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1 IN THE HOUSE

2

HOUSE BILL NO. 512

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act establishing the Alaska Railroad Corporation
7 to manage and operate the Alaska Railroad; and pro-
8 viding for an effective date."

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

10 * Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature
11 finds that

12 (1) The Alaska Railroad is an essential part of the state trans-
13 portation network that without state action will cease to be a transporta-
14 tion option available within Alaska. The federal government has offered to
15 the state the option of taking over the Alaska Railroad to ensure its
16 continued existence. It is in the state's best interest to accept the
17 railroad under the terms and conditions offered by the United States gov-
18 ernment.

19 (2) There is vast potential in Alaska's natural resource areas
20 and that extension of the Alaska Railroad into natural resource areas is
21 necessary for the achievement of the goals of lower freight cost and long-
22 term economic growth.

23 (b) It is the purpose of this Act to create an entity and to provide
24 that entity with the powers and duties necessary to operate and manage the
25 Alaska Railroad as a viable independent entity pending the eventual trans-
26 fer of the railroad to the private sector for its ownership or operation or
27 both consistent with 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of
28 1982).

29 (c) The legislature declares that

1 (1) the exercise of the powers of the state in the interest of
2 the people of the state is necessary to accomplish the policy set out in
3 (a) of this section by authorizing the creation of a public corporation
4 with the powers, duties, and functions as provided in this Act to operate
5 the Alaska Railroad and to manage its rail, industrial, port and other
6 properties;

7 (2) it is in the best interests of the people of the state for
8 the public corporation that will operate and manage the Alaska Railroad to
9 be created in such a way that

10 (A) the corporation will be exclusively responsible for the
11 management of the financial and legal obligations of the Alaska Rail-
12 road;

13 (B) the corporation, and not the state, will constitute a
14 common carrier subject to the jurisdiction of the United States Inter-
15 state Commerce Commission;

16 (C) the corporation will have the ability to raise capital
17 by issuing obligations exempt from federal and state taxation;

18 (D) the corporation may carry out its responsibilities on a
19 self-sustaining basis;

20 (E) the best possible combination of types and levels of
21 safe, efficient, and economical transportation can be provided that is
22 necessary to meet the overall needs of the state, supported when
23 necessary by state investment;

24 (F) the railroad may be operated prudently and according to
25 sound business management practices; and

26 (G) borrowing by the corporation does not directly or
27 indirectly endanger the state's own borrowing capacity.

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

29 CHAPTER 40. ALASKA RAILROAD CORPORATION.

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ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is established the Alaska Railroad Corporation. The corporation is a public corporation for the purposes of art. III, sec. 22, Constitution of the State of Alaska. The corporation shall be considered a principal department only for the purposes of art. III, sec. 26, Constitution of the State of Alaska. The corporation has a legal existence independent of and separate from the state. The exercise by the corporation of the powers provided in this chapter is considered an essential government function of the state.

Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the corporation are vested in the board of directors. The board consists of five voting members appointed by the governor. These five members must be residents of and registered voters in the state except as provided in (b) of this section. No more than two of these members may be from any one of the four judicial districts in the state. Two of the voting members must have at least five years experience as owners or managers of a business in the state. A voting member may not be a state officer or employee.

(b) One person who is not a resident of or registered voter in the state may be appointed by the governor to be a voting member of the board, if, at the time of appointment, the person has at least 10 years of experience in management of railroads.

(c) In addition to the voting members, the following nonvoting members shall serve on the board:

(1) an employee of the corporation appointed by the governor to represent the employees;

(2) the chief executive officer of the corporation.

(d) The voting members of the board shall be confirmed by a

1 majority of the membership of the legislature in joint session. A
2 member appointed by the governor has the full powers and responsibili-
3 ties of a confirmed board member unless and until the member has been
4 rejected by the legislature.

5 (e) The board shall elect from its membership a chairperson and
6 vice-chairperson and prescribe their specific duties by rule.

7 (f) The board shall appoint a secretary and prescribe the spe-
8 cific duties of the secretary.

9 (g) The chairperson shall call meetings of the board at least
10 once every three months. The chairperson may call other meetings of
11 the board as the chairperson considers necessary. The chairperson
12 shall preside at meetings of the board.

13 (h) The governor may, by written notice to the member, remove a
14 member from the board for

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

17 (2) continued refusal or inability to attend meetings of
18 the board;

19 (3) conviction of a felony; or

20 (4) conviction of a misdemeanor involving moral turpitude.

21 Sec. 42.40.030. TERM OF OFFICE. The appointed members of the
22 board serve for staggered terms of five years each.

23 Sec. 42.40.040. VACANCIES. (a) A vacancy on the board is
24 filled by appointment by the governor, and the appointment must be
25 confirmed by the legislature in joint session. A member selected to
26 fill a vacancy holds office for the balance of the term for which the
27 member's predecessor is appointed.

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

1 board.

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

4 Sec. 42.40.050. COMPENSATION AND EXPENSES. (a) An appointed
5 member of the board is entitled to compensation at a rate of \$200 for
6 each day the member is engaged in the actual performance of duties as
7 a member of the board.

8 (b) In addition to compensation under (b) of this section, an
9 appointed member of the board is entitled to per diem and travel
10 expenses authorized by law for state boards and commissions.

11 Sec. 42.40.060. QUORUM AND NOTICE OF MEETINGS. Three voting
12 members of the board constitute a quorum for the transaction of busi-
13 ness.

14 Sec. 42.40.070. VOTING. The board shall provide by rule for the
15 manner of voting and representation of persons absent from meetings.
16 The rules may provide for voting and conferring by means of telecommu-
17 nication devices or by mail or for voting as directed in a written
18 proxy taking a position on a particular issue.

19 ARTICLE 2. MANAGEMENT.

20 Sec. 42.40.100. EXECUTIVE OFFICERS. (a) The board shall ap-
21 point and fix compensation for the chief executive officer of the
22 corporation. The chief executive officer serves at the pleasure of
23 the board.

24 (b) The chief executive officer of the corporation shall appoint
25 and fix the compensation for other executive officers. The appoint-
26 ment of other executive officers and their compensation are subject to
27 board approval.

28 Sec. 42.40.110. DELEGATION. (a) The board shall by rule dele-
29 gate powers and duties necessary and appropriate for the management of

1 the daily affairs and operations of the corporation to the chief
2 executive officer, subject to a requirement of board concurrence or
3 authorization imposed by the rules.

4 (b) Within 60 days of its establishment, the board shall by rule
5 delegate the following activities of the corporation to the chief
6 executive officer or other executive officers designated by the board:

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 corporation's entire interest in real property of the corpora-
10 tion;

11 (2) establishing specific rates, tariffs, divisions, and
12 contract rate agreements;

13 (3) making routine changes in service levels; and

14 (4) performing procurement activities.

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

17 (1) transferring the corporation's entire interest in real
18 property;

19 (2) issuing notes, debentures, and bonds;

20 (3) mortgaging or pledging authority assets;

21 (4) donating property, or other assets belonging to the
22 corporation;

23 (5) acting as a surety or guarantee;

24 (6) adopting a long-range expansion and capital improvement
25 plan;

26 (7) certifying annual reports;

27 (8) effecting generally applicable increases and decreases
28 in rates other than those periodically approved by the United States
29 Interstate Commerce Commission;

1 (9) expanding or reducing services in a major way as pro-
2 vided under this chapter;

3 (10) expanding the main or branch lines, other than perform-
4 ing routine track alignment as necessary to maintain service levels in
5 effect on the date of transfer; and

6 (11) selecting independent auditors and accountants.

7 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

8 Sec. 42.40.200. PUBLIC BOARD MEETINGS. (a) The meetings of the
9 board are public with the exception of an executive session conducted
10 under AS 44.62.310 and (b) of this section.

11 (b) In addition to those subjects that may be discussed in
12 executive session under AS 44.62.310, the board may consider in execu-
13 tive session matters that pertain to personnel, the corporation's
14 legal position, land acquisition or disposal, or proprietary informa-
15 tion, as defined in a manner consistent with the standards and prac-
16 tices of the United States Interstate Commerce Commission for protec-
17 tion of information associated with specific shippers, divisions, and
18 contract rate agreements.

19 Sec 42.40.220. MINUTES OF MEETINGS. The board shall keep
20 minutes of each meeting.

21 Sec. 42.40.230. RULES. The board shall establish a procedure
22 for adopting rules to carry out its functions and the purposes of this
23 chapter. The rules shall include a procedure for the adoption of
24 emergency rules when the adoption of an emergency rule is essential to
25 continue or to reinstate the orderly operation of the corporation's
26 facilities or program.

27 Sec. 42.40.240. PUBLIC DISCLOSURE OF INFORMATION. (a) Except
28 as provided by rule of the corporation under (b) of this section,
29 information in the possession of the corporation is public and is open

1 to public inspection at reasonable times.

2 (b) Except as provided in AS 42.40.270, the corporation may by
3 rule designate and withhold disclosure of matters of a nonpublic,
4 privileged, or proprietary nature. Those matters include personnel
5 records, communications with and work product of counsel consistent
6 with the standards and practices of the United States Interstate
7 Commerce Commission, and information associated with specific ship-
8 pers, divisions, and contract rate agreements.

9 Sec. 42.40.250. SPECIAL REPORT. The corporation shall investi-
10 gate and prepare a report for the governor and the legislature on the
11 long-term operations of the railroad that are in the best interest of
12 the state. The report shall be due January 1, 1988. It shall make
13 specific recommendations on operational alternatives and the transfer
14 of all or part of the railroads operations to the private sector.

15 Sec. 42.40.260. ANNUAL REPORT. Within 90 days following the end
16 of the fiscal year of the railroad the board shall direct preparation
17 of, certify and distribute to the governor and to the legislature a
18 report describing the operations and financial condition of the corpo-
19 ration during the preceding fiscal year.

20 Sec. 42.40.270. ANNUAL AUDIT. The board shall have the finan-
21 cial records of the corporation audited annually by an independent
22 certified public accountant experienced in railroad accounting. The
23 corporation shall make all of its financial records available to an
24 auditor appointed by the governor or to the legislative audit division
25 for examination. Disclosure to the public by the auditor or legisla-
26 tive audit division of this information is subject to AS 42.40.240 and
27 rules implementing that section.

28 ARTICLE 4. POWERS AND DUTIES.

29 Sec. 42.40.300. GENERAL POWERS. In addition to the exercise of

- 1 other powers authorized by law, the corporation may
- 2 (1) adopt a seal;
- 3 (2) adopt bylaws governing the business of the corporation;
- 4 (3) sue and be sued;
- 5 (4) appoint trustees and agents of the corporation and
- 6 prescribe their powers and duties;
- 7 (5) hire legal counsel to represent the corporation;
- 8 (6) make contracts and execute instruments necessary or
- 9 convenient in the exercise of its powers and duties;
- 10 (7) acquire by purchase, lease, bequest, devise, gift,
- 11 exchange, the satisfaction of debts, the foreclosure of mortgages, or
- 12 otherwise, real or personal property, rights, rights-of-way, fran-
- 13 chises, easements, and other interest in land, including land lying
- 14 under water and appropriation of water rights that are located in the
- 15 state, taking title to the property in the name of the corporation;
- 16 (8) acquire property by eminent domain in accordance with
- 17 AS 42.40.430;
- 18 (9) hold, maintain, use, operate, lease, exchange, donate,
- 19 improve, convey, alienate, dispose of, or transfer any real or person-
- 20 al property including facilities and equipment;
- 21 (10) contract with and accept transfers, gifts, grants or
- 22 loans of funds or property from the United States and the state or its
- 23 political subdivisions, subject to the provisions of federal, state,
- 24 or local programs;
- 25 (11) undertake and provide for the management, operation,
- 26 maintenance, use, and control of all of the properties of the corpo-
- 27 ration including, the tracks, equipment and other property transferred
- 28 to it by the federal government or by any person;
- 29 (12) recommend to the legislature and the governor any tax,

1 financing, or financial arrangement the corporation considers appro-
2 priate for expansion or extension and operation of the Alaska Rail-
3 road;

4 (13) maintain offices and facilities at places it desig-
5 nates;

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

12 (15) prescribe rates to be charged for services provided by
13 the Alaska Railroad on a competitive basis;

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

16 (17) enter into contracts and leases with connecting carri-
17 ers and shippers, that contain provisions to preserve and expand the
18 railroad's traffic base;

19 (18) plan for and undertake expansion of the railroad and
20 railroad activities, including extension of the Alaska Railroad's rail
21 system, and contract with other modes of transportation service con-
22 necting to the railroad's rail services;

23 (19) adopt rules that are designed to safeguard property
24 owned, managed, or transported by the corporation and to protect
25 employees and persons using the corporation's property or services;

26 (20) hire and discharge railroad personnel and determine
27 benefits and other terms and conditions of employment established in
28 accordance with obligations imposed by 45 U.S.C. 1201-1214 (Alaska
29 Railroad Transfer Act of 1982);

1 (21) assume and satisfy liabilities of the United States or
2 its agencies as provided by the federal transfer legislation and the
3 closing report or its substantive equivalent as accepted by the legis-
4 lature;

5 (22) maintain a security force to enforce state law and the
6 corporations rules with respect to violations that occur on or to
7 property owned, managed or transported by the corporation;

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

11 (24) secure the payment of its obligations by pledge or
12 mortgage or other lien on its contracts, revenues, income, or proper-
13 ty;

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

18 (26) include in any borrowing the amounts necessary to
19 establish reasonable reserves and pay financing charges and interest
20 on the obligations for a reasonable period after which the corporation
21 estimates funds will be otherwise available to pay the interest,
22 consultant, advisory, and legal fees, and other expenses necessary or
23 incident to borrowing;

24 (27) purchase the corporation's bonds at a price not more
25 than the principal amount of them plus interest; and

26 (28) cancel bonds purchased under (21) of this section.

27 Sec. 42.40.310. LONG-RANGE EXPANSION AND CAPITAL IMPROVEMENT
28 PLANS. (a) The corporation shall prepare and the board shall adopt a
29 long-range expansion plan and a capital improvement plan. The long-

1 range expansion plan shall delineate the manner in which the corpora-
2 tion intends to accomplish the purposes of this chapter during each of
3 the five years after the plan is adopted. The capital improvement
4 plan shall present and explain the corporation's anticipated capital
5 improvements for each of the five years after the plan is adopted.

6 (b) The board shall annually review and update the plans re-
7 quired under (a) of this section. The board may not contract for the
8 preparation or revision of either the long-range expansion plan or the
9 capital improvement plan, but shall require their preparation and
10 revision by employees of the corporation.

11 (c) The board shall provide copies of its updated plans to the
12 governor and the legislature by December 1 of each year.

13 Sec. 42.40.320. USE OF CORPORATION ASSETS. (a) The corporation
14 shall apply all money, property, other assets, and credit of the
15 corporation toward activities authorized by this chapter. The corpo-
16 ration may not issue shares of stock, pay dividends, make private
17 distributions of assets, make loans to board members or employees, or
18 engage in business for private benefit. The use of money, property,
19 other assets, or credit of the corporation for purposes not authorized
20 by law by persons having the possession or control of it is prohibi-
21 ted.

22 (b) Notwithstanding the provisions of this section, the corpo-
23 ration may

24 (1) defend and indemnify a current or former employee,
25 agent, or board member of the corporation and their successors against
26 all costs, expenses, judgments, and liabilities, including attorney
27 fees, incurred by or imposed upon that person in connection with a
28 civil or criminal action in which the person is involved by affilia-
29 tion with the corporation, if the person acted in good faith on behalf

1 of the corporation and within the scope of official duties or powers;
2 and

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

13 ARTICLE 5. RAIL PROPERTIES.

14 Sec. 42.40.400. LAND. All land among the rail properties trans-
15 ferred under 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of
16 1982) or otherwise acquired by the corporation is under the control of
17 the corporation. As to all land that is transferred or acquired

18 (1) railroad rights-of-way or easements transferred under
19 the federal act or otherwise acquired shall be classified as railroad
20 utility corridors;

21 (2) future railroad utility corridors shall be of a width
22 at least 100 feet on both sides of the centerline of the extended main
23 or branch line, or may be of other width as designated by the corpo-
24 ration, and may be surveyed by the metes and bounds method; and

25 (3) the corporation may lease or rent portions of the
26 utility corridor for other transportation services.

27 Sec. 42.40.420. CLASSIFICATION, ACQUISITION, AND USE OF STATE
28 LAND FOR RAILROAD PURPOSES. (a) The board by rule may identify and
29 request conveyance of land owned by or subject to selection by the

1 state, including tide and submerged land and land not adjacent to a
2 railroad corridor, as necessary or useful for present, future or
3 intended railroad purposes. The request must include a statement of
4 and justification for the present, future or intended railroad use.
5 Upon submission of a request for classification and conveyance to the
6 commissioner of natural resources, the commissioner shall temporarily
7 classify and reserve the land identified in the request for railroad
8 purposes and shall temporarily vacate a classification allowing dis-
9 posal or lease of that land under laws or programs of the state. A
10 temporary classification and vacation is subject to valid existing
11 rights and remains in effect for 180 days.

12 (b) Within 90 days after receiving a request under (a) of this
13 section, the commissioner of natural resources by departmental order
14 shall;

15 (1) classify that land for railroad purposes and, subject
16 to valid existing rights, convey the state's interests to the corpo-
17 ration; or

18 (2) notify the corporation of reasons for refusal to clas-
19 sify the land for railroad purposes.

20 (c) A conveyance under (b)(1) of this section vests in the
21 corporation the exclusive right to extract and use for its purposes
22 sand, gravel, rock, timber and other construction materials the land
23 conveyed without regard to the classification of the resources as part
24 of the surface or subsurface estate.

25 (d) The corporation may reconvey to the state land received
26 under this section that the corporation and the commissioner of natu-
27 ral resources jointly identify as unnecessary or unsuitable for the
28 corporation's purposes.

29 (e) The corporation's ownership of state land entitles it to

1 exclusive use and control of the surface, subsurface, complete sub-
2 jacent and lateral support of the surface, subsurface, and the right
3 to tunnel, ditch, recontour, excavate or otherwise use the subsurface
4 for railroad, transportation, transmission, and related purposes.

5 (f) When physical conditions require that track or other right-
6 of-way fixtures of the corporation be moved from the existing location
7 and relocated on state-owned land adjacent to or in the vicinity of
8 the existing right-of-way, and the chief executive officer determines
9 that relocation is necessary to maintain safe and adequate rail op-
10 erations, the corporation may effect the relocation with concurrence
11 of the Department of Natural Resources. The relocation must be limi-
12 ted to land adequate to restore or continue safe rail operations at a
13 normal level.

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

18 (b) The corporation may acquire a fee simple title whenever, in
19 the judgment of the board, ownership of a fee simple is necessary to
20 carry out the state's lawful purposes in condemning property.

21 (c) The corporation may file a declaration of taking in the
22 manner provided for the state under AS 09.55.420.

23 (d) The power of eminent domain conferred under this section
24 includes the power to obtain material, including clay, gravel, sand,
25 timber, or rock for railroad use, the land necessary to obtain the
26 material, and access to the land and material.

27 Sec. 42.40.450. OTHER ASSETS. (a) The corporation may submit
28 applications on its own behalf as an instrumentality of the state for
29 acquisition of interests in federal land available under federal law

1 that will enhance the operations of the corporation and may receive
2 conveyances of all interests in its own name.

3 (b) The corporation, as an agency of the state, may acquire in
4 its own name from the United States under 50 App U.S.C. 1622 et seq
5 (the Surplus Property Act of 1944), 40 U.S.C. 471 et seq as amended
6 (the Federal Property and Administrative Services Act of 1949), or
7 other law, property under the control of a federal department or
8 agency that is useful for the corporation's purposes and may acquire
9 from the Department of Administration property of the state made
10 available under AS 44.71.010 - 44.71.040.

11 ARTICLE 6. FINANCIAL PROVISIONS.

12 Sec. 42.40.500. LIMITATION OF LIABILITY. A liability incurred
13 by the corporation shall be satisfied exclusively from the assets or
14 revenue of the corporation and no creditor or other person has a right
15 of action against the state because of a debt, obligation, or
16 liability of the corporation.

17 Sec. 42.40.520. FIDELITY BOND. The corporation shall obtain a
18 fidelity bond in an amount determined by the board for its members and
19 any officer responsible for accounts and finances. A bond must be in
20 effect during the entire tenure in office of the bonded person.

21 Sec. 42.40.530. INSURANCE. The corporation shall keep in force
22 public liability insurance in an amount reasonably calculated to cover
23 potential claims for bodily injury, death or disability and property
24 damage that may arise from or be related to its operations and activi-
25 ties, naming the state as an additional insured.

26 Sec. 42.40.540. CLAIMS. (a) All claims and lawsuits involving
27 activities of the railroad, including suits in contract, quasi-con-
28 tract, or tort, shall be brought against the corporation, and not
29 against the state.

1 (b) In a claim or other legal action against the corporation
2 involving its activities, including the expansion, extension and
3 construction of the railroad, in which the corporation is the
4 prevailing party, the party or parties that maintained the action
5 shall be liable to the corporation for its full costs and legal fees
6 in defending the action and for the financial losses to the
7 corporation that are directly attributable to the maintenance of that
8 action.

9 (c) For the purposes of actionable claims, undertakings, pay-
10 ments of judgments, execution, interest, punitive damages, statutes of
11 limitations, bonds, costs, and similar matters related to the pres-
12 entation and prosecution of claims by and against the corporation, the
13 corporation and its board members and employees enjoy the same rights,
14 privileges, and immunities as the state and state officers as provided
15 in AS 09.10.120, AS 09.50.250 - 09.50.290, and AS 09.65.040.

16 (d) Claims against the corporation are not subject to the
17 provisions of AS 44.77.010 - 44.77.070 regarding claims against the
18 state.

19 (e) The corporation is not subject to the provisions of AS 44.-
20 80.010, regarding the state as a party to an action.

21 Sec. 42.40.550. REVENUE. Revenue generated by or appropriated
22 to the corporation shall be retained and managed by the corporation
23 for railroad and related purposes as required by 45 U.S.C. 1207(a)(5)
24 (Alaska Railroad Transfer Act of 1982).

25 Sec. 42.40.560. APPROPRIATIONS. The corporation may request,
26 with the concurrence of the governor, a direct appropriation or grant
27 from the legislature to assist in carrying out the provisions of
28 AS 42.40.300 and 42.40.310.

29 Sec. 42.40.570. BONDS AND NOTES. (a) The corporation by

1 resolution may issue bonds and bond anticipation notes to provide
2 money to carry out its purposes.

3 (b) The principal and interest on bonds or notes of the corpo-
4 ration is payable from corporation money or assets. Bonds or notes
5 may be additionally secured by a pledge of a grant or contribution
6 from the federal government or a corporation, association, institution
7 or person, or a pledge of money, income, or revenue of the corporation
8 from any source.

9 (c) Bond anticipation notes may be payable from the proceeds of
10 the sale of bonds or other bond anticipation notes, or, if bond or
11 bond anticipation note proceeds are not available, from other money or
12 assets of the corporation.

13 (d) Bonds or bond anticipation notes may be issued in one or
14 more series and shall, as provided by the resolution of the board,

- 15 (1) be dated;
- 16 (2) bear interest at a required rate or rates per year or
17 within a maximum rate;
- 18 (3) be in a required denomination;
- 19 (4) be in a coupon or registered form;
- 20 (5) carry conversion or registration provisions;
- 21 (6) have a required rank or priority;
- 22 (7) be executed in the required manner and form;
- 23 (8) be payable as required from the sources, in the medium
24 of payment, and place or places inside or outside the state;
- 25 (9) be subject to authentication by a trustee or fiscal
26 agent; and
- 27 (10) be subject to terms of redemption with or without
28 premium.

29 (e) Bonds or bond anticipation notes may be sold in the manner,

1 on the terms, and at the price the board determines. Bond anticipa-
2 tion notes shall mature at the time or times determined by the board.
3 Bonds shall mature at the time, not exceeding 50 years from their
4 date, determined by the board.

5 (f) The corporation may by provisions in a resolution authoriz-
6 ing or relating to the issuance of bonds or bond anticipation notes
7 enter into the following agreements with the holders of the bonds or
8 bond anticipation notes:

9 (1) pledge all or part of its revenue to which its right
10 then exists or may thereafter exist, the money derived from the reve-
11 nue, and the proceeds of its bonds or notes;

12 (2) covenant against pledging all or part of its revenue,
13 or against permitting or suffering a lien on its revenue or property;

14 (3) covenant as to establishment of reserves or sinking
15 funds and provide for, regulate, and dispose of the reserves or sink-
16 ing funds;

17 (4) covenant regarding limitations on a right to sell or
18 otherwise dispose of property of any kind;

19 (5) covenant as to bonds and notes to be issued, their
20 limitations, terms and conditions, the custody, application and dispo-
21 sition of the proceeds of the bonds and notes;

22 (6) covenant as to the issuance of additional bonds or
23 notes, or limitations on the issuance of additional bonds or notes,
24 and the incurring of other debts;

25 (7) covenant as to the payment of the principal of or
26 interest on the bonds or notes, the sources and methods of payment,
27 the rank or priority of the bonds or notes with respect to a lien or
28 security, or the acceleration of the maturity of the bonds or notes;

29 (8) provide for the replacement of lost, stolen, destroyed

1 or mutilated bonds or notes;

2 (9) covenant against extending the time for the payment of
3 bonds or notes, or interest on the bonds or notes;

4 (10) covenant as to the redemption of bonds or notes and
5 privileges of their exchange for other bonds or notes of the corpo-
6 ration;

7 (11) covenant to create or authorize the creation of special
8 funds of money to be held in pledge or otherwise for operating ex-
9 penses, payment or redemption of bonds or notes, reserves or other
10 purposes, and as to the use and disposition of the money held in the
11 funds;

12 (12) establish the procedure by which the terms of a con-
13 tract or covenant with or for the benefit of the holders of bonds or
14 notes may be amended or abrogated, the amount of bonds or notes the
15 holders of which must consent to amendment or abrogation, and the
16 manner in which the consent may be given;

17 (13) covenant as to the custody of any of its properties or
18 investments, their safekeeping and insurance, and the use and disposi-
19 tion of insurance money;

20 (14) vest in a trustee or trustees inside or outside the
21 state property, rights, powers and duties in trust as the corporation
22 may determine that may include any or all of the rights, powers and
23 duties of a trustee appointed by the holders of bonds or notes of the
24 corporation, and to limit or abrogate the rights of the holders of the
25 bonds or notes of the corporation to appoint a trustee under this
26 chapter or limit the rights, powers and duties of the trustee;

27 (15) pay the costs or expenses incident to the enforcement
28 of the bonds or notes, of the provisions of the resolution, or of a
29 covenant or agreement of the corporation with the holders of its bonds

1 or notes;

2 (16) agree with a corporation trustee, that may be a trust
3 company or bank having the powers of a trust company inside or outside
4 the state, as to the pledging or assigning of revenue or funds that or
5 in which the corporation has a right or interest; the agreement may
6 provide for other rights and remedies exercisable by the trustee for
7 the protection of the holders of bonds or notes of the corporation and
8 not otherwise in violation of law, and may provide for the restriction
9 of the rights of an individual holder of bonds or notes of the
10 corporation;

11 (17) appoint and provide for the duties and obligations of a
12 paying agent or other fiduciary inside or outside the state;

13 (18) limit the rights of the holders of bonds or notes of
14 the corporation to enforce a pledge or covenant securing the bonds or
15 notes; and

16 (19) make covenants other than and in addition to the cove-
17 nants expressly authorized in this section, of like or different
18 character, and make covenants to do or refrain from doing acts in
19 order to better secure bonds or notes or that, in the absolute
20 discretion of the board, will tend to make bonds or notes more
21 marketable.

22 Sec. 42.40.580. INTERIM RECEIPTS, TEMPORARY BONDS, AND TEMPORARY
23 BOND ANTICIPATION NOTES. Before the preparation of definitive bonds
24 or bond anticipation notes, the corporation may issue interim receipts
25 or temporary bonds or bond anticipation notes, with or without cou-
26 pons, exchangeable for bonds or bond anticipation notes when these
27 definitive bonds or bond anticipation notes have been executed and are
28 available for delivery.

29 Sec. 42.40.590. VALIDITY OF SIGNATURES. If an officer whose

1 signature or a facsimile of whose signature appears on bonds, notes,
2 or coupons attached to them ceases to be an officer before the de-
3 livery of the bond, note, or coupon, the signature or facsimile is
4 valid the same as if the person had remained in office until delivery.

5 Sec. 42.40.600. INDEPENDENT FINANCIAL ADVISOR. In negotiating
6 the private sale of bonds or bond anticipation notes to an under-
7 writer, the board shall retain a financial advisor who is independent
8 from the underwriter.

9 Sec. 42.40.610. VALIDITY OF PLEDGE. (a) The pledge of assets
10 or revenue of the corporation to the payment of the principal or
11 interest on bonds or notes of the corporation is valid and binding
12 from the time the pledge is made and the assets or revenue are immedi-
13 ately subject to the lien of the pledge without physical delivery or
14 further act. The lien of a pledge is valid and binding against all
15 parties having claims of any kind against the corporation, irrespec-
16 tive of whether those parties have notice of the lien of the pledge.

17 (b) Nothing in this section prohibits the corporation from
18 selling assets subject to a pledge, except that a sale may be re-
19 stricted by the trust agreement or resolution providing for the issu-
20 ance of the bonds or notes.

21 Sec. 42.40.620. REMEDIES. A holder of bonds or notes issued
22 under this chapter or of coupons attached to them, and a trustee under
23 a trust agreement or resolution authorizing the issuance of the bonds
24 or notes, except as restricted by a trust agreement or resolution,
25 either at law or in equity, may

26 (1) enforce all rights granted under this chapter, the
27 trust agreement or resolution, or any other contract executed by the
28 corporation under this chapter; and

29 (2) compel the performance of all duties of the corporation

1 required by this chapter or by the trust agreement or resolution.

2 Sec. 42.40.630. NEGOTIABLE INSTRUMENTS. Bonds and notes issued
3 under this chapter and interest coupons attached to them are nego-
4 tiable instruments under the laws of this state, subject only to
5 applicable provisions for registration.

6 Sec. 42.40.640. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds
7 and notes issued under this chapter are securities in which all public
8 officers and public bodies of the state and its political subdivi-
9 sions, all insurance companies, trust companies, banking associations,
10 investment companies, executors, administrators, trustees and other
11 fiduciaries may properly and legally invest funds, including capital
12 in their control or belonging to them. These bonds and notes may be
13 deposited with a state or municipal officer of an agency or political
14 subdivision of the state for any purpose for which the deposit of
15 bonds or notes of the state is authorized by law.

16 Sec. 42.40.650. REFUNDING BONDS. (a) The corporation may
17 provide for the issuance of refunding bonds for the purpose of refund-
18 ing bonds then outstanding that have been issued under this chapter,
19 including the payment of a redemption premium on them and interest
20 that accrues to the date of redemption of the bonds. Refunding bonds
21 shall be issued in accordance with provisions of this chapter that
22 relate to the issuance of bonds to the extent those provisions are
23 appropriate.

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

1 in the resolution authorizing the issuance of the refunding bonds or
2 in the trust agreement securing them, to the payment of interest on
3 the refunding bonds and expenses in connection with the refunding, the
4 proceeds may be invested in direct obligations of the United States or
5 obligations the principal of and the interest on which are uncondi-
6 tionally guaranteed by the United States that mature or may be re-
7 deemed not later than the date the proceeds of the refunding bonds,
8 together with the interest accruing on them, will be required for the
9 purposes intended.

10 Sec. 42.40.660. CREDIT OF STATE NOT PLEDGED. (a) The state and
11 its political subdivisions are not liable for the debts of the corpo-
12 ration. Bonds and notes issued under this chapter are payable solely
13 from the revenue or assets of the corporation and do not constitute a

14 (1) debt, liability, or obligation of the state or of a
15 political subdivision of the state; or

16 (2) pledge of the faith and credit of the state or of a
17 political subdivision of the state.

18 (b) The corporation may not pledge the credit or the taxing
19 power of the state or its political subdivisions. Each bond and note
20 issued under this chapter shall contain on its face a statement that

21 (1) the corporation is not obligated to pay it or the
22 interest on it except from the revenue or assets pledged for it; and

23 (2) neither the faith and credit nor the taxing power of
24 the state or of a political subdivision of the state is pledged to the
25 payment of it.

26 Sec. 42.40.670. OFFICERS NOT LIABLE. An officer or employee of
27 the corporation is not subject to personal liability or accountability
28 because of the execution or issuance of bonds or notes.

29 Sec. 42.40.680. EXEMPTION FROM TAXATION. (a) The real and

1 personal property of the corporation and its assets, income, and
2 receipts are exempt from all taxes and special assessments of the
3 state or a political subdivision of the state.

4 (b) This section does not affect or limit an exemption from
5 license fees, property taxes, or excise, income or other taxes,
6 provided under any other law, nor does it create a tax exemption with
7 respect to the interest of any business enterprise or other person,
8 other than the corporation.

9 (c) The exercise of the powers granted by this chapter shall be
10 in all respects for the benefit of the people of the state, for their
11 well-being and prosperity, and for the improvement of their social and
12 economic conditions. Therefore, the corporation is not required to
13 pay a tax or assessment on property owned by the corporation under the
14 provisions of this chapter or on the income from the property.

15 (d) Bonds and notes issued under this chapter are issued by a
16 body corporate and public of the state and for an essential public and
17 governmental purpose. Therefore, the bonds and notes, the interest
18 and income from them, and all fees, charges, funds, revenue, income
19 and other money pledged or available to pay or secure the payment of
20 the bonds and notes or interest on them, are exempt from taxation
21 except for inheritance, transfer, and estate taxes.

22 Sec. 42.40.690. REVERSION OF ASSETS. If the corporation ceases
23 to exist, for whatever reason, its assets revert to the state.

24 ARTICLE 7. PERSONNEL AND LABOR RELATIONS.

25 Sec. 42.40.700 PERSONNEL. (a) Employees of the Alaska Railroad
26 are employees of the corporation and not of the state. The provisions
27 of AS 39 do not apply to employees of the corporation.

28 (b) The collective bargaining agreements between the corporation
29 and its employees shall remain in effect until they expire by their

1 terms or, as required under 45 U.S.C. 1206 (Alaska Railroad Transfer
2 Act of 1982), they are renegotiated, subject to the approval of the
3 board.

4 (c) The corporation may not enter into a collective bargaining
5 agreement concerning wages, hours, working conditions or other
6 employment terms, conditions and benefits with an organization
7 representing the corporation's chief executive official or executive
8 officials appointed by the chief executive official.

9 Sec. 42.40.710. POLITICAL ACTIVITIES. (a) Money, assets, or
10 property of the corporation may not be used for political activity.
11 However, board members and employees of the corporation may upon
12 request communicate with and appear before committees of Congress, the
13 state legislature, and municipal governing bodies in connection with
14 matters directly affecting the corporation.

15 (b) A board member or employee who violates the provisions of
16 this section is personally subject to a civil penalty assessed by a
17 judge of the superior court in an amount not to exceed \$5,000. An
18 action to enforce this section may be brought by any person.

19 ARTICLE 8. GENERAL PROVISIONS.

20 Sec. 42.40.900. APPLICATION OF EXISTING STANDARDS. The Alaska
21 Railroad Corporation is not subject to the jurisdiction of the Alaska
22 Transportation Commission. The following laws do not apply to the
23 operations of the Alaska Railroad Corporation:

- 24 (1) AS 19;
25 (2) AS 30.15;
26 (3) AS 35;
27 (4) AS 37.05;
28 (5) AS 37.07;
29 (6) AS 37.10.010 - 37.10.060;

- 1 (7) AS 37.10.085;
2 (8) AS 37.20;
3 (9) AS 37.25;
4 (10) AS 44.62.040 - 44.62.320.

5 Sec. 42.40.950. DEFINITIONS. In this chapter,

- 6 (1) "board" means the board of directors of the Alaska
7 Railroad Corporation;
8 (2) "corporation" means the Alaska Railroad Corporation;
9 (3) "date of transfer" means the date on which the United
10 States Secretary of Transportation delivers the deed of conveyance for
11 the properties of the Alaska Railroad under 45 U.S.C. 1201-1214
12 (Alaska Railroad Transfer Act of 1982);
13 (4) "employees" means all persons employed by the
14 corporation including executive officials;
15 (5) "railroad utility corridor" means a right-of-way for
16 railroad and related purposes as defined in 45 U.S.C. 1202(11) (Alaska
17 Railroad Transfer Act of 1982).
18 (6) "land" means all real property, including tide and
19 submerged land;
20 (7) "rail properties" means all real and personal property,
21 tangible and intangible, of the corporation.

22 Sec. 42.40.990. SHORT TITLE. This chapter may be referred to as
23 the Alaska Railroad Corporation Act.

24 * Sec. 3. CONFLICTING LAWS INAPPLICABLE. If provisions of this Act are
25 in conflict with the provisions of other law, the provisions of this Act
26 prevail. Where possible, provisions of this Act shall be construed so that
27 they do not conflict with 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act
28 of 1982).

29 * Sec. 4. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD

1 CORPORATION. Notwithstanding AS 42.40.020 enacted in sec. 1 of this Act,
2 the governor shall designate the terms of the appointed members of the
3 first board of directors of the Alaska Railroad Corporation as follows:

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

8 * Sec. 5. EFFECTIVE DATE. This Act takes effect immediately in
9 accordance with AS 01.10.070(c).