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Original sponsors: Hayes, Ringstad,
Shultz, et al

1 IN THE HOUSE

BY THE TRANSPORTATION COMMITTEE

2 CS FOR HOUSE BILL NO. 512 (Transportation)

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) it is the policy of the state to

13 (A) provide safe, economical, and efficient transportation
14 to residents, businesses, visitors, and military installations in the
15 state;

16 (B) foster and promote the long-term economic growth and
17 development of the state;

18 (C) develop and implement plans for a transportation net-
19 work;

20 (D) foster and promote the development of the state's land
21 and natural resources;

22 (2) the Alaska Railroad is an essential part of the state trans-
23 portation network that may, unless preserved by state action, cease to be a
24 transportation option in Alaska;

25 (3) the federal government has offered to the state the option
26 of taking over the Alaska Railroad to ensure its continued existence;

27 (4) it is in the state's best interest to accept the railroad
28 under the terms and conditions offered by the United States government; and

29 (5) there is vast potential in Alaska's natural resource areas

1 and extension of the Alaska Railroad into natural resource areas is neces-
2 sary for long-term economic growth.

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

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

9 (2) provide for the level of service that best satisfies the
10 needs of the people of the state;

11 (3) create a public corporation with the powers, duties, and
12 functions needed to operate the Alaska Railroad and manage its rail, indus-
13 trial, port and other properties in the best interest of the people of the
14 state by ensuring that the corporation will

15 (A) be exclusively responsible for the management of the
16 financial and legal obligations of the Alaska Railroad rather than the
17 state;

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

21 (C) have the ability to raise capital by issuing obliga-
22 tions exempt from federal and state taxation;

23 (D) generally carry out its responsibilities on a self-
24 sustaining basis;

25 (E) provide the best possible combination of types and
26 levels of safe, efficient, and economical transportation to meet the
27 overall needs of the state, supported when necessary by state invest-
28 ment;

29 (F) provide for the prudent operation of the railroad

1 according to sound business management practices;

2 (4) ensure that borrowing by the corporation does not directly
3 or indirectly endanger the state's own borrowing capacity.

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

5 CHAPTER 40. ALASKA RAILROAD CORPORATION.

6 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

7 Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is
8 established the Alaska Railroad Corporation. The corporation is a
9 public corporation and is an instrumentality of the state within the
10 Department of Commerce and Economic Development. The corporation has
11 a legal existence independent of and separate from the state. The
12 exercise by the corporation of the powers provided in this chapter is
13 considered an essential government function of the state.

14 Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the
15 corporation are vested in the board of directors. The board consists
16 of the commissioner of commerce and economic development, the chief
17 executive officer of the corporation, and seven members appointed by
18 the governor. At least five of the seven appointed members must be
19 registered voters in the state. No more than two appointed members
20 may be from any one of the four judicial districts in the state. The
21 appointed members must have substantial experience or professional
22 training and expertise in fields relevant to the purposes of this
23 chapter, including transportation, business, and finance. Except for
24 the commissioner, the chief executive officer, and the member ap-
25 pointed under (d) of this section, a member may not be a state officer
26 or employee.

27 (b) One member of the board may be a person who has at least 10
28 years of experience in railroad management.

29 (c) One member of the board may be or have been an executive

1 official of a United States railroad that is not now and never was a
2 connecting carrier of the Alaska Railroad.

3 (d) One member shall be an employee who is a member of a bar-
4 gaining unit representing employees of the corporation.

5 (e) Except for the commissioner of commerce and economic devel-
6 opment and the chief executive officer of the corporation, the members
7 of the board shall be confirmed by a majority of the members of each
8 house of the legislature in joint session. A member appointed by the
9 governor has the full powers and responsibilities of a confirmed board
10 member until the member is rejected by the legislature.

11 Sec. 42.40.030. TERM OF OFFICE. Except for the commissioner of
12 commerce and economic development and the chief executive officer of
13 the corporation, members of the board serve for staggered terms of
14 five years each at the pleasure of the governor.

15 Sec. 42.40.040. VACANCIES. (a) Except for the commissioner of
16 commerce and economic development and the chief executive officer, a
17 vacancy on the board is filled by appointment by the governor, and the
18 appointment must be confirmed by the members of each house of the
19 legislature in joint session. A member appointed to fill a vacancy
20 holds office for the balance of the term for which the member's prede-
21 cessor was appointed.

22 (b) A vacancy on the board does not impair the authority of a
23 quorum of members to exercise the powers and perform the duties of the
24 board.

25 (c) A member of the board whose term has expired shall serve
26 until a successor has been appointed.

27 Sec. 42.40.050. COMPENSATION AND EXPENSES. (a) An appointed
28 member of the board is entitled to compensation at a rate of \$400 for
29 each day the member is engaged in the actual performance of duties as

1 a member of the board. The board may provide by rule for compensation
2 for partial days during which an appointed member is engaged in actual
3 performance of duties as a member of the board.

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

7 Sec. 42.40.060. BOARD OFFICERS. (a) The board shall elect from
8 its membership a chairman and vice-chairman and prescribe their duties
9 by rule.

10 (b) The board shall appoint a secretary and prescribe the duties
11 of the secretary.

12 ARTICLE 2. MANAGEMENT.

13 Sec. 42.40.100. MANAGEMENT BY THE BOARD. The board is responsi-
14 ble for the management of the corporation but shall delegate certain
15 powers and duties to the chief executive officer in accordance with
16 AS 42.40.120. In managing the corporation the board shall

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

19 (2) operate the Alaska Railroad as a common carrier subject
20 to the jurisdiction of the United States Interstate Commerce Commis-
21 sion consistent with 45 U.S.C. 1207;

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

24 (4) provide for safe, efficient, and economical transporta-
25 tion to meet the overall needs of the state;

26 (5) raise needed capital by issuing obligations of the
27 corporation while ensuring that borrowing by the corporation does not
28 directly or indirectly endanger the state's own borrowing capacity;

29 (6) review state and other land disposal proposals to aid

1 in planning for future development or expansion of transportation ser-
2 vices;

3 (7) ensure that the accounting and procurement procedures
4 of the corporation meet accepted railroad industry standards.

5 Sec. 42.40.110. EXECUTIVE OFFICERS. (a) The board shall ap-
6 point the chief executive officer of the corporation who serves at the
7 pleasure of the board. The board shall fix compensation for the chief
8 executive officer.

9 (b) The chief executive officer of the corporation shall appoint
10 and fix the compensation for other executive officers. The appoint-
11 ment of other executive officers and their compensation are subject to
12 board approval.

13 Sec. 42.40.120. DELEGATION. (a) The board shall by rule dele-
14 gate to the chief executive officer powers and duties necessary or
15 appropriate for the management of the daily affairs and operations of
16 the corporation.

17 (b) Within 60 days after its first meeting, the board shall by
18 rule delegate the following powers and duties of the corporation to
19 the chief executive officer or other executive officers designated by
20 the board:

21 (1) leasing, granting easements in, issuing permits for the
22 use of, or conveying other interests in property;

23 (2) establishing specific rates, tariffs, divisions, and
24 contract rate agreements;

25 (3) making routine changes in service levels;

26 (4) establishing procurement and accounting procedures for
27 the corporation; and

28 (5) performing procurement activities.

29 (c) The board may by rule require the exercise of a power or

1 duty delegated under (a) or (b) of this section to be subject to board
2 approval. Specific board approval is required for the following:

3 (1) except for executing a release of a mortgage or other
4 lien after payment is received, conveying the corporation's entire
5 interest in land;

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

7 (3) mortgaging or pledging corporation assets;

8 (4) donating property or other assets belonging to the
9 corporation;

10 (5) acting as a surety or guarantor;

11 (6) adopting a long-range program or capital improvement
12 plan;

13 (7) certifying annual reports;

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

17 (9) diversifying, expanding, or reducing services provided
18 on the date of transfer;

19 (10) expanding the main or branch rail lines, other than
20 performing routine track alignment as necessary to maintain service
21 levels in effect on the date of transfer;

22 (11) selecting independent auditors and accountants;

23 (12) exercising the power of eminent domain;

24 (13) entering into collective bargaining agreements;

25 (14) adopting annual budgets; and

26 (15) beginning capital projects with an estimated completion
27 cost of more than \$500,000 or an estimated completion time of more
28 than one year.

29 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

1 Sec. 42.40.150. MEETINGS OF THE BOARD. (a) The chairman of the
2 board shall call meetings of the board at least once every three
3 months and may call other meetings of the board as necessary. The
4 chairman shall preside at meetings.

5 (b) Except for executive sessions, the meetings of the board are
6 public. The board shall provide by rule for a method of providing
7 notice to the public of its meetings.

8 (c) The board shall keep minutes of each meeting and shall send
9 a certified copy of the public portion of each meeting to the governor
10 and the legislature.

11 Sec. 42.40.160. QUORUM AND VOTING. (a) Five members of the
12 board constitutes a quorum for the transaction of business.

13 (b) Five affirmative votes are required for board action. The
14 board shall provide by rule for the manner of voting, except that the
15 board may not provide for voting by proxy. The rules may provide for
16 voting and conferring by telecommunication devices.

17 Sec. 42.40.170. EXECUTIVE SESSIONS. The board may consider in
18 an executive session matters that pertain to personnel, the corpora-
19 tion's legal position, land acquisition or disposal, or proprietary or
20 other information of a type treated as confidential under the stan-
21 dards and practices of the United States Interstate Commerce Commis-
22 sion, including practices that protect information associated with
23 specific shippers, divisions, and contract rate agreements.

24 Sec. 42.40.180. RULES. (a) The board may adopt rules

25 (1) governing the business of the corporation; and

26 (2) designed to safeguard property owned, managed, or
27 transported by the corporation and to protect employees and persons
28 using the corporation's property or services.

29 (b) Within 90 days after its first meeting, the board shall

1 establish a procedure for adopting, amending, and repealing rules to
2 carry out the functions and the purposes of this chapter. The proce-
3 dures shall provide for advance public notice and opportunity for
4 public comment on proposed rules or changes to rules that, in the
5 determination of the board, will have a substantial impact on the
6 public or be used in the corporation's dealings with a significant
7 segment of the public.

8 (c) The board shall establish a procedure for the adoption,
9 amendment, or repeal of a rule on an emergency basis when essential
10 for the orderly operation of the corporation's facilities or programs.

11 Sec. 42.40.190. PREVIOUSLY ADOPTED RULES AND ORDERS. The board
12 may provide by resolution that rules and orders in effect on the date
13 of transfer that are not inconsistent with this chapter or other state
14 law remain in effect until amended or repealed by the board. The
15 board may adopt the substance of former federal rules or orders relat-
16 ing to the Alaska Railroad and this may not be considered a continua-
17 tion of the federal rules or orders if adopted by the board in accor-
18 dance with procedural requirements of this chapter or other law.

19 Sec. 42.40.200. PUBLIC DISCLOSURE OF INFORMATION. (a) Except
20 as provided under (b) of this section, information in the possession
21 of the corporation is public and is open to public inspection at
22 reasonable times.

23 (b) The corporation may by rule designate as confidential and
24 withhold public disclosure of matters of a nonpublic, privileged, or
25 proprietary nature. Those matters include personnel records, communi-
26 cations with and work product of legal counsel, and, consistent with
27 the standards and practices of the United States Interstate Commerce
28 Commission for the protection of these matters, other information
29 including proprietary information associated with specific shippers,

1 divisions and contract rate agreements.

2 Sec. 42.40.210. CONFLICTS OF INTEREST. (a) Except as provided
3 in this section, a board member or executive officer of the corpora-
4 tion may not participate in a decision of the corporation in which
5 that person or a member of that person's immediate family has a direct
6 or indirect financial interest unless the financial interest is a
7 remote financial interest and participation is approved under (b) of
8 this section.

9 (b) A board member or executive officer may participate in a
10 decision if that person or a member of that person's immediate family
11 has only a remote interest, the fact and extent of the interest is
12 disclosed to the board in a public meeting and is noted in the minutes
13 of the board before any participation by the member or in the deci-
14 sion, and thereafter in a public meeting the board by vote authorizes
15 or approves the participation. If the person whose participation is
16 under consideration is a board member, that person may not vote under
17 this subsection. For purposes of this subsection, "remote interest"
18 means an interest that in good faith is defined as remote by rules
19 adopted by the corporation.

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

24 (d) Within 120 days of the first meeting of the board, the board
25 shall adopt and may subsequently amend rules implementing this sec-
26 tion, providing additional conflict of interest and ethical rules it
27 considers appropriate, and providing for the removal by the board of a
28 board member or executive officer who intentionally violates a prohi-
29 bition contained in this section.

1 (e) For purposes of this section "participate in a decision"
2 includes all discussions, deliberations, preliminary negotiations, and
3 votes concerning a matter that is the subject of formal action by the
4 board.

5 ARTICLE 4. POWERS AND DUTIES.

6 Sec. 42.40.250. GENERAL POWERS. In addition to the exercise of
7 other powers authorized by law, the corporation may

8 (1) adopt a seal;

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

10 (3) sue and be sued;

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

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

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

16 (7) acquire by purchase, lease, bequest, devise, gift,
17 exchange, the satisfaction of debts, the foreclosure of mortgages, or
18 otherwise, personal property, rights, rights-of-way, franchises,
19 easements, and other interest in land, and acquire by appropriation
20 water rights that are located in the state, taking title to the prop-
21 erty in the name of the corporation;

22 (8) hold, maintain, use, operate, lease, exchange, donate,
23 improve, convey, alienate, dispose of, mortgage, encumber, and other-
24 wise grant security interests in or transfer land or personal prop-
25 erty, subject to other provisions of this chapter;

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

1 (10) undertake and provide for the management, operation,
2 maintenance, use, and control of all of the property of the corpo-
3 ration, including tracks, equipment and other property transferred to
4 the corporation by the federal government or any person;

5 (11) recommend to the legislature and the governor any tax,
6 financing, or financial arrangement the corporation considers appro-
7 priate to carry out the duties under this chapter;

8 (12) maintain offices and facilities at places it desig-
9 nates;

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

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

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

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

25 (17) plan for and undertake expansion of the railroad and
26 railroad activities, including extension of the rail system, and
27 contract with other modes of transportation service connecting to the
28 rail system;

29 (18) hire and discharge railroad personnel and determine

1 benefits and other terms of employment, in accordance with 45 U.S.C.
2 1201 - 1214 (Alaska Railroad Transfer Act of 1982);

3 (19) assume and satisfy liabilities of the United States in
4 accordance with 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of
5 1982);

6 (20) maintain or provide for a security force to enforce
7 state law and the corporation's rules with respect to violations that
8 occur on or to property owned, managed or transported by the corpo-
9 ration;

10 (21) issue its bonds or notes and provide for and secure
11 their payment, provide for the rights of their holders and hold or
12 dispose of them;

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

15 (23) cancel bonds of the corporation purchased by the corpo-
16 ration;

17 (24) secure the payment of its obligations by pledge, mort-
18 gage, or other lien on its contracts, revenues, income, or property;

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

23 (26) borrow money, including the amounts necessary to estab-
24 lish reasonable reserves, and pay financing charges and interest on
25 the obligations for a reasonable period after which the corporation
26 estimates other money will be available to pay the interest, consul-
27 tant, advisory, and legal fees, and other expenses necessary or inci-
28 dent to borrowing;

29 (27) include in any borrowing the amounts necessary to

1 establish reasonable reserves and pay financing charges and interest
2 on the obligations for a reasonable period after which the corporation
3 estimates funds will be otherwise available to pay the interest,
4 consultant, advisory, and legal fees, and other expenses necessary or
5 incident to borrowing;

6 (28) acquire, hold, and dispose of stocks, memberships,
7 contracts, bonds, general or limited partnership interests or other
8 interests in another corporation, association, partnership, joint
9 venture, or other legal entity, and exercise the powers or rights in
10 connection with these interests that are provided in contracts or
11 agreements and that are allowed by law concerning the satisfaction of
12 debts;

13 (29) undertake and provide for the acquisition, construc-
14 tion, maintenance, equipping, and operation of connecting, switching,
15 terminal, or other railroads and railroad facilities in the state;

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

20 Sec. 42.40.260. ANNUAL REPORT. Within 90 days following the end
21 of the fiscal year of the Alaska Railroad the board shall direct
22 preparation of, certify and distribute to the governor and to the
23 legislature a report describing the operations and financial condition
24 of the corporation during the preceding fiscal year. The report may
25 include suggestions for legislation relating to the structure, powers
26 or duties of the corporation or to operation facilities of the corpo-
27 ration. The report shall itemize the cost of providing each category
28 of service offered by the railroad and the income generated by each
29 category.

1 Sec. 42.40.270. AUDITS. (a) The board shall have the financial
2 records of the corporation audited annually by an independent cer-
3 tified public accountant experienced in railroad accounting. The
4 board shall have an annual performance audit conducted by a qualified
5 professional performance auditing firm to assure that the railroad is
6 being managed and operated effectively and efficiently in accordance
7 with the requirements of this chapter.

8 (b) The corporation shall make all of its financial records
9 available to an auditor appointed by the governor and to the legisla-
10 tive audit division for examination. Disclosure to the public by the
11 auditor or legislative audit division of this information is subject
12 to AS 42.40.200 and rules implementing that section.

13 Sec. 42.40.280. STATE OVERSIGHT REPORTS. (a) The board shall
14 provide a state oversight report to the governor and the legislature
15 before undertaking

16 (1) expansion, reduction, or diversification of services
17 provided by the railroad upon the date of transfer or as provided
18 under this chapter that the board determines would represent a signif-
19 icant and permanent change in the level and nature of services pro-
20 vided;

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

24 (3) the issuance of securities, notes, bonds or contracts
25 with a term in excess of one year and in an amount exceeding
26 \$5,000,000;

27 (4) an application for an appropriation to be used for
28 providing any service that is not self-sustaining.

29 (b) The report under (a) of this section shall be in writing,

1 describe the proposed undertaking in detail, and specify

2 (1) its financial impact on the corporation;

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

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

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

9 Sec. 42.40.290. LONG RANGE PROGRAM AND CAPITAL IMPROVEMENT
10 PLANS. (a) The corporation shall prepare and the board shall adopt a
11 long range program plan and a capital improvement plan. The board
12 shall consult with affected state agencies in preparing the plans.
13 The long range program plan shall explain the manner in which the
14 corporation intends to accomplish the purposes of this chapter during
15 each of the five years after the plan is adopted. The capital im-
16 provement plan shall present and explain the corporation's anticipated
17 capital improvements for each of the five years after the plan is
18 adopted and shall reflect efforts to upgrade the railroad and develop
19 safer, more cost-effective rail operations.

20 (b) The board shall annually review and update the long range
21 program and capital improvement plans. The board shall provide copies
22 of the updated plans to the governor and the legislature by December 1
23 of each year.

24 Sec. 42.40.300. USE OF CORPORATION ASSETS. The corporation
25 shall apply all money, property, other assets, and credit of the
26 corporation toward activities authorized by this chapter. The corpo-
27 ration may not issue shares of stock, pay dividends, make private
28 distributions of assets, make loans to board members or employees, or
29 engage in business for private benefit. The use of money, property,

1 other assets, or credit of the corporation for a purpose not author-
2 ized by law by a person having the possession or control of it is
3 prohibited.

4 Sec. 42.40.310. INDEMNIFICATION. (a) The corporation may
5 defend and indemnify a current or former member of the board, em-
6 ployee, or agent of the corporation against all costs, expenses, judg-
7 ments, and liabilities, including attorney's fees, incurred by or
8 imposed upon that person in connection with a civil or criminal action
9 in which the person is involved by affiliation with the corporation,
10 if the person acted in good faith on behalf of the corporation and
11 within the scope of official duties or powers.

12 (b) The corporation may purchase insurance to protect and hold
13 personally harmless its employees, agents, and board members from an
14 action, claim, or proceeding arising out of the performance, purported
15 performance, or failure of performance, in good faith, of duties for,
16 or employment with, the corporation and to hold them harmless from
17 expenses connected with the defense, settlement, or monetary judgments
18 from that action, claim, or proceeding. The purchase of insurance is
19 discretionary with the board and insurance is not considered to be
20 compensation to the insured person.

21 ARTICLE 5. CORPORATION PROPERTY.

22 Sec. 42.40.350. LAND. (a) All land transferred under 45 U.S.C.
23 1201 - 1214 (Alaska Railroad Transfer Act of 1982) or otherwise ac-
24 quired by the corporation is under the control of the corporation.
25 All land that is transferred or acquired by the corporation is des-
26 ignated as follows:

- 27 (1) railroad rights-of-way or easements are railroad util-
28 ity corridors;
29 (2) land other than railroad rights-of-way or easements is

1 rail land.

2 (b) Railroad utility corridors shall be of a width at least 100
3 feet on both sides of the centerline of the extended main or branch
4 line, or may be of lesser width if the adjoining land is not rail
5 land, and may be surveyed by the metes and bounds method. The corpo-
6 ration may not convey land within a utility corridor. Except as
7 provided in AS 42.40.420, the corporation may lease, grant easements
8 or permits, or otherwise authorize use of portions of a utility corri-
9 dor for transportation, communication, and transmission purposes and
10 support functions associated with those purposes if the use does not
11 restrict other parallel uses of the utility corridor.

12 (c) The corporation may convey, lease, grant easements or per-
13 mits, or otherwise authorize use of portions of rail land. However,
14 sale of rail land is subject to approval by the legislature.

15 Sec. 42.40.360. REQUEST FOR LAND. (a) The board may nominate
16 federal land for railroad purposes and request the commissioner of
17 natural resources to select the land for the state through the federal
18 land selection process.

19 (b) The board may identify and request the commissioner of
20 natural resources to convey land necessary or useful for present or
21 future railroad purposes owned by or tentatively approved for transfer
22 to the state, including land not adjacent to a railroad utility corri-
23 dor. The request must include a statement of and justification for
24 the present or future railroad use. Upon receipt of a request, the
25 commissioner shall temporarily reserve the land identified in the
26 request for railroad purposes and delay disposal or lease of that land
27 under other laws to a party other than the corporation. The temporary
28 reservation of land is subject to valid existing rights and remains in
29 effect for 180 days.

1 Sec. 42.40.370. CONVEYANCE OF LAND. (a) Within 90 days after
2 receiving a request under AS 42.40.360(b) the commissioner of natural
3 resources shall by written decision

4 (1) designate the identified land for railroad purposes
5 and, subject to valid existing rights, convey the state's interests in
6 the land to the corporation;

7 (2) notify the corporation of reasons for refusal to desig-
8 nate the identified land for railroad purposes; or

9 (3) approve in part and deny in part the request for desig-
10 nation of the identified land and convey as appropriate.

11 (b) In the absence of a reservation to the contrary, a convey-
12 ance of land under this section vests in the corporation ownership,
13 control of the surface and subsurface, and the exclusive right to
14 extract or use timber and other construction materials, sand, gravel,
15 rock, and the right to tunnel, ditch, recontour, excavate, or other-
16 wise use the land for railroad, transportation, transmission, or
17 communication services without regard to the classification of the
18 resources as part of the surface or subsurface estate.

19 (c) The corporation may reconvey to the state land received
20 under this section or under 45 U.S.C. 1201 - 1214 (Alaska Railroad
21 Transfer Act of 1982) that the corporation and the commissioner of
22 natural resources jointly identify as unnecessary or unsuitable for
23 the corporation's purposes.

24 Sec. 42.40.380. USE OF STATE LAND. When physical conditions
25 require that track or other right-of-way fixtures of the corporation
26 be moved from the existing location and relocated on state land adja-
27 cent to or in the vicinity of the existing right-of-way and the chief
28 executive officer determines that relocation is necessary to maintain
29 safe and adequate rail operations, the corporation may effect the

1 relocation with the concurrence of the Department of Natural Re-
2 sources. The relocation must affect only the amount of state land
3 necessary to adequately restore or continue safe rail operations at a
4 normal level.

5 Sec. 42.40.390. EMINENT DOMAIN. (a) The corporation may exer-
6 cise the power of eminent domain under AS 09.55.240 - 09.55.460 to
7 acquire land for railroad purposes consistent with this chapter. The
8 corporation may acquire a fee simple title whenever, in the judgment
9 of the board, ownership of a fee simple title is necessary to carry
10 out the purposes of this chapter.

11 (b) The corporation may file a declaration of taking in the
12 manner provided for the state under AS 09.55.420.

13 (c) The power of eminent domain conferred under this section
14 includes the power to obtain clay, gravel, sand, timber, rock, or
15 other material for railroad use, the land necessary to obtain the
16 material, and access to the land and material.

17 Sec. 42.40.400. VACATION OF LAND. The corporation may vacate
18 land acquired for railroad purposes by executing and filing a deed in
19 the appropriate recording district. Upon filing the deed the state
20 shall acquire title to the land.

21 Sec. 42.40.410. FEDERAL LAND. The corporation may submit appli-
22 cations on its own behalf as an instrumentality of the state for
23 acquisition of federal land available under federal law that will
24 enhance the operations of the corporation. The corporation may re-
25 ceive in its own name conveyances of all interests in federal land.

26 Sec. 42.40.420. MUNICIPAL RIGHTS-OF-WAY. Upon request of a
27 municipality the corporation may grant to the municipality a right-
28 of-way in a railroad utility corridor or in rail land to be used for a
29 pedestrian walkway or trail. Before granting a right-of-way under

1 this section the board shall require the municipality to execute an
2 agreement in a form approved by the board to

3 (1) hold the corporation harmless and indemnify the corpo-
4 ration for any use made of the right-of-way including

5 (A) defending the corporation in a cause of action
6 brought against the corporation as a result of the use; and

7 (B) indemnifying the corporation for the amount of a
8 judgment rendered against the corporation including prejudgment
9 interest, costs, and attorney's fees; and

10 (2) vacate the right-of-way upon request of the corporation
11 if the right-of-way interferes with expansion or replacement of rail-
12 road facilities.

13 Sec. 42.40.430. ACQUISITION OF GOVERNMENT PROPERTY. The corpor-
14 ation, as an instrumentality of the state, may acquire in its own name
15 from the United States under 50 App U.S.C. 1622 et seq. (Surplus
16 Property Act of 1944), 40 U.S.C. 471 et seq. (Federal Property and
17 Administrative Services Act of 1949), or other law, property under the
18 control of a federal department or agency that is useful for the
19 corporation's purposes. The corporation may acquire from the Depart-
20 ment of Administration property of the state made available under
21 AS 44.71.010 - 44.71.040.

22 Sec. 42.40.440. USE OF PESTICIDES AND HERBICIDES. Vegetation
23 control involving the use of pesticides or herbicides on land owned or
24 managed by the corporation may be conducted only in compliance with
25 state requirements applicable to other state pesticide or herbicide
26 use.

27 **ARTICLE 6. FINANCIAL PROVISIONS.**

28 Sec. 42.40.500. LIMITATION OF LIABILITY. A liability incurred
29 by the corporation shall be satisfied exclusively from the assets or

1 revenue of the corporation and no creditor or other person has a right
2 of action against the state because of a debt, obligation, or liabil-
3 ity of the corporation.

4 Sec. 42.40.510. FIDELITY BOND. The corporation shall obtain a
5 fidelity bond in an amount determined by the board for board members
6 and each officer of the corporation responsible for accounts and
7 finances. A bond must be in effect during the entire tenure in office
8 of the bonded person.

9 Sec. 42.40.520. INSURANCE. The corporation shall keep in force
10 public liability insurance in an amount reasonably calculated to cover
11 potential claims against the corporation or state for bodily injury,
12 death or disability and property damage that may arise from or be
13 related to corporation operations and activities.

14 Sec. 42.40.530. REVENUE. Revenue generated by or appropriated
15 to the corporation shall be retained and managed by the corporation
16 for railroad and related purposes in accordance with 45 U.S.C. 1207-
17 (a)(5) (Alaska Railroad Transfer Act of 1982).

18 Sec. 42.40.540. APPROPRIATIONS. The corporation may request,
19 with the concurrence of the governor, a direct appropriation or grant
20 from the legislature to assist in carrying out the provisions of this
21 chapter.

22 ARTICLE 7. BONDS AND NOTES.

23 Sec. 42.40.600. GENERAL PROVISIONS. (a) The corporation by
24 resolution may issue bonds and notes to provide money to carry out its
25 purposes.

26 (b) Bonds and notes may be issued in one or more series and
27 shall, as provided by the resolution of the board,

28 (1) be dated;

29 (2) bear interest at a required rate or rates per year or

- 1 within a maximum rate;
- 2 (3) be in a required denomination;
- 3 (4) be in a coupon or registered form;
- 4 (5) carry conversion or registration provisions;
- 5 (6) have a required rank or priority;
- 6 (7) be executed in the required manner and form;
- 7 (8) be payable as required from the sources, in the medium
- 8 of payment, and place or places inside or outside the state;
- 9 (9) be subject to authentication by a trustee or fiscal
- 10 agent; and
- 11 (10) be subject to terms of redemption with or without
- 12 premium.

13 (c) Bonds and notes may be sold in the manner, on the terms, and

14 at the price the board determines. Notes shall mature at the time or

15 times determined by the board. Bonds shall mature at the time, not

16 exceeding 50 years from their date, determined by the board.

17 Sec. 42.40.610. NEGOTIABLE INSTRUMENTS. Bonds and notes issued

18 under this chapter and interest coupons attached to them are nego-

19 tiable instruments under the laws of this state, subject only to

20 applicable provisions for registration.

21 Sec. 42.40.620. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds

22 and notes issued under this chapter are securities in which all public

23 officers and public bodies of the state and its political subdivi-

24 sions, all insurance companies, trust companies, banking associations,

25 investment companies, executors, administrators, trustees and other

26 fiduciaries may properly and legally invest funds, including capital

27 in their control or belonging to them. These bonds and notes may be

28 deposited with a state or municipal officer of an agency or political

29 subdivision of the state for any purpose for which the deposit of

1 bonds or notes of the state is authorized by law.

2 Sec. 42.40.630. PAYMENT OF BONDS AND NOTES. The principal and
3 interest on bonds or notes of the corporation is payable from corpo-
4 ration money or assets. Bonds or notes may be additionally secured by
5 a pledge of a grant or contribution from the federal, state, or munic-
6 ipal government or a corporation, association, institution or person,
7 or a pledge of money, income, or revenue of the corporation from any
8 source.

9 Sec. 42.40.640. SECURITY FOR BONDS. In the discretion of the
10 board, an issue of bonds may be secured by a trust indenture, which
11 may be a trust company, bank or national banking association, with
12 corporate trust powers, located inside or outside the state, or by a
13 secured loan agreement or other instrument or under resolution giving
14 powers to a corporate trustee by means of which the corporation may

15 (1) make and enter into any and all the covenants and
16 agreements with the trustees or the holders of the bonds that the
17 corporation may determine to be necessary or desirable, including
18 covenants, provisions, limitations and agreements as to

19 (A) the application, investment, deposit, use and
20 disposition of the proceeds of bonds of the corporation or of
21 money or other property of the corporation or in which it has an
22 interest;

23 (B) the fixing and collection of rentals, charges,
24 fees or other consideration for, and the other terms to be incor-
25 porated in, contracts with respect to the use of any of the
26 corporation's property;

27 (C) the fixing and collection of tariffs, fees,
28 charges or other consideration for the use or service of the
29 Alaska Railroad by passengers, and other users and freight;

1 (D) the terms and conditions upon which additional
2 bonds of the corporation may be issued;

3 (E) the vesting in the trustee of rights and remedies
4 exercisable by the trustee for the protection of the holders of
5 bonds of the corporation and not otherwise in violation of law
6 and the restriction of the rights of an individual holder of
7 bonds of the corporation;

8 (2) pledge, mortgage or assign money, leases, agreements,
9 property, or other assets of the corporation either presently in hand
10 or to be received in the future, or both; and

11 (3) provide for any other matters of like or different
12 character that in any way affect the security or protection of the
13 bonds.

14 Sec. 42.40.650. INDEPENDENT FINANCIAL ADVISOR. In negotiating
15 the private or public sale of bonds or notes to an underwriter, the
16 board shall retain a financial advisor who is independent from the
17 underwriter.

18 Sec. 42.40.660. VALIDITY OF SIGNATURES. If an officer of the
19 corporation whose signature or a facsimile of whose signature appears
20 on bonds, notes, or coupons attached to them ceases to be an officer
21 before the delivery of the bond, note, or coupon, the signature or
22 facsimile is valid the same as if the person had remained in office
23 until delivery.

24 Sec. 42.40.670. VALIDITY OF PLEDGE. (a) The pledge of assets
25 or revenue of the corporation to the payment of the principal or
26 interest on bonds or notes of the corporation is valid and binding
27 from the time the pledge is made and the assets or revenue are immedi-
28 ately subject to the lien of the pledge without physical delivery or
29 further act. The lien of a pledge is valid and binding against all

1 parties having claims of any kind against the corporation, irrespec-
2 tive of whether those parties have notice of the lien of the pledge.

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

7 Sec. 42.40.680. REMEDIES. A holder of bonds or notes issued
8 under this chapter or of coupons attached to them, and a trustee under
9 a trust agreement or resolution authorizing the issuance of the bonds
10 or notes, except as restricted by a trust agreement or resolution,
11 either at law or in equity, may

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

15 (2) compel the performance of all duties of the corporation
16 required by this chapter or by the trust agreement or resolution.

17 Sec. 42.40.690. CREDIT OF STATE NOT PLEDGED. (a) The state and
18 its political subdivisions are not liable for the debts of the corpo-
19 ration. Bonds and notes issued under this chapter are payable solely
20 from the revenue or assets of the corporation and do not constitute a

21 (1) debt, liability, or obligation of the state or of a
22 political subdivision of the state; or

23 (2) pledge of the faith and credit of the state or of a
24 political subdivision of the state.

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

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

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

4 Sec. 42.40.700. LIMITATION ON PERSONAL LIABILITY. A board
5 member or employee of the corporation is not subject to personal
6 liability or accountability because of the execution or issuance of
7 bonds or notes.

8 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

9 Sec. 42.40.710 CORPORATION EMPLOYEES. (a) Employees of the
10 Alaska Railroad are employees of the corporation and not of the state.
11 The provisions of AS 39 do not apply to employees of the corporation.

12 Sec. 42.40.720. COLLECTIVE BARGAINING RIGHTS. The provisions of
13 AS 23.40.070 - 23.40.260 do not apply to the corporation or to its
14 employees. However, employees who are not executive officers may
15 organize and form, join, or assist an organization to engage in
16 collective bargaining through representatives of their own choosing
17 and engage in concerted activities for the purpose of collective
18 bargaining or other mutual aid or protection.

19 Sec. 42.40.730. RAILROAD LABOR RELATIONS AGENCY. (a) There is
20 established a railroad labor relations agency that consists of three
21 members appointed by the governor. One member shall be a member of
22 the state personnel board. Members serve at the pleasure of the
23 governor.

24 (b) The railroad labor relations agency shall carry out the
25 provisions of AS 42.40.710 - 42.40.890.

26 (c) Members of the railroad labor relations agency receive no
27 compensation for their services, but are entitled to per diem and
28 travel expenses authorized for boards and commissions.

29 Sec. 42.40.740. COLLECTIVE BARGAINING UNIT. The railroad labor

1 relations agency shall decide in each case, in order to ensure employ-
2 ees the fullest freedom in exercising the rights guaranteed by AS 42.-
3 40.710 - 42.40.890 the unit appropriate for the purposes of collective
4 bargaining, based on such factors as community of interest, wages,
5 hours and other working conditions of the employees involved, the
6 history of collective bargaining, and the desires of the employees.
7 Bargaining units shall be as large as is reasonable, and unnecessary
8 fragmenting shall be avoided.

9 Sec. 42.40.750. REPRESENTATIVES AND ELECTIONS. (a) The rail-
10 road labor relations agency shall investigate a petition if it is
11 submitted in a manner prescribed by the labor relations agency by

12 (1) an employee or group of employees or an organization
13 acting in their behalf alleging that 30 percent of the employees of a
14 proposed bargaining unit

15 (A) want to be represented for collective bargaining
16 by a labor or employee organization as exclusive representative;
17 or

18 (B) assert that the organization that has been certi-
19 fied or is currently being recognized by the corporation as
20 bargaining representative is no longer the representative of the
21 majority of employees in an appropriate unit; or

22 (2) the corporation alleging that one or more organizations
23 have presented to it a claim to be recognized as a representative of a
24 majority of employees in an appropriate unit.

25 (b) If the railroad labor relations agency has reasonable cause
26 to believe that a question of representation exists, it shall provide
27 for a hearing upon due notice. If the railroad labor relations agency
28 finds that there is a question of representation, it shall direct an
29 election by secret ballot to determine whether or by which

1 organization the employees desire to be represented and shall certify
2 the results of the election. Nothing in this subsection prohibits the
3 waiving of hearings by stipulation for the purpose of a consent elec-
4 tion in conformity with the regulations of the railroad labor rela-
5 tions agency or an election in a bargaining unit agreed upon by the
6 parties.

7 (c) The railroad labor relations agency shall determine who is
8 eligible to vote in an election held under this section and shall
9 establish rules governing the election. In an election in which none
10 of the choices on the ballot receives a majority of the votes cast, a
11 runoff election shall be conducted, the ballot providing for selection
12 between the two choices receiving the largest number of valid votes
13 cast in the election. If an organization receives the majority of the
14 votes case in the election it shall be certified by the railroad labor
15 relations agency as exclusive representative of all the employees in
16 the bargaining unit. An election may not be held in a bargaining unit
17 or in a subdivision of a bargaining unit if a valid election has been
18 held within the preceding 12 months.

19 (d) Nothing in this chapter prohibits recognition of an
20 organization as the exclusive representative by the corporation by
21 mutual consent.

22 (e) An election may not be directed by the railroad labor
23 relations agency in a bargaining unit in which there is in force a
24 valid collective bargaining agreement, except during a 90-day period
25 preceding the expiration date. However, no collective bargaining
26 agreement may bar an election upon petition of employees in the
27 bargaining unit but not parties to the agreement if more than three
28 years have elapsed since the execution of the agreement or the last
29 timely renewal, whichever was later.

1 Sec. 42.40.760. UNFAIR LABOR PRACTICES. (a) The corporation or
2 its agent may not

3 (1) interfere, restrain, or coerce an employee in the
4 exercise of the rights guaranteed in AS 42.40.720;

5 (2) dominate or interfere with the formation, existence, or
6 administration of an organization;

7 (3) discriminate in regard to hire or tenure of employment
8 or a term or condition of employment to encourage or discourage
9 membership in an organization;

10 (4) discharge or discriminate against an employee because
11 the employee has signed or filed an affidavit, petition or complaint
12 or given testimony under AS 42.40.710 - 42.40.890;

13 (5) refuse to bargain collectively in good faith with an
14 organization that is the exclusive representative of employees in an
15 appropriate unit, including the discussing of grievances with the
16 exclusive representative.

17 (b) Nothing in AS 42.40.710 - 42.40.890 prohibits the
18 corporation from making an agreement with an organization to require
19 as a condition of employment

20 (1) membership in the organization that represents the unit
21 on or after the 30th day following the beginning of employment or on
22 the effective date of the agreement, whichever is later; or

23 (2) payment by the employee to the exclusive bargaining
24 agent of a service fee to reimburse the exclusive bargaining agency
25 for the expense of representing the members of the bargaining unit.

26 (c) An organization or its agents may not

27 (1) restrain or coerce

28 (A) an employee in the exercise of the rights
29 guaranteed in AS 42.40.720; or

1 (B) the corporation in the selection of a representa-
2 tive for the purposes of collective bargaining or the adjustment
3 of grievances;

4 (2) refuse to bargain collectively in good faith with the
5 corporation, if it has been designated in accordance with AS 42.40.-
6 710 - 42.40.890 as the exclusive representative of employees in an
7 appropriate unit.

8 Sec. 42.40.770. INVESTIGATION AND CONCILIATION OF COMPLAINTS.
9 If a verified written complaint by or for a person claiming to be
10 aggrieved by a practice prohibited by AS 42.40.760 or a written
11 accusation that a person subject to AS 42.40.710 - 42.40.890 has
12 engaged in a prohibited practice, is filed with the railroad labor
13 relations agency, it shall investigate the complaint or accusation.
14 If it determines after a preliminary investigation that probable cause
15 exists in support of the complaint or accusation, it shall try to
16 eliminate the prohibited practice by informal methods of conference,
17 conciliation, and persuasion. Nothing said or done during this
18 endeavor may be used as evidence in a subsequent proceeding.

19 Sec. 42.40.780. COMPLAINT AND ACCUSATION. If the railroad labor
20 relations agency fails to eliminate the prohibited practice by
21 conciliation and to obtain voluntary compliance with AS 42.40.710 -
22 42.40.890 or before it attempts conciliation, it may serve a copy of
23 the complaint or accusation upon the respondent. The complaint or
24 accusation and the subsequent procedures shall be handled in accor-
25 dance with the administrative adjudication portion of the
26 Administrative Procedure Act (AS 44.62).

27 Sec. 42.40.790. ORDERS AND DECISIONS. If the railroad labor
28 relations agency finds that a person named in the written complaint or
29 accusation has engaged in a prohibited practice, the railroad labor

1 relations agency shall issue and serve on the person an order or
2 decision requiring the person to cease and desist from the prohibited
3 practice and to take affirmative action that will carry out the
4 provisions of AS 42.40.710 - 42.40.890. If the railroad labor rela-
5 tions agency finds that a person named in the complaint or accusation
6 has not engaged or is not engaging in a prohibited practice, the
7 railroad labor relations agency shall state its findings of fact and
8 issue an order dismissing the complaint or accusation.

9 Sec. 42.40.800. ENFORCEMENT BY INJUNCTION. The railroad labor
10 relations agency may apply to the superior court in the judicial
11 district in which the prohibited practice occurred for an order
12 enjoining the prohibited acts specified in the order or decision of
13 the railroad labor relations agency. Upon showing by the railroad
14 labor relations agency that the person has engaged or is about to
15 engage in the practice, an injunction, restraining order, or other
16 order that is appropriate may be granted by the court and shall be
17 without bond.

18 Sec. 42.40.810. POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a)
19 For the purpose of the investigations, proceedings, or hearings that
20 the railroad labor relations agency considers necessary to carry out
21 AS 42.40.710 - 42.40.890, the railroad labor relations agency may
22 issue subpoenas requiring the attendance and testimony of witnesses
23 and the production of relevant evidence.

24 (b) The railroad labor relations agency may administer oaths,
25 examine witnesses, and receive evidence.

26 (c) The attendance of witnesses and the production of evidence
27 may be required from any place in the state at any designated place of
28 hearing.

29 (d) If a person refuses to obey a subpoena issued under

1 AS 42.40.710 - 42.40.890, the superior court in the district in which
2 the person resides or is found may, upon application by the railroad
3 labor relations agency, issue an order requiring the person to comply
4 with the subpoena.

5 Sec. 42.40.820. REGULATIONS. The railroad labor relations
6 agency shall adopt regulations under the Administrative Procedure Act
7 (AS 44.62) to carry out AS 42.40.710 - 42.40.890.

8 Sec. 42.40.830. PENALTY FOR VIOLATION OF ORDER OR DECISION. A
9 person who violates a provision of an order or decision of the
10 railroad labor relations agency is guilty of a misdemeanor and is
11 punishable by a fine of not more than \$500.

12 Sec. 42.40.840. MEDIATION. (a) If, after a reasonable period
13 of negotiation over the terms of a collective bargaining agreement, an
14 impasse as determined by the railroad labor relations agency exists
15 between the corporation and an organization, the railroad labor
16 relations agency shall appoint a person mutually agreeable to the
17 parties from a list of seven qualified mediators/arbitrators
18 knowledgeable in railway labor agreements to act as mediator in the
19 dispute.

20 (b) Before the determination of an impasse under this section,
21 the parties may also select a mediator by agreement or mutual consent.

22 (c) It shall be the function of the mediator to bring the
23 parties together to effectuate a settlement of the dispute, but
24 neither the mediator nor the railroad labor relations agency has any
25 power of compulsion in mediation proceedings.

26 Sec. 42.40.850. STRIKES. (a) Following a decision by the
27 mediator to end the mediation proceedings, employees of a collective
28 bargaining unit may engage in a strike for a limited time if a
29 majority of the employees in that collective bargaining unit vote by

1 secret ballot to do so. The limit of the strike is determined by the
2 interest of the health, safety, or welfare of the public.

3 (b) The corporation may apply to the superior court in the
4 judicial district in which the strike is occurring for an order
5 enjoining the strike. A strike may not be enjoined unless it can be
6 shown that it has begun to threaten, or is about to threaten, the
7 health, safety, or welfare of the public. A court, in deciding
8 whether to enjoin the strike, shall consider the total equities in the
9 particular case, including the impact of a strike on the public and
10 the extent to which an employee organization and the corporation have
11 met their statutory obligations.

12 (c) If an impasse or deadlock still exists after the issuance of
13 an injunction, the parties shall submit the dispute to binding arbi-
14 tration. The arbitrator shall be the same person selected under
15 AS 42.40.840 and shall fashion the award considered equitable.

16 (d) Notwithstanding the provisions of (a) - (c) of this section,
17 the parties to the dispute may mutually agree to submit the dispute to
18 binding arbitration at any time.

19 Sec. 42.40.860. AGREEMENTS. (a) The Department of Administra-
20 tion may participate in labor negotiations between the corporation and
21 an organization. The corporation shall seek advice of the Department
22 of Administration before entering into a collective bargaining
23 agreement concerning wages, hours, and other terms and conditions of
24 employment. However, the final decision regarding collective
25 bargaining agreements, shall be made by the board.

26 (b) Upon the completion of negotiations between an organization
27 and the corporation, if a settlement is reached, the corporation shall
28 reduce it to writing in the form of an agreement. The agreement shall
29 include a grievance procedure that shall have binding arbitration as

1 its final step. Either party to the agreement has a right of action
2 to enforce the agreement by petition to the railroad labor relations
3 agency.

4 (c) The parties to an agreement under this section may agree to
5 terms that specify an expiration date for the agreement.

6 Sec. 42.40.870. ORGANIZATION DUES AND EMPLOYEE BENEFITS, DEDUC-
7 TION AND AUTHORIZATION. Upon written authorization of an employee
8 within a bargaining unit, the corporation shall deduct from the
9 payroll of the employee the monthly amount of dues, fees, and other
10 employee benefits as certified by the secretary of the exclusive
11 bargaining representative and shall deliver it to the chief fiscal
12 officer of the exclusive bargaining representative.

13 Sec. 42.40.880. EXEMPTION. Notwithstanding the provisions of
14 AS 42.40.870, a collective bargaining settlement reached, or agreement
15 entered into, under AS 42.40.860 that incorporates union security
16 provisions, including a union shop or agency shop provision or agree-
17 ment, shall safeguard the rights of nonassociation of employees having
18 bona fide religious convictions based on tenets or teachings of a
19 church or religious body of which an employee is a member. Upon
20 submission of proper proof of religious conviction to the railroad
21 labor relations agency, the agency shall declare the employee exempt
22 from becoming a member of an organization. The employee shall pay an
23 amount of money equivalent to regular organization dues, initiation
24 fees, and assessments to the organization. Nonpayment of this money
25 subjects the employee to the same penalty as if it were nonpayment of
26 dues. The receiving organization shall contribute an equivalent
27 amount of money to a charity of its choice not affiliated with a
28 religious, labor, or employee organization. The organization shall
29 submit to the railroad labor relations agency proof of contribution.

1 Sec. 42.40.890. DEFINITIONS. In AS 42.40.710 - 42.40.890

2 (1) "collective bargaining" means the performance of the
3 mutual obligation of the corporation or its designated representatives
4 and the representatives of the employees to meet at reasonable times,
5 including meetings in advance of the budget making process, and
6 negotiating in good faith with respect to wages, hours, and other
7 terms and conditions of employment, or the negotiation of an agree-
8 ment, or negotiation of a question arising under an agreement and the
9 execution of a written contract incorporating an agreement reached if
10 requested by either party, but these obligations do not compel either
11 party to agree to a proposal or require the making of a concession;

12 (2) "election" means a proceeding conducted by the labor
13 relations agency in which the employees in a collective bargaining
14 unit cast a secret ballot for collective bargaining representatives,
15 or for any other purpose specified in AS 42.40.710 - 42.40.890;

16 (3) "organization" means a labor or employee organization
17 of any kind in which employees participate and that exists for the
18 primary purpose of dealing with the corporation concerning grievances,
19 labor disputes, wages, rates of pay, hours of employment and condi-
20 tions of employment.

21 ARTICLE 9. GENERAL PROVISIONS.

22 Sec. 42.40.900. CLAIMS. (a) All claims and lawsuits involving
23 activities of the railroad, including suits in contract, quasi-con-
24 tract, or tort, shall be brought against the corporation and not
25 against the state.

26 (b) For the purposes of actionable claims, undertakings, pay-
27 ments of judgments, execution, interest, punitive damages, statutes of
28 limitations, bonds, costs, and similar matters related to the pres-
29 entation and prosecution of claims by and against the corporation, the

1 its final step. Either party to the agreement has a right of action
2 to enforce the agreement by petition to the railroad labor relations
3 agency.

4 (c) The parties to an agreement under this section may agree to
5 terms that specify an expiration date for the agreement.

6 Sec. 42.40.870. ORGANIZATION DUES AND EMPLOYEE BENEFITS, DEDUC-
7 TION AND AUTHORIZATION. Upon written authorization of an employee
8 within a bargaining unit, the corporation shall deduct from the
9 payroll of the employee the monthly amount of dues, fees, and other
10 employee benefits as certified by the secretary of the exclusive
11 bargaining representative and shall deliver it to the chief fiscal
12 officer of the exclusive bargaining representative.

13 Sec. 42.40.880. EXEMPTION. Notwithstanding the provisions of
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15 entered into, under AS 42.40.860 that incorporates union security
16 provisions, including a union shop or agency shop provision or agree-
17 ment, shall safeguard the rights of nonassociation of employees having
18 bona fide religious convictions based on tenets or teachings of a
19 church or religious body of which an employee is a member. Upon
20 submission of proper proof of religious conviction to the railroad
21 labor relations agency, the agency shall declare the employee exempt
22 from becoming a member of an organization. The employee shall pay an
23 amount of money equivalent to regular organization dues, initiation
24 fees, and assessments to the organization. Nonpayment of this money
25 subjects the employee to the same penalty as if it were nonpayment of
26 dues. The receiving organization shall contribute an equivalent
27 amount of money to a charity of its choice not affiliated with a
28 religious, labor, or employee organization. The organization shall
29 submit to the railroad labor relations agency proof of contribution.

1 corporation and its board members and employees enjoy the same rights,
2 privileges, and immunities as the state and state officers under
3 AS 09.10.120, AS 09.50.250 - 09.50.290, and AS 09.65.040.

4 (c) Claims against the corporation are not subject to the pro-
5 visions of AS 44.77 regarding claims against the state.

6 (d) The corporation is not subject to the provisions of AS 44.-
7 80.010, regarding the state as a party to an action.

8 Sec. 42.40.910. EXEMPTION FROM TAXATION. (a) The exercise of
9 the powers granted by this chapter shall be in all respects for the
10 benefit of the people of the state, for their well-being and prosper-
11 ity, and for the improvement of their social and economic conditions.
12 Subject to (b) of this section, the real and personal property of the
13 corporation and its assets, income, and receipts are exempt from all
14 taxes and special assessments of the state or a political subdivision
15 of the state.

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

23 (c) This section does not affect or limit an exemption from
24 license fees, property taxes, excise taxes, income taxes, or other
25 taxes, provided under any other law, nor does it create a tax
26 exemption with respect to the interest of any business enterprise or
27 other person, other than the corporation.

28 Sec. 42.40.920. APPLICATION OF EXISTING LAWS. (a) The corpo-
29 ration is not subject to the jurisdiction of the Alaska Transportation

1 Commission.

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

- 4 (1) AS 19;
5 (2) AS 30.15;
6 (3) AS 35;
7 (4) AS 37.05;
8 (5) AS 37.07;
9 (6) AS 37.10.010 - 37.10.060;
10 (7) AS 37.10.085;
11 (8) AS 37.20;
12 (9) AS 37.25;
13 (10) AS 38;
14 (11) AS 44.62.040 - 44.62.320.

15 Sec. 42.40.930. CONFLICTING LAWS INAPPLICABLE. If provisions of
16 this chapter conflict with the provisions of other state law, the pro-
17 visions of this chapter prevail. Provisions of this chapter shall be
18 construed so that they do not conflict with 45 U.S.C. 1201 - 1214
19 (Alaska Railroad Transfer Act of 1982).

20 Sec. 42.40.940. REVERSION OF ASSETS. If the corporation ceases
21 to exist, for whatever reason, its assets revert to the state.

22 Sec. 42.40.980. DEFINITIONS. In this chapter, unless the
23 context otherwise requires,

24 (1) "board" means the board of directors of the Alaska
25 Railroad Corporation;

26 (2) "corporation" means the Alaska Railroad Corporation;

27 (3) "date of transfer" means the date on which the United
28 States Secretary of Transportation delivers the transfer documents
29 under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982);

1 (4) "employees" means all persons employed by the corpo-
2 ration including executive officers;

3 (5) "executive officer" means the corporation's chief
4 executive officer, an employee who fulfills management functions and
5 is so designated by the board, and employees occupying the following
6 positions on the date of transfer: general manager, assistant general
7 manager, assistant to the general manager, chief of administration,
8 and general counsel;

9 (6) "land" means any interest in real property, including
10 tide and submerged land.

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

13 * Sec. 3. AS 42.40.010 is amended to read:

14 Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is
15 established the Alaska Railroad Corporation. The corporation is a
16 public corporation and is an instrumentality of the state [WITHIN THE
17 DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT]. The corporation has
18 a legal existence independent of and separate from the state. The
19 exercise by the corporation of the powers provided in this chapter is
20 considered an essential government function of the state.

21 * Sec. 4. AS 42.40.020(a) is amended to read:

22 (a) The powers of the corporation are vested in the board of
23 directors. The board consists of [THE COMMISSIONER OF COMMERCE AND
24 ECONOMIC DEVELOPMENT,] the chief executive officer of the corporation,
25 and eight [SEVEN] members appointed by the governor. At least six
26 [FIVE] of the eight [SEVEN] appointed members must be registered
27 voters in the state. No more than two appointed members may be from
28 any one of the four judicial districts in the state. The appointed
29 members must have substantial experience or professional training and

1 expertise in fields relevant to the purposes of this chapter, in-
2 cluding transportation, business, and finance. Except for [THE COM-
3 MISSIONER,] the chief executive officer [,] and the member appointed
4 under (d) of this section, a member may not be a state officer or
5 employee.

6 * Sec. 5. AS 42.40.020(e) is amended to read:

7 (e) Except for [THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVEL-
8 OPMENT AND] the chief executive officer of the corporation, the mem-
9 bers of the board shall be confirmed by a majority of the members of
10 each house of the legislature in joint session. A member appointed by
11 the governor has the full powers and responsibilities of a confirmed
12 board member until the member is rejected by the legislature.

13 * Sec. 6. AS 42.40.030 is amended to read:

14 Sec. 42.40.030. TERM OF OFFICE; REMOVAL. (a) Except for [THE
15 COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT AND] the chief
16 executive officer of the corporation, members of the board serve for
17 staggered terms of five years each [AT THE PLEASURE OF THE GOVERNOR].

18 * Sec. 7. AS 42.40.030 is amended by adding a new subsection to read:

19 (b) The governor may, by written notice to the member, remove a
20 member from the board for

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

23 (2) continued refusal or inability to attend meetings of
24 the board;

25 (3) conviction of a felony; or

26 (4) any conduct that was intended to harm the corporation,
27 even if it does not constitute a crime.

28 * Sec. 8. AS 42.40.040(a) is amended to read:

29 (a) Except for the [COMMISSIONER OF COMMERCE AND ECONOMIC

1 DEVELOPMENT AND THE] chief executive officer, a vacancy on the board
2 is filled by appointment by the governor, and the appointment must be
3 confirmed by the members of each house of the legislature in joint
4 session. A member appointed to fill a vacancy holds office for the
5 balance of the term for which the member's predecessor was appointed.

6 * Sec. 9. SPECIAL REPORT. The corporation shall prepare a report for
7 the governor and the legislature on the long-term operations of the Alaska
8 Railroad that are in the best interest of the state. The report shall be
9 submitted by January 1, 1988. It shall contain specific recommendations on
10 operational alternatives and the transfer of all or part of the railroad's
11 operation's is to the private sector.

12 * Sec. 10. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD
13 CORPORATION. Notwithstanding AS 42.40.020 enacted in sec. 1 of this Act,
14 the terms of the appointed members of the first board of directors of the
15 Alaska Railroad Corporation are as follows:

- 16 (1) one shall serve a term of two years;
- 17 (2) two shall serve a term of three years;
- 18 (3) two shall serve a term of four years; and
- 19 (4) two shall serve a term of five years.

20 * Sec. 11. COLLECTIVE BARGAINING AGREEMENTS. (a) As soon as practi-
21 cable after establishment of the Alaska Railroad Corporation and before
22 transfer of the Alaska Railroad to the state, the Alaska Railroad Corpora-
23 tion and its employees shall adopt collective bargaining agreements that
24 continue the provisions of the agreements in effect between the Alaska
25 Railroad and its employees on the date of transfer of the railroad. The
26 collective bargaining agreements adopted under this section between the
27 corporation and its employees shall remain in effect to the extent required
28 under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982).

29 (b) The board of directors of the Alaska Railroad Corporation shall

1 on or before the date of transfer of the Alaska Railroad to the state adopt
2 personnel rules necessary to prevent an interruption of services of the
3 railroad.

4 (c) Subject to 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of
5 1982), within 180 days after the first meeting of the board of directors of
6 the Alaska Railroad Corporation, the board and representatives of employee
7 bargaining units shall establish procedures for the renegotiation of
8 collective bargaining agreements adopted under (a) of this section. The
9 board shall renegotiate all agreements adopted under (a) of this section
10 within two years after the date of transfer of the Alaska Railroad to the
11 state unless the parties agree to the contrary.

12 * Sec. 12. Sections 3 - 8 of this Act take effect on the effective date
13 of an amendment to the Constitution of the State of Alaska relating to the
14 Alaska Railroad.

15 * Sec. 13. Sections 1, 2, and 9 - 11 of this Act take effect imme-
16 diately in accordance with AS 01.10.070(c).