of the authority. Each bond and note issued under this chapter  
23 must contain on its face a statement that the authority is not obli-  
24 gated to pay it nor the interest on it except from the revenues or  
25 assets pledged for it and that neither the faith and credit nor the  
26 taxing power of the state or of a political subdivision of the state  
27 other than the authority is pledged to the payment of the principal of  
28 or the interest on the bond or note.

29 Sec. 42.40.545. NO PERSONAL LIABILITY. A board member or

1 employee of the authority is not subject to personal liability or ac-  
2 countability for executing bonds or notes or because of their issu-  
3 ance.

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

7 Sec. 42.40.555. INSURANCE. The authority shall keep in force  
8 public liability insurance in an amount reasonably calculated to cover  
9 potential claims for bodily injury, death or disability, and property  
10 damage that may arise from or be related to its operations and activi-  
11 ties, naming the state as an additional insured.

12 Sec. 42.40.560. SAFEGUARDING OF MONEY. The authority shall  
13 maximize revenues from and deposit all money in depositories accept-  
14 able to the governor and otherwise safeguard the money under instruc-  
15 tions as the governor may from time to time issue.

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

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

#### 22 ARTICLE 6. STATE OVERSIGHT.

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

25 (1) expansion, reduction, or diversification of services  
26 provided by the railroad upon the date of transfer to the authority or  
27 as provided under this chapter that the board determines would repre-  
28 sent a significant and permanent change in the level and nature of  
29 services provided;

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

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

7           (b) The notice required by (a) of this section must be in writ-  
8 ing and describe the proposed undertaking in detail, specifying

9                 (1) its financial impact on the authority;

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

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

14                (4) whether and when the undertaking will be self-sustain-  
15 ing financially.

16           (c) The notice required by (a) of this section shall be pub-  
17 lished and given in the same manner as notice required under AS 42.-  
18 40.060.

19           (d) Within 45 days after receipt of the notice required by (a)  
20 of this section, the governor may

21                 (1) disapprove the proposed undertaking;

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

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

27           (e) A decision by the governor disapproving the proposed under-  
28 taking under (d) of this section is binding on the authority, unless  
29 the authority is directed by the legislature under AS 42.40.610 to

1 proceed with the proposed undertaking. If the governor suspends the  
2 proposed undertaking under (d) of this section, the governor shall  
3 promptly transmit a decision to the board and the leadership of the  
4 legislature in the form of a recommendation that the legislature  
5 acquiesce in the proposed undertaking or that the legislature reject  
6 the proposed undertaking. The authority's proposed undertaking is  
7 considered approved if the governor fails to act under (d) of this  
8 section within the prescribed time.

9 (f) During a legislative session, within 60 days after receipt  
10 of the governor's recommendation the legislature may, by law, reject  
11 the proposed undertaking. The legislation is binding on the authori-  
12 ty. The proposed undertaking is considered approved if the legisla-  
13 ture fails to pass legislation rejecting it within the prescribed  
14 time.

15 (g) Notwithstanding the provisions of (a) - (f) of this section,  
16 a proposed extension of main or branch lines by more than 50 percent  
17 of the railroad's total track mileage and requiring the issuance of  
18 securities, notes, bonds, or contracts for other borrowings of an  
19 amount in excess of \$50,000,000 or provision for the management and  
20 operation of the railroad by a third-party contractor must be specif-  
21 ically authorized by law.

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

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

26 (2) the legislature by law has specifically approved the  
27 undertaking by authorizing, appropriating financing for, or guarantee-  
28 ing the authority's borrowing for the proposed undertaking.

29 Sec. 42.40.610. ACTION-FORCING MECHANISM. (a) The governor or

1 the legislature, by resolution, may request that the authority exer-  
2 cise or refrain from exercising its powers and authorities. Notice of  
3 a request shall be given to the legislature by the governor and to the  
4 governor by the legislature.

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

8 (1) the manner in which it proposes to take the requested  
9 action or any modification to the requested action sought by the  
10 authority; or

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

13 (c) At the request of the governor or on its own initiative, the  
14 legislature by law may then direct the authority to take the requested  
15 action or the legislature may act to cure the problem precluding the  
16 authority from taking the requested action. If the authority is  
17 unable to take the requested action for financial reasons, it is  
18 obligated to do so, even if directed, only upon provision by the  
19 legislature of sufficient money to plan and implement the action.

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

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

27 (2) the authority has represented to the public or to  
28 creditors that recourse may be had to the assets, property, or credit  
29 of the state on account of acts or omissions of the authority, unless

1 the secondary or direct liability has been expressly assumed by the  
2 state;

3 (3) the authority has failed to file an annual report as  
4 required by AS 42.40.310 within 120 days after receipt of formal  
5 notice of the omission or has filed an annual report that is false or  
6 misleading on a material matter;

7 (4) a deadlock has occurred in the board, or the membership  
8 of the board is insufficient to constitute a quorum for conduct of  
9 affairs so that the authority is unable to conduct its operations or  
10 perform its activities; or

11 (5) the assets of the authority have been or are committed  
12 to be misapplied or wasted or illegally expended, or the authority has  
13 committed or is about to commit a material violation of this chapter.

14 (b) The governor may take actions necessary to achieve the  
15 object of the intervention stated in the legislation and make ancil-  
16 lary corrections, and shall accomplish the purposes of the interven-  
17 tion as expeditiously as reasonable. Board members and employees may  
18 not be displaced nor the conduct of their duties impaired more than  
19 necessary to accomplish the purposes of the intervention and the  
20 intervention must cease as soon as the objective stated in the legis-  
21 lation and ancillary corrections have been accomplished.

22 Sec. 42.40.6.9. TRUSTEESHIP. (a) When authorized by law, the  
23 governor may petition the superior court of the State of Alaska for  
24 the Third Judicial District at Anchorage to impose a trusteeship over  
25 the authority and appoint the trustees if

26 (1) the board has requested imposition of the trusteeship  
27 by resolution;

28 (2) the authority has become insolvent or otherwise unable  
29 to carry out its contractual obligations to creditors and other

1 persons;

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

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

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

9 (6) the assets of the authority have been or are committed  
10 to be misapplied or wasted, or illegally expended, or a material  
11 violation of this chapter has been committed or is about to be commit-  
12 ted and the governor has determined that intervention as provided in  
13 AS 42.40.615 would not be feasible under the circumstances; or

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

16 (b) The trustees appointed by the superior court shall take rea-  
17 sonable actions necessary during the trusteeship to achieve its ob-  
18 ject. The trustees have the power and authority to reorganize the  
19 authority and amend its rules and regulations; suspend or remove board  
20 members and executive officials; manage the assets and affairs of the  
21 authority; and exercise all powers necessary or appropriate to fulfill  
22 outstanding agreements, to restore the capability of the authority to  
23 perform the functions and activities for which it was established, to  
24 reinstate its credit or credibility with its creditors or obligees or  
25 the credit of the state or its credibility with its creditors or  
26 obligees to the extent impaired by authority actions.

27 ARTICLE 7. MISCELLANEOUS PROVISIONS.

28 Sec. 42.40.700. PERSONNEL. (a) All personnel employed by the  
29 Alaska Railroad are personnel of the authority, and not of the state.

1 The provisions of AS 39 do not apply to personnel employed by the  
2 authority.

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

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

12 Sec. 42.40.710. POLITICAL ACTIVITIES. (a) Money, assets, or  
13 property of the authority may not be used for partisan political  
14 activity or to further the election or defeat of a person seeking an  
15 elective office. Money or a substantial part of the activities of the  
16 authority may not be used for publicity or educational purposes de-  
17 signed to support or defeat legislation pending before congress or the  
18 legislature. However, board members and employees of the authority  
19 may communicate with and appear before committees of congress or the  
20 legislature as well as local legislative bodies in connection with  
21 financing and other matters directly affecting the authority or its  
22 ability to carry out the purposes for which it is established and  
23 respond to requests by members of congress, the legislature, or local  
24 legislative bodies for information, views, and testimony.

25 (b) A board member or employee who violates the provisions of  
26 this section is personally subject to a civil penalty assessed by a  
27 judge of the superior court in an amount not to exceed \$5,000. An  
28 action to enforce this penalty may be brought by any person. A viola-  
29 tion of this chapter does not constitute a crime and assessment of the

1 civil penalty by a judge does not create any disability or legal  
2 disadvantage based on conviction of a criminal offense.

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

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

12 Sec. 42.40.740. CLAIMS AGAINST THE AUTHORITY. (a) All claims  
13 and lawsuits involving activities of the railroad, including without  
14 limitation suits in contract, quasi-contract, or tort, shall be  
15 brought against the authority, and not against the state.

16 (b) For the purposes of actionable claims, undertakings, pay-  
17 ments of judgments, execution, interest, punitive damages, statutes of  
18 limitations, bonds, costs, and similar matters related to the presen-  
19 tation and prosecution of claims by and against the authority, the  
20 authority and its board members and employees enjoy the same rights,  
21 privileges, and immunities as the state and state officers as provided  
22 in AS 09.10.120, AS 09.50.250 - 09.50.290, AS 09.50.040, and other  
23 similar or related statutes.

24 (c) Claims against the authority are not subject to the pro-  
25 visions of AS 44.77.010 - 44.77.070 regarding claims against the  
26 state.

27 (d) The authority is not subject to the provisions of AS 44.80.-  
28 010, regarding the state as a party to an action.

29 Sec. 42.40.755. EXEMPTION FROM TAXATION. (a) The real and

1 personal property of the authority and its assets, income, and re-  
2 cepts are declared to be the property of a political subdivision of  
3 the state and devoted to an essential public and governmental function  
4 and purpose, and the property, assets, income, and receipts are exempt  
5 from all taxes and special assessments of the state or a political  
6 subdivision of the state, including, without limitation, a borough,  
7 city, municipality, school district, public utility district and other  
8 taxing unit. All bonds of the authority are declared to be issued by  
9 a political subdivision of the state and for an essential public and  
10 governmental purpose and to be a public instrumentality and the bonds,  
11 and the interest on them, the income from them and the transfer of the  
12 bonds, and all assets, income, and receipts pledged to pay or secure  
13 the payment of the bonds, or interest on them, are at all times exempt  
14 from taxation by or under the authority of the state, except for  
15 inheritance and estate taxes and taxes on transfers by or in contem-  
16 plation of death.

17 (b) Nothing in this section affects or limits an exemption from  
18 license fees, property taxes, or excise, income or other taxes, pro-  
19 vided under any other law, nor does it create a tax exemption with  
20 respect to the interest of any business enterprise or other person,  
21 other than the authority.

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

26 Sec. 42.40.770. PAYMENTS IN PLACE OF LOCAL REAL PROPERTY TAXA-  
27 TION AND IMPACT AID. (a) To the extent feasible, without impairing  
28 the authority's financial viability and consistent with sound business  
29 principles, including but not limited to the operation of the railroad

1 on a self-sustaining basis, the need for capital accumulation, and  
2 consistency with regulation by the United States Interstate Commerce  
3 Commission, the authority may

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

7 (2) provide financial assistance to political subdivisions  
8 and other local districts in the development of public education and  
9 other facilities required to be developed as a result of expanded  
10 authority activities in the area.

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

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

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

17 (3) the relative need among communities affected by author-  
18 ity activities; and

19 (4) the present or anticipated benefits to the communities  
20 attributable to authority activities.

21 ARTICLE 8. GENERAL PROVISIONS.

22 Sec. 42.40.870. ENFORCEMENT OF LAW AND AUTHORITY REGULATIONS BY  
23 AUTHORITY SECURITY FORCE. Members of the security force maintained by  
24 the authority under AS 42.40.300 may enforce state laws and regula-  
25 tions adopted by the authority with respect to violations of the laws  
26 or regulations that occur on or to property owned, managed or trans-  
27 ported by the authority. Members of the security force may exercise  
28 the same enforcement powers granted by law to state law enforcement  
29 officers.

1           Sec. 42.40.880. PENALTY FOR VIOLATION OF DESIGNATED REGULATION.  
2           A person who violates a regulation of the authority that has been  
3           designated by the authority as a regulation that is necessary to  
4           protect life, health or property, is guilty of a class B misdemeanor.

5           Sec. 42.40.890. CONSTRUCTION. This chapter shall be liberally  
6           construed to carry out its purposes.

7           Sec. 42.40.900. DEFINITIONS. In this chapter, unless the con-  
8           text clearly indicates otherwise,

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

10                    (2) "board" means the Board of Commissioners of the Alaska  
11           Railroad Authority;

12                    (3) "date of transfer" means the date on which the United  
13           States Secretary of Transportation delivers the deed of conveyance for  
14           the properties of the Alaska Railroad under the federal transfer  
15           legislation;

16                    (4) "employees" means all persons employed by the authori-  
17           ty, including executive officials;

18                    (5) "executive officials" means the authority's chief  
19           executive officer, assistant chief executive officer, assistant to the  
20           chief executive officer, chief of administration, superintendent of  
21           transportation, manager of marketing and sales, chief engineer, chief  
22           mechanical officer, manager of industrial development and real estate,  
23           manager of budget and accounting, manager of planning, manager of  
24           personnel, manager of supply and procurement, chief of security,  
25           manager of operating rules, manager of data processing, or any employ-  
26           ee of the authority who fulfills these management functions under a  
27           different title or who exercises a similar or comparable level of  
28           responsibility if so designated by the board;

29                    (6) "federal transfer legislation" means that Act of

1 Congress authorizing transfer of the Alaska Railroad to the State of  
2 Alaska or the authority;

3 (7) "immediate family" means

4 (A) spouse;

5 (B) dependent parent, parent-in-law, child, son-in-  
6 law, or daughter-in-law; or

7 (C) a parent, parent-in-law, child, son-in-law, daugh-  
8 ter-in-law, sibling, uncle, aunt, cousin, niece, or nephew resid-  
9 ing in the household of an officer or employee of the authority;

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

12 (9) "leadership of the legislature" means the president of  
13 the senate, the speaker of the house, the minority leaders of each  
14 house, the chairmen of the senate and house transportation and finance  
15 committees, the chairman of the legislative budget and audit committee  
16 or jurisdictional successors or persons or offices designated by those  
17 individuals;

18 (10) "rail properties" means all right, title, and interest  
19 of the United States to real and personal property, tangible and  
20 intangible, identified in the closing report prepared under the feder-  
21 al transfer legislation and transferred to the authority under the  
22 legislation;

23 (11) "regulation" has the same meaning as under AS 44.62.-  
24 640;

25 (12) "rules" means rules, standards, or written procedures  
26 relating to the governance and internal management and affairs of the  
27 authority or the Board; rules may not be considered to be "regula-  
28 tions".

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

1 (4) if the property sought to be condemned is for a rail-  
2 road other than one operated by the Alaska Railroad Authority, the  
3 cost of good and sufficient fences along the line of the railroad, and  
4 the cost of cattle guards where fences may cross the line of the  
5 railroad.

6 \* Sec. 4. AS 09.55.350 is amended to read:

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

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

21 (46) members of the Board of Commissioners of the Alaska  
22 Railroad Authority.

23 \* Sec. 6. COMMENCEMENT OF LEGAL EXISTENCE OF ALASKA RAILROAD AUTHORITY.

24 The legal existence and authority of the Alaska Railroad Authority com-  
25 mences upon appointment by the governor under AS 42.40.030 enacted in sec.  
26 2 of this Act of all members of the Board of Commissioners of the authori-  
27 ty.

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

29 (a) The governor shall designate the terms of the six public members of

1 the Board of Commissioners of the Alaska Railroad Authority first appointed  
2 under AS 42.40.040. Of the six public members first appointed

- 3 (1) two shall serve a term of two years;
- 4 (2) one shall serve a term of three years;
- 5 (3) one shall serve a term of four years;
- 6 (4) two shall serve a term of five years.

7 (b) The governor may exercise the power of appointment under AS 42.-  
8 40.030 only upon acceptance by the legislature by law of the closing report  
9 or its substantive equivalent prepared and submitted under the federal  
10 transfer legislation or upon approval by the legislature of operation of  
11 the Federal Alaska Railroad by the authority.

12 \* Sec. 8. CLOSING REPORT SUBMITTED UNDER FEDERAL TRANSFER LEGISLATION.  
13 The closing report submitted under the federal transfer legislation must  
14 include a statement of the assets and liabilities of the Alaska Railroad  
15 proposed to be transferred to and assumed by the Alaska Railroad Authority  
16 or the state which statement is as specific and definitive as practicable  
17 under the federal transfer legislation. The legislature may accept or  
18 reject the report and may not condition acceptance on its modification in  
19 any material respect.

20 \* Sec. 9. ASSETS AND LIABILITIES TO BE NOTED IN AUDIT. To the extent  
21 practicable, for the five years following the date of transfer of the  
22 Alaska Railroad to the state or the Alaska Railroad Authority the status of  
23 the assets and liabilities specifically identified in the closing report  
24 submitted under the federal transfer legislation must be noted in the  
25 annual audit.

26 \* Sec. 10. INITIAL LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT PLANS.  
27 (a) Within 18 months of the date of transfer of the Alaska Railroad to the  
28 state or the Alaska Railroad Authority, the authority shall prepare and the  
29 Board of Commissioners of the authority shall adopt a long-range program

1 plan and a capital improvement plan in accordance with AS 42.40.325.

2 (b) Beginning three years after the preparation of the long-range  
3 program plan described in (a) of this section, the governor and the legis-  
4 lative audit division may conduct an annual performance and efficiency  
5 audit of the authority's compliance with the plan.

6 \* Sec. 11. PRE-EXISTING RULES, REGULATIONS AND ORDERS OF THE ALASKA  
7 RAILROAD. The Board of Commissioners of the Alaska Railroad Authority, by  
8 resolution, may continue in force for a period of not more than two years  
9 after date of transfer all or part of the rules, regulations, and orders of  
10 the Alaska Railroad which were in effect one day before the date of trans-  
11 fer and are not inconsistent with this chapter or other state law. All  
12 authorities continued in force under this section shall expire on the  
13 second anniversary of the date of transfer. The Board of Commissioners may  
14 adopt in its rules, regulations, and orders the substance of former federal  
15 authorities relating to the Alaska Railroad. This adoption is not con-  
16 sidered a continuation of the federal authorities if made in compliance  
17 with the procedural requirements of this chapter and other applicable law.

18 \* Sec. 12. COLLECTIVE BARGAINING AGREEMENT BETWEEN THE ALASKA RAILROAD  
19 AUTHORITY AND EMPLOYEES. As soon as practicable after transfer of the  
20 Alaska Railroad, the Alaska Railroad Authority and its employees shall  
21 adopt collective bargaining agreements that continue the provisions of the  
22 agreements in effect between the Alaska Railroad and its employees immedi-  
23 ately before transfer of the Alaska Railroad. The collective bargaining  
24 agreements between the authority and its employees shall remain in effect  
25 until they expire by their terms or, as required under the federal transfer  
26 legislation, they are renegotiated, subject to the approval of the Board of  
27 Commissioners of the Alaska Railroad Authority.

28 \* Sec. 13. CONFLICTING LAWS INAPPLICABLE. If provisions of this Act  
29 are in conflict with the provisions of other law, the provisions of this

1 Act prevail.

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

4 (b) The Alaska Railroad Authority is considered a political subdivi-  
5 sion of the state for the purposes of AS 23.10.055.

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

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

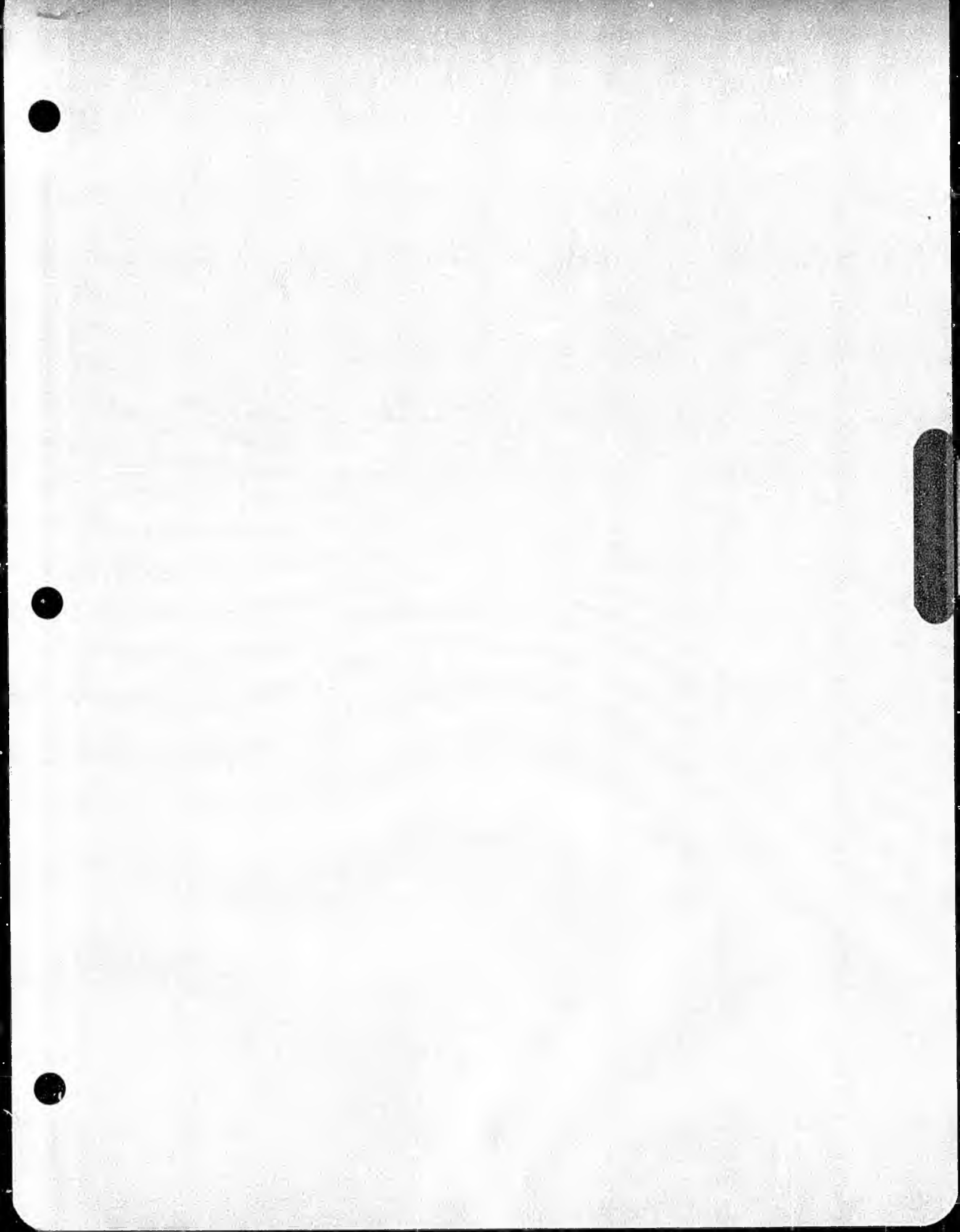
10 (e) AS 35 does not apply to the operation of the Alaska Railroad  
11 Authority.

12 (f) The following provisions of AS 37 do not apply to the operations  
13 and budgeting procedures of the Alaska Railroad Authority: AS 37.05;  
14 AS 37.07; AS 37.10.010 - 37.10.060, 37.10.085; AS 37.20; and AS 37.25.

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

17 \* Sec. 15. SUBSEQUENTLY ENACTED STATUTES. No subsequently enacted  
18 statute shall be interpreted or construed to apply to the Alaska Railroad  
19 Authority, the Alaska Railroad, or any of the authority's activities unless  
20 it specifically so provides by its terms.

21 \* Sec. 16. EFFECTIVE DATE. This Act takes effect upon acceptance by  
22 the Alaska State Legislature of the closing report submitted under the  
23 federal transfer legislation enacted by Congress authorizing transfer of  
24 the Alaska Railroad to the State of Alaska or the Alaska Railroad Authority  
25 or upon approval by the legislature of operation of the Federal Alaska  
26 Railroad by the Alaska Railroad Authority.



STATE ORGANIZATIONAL ISSUES  
INVOLVED IN THE PROPOSED TRANSFER  
OF THE ALASKA RAILROAD FROM THE  
UNITED STATES TO THE STATE OF ALASKA

January 15, 1982

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This memorandum addresses some of the issues involved in creating an entity to own and operate the Alaska Railroad after transfer from the federal government to the State of Alaska. The issues involved in determining the most appropriate organizational structure were treated preliminarily in two studies performed jointly by the State and an outside consultant (referred to hereafter as Bivens 1 and Bivens 2).<sup>1</sup> As stressed in Bivens 2, the issue is important because the railroad's organizational structure will directly affect the State's ability to meet its policy objectives for the railroad, see Bivens 2 at 81.

Bivens 2 predicated its analysis of different organizational structures on a set of specified assumptions, ( See Appendix 2 enclosed ). This memorandum adopts the same assumptions about the State's basic policy guidelines; most of which seem fully warranted by the State's actions and expressed policies to date. This memorandum further agrees with Bivens 2 that the twelve criteria it sets forth are extremely useful tools for evaluating the effectiveness of alternative structures for the railroad. However, as a result of decisions made by the Governor's Railroad Policy Committee in the fall of 1981, this memorandum is organized around a different set of ten goals that are, in substance,

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<sup>1</sup>  
Statewide Rail Systems Study for the State of Alaska, Department of Transportation and Public Facilities Planning and Programming Division, December 1980, prepared by Bivens & Associates, Inc., et al. (Bivens 1); Assessment of the Alaska Railroad: Ownership and Operational Alternatives, July, 1981, prepared by John T. Gray II and Bivens & Associates, et al. (Bivens 2).

largely identical to the Bivens 2 criteria, but incorporate additional legal constraints that must be considered in setting up a railroad structure. As outlined in the following

sections, the railroad entity should be organized in such a way as to:

1. Insulate the State from legal and financial liability for the railroad's tort, contractual, and debt liability;
2. Insulate the State from I.C.C. jurisdiction;
3. Have an independent capacity to obtain tax-exempt financing;
4. Preclude a State operating subsidy;
5. Permit both service contracts with the State and State investment in the railroad's capital improvements in facilities, rolling stock and track expansion, and rehabilitation;
6. Provide the best possible combination of high quality and low cost transportation;
7. Insulate railroad operations from political pressures generated by the railroad's competitors, suppliers, shippers, lessees, and lessors;
8. Be subject to State oversight and intervention power to:
  - (a) prevent insolvency;
  - (b) ensure continued service;
  - (c) require or preclude expansion or increased service; and

(d) disapprove borrowing that could endanger the State's borrowing capacity;

9. Cause the least possible disruption to the State's employee pay, benefits, and retirement systems; and

10. Conform to the State constitution.

The initial Bivens report (December 1980) considered four very broad approaches to organizing the Alaska Railroad, including continued federal ownership and totally private ownership. By the time the second Bivens study was completed in July 1981, the range of options had been considerably narrowed, and Bivens 2 presents three alternatives: (1) a state line agency, (2) a state public corporation or authority, or (3) a state-owned railroad operated by a private lessee. Bivens 2 at 85. Bivens 2 makes clear, however, that one option -- a public authority or corporation -- best satisfies all of the relevant criteria, whereas each of the other alternatives has serious, indeed potentially fatal, drawbacks or impracticalities. Although the criteria analyzed in this memorandum are somewhat different, and perhaps more legalistic, than those applied in Bivens 2, the conclusion reached is the same: a public corporation or authority provides the greatest opportunity to maximize the State's goals. Leasing to a private operator, for example, would probably preclude tax-exempt financing. Using a State line agency would subject the State itself to tort and contractual liability for railroad activities and probably to

I.C.C. supervision. It also would probably not afford the desired degree of management independence and flexibility.

As a result of the Bivens studies and of preliminary discussions regarding some of the legal concerns addressed below, the Governor's Railroad Policy Committee has tentatively decided to pursue only the possibility of creating a public authority or corporation<sup>2</sup> to operate the railroad. Accordingly, this memorandum, except as noted, focuses only on this one possibility, and considers whether and how a public authority can achieve each of the State's expressed goals, as outlined above.

As a caveat, it should be noted that the State's fundamental objectives -- to run the railroad both as a public service and as a sound business enterprise -- may conflict to some degree. It will therefore be necessary to create an organizational structure that strikes a balance between these goals, and between the means of achieving those goals discussed below. See Bivens 2 at 79, 89. Fundamental decisions must be made, in particular, on how best to balance autonomy and flexibility on the one hand with accountability and State oversight on the other.

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2

The terms "public corporation" and "public authority" are used interchangeably in this memorandum. The ramifications of any technical differences between these two structures can be resolved at a later date.

I. STATE LIABILITY.

An independent public authority can effectively insulate the State from legal and financial responsibility for the railroad's tort, contractual, and debt liabilities and can bear sole responsibility for railroad obligations. Public authorities are, in fact, often used for this purpose in other states and in Alaska. The State constitution contemplates and impliedly allows creation of public authorities with the power to issue bonds that are not supported by the full faith and credit of the State. See Alas. Const. Art. IX, Sec. 11 (exempting bonds of public authorities whose debts are not State debts from the credit limitations of Article IX, Section 8). See Section VIII below for further discussion of State constitutional restrictions on public authorities. Numerous other Alaska public authorities have been granted the power to issue bonds without pledging the credit of the State.<sup>3</sup> The enabling legislations for these other authorities offers a model for appropriate language in the railroad's enabling legislation.

The acts creating the existing independent public authorities in Alaska appear silent on the issue of State contract and debt

3

See, e.g., A.S. 44.81.010 et seq. (Alaska Commercial Fishing and Agriculture Bank); A.S. 44.82.010 et seq. (Alaska Gas Pipeline Financing Authority); A.S. 44.83.010 et seq. (Alaska Power Authority); A.S. 44.88.010 et seq. (Alaska Industrial Development Authority).

liability. The State has the power to provide that an independent public authority will bear exclusive liability for the railroad's contractual obligations and tort liabilities, and can, in fact, limit that liability if it chooses.<sup>4</sup> To ensure State immunity, the enabling legislation should address the issue specifically.

## II. I.C.C. JURISDICTION.

If the Interstate Commerce Commission (I.C.C.) considers the State, rather than a railroad entity, to be the "common carrier," the State itself would be subject to I.C.C. supervision. Such supervision would require the State to conform its accounting practices to I.C.C. requirements and to obtain I.C.C. approval for the issuance of all State securities. The obvious burdens imposed by such requirements appear to preclude direct State operation of the railroad.

Creation of a public authority will avoid such far-reaching I.C.C. jurisdiction. As indicated in Memorandum, Regulatory and Related Issues Involved in the Proposed Transfer of the Alaska

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If the State owned and operated the railroad itself, it might technically have the power to limit its liability for the railroad's tort and contractual obligations. It is unclear whether a court would allow total immunity, however, or whether the railroad would be able to contract effectively with third parties if it denied all liability. Establishing a public authority is the clearest and most definite method of insulating the State itself from liability, while continuing effective and responsible railroad operations.

Railroad from the United States to the State of Alaska, October 3, 1981, prepared by Wickwire, Lewis, Goldmark & Schorr (hereafter "Regulatory Issues Memorandum"), the I.C.C. generally considers a state authority or corporation chartered to operate a railroad to be the "common carrier." See State of Vermont and Vermont Railway Inc., 320 I.C.C. 330, 334-35 (1963); Port Authority Trans-Hudson Corp., 317 I.C.C. 357, 362 (1962). The I.C.C. does not seem to have laid forth any standards, however, either through rule making or adjudication, as to how independent a state authority must be in order to be considered the common carrier.

### III. TAX-EXEMPT FINANCING.

As discussed in Bivens 2, at 77-78, 86, one of the major problems with federal administration of the railroad has been inadequate capitalization. In the past, federal appropriations have been the sole source of capital. For reasons set out in the Bivens studies, as well as changes in federal policy, access to other public and private sources will be necessary in the future. Such investment might be easier to obtain if the railroad can issue federally tax-exempt bonds, and an entity to operate the railroad can probably be created that would qualify for tax-exempt financing. ]

For interest to be exempt from federal income tax, the obligation must be issued either (1) by a "political subdivision" of

a state, or (2) by an instrumentality of a political subdivision that issues obligations "on behalf of" a political subdivision.

Internal Revenue Code (I.R.C.) § 103(a)(1), Regs. § 1.103-1(b).

Even if the railroad authority qualifies as a political subdivision or an instrumentality thereof, any obligation it issues will nonetheless be taxable if it is considered an "industrial development bond."<sup>5</sup>

1. Political Subdivision.

For purposes of the Internal Revenue Code, a political subdivision is:

any division of any State or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit. As thus defined, a political subdivision of any State or local governmental unit may or may not, for purposes of this section, include special assessment districts so created, such as road, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvement and similar districts and divisions of any such unit.

Regs. §§ 1.103-1(b) (emphasis added).

For a political subdivision to exercise "the sovereign power" of the state, it must have more than an insubstantial amount of the state's sovereign powers: the power to tax, the power of

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There are a number of exceptions to the general rule that industrial development bonds are taxable. Although these exceptions are exceedingly useful in some circumstances and are often relied on for tax-free financing of municipal development, none of these exceptions appears to apply to the entire railroad operation.

eminent domain, or the police power. Estate of Shamberg v. Commissioner, 3 T.C. 131, aff'd, 144 F.2d 998 (2nd Cir.), cert. denied, 323 U.S. 792 (1944). It is not altogether clear whether one of these powers is enough, but all three are not required. If only one power is conferred, it may need to be an unrestricted power. In determining whether an entity has sufficient sovereign powers, the Internal Revenue Service ("the Service") considers "all the facts and circumstances . . ., including the public purpose of the entity and its control by a government." Rev. Rul. 77-165, 1977-1 C.B. 21.

The power of taxation is probably not a realistic alternative for the railroad entity. The State must therefore confer some eminent domain or police powers on the railroad entity if it is to qualify as a political subdivision. The Internal Revenue Service has ruled that an authority's ability to request a political subdivision to condemn property on the entity's behalf is not a substantial possession of unrestricted sovereign power and was not alone enough to make an entity a political subdivision. Rev. Rul. 77-164, 1977-1 C.B. 20. It is unclear whether power to condemn subject to state veto would be sufficient, but it might well not be considered an unrestricted exercise of the sovereign power.

Conferring police power upon the railroad entity may also be feasible, alone or in conjunction with eminent domain power. The law regarding police power is still developing, however, and it

is difficult to say how much police power is required. On the one hand, the Service has ruled that a state university possessed insubstantial police power where its police force was authorized only to enforce traffic regulations on campus and to arrest violators and detain them until city police arrive. Rev. Rul. 77-165, 1977-1 C.B. On the other hand, a regional urban transit authority has been deemed a political subdivision on the basis of its police powers, which included the power to set rates (after public hearings), determine routes, and enforce its regulations by maintaining a security force. The authority exercised these powers free from any regulation by the State Public Service Commission. Rev. Rul. 73-563, 1973-2 C.B. 24. If the State seeks a political subdivision exemption based on police power, it would be advisable to give the railroad entity as much regulatory and enforcement power as possible, perhaps including an independent security force with the ability to make arrests and issue summonses.

In short, the most promising avenue of achieving political subdivision status would be to grant the railroad the power of eminent domain to condemn property directly for railroad purposes, if the State considers this acceptable. A second, and less certain, alternative would be to confer substantial police power upon the railroad entity. A combination of both of these powers increases the likelihood that the railroad entity would be considered a political subdivision.

2. "On Behalf of" Issues.

If the railroad authority is not granted enough sovereign power to qualify as a "political subdivision," it may still be eligible for tax-exempt financing if it issues obligations "on behalf of a political subdivision." It appears that such obligations need not be backed by the full faith and credit or the taxing power of the state. Such an exemption is less certain, however, and subjects the railroad to greater restrictions.

Internal Revenue Service rulings indicate that certain tests must be met for an obligation to be issued "on behalf of" a political subdivision. These are:

(a) The issuer must engage in activities that are essentially public in nature;

(b) The issuer, except to the extent of retiring indebtedness, must not be one which is organized for profit;

(c) Income must not inure directly or indirectly, or appear to be available to, any private person;

(d) The state or political subdivision must have a beneficial interest in the organization while the indebtedness remains outstanding and must obtain full legal title to the property when indebtedness is retired;

(e) The corporation must be approved by the state or a political subdivision thereof, either of which must also have approved the specific obligations issued by the corporation.