

SENATE BILL NO. 42

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND
AUDIT COMMITTEE

Introduced: 1/13/97

Referred: Transportation, State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the fiscal operations of the Alaska Railroad Corporation and
2 to land acquired by the State of Alaska under the Alaska Railroad Transfer Act
3 of 1982 or otherwise acquired for railroad purposes; and providing for an
4 effective date."

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

6 * **Section 1.** Section 1(b), ch. 153, SLA 1984, is amended to read:

7 (b) It is the purpose of this Act to

8 (1) create a viable economic entity with the powers and duties
9 necessary to operate and manage the Alaska Railroad pending eventual transfer of the
10 railroad to the private sector for its ownership or operation or both consistent with
11 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982);

12 (2) provide for the level of transportation service that best satisfies the
13 needs of the people of the state consistent with the other findings and policies of this
14 section;

1 (3) create a public corporation with the powers, duties, and functions
 2 needed to operate the Alaska Railroad and manage its rail, industrial, port, and other
 3 properties in the best interest of the people of the state by ensuring that the corporation
 4 will

5 (A) be [EXCLUSIVELY] responsible for the management of
 6 the financial and legal obligations of the Alaska Railroad;

7 (B) operate the railroad as a common carrier subject to the
 8 jurisdiction of the United States Interstate Commerce Commission consistent
 9 with 45 U.S.C. 1207;

10 (C) have the ability to raise capital by issuing bonds upon
 11 approval of the legislature exempt from federal and state taxation and applying
 12 for federal money to which the state may be entitled or that may be available;

13 (D) carry out its responsibilities on a self-sustaining basis;

14 (E) provide the best possible combination of types and levels
 15 of safe, efficient, and economical transportation to meet the overall needs of
 16 the state, supported when necessary by state investment;

17 (F) provide for the prudent operation of the railroad according
 18 to sound business management practices; [AND]

19 (G) preserve the integrity of the railroad utility corridor for
 20 transportation, communication, and transmission purposes; **and**

21 **(H) be subject to AS 37.07 (Executive Budget Act) and be**
 22 **responsible for the operating, capital, and debt service expenditures of the**
 23 **corporation in accordance with appropriations made by the legislature;**

24 (4) ensure that borrowing by the corporation does not directly or
 25 indirectly endanger the state's own borrowing capacity;

26 **(5) provide for**

27 **(A) state ownership of land acquired under 45 U.S.C. 1201 -**
 28 **1214 (Alaska Railroad Transfer Act of 1982) or otherwise acquired for**
 29 **railroad purposes; and**

30 **(B) use, management, and maintenance by the corporation**
 31 **of land acquired by the state for railroad purposes.**

1 * **Sec. 2.** AS 37.07.120(1) is amended to read:

2 (1) "agency" means a department, officer, institution, board,
3 commission, bureau, division, or other administrative unit forming the state
4 government and includes the **Alaska Railroad Corporation**, Alaska Pioneers' Home,
5 and the University of Alaska, but does not include the legislature or the judiciary;

6 * **Sec. 3.** AS 42.40.100 is amended to read:

7 **Sec. 42.40.100. Management by the board.** The board is responsible for the
8 management of the corporation but shall delegate certain powers and duties to the chief
9 executive officer in accordance with AS 42.40.120. In managing the corporation, the
10 board shall

11 (1) be responsible for the management of the financial and legal
12 obligations of the Alaska Railroad;

13 (2) operate the Alaska Railroad as a common carrier subject to the
14 jurisdiction of the United States Interstate Commerce Commission consistent with 45
15 U.S.C. 1207;

16 (3) generally manage the corporation on a self-sustaining basis;

17 (4) **in accordance with AS 37.07**, apply to the legislature for an
18 appropriation with the concurrence of the governor to be used to

19 **(A) fund the operating, capital, and debt service**
20 **expenditures of the corporation; and**

21 **(B) when necessary**, provide a particular service that is not
22 otherwise self-sustaining if a subsidy is required to maintain that service;

23 (5) provide for safe, efficient, and economical transportation to meet
24 the overall needs of the state;

25 (6) raise needed capital by issuing bonds of the corporation upon
26 approval by the legislature while ensuring that borrowing by the corporation does not
27 directly or indirectly endanger the state's own borrowing capacity;

28 (7) review all state and other land disposal proposals to aid in planning
29 for future development or expansion of transportation services;

30 (8) ensure that the procurement procedures of the corporation meet
31 accepted railroad industry standards;

1 (9) ensure that the accounting procedures of the corporation meet
 2 generally accepted accounting principles consistent with industry standards for
 3 comparable railroads.

4 * **Sec. 4.** AS 42.40.250 is amended to read:

5 **Sec. 42.40.250. General powers.** In addition to the exercise of other powers
 6 authorized by law, the corporation may

7 (1) adopt a seal;

8 (2) adopt bylaws governing the business of the corporation;

9 (3) sue and be sued;

10 (4) appoint trustees and agents of the corporation and prescribe their
 11 powers and duties;

12 (5) hire legal counsel to represent the corporation;

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

15 (7) acquire by

16 (A) purchase, lease, bequest, devise, gift, exchange, the
 17 satisfaction of debts, the foreclosure of mortgages, or otherwise,

18 (i) personal property, **taking title to the property in the**
 19 **name of the corporation;**

20 (ii) rights, rights-of-way, franchises, easements, and
 21 other interests in land, **taking title to the property on behalf of and**
 22 **in the name of the state;** and

23 (B) [ACQUIRE BY] appropriation water rights that are located
 24 in the state, taking title to the property in the name of the corporation;

25 (8) hold, maintain, use, operate, improve, lease, exchange, donate,
 26 convey, alienate, encumber, or otherwise grant a security interest in, or authorize use
 27 or dispose of, land or personal property, subject to other provisions of this chapter;

28 (9) contract with and accept transfers, gifts, grants, or loans of funds or
 29 property from the United States and the state or its political subdivisions, subject to
 30 other provisions of federal or state law or municipal ordinances;

31 (10) undertake and provide for the management, operation,

1 maintenance, use, and control of all of the property of the corporation, including all
2 land and personal property of the Alaska Railroad transferred under 45 U.S.C. 1203(a)
3 and described in the report dated July 14, 1983, as amended, submitted to Congress
4 and the legislature under 45 U.S.C. 1204(a);

5 (11) recommend to the legislature and the governor any tax, financing,
6 or financial arrangement the corporation considers appropriate for expansion or
7 extension and operation of the Alaska Railroad;

8 (12) maintain offices and facilities at places it designates;

9 (13) apply to the state, the United States, and foreign countries or other
10 proper agencies for the permits, licenses, rights-of-way, or approvals necessary to
11 construct, maintain, and operate transportation and related services, and obtain, hold,
12 and reuse the licenses and permits in the same manner as other railroad operators;

13 (14) prescribe rates to be charged for services provided by the Alaska
14 Railroad consistent with 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of
15 1982);

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

18 (16) enter into contracts, leases, and other agreements with connecting
19 carriers, shippers, and other persons concerning the services, activities, operations,
20 property, and facilities of the corporation, including agreements that contain provisions
21 to preserve and expand the railroad's traffic base;

22 (17) plan for and undertake expansion of the railroad and railroad
23 activities, including extension of the rail system, and contract with other modes of
24 transportation service connecting to the rail system;

25 (18) hire and discharge railroad personnel and determine benefits and
26 other terms and conditions of employment;

27 (19) assume all rights, liabilities, and obligations of the Alaska Railroad
28 in accordance with 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982);

29 (20) maintain a security force to enforce municipal ordinances, state
30 laws, and the corporation's rules with respect to violations that occur on or to property
31 owned, managed, or transported by the corporation;

1 (21) issue its bonds upon approval of the legislature and provide for
2 and secure their payment, provide for the rights of their holders and hold or dispose
3 of them;

4 (22) purchase the corporation's bonds at a price not more than the
5 principal amount of them plus interest;

6 (23) cancel bonds of the corporation purchased by the corporation;

7 (24) secure the payment of its bonds by pledge, mortgage, or other lien
8 on its contracts, revenues, income, or property;

9 (25) consent to the modification of the rate of interest, time of payment
10 of an installment of principal or interest, or other term of a loan, contract, or
11 agreement to which the corporation is a party;

12 (26) borrow money, including the amounts necessary to establish
13 reasonable reserves, and pay financing charges and interest on bonds for a reasonable
14 period after which the corporation estimates other money will be available to pay the
15 interest, consultant, advisory, and legal fees, and other expenses necessary or incident
16 to borrowing;

17 (27) acquire, hold, and dispose of stocks, memberships, contracts,
18 bonds, general or limited partnership interests or other interests in another corporation,
19 association, partnership, joint venture, or other legal entity, and exercise the powers
20 or rights in connection with these interests that are provided in contracts or agreements
21 and that are allowed by law concerning the satisfaction of debts;

22 (28) undertake and provide for the acquisition, construction,
23 maintenance, equipping, and operation of connecting, switching, terminal, or other
24 railroads and railroad facilities;

25 (29) enter into agreements with a state agency or other instrumentality
26 of the state; and

27 (30) do all things necessary or desirable to carry out the powers and
28 duties of the corporation granted or necessarily implied in this chapter or other laws
29 of the state or the laws or regulations of the federal government.

30 * **Sec. 5.** AS 42.40.285 is amended by adding a new subsection to read:

31 (b) Unless the legislature approves the action by law, the state may not

1 exchange, donate, sell, or otherwise convey its entire interest in land that is acquired
 2 by the state under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982) or
 3 that is otherwise acquired by the state for railroad purposes of the corporation.

4 * **Sec. 6.** AS 42.40.350 is amended to read:

5 **Sec. 42.40.350. Land.** (a) The **state, acting through the Department of**
 6 **Natural Resources,** [CORPORATION] shall receive from the United States and, in
 7 its own name, take title to all rail property transferred under 45 U.S.C. 1201 - 1214
 8 (Alaska Railroad Transfer Act of 1982). All land that is transferred **to** or acquired by
 9 the **state under 45 U.S.C. 1201 - 1214 or for railroad purposes of the** corporation
 10 is designated as follows:

11 (1) railroad rights-of-way are railroad utility corridors;

12 (2) land outside railroad utility corridors is rail land.

13 (b) Railroad utility corridors shall be of a width at least 100 feet on both sides
 14 of the centerline of the extended main or branch line, unless the **state**
 15 [CORPORATION] does not own or control sufficient land to allow a corridor of that
 16 width. Railroad utility corridors may be surveyed by the metes and bounds method.

17 **Land within a utility corridor shall be reserved for use by the corporation. The**
 18 **corporation shall manage the use of land within a utility corridor. Neither the**
 19 **state nor the** [THE] corporation may [NOT] convey its entire interest in land within
 20 a utility corridor except as provided in AS 42.40.285, 42.40.370(d), and 42.40.400.
 21 However, the corporation may lease, subject to AS 42.40.285 and (d) of this section,
 22 grant easements in or permits for [,] or otherwise authorize use of portions of a utility
 23 corridor for transportation, communication, and transmission purposes and support
 24 functions associated with those purposes, and for commercial and other uses authorized
 25 under this chapter if the use does not restrict other parallel uses of the utility corridor.

26 (c) **Rail land necessary for the use, maintenance, or operation of the**
 27 **railroad shall be reserved for use by the corporation. The corporation shall**
 28 **manage the use of rail land reserved for the use of the corporation.** The
 29 corporation may lease, subject to AS 42.40.285 and (d) of this section, grant easements
 30 in or permits for [,] or otherwise authorize use of portions of rail land **that is reserved**
 31 **for use by the corporation.** However, **neither the state nor** the corporation may

1 [NOT] convey its entire interest in rail land except as provided in AS 42.40.285,
2 42.40.370(d), and 42.40.400.

3 (d) A lease or disposal of land approved by the legislature under AS 42.40.285
4 [BY THE CORPORATION] to a party other than the state shall be made at fair
5 market value as determined by a qualified appraiser or by competitive bid. **However,**
6 **a lease or disposal of land within railroad rights-of-way received by the state**
7 **under 45 U.S.C. 1201 - 1214 shall require that the land be used for transportation,**
8 **communication, and transmission purposes in perpetuity, though other compatible**
9 **purposes are allowed.**

10 * **Sec. 7.** AS 42.40.350 is amended by adding new subsections to read:

11 (e) Notwithstanding (d) of this section, but subject to AS 42.40.285, rail land
12 that is not reserved for use by the corporation under this section is available for
13 selection by and conveyance to municipalities under AS 29.65.

14 (f) Land not reserved for use by the corporation under this section is managed
15 by the Department of Natural Resources under AS 38, except as otherwise provided
16 by this chapter.

17 * **Sec. 8.** AS 42.40.360(b) is amended to read:

18 (b) The board may identify and request the commissioner of natural resources
19 to **make available to the corporation** [CONVEY] land necessary or useful for present
20 or future railroad purposes owned by or tentatively approved for transfer to the state,
21 including land not contiguous with a railroad utility corridor or rail land. The request
22 must include a statement of and justification for the present or future railroad use.
23 Upon receipt of a request, the commissioner shall temporarily reserve the land
24 identified in the request for railroad purposes and defer disposal or lease of that land
25 under other laws to a party other than the corporation. The temporary reservation of
26 land is subject to valid existing rights and remains in effect for 180 days.

27 * **Sec. 9.** AS 42.40.370(a) is amended to read:

28 (a) Within 90 days after receiving a request under AS 42.40.360(b), the
29 commissioner of natural resources shall by written decision

30 (1) **make available** [DESIGNATE] the identified land for railroad
31 purposes and, subject to valid existing rights, **reserve use of the land for railroad**

1 purposes by [CONVEY THE STATE'S INTERESTS IN THE LAND TO] the
2 corporation;

3 (2) notify the corporation of reasons for refusal to designate the
4 identified land for railroad purposes; or

5 (3) approve the request in part and deny it in part, [AND CONVEY]
6 as appropriate.

7 * **Sec. 10.** AS 42.40.370(c) is amended to read:

8 (c) In the absence of a reservation to the contrary, a **reservation**
9 [CONVEYANCE] of land under this section **or AS 42.40.350** vests in the corporation
10 [OWNERSHIP,] control of the surface, material and mineral estate, including the right
11 to extract or use timber and other construction materials, sand, gravel, rock, and the
12 right to tunnel, ditch, recontour, excavate, or otherwise use the land for railroad,
13 transportation, transmission, communication, and related purposes.

14 * **Sec. 11.** AS 42.40.370(d) is amended to read:

15 (d) The corporation may **transfer** [RECONVEY] to the **Department of**
16 **Natural Resources** [STATE] land received under this section that the corporation and
17 the commissioner of natural resources jointly identify as unnecessary or unsuitable for
18 the corporation's purposes.

19 * **Sec. 12.** AS 42.40.385(a) is amended to read:

20 (a) The corporation may exercise the power of eminent domain under
21 AS 09.55.240 - 09.55.460 to acquire land for railroad transportation purposes
22 consistent with this chapter. Notwithstanding AS 09.55.250, the corporation may
23 acquire a fee simple title whenever, in the judgment of the board, ownership of a fee
24 simple title is necessary to carry out the purposes of this chapter; **however, the**
25 **corporation may acquire land only on behalf of and in the name of the state.**

26 * **Sec. 13.** AS 42.40.390 is amended to read:

27 **Sec. 42.40.390. Land use rules.** The board may adopt exclusive rules
28 governing land use by parties having interests in or permits for land [OWNED OR]
29 managed by the corporation. The power conferred by this section is exercised for the
30 common health, safety, and welfare of the public and, to the extent constitutionally
31 permissible, may not be limited by the terms and conditions of leases, contracts, or

1 other transactions.

2 * **Sec. 14.** AS 42.40.400 is amended to read:

3 **Sec. 42.40.400. Vacation of easements.** The state [CORPORATION] may
4 vacate an easement acquired under this chapter by executing and filing a deed in the
5 appropriate recording district. If the easement was acquired by the state
6 [CORPORATION] under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of
7 1982), the state shall retain [ACQUIRE] the easement for use in conformity with those
8 laws.

9 * **Sec. 15.** AS 42.40.410 is amended to read:

10 **Sec. 42.40.410. Federal land.** The state [CORPORATION] may submit
11 applications [ON ITS OWN BEHALF AS AN INSTRUMENTALITY OF THE
12 STATE] for acquisition of federal land available under federal law that will enhance
13 the operations of the corporation [IF IT IS AVAILABLE UNDER A FEDERAL LAW
14 OTHER THAN THE ALASKA STATEHOOD ACT OF 1958 (P.L. 85 - 508, 72
15 STAT. 339), AS AMENDED]. The state shall [CORPORATION MAY] receive in
16 its own name conveyances of all interests in federal land obtained under this section.

17 * **Sec. 16.** AS 42.40.430 is amended to read:

18 **Sec. 42.40.430. Acquisition of government property.** The corporation, as an
19 instrumentality of the state, may acquire in its own name from the United States under
20 50 U.S.C. App. 1622 - 1622c (Surplus Property Act of 1944), 40 U.S.C. 471 et seq.
21 (Federal Property and Administrative Services Act of 1949), or other law, property
22 under the control of a federal department or agency that is useful for the corporation's
23 purposes; however, the corporation may acquire land only on behalf of and in the
24 name of the state. The corporation may acquire from the Department of
25 Administration property of the state made available under AS 44.68.110 - 44.68.140.

26 * **Sec. 17.** AS 42.40.435 is amended to read:

27 **Sec. 42.40.435. Exchange of land.** The state [CORPORATION] may
28 exchange land acquired under this chapter subject to AS 42.40.285. [THE
29 CORPORATION IS AN INSTRUMENTALITY AND AGENCY OF THE STATE
30 FOR PURPOSES OF EXCHANGING LAND WITH THE UNITED STATES,
31 MUNICIPALITIES, CORPORATIONS INCLUDING CORPORATIONS FORMED

1 UNDER 43 U.S.C. 1601 - 1628 (ALASKA NATIVE CLAIMS SETTLEMENT ACT),
2 AND INDIVIDUALS.]

3 * **Sec. 18.** AS 42.40.450 is amended to read:

4 **Sec. 42.40.450. Adverse possession.** No prescription or statute of limitations
5 runs against **an** [THE TITLE OR] interest of the corporation [TO OR] in land
6 [OWNED BY THE CORPORATION OR] under its jurisdiction. Title to **land under**
7 **the jurisdiction of the corporation may not be acquired by adverse possession or**
8 **prescription or in any other manner except by conveyance by the state. An** [OR]
9 interest in land [OWNED BY THE CORPORATION OR] under [ITS] jurisdiction **of**
10 **the corporation** may not be acquired by adverse possession or prescription, or in any
11 other manner except by [CONVEYANCE FROM OR] formal vacation by the **state**
12 [CORPORATION].

13 * **Sec. 19.** AS 42.40.540 is amended to read:

14 **Sec. 42.40.540. Appropriations.** The corporation **shall** [MAY] request, **in**
15 **accordance** with **AS 37.07, appropriations** [THE CONCURRENCE OF THE
16 GOVERNOR, A DIRECT APPROPRIATION OR GRANT] from the legislature to
17 **carry** [ASSIST IN CARRYING] out the provisions of this chapter.

18 * **Sec. 20.** AS 42.40.900(a) is amended to read:

19 (a) All claims and lawsuits involving activities of the railroad **or land under**
20 **the jurisdiction of the corporation**, including suits in contract, quasi-contract, or tort,
21 shall be brought against the corporation and not against the state.

22 * **Sec. 21.** AS 42.40.920(b) is amended to read:

23 (b) Unless specifically provided otherwise in this chapter, the following laws
24 do not apply to the operations of the corporation:

- 25 (1) AS 19;
26 (2) AS 30.15;
27 (3) AS 35;
28 (4) AS 36.30, except as specifically provided in that chapter;
29 (5) AS 37.05;
30 (6) [AS 37.07;
31 (7)] AS 37.10.010 - 37.10.060;

1 (7) [(8)] AS 37.10.085;
2 (8) [(9)] AS 37.20;
3 (9) [(10)] AS 37.25;
4 (11)] AS 38;
5 (10) [(12)] AS 44.62.010 - 44.62.320.

6 * **Sec. 22.** AS 42.40.285(1) and 42.40.370(b) are repealed.

7 * **Sec. 23.** PREPARATION OF FIRST ANNUAL BUDGET UNDER AS 37.07. The
8 Alaska Railroad Corporation shall prepare its first agency program and financial plan under
9 AS 37.07 for consideration by the governor in the development of the governor's
10 recommended operating and capital improvements programs and financial plans that are
11 submitted to the legislature at the next regular session of the legislature that convenes
12 following the effective date of this Act.

13 * **Sec. 24.** RATIFICATION OF PRIOR LAND TRANSFERS. Transfers of title to land
14 under the jurisdiction of the Alaska Railroad Corporation to a party other than the state that
15 occurred prior to the effective date of this Act and that occurred in accordance with law are
16 ratified.

17 * **Sec. 25.** TITLE TO RAILROAD LAND. (a) Title to all land acquired by the Alaska
18 Railroad Corporation under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982)
19 or otherwise acquired by the corporation before the effective date of this Act is transferred to
20 the Department of Natural Resources, acting in behalf of the State of Alaska, on the effective
21 date of this Act.

22 (b) The commissioner of natural resources shall provide for the recording of title to
23 the land subject to this section in the name of the State of Alaska in the appropriate recording
24 offices.

25 * **Sec. 26.** This Act takes effect immediately under AS 01.10.070(c).