

BY REP. MENARD

1 IN THE HOUSE

2

HOUSE BILL NO. 510

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to regulation of railroads by the
Alaska Public Utilities Commission; and providing for
an effective date."

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

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* Section 1. AS 42 is amended by adding a new chapter to read:

11

CHAPTER 08. RAILROAD ACT.

12

ARTICLE 1. POWERS AND DUTIES OF PUBLIC UTILITIES COMMISSION.

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Sec. 42.08.010. POWERS AND DUTIES OF THE PUBLIC UTILITIES COM-

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MISSION. (a) The commission shall

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(1) regulate railroads in the state, including state-owned
railroads;

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(2) require permits for the construction, extension, con-
nection and interconnection, operation, or abandonment of a railroad
facility, subject to necessary and reasonable terms, conditions, and
limitations;

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(3) obtain and maintain certification from the Interstate
Commerce Commission under 49 U.S.C. 11501(b) to exercise jurisdiction
over intrastate transportation provided by railroads subject to the
jurisdiction of the Interstate Commerce Commission under 49 U.S.C.
10501-10505.

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(b) The commission may

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(1) investigate upon complaint or its own motion, the
rates, classifications, rules, regulations, prices, services, prac-
tices, and facilities of railroads;

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1 (2) make, prescribe, or require reasonable rates, classi-
2 fications, regulations, practices, services, and facilities for rail-
3 roads;

4 (3) require railroads and affiliated interests to file with
5 the commission reports and other information and data required or that
6 may be required under this chapter;

7 (4) adopt regulations that are necessary to the performance
8 of its duties under this chapter, including regulations governing
9 practices and procedures of the commission;

10 (5) initiate, intervene in, and appear personally or by
11 counsel and offer evidence in and participate in, a proceeding involv-
12 ing a railroad, and affecting the interests of the state, before an
13 officer, department, board, commission, or court of the state;

14 (6) prescribe the system of accounts and regulate the
15 service of a railroad.

16 (c) This section applies to railroads regulated under federal
17 law only to the extent not preempted by federal law.

18 Sec. 42.08.020. JURISDICTION OF COMMISSION. (a) The jurisdic-
19 tion and authority over the subject matter of this chapter is exclu-
20 sively in the commission. To the extent that the performance of the
21 duties of the commission affects a railroad subject to regulation
22 under federal law, the performance of its duties may not, as to that
23 railroad, conflict with applicable federal laws, regulations, orders,
24 or other requirements.

25 (b) The commission's jurisdiction and authority extend to a
26 railroad operating in a municipality, whether home rule or otherwise.
27 If a conflict between a certificate, order, decision, or regulation of
28 the commission and a charter, permit, franchise, ordinance, rule, or
29 regulation of a local governmental entity occurs, the certificate,

1 order, decision, or regulation of the commission prevails.

2 Sec. 42.08.030. PUBLICATION OF REPORTS, ORDERS, DECISIONS, AND
3 REGULATIONS. (a) All reports, orders, decisions, and regulations of
4 the commission must be in writing. The commission shall apprise all
5 affected railroads and interested parties of reports, orders, deci-
6 sions, and regulations as they are issued and adopted, and, when
7 appropriate to do so, publish them in a manner that will reasonably
8 inform the public or the affected consumers of the services of a
9 railroad facility.

10 (b) The commission may set charges for costs of printing or
11 reproducing and furnishing copies of its reports, orders, decisions,
12 and regulations.

13 (c) The publication requirement, as it pertains to regulations,
14 does not supersede the requirements of the Administrative Procedure
15 Act (AS 44.62).

16 ARTICLE 2. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

17 Sec. 42.08.100. CERTIFICATE REQUIRED. (a) After January 1,
18 1991, a railroad, or person that will be a railroad upon completion of
19 proposed construction may not engage in the transportation of property
20 or passengers by railroad subject to the jurisdiction of the commis-
21 sion, or undertake the construction of railroad facilities for that
22 purpose, or acquire or operate railroad facilities, unless there is in
23 force with respect to that railroad a certificate of public conven-
24 ience and necessity issued by the commission authorizing those acts or
25 operations. A certificate must describe the nature and extent of the
26 authority granted in it, including, as appropriate for the services
27 involved, a description of the authorized area and scope of operation
28 of the railroad.

29 (b) If a person or predecessor in interest was engaged in

1 transportation of property or passengers by railroad or construction
2 of a railroad on or before January 1, 1991, the commission shall issue
3 a certificate of public convenience and necessity for that railroad
4 without hearings or proceedings.

5 (c) Notwithstanding (b) of this section, in an area where the
6 commission determines that two or more railroad facilities are compet-
7 ing or are planning to compete to offer identical railroad service,
8 and this competition is not in the public interest, the commission
9 shall take appropriate action to eliminate or not allow the competi-
10 tion and undesirable duplication of facilities.

11 (d) The commission may attach terms and conditions to certifi-
12 cates of public convenience and necessity and require issuance of
13 security or bond it considers necessary for the best interest of the
14 railroad and the general public.

15 (e) The requirement for a certificate does not operate to impose
16 state regulation that has been preempted under federal law. When
17 federal law has preempted state regulation the commission shall accept
18 the findings made under the federal scheme of regulation.

19 Sec. 42.08.110. APPLICATION (a) Application for a certificate
20 shall be made in writing to the commission and verified under oath.
21 The commission may establish by regulation the form and content of the
22 application and the manner of notice that shall be served upon inter-
23 ested parties.

24 (b) The commission may establish reasonable fees to cover costs
25 of processing applications for certificates or amendments to certifi-
26 cates.

27 Sec. 42.08.120. PUBLIC HEARING. At least 30 days before issuing
28 a certificate of public convenience and necessity, the commission
29 shall hold a public hearing on the application. Copies of the

1 completed application shall be made available to the public at least
2 10 days before the public hearing date. A transcript of the public
3 hearing shall be included in the permanent record of commission action
4 on that application, and copies of the public hearing transcripts
5 shall be available to the public. The commission may, without notice
6 of hearing and pending the determination of an application for a
7 certificate, issue a temporary certificate in cases of emergency, to
8 assure maintenance of adequate service or to serve particular custom-
9 ers, and may by regulation exempt from the requirements of this sec-
10 tion temporary acts or operations for which the issuance of a certifi-
11 cate will not be required in the public interest.

12 Sec. 42.08.130. GRANT OR DENIAL OF APPLICATION. (a) Unless
13 governed by AS 42.08.100(b), a certificate shall be issued to a quali-
14 fied applicant, authorizing the whole or part of the operation, ser-
15 vice, construction, extension, or acquisition covered by the applica-
16 tion, if it is found that the applicant is able and willing properly
17 to do the acts and to perform the service proposed and to conform to
18 the provisions of this chapter and the requirements and regulations of
19 the commission, and that the proposed service, operation, construc-
20 tion, extension, or acquisition, to the extent authorized by the
21 certificate, is or will be required by the present or future public
22 convenience and necessity; otherwise the application shall be denied.

23 (b) Nothing in this chapter shall be construed as a limitation
24 upon the power of the commission to grant certificates of public
25 convenience and necessity for service of an area, or routes, already
26 being served by another railroad.

27 Sec. 42.08.140. MODIFICATION, SUSPENSION, OR REVOCATION OF
28 CERTIFICATES. Upon complaint or upon its own motion the commission,
29 after due notice and hearing and for good cause shown, may amend,

1 modify, suspend, or revoke a certificate, in whole or in part. Good
2 cause for amendment, modification, suspension, or revocation of a
3 certificate consists of

4 (1) the requirements of public convenience and necessity;

5 (2) misrepresentation of a material fact in obtaining the
6 certificate;

7 (3) unauthorized discontinuance or abandonment of all or
8 part of a service that is the subject of the certificate;

9 (4) wilful failure to comply with the provisions of this
10 chapter, or the regulations or orders of the commission; or

11 (5) wilful failure to comply with a term, condition, or
12 limitation of the certificate.

13 Sec. 42.08.150. TRANSFER OF OPERATING AUTHORITY. Operating
14 authority may not be transferred by sale or lease of the certificate
15 or by the sale of substantially all of the stock or assets of a rail-
16 road holding a certificate without the prior approval of the commis-
17 sion. A transfer not involving a substantial change in ownership
18 shall be summarily approved.

19 Sec. 42.08.160. ABANDONMENT. (a) A railroad may not abandon or
20 permanently discontinue use of all or a portion of a railroad or
21 abandon or discontinue service rendered by means of a railroad that is
22 the subject of a certificate of public convenience and necessity,
23 without the permission and approval of the commission, after due
24 notice and hearing, and a finding by the commission that continued
25 service is not required by public convenience and necessity. An
26 interested person may file with the commission a protest or memorandum
27 of opposition to or in support of discontinuance or abandonment. The
28 commission may authorize temporary suspension of a service or of part
29 of a service.

1 (b) Upon complaint or upon its own motion, the commission may
2 reinvestigate a previously authorized discontinuance, abandonment, or
3 suspension of a service described in (a) of this section. If, after
4 due notice and hearing, the commission finds that the public convenience and necessity requires the service to be resumed, and that
5 there has not been detrimental reliance on the previous authorization,
6 it may order the operator or owner of the railroad or railroad facility
7 to again provide the service.
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9 ARTICLE 3. SERVICES AND FACILITIES.

10 Sec. 42.08.200. STANDARDS OF SERVICE AND FACILITIES. (a) Each
11 railroad shall furnish and maintain adequate, efficient, and safe
12 service and facilities. This service must be reasonably continuous
13 and without unreasonable interruption or delay.

14 (b) If the commission, upon its own motion or upon complaint,
15 after providing reasonable notice and opportunity for hearing, finds
16 that the service or facilities of a railroad or railroad facility are
17 unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of this chapter, the commission
18 shall prescribe by regulation or order, the reasonable, safe, adequate, sufficient service or facilities to be observed, furnished,
19 enforced, or employed, including all repairs, changes, alterations,
20 extensions, substitutions, or improvements in facilities that are
21 reasonably necessary and proper for the safety, accommodation, and
22 convenience of the public and the users. Regulations or orders issued
23 under this subsection shall conform to accepted industry standards and
24 practices.
25

26 (c) A railroad shall, when ordered by the commission, extend or
27 enlarge its railroad facilities provided the extension or enlargement
28 shall be found to be reasonable and required in the public interest
29

1 and that the expense involved will not impair the ability of the
2 railroad to perform its duty to the public.

3 Sec. 42.08.210. DISCRIMINATION IN SERVICE. A railroad may not,
4 as to service, make or grant an unreasonable preference or advantage
5 to a person or subject a person to an unreasonable prejudice or disad-
6 vantage. A railroad facility that is owned by more than one owner may
7 not require that users make separate requests of each separate owner
8 in order to obtain a reasonable share of the service provided by the
9 railroad facility.

10 Sec. 42.08.220. POWER OF COMMISSION TO ALLOCATE USAGE. If the
11 commission, upon its own motion or upon complaint, after providing
12 reasonable notice and opportunity for hearing, finds that a railroad
13 facility is making or granting an unreasonable preference or advantage
14 to a person or subjecting a person to an unreasonable prejudice or
15 discrimination, the commission may prescribe rules to end the dis-
16 crimination or the commission may itself prescribe the allocation of
17 the service until it determines the discrimination can be avoided by
18 appropriate rule or agreement.

19 Sec. 42.08.230. ORDER FOR JOINT USE OR CONNECTION. When there
20 is failure to agree upon the joint use or interconnection of railroad
21 facilities or the conditions or compensation for joint use or inter-
22 connections, an interested person may apply to the commission for an
23 order requiring the joint use or interconnection. If, after inves-
24 tigation and opportunity for hearing, the commission finds that public
25 convenience and necessity require the joint use or connection, and
26 that the use or connection will not result in substantial injury to
27 the railroad facility or its customers, or in substantial detriment to
28 the services furnished by the railroad facility, or in the creation of
29 safety hazards, it shall

- 1 (1) order that the use be permitted;
- 2 (2) prescribe reasonable conditions and compensation for
- 3 the joint use;
- 4 (3) order the interconnection to be made;
- 5 (4) determine the time and manner of the interconnection;
- 6 (5) determine the apportionment of costs and responsibility
- 7 for operation and maintenance of the interconnection.

8 ARTICLE 4. TARIFFS.

9 Sec. 42.08.300. TARIFFS, CONTRACTS, FILING, AND PUBLIC INSPEC-
10 TION. (a) Under regulations adopted by the commission, a railroad
11 shall file with the commission, within the time and in the form desig-
12 nated by the commission, all rates, tariffs, charges, classifications,
13 rules, regulations, terms, and conditions pertaining to service pro-
14 vided under the certificate, and shall maintain copies on file at its
15 principal business office and at places designated by the commission,
16 available to, and subject to inspection by, the general public on
17 demand.

18 (b) The commission may reject the filing of all or part of a
19 tariff that does not comply with the form or filing regulations of the
20 commission or that is not consistent with this chapter or the regula-
21 tions of the commission. A tariff or provision so rejected is void.

22 Sec. 42.08.310. ADHERENCE TO TARIFFS. The terms and conditions
23 under which a railroad offers its services and facilities to the
24 public shall be governed strictly by the provisions of its currently
25 effective tariffs. A legally filed and effective tariff rate, charge,
26 rule, regulation, or condition of service may not be changed except in
27 the manner provided in this chapter. If more than one tariff rate or
28 charge can reasonably be applied for billing purposes the one most
29 advantageous to the customer shall be used.

1 Sec. 42.08.320. RATES TO BE REASONABLE. (a) All rates demanded
2 or received by a railroad, or by any two or more railroads jointly,
3 for a service furnished or to be furnished must be reasonable.

4 (b) Additional regulations governing determination of a reason-
5 able tariff shall be adopted by the commission.

6 Sec. 42.08.330. DISCRIMINATION IN RATES. (a) A railroad may
7 not, as to rates, grant a preference or advantage to a customer or
8 subject a customer to an unreasonable prejudice or disadvantage. A
9 railroad may not establish or maintain an unreasonable difference as
10 to rates, either as between localities served or between classes of
11 service provided under the certificate.

12 (b) A railroad may not

13 (1) directly or indirectly refund, rebate, or remit in any
14 manner, or by any device, a portion of the rates and charges;

15 (2) charge, demand, or receive a greater or lesser compen-
16 sation for service than is specified in its effective tariff;

17 (3) extend to a customer served under the certificate a
18 form of contract, agreement, inducement, privilege, or facility except
19 as is extended or applied to all customers under like circumstances;
20 or

21 (4) apply a rule, regulation, or condition of service
22 except as is extended or applied to all customers under like circum-
23 stances.

24 Sec. 42.08.340. INITIAL OR REVISED RATES. (a) A railroad may
25 not establish or place in effect initial rates, charges, rules, regu-
26 lations, conditions of service, or practices except after 90 days'
27 notice to the commission and to the public. Notice shall be given by
28 filing with the commission and keeping open for public inspection the
29 tariff provisions, which shall plainly indicate the time when the

1 tariff will go into effect. The commission may prescribe additional
2 means of giving notice. The commission, for good cause shown, may
3 allow initial tariffs to take effect on less than 90 days' notice
4 under conditions the commission prescribes by order.

5 (b) A railroad may not establish or place in effect revised
6 rates, charges, rules, regulations, conditions of service, or prac-
7 tices except after 30 days' notice to the commission and to the pub-
8 lic. Notice shall be given by filing with the commission and keeping
9 open for public inspection the revised tariff provisions, which shall
10 plainly indicate the changes to be made in the schedules then in force
11 and the time when the changes will go into effect. The commission may
12 prescribe additional means of giving notice. The commission, for good
13 cause shown, may allow changes to take effect on less than 30 days'
14 notice under conditions the commission prescribes by order.

15 (c) Initial and revised tariffs shall be filed in the manner
16 provided in AS 42.08.300.

17 Sec. 42.08.350. SUSPENSION OF TARIFF FILING. (a) When a tariff
18 filing is made containing an initial or revised rate, classification,
19 rule, regulation, practice, or condition of service the commission
20 may, either upon written complaint or upon its own motion, after
21 reasonable notice, conduct a hearing to determine the reasonableness
22 and propriety of the filing. Pending a hearing the commission may, by
23 order stating the reasons for its action, suspend the operation of the
24 tariff filing for an initial period not longer than six months beyond
25 the time when it would otherwise go into effect.

26 (b) An order suspending a tariff filing may be vacated if, after
27 investigation, the commission finds that it is in all respects proper.
28 Otherwise the commission shall hold a hearing on the suspended filing
29 and issue its order, before the end of the suspension period,

1 granting, denying, or modifying the suspended tariff in whole or in
2 part.

3 (c) If a proposed increased rate is suspended, the commission
4 shall establish a reasonable temporary tariff. The temporary tariff
5 may be the same as the tariff the railroad is seeking to revise. The
6 commission may allow the collection of the filed proposed increased
7 rate, or it may require collection of the temporary rate.

8 (d) One who initiates a change in existing tariffs bears the
9 burden of proving the reasonableness of the change.

10 Sec. 42.08.360. POWER OF COMMISSION TO FIX RATES. (a) When the
11 commission, after an investigation and hearing, finds that a rate
12 demanded, observed, charged, or collected by a railroad for a service,
13 subject to the jurisdiction of the commission, or that a classifica-
14 tion, rule, regulation, practice, or contract affecting the rate, is
15 unreasonable, unduly discriminatory, or preferential, the commission
16 shall determine a reasonable rate, classification, rule, regulation,
17 practice, or contract to be observed or allowed and shall establish it
18 by order.

19 (b) If an investigation is conducted in multiple phases, the
20 commission may establish a rate at the end of a single phase.

21 Sec. 42.08.370. VALUATION OF PROPERTY OF A RAILROAD. The com-
22 mission may, after providing reasonable notice and opportunity to be
23 heard, ascertain and set the fair value of the whole or part of the
24 property of a railroad, insofar as it is material to the exercise of
25 the jurisdiction of the commission. The commission may make revalua-
26 tions from time to time and ascertain the fair value of all new con-
27 struction, extensions, and additions to the property of a railroad.

28 Sec. 42.08.380. INTERSTATE FREIGHT RATES, DUTIES OF COMMISSION
29 CONCERNING. The commission shall examine all through freight rates of

1 railroads between points out of this state and points in this state.
2 If the commission finds that a through rate is excessive, unreason-
3 able, or discriminatory, the commission shall call the attention of
4 the railroad to the fact and urge the railroad to change the rates.
5 If the rates are not changed, the commission shall present the facts
6 to the Interstate Commerce Commission and appeal to it for relief.

7 ARTICLE 5. ACCOUNTS, RECORDS, AND REPORTS.

8 Sec. 42.08.400. GENERAL PROVISIONS AS TO ACCOUNTS, RECORDS, AND
9 REPORTS. (a) The commission by regulation shall, for the purposes of
10 this section, classify railroad facilities, and may designate the
11 railroad facilities or groups of railroad facilities within the state
12 that constitute a railroad system for the purposes of this section.

13 (b) The commission may by regulation prescribe a uniform system
14 of accounts for a classification of railroad facilities that best
15 represents and clearly reveals the investment, revenue, direct operat-
16 ing costs, and other expenses of the subject classification of facil-
17 ities, and may prescribe the manner in which the accounts and support-
18 ing records are kept in order to clearly show the investment, revenue,
19 and costs pertaining to the subject facilities or to a railroad system
20 constituting a part of it. Accounts shall be maintained on the calen-
21 dar year basis unless the commission specifically authorizes the
22 maintenance of accounts on the basis of a fiscal year other than the
23 calendar year.

24 (c) The commission may by regulation require a railroad or
25 affiliated interest engaged in activities relating to railroads to
26 establish and maintain as part of its system of accounts continuing
27 property records showing, as to property units that are actually being
28 used in railroad activity in this state, the year of placement in
29 service, original cost, and current location, and, as to a railroad

1 system, accounts and records in a manner showing, on a current basis,
2 the original cost of the system in the state and related reserves for
3 depreciation. From time-to-time the commission shall determine the
4 proper and adequate rates of depreciation for each major class of
5 property of a railroad facility.

6 (d) The railroad shall keep its accounts for its railroad facil-
7 ities located in this state separate from accounts relating to another
8 business, including another railroad facility business, or a subsid-
9 iary business it engages in, directly or indirectly. Except as the
10 commission provides, property, expense, or revenue used in or derived
11 from the other business may not be considered in establishing the
12 rates and charges of the facility.

13 (e) The railroad shall keep books, accounts, papers, and records
14 required by this chapter or by regulations adopted by the commission
15 in an office in this state and may not remove them from the state
16 except upon written authority by the commission.

17 (f) For railroads subject to the Interstate Commerce Act, the
18 uniform system of accounts and manner of maintaining them and the
19 property records kept and maintained must, where considered practi-
20 cable by the commission, be the same as required under regulations
21 prescribed by the applicable federal agency.

22 (g) Within 90 days after the close of its authorized annual
23 accounting period, or within additional time granted by the commission
24 for good cause shown, a railroad shall file a verified annual report
25 with the commission. The annual report must consist of

26 (1) a statement of income and investment applicable to the
27 railroad in this state, and a statement of investment, revenue, direct
28 operating costs and other expenses, detailed under the uniform system
29 of accounts to be applied under this chapter, for each railroad system

1 designated by the commission under (a) of this section;

2 (2) the number of miles run by passenger trains; the number
3 of miles run by freight trains; the number of tons of through freight
4 and the number of tons of local freight carried; the monthly earnings
5 from the transportation of passengers; the monthly earnings from the
6 transportation of freight; the monthly earnings from each other
7 source; the amount of expenses incurred in running passenger trains;
8 the amount of expenses incurred in running freight trains and in run-
9 ning mixed trains; all other expenses incurred in the management of
10 the road, stating separately the salaries of the officers; the amount
11 expended for repairs of the road and maintenance of way, including
12 repairs and renewals of bridges and rails; the amount expended for
13 improvements, showing what parts, if any, are estimated as expenses of
14 operating or repairing the road; the amount expended for motive power
15 and cars; the amount expended for station houses, buildings, and fix-
16 tures; all other expenses for maintenance of way; all other expenses
17 for other purposes; the number of tons of freight carried; the amount
18 received per ton per mile; and the average distance each ton was
19 hauled;

20 (3) additional accounts and information required under (b)
21 of this section.

22 (h) The commission may require additional accounts and informa-
23 tion as may be necessary.

24 Sec. 42.08.410. INSPECTION OF RECORDS. The commission shall at
25 all reasonable times have access to, and may designate its employees,
26 agents, or consultants to inspect and examine, the accounts, records,
27 books, maps, inventories, appraisals, valuations, or other reports and
28 documents, kept by a railroad or its affiliated interests, or prepared
29 or kept for it by others, that relate to a contract or transaction

1 between the railroad and the affiliated interest. The commission may
2 require a railroad or its affiliated interest to file with the commis-
3 sion copies of these accounts, records, books, maps, inventories,
4 appraisals, valuations, or other reports and documents, or to maintain
5 those materials at some convenient location in the state specified by
6 order. Costs incurred in complying with a commission request to
7 review the records under this section or to maintain these records in
8 a manner that is conveniently available for the commission's review
9 shall be borne by the party controlling the records.

10 Sec. 42.08.420. PUBLIC RECORDS. (a) Except as provided in (b)
11 and (c) of this section, or prohibited from disclosure under state or
12 federal law, records in the possession of the commission are open to
13 public inspection at reasonable times.

14 (b) The commission may, by regulation, classify records submit-
15 ted to it by regulated railroads as privileged records that are not
16 open to the public for inspection. However, if a record involves an
17 application or tariff filing pending before the commission, the com-
18 mission may release the record for the purpose of preparing for or
19 making a presentation to the commission in the proceeding if the
20 record or information derived from the record is considered by the
21 commission to be relevant to an issue in the proceeding, and if the
22 record or information will be used by the commission in the proceed-
23 ing. A record or information that the commission releases under this
24 subsection may be released only after giving to the party that filed
25 the record or information reasonable notice of its intention to re-
26 lease the record or information and opportunity to object to that
27 release.

28 (c) A document filed with the commission that relates to the
29 finances or operations of a railroad subject to federal jurisdiction

1 and that is in addition to or other than the copy of a document re-
2 quired to be filed with the appropriate federal agency is open to
3 inspection only by an appropriate officer or official of the state for
4 relevant purposes of the state.

5 (d) A person may make written objection to the public disclosure
6 of information contained in a record filed under the provisions of
7 this chapter or of information obtained by the commission under the
8 provisions of this chapter, stating the grounds for the objection.
9 When an objection is made, the commission shall order the information
10 withheld from public disclosure if the information adversely affects
11 the interest of the person making written objection and disclosure is
12 not required in the interest of the public.

13 (e) A commissioner, and the executive director, may certify as
14 to all official records of the commission under this section and may
15 certify as to all official acts of the commission under this chapter.

16 (f) In this section, "record" means a report, file, book, ac-
17 count, paper, or application, and the facts and information contained
18 in it.

19 Sec. 42.08.430. INVESTIGATIONS. The commission may investigate
20 a matter that affects the cost or quality of transportation of proper-
21 ty or passengers in this state by railroads or affiliated interests or
22 of related services and may ensure compliance by railroads and their
23 affiliated interests with the provisions of this chapter. Investiga-
24 tions may be public, nonpublic, or both. In conducting investiga-
25 tions, the commission may compel the attendance and testimony of
26 witnesses and the production of records and testimony before the
27 commission or its designee. In the course of an investigation, the
28 commission may exclude from attendance at the taking of investigative
29 testimony all persons except the person compelled to attend, that

1 person's attorney, members of the commission or the commission's
2 staff, and a person authorized to transcribe the proceedings. Follow-
3 ing an investigation and after providing reasonable notice and oppor-
4 tunity for hearing, the commission may institute proceedings to deter-
5 mine whether unreasonable practices have occurred, whether expendi-
6 tures have been imprudently incurred, the costs of those practices or
7 expenditures, and whether a railroad and its affiliated interests are
8 in compliance with this chapter. Following such a determination, the
9 commission shall take appropriate action to ensure that neither the
10 direct nor indirect costs of unreasonable practices or imprudent
11 expenditures are included in a tariff or rate of a railroad or are
12 borne by the public or the state.

13 Sec. 42.08.440. DESIGNATION OF SERVICE AGENTS. Each railroad
14 shall file with the commission a written appointment of a named perma-
15 nent resident, which may be a corporation, of this state as its regis-
16 tered agent in this state upon whom service of all notices, regula-
17 tions, and requests of the commission may be made. The appointment
18 shall specify an address in this state of the appointed agent, which
19 address may be changed from time to time by filing a new Alaska ad-
20 dress with the commission. If a railroad fails to appoint an agent,
21 service of notices, regulations, and requests may be made by posting a
22 copy in the main office of the commission and filing a copy in the
23 office of the lieutenant governor.

24 Sec. 42.08.450. CLASSIFICATION. The commission may by regula-
25 tion provide for the classification of railroad facilities based upon
26 differences in annual revenue, assets, nature of ownership, and other
27 appropriate distinctions and as between these classifications, by
28 regulation, provide for different reporting, accounting, and other
29 regulatory requirements.

1 ARTICLE 6. ENFORCEMENT, PENALTIES, AND CIVIL REMEDIES.
2 Sec. 42.08.500. REVIEW AND ENFORCEMENT. (a) All final orders
3 of the commission are subject to judicial review under AS 44.62.560 -
4 44.62.570.
5 (b) If an appeal is not taken from a final order of the commis-
6 sion within 30 calendar days, the commission may apply to the superior
7 court for enforcement of this chapter, the regulations adopted under
8 it and the orders of the commission. The court shall enforce the
9 order by injunction or other process.
10 Sec. 42.08.510. INJUNCTIVE AND MONETARY SANCTIONS. (a) The
11 full amount of damages awarded in a civil action or claimed by the
12 commission may be compromised by the commission. In determining the
13 amount of the damages, or the amount agreed upon in compromise, the
14 gravity of the violation, and the good faith of the person charged in
15 attempting to achieve compliance, after notification of a violation,
16 shall be considered. The amount of the damages, when finally deter-
17 mined, or the amount agreed upon in compromise, may be deducted from
18 sums owing by the state to the person charged or may be recovered in a
19 proper proceeding in the state courts.
20 (b) A person may be enjoined by the superior court from commit-
21 ting a violation of a regulation or rule adopted under AS 42.08.200.
22 Sec. 42.08.520. CIVIL PENALTIES. (a) In addition to all other
23 penalties and remedies provided by law, a person subject to the pro-
24 visions of this chapter, as well as an officer, manager, agent, or
25 employee of that person, that either violates or procures, aids, or
26 abets the violation of a provision of this chapter, or of an order,
27 regulation, or written requirement of the commission is subject to a
28 maximum civil penalty of \$500 for each violation.
29 (b) A civil penalty may not be assessed unless the commission

1 first issues an order to show cause why the penalty should not be
2 levied. The order must describe the violation with reasonable par-
3 ticularity and designate the maximum penalty that may be assessed for
4 the violation. The order shall be served on the alleged violator
5 named in the order. The order must state a time and place for the
6 hearing.

7 (c) After a hearing the commission shall enter its findings of
8 fact and final order that shall state when the penalties, if any, are
9 payable.

10 Sec. 42.08.530. EACH VIOLATION A SEPARATE OFFENSE. Each viola-
11 tion of a provision of this chapter or of an order, decision, regula-
12 tion, or written requirement of the commission is a separate and dis-
13 tinct offense and in case of a continuing violation each day the
14 violation continues constitutes a separate offense.

15 Sec. 42.08.540. ACTIONS TO RECOVER DAMAGES AND PENALTIES; DISPO-
16 SITION. (a) Actions to recover damages and penalties under this
17 chapter shall be brought by the attorney general in a court of compe-
18 tent jurisdiction.

19 (b) All damages and penalties recovered under the provisions of
20 this chapter shall be paid to the commission and deposited by it in
21 the general fund of the state.

22 Sec. 42.08.550. PENALTIES CUMULATIVE. (a) All penalties im-
23 posed under this chapter are cumulative.

24 (b) An action to recover a civil penalty is not a bar to an
25 enforcement proceeding to require compliance, or to another remedy
26 provided by this chapter.

27 Sec. 42.08.560. PRIVATE CAUSE OF ACTION. (a) A person sub-
28 jected to an unlawful rate, price, service, or practice, in violation
29 of this chapter, may sue in a state court of appropriate jurisdiction

1 for damages resulting from the unlawful rate, price, service, or
2 practice.

3 (b) If the violation described in (a) of this section resulted
4 in the overcharge of rate or price, the person paying the unlawful
5 rate or price is entitled to recover as damages at least double the
6 amount of the overcharge.

7 (c) A person recovering damages under this section is entitled
8 to reasonable attorney fees, fixed by the court, to be taxed and
9 collected as costs of the suit.

10 ARTICLE 7. GENERAL PROVISIONS.

11 Sec. 42.08.600. RESTRICTIONS ON COMMISSIONERS AND EMPLOYEES. A
12 member or employee of the commission may not have an official con-
13 nection with, or hold stock or securities in, or have a pecuniary
14 interest in, a corporation, company, or association engaged in the
15 transportation of property or passengers by railroad. A member or
16 employee may not act upon a matter in which the relationship of the
17 member or employee with any person creates a conflict of interest.

18 Sec. 42.08.610. EXPENSES OF INVESTIGATION OR HEARING. (a)
19 During a proceeding held under this chapter, the commission shall
20 allocate the cost of the proceeding among the parties, including the
21 commission, as is just under the circumstances. The costs allocated
22 may include the costs of time devoted to investigations or hearings by
23 hired consultants, whether or not the consultants appear as witnesses
24 or participants. The commission shall provide an opportunity for a
25 person objecting to an allocation to be heard before the allocation
26 becomes final.

27 (b) After completion of a proceeding held under this chapter,
28 the commission may reallocate the cost of the proceeding among the
29 parties, including the commission, as is just under the circumstances.

1 The costs that are reallocated may include the costs of time devoted
2 to investigations or hearings by hired consultants, whether or not the
3 consultants appear as witnesses or participants. The commission shall
4 provide an opportunity for a person objecting to a reallocation to be
5 heard before the reallocation becomes final.

6 (c) The commissioner of administration shall separately account
7 for investigation and hearing costs collected under this section that
8 the commission deposits in the general fund. The annual estimated
9 balance in the account may be used by the legislature to make appro-
10 priations to the commission to carry out the purposes of this chapter.

11 Sec. 42.08.620. ANNUAL REPORT. The commission shall publish an
12 annual report reviewing its work and submit it to the legislature by
13 February 15 of each year. The report must contain information and
14 data that bear a significant relationship to the development and
15 regulation of railroads in the state and include an outline of the
16 commission's program for the development and regulation of railroads
17 in the forthcoming year. The report must also disclose the practical
18 workings of railroads in the state.

19 Sec. 42.08.990. DEFINITIONS. In this chapter

20 (1) "affiliated interest" means a person or other entity
21 that

22 (A) is controlled or owned, in whole or in part, by a
23 railroad;

24 (B) is controlled or owned, in whole or in part, by an
25 entity that controls or owns, in whole or in part, a railroad;

26 (C) is an agent, officer, director, contractor, or
27 subcontractor of a railroad or an entity controlled or owned, in
28 whole or in part, by a railroad; or

29 (D) controls or owns, in whole or in part, a railroad;

1 (2) "commission" means the Alaska Public Utilities Commis-
2 sion;

3 (3) "commissioner" means a member of the commission;

4 (4) "railroad" means a person providing railroad transpor-
5 tation of property or passengers for compensation;

6 (5) "railroad facility" includes, whether owned or operated
7 by a railroad under a contract, agreement, or lease,

8 (A) a bridge, car float, lighter, and ferry used by or
9 in connection with a railroad;

10 (B) the road used by a railroad and owned by it or
11 operated under an agreement; and

12 (C) a switch, spur, track, terminal, terminal facili-
13 ty, and a freight depot, yard, and ground used or necessary for
14 transportation;

15 (6) "regulation" includes rules;

16 (7) "tariff" means a rate, charge, toll, rule, or regula-
17 tion of a railroad facility relating to services furnished by the
18 facility to the general public or other users for compensation.

19 * Sec. 2. AS 42.40.100 is amended to read:

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

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

26 (2) operate the Alaska Railroad as a common carrier subject
27 to the jurisdiction of the United States Interstate Commerce Commis-
28 sion consistent with 45 U.S.C. 1207 and to the jurisdiction of the
29 Alaska Public Utilities Commission;

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

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

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

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

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

16 (8) ensure that the procurement procedures of the corpo-
17 ration meet accepted railroad industry standards;

18 (9) ensure that the accounting procedures of the corpo-
19 ration meet generally accepted accounting principles consistent with
20 industry standards for comparable railroads.

21 * Sec. 3. AS 42.40.220(b) is amended to read:

22 (b) The corporation may by rule designate and withhold public
23 disclosure of matters of a privileged or proprietary nature. Those
24 matters include personnel records, communications with and work prod-
25 uct of legal counsel, and, consistent with the standards and practices
26 of the United States Interstate Commerce Commission or the Alaska
27 Public Utilities Commission for the protection of these matters, other
28 information including proprietary information associated with specific
29 shippers, divisions, and contract rate agreements.

1 * Sec. 4. AS 42.40.920(a) is amended to read:

2 (a) The corporation is [NOT] subject to the jurisdiction of the
3 Alaska Public Utilities [TRANSPORTATION] Commission, to the extent
4 permitted by federal law. Nothing in this chapter shall be construed
5 as limiting the authority of the Alaska Public Utilities Commission to
6 regulate the railroad.

7 * Sec. 5. This Act takes effect January 1, 1991.