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Original sponsors: Hayes, Ringstad,
Shultz, et al

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

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

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 (E) ensure that the Alaska Railroad does not use direct
23 appropriations to fund a particular freight operation if it can be
24 demonstrated that the appropriation has placed privately owned and
25 operated carriers in an unfair competitive position. Nothing herein
26 shall affect the provisions of AS 42.40.220(b);

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

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

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

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

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

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

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

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

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

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

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

29 (E) provide the best possible combination of types and

1 levels of safe, efficient, and economical transportation to meet the
2 overall needs of the state, supported when necessary by state invest-
3 ment;

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

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

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

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

11 CHAPTER 40. ALASKA RAILROAD CORPORATION.

12 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

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

21 Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the
22 corporation are vested in the board of directors. The board consists
23 of the commissioner of commerce and economic development, the commis-
24 sioner of transportation and public facilities, and five members
25 appointed by the governor. The five appointed members must be regis-
26 tered voters in the state except as provided in (1) and (2) of this
27 subsection. Except for the commissioners and the member appointed
28 under (5) of this section, a member may not be a state officer or
29 employee. Appointed members shall have the following qualifications:

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

4 (2) one member of the board shall be or have been an execu-
5 tive official of a United States railroad and shall be selected in
6 accordance with any requirements imposed under 49 U.S.C. (Interstate
7 Commerce Act); a person who is not a resident of the state may be ap-
8 pointed under this paragraph;

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

11 (4) one members shall have at least five years experience
12 as owners or managers of a business in the state;

13 (5) one member shall be an employee who is a member of a
14 bargaining unit representing employees of the corporation.

15 (b) Except for the commissioners, the members of the board shall
16 be confirmed by a majority of the members of the legislature in joint
17 session. A member appointed by the governor has the full powers and
18 responsibilities of a confirmed board member until the member is
19 rejected by the legislature or the legislature adjourns without con-
20 firming the member.

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

25 Sec. 42.40.040. VACANCIES. (a) Except for the commissioner of
26 commerce and economic development and the commissioner of transporta-
27 tion and public facilities, a vacancy on the board is filled by ap-
28 pointment by the governor, and the appointment must be confirmed by
29 the members of the legislature in joint session. A member appointed

1 to fill a vacancy holds office for the balance of the term for which
2 the member's predecessor was appointed.

3 (b) A vacancy on the board does not impair the authority of a
4 quorum of members to exercise the powers and perform the duties of the
5 board.

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

8 Sec. 42.40.050. COMPENSATION AND EXPENSES. (a) An appointed
9 member of the board is entitled to compensation at a rate of \$400 for
10 each day the member is engaged in the actual performance of duties as
11 a member of the board. The board may provide by rule for compensation
12 for partial days during which an appointed member is engaged in actual
13 performance of duties as a member of the board.

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

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

20 (b) The board shall appoint a secretary and prescribe the duties
21 of the secretary.

22 ARTICLE 2. MANAGEMENT.

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

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

29 (2) operate the Alaska Railroad as a common carrier subject

1 to the jurisdiction of the United States Interstate Commerce Commis-
2 sion consistent with 45 U.S.C. 1207;

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

5 (4) apply to the legislature for an appropriation with the
6 concurrence of the governor to be used to provide a particular service
7 that is not otherwise self-sustaining if a subsidy is required to
8 maintain that service;

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

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

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

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

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

23 Sec. 42.40.110. EXECUTIVE OFFICERS. (a) The board shall ap-
24 point the chief executive officer of the corporation who serves at the
25 pleasure of the board. The board shall fix compensation for the chief
26 executive officer.

27 (b) The chief executive officer of the corporation shall appoint
28 and fix the compensation for other executive officers. The compen-
29 sation for an executive officer appointed under this subsection is

1 subject to board approval.

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

7 (b) Within 60 days after its first meeting, the board shall
8 delegate the following activities of the corporation to the chief
9 executive officer or other executive officers designated by the board:

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

14 (2) establishing specific rates, tariffs, divisions, and
15 contract rate agreements;

16 (3) making routine changes in service levels;

17 (4) establishing procurement and accounting procedures for
18 the corporation; and

19 (5) performing procurement activities.

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

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

23 (2) mortgaging or pledging corporation assets;

24 (3) donating property or other assets belonging to the
25 corporation;

26 (4) acting as a surety or guarantor;

27 (5) adopting a long-range capital improvement and program
28 plan;

29 (6) adopting annual reports;

1 (7) effecting general, comprehensive increases and de-
2 creases in rates;

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

4 (9) expanding the main or branch rail lines including spur,
5 industrial, team, switching or side tracks, other than performing
6 routine track alignment as necessary to maintain existing service
7 levels;

8 (10) selecting independent auditors and accountants;

9 (11) entering into collective bargaining agreements;

10 (12) adopting annual budgets;

11 (13) beginning a capital project with an estimated comple-
12 tion cost of more than \$500,000 or an estimated completion time of
13 more than one year;

14 (14) exchanging, donating, selling, or otherwise conveying
15 its entire interest in land subject to approval by the legislature;

16 (15) exercising the power of eminent domain.

17 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

18 Sec. 42.40.150. MEETINGS OF THE BOARD. (a) The chairman of the
19 board shall call meetings of the board at least once every three
20 months. The chairman or a majority of the members of the board may
21 call other meetings of the board as necessary. The chairman shall
22 preside at meetings.

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

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

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

29 (b) Four affirmative votes are required for board action. The

1 board shall provide by rule for the manner of voting, except that the
2 board may not provide for voting by proxy. The rules may provide for
3 voting and conferring by telecommunication devices.

4 Sec. 42.40.170. EXECUTIVE SESSIONS. (a) The question of hold-
5 ing an executive session shall be determined in accordance with
6 AS 42.40.160. A subject may not be considered at an executive session
7 unless it is mentioned in the motion calling for the executive session
8 or is auxiliary to a subject mentioned. An action may not be taken at
9 an executive session.

10 (b) Only the following subjects may be discussed in an executive
11 session:

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

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

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

19 (4) matters pertaining to personnel;

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

21 (6) land acquisition or disposal; and

22 (7) proprietary or other information of a type treated as
23 confidential under the standards and practices of the United States
24 Interstate Commerce Commission, including practices that protect
25 information associated with specific shippers, divisions, and contract
26 rate agreements.

27 Sec. 42.40.180. RULES. (a) The board shall adopt rules to
28 carry out its functions and the purposes of this chapter, including
29 rules to safeguard property owned, managed, or transported by the

1 corporation and to protect employees and persons using the corpora-
2 tion's property or services. At least 15 days before the adoption of
3 a rule, the board shall give public notice of the proposed action by
4 publishing a notice in at least three newspapers of general circula-
5 tion in the state and by mailing a copy of the notice to each person
6 who has requested notice of proposed changes to rules. The notice
7 must state the time, place, and nature of the proceedings and must
8 contain a summary of the subject of the proposed rule.

9 (b) On the date and at the time and place designated in the
10 notice required under (a) of this section the board shall provide each
11 interested person an opportunity to present statements in writing
12 concerning the proposed rule and shall give members of the public an
13 opportunity to present oral statements for a total period of at least
14 one hour.

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

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

23 Sec. 42.40.190. EMERGENCY RULES. (a) The board shall establish
24 in the bylaws of the corporation a procedure for the adoption of a
25 rule on an emergency basis. An emergency rule may be adopted only
26 when necessary for the orderly operation of the corporation's facili-
27 ties or programs. The requirements of AS 42.40.180 do not apply to
28 actions taken under this section. However, within 10 days after the
29 adoption of a rule on an emergency basis the board shall give notice

1 of its action that substantially complies with the notice requirements
2 of AS 42.40.180(a).

3 (b) An action taken under this section remains in effect for not
4 more than 120 days. To prevent an emergency rule from lapsing the
5 board may adopt the same rule under AS 42.40.180 before the end of the
6 120-day period.

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

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

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

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

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

20 (1) relates only to the internal management of the corpo-
21 ration;

22 (2) relates to specific rates, tariffs, divisions, and
23 contract rate agreements;

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

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

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

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

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

9 (b) The corporation may by rule designate and withhold public
10 disclosure of matters of a privileged or proprietary nature. Those
11 matters include personnel records, communications with and work pro-
12 duct of legal counsel, and, consistent with the standards and prac-
13 tices of the United States Interstate Commerce Commission for the
14 protection of these matters, other information including proprietary
15 information associated with specific shippers, divisions and contract
16 rate agreements.

17 Sec. 42.40.230. CONFLICTS OF INTEREST. (a) Except as provided
18 in this section, a board member or executive officer of the corpora-
19 tion may not participate in a decision of the corporation in which
20 that person or a member of that person's immediate family has a direct
21 or indirect financial interest unless the financial interest is a
22 remote financial interest and participation is approved under (b) of
23 this section.

24 (b) A board member or executive officer may participate in a
25 decision if that person or a member of that person's immediate family
26 has only a remote interest, the fact and extent of the interest is
27 disclosed to the board in a public meeting and is noted in the minutes
28 of the board before any participation by the member or in the deci-
29 sion, and thereafter in a public meeting the board by vote authorizes

1 or approves the participation. If the person whose participation is
2 under consideration is a board member, that person may not vote under
3 this subsection. For purposes of this subsection, "remote interest"
4 means an interest that in good faith is defined as remote by rules
5 adopted by the corporation.

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

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

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

17 (f) For purposes of this section

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

20 (2) "immediate family" means

21 (A) spouse;

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

24 ARTICLE 4. POWERS AND DUTIES.

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

27 (1) adopt a seal;

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

29 (3) sue and be sued;

1 (4) appoint trustees and agents of the corporation and
2 prescribe their powers and duties;

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

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

6 (7) acquire by purchase, lease, bequest, devise, gift,
7 exchange, the satisfaction of debts, the foreclosure of mortgages, or
8 otherwise, personal property, rights, rights-of-way, franchises,
9 easements, and other interests in land, and acquire by appropriation
10 water rights that are located in the state, taking title to the prop-
11 erty in the name of the corporation;

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

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

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

26 (11) recommend to the legislature and the governor any tax,
27 financing, or financial arrangement the corporation considers appro-
28 priate for expansion or extension and operation of the Alaska Rail-
29 road;

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

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

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

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

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

18 (17) plan for and undertake expansion of the railroad and
19 railroad activities, including extension of the rail system, and
20 contract with other modes of transportation service connecting to the
21 rail system;

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

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

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

1 the corporation;

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

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

7 (23) cancel bonds of the corporation purchased by the corpo-
8 ration;

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

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

15 (26) borrow money, including the amounts necessary to estab-
16 lish reasonable reserves, and pay financing charges and interest on
17 bonds for a reasonable period after which the corporation estimates
18 other money will be available to pay the interest, consultant, advi-
19 sory, and legal fees, and other expenses necessary or incident to
20 borrowing;

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

28 (28) undertake and provide for the acquisition, construc-
29 tion, maintenance, equipping, and operation of connecting, switching,

1 terminal, or other railroads and railroad facilities;

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

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

8 Sec. 42.40.260. ANNUAL REPORT. (a) Within 90 days following
9 the end of the fiscal year of the Alaska Railroad the board shall
10 distribute to the governor and to the legislature a report describing
11 the operations and financial condition of the corporation during the
12 preceding fiscal year. The report may include suggestions for legis-
13 lation relating to the structure, powers or duties of the corporation
14 or to the operation or facilities of the corporation. Subject to
15 AS 42.40.220, the report shall itemize the cost of providing each
16 category of service offered by the railroad and the income generated
17 by each category.

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

23 Sec. 42.40.270. AUDITS. (a) The board shall have the financial
24 records of the corporation audited annually by an independent certi-
25 fied public accountant experienced in railroad accounting. The board
26 shall have an annual performance audit conducted by a recognized
27 railroad management expert to assure that the railroad is being
28 managed and operated effectively and efficiently in accordance with
29 the requirements of this chapter and that each appropriation is used

1 to directly support those services for which the appropriation was
2 requested. Auditors shall use the standards required under AS 42.-
3 40.100(9) and determine whether appropriations received for a service
4 that is not self-sustaining were calculated in accordance with United
5 States Interstate Commerce Commission standards for determining rail
6 service subsidies.

7 (b) The corporation shall make all of its financial records
8 available to an auditor appointed by the governor and to the legisla-
9 tive audit division for examination. Disclosure to the public by the
10 auditor or legislative audit division of this information is subject
11 to AS 42.40.220 and rules implementing that section.

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

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

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

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

24 (1) its financial impact on the corporation;

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

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

29 (4) whether and when the undertaking or service is expected

1 to be self-sustaining financially; and

2 (5) if the undertaking requires an appropriation to be used
3 for providing a service that is not self-sustaining, that the amount
4 of the appropriation has been strictly calculated in accordance with
5 United States Interstate Commerce Commission standards for determining
6 rail service subsidies.

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

9 (1) exchange, donate, sell, or otherwise convey its entire
10 interest in land;

11 (2) issue bonds;

12 (3) extend railroad lines; this paragraph does not apply to
13 a spur, industrial, team, switching or side track;

14 (4) lease land for a period in excess of 35 years unless
15 the corporation reserves the right to terminate the lease if the land
16 is needed for railroad purposes.

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

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

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

27 Sec. 42.40.300. USE OF CORPORATION ASSETS. The corporation
28 shall apply all money, property, other assets, and credit of the
29 corporation toward activities authorized by this chapter. The

1 corporation may not issue shares of stock, pay dividends, make private
2 distributions of assets, make loans to board members or employees, or
3 engage in business for private benefit. The use of money, property,
4 another asset, or credit of the corporation for a purpose not author-
5 ized by law by a person having the possession or control of it is
6 prohibited.

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

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

24 ARTICLE 5. CORPORATION PROPERTY.

25 Sec. 42.40.350. LAND. (a) The corporation shall receive from
26 the United States and, in its own name, take title to all rail proper-
27 ty transferred under 45 U.S.C. 1201 - 1214 (Alaska Transfer Act of
28 1982). All land that is transferred or acquired by the corporation is
29 designated as follows:

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

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

3 (b) Railroad utility corridors shall be of a width at least 100
4 feet on both sides of the centerline of the extended main or branch
5 line, unless the corporation does not own or control sufficient land
6 to allow a corridor of that width. Railroad utility corridors may be
7 surveyed by the metes and bounds method. The corporation may not
8 convey its entire interest in land within a utility corridor except as
9 provided in AS 42.40.285, 42.40.370(d) and 42.40.400. However, the
10 corporation may lease, subject to AS 42.40.285 and (d) of this sec-
11 tion, grant easements in or permits for, or otherwise authorize use of
12 portions of a utility corridor for transportation, communication, and
13 transmission purposes and support functions associated with those
14 purposes, and for commercial and other uses authorized under this
15 chapter if the use does not restrict other parallel uses of the util-
16 ity corridor.

17 (c) The corporation may lease, subject to AS 42.40.285 and (d)
18 of this section, grant easements in or permits for, or otherwise
19 authorize use of portions of rail land. However, the corporation may
20 not convey its entire interest in rail land except as provided in
21 AS 42.40.285, 42.40.370(d) and 42.40.400.

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

26 Sec. 42.40.355. PROHIBITION. Notwithstanding any other pro-
27 vision in AS 42.40, the state-owned railroad as defined under
28 45.U.S.C. 1202(14) may not apply for a right-of-way across, or exer-
29 cise eminent domain in, the western (Kobuk River) unit of the Gates of

1 the Arctic National Preserve under 16 U.S.C. 410hh(4)(b)-(e).

2 Sec. 42.40.360. REQUEST FOR LAND. (a) The board may nominate
3 federal land it determines may be useful for present or future rail-
4 road purposes for selection under the Alaska Statehood Act (P.L. 85 -
5 508, 72 Stat. 339), as amended, and request the commissioner of natu-
6 ral resources to select the land for the state through the federal
7 land selection process.

8 (b) The board may identify and request the commissioner of
9 natural resources to convey land necessary or useful for present or
10 future railroad purposes owned by or tentatively approved for transfer
11 to the state, including land not contiguous with a railroad utility
12 corridor or rail land. The request must include a statement of and
13 justification for the present or future railroad use. Upon receipt of
14 a request, the commissioner shall temporarily reserve the land iden-
15 tified in the request for railroad purposes and defer disposal or
16 lease of that land under other laws to a party other than the corpo-
17 ration. The temporary reservation of land is subject to valid exist-
18 ing rights and remains in effect for 180 days.

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

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

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

27 (3) approve the request in part and deny it in part and
28 convey as appropriate.

29 (b) A conveyance of land under this section may be for less than

1 its appraised value as determined by the commissioner of natural
2 resources.

3 (c) In the absence of a reservation to the contrary, a convey-
4 ance of land under this section vests in the corporation ownership,
5 control of the surface, material and mineral estate, including the
6 right to extract or use timber and other construction materials, sand,
7 gravel, rock, and the right to tunnel, ditch, recontour, excavate, or
8 otherwise use the land for railroad, transportation, transmission,
9 communication, and related purposes.

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

14 Sec. 42.40.380. USE OF STATE LAND. When emergency conditions
15 require that track or other right-of-way fixtures of the corporation
16 be moved from the existing location and relocated on state land adja-
17 cent to or in the vicinity of the existing right-of-way and the chief
18 executive officer determines that relocation is necessary to maintain
19 safe and adequate rail operations, the corporation may effect the
20 relocation and notify the the Department of Natural Resources. The
21 relocation must affect only the amount of state land necessary to
22 adequately restore or continue safe rail operations at a normal level.

23 Sec. 42.40.385. EMINENT DOMAIN. (a) The corporation may exer-
24 cise the power of eminent domain under AS 09.55.240 - 09.55.460 to
25 acquire land for railroad transportation purposes consistent with this
26 chapter. Notwithstanding AS 09.55.250, the corporation may acquire a
27 fee simple title whenever, in the judgment of the board, ownership of
28 a fee simple title is necessary to carry out the purposes of this
29 chapter.

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

3 (c) The power of eminent domain conferred under this section
4 includes the power to obtain clay, gravel, sand, timber, rock or other
5 material for the operation of the railroad, the land necessary to
6 obtain the material, and access to the land and material.

7 (d) The exercise of the power of eminent domain requires the
8 prior approval of the governor.

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

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

22 Sec. 42.40.410. FEDERAL LAND. The corporation may submit appli-
23 cations on its own behalf as an instrumentality of the state for
24 acquisition of federal land available under federal law that will
25 enhance the operations of the corporation if it is available under a
26 federal law other than the Alaska Statehood Act of 1958 (P.L. 85 -
27 508, 72 Stat 339), as amended. The corporation may receive in its own
28 name conveyances of all interests in federal land.

29 Sec. 42.40.420. PUBLIC USE OF RAILROAD LAND. Upon request of a

1 municipality or the state, the corporation may authorize use of rail-
2 road land for public purposes. Subject to AS 42.40.350(b), the corpo-
3 ration shall authorize a walkway or a trail if the board first finds
4 in writing that the proposed walkway or trail will not create a safety
5 hazard and will not unreasonably interfere with continued or expanded
6 operations in the utility corridor. Before authorizing a use under
7 this section, the board shall require the municipality or state to
8 execute an agreement in a form approved by the board to

9 (1) agree to restrictions, limitations, and conditions on
10 the proposed use required by the corporation and reasonably calculated
11 to reduce the risk of a safety hazard or interference with authorized
12 uses in the utility corridor;

13 (2) hold the corporation harmless from and indemnify the
14 corporation for liability and claims arising from any use authorized
15 under this section including

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

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

23 (3) stop the use upon request of the corporation if the use
24 interferes with expansion or replacement of railroad facilities,
25 creates a safety hazard, or interferes with railroad operations.

26 Sec. 42.40.430. ACQUISITION OF GOVERNMENT PROPERTY. The corpor-
27 ation, as an instrumentality of the state, may acquire in its own name
28 from the United States under 50 App U.S.C. 1622 - 1622c (Surplus
29 Property Act of 1944), 40 U.S.C. 471 et seq. (Federal Property and

1 Administrative Services Act of 1949), or other law, property under the
2 control of a federal department or agency that is useful for the
3 corporation's purposes. The corporation may acquire from the Depart-
4 ment of Administration property of the state made available under
5 AS 44.71.010 - 44.71.040.

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

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

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

24 ARTICLE 6. FINANCIAL PROVISIONS.

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

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

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

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

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

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

18 years from their date, determined by the board.

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

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

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

22 visions for registration.

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

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

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

26 ance companies, trust companies, banking associations, investment

27 companies, executors, administrators, trustees and other fiduciaries

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

29 control or belonging to them. These bonds may be deposited with a

1 state or municipal officer of an agency or political subdivision of
2 the state for any purpose for which the deposit of bonds of the state
3 is authorized by law.

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

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

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

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

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

28 (C) the fixing and collection of tariffs, fees,
29 charges or other consideration for the use or service of the

1 Alaska Railroad by passengers, and other users and freight;

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

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

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

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

15 Sec. 42.40.650. INDEPENDENT FINANCIAL ADVISOR. In negotiating
16 the private or public sale of bonds to an underwriter, the board shall
17 retain a financial advisor who is independent from the 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 or coupons attached to them ceases to be an officer before
21 the delivery of the bond or coupon, the signature or facsimile is
22 valid the same as if the person had remained in office until delivery.

23 Sec. 42.40.670. VALIDITY OF PLEDGE. (a) The pledge of assets
24 or revenue of the corporation to the payment of the principal or
25 interest on bonds of the corporation is valid and binding from the
26 time the pledge is made and the assets or revenue are immediately
27 subject to the lien of the pledge without physical delivery or further
28 act. The lien of a pledge is valid and binding against all parties
29 having claims of any kind against the corporation, irrespective of

1 whether those parties have notice of the lien of the pledge.

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

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

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

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

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

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

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

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

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

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

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

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

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

22 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

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

29 (b) A board member or employee who violates the provisions of

1 this section is personally subject to a civil penalty assessed by a
2 judge of the superior court in an amount not to exceed \$5,000. An
3 action to enforce this section may be brought by any person.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 relations agency or an election in a bargaining unit agreed upon by
2 the parties.

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

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

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

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

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

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

29 (1) interfere, restrain, or coerce an employee in the

1 exercise of the rights guaranteed in AS 42.40.720;

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

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

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

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

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

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

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

23 (c) An organization or its agents may not

24 (1) restrain or coerce

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

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

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

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

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

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

1 provisions of AS 42.40.710 - 42.40.890. If the railroad labor rela-
2 tions agency finds that a person named in the complaint or accusation
3 has not engaged or is not engaging in a prohibited practice, the
4 railroad labor relations agency shall state its findings of fact and
5 issue an order dismissing the complaint or accusation.

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

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

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

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

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

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

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

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

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

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

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

28 (b) The corporation may apply to the superior court in the
29 judicial district in which the strike is occurring for an order

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

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

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

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

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

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

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

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

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

29 (1) require or coerce an employee to participate in any way

1 in any activity or undertaking unless the activity or undertaking is
2 related to the performance of official duties;

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

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

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

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

13 (C) sexual matters;

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

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

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

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

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

28 (1) "election" means a proceeding conducted by the labor
29 relations agency in which the employees in a collective bargaining

1 unit cast a secret ballot for collective bargaining representatives,
2 or for any other purpose specified in AS 42.40.710 - 42.40.890;

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

8 ARTICLE 9. GENERAL PROVISIONS.

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

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

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

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

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

28 (b) If notice of legal action is not given under (a) of this
29 section, within seven days of taking action the board shall notify the

1 Department of Law of the action taken and of the special circumstances
2 that exempted the action from the requirements of (a) of this section.

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

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

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

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

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

- 28 (1) AS 19;
29 (2) AS 30.15;

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

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

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

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

1 compliance with state or municipal safety codes.

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

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

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

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

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

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

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

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

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

- 1 (4) "corporation" means the Alaska Railroad Corporation;
- 2 (5) "date of transfer" means the date on which the United
3 States Secretary of Transportation delivers the transfer documents
4 under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982);
- 5 (6) "employees" means all persons employed by the corpo-
6 ration including executive officers;
- 7 (7) "executive officer" means the corporation's chief
8 executive officer, assistant chief executive officer, assistant to the
9 chief executive officer, chief of administration, superintendent of
10 transportation, manager of marketing and sales, chief engineer, chief
11 mechanical officer, manager of industrial development and real estate,
12 manager of budget and accounting, manager of planning, manager of
13 personnel, manager of supply and procurement, chief of security,
14 manager of operating rules, manager of data processing, manager of
15 strategy, manager of operations planning, manager of supply, manager
16 of procurement, manager of safety, manager of administrative proce-
17 dure, chief counsel, or, if so designated by the board, any employee
18 who fulfills these management functions under a different title or who
19 exercises a similar or comparable level of responsibility or super-
20 vision;
- 21 (8) "land" means any interest in real property, including
22 tide and submerged land, and any right appurtenant to the interest;
- 23 (9) "rule" means a standard of general application or the
24 amendment, supplement, revision, or repeal of a standard adopted by
25 the corporation to implement, interpret, or make specific the law
26 enforced or administered by it or to govern its procedure;
- 27 (10) "terms and conditions of employment" means the hours of
28 employment, the compensation and fringe benefits, and the employer's
29 personnel policies affecting the working conditions of the employees,

1 but does not mean the general policies describing the function and
2 purposes of an employer.

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

5 * Sec. 3. SPECIAL REPORTS. (a) The governor shall contract with a
6 private consultant for the preparation of a report on the long-term op-
7 erations of the Alaska Railroad that are in the best interest of the state.
8 The report shall be submitted to the governor and the legislature by
9 February 1, 1987. It shall contain specific recommendations on operational
10 alternatives and the transfer of all or part of the railroad operation to
11 the private sector.

12 (b) The corporation shall study any problems created by vibrations
13 due to operating the railroad from Birchwood through Inlet View to the
14 Turnagain Area and extending to Potter's Marsh. The study shall include
15 consideration of any potential for problems that may be created by hauling
16 coal and larger quantities of gravel along that portion of the rail line.
17 By February 1, 1986, the corporation shall present a report to the legisla-
18 ture on the study containing recommendations for correcting any problems
19 identified.

20 * Sec. 4. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD
21 CORPORATION. Notwithstanding AS 42.40.020 enacted in sec. 1 of this Act,
22 the terms of the appointed members of the first board of directors of the
23 Alaska Railroad Corporation are as follows:

- 24 (1) one shall serve a term of two years;
25 (2) one shall serve a term of three years;
26 (3) one shall serve a term of four years; and
27 (4) two shall serve a term of five years.

28 * Sec. 10. COLLECTIVE BARGAINING AGREEMENTS. (a) As soon as practi-
29 cable before transfer of the Alaska Railroad to the state, the Alaska

1 Railroad Corporation and its employees shall adopt collective bargaining
2 agreements that continue the provisions of the agreements in effect between
3 the Alaska Railroad and its employees on the date of transfer of the rail-
4 road. The collective bargaining agreements adopted under this section
5 between the corporation and its employees shall remain in effect to the
6 extent required under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act
7 of 1982).

8 (b) The board of directors of the Alaska Railroad Corporation shall
9 on or before the date of transfer of the Alaska Railroad to the state adopt
10 personnel rules necessary to prevent an interruption of services of the
11 railroad.

12 (c) Subject to 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of
13 1982), within 180 days after the first meeting of the board of directors of
14 the Alaska Railroad Corporation, the board and representatives of employee
15 bargaining units shall establish procedures for the renegotiation of bar-
16 gaining agreements adopted under (a) of this section. The board shall
17 renegotiate all agreements adopted under (a) of this section within two
18 years after the date of transfer of the Alaska Railroad to the state unless
19 the parties agree to the contrary.

20 * Sec. 5. This Act takes effect immediately in accordance with AS 01.10
21 070(c).