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Original sponsors: Hayes, Ringstad,
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1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 512 (Finance)

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; and

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.

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

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

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

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

13 (A) be exclusively responsible for the management of the
14 financial and legal obligations of the Alaska Railroad;

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

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

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

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

28 (F) provide for the prudent operation of the railroad
29 according to sound business management practices; and

1 (G) preserve the integrity of the railroad utility corridor
2 for transportation, communication, and transmission purposes;

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

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

6 CHAPTER 40. ALASKA RAILROAD CORPORATION.

7 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

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

16 Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the
17 corporation are vested in the board of directors. The board consists
18 of the commissioner of commerce and economic development, the commis-
19 sioner of transportation and public facilities, and five members
20 appointed by the governor. The five appointed members must be regis-
21 tered voters in the state except as provided in (1) and (2) of this
22 subsection. Except for the commissioners, a member may not be a state
23 officer or employee. Appointed members shall have the following
24 qualifications:

25 (1) one member of the board shall be a person who has at
26 least 10 years of experience in railroad management; a person who is
27 not a resident of the state may be appointed under this paragraph;

28 (2) one member of the board shall be or have been an execu-
29 tive official of a United States railroad and shall be selected in

1 accordance with any requirements imposed under 49 U.S.C. (Interstate
2 Commerce Act); a person who is not a resident of the state may be ap-
3 pointed under this paragraph;

4 (3) at least one member shall be from each judicial dis-
5 trict directly served by the Alaska Railroad;

6 (4) two members shall have at least five years experience
7 as owners or managers of a business in the state.

8 (b) Except for the commissioners, the members of the board shall
9 be confirmed by a majority of the members of the legislature in joint
10 session. A member appointed by the governor has the full powers and
11 responsibilities of a confirmed board member until the member is
12 rejected by the legislature or the legislature adjourns without con-
13 firming the member.

14 Sec. 42.40.030. TERM OF OFFICE. Except for the commissioner of
15 commerce and economic development and the commissioner of transporta-
16 tion and public facilities, members of the board serve for staggered
17 terms of five years each at the pleasure of the governor.

18 Sec. 42.40.040. VACANCIES. (a) Except for the commissioner of
19 commerce and economic development and the commissioner of transporta-
20 tion and public facilities, a vacancy on the board is filled by ap-
21 pointment by the governor, and the appointment must be confirmed by
22 the members of the legislature in joint session. A member appointed
23 to fill a vacancy holds office for the balance of the term for which
24 the member's predecessor was appointed.

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

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

1 maintain that service;

2 (5) provide for safe, efficient, and economical transporta-
3 tion to meet the overall needs of the state;

4 (6) raise needed capital by issuing bonds of the corpora-
5 tion upon approval by the legislature while ensuring that borrowing by
6 the corporation does not directly or indirectly endanger the state's
7 own borrowing capacity;

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

11 (8) ensure that the procurement procedures of the corpora-
12 tion meet accepted railroad industry standards;

13 (9) ensure that the accounting procedures of the corpora-
14 tion meet generally accepted accounting principles consistent with
15 industry standards for comparable railroads.

16 Sec. 42.40.110. EXECUTIVE OFFICERS. (a) The board shall ap-
17 point the chief executive officer of the corporation who serves at the
18 pleasure of the board. The board shall fix compensation for the chief
19 executive officer.

20 (b) The chief executive officer of the corporation shall appoint
21 and fix the compensation for other executive officers. The compen-
22 sation for an executive officer appointed under this subsection is
23 subject to board approval.

24 Sec. 42.40.120. DELEGATION. (a) The board shall by rule dele-
25 gate to the chief executive officer powers and duties necessary or
26 appropriate for the management of the daily affairs and operations of
27 the corporation. The board may by rule require the exercise of a
28 delegated power or duty to be subject to board approval.

29 (b) Within 60 days after its first meeting, the board shall

1 delegate the following activities of the corporation to the chief
2 executive officer or other executive officers designated by the board:

3 (1) leasing subject to AS 42.40.285 and 42.40.350(b) and
4 (d), granting easements in, issuing permits for the use of, or convey-
5 ing other interests in property that do not constitute a transfer of
6 the corporation's entire interest in land;

7 (2) establishing specific rates, tariffs, divisions, and
8 contract rate agreements;

9 (3) making routine changes in service levels;

10 (4) establishing procurement and accounting procedures for
11 the corporation; and

12 (5) performing procurement activities.

13 (c) Notwithstanding (a) and (b) of this section, specific board
14 approval is required for the following:

15 (1) issuing bonds upon approval by the legislature;

16 (2) mortgaging or pledging corporation assets;

17 (3) donating property or other assets belonging to the
18 corporation;

19 (4) acting as a surety or guarantor;

20 (5) adopting a long-range capital improvement and program
21 plan;

22 (6) adopting annual reports;

23 (7) effecting general, comprehensive increases and de-
24 creases in rates;

25 (8) expanding or reducing services in a major way;

26 (9) expanding the main or branch rail lines including spur,
27 industrial, team, switching or side tracks, other than performing
28 routine track alignment as necessary to maintain service levels;

29 (10) selecting independent auditors and accountants;

- 1 (11) entering into collective bargaining agreements; and
2 (12) adopting annual budgets;
3 (13) beginning a capital project with an estimated comple-
4 tion cost of more than \$500,000 or an estimated completion time of
5 more than one year;
6 (14) exchanging, donating, selling, or otherwise conveying
7 its entire interest in land after approval by the legislature.

8 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

9 Sec. 42.40.150. MEETINGS OF THE BOARD. (a) The chairman of the
10 board shall call meetings of the board at least once every three
11 months. The chairman or a majority of the members of the board may
12 call other meetings of the board as necessary. The chairman shall
13 preside at meetings.

14 (b) Except for executive sessions, the meetings of the board are
15 public. The board shall provide by rule for a method of providing
16 reasonable notice to the public of its meetings.

17 (c) The board shall keep minutes of each meeting.

18 Sec. 42.40.160. QUORUM AND VOTING. (a) Four voting members of
19 the board constitutes a quorum for the transaction of business.

20 (b) Four affirmative votes are required for board action. The
21 board shall provide by rule for the manner of voting, except that the
22 board may not provide for voting by proxy. The rules may provide for
23 voting and conferring by telecommunication devices.

24 Sec. 42.40.170. EXECUTIVE SESSIONS. (a) The question of hold-
25 ing an executive session shall be determined in accordance with
26 AS 42.40.160. A subject may not be considered at an executive session
27 unless it is mentioned in the motion calling for the executive session
28 or is auxiliary to a subject mentioned. An action may not be taken at
29 an executive session.

1 (b) Only the following subjects may be discussed in an executive
2 session:

3 (1) matters, the immediate knowledge of which would clearly
4 have an adverse effect upon the finances of the corporation;

5 (2) unless the person has requested to have the subjects
6 discussed in public, subjects that tend to prejudice the reputation
7 and character of a person;

8 (3) matters that, by law or municipal charter or ordinance,
9 are permitted to be kept confidential from public disclosure;

10 (4) matters pertaining to personnel;

11 (5) matters pertaining to the corporation's legal position;

12 (6) land acquisition or disposal; and

13 (7) proprietary or other information of a type treated as
14 confidential under the standards and practices of the United States
15 Interstate Commerce Commission, including practices that protect
16 information associated with specific shippers, divisions, and contract
17 rate agreements.

18 Sec. 42.40.180. RULES. (a) The board shall adopt rules to
19 carry out its functions and the purposes of this chapter, including
20 rules to safeguard property owned, managed, or transported by the
21 corporation and to protect employees and persons using the corpora-
22 tion's property or services. At least 15 days before the adoption of
23 a rule, the board shall give public notice of the proposed action by
24 publishing a notice in at least three newspapers of general circula-
25 tion in the state and by mailing a copy of the notice to each person
26 who has requested notice of proposed changes to rules. The notice
27 must state the time, place, and nature of the proceedings and must
28 contain a summary of the subject of the proposed rule.

29 (b) On the date and at the time and place designated in the

1 notice required under (a) of this section the board shall provide each
2 interested person an opportunity to present statements in writing
3 concerning the proposed rule and shall give members of the public an
4 opportunity to present oral statements for a total period of at least
5 one hour.

6 (c) The board shall consider all relevant matters presented to
7 it before adopting a rule. The board may take action on a rule that
8 varies in content from the summary provided with the notice of the
9 proposed rule if the subject of the rule was reflected in the summary
10 and it provided reasonable notice to the public as to whether their
11 interests could be affected by the board's action on that subject.

12 (d) The board shall establish in the bylaws of the corporation
13 additional procedures for adopting rules if necessary.

14 Sec. 42.40.190. EMERGENCY RULES. (a) The board shall establish
15 in the bylaws of the corporation a procedure for the adoption of a
16 rule on an emergency basis. An emergency rule may be adopted only
17 when necessary for the orderly operation of the corporation's facili-
18 ties or programs. The requirements of AS 42.40.180 do not apply to
19 actions taken under this section. However, within 10 days after the
20 adoption of a rule on an emergency basis the board shall give notice
21 of its action that substantially complies with the notice requirements
22 of AS 42.40.180(a).

23 (b) An action taken under this section remains in effect for not
24 more than 120 days. To prevent an emergency rule from lapsing the
25 board may adopt the same rule under AS 42.40.180 before the end of the
26 120-day period.

27 Sec. 42.40.200. VALIDITY OF RULES. (a) Failure to mail notice
28 to a person under AS 42.40.180(a) or 42.40.190(a) does not invalidate
29 an action taken by the board.

1 (b) An interested person may challenge a rule adopted by the
2 board by bringing an action in the superior court. In addition to
3 other grounds, a court may declare a change invalid

4 (1) for substantial failure by the board to comply with
5 AS 42.40.180 or 42.40.190; or

6 (2) if the rule was adopted under AS 42.40.190, upon the
7 grounds that the emergency rule was not necessary for the orderly
8 operation of the corporation's facilities or programs.

9 Sec. 42.40.205. APPLICATION. Adoption of a rule is not subject
10 to AS 42.40.180 or 42.40.190 if it

11 (1) relates only to the internal management of the corpo-
12 ration;

13 (2) relates to specific rates, tariffs, divisions, and
14 contract rate agreements;

15 (3) relates to service schedules of the railroad;

16 (4) is directed to a specifically named person or to a
17 group of persons and does not apply to the general public; or

18 (5) relates to the use of public works under the jurisdic-
19 tion of the corporation if the effect of the order is indicated to the
20 public by means of signs or signals.

21 Sec. 42.40.210. PREVIOUSLY ADOPTED RULES AND ORDERS. The board
22 may provide by resolution that rules and orders in effect on the date
23 of transfer remain in effect until amended or repealed by the board.
24 AS 42.40.180 does not apply to actions taken under this section.

25 Sec. 42.40.220. PUBLIC DISCLOSURE OF INFORMATION. (a) Except
26 as provided under (b) of this section, information in the possession
27 of the corporation is public and is open to public inspection at
28 reasonable times.

29 (b) The corporation may by rule designate and withhold public

1 disclosure of matters of a privileged or proprietary nature. Those
2 matters include personnel records, communications with and work pro-
3 duct of legal counsel, and, consistent with the standards and prac-
4 tices of the United States Interstate Commerce Commission for the
5 protection of these matters, other information including proprietary
6 information associated with specific shippers, divisions and contract
7 rate agreements.

8 Sec. 42.40.230. CONFLICTS OF INTEREST. (a) Except as provided
9 in this section, a board member or executive officer of the corpora-
10 tion may not participate in a decision of the corporation in which
11 that person or a member of that person's immediate family has a direct
12 or indirect financial interest unless the financial interest is a
13 remote financial interest and participation is approved under (b) of
14 this section.

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

26 (c) A board member or executive officer is not considered to be
27 financially interested in a decision when the decision could not
28 affect that person in a manner different from its effect on the pub-
29 lic.

1 (d) Within 120 days of the first meeting of the board, the board
2 shall adopt and may subsequently amend rules implementing this sec-
3 tion, providing additional conflict of interest and ethical rules it
4 considers appropriate.

5 (e) The board may recommend to the governor the removal of a
6 board member or executive officer who intentionally violates this
7 section or a rule adopted under this section.

8 (f) For purposes of this section

9 (1) "participate in a decision" includes all discussions,
10 deliberations, preliminary negotiations, and votes;

11 (2) "immediate family" means

12 (A) spouse;

13 (B) dependent, parent, parent-in-law, child, son-in-
14 law, daughter-in-law, sibling, uncle, aunt, niece, or nephew.

15 ARTICLE 4. POWERS AND DUTIES.

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

18 (1) adopt a seal;

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

20 (3) sue and be sued;

21 (4) appoint trustees and agents of the corporation and
22 prescribe their powers and duties;

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

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

26 (7) acquire by purchase, lease, bequest, devise, gift,
27 exchange, the satisfaction of debts, the foreclosure of mortgages, or
28 otherwise, personal property, rights, rights-of-way, franchises,
29 easements, and other interests in land, and acquire by appropriation

1 water rights that are located in the state, taking title to the prop-
2 erty in the name of the corporation;

3 (8) hold, maintain, use, operate, improve, lease, exchange,
4 or encumber, or otherwise grant a security interest in land or person-
5 al property and exchange, donate, convey, alienate, or otherwise
6 dispose of personal property, subject to other provisions of this
7 chapter;

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

12 (10) undertake and provide for the management, operation,
13 maintenance, use, and control of all of the property of the corpo-
14 ration, including all land and personal property of the Alaska Rail-
15 road transferred under 45 U.S.C. 1203(a) and described in the report
16 dated July 14, 1983, as amended, submitted to Congress and the legis-
17 lature under 45 U.S.C. 1204(a);

18 (11) recommend to the legislature and the governor any tax,
19 financing, or financial arrangement the corporation considers appro-
20 priate for expansion or extension and operation of the Alaska Rail-
21 road;

22 (12) maintain offices and facilities at places it desig-
23 nates;

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

29 (14) prescribe rates to be charged for services provided by

1 the Alaska Railroad consistent with 45 U.S.C. 1201 - 1214 (Alaska
2 Railroad Transfer Act of 1982);

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

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

10 (17) plan for and undertake expansion of the railroad and
11 railroad activities, including extension of the rail system, and
12 contract with other modes of transportation service connecting to the
13 rail system;

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

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

19 (20) maintain a security force to enforce municipal ordi-
20 nances, state laws, and the corporation's rules with respect to viola-
21 tions that occur on or to property owned, managed or transported by
22 the corporation;

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

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

28 (23) cancel bonds of the corporation purchased by the corpo-
29 ration;

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

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

7 (26) borrow money, including the amounts necessary to estab-
8 lish reasonable reserves, and pay financing charges and interest on
9 bonds for a reasonable period after which the corporation estimates
10 other money will be available to pay the interest, consultant, advi-
11 sory, and legal fees, and other expenses necessary or incident to
12 borrowing;

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

20 (28) undertake and provide for the acquisition, construc-
21 tion, maintenance, equipping, and operation of connecting, switching,
22 terminal, or other railroads and railroad facilities;

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

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

29 Sec. 42.40.260. ANNUAL REPORT. (a) Within 90 days following

1 the end of the fiscal year of the Alaska Railroad the board shall
2 distribute to the governor and to the legislature a report describing
3 the operations and financial condition of the corporation during the
4 preceding fiscal year. The report may include suggestions for legis-
5 lation relating to the structure, powers or duties of the corporation
6 or to the operation or facilities of the corporation. Subject to
7 AS 42.40.220, the report shall itemize the cost of providing each
8 category of service offered by the railroad and the income generated
9 by each category.

10 (b) Every five years the annual report shall include an analysis
11 of potential sale arrangements whereby the corporation may be trans-
12 ferred into private ownership. The analysis shall include documenta-
13 tion of at least three offers to sell the corporation initiated by the
14 corporation during the last five years.

15 Sec. 42.40.270. AUDITS. (a) The board shall have the financial
16 records of the corporation audited annually by an independent certi-
17 fied public accountant experienced in railroad accounting. The board
18 shall have an annual performance audit conducted by a recognized
19 railroad management expert to assure that the railroad is being
20 managed and operated effectively and efficiently in accordance with
21 the requirements of this chapter and that each appropriation is used
22 to directly support those services for which the appropriation was
23 requested. Auditors shall use the standards required under AS 42.-
24 40.100(9) and determine whether each appropriation is used in accor-
25 dance with United States Interstate Commerce Commission standards for
26 determining rail services continuation subsidies if appropriate.

27 (b) The corporation shall make all of its financial records
28 available to an auditor appointed by the governor and to the legisla-
29 tive audit division for examination. Disclosure to the public by the

1 auditor or legislative audit division of this information is subject
2 to AS 42.40.220 and rules implementing that section.

3 Sec. 42.40.280. STATE OVERSIGHT REPORTS. (a) The board shall
4 provide a state oversight report to the governor and the legislature
5 before undertaking

6 (1) expansion, reduction, or diversification of services
7 provided by the railroad upon the date of transfer or as provided
8 under this chapter that the board determines would represent a signif-
9 icant and permanent change in the level and nature of services pro-
10 vided; or

11 (2) an application for an appropriation to be used for
12 providing any service that is not self-sustaining.

13 (b) The report under (a) of this section shall be in writing,
14 describe the proposed undertaking in detail, and specify

15 (1) its financial impact on the corporation;

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

18 (3) the reasons the action is necessary or desirable to
19 achieve the purposes of this chapter;

20 (4) whether and when the undertaking or service is expected
21 to be self-sustaining financially; and

22 (5) if the undertaking requires an appropriation to be used
23 for providing a service that is not self-sustaining, that the amount
24 of the appropriation has been strictly calculated in accordance with
25 United States Interstate Commerce Commission standards for determining
26 rail services continuation subsidies.

27 Sec. 42.40.285. LEGISLATIVE APPROVAL REQUIRED. Unless the
28 legislature approves the action by law, the corporation may not

29 (1) exchange, donate, sell, or otherwise convey its entire

- 1 interest in land;
- 2 (2) issue bonds;
- 3 (3) extend railroad lines; this paragraph does not apply to
4 a spur, industrial, team, switching or side track;
- 5 (4) lease land for a period in excess of 35 years unless
6 the corporation reserves the right to terminate the lease if the land
7 is needed for railroad purposes.

8 Sec. 42.40.290. LONG-RANGE CAPITAL IMPROVEMENT AND PROGRAM PLAN.

9 (a) The corporation shall prepare and the board shall adopt a long-
10 range capital improvement and program plan. The plan shall explain
11 the manner in which the corporation intends to accomplish the purposes
12 of this chapter and the corporation's anticipated capital improvements
13 during each of the five years after the plan is adopted.

14 (b) The board shall annually review and approve revisions to the
15 long-range capital improvement and program plan. The board shall
16 provide copies of the updated plan to the governor and the legislature
17 by December 1 of each year.

18 Sec. 42.40.300. USE OF CORPORATION ASSETS. The corporation
19 shall apply all money, property, other assets, and credit of the
20 corporation toward activities authorized by this chapter. The corpo-
21 ration may not issue shares of stock, pay dividends, make private
22 distributions of assets, make loans to board members or employees, or
23 engage in business for private benefit. The use of money, property,
24 another asset, or credit of the corporation for a purpose not author-
25 ized by law by a person having the possession or control of it is
26 prohibited.

27 Sec. 42.40.310. INDEMNIFICATION. (a) The corporation may
28 defend and indemnify a current or former member of the board, em-
29 ployee, or agent of the corporation against all costs, expenses,

1 judgments, and liabilities, including attorney's fees, incurred by or
2 imposed upon that person in connection with a civil or criminal action
3 in which the person is involved by affiliation with the corporation,
4 if the person acted in good faith on behalf of the corporation and
5 within the scope of official duties or powers.

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

15 ARTICLE 5. CORPORATION PROPERTY.

16 Sec. 42.40.350. LAND. (a) The corporation shall receive from
17 the United States and, in its own name, take title to all rail proper-
18 ty transferred under 45 U.S.C. 1201 - 1214 (Alaska Transfer Act of
19 1982). All land that is transferred or acquired by the corporation is
20 designated as follows:

- 21 (1) railroad rights-of-way are railroad utility corridors;
22 (2) land outside railroad utility corridors is rail land.

23 (b) Railroad utility corridors shall be of a width at least 100
24 feet on both sides of the centerline of the extended main or branch
25 line, unless the corporation does not own or control sufficient land
26 to allow a corridor of that width. Railroad utility corridors may be
27 surveyed by the metes and bounds method. The corporation may not
28 convey its entire interest in land within a utility corridor except as
29 provided in AS 42.40.285, 42.40.370(d) and 42.40.400. However, the

1 corporation may lease, subject to AS 42.40.285 and (d) of this sec-
2 tion, grant easements in or permits for, or otherwise authorize use of
3 portions of a utility corridor for transportation, communication, and
4 transmission purposes and support functions associated with those
5 purposes, and for commercial and other uses authorized under this
6 chapter if the use does not restrict other parallel uses of the util-
7 ity corridor.

8 (c) The corporation may lease, subject to AS 42.40.285 and (d)
9 of this section, grant easements or permits for, or otherwise author-
10 ize use of portions of rail land. However, the corporation may not
11 convey its entire interest in rail land except as provided in AS 42.-
12 40.285, 42.40.370(d) and 42.40.400.

13 (d) A lease or disposal of land approved by the legislature
14 under AS 42.40.285 by the corporation to a party other than the state
15 shall be made at fair market value as determined by a qualified ap-
16 praiser or by competitive bid.

17 Sec. 42.40.355. PROHIBITION. Notwithstanding any other pro-
18 vision in AS 42.40, the state-owned railroad as defined under
19 45.U.S.C. 1202(14) may not apply for a right-of-way across, or
20 exercise eminent domain in, the western (Kobuk River) unit of the
21 Gates of the Arctic National Preserve under 16 U.S.C. 410hh(4)(b)-(e).

22 Sec. 42.40.360. REQUEST FOR LAND. (a) The board may nominate
23 federal land it determines may be useful for present or future rail-
24 road purposes for selection under the Alaska Statehood Act (P.L. 85 -
25 508, 72 Stat. 339), as amended, and request the commissioner of natu-
26 ral resources to select the land for the state through the federal
27 land selection process.

28 (b) The board may identify and request the commissioner of
29 natural resources to convey land necessary or useful for present or

1 future railroad purposes owned by or tentatively approved for transfer
2 to the state, including land not contiguous with a railroad utility
3 corridor or rail land. The request must include a statement of and
4 justification for the present or future railroad use. Upon receipt of
5 a request, the commissioner shall temporarily reserve the land iden-
6 tified in the request for railroad purposes and defer disposal or
7 lease of that land under other laws to a party other than the corpo-
8 ration. The temporary reservation of land is subject to valid exist-
9 ing rights and remains in effect for 180 days.

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

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

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

18 (3) approve the request in part and deny it in part and
19 convey as appropriate.

20 (b) A conveyance of land under this section may be for less than
21 its appraised value as determined by the commissioner of natural
22 resources.

23 (c) In the absence of a reservation to the contrary, a convey-
24 ance of land under this section vests in the corporation ownership,
25 control of the surface, material and mineral estate, including the
26 right to extract or use timber and other construction materials, sand,
27 gravel, rock, and the right to tunnel, ditch, recontour, excavate, or
28 otherwise use the land for railroad, transportation, transmission,
29 communication, and related purposes.

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

5 Sec. 42.40.380. USE OF STATE LAND. When emergency conditions
6 require that track or other right-of-way fixtures of the corporation
7 be moved from the existing location and relocated on state land adja-
8 cent to or in the vicinity of the existing right-of-way and the chief
9 executive officer determines that relocation is necessary to maintain
10 safe and adequate rail operations, the corporation may effect the
11 relocation and notify the the Department of Natural Resources. The
12 relocation must affect only the amount of state land necessary to
13 adequately restore or continue safe rail operations at a normal level.

14 Sec. 42.40.390. LAND USE RULES. The board may adopt exclusive
15 rules governing land use by parties having interests in or permits for
16 land owned or managed by the corporation. The power conferred by this
17 section is exercised for the common health, safety, and welfare of the
18 public and to the extent constitutionally permissible, may not be
19 limited by the terms and conditions of leases, contracts, or other
20 transactions.

21 Sec. 42.40.400. VACATION OF EASEMENTS. The corporation may
22 vacate an easement acquired under this chapter by executing and filing
23 a deed in the appropriate recording district. If the easement was
24 acquired by the corporation under 45 U.S.C. 1201 - 1214 (Alaska Rail-
25 road Transfer Act of 1982), the state shall acquire the easement for
26 use in conformity with those laws.

27 Sec. 42.40.410. FEDERAL LAND. The corporation may submit appli-
28 cations on its own behalf as an instrumentality of the state for
29 acquisition of federal land available under federal law that will

1 enhance the operations of the corporation if it is available under a
2 federal law other than the Alaska Statehood Act of 1958 (P.L. 85 -
3 508, 72 Stat 339), as amended. The corporation may receive in its own
4 name conveyances of all interests in federal land.

5 Sec. 42.40.420. MUNICIPAL USE OF RAILROAD LAND. Upon request by
6 a municipality the corporation may authorize use of railroad land for
7 municipal purposes. Subject to AS 42.40.350(b), the corporation may
8 authorize a municipality to establish a walkway or trail over a util-
9 ity corridor. Before authorizing a use under this section the board
10 shall require the municipality to execute an agreement in a form
11 approved by the board to

12 (1) hold the corporation harmless from and indemnify the
13 corporation for any liability and claims arising from any use autho-
14 rized under this section including

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

17 (B) indemnifying the corporation for the amount of a
18 judgment, including prejudgment and postjudgment interest, ren-
19 dered against the corporation or for the amount of a settlement
20 entered into by the corporation, and for all costs and attorney's
21 fees incurred by the corporation in settling or defending the
22 claim; and

23 (2) stop the use of railroad land upon request of the
24 corporation if, as determined by the corporation, the use interferes
25 with expansion or replacement of railroad facilities, creates a safety
26 hazard, or interferes with railroad operations.

27 Sec. 42.40.430. ACQUISITION OF GOVERNMENT PROPERTY. The corpor-
28 ation, as an instrumentality of the state, may acquire in its own name
29 from the United States under 50 App U.S.C. 1622 - 1622c (Surplus

1 Property Act of 1944), 40 U.S.C. 471 et seq. (Federal Property and
2 Administrative Services Act of 1949), or other law, property under the
3 control of a federal department or agency that is useful for the
4 corporation's purposes. The corporation may acquire from the Depart-
5 ment of Administration property of the state made available under
6 AS 44.71.010 - 44.71.040.

7 Sec. 42.40.435. EXCHANGE OF LAND. The corporation may exchange
8 land subject to AS 42.40.285. The corporation is an instrumentality
9 and agency of the state for purposes of exchanging land with the
10 United States, municipalities, corporations including corporations
11 formed under 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement
12 Act), and individuals.

13 Sec. 42.40.440. USE OF PESTICIDES AND HERBICIDES. Vegetation
14 control involving the use of pesticides or herbicides on land owned or
15 managed by the corporation may be conducted only in compliance with
16 state requirements applicable to other state pesticide or herbicide
17 use.

18 Sec. 42.40.450. ADVERSE POSSESSION. No prescription or statute
19 of limitations runs against the title or interest of the corporation
20 to or in land owned by the corporation or under its jurisdiction.
21 Title to or interest in land owned by the corporation or under its
22 jurisdiction may not be acquired by adverse possession or prescrip-
23 tion, or in any other manner except by conveyance from or formal
24 vacation by the corporation.

25 ARTICLE 6. FINANCIAL PROVISIONS.

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

1 liability of the corporation.

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

7 Sec. 42.40.520. INSURANCE. Except as provided in AS 42.40.310-
8 (b), the corporation shall protect its assets, services, and employees
9 by purchasing insurance or providing for certain self-insurance re-
10 tentions. The corporation shall also maintain casualty, property,
11 business interruption, marine, boiler and machinery, pollution liabil-
12 ity, and other insurance in amounts reasonably calculated to cover
13 potential claims against the corporation or state for bodily injury,
14 death or disability and property damage that may arise from or be
15 related to corporation operations and activities.

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

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

24 ARTICLE 7. BONDS.

25 Sec. 42.40.600. GENERAL PROVISIONS. (a) Upon receiving legis-
26 lative approval under AS 42.40.285 the corporation may issue bonds by
27 resolution to provide money to carry out its purposes.

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

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

15 (c) Bonds may be sold in the manner, on the terms, and at the

16 price the board determines. Notes shall mature at the time or times

17 determined by the board. Except for bond anticipation notes, notes,

18 or other obligations, bonds shall mature at the time, not exceeding 50

19 years from their date, determined by the board.

20 Sec. 42.40.610. NEGOTIABLE INSTRUMENTS. Bonds issued under this

21 chapter and interest coupons attached to them are negotiable instru-

22 ments under the laws of this state, subject only to applicable pro-

23 visions for registration.

24 Sec. 42.40.620. BONDS ELIGIBLE FOR INVESTMENT. Bonds issued

25 under this chapter are securities in which all public officers and

26 public bodies of the state and its political subdivisions, all insur-

27 ance companies, trust companies, banking associations, investment

28 companies, executors, administrators, trustees and other fiduciaries

29 may properly and legally invest funds, including capital in their

1 control or belonging to them. These bonds may be deposited with a
2 state or municipal officer of an agency or political subdivision of
3 the state for any purpose for which the deposit of bonds of the state
4 is authorized by law.

5 Sec. 42.40.630. PAYMENT OF BONDS. The principal and interest on
6 bonds of the corporation is payable from corporation money or assets.
7 Bonds may be additionally secured by a pledge of a grant or contribu-
8 tion from the federal or state government, a municipality, a corpo-
9 ration, an association, an institution or a person, or a pledge of
10 money, income, or revenue of the corporation from any source.

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

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

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

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

29 (C) the fixing and collection of tariffs, fees,

1 charges or other consideration for the use or service of the
2 Alaska Railroad by passengers, and other users and freight;

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

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

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

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

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

19 Sec. 42.40.660. VALIDITY OF SIGNATURES. If an officer of the
20 corporation whose signature or a facsimile of whose signature appears
21 on bonds or coupons attached to them ceases to be an officer before
22 the delivery of the bond or coupon, the signature or facsimile is
23 valid the same as if the person had remained in office 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 of the corporation is valid and binding from the
27 time the pledge is made and the assets or revenue are immediately
28 subject to the lien of the pledge without physical delivery or further
29 act. The lien of a pledge is valid and binding against all parties

1 having claims of any kind against the corporation, irrespective of
2 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.

7 Sec. 42.40.675. PLEDGE OF THE STATE. The state pledges to and
8 agrees with the holders of bonds issued under this chapter and with
9 the federal agency that loans or contributes funds in respect to a
10 project, that the state will not limit or alter the rights and powers
11 vested in the corporation by this chapter to fulfill the terms of a
12 contract made by the corporation with the holders or federal agency,
13 or in any way impair the rights and remedies of the holders until the
14 bonds together with the interest on them with interest on unpaid
15 installments of interest, and all costs and expenses in connection
16 with an action or proceeding by or on behalf of the holders, are fully
17 met and discharged. The corporation is authorized to include this
18 pledge and agreement of the state, insofar as it refers to holders of
19 bonds of the corporation, in a contract with the holders and insofar
20 as it relates to a federal agency, in a contract with the federal
21 agency.

22 Sec. 42.40.680. REMEDIES. A holder of bonds issued under this
23 chapter or of coupons attached to them, and a trustee under a trust
24 agreement or resolution authorizing the issuance of the bonds, except
25 as restricted by a trust agreement or resolution, either at law or in
26 equity, may

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

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

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

7 (1) debt, liability, or obligation of the state or of a
8 political subdivision of the state; or

9 (2) pledge of the faith and credit of the state or of a
10 political subdivision of the state.

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

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

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

19 Sec. 42.40.700. LIMITATION ON PERSONAL LIABILITY. A board
20 member or employee of the corporation is not subject to personal
21 liability or accountability because of the execution or issuance of
22 bonds.

23 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

24 Sec. 42.40.705. POLITICAL ACTIVITIES. (a) Money, assets, or
25 property of the corporation may not be used for political activities.
26 However, board members and employees may communicate with and appear
27 before committees of Congress, the state legislature, and municipal
28 governing bodies in connection with matters directly affecting the
29 corporation.

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

5 Sec. 42.40.710. CORPORATION EMPLOYEES. Employees of the Alaska
6 Railroad are employees of the corporation and not of the state. The
7 provisions of AS 39 do not apply to employees of the corporation.

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

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

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

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

25 Sec. 42.40.740. COLLECTIVE BARGAINING UNIT. The railroad labor
26 relations agency shall decide in each case, in order to ensure employ-
27 ees the fullest freedom in exercising the rights guaranteed by AS 42.-
28 40.710 - 42.40.890 the unit appropriate for the purposes of collective
29 bargaining, based on such factors as community of interest, wages,

1 hours and other working conditions of the employees involved, the
2 history of collective bargaining, and the desires of the employees.
3 Bargaining units shall be as large as is reasonable, and unnecessary
4 fragmenting shall be avoided.

5 Sec. 42.40.750. REPRESENTATIVES AND ELECTIONS. (a) The rail-
6 road labor relations agency shall investigate a petition if it is
7 submitted in a manner prescribed by the railroad labor relations
8 agency by

9 (1) an employee or group of employees or an organization
10 acting in their behalf alleging that 30 percent of the employees of a
11 proposed bargaining unit

12 (A) want to be represented for collective bargaining
13 by a labor or employee organization as exclusive representative;
14 or

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

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

22 (b) If the railroad labor relations agency has reasonable cause
23 to believe that a question of representation exists, it shall provide
24 for a hearing upon due notice. If the railroad labor relations agency
25 finds that there is a question of representation, it shall direct an
26 election by secret ballot to determine whether or by which organiza-
27 tion the employees desire to be represented and shall certify the
28 results of the election. Nothing in this subsection prohibits the
29 waiving of hearings by stipulation for the purpose of a consent

1 election in conformity with the regulations of the railroad labor
2 relations agency or an election in a bargaining unit agreed upon by
3 the parties.

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

16 (d) Nothing in this chapter prohibits recognition of an orga-
17 nization as the exclusive representative by the corporation by mutual
18 consent.

19 (e) An election may not be directed by the railroad labor rela-
20 tions agency in a bargaining unit in which there is in force a valid
21 collective bargaining agreement, except during a 90-day period preced-
22 ing the expiration date. However, a collective bargaining agreement
23 may not bar an election upon petition of employees in the bargaining
24 unit if

25 (1) the petitioners are not parties to the agreement; and

26 (2) more than three years have elapsed since the execution
27 of the agreement or its last timely renewal, whichever was later.

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

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

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

5 (3) discriminate in regard to hire or tenure of employment
6 or a term or condition of employment to encourage or discourage mem-
7 bership in an organization;

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

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

15 (b) Nothing in AS 42.40.710 - 42.40.890 prohibits the corpo-
16 ration from making an agreement with an organization to require as a
17 condition of employment

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

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

24 (c) An organization or its agents may not

25 (1) restrain or coerce

26 (A) an employee in the exercise of the rights guaran-
27 teed in AS 42.40.720; or

28 (B) the corporation in the selection of a representa-
29 tive for the purposes of collective bargaining or the adjustment

1 of grievances;

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

6 Sec. 42.40.770. INVESTIGATION AND CONCILIATION OF COMPLAINTS.

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

17 Sec. 42.40.780. COMPLAINT AND ACCUSATION. If the railroad labor
18 relations agency fails to eliminate the prohibited practice by concil-
19 iation and to obtain voluntary compliance with AS 42.40.710 - 42.40.-
20 890 or before it attempts conciliation, it may serve a copy of the
21 complaint or accusation upon the respondent. The complaint or accusa-
22 tion and the subsequent procedures shall be handled in accordance with
23 the administrative adjudication portion of the Administrative Proce-
24 dure Act (AS 44.62).

25 Sec. 42.40.790. ORDERS AND DECISIONS. If the railroad labor
26 relations agency finds that a person named in the written complaint or
27 accusation has engaged in a prohibited practice, the railroad labor
28 relations agency shall issue and serve on the person an order or
29 decision requiring the person to cease and desist from the prohibited

1 practice and to take affirmative action that will carry out the pro-
2 visions of AS 42.40.710 - 42.40.890. If the railroad labor relations
3 agency finds that a person named in the complaint or accusation has
4 not engaged or is not engaging in a prohibited practice, the railroad
5 labor relations agency shall state its findings of fact and issue an
6 order dismissing the complaint or accusation.

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

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

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

23 (c) The attendance of witnesses and the production of evidence
24 may be required from any place in the state at any designated place of
25 hearing.

26 (d) If a person refuses to obey a subpoena issued under AS 42.-
27 40.710 - 42.40.890, the superior court in the district in which the
28 person resides or is found may, upon application by the railroad labor
29 relations agency, issue an order requiring the person to comply with

1 the subpoena.

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

5 Sec. 42.40.830. PENALTY FOR VIOLATION OF ORDER OR DECISION. A
6 person who violates a provision of an order or decision of the rail-
7 road labor relations agency is guilty of a misdemeanor and is punish-
8 able by a fine of not more than \$500.

9 Sec. 42.40.840. MEDIATION. (a) If, after a reasonable period
10 of negotiation over the terms of a collective bargaining agreement, an
11 impasse as determined by the railroad labor relations agency exists
12 between the corporation and an organization, the railroad labor re-
13 lations agency shall appoint a person mutually agreeable to the
14 parties from a list of seven qualified mediators or arbitrators knowl-
15 edgeable in railway labor agreements to act as mediator in the dis-
16 pute.

17 (b) Before the determination of an impasse under this section,
18 the parties may also select a mediator by mutual consent.

19 (c) It shall be the function of the mediator to bring the
20 parties together to effectuate a settlement of the dispute, but nei-
21 ther the mediator nor the railroad labor relations agency has any
22 power of compulsion in mediation proceedings.

23 Sec. 42.40.850. STRIKES. (a) Following a decision by the
24 mediator to end the mediation proceedings, employees of a collective
25 bargaining unit may engage in a strike for a limited time if a major-
26 ity of the employees in that collective bargaining unit vote by secret
27 ballot to do so. The limit of the strike is determined by the interest
28 of the health, safety, or welfare of the public.

29 (b) The corporation may apply to the superior court in the

1 judicial district in which the strike is occurring for an order en-
2 joining the strike. A strike may not be enjoined unless it can be
3 shown that it has begun to threaten, or is about to threaten, the
4 health, safety, or welfare of the public. A court, in deciding wheth-
5 er to enjoin the strike, shall consider the total equities in the
6 particular case, including the impact of a strike on the public and
7 the extent to which an employee organization and the corporation have
8 met their statutory obligations.

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

14 (d) Notwithstanding (a) - (c) of this section, an organization
15 and the corporation may mutually agree to submit a dispute to binding
16 arbitration at any time.

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

24 (b) Upon the completion of negotiations between an organization
25 and the corporation, if a settlement is reached, the corporation shall
26 reduce it to writing in the form of an agreement. The agreement shall
27 include a grievance procedure that shall have binding arbitration as
28 its final step. Either party to the agreement has a right of action
29 to enforce the agreement by petition to the railroad labor relations

1 agency.

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

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

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

28 Sec. 42.40.885. PROHIBITED ACTS. (a) The corporation or an
29 employee may not directly or indirectly

1 (1) require or coerce an employee to participate in any way
2 in any activity or undertaking unless the activity or undertaking is
3 related to the performance of official duties;

4 (2) require or coerce an employee to make any report con-
5 cerning an activity or undertaking of the employee unless the activity
6 or undertaking is related to the performance of official duties;

7 (3) except as directly related to the performance of offi-
8 cial duties, require or coerce an employee to submit to an interro-
9 gation, examination, or psychological test that is designed to elicit
10 information concerning

11 (A) a personal relationship with a person connected
12 with the employee by blood or marriage;

13 (B) the employee's religious beliefs or practices;

14 (C) sexual matters;

15 (D) the employee's political affiliation or philoso-
16 phy;

17 (4) coerce an employee to invest or contribute earnings in
18 any manner or for any purpose;

19 (5) restrict or attempt to restrict after-working-hour
20 statements, pronouncements or other activities, not otherwise prohib-
21 ited by law or personnel rule, of an employee, if the employee does
22 not purport to speak or act in an official capacity.

23 (b) The provisions of (a) of this section do not diminish the
24 authority of an authorized law enforcement agency to conduct criminal
25 investigations of employees suspected of being involved in criminal
26 activity or to investigate other activity directly related to official
27 railroad business.

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

29 (1) "election" means a proceeding conducted by the labor

1 relations agency in which the employees in a collective bargaining
2 unit cast a secret ballot for collective bargaining representatives,
3 or for any other purpose specified in AS 42.40.710 - 42.40.890;

4 (2) "organization" means a labor or employee organization
5 of any kind in which employees participate and that exists for the
6 primary purpose of dealing with the corporation concerning grievances,
7 labor disputes, wages, rates of pay, hours of employment and condi-
8 tions of employment.

9 ARTICLE 9. GENERAL PROVISIONS.

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

14 (b) For the purposes of actionable claims, undertakings, pay-
15 ments of judgments, execution, interest, punitive damages, statutes of
16 limitations, bonds, costs, and similar matters related to the pres-
17 entation and prosecution of claims by and against the corporation, the
18 corporation and its board members and employees enjoy the same rights,
19 privileges, and immunities as the state and state officers.

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

22 (d) The corporation is not subject to the provisions of AS 44.-
23 80.010, regarding the state as a party to an action.

24 Sec. 42.40.905. NOTICE OF LEGAL ACTIONS. (a) The corporation
25 shall notify the Department of Law within 30 days before initiating
26 legal action unless special circumstances exist that require immediate
27 legal action to protect the corporation assets or to continue existing
28 service.

29 (b) If notice of legal action is not given under (a) of this

1 section, within seven days of taking action the board shall notify the
2 Department of Law of the action taken and of the special circumstances
3 that exempted the action from the requirements of (a) of this section.

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

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

19 (c) This section does not affect or limit an exemption from
20 license fees, property taxes, or excise, income or other taxes, pro-
21 vided under any other law, nor does it create a tax exemption with
22 respect to the interest of any business enterprise or other person,
23 other than the corporation.

24 Sec. 42.40.920. APPLICATION OF EXISTING LAWS. (a) The corpo-
25 ration is not subject to the jurisdiction of the Alaska Transportation
26 Commission.

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

29 (1) AS 19;

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

11 Sec. 42.40.930. CONFLICTING LAWS INAPPLICABLE. If provisions of
12 AS 42.40 conflict with the provisions of other state law, the pro-
13 visions of AS 42.40 prevail. Provisions of AS 42.40 shall be con-
14 strued so that they do not conflict with 45 U.S.C. 1201 - 1214 (Alaska
15 Railroad Transfer Act of 1982).

16 Sec. 42.40.935. RAILROAD FACILITIES CODE COMPLIANCE. (a) Not
17 later than two years after the date of transfer the corporation in
18 consultation with the Department of Labor shall develop and adopt a
19 plan to achieve compliance with AS 18.60. The plan shall be imple-
20 mented and compliance achieved within five years after it is adopted.

21 (b) No later than two years after the date of transfer, the
22 corporation in consultation with the Department of Public Safety and
23 appropriate municipal officials, shall develop and adopt a plan to
24 achieve compliance with building and related safety codes applicable
25 to facilities of the corporation. The plan shall be implemented and
26 compliance achieved within five years after it is adopted. In the
27 sole determination of the commissioner of public safety, any existing
28 building owned or controlled by the corporation that does not present
29 a serious safety hazard and for which compliance would be uneconomical

1 in consideration of its remaining useful life shall be exempted from
2 compliance with state or municipal safety codes.

3 Sec. 42.40.940. SALE OR LEASE OF THE RAILROAD. (a) The gover-
4 nor may provide for the sale or lease of the Alaska Railroad and
5 dissolve the corporation if

6 (1) it can be assured that the railroad will continue to
7 operate after the sale or lease; and

8 (2) under the terms of the sale or lease, the state will
9 receive the amount of money it has spent in connection with the Alaska
10 Railroad.

11 (b) A sale under this section is subject to approval by law.

12 Sec. 42.40.950. REVERSION OF ASSETS. Except as provided in
13 AS 42.40.940, if the corporation ceases to exist its assets revert to
14 the state.

15 Sec. 42.40.980. DEFINITIONS. In this chapter unless the context
16 otherwise requires,

17 (1) "board" means the board of directors of the Alaska
18 Railroad Corporation;

19 (2) "bonds" means bonds, bond anticipation notes, notes,
20 refunding bonds, or other obligations;

21 (3) "collective bargaining" means the performance of the
22 mutual obligation of the corporation or its designated representatives
23 and the representatives of the employees to meet at reasonable times,
24 including meetings in advance of the budget making process, and nego-
25 tiating in good faith with respect to wages, hours, and other terms
26 and conditions of employment, or the negotiation of an agreement, or
27 negotiation of a question arising under an agreement and the execution
28 of a written contract incorporating an agreement reached if requested
29 by either party, but these obligations do not compel either party to

1 agree to a proposal or require the making of a concession;

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

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

6 (6) "employees" means all persons employed by the corpo-
7 ration including executive officers;

8 (7) "executive officer" means the corporation's chief
9 executive officer, assistant chief executive officer, assistant to the
10 chief executive officer, chief of administration, superintendent of
11 transportation, manager of marketing and sales, chief engineer, chief
12 mechanical officer, manager of industrial development and real estate,
13 manager of budget and accounting, manager of planning, manager of
14 personnel, manager of supply and procurement, chief of security,
15 manager of operating rules, manager of data processing, manager of
16 strategy, manager of operations planning, manager of supply, manager
17 of procurement, manager of safety, manager of administrative proce-
18 dure, chief counsel, or, if so designated by the board, any employee
19 who fulfills these management functions under a different title or who
20 exercises a similar or comparable level of responsibility or super-
21 vision;

22 (8) "land" means any interest in real property, including
23 tide and submerged land, and any right appurtenant to the interest;

24 (9) "rule" means a standard of general application or the
25 amendment, supplement, revision, or repeal of a standard adopted by
26 the corporation to implement, interpret, or make specific the law
27 enforced or administered by it to govern its procedure;

28 (10) "terms and conditions of employment" means the hours of
29 employment, the compensation and fringe benefits, and the employer's

1 personnel policies affecting the working conditions of the employees,
2 but does not mean the general policies describing the function and
3 purposes of an employer.

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

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

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. 4. AS 42.40.030 is amended to read:

15 Sec. 42.40.030. TERM OF OFFICE; REMOVAL. Except for the commis-
16 sioner of commerce and economic development and the commissioner of
17 transportation and public facilities, members of the board serve for
18 staggered terms of five years each [AT THE PLEASURE OF THE GOVERNOR].

19 * Sec. 5. AS 42.40.030 is amended by adding a new subsection to read:

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

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

24 (2) continued refusal or inability to attend meetings of
25 the board or to perform duties under this chapter;

26 (3) conviction of a felony; or

27 (4) malfeasance or misfeasance.

28 * Sec. 6. AS 42.40.180 is repealed and reenacted to read:

29 Sec. 42.40.180. RULES. (a) The board shall establish a

1 procedure for adopting rules to carry out its functions and the
2 purposes of this chapter, including a procedure for the adoption of
3 rules on an emergency basis when essential to continue or to reinstate
4 the orderly operation of the corporation's facilities or programs.

5 (b) The board shall adopt rules to safeguard property owned,
6 managed, or transported by the corporation and to protect employees
7 and persons using the corporation's property or services.

8 * Sec. 7. AS 42.40.205 is amended to read:

9 Sec. 42.40.205. APPLICATION. Adoption of a rule is not subject
10 to AS 42.40.180 [OR 42.40.190] if it

11 (1) relates only to the internal management of the corpo-
12 ration;

13 (2) relates to specific rates, tariffs, divisions, and
14 contract rate agreements;

15 (3) relates to service schedules of the railroad;

16 (4) is directed to a specifically named person or to a
17 group of persons and does not apply to the general public; or

18 (5) relates to the use of public works under the jurisdic-
19 tion of the corporation if the effect of the order is indicated to the
20 public by means of signs or signals.

21 * Sec. 8. SPECIAL REPORTS. (a) The governor shall contract with a
22 private consultant for the preparation of a report on the long-term op-
23 erations of the Alaska Railroad that are in the best interest of the state.
24 The report shall be submitted to the governor and the legislature by
25 February 1, 1987. It shall contain specific recommendations on operational
26 alternatives and the transfer of all or part of the railroad operation to
27 the private sector.

28 (b) The corporation shall study any problems created by vibrations
29 due to operating the railroad from Ship Creek through Inlet View to the

1 Turnagain Area and extending to Potter's Marsh. The study shall include
2 consideration of any potential for problems that may be created by hauling
3 coal and larger quantities of gravel along that portion of the rail line.
4 By February 1, 1986, the corporation shall present a report to the legisla-
5 ture on the study containing recommendations for correcting any problems
6 identified.

7 * Sec. 9. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD
8 CORPORATION. Notwithstanding AS 42.40.020 enacted in sec. 1 of this Act,
9 the terms of the appointed members of the first board of directors of the
10 Alaska Railroad Corporation are as follows:

- 11 (1) one shall serve a term of two years;
- 12 (2) one shall serve a term of three years;
- 13 (3) one shall serve a term of four years; and
- 14 (4) two shall serve a term of five years.

15 * Sec. 10. COLLECTIVE BARGAINING AGREEMENTS. (a) As soon as practi-
16 cable before transfer of the Alaska Railroad to the state, the Alaska Rail-
17 road Corporation and its employees shall adopt collective bargaining agree-
18 ments that continue the provisions of the agreements in effect between the
19 Alaska Railroad and its employees on the date of transfer of the railroad.
20 The collective bargaining agreements adopted under this section between the
21 corporation and its employees shall remain in effect to the extent required
22 under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982).

23 (b) The board of directors of the Alaska Railroad Corporation shall
24 on or before the date of transfer of the Alaska Railroad to the state adopt
25 personnel rules necessary to prevent an interruption of services of the
26 railroad.

27 (c) Subject to 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of
28 1982), within 180 days after the first meeting of the board of directors of
29 the Alaska Railroad Corporation, the board and representatives of employee

1 bargaining units shall establish procedures for the renegotiation of bar-
2 gaining agreements adopted under (a) of this section. The board shall
3 renegotiate all agreements adopted under (a) of this section with two years
4 after the date of transfer of the Alaska Railroad to the state unless the
5 parties agree to the contrary.

6 * Sec. 11. AS 42.40.190 and 42.40.200 are repealed.

7 * Sec. 12. Sections 3 - 7 and 11 of this Act take effect on the effec-
8 tive date of an amendment to the Constitution of the State of Alaska relat-
9 ing to the Alaska Railroad.

10 * Sec. 13. Sections 1, 2, and 8 - 10 of this Act take effect imme-
11 diately in accordance with AS 01.10.070(c).