

AK. RAILROAD

ANALYSIS:

CSHB 352

+ HB 512

STATE OF ALASKA  
THE LEGISLATURE  
LEGISLATIVE AFFAIRS AGENCY

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M E M O R A N D U M

January 18, 1984

SUBJECT: Alaska Railroad (HB 512)  
TO: Representative Bette Cato  
FROM: Tamara Brandt Cook  
Legislative Counsel

TBC

Here is the section by section analysis of HB 512 that you requested.

\* Section 1 This is a statement of legislative findings and purpose. In (a) the legislature finds that the Alaska Railroad is an essential part of the state transportation network that will cease to be an option without state action and that extending the railroad into natural resource areas is necessary for long-term economic growth. In (b) the purpose of the Act is stated to be the creation of an entity to operate and manage the railroad pending the transfer of the railroad to the private sector. In (c) the legislature finds that it is necessary to create a public corporation to operate the railroad and that the corporation should be created so that it will be responsible for the management of the financial and legal obligations of the railroad, will constitute a common carrier under the Interstate Commerce Commission, will have the ability to issue tax exempt obligations, may carry out its responsibilities on a self-sustaining basis, and so that the best transportation can be provided supported by state investment when necessary, the railroad may be operated prudently, and borrowing by the corporation does not endanger the state's own borrowing capacity.

\* Section 2

Section 42.40.010 The Alaska Railroad Corporation is established as a public corporation outside the executive branch of government but considered a principal department for the purposes of art. III, sec. 26 of the state constitution.

Representative Bette Cato  
Page 2  
January 18, 1984

This last provision is an apparent effort to justify legislative confirmation of members of the board of directors.

The Alaska Supreme Court has found that the power to appoint executive officers is solely an executive function. While Article III, sections 25 and 26 of the state constitution requires legislative confirmation of the appointments of heads of departments and members of quasi-judicial or regulatory agencies, the court has held that those sections represent the outer limits of the legislature's power to confirm. (Bradner v. Hammond, 553 P.2d 1 (Alaska, 1976)) Despite the effort at characterizing the board as a ". . . board or commission . . . at the head of a principal department or a regulatory or quasi-judicial agency. . . ." (Article III, Section 26, Constitution of the State of Alaska), I am certain that the court would find that the board does not fit within the terms of Article III, Section 26 and that legislative confirmation on that basis is inappropriate.

There is a basis for arguing in support of the confirmation requirement. It could be argued that Bradner applies only to appointments of officers of the executive branch and does not apply to appointments of officers of public corporations that have an independent legal status from the executive branch of government. Confirmation of appointments to independent public corporations does not directly invade the governor's power of appointment, because the governor has no duty to administer the corporation that is similar to his duty to administer the executive branch. Nevertheless, it must be stressed that the provision regarding confirmation of board members is subject to constitutional attack.

Section 42.40.020 Five voting members who are voters in the state. are appointed to the board of directors by the governor. No more than two members may be from one judicial district and two members must have at least five years experience as owners or managers of a business in the state. A member may not be a state officer or employee. However, the governor may appoint one person who is not a voter if he has at least 10 years of experience in management of railroads. In addition to voting members, the governor shall appoint a nonvoting member who is an employee of the corporation and the chief executive officer of the corporation shall serve as another nonvoting member. The voting members are to be confirmed by the legislature.

The board is to elect a chairperson and appoint a secretary. The chairperson must call a meeting at least every three months and may call other meetings. The governor is authorized to remove a member from the board for incapacitation, failure to attend meetings, conviction of a felony, or conviction of a misdemeanor involving moral turpitude.

Section 42.40.030 The appointed members of the board serve for staggered five year terms.

Section 42.40.040 A vacancy on the board is filled by the governor and the appointment must be confirmed by the legislature. Despite a vacancy the board may exercise its powers if it has a quorum of members.

Section 42.40.050 An appointed member of the board receives \$200 for each day he is engaged in the performance of duties as a board member. In addition, he is entitled to per diem and travel expenses.

Section 42.40.070 The board must provide by rule for the method of voting and representation of persons absent from a meeting.

Section 42.40.100 The board appoints the chief executive officer of the corporation and fixes his compensation. The chief executive officer of the corporation appoints other executive officers and fixes their compensation subject to board approval.

Section 42.40.110 By rule the board delegates duties necessary for the management of daily affairs of the corporation to the chief executive officer. Within 60 days after it is established, the board must delegate certain specified activities of the corporation.

Section 42.40.200 Meetings of the board are public with the exception of executive sessions. These may be called as authorized under the Administrative Procedure Act or to consider matters pertaining to personnel, the corporation's legal position, land acquisition or disposal, or proprietary information as defined in a manner consistent with the practices of the Interstate Commerce Commission.

Section 42.40.220 The board must keep minutes of each meeting.

Section 42.40.230 The board must establish a procedure for adopting rules, including a procedure for adopting emergency rules.

Section 42.40.240 Information of the corporation is open to public inspection except the corporation may withhold certain matters from disclosure if they are of a nonpublic, privileged, or proprietary nature.

Section 42.40.250 The corporation must prepare a report on the long-term operations of the railroad that is due January 1, 1988. The report shall include recommendations on the transfer of railroad operations to the private sector.

Section 42.40.260 A report describing the operations and financial condition of the corporation during the preceding fiscal year of the railroad shall be distributed to the governor and the legislature within 90 days after the fiscal year ends.

Section 42.40.270 The board must have the records of the corporation audited annually. Corporation records will be made available to an auditor appointed by the governor or to the legislative audit division.

Section 42.40.300 In addition to other powers authorized by law, the corporation may exercise certain specified general powers listed in this section.

Section 42.40.310 The board must adopt a long-range expansion plan and capital improvement plan. The plans cover five year periods and must be updated annually. These plans are to be prepared by employees of the corporation. Copies of the updated plans are to be provided to the governor and the legislature by December 1 each year.

Section 42.40.320 The corporation may not issue stock, pay dividends, make private distributions of assets, make loans to board members or employees or engage in business for private benefit. The corporation may defend and indemnify a current or former employee, agent, or board member against costs incurred in connection with a civil or criminal action if the person acted in good faith on behalf of the corporation and within the scope of his official duties or powers. The corporation may purchase insurance to protect its employees, agents, and board members for actions arising out

Representative Bette Cato

Page 5

January 18, 1984

of the performance or failure of performances of duties for or employment with the corporation.

Section 42.40.400 Land acquired by the corporation is under the control of the corporation. Railroad rights-of-way or easements shall be classified as railroad utility corridors. Future railroad utility corridors must be at least 100 feet wide on both sides of the center line of the extended main or branch line, or may be of other width as designated by the corporation. Portions of the utility corridor may be leased or rented for other transportation services.

Section 42.40.420 The board may request conveyance of land owned by or subject to selection by the state. Upon receipt of a request the commissioner of natural resources shall temporarily classify the land for railroad purposes and vacate a classification allowing disposal or lease of that land under other laws. The temporary classification remains in effect for 180 days. Within 90 days after receiving a request, the commission must convey the state's interests in the land to the corporation or notify the corporation of reasons for refusal to classify the land for railroad purposes. A conveyance under this section vests in the corporation the right to extract and use construction materials on the land without regard to whether the resources are part of the surface or subsurface estate.

The corporation may reconvey to the state land that the corporation and the commissioner identify as unnecessary for the corporation's purposes. When physical conditions require that track or fixtures be moved to state-owned land to maintain safe rail operations, the relocation may be made with concurrence of the Department of Natural Resources.

Section 42.40.430 The corporation is authorized to exercise the power of eminent domain and declaration of taking.

Section 42.40.450 The corporation may acquire interests in federal land and property that is available under federal law and may acquire property that is available from the state.

Section 42.40.500 A liability incurred by the corporation may be satisfied only from the assets of the corporation and no creditor has a right of action against the state.

Section 42.40.520 The corporation must obtain a fidelity bond for its board members and officers responsible for finances.

Section 42.40.530 The corporation must keep in force public liability insurance naming the state as an additional insured.

Section 42.40.540 Claims involving activities of the railroad shall be brought against the corporation and not against the state. (b) provides that if the railroad corporation prevails in a legal action, the other party is liable for full costs and legal fees incurred by the corporation in defending the action. This subsection is flawed in that it ignores the possibility that the corporation will be a prevailing plaintiff rather than a prevailing defendant in many cases.

Aside from that minor consideration, this subsection raises a severe constitutional question. Under the Civil Rules of Court there are situations where a prevailing party has only a limited right to attorney's fees and cost. (see Civil Rule 72 (k)) In any case, Civil Rule 82 provides for payment of attorney's fees to a prevailing party according to a schedule that, in general, provides less than the full cost incurred in fees. Singling out the railroad corporation for different treatment from any other prevailing party creates equal protection problems under both the federal and state constitutions that need to be considered. Furthermore, since Article IV, Section 15 of the state constitution grants the supreme court the power to promulgate rules governing practice and procedure in civil cases, it appears that this subsection will have to be approved by two-thirds of the members elected to each house of the legislature. Uniform Rule 39(e) requires that if a bill contains a section changing a court rule the bill must have a section citing the rule and noting what change is made. The fact that the bill changes a court rule must also be noted in the title of the bill. HB 512 does not comply with these technical requirements.

Under (c) the corporation enjoys certain legal rights which the state has. Provisions dealing with the administrative handling of claims against the state do not apply to the corporation.

Section 42.40.550 Revenue generated by or appropriated to the corporation shall be retained and used for railroad purposes by the corporation. This raises a question concerning the application of Article IX, Section 7, of the constitution. As interpreted in State v. Alex 646 P. 2d 203 (Alaska, 1982), that prohibition against dedicated funds extends to all sources of public revenue, so it would apply to money generated by the Alaska Railroad. (See also 1982 Op. Att'y Gen., Nos. J66-785-81 and J66-649-80.) This legislation requires that revenue generated by the railroad corporation be retained for railroad purposes in contravention of the prohibition against dedicated funds. However, the federal law providing for the transfer of the railroad to the state requires that revenues generated by the state-owned railroad be kept by the railroad and used for railroad purposes. (45 U.S.C. 1207 (a)(5)) Faced with this requirement in federal law, it is likely that the Alaska Supreme Court will strain to fit this into the exception to the prohibition against dedicated funds as being ". . . required by the federal government for state participation in federal programs." (Article IX, Section 7, Constitution of the State of Alaska) In any case, there appears to be little the legislature can do to resolve the conflict between the federal railroad transfer law and the state constitution.

Section 42.40.560 With the concurrence of the governor, the corporation may request an appropriation from the legislature to assist it in carrying out its general powers and preparing long-range expansion and capital improvement plans.

Section 42.40.570 The corporation may issue bonds and bond anticipation notes. The principal and interest are payable from corporation assets. The board shall by resolution establish the form and manner of execution of bonds or bond anticipation notes. They may be sold as determined by the board and shall mature at the time, not exceeding 50 years from their date, determined by the board. The board is authorized to enter into certain agreements with the holders of the bonds or bond anticipation notes listed in (f).

Section 42.40.580 The corporation may issue interim receipts or temporary bonds or bond anticipation notes exchangeable for bonds or bond anticipation notes once they have been executed.

Section 42.40.590 If an officer whose signature appears on bonds, notes, or coupons attached to them ceases to be an officer before delivery of the bonds, notes, or coupons, the signature is valid.

Section 42.40.600 The pledge of assets of the corporation to the payment of bonds or notes is valid and the assets are subject to the lien of the pledge without physical delivery or other act. The corporation is not prohibited from selling assets subject to a pledge.

Section 42.40.620 A holder of bonds or notes or a trustee may enforce all rights under this chapter, the trust agreement or resolution, or any other contract executed by the corporation relating to the bonds or notes and may compel the performance of duties of the corporation required by law or the trust agreement or resolution.

Section 42.40.630 Bonds and notes issued by the corporation are negotiable instruments.

Section 42.40.640 Bonds and notes issued by the corporation are securities in which all public bodies of the state and other financial entities may invest funds.

Section 42.40.650 The corporation may issue refunding bonds. They may be sold or exchanged for outstanding bonds and the proceeds applied to the purchase, redemption or payment of outstanding bonds.

Section 42.40.660 The state is not liable for the debts of the corporation. Bonds and notes are payable solely from the revenue or assets of the corporation and are not a liability of the state or a pledge of the faith and credit of the state. Each bond and note issued by the corporation must contain a statement that the corporation is not obligated to pay it except from the revenue or assets pledged for it and neither the faith and credit nor the taxing power of the state is pledged to the payment of it.

Section 42.40.670 An officer or employee of the corporation is not subject to personal liability because of the execution or issuance of bonds or notes.

Section 42.40.680 The property of the corporation and its assets are exempt from taxes and special assessments of the state or a political subdivision of the state. Bonds and

notes issued by the corporation are exempt from taxation except for inheritance, transfer, and estate taxes.

Section 42.40.690 The assets of the corporation revert to the state if it ceases to exist.

Section 42.40.700 Employees of the railroad are employees of the corporation and not of the state. Laws relating to public employees do not apply. The collective bargaining agreements between the corporation and its employees remain in effect until they expire or are renegotiated. The corporation may not enter into a collective bargaining agreement with an organization representing the corporation's chief executive official or other executive officials appointed by him.

Section 42.40.710 Assets of the corporation may not be used for political activity. Board members and employees may on request appear before Congress, the state legislature, and municipal governing bodies in connection with matters directly affecting the corporation. A board member or employee who violates this section is subject to a civil penalty not to exceed \$5,000.

Section 42.40.900 Certain state laws listed in this section do not apply to the corporation. The railroad is not subject to the jurisdiction of the Alaska Transportation Commission.

Section 42.40.950 Definitions for the chapter are provided.

Section 42.40.990 The short title of this chapter is the Alaska Railroad Corporation Act.

\* Section 3 If provisions of this Act conflict with the provisions of other law, the provisions of this Act prevail. Where possible, provisions of this Act shall be construed so that they do not conflict with the Alaska Railroad Transfer Act of 1982.

\* Section 4 Members of the first board of directors serve terms that differ in length and will result in staggered terms for members that follow.

\* Section 5 The Act takes effect immediately.

TBC:ojb  
J2/044

# Alaska State Legislature

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## Senate Committee on Transportation

### SENATE TRANSPORTATION COMMITTEE Staff Analysis CS for Senate Bill No. 352 (Transportation)

*with italicized reference to major differences found in  
CS for House Bill No. 512 (Transportation)*

March 29, 1984

#### Title

Includes a brief description of the main elements of the bill. The list of statutes the corporation is exempt from is also included in the title.

The statutes are:

AS 19 - Title 19 is the statute which sets out the duties of state agencies in regard to highways and ferries and related activities.

AS 23.40 - Chapter 40 deals with the relationship between state entities and labor organizations. But see Article 8 of this legislation for Personnel and Labor Relations provisions.

AS 30.15 - Chapter 15 is concerned with state participation in port facilities and development.

AS 35 - Title 35 sets out the duties and powers of the Department of Transportation and Public Facilities with regard to public facilities.

AS 37.05 - Chapter 05 is the Fiscal Procedures Act. For provisions in this legislation which replace similar provisions in the Fiscal Procedures Act see Section 1, 3(A) and (F); 42.40.100(1) and (8); 42.40.120(b)(4), (C)(11); 42.40.260; 42.40.270.

AS 37.07 - Chapter 07 contains the Executive Budget Act. For similar provisions in this legislation see 42.40.260; and 42.40.270

and 42.40.280.

AS 37.10.010 - 37.10.060 - Give the Department of Administration duties related to Public Funds.

AS 37.10.085 prohibits financial aid to corporations by state or political subdivisions.

AS 37.20 sets out a method for the state to receive federal property. Sec. 42.40.360; 42.40.420 and 42.40.440 for comparable provisions.

AS 37.25 is the miscellaneous provisions of the public finance title.

AS 38 - Title 38 is the Public Lands statute. For similar provisions see 42.40.350; 42.40.360; 42.40.370; 42.40.380; 42.40.390; 42.40.400; 42.40.410; 42.40.420 and 42.40.430.

AS 39 - Title 39 is the public officer and employees statute. See sections 112.40.020; 42.40.030; 42.40.040; (see also Sections 3,4,5, and 6); 42.40.050; 42.40.060 and Article 8 of this Act.

AS 44.62.040 - 44.62.32J - is the Administrative Procedures Act. But see 42.40.150; 42.40.160; 42.40.170; 42.40.180; (see also Section 8); 42.40.200; 42.40.210; 42.40.220 for similar provisions contained in this Act.

\*Section 1 This is a statement of legislative findings and purpose. In (a) the legislature finds that the Alaska Railroad is an essential part of the state transportation network that may cease to be an option without state action. It also states that the railroad is necessary for long-term economic growth of the state and an essential part of the state transportation network. In (b) the purpose of the Act is stated to be the creation of an entity to operate and manage the railroad pending the transfer of the railroad to the private sector. That it will be responsible for the management of the financial and legal obligations of the railroad, will constitute a common carrier under the Interstate Commerce Commission, will have the ability to issue tax exempt obligations, carry out its responsibilities on a self-sustaining basis, and so that the best transportation can be provided supported by state investment when necessary, the railroad may be operated prudently, and borrowing by the corporation does not endanger the state's own borrowing capacity. It is also charged with protecting the railroad utility corridor.

\*Section 2  
Section 42.40.010

The Alaska Railroad is established as a public corporation within the Department of Commerce and Economic Development. However, Section 3 would remove the corporation from the Department of Commerce and Economic Development if the Constitutional Amendment passes.

Section 42.40.020

The corporation is run by a board with nine members including the Commissioner of Commerce and Economic Development, the Chief Executive Officer of the Corporation and one appointed member who is a representative of the corporation's organized labor. In addition, there are six public members who may not be state employees. One of the public members must have 10 years experience and one shall have been an executive official of a U.S. railroad. Except for the two public members just mentioned, all public members must be registered Alaskan voters. With the exception of the Commissioner of Commerce and Economic Development and the chief executive officer, the board shall be confirmed by the majority of the members of each house of the legislature in joint session.

However, see Section 4 where 42.40.020 is amended if the Constitutional Amendment passes. Under this amendment the Commissioner of Commerce and Economic Development is removed from the board and the board is increased to eight appointed members.

*The House version, [CSHB 512(Trsp)], is slightly different in that it gives the governor more discretion in naming public members to the board. In the Senate Bill the two railroad experts are mandatory members but in the House version they are optional. In addition, the Senate Bill requires all members of the board, except for the railroad experts, to be registered voters but in the House Bill the two non-registered voters may be any two of the seven public members. The House Bill also differs slightly in its description of the work experience requirements of board members. It allows work experience if it relates to fields relevant to this Act while the Senate Bill just requires five years of business experience. The Senate requirement is limited to business experience in Alaska while the House does not have a similar limitation.*

Section 42.40.030 All members required to be confirmed by the Legislature serve for staggered five year terms and serve at the pleasure of the Governor. Section 10 sets up how the first board of directors will serve which results in staggered terms for members that follow.

However, see Section 6 and Section 7 which amend 42.40.030 if the Constitutional Amendment passes. Under these amendments a board member could be removed only for cause.

Section 42.40.040 A vacancy on the board is filled by the governor and the appointment must be confirmed by the legislature. Despite a vacancy the board may exercise its power if it has a quorum of members.

Section 42.40.050 An appointed member of the board received \$250 for each day he is engaged in the performance of duties as a board members and partial day provisions may be established by the board. In addition, he is entitled to per diem and travel expenses.

*The House Bill, [CSHB 512(Trsp)], provides for a \$400 per day compensation rate.*

Sec. 42.40.060 The board is to elect a chairman and vice-chairman from its membership and appoint a secretary.

Section 42.40.100 - The board is to manage the corporation according to the guidelines provided in this section. This corporation is to be generally self-sustaining, subject to the ICC consistent with the Transfer Act and provide safe, efficient and economical transportation. The board must apply to the legislature for appropriations if a service is provided which is not self-sustaining. In addition, the board is responsible for reviewing all land disposals so that future expansions of the railroad are not restricted.

*The House Bill, [CSHB 512(Trsp)], does not include the provision requiring the corporation to apply for an appropriation if it provides a service which is not self sustaining.*

Section 42.40.110 The board appoints the Chief Executive Officer of the corporation and fixes his compensation. The Chief Executive Officer of the corporation appoints other executive officers. The salaries of the executive officers appointed by the Chief Executive Officer are subject to board approval.

*The House Bill, [CSHB 512(Trsp)], requires that the board approve all executive officers appointed by the Chief Executive Officer.*

Section 42.40.120 By rule the board delegates duties necessary for the management of daily affairs of the corporation to the Chief Executive Officer. Within 60 days after it is established, the board must delegate certain specified activities of the corporation. Some activities are delegated but require specific board approval for final action.

*In addition to the delegated activities which require board approval found in the Senate version, the House Bill, [CSHB 512(Trsp)], requires specific board approval to begin capital projects with an estimated completion cost of \$500,000 or on estimated completion time of more than one year.*

Section 42.40.150 Meetings of the board are public with the exception of executive sessions. The board provides by rule how notice of the meetings shall be given. The board is required to keep minutes of the meetings.

*In addition to the requirement that minutes be kept of the meetings the House Bill, [CSHB 512(Trsp)], requires that a certified copy of the public portion of the minutes of each meeting be sent to the governor and the legislature.*

Section 42.40.160 A quorum is established as five and an affirmative action by the board also requires five votes. The board may confer and vote by teleconferencing but may not vote by proxy.

Section 42.40.170 Executive sessions are limited to matters listed and must be called by a majority vote. No action may be taken at an

executive session and discussion must be limited to the topic of the motion or an auxiliary subject.

*In the House Bill, [CSHB 512 (Trsp)], the list of subjects to be covered in an executive session is more general in nature than the list in the Senate Bill. In addition, the list is permissive rather than an exclusive list. There is no majority vote requirement to call an executive session nor is there a prohibition against taking action in an executive session. There is no restriction to discuss only the topic contained in the motion.*

Section 42.40.180 The board is to adopt rules to carry out the purposes of this chapter. It is required to give public notice 15 days before it adopts, amends or repeals a rule. Public notice consists of publishing in at least three newspapers of statewide circulation and to persons requesting notice. Every interested party must be given one hour to testify and all relevant matter must be considered.

But see Section 8 which repeals the rule making procedure if the Constitutional Amendment passes. In its place, the new section would give all powers to adopt a rule making procedure to the board.

*The House Bill [CSHB 512 (Trsp)], leaves the development of a procedure for providing notice and an opportunity to testify up to the board. It shall establish this procedure within 90 days after its first meeting. The board is also given the responsibility of developing an emergency rule making procedure but the 90 day rule does not apply to the development of this procedure.*

Section 42.40.190 The board is required to set up a process for adopting emergency rules. Emergency rules are to be limited to situations where they are necessary for the orderly operation of the corporation's facilities or programs. The requirements of 42.40.180 need not be followed but within 10 days public notice is to be given of the action. Rules adopted under this section remain in effect for no more than 120 days unless the procedures of 42.40.180 are followed.

*The House Bill, [CSHB 512(Trsp)], has no similar restrictions or requirements for emergency rules. In the preceding section, the board is given full authority to set up a procedure for adopting emergency rules but the question of what topics may be covered by the emergency rules is not addressed.*

Section 42.40.200 Sets up a procedure for challenging a rule adopted under 42.40.180(a) and 42.40.190(a) but restricts the ability to declare a rule invalid for procedural deficiency.

*The House Bill, [CSHB 512(Trsp)], has no similar provision.*

Section 42.40.210 The board may, by resolution, adopt the existing rules without following the rule making procedure of 42.40.180.

*The rules adopted by resolution may not be inconsistent with this chapter or other state law. The House Bill also contains a*

*provision whereby the substance of previous federal rules may be adopted however the operative effect of this provision is unclear.*

Section 42.40.220 Records of the corporation are open to public inspection except the corporation may withhold certain matters from disclosure by rule if they are of a nonpublic, privileged, or proprietary nature.

*The House Bill, [CSHB 512 (Trsp)], requires that the board must by rule identify the records as confidential before they are withheld from the public.*

Special Note: *The House Bill, [CSHB 512 (Trsp)], contains a provision on conflict of interest. No similar provision is contained in the Senate Bill. The conflict of interest section in the House Bill, 42.40.210, says a board member or executive officer may not participate in a decision of the corporation if he, or an immediate family member, has an interest unless their interest is remote. Interest and remote are defined and a procedure is set out for situations where the application of the section is not clear. In addition, the board shall adopt rules to further define conflict of interest and ethical rules 120 days after its first meeting.*

Section 42.40.250 In addition to other powers authorized by law, the corporation may exercise certain specified general powers listed in this section.

*In addition to slight drafting changes found in numbers (10), (11), (19) and (20) the House Bill, [CSHB 512 (Trsp)], contains two additional powers. Number (27) of the House Bill provides the power to own subsidiary companies or enter into agreements where part ownership or a similar interest in another corporation is part of the agreement. Number (28), of the House Bill seems to allow additional railroad activity which could technically be beyond the powers to extend the current railroad facility.*

Special Note: *The House Bill, [CSHB 512 (Trsp)], contains a section requiring an oversight report to the governor and the legislature before certain action is taken (Sec. 42.40.280). The Senate Bill contains no similar provision.*

Section 42.40.260 A report describing the operation and financial condition of the corporation during the preceding fiscal year of the railroad shall be distributed to the governor and the legislature within 90 days after the fiscal year ends.

*The House Bill, [CSHB 512 (Trsp)], also includes a provision that the report may include suggestions for legislation relating to the structure, powers or duties of the corporation or to operate facilities of the corporation.*

Section 42.40.270 The board must have the records of the corporation audited annually. Corporation records will be made available to an auditor appointed by the governor or to the legislative audit division.

In addition, the board is required to have an annual performance audit conducted by a recognized railroad management expert.

*In the House Bill, [CSHB 512 (Trsp)], the performance audit is to be conducted by a qualified professional performance auditing firm rather than a railroad management expert as provided in the Senate Bill.*

Section 42.40.280 The board must develop a long-range program and capital improvement plan. The plan covers a five year period and must be updated annually. Copies of the adopted plan are to be provided to the governor and the legislature by December 1 of each year.

*The House Bill, [CSHB 512 (Trsp)], requires separate reports for each subject area. In addition, the board is required to consult with other state agencies when they develop the plans if another state agency is affected by their plans.*

Section 42.40.320 The corporation may not issue stock, pay dividends, make private distributions of assets, make loans to board members or employees or engage in business for private benefit. The corporation may defend and indemnify a current or former employee, agent, or board member against costs incurred in connection with a civil or criminal action if the person acted in good faith on behalf of the corporation and within the scope of his official duties or powers. The corporation may purchase insurance to protect its employees, agents, and board members for actions arising out of the performance or failure of performances of duties for or employment with the corporation.

Section 42.40.350 Land acquired by the corporation is under the control of the corporation. Railroad rights-of-way or easements are railroad utility corridors. Land other than right-of-way or easements is rail land. Future railroad utility corridors must be at least 100 feet wide on both sides of the center line of the extended main or branch line, or may be less if adjoining land does not belong to the corporation. Portions of the utility corridor may be leased or rented for other transportation services if the use does not restrict other parallel uses of the utility corridor. The corporation may sell or lease rail land however, none of the railroad utility corridor may be sold.

*The House Bill, [CSHB 512(Trsp)], requires legislative approval for sale of rail land.*

Section 42.40.360 The board may nominate federal land for state selection for a railroad purpose. The Commissioner of Natural Resources would acquire the land through the federal land selection process.

In addition, the board may request any state land from the Department of Natural Resources. Upon receipt of the written request the Commissioner of the Department of Natural Resources must reserve the land in the railroad's name for 180 days.

Section 42.40.370 When the railroad requests state land under the preceding section the Commissioner has 90 days to reply in writing

whether or no the request has been denied, denied in part or if the request has been granted. A conveyance under this section may be for less than fair market value and, absence a reservation to the contrary, vest full ownership of surface and subsurface rights. The land may be reconveyed back to the state if it is no longer necessary for the corporation's purposes.

*The House Bill, [CSEB 51 (Trsp)], does not contain a provision allowing transfer to the corporation for less than fair market value.*

Section 42.40.380 The corporation is authorized to relocate rail facilities to state land when an emergency exists. The Chief Executive Officer makes the determination that it is necessary to relocate for safe and adequate rail operations. After the relocation the corporation is required to notify the Department of Natural Resources.

*The House Bill, [CSHB 512 (Trsp)], does not require an emergency condition, rather it says simply that a physical condition must require relocation. However, the House Bill requires concurrence of Department of Natural Resources before the move.*

Section 42.40.390 The board may develop rules governing land used by a third party. The rules are to protect the common health, safety, and welfare of the public and may not be limited by leases, contracts or other transaction.

*No comparable provisions in the House Bill.*

Section 42.40.400 The corporation is authorized to exercise the power of eminent domain and declaration of taking.

Section 42.40.410 The corporation may vacate land acquired for railroad purposes by filing in the appropriate recording district.

Section 42.40.420 The corporation may acquire interests in federal land on its own behalf.

Section 42.40.430 The corporation may authorized municipal use of rail land. It may also authorize a walkway or trail on the utility corridor so long as parallel uses are not restricted. Before authorizing the use of either rail land or the utility corridor, the municipality must sign a hold harmless agreement and indemnify the corporation for any judgment against it for use related to the municipal use. When the corporation determines the use is inconsistent with expansion or replacement of railroad facilities the municipal use must be stopped.

*The House Bill, [CSHB 512(Trsp)], allows the granting of a right-of-way on any rail property for use of a pedestrian walkway or trail. It does not contain a provision protecting parallel uses of the railroad corridor nor does it state who shall determine when the municipality shall vacate the right-of-way if it interferes with rail use.*

Section 42.40.440 The corporation may acquire surplus property from either the federal government or the state.

*Special Note: The House Bill contains a provision requiring compliance with state law if pesticides or herbicides are used by the corporation.*

Section 42.40.500 A liability incurred by the corporation may be satisfied only from the assets of the corporation and no creditor has a right of action against the state.

Section 42.40.510 The corporation must obtain a fidelity bond for its board members and officers responsible for finances.

Section 42.40.520 The corporation is required to keep in force all manners of insurance to protect its assets, services, and employees from any potential liability. It may, however, provide for certain self-insurance retentions.

*The corporation must provide public liability insurance under the House Bill. It is not authorized to self-insure.*

Section 42.40.530 Revenue generated by or appropriated to the corporation shall be retained and used for railroad purposes by the corporation.

Section 42.40.540 With the concurrence of the governor, the corporation may request an appropriation from the legislature to assist it in carrying out its general powers and preparing long-range expansion and capital improvement plans.

Section 42.49.600 The corporation may issue bonds and bond anticipation notes. The principal and interest are payable from corporation assets. The board shall by resolution establish the form and manner of execution of bonds or bond anticipation notes. They may be sold as determined by the board and shall mature at the time, not exceeding 50 years from their date, determined by the board. The proceeds from the bonds may not be used for any other purpose than that for which the instruments were originally issued. There is also a list of mandatory requirements that the instruments must comply with.

*Special Note: The House Bill, (CSHB 512(Trsp)), sections on bonds and notes is substantially different from the Senate version. However, the powers, duties and obligations, of the corporations in relation to its ability to raise money through bonding ostensibly remains the same.*

Section 42.40.610 Bonds and notes issued by the corporation are negotiable instruments.

Section 42.40.620 Bonds and notes issued by the corporation are securities in which all public bodies of the state and other financial entities may invest funds.

Section 42.40.630 Payment of the principal or interest on lands may be made from assets or revenue of the corporation regardless of the source.

Section 42.40.640 This section authorizes the board to enter into certain agreements with holders of the bonds or bond anticipation notes and provides for a general authority to enter into additional agreements in the absolute discretion of the board if an agreement will make bonds or notes more marketable.

Section 42.40.650 The corporation may issue interim receipts or temporary bonds or bond anticipation notes exchangeable for bonds or bond anticipation notes once they have been executed.

Section 42.40.660 The corporation may issue refunding bonds. They may be sold or exchanged for outstanding bonds and the proceeds applied to the purchase, redemption or payment of outstanding bonds.

Section 42.40.670 The board is required to retain a financial advisor independent of an underwriter who is negotiating with them for a bond sale.

Section 42.40.680 The signatures of corporation officers on bonds or notes are valid regardless of the officers' current relationship to the corporation.

Section 42.40.690 The pledge of assets of the corporation to the payment of bonds or notes is valid and the assets are subject to the lien of the pledge without physical delivery or other act. The corporation is not prohibited from selling assets subject to a pledge.

Section 42.40.700 A holder of bonds or notes or a trustee may enforce all rights under this chapter, the trust agreement or resolution, or any other contract executed by the corporation relating to the bonds or notes and may compel the performance of duties of the corporation required by law or the trust agreement or resolution.

Section 42.40.710 The state is not liable for the debts of the corporation. Bonds and notes are payable solely from the revenue or assets of the corporation and are not a liability of the state or a pledge of the faith and credit of the state. Each bond and note issued by the corporation must contain a statement that the corporation is not obligated to pay it except from the revenue or assets pledged for it and neither the faith and credit nor the taxing power of the state is pledged to the payment of it.

Section 42.40.720 An officer, board member, or employee of the corporation is not subject to personal liability because of the execution or issuance of bonds or notes.

Section 42.40.750 Employees of the railroad are employees of the corporation and not of the state. Laws relating to public employees do not apply.

Section 42.40.760 The provisions of the Public Employee Relations Act do not apply. However, non-executive officials may organize and engage in collective bargaining.

Section 42.40.770 The board or the employees organization may request the Department of Administration to participate in their contract negotiations. Any agreement accepted by the two parties must have a grievance procedure which has binding arbitration as its last step.

*The House Bill, [CSHB 512(Trsp)], provides that the Department of Administration may participate in labor negotiations without stating at whose invitation or if in fact they need to be invited to participate. In addition, the corporation is required to confer with the Department of Administration before entering into labor negotiations.*

Section 42.40.780 There is created a railroad labor relations agency made up of three members appointed by the governor. The agency shall perform the functions described in AS 23.40.090 - 23.40.190 which are the functions currently carried out by the state personnel board for all state employees.

*It should be noted that the House Bill, [CSHB 512(Trsp)], has spelled out the provision of AS 23.40.090 - 23.40.190 rather than cite them as the Senate Bills. Those provisions can be found in the House Bill at; 42.40.090 which is cited as AS 23.40.090 in the Senate Bill; 42.40.750 which is cited as AS 23.40.100 in the Senate Bill; 42.40.760 which is cited as AS 23.40.110 in the Senate Bill; 42.40.770 which is cited as AS 23.40.120 in the Senate Bill; 42.40.780 which is cited as AS 23.40.130 in the Senate Bill; 42.40.790 which is cited as AS 23.40.140 in the Senate Bill; 42.40.800 which is cited as AS 23.40.150 in the Senate Bill; 42.40.810 which is cited as AS 23.40.160 in the Senate Bill; 42.40.820 which is cited as AS 23.40.170 in the Senate Bill; 42.40.830 which is cited as AS 23.40.180 in the Senate Bill; and 42.40.840 which is a slightly modified version of AS 23.40.190 cited in the Senate Bill. The difference between the Senate cite and 42.40.840 is that the railroad labor relations agency acts on its own to initially name the mediator while the Senate cite allows one of the parties to request a mediator. In addition, the House version requires that the mediator be mutually agreeable to both parties and shall be chosen from a list of seven qualified mediators/arbitrators knowledgeable in railway labor agreements. The Senate cite has no similar provision.*

Section 42.40.790 Railroad employers have a full right to strike if a collective bargaining unit votes to do so by secret ballot. However, the parties may agree in writing to submit interpretation or application disputes to an arbitrator. Under this provision the railroad employees clearly fall under 23.40.200(a)(3) which are commonly referred to as "class 3" employees.

*The House Bill has a substantial rewrite of this section. Basically the House has the employees somewhere between class 2*

*employees and class 1 employees (see AS 23.40.200). In the House version the employees are permitted to strike for a limited time and may be enjoined by a court of law at the request of the corporation. After being enjoined the dispute is automatically sent to binding arbitration. The arbitrator is the same person as was the original mediator chosen under 42.40.840.*

Section 42.40.800 Prohibits use of corporation money, assets or property for political activity except lobbying on matters which directly affect the corporation. It provides for a \$5000 penalty for violation of this section.

*The House Bill, [CSHB 512(Trsp)], has no similar provision.*

Section 42.40.810 Prohibits requiring or coercing employees to undertake activities, or restrain from activities, except as directly related to the performance of their official duties.

*The House Bill, [CSHB 512(Trsp)] has no similar provision.*

*Special Note: In addition to the provision found in the Senate Bill, the House Bill contains two additional provisions; 42.40.870 and 42.40.880. 42.40.870 allows the deduction of union dues from an employee's wages, it should be noted that the power to make such an agreement exists under 42.40.760(b)(2) which is cited as AS 23.40.110 under the Senate Bill. 42.40.880 provides for a religious exception from the payment of union dues.*

Section 42.40.900 Claims involving activities of the railroad shall be brought against the corporation and not against the state. The corporation board members and employees have the same immunities from liability for claims against the corporation as do other state officers. Claims against the corporation must first go through an administrative appeal process to the Department of Administration before going to court action.

Section 42.40.910 The property of the corporation and its assets are exempt from taxes and special assessments of the state or a political subdivision of the state. Bonds and notes issued by the corporation are exempt from taxation except for inheritance, transfer, and estate taxes.

Section 42.40.920 The corporation is exempt from the jurisdiction of the Alaska Transportation Commission. In addition, it is exempt from the following statutes:

The statutes are:

AS 19 - Title 19 is the statute which sets out the duties of state agencies in regard to highways and ferries and related activities.

AS 23.40 - Chapter 40 deals with the relationship between state entities and labor organizations. But see Article 8 of this legislation for Personnel and Labor Relations provisions.

AS 30.15 - Chapter 15 is concerned with state participation in port facilities and development.

AS 35 - Title 35 sets out the duties and powers of DOT&PF with regard to public facilities.

AS 37.05 - Chapter 05 is the Fiscal Procedures Act. For provisions in this legislation which replace similar provisions in the Fiscal Procedures Act see Section 1, 3(A) and (F); 42.40.100(1) and (8); 42.40.120(b)(4), (C)(11); 42.40.260; 42.40.270.

AS 37.07 - Chapter 07 contains the Executive Budget Act. For similar provisions in this legislation see 42.40.260; and 42.40.270 and 42.40.280.

AS 37.10.010 - 37.10.060 - Give the Department of Administration duties related to Public Funds.

AS 37.10.085 prohibits financial aid to corporations by state or political subdivisions.

AS 37.20 sets out a method for the state to receive federal property. Sec. 42.40.360; 42.40.420 and 42.40.440 for comparable provisions.

AS 37.25 is the miscellaneous provisions of the public finance title.

AS 38 - Title 38 is the Public Lands statute. For similar provisions see 42.40.350; 42.40.360; 42.40.370; 42.40.380; 42.40.390; 42.40.400; 42.40.410; 42.40.420 and 42.40.430.

AS 39 - Title 39 is the public officer and employees statute. See sections 42.40.020; 42.40.030; 42.40.040; (see also Sections 3, 4, 5, and 6); 42.40.050; 42.40.060 and Article 8 of this Act.

AS 44.62.040 - 44.62.320 - is the Administrative Procedures Act. But see 42.40.150; 42.40.160; 42.40.170; 42.40.180; (see also Section 8); 42.40.200; 42.40.210; 42.40.220 for similar provisions contained in this Act.

Section 42.40.930 If provisions of this Act conflict with the provisions of other law, the provisions of this Act prevail. Where possible, provisions of the Act shall be construed so that they do not conflict with the Alaska Railroad Transfer Act of 1981.

Section 42.40.940 The assets of the corporation revert to the state if it ceases to exist.

Section 42.40.980 Definitions of the chapter are provided.

*The House Bill, [CCHB 512(Trans)], has a substantially different list of positions under executive officer.*

Section 42.40.990 The short title of this chapter is the Alaska Railroad Corporation Act.

Section 3 Amends 42.40.010 by removing the corporation from the Department of Commerce and Economic Development if the Constitutional Amendment passes.

Section 4 Amends 42.40.020(a) if the Constitutional Amendment passes by removing the Commissioner of Commerce and Economic Development from the board and increases the appointed members of the board from seven to eight.

Section 5 Amends 42.40.020(e) by removing reference to the Commissioner of Commerce and Economic Development if the Constitutional Amendment passes.

Section 6 Amends 42.40.030 if the Constitutional Amendment passes by removing reference to the Commissioner of Commerce and Economic Development and by removing the ability of the governor to remove board members at his pleasure.

Section 7 Amends 42.40.030 if the Constitutional Amendment passes by adding a new section which would state specific reasons for which a governor may remove board members.

Section 8 Repeals 42.40.180 if the Constitutional Amendment passes and replaces it with a new section. The new section gives the board discretion in adopting a rule making process.

Section 9 The corporation must prepare a report on the long-term operations of the railroad that is due January 1, 1988. The report shall include recommendations on the transfer of railroad operations to the private sector.

Section 10 Members of the first board of directors serve terms that differ in length and will result in staggered terms for members that follow.

Section 11 Existing collective bargaining agreements are to be adopted by the corporation and remain in effect for two years. Within 180 days of the first meeting the board and the unions shall establish a procedure for renegotiating the existing collective bargaining agreements.

Section 12 Repeals 42.40.190 and 42.40.200 if the Constitutional Amendment passes.

Section 13 The effective date of Section 3-8 and 12 is the effective date of the Constitutional Amendment should it pass. Section 12 sections 1,2 and 9-11 take effect immediately.

This analysis contains key concepts embodied in CSHE 512 (transportation) and also lists the differences between CSAB 512 (transportation) and CSSB 352 (transportation) relating to the establishment of a public corporation to operate and manage the Alaska Railroad. This has been prepared by the House Transportation Committee staff.

### Key Concepts

Purpose section contains provisions that support future transfer to the private sector for ownership, operation, or both consistent with the federal transfer legislation.

The board of directors is exclusively responsible for the operations of the railroad. Day to day operations are delegated to the chief executive officer, who is appointed by and serves at the pleasure of the board.

There is a detailed powers and duties section to give the board general direction in management of the corporation.

The general policy of the legislation is to separate the railroad corporation from government as much as possible. This is difficult under the State Constitution and considering the use of public funds.

The board establishes rules to govern their operation and there is a procedure for public comment and participation in the formulation of rules. Exceptions are listed in the case of proprietary, rate and other information.

The board is to prepare long-range program and capital improvement plans. The corporation is required to be audited annually and submit an annual report.

In the "Lands" section, the corporation holds title to and has exclusive control of all lands transferred by the federal government, surface and subsurface. There is also a "fast track" procedure for acquiring state lands for railroad purposes and the powers of eminent domain. (NOTE the Federal Interest Land Policy Management Act provided for a mechanism for acquiring federal lands for transportation corridors.) Municipalities may get access to rail lands and rights-of-way for municipal trails.

The corporation may sell revenue bonds and must insure that it's borrowing does not endanger the states borrowing abilities. Revenues generated by or appropriated to the corporation are under the control of the corporation and the operations are tax-exempt consistent with the federal transfer legislation.

Employees of the railroad corporation are employees of the corporation and not of the state. Consistent with the federal transfer legislation, collective bargaining agreements shall be continued for a two year period during which time the contracts are renegotiated.

An amendment to the constitution is proposed to remove the corporation from one of the principal departments as is currently required and to give the legislature confirmation of board members. The amendment is contained in HJR 72 and SJR 43.

Differences in the House and Senate Versions.

Two members of the board may have experience in railroad operations.

Rate of compensation for board members is \$400 in the House version and \$250 per day in the Senate version.

The House Bill contains a conflict of interest section for board members.

The House Bill requires State Oversight Reports for the Governor and the ~~leadership of the~~ legislature in addition to the formal action that may be taken in oversight by the federal Interstate Commerce Commission.

Legislative approval is required for final sale of land.

The House Bill has a section on the use of pesticides and herbicides on railroad land.

The House version of the bonding section has been reviewed by the state bond counsel and appropriate recommendations have been incorporated in the House bill.

The House Bill contains a detailed labor relations section as opposed to the Senate specifying sections of existing law. Conflicts were found in the latter process and the House bill details the sections as appropriate.

A mediations/arbitration process has been structured for the resolution of disputes in the collective bargaining process. Strikes for a limited time are permitted similar to the state's "class A-2" employees.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 30, 1984

MAR 30 1984

SUBJECT: Alaska Railroad (CSHB 512 (Trsp))

TO: Representative Joe Hayes

FROM: Tamara Brandt Cook  
Deputy Director TB  
Division of Legal Services

Here is the section by section analysis of HB 512 that you requested.

\* Section 1 This is a statement of legislative findings and purpose. In (a) the legislature finds, among other things, that the Alaska Railroad is an essential part of the state transportation network that will cease to be an option without state action and that extending the railroad into natural resource areas is necessary for long-term economic growth. In (b) the purpose of the Act is stated to be, among other things, the creation of an entity to operate and manage the railroad pending the transfer of the railroad to private sector. It is the purpose of the legislature to create a public corporation to operate the railroad and that corporation should be created so that it will be responsible for the management of the financial and legal obligations of the railroad, will constitute a common carrier under the Interstate Commerce Commission, will have the ability to issue tax exempt obligations, and so that the best transportation can be provided supported by state investment when necessary, the railroad may be operated prudently, and borrowing by the corporation does not endanger the state's own borrowing capacity.

\* Section 2

Section 42.40.010 The Alaska Railroad Corporation is established as a public corporation within the Department of Commerce and Economic Development.

Section 42.40.020 Seven members, at least five of whom are voters in the state, are appointed to the board of directors by the governor. No more than two appointed members may be from one judicial district and all members must have at least five years experience or training in fields relevant to the purposes of AS 42.40. The governor shall appoint one member who is an employee of the corporation and a member of a bargaining unit. The commissioner of commerce and economic development and the chief executive officer of the corporation shall serve as additional members. The appointed members are to be confirmed by the legislature.

This last provision can only function as a request to the governor to submit the members for confirmation. It is not, however, constitutionally enforceable under Article III, sections 25 and 26 of the State Constitution as construed in Bradner v. Hammond, 553 P.2d (Alaska, 1976).

Section 42.40.030 The appointed members of the board serve for staggered five year terms.

Section 42.40.040 A vacancy on the board is filled by the governor and the appointment must be confirmed by the legislature. Despite a vacancy the board may exercise its powers if it has a quorum of members. A member whose term expires serves until a successor has been appointed.

Section 42.40.050 An appointed member of the board receives \$400 for each day he is engaged in the performance of duties as a board member. In addition, he is entitled to per diem and travel expenses.

Section 42.40.060 The board elects from its membership a chairman and vice-chairman. The board appoints a secretary.

Section 42.40.100 The board is responsible for the management of the corporation. As part of this duty, the board is obligated to carry out certain itemized functions.

Section 42.40.110 The board appoints the chief executive officer of the corporation and fixes his compensation. The chief executive officer of the corporation appoints other executive officers and fixes their compensation subject to board approval.

Section 42.40.120 By rule the board delegates duties necessary for the management of daily affairs of the corporation to the chief executive officer. Within 60 days after it is

established, the board must delegate certain specified activities of the corporation. The board may require exercise of a delegated duty to be subject to board approval. Specific board approval is required for certain itemized actions.

Section 42.40.150 Meetings of the board are public with the exception of executive sessions. The chairman must call a meeting every three months and may call other meetings as necessary. The board keeps minutes of meetings.

Section 42.40.160 Five members of the board constitute a quorum. Five affirmative votes are required for board action. The board provides for the manner of voting, but may not allow voting by proxy.

Section 42.40.170 The board may consider in an executive session matters that pertain to personnel, the corporation's legal position, land acquisition or disposal, or information of a type treated as confidential by the Interstate Commerce Commission.

Section 42.40.180 The board must establish a procedure for adopting rules, including a procedure for adopting emergency rules.

Section 42.40.190 The board may provide that rules and orders in effect on the date of transfer of the railroad to the state that are not inconsistent with AS 42.40 or other state law remain in effect.

Section 42.40.200 Information of the corporation is open to public inspection except the corporation may withhold certain matters from disclosure if they are of a nonpublic, privileged, or proprietary nature.

Section 42.40.210 A board member or executive officer of the corporation may not participate in a decision of the corporation in which that person or a member of his immediate family has a direct or indirect financial interest unless the interest is remote and participation is approved by the board. Within 120 days after the first meeting, the board shall adopt rules implementing this section, providing additional conflict of interest rules, and providing for the removal of a board member or executive officer who intentionally violates a prohibition contained in this section.

Section 42.40.250 In addition to other powers authorized by law, the corporation may exercise certain specified general powers listed in this section.

Section 42.40.260 A report describing the operations and financial condition of the corporation during the preceding fiscal year of the railroad shall be distributed to the governor and the legislature within 90 days after the fiscal year of the railroad ends.

Section 42.40.270 The board must have the records of the corporation audited annually. Corporation records will be made available to an auditor appointed by the governor or to the legislative audit division.

Section 42.40.280 The board shall provide a state oversight report to the governor and the legislature before undertaking certain major actions. Requirements of the report are specified.

Section 42.40.290 The board must adopt a long-range expansion plan and capital improvement plan. The plans cover five year periods and must be updated annually. Copies of the updated plans are to be provided to the governor and the legislature by December 1 each year.

Section 42.40.300 The corporation may not issue stock, pay dividends, make private distributions of assets, make loans to board members or employees or engage in business for private benefit.

Section 42.40.310 The corporation may defend and indemnify a current or former employee, agent, or board member against costs incurred in connection with a civil or criminal action if the person acted in good faith on behalf of the corporation and within the scope of his official duties or powers. The corporation may purchase insurance to protect its employees, agents, and board members for actions arising out of the performance or failure of performances of duties for or employment with the corporation.

Section 42.40.350 Land acquired by the corporation is under the control of the corporation. Railroad rights-of-way or easements shall be classified as railroad utility corridors. Future railroad utility corridors must be at least 100 feet wide on both sides of the center line of the extended main

or branch line, or may be of lesser width if adjoining land is not rail land. Portions of the utility corridor may be leased or rented for transportation, communication, and transmission purposes. The corporation may authorize other uses of rail land, but sale is subject to approval of the legislature.

I note that, for some reason, other methods of disposing of land, such as trading it for other property, is not subject to legislative approval. This seems inconsistent from a policy point of view. It may also conflict with the "separation of powers" doctrine which is recognized in Alaska. Bradner v. Hammond, supra. While the precise question was not considered, a scheme that included legislative approval of a Cook Inlet land exchange survived consideration by the court. State v. Lewis, 559 P.2d 630 (Alaska 1977) However, that case involved approval of the exchange of large parcels of land only. The court emphasized the extreme nature of the state interest in settling the land issues arising out of the Alaska Native Claim Settlement Act and the unique nature of that situation. Neither of these considerations apply here. In this draft, legislative approval must be obtained before the sale of any parcel may take place, even very small parcels of little value. Requiring approval in every instance could interfere with the executive function of carrying out the purpose of the Act. Since only land of the Alaska Railroad Corporation is involved and not the land of any other state agency or entity, the provision could amount to local and special legislation.

Section 42.40.360 The board may request conveyance of land owned by or tentatively approved for transfer to the state. Upon receipt of a request the commissioner of natural resources shall temporarily reserve the land for railroad purposes and delay disposal or lease of that land under other laws. The temporary reservation remains in effect for 180 days.

Section 42.40.370 Within 90 days after receiving a request, the commission must convey the state's interests in the land to the corporation, notify the corporation of reasons for refusal to classify the land for railroad purposes, or approve in part and deny in part the request. A conveyance under this section vests in the corporation the right to extract and use construction materials on the land without regard to whether the resources are part of the surface or

subsurface estate. The corporation may reconvey to the state land that the corporation and the commissioner identify as unnecessary for the corporation's purposes.

Section 42.40.380 When physical conditions require that track or fixtures be moved to state-owned land to maintain safe rail operations, the relocation may be made with concurrence of the Department of Natural Resources.

Section 42.40.390 The corporation is authorized to exercise the power of eminent domain and declaration of taking.

Section 42.40.400 The corporation may vacate land and title goes to the state.

Section 42.40.410 The corporation may acquire interests in federal land that is available under federal law.

Section 42.40.420 Upon request the corporation may grant to a municipality a right-of-way for a pedestrian walkway or trail. Before granting the right-of-way the board must require the municipality to agree to hold the corporation harmless and indemnify the corporation for any use made of the right-of-way and to vacate the right-of-way on request of the corporation if it interferes with expansion or replacement of railroad facilities.

Section 42.40.430 The corporation may acquire property available from the federal or state government.

Section 42.40.440 Vegetation control involving the use of pesticides or herbicides on land owned or managed by the corporation must be conducted in compliance with state requirements applicable to other state pesticide or herbicide use.

Section 42.40.500 A liability incurred by the corporation may be satisfied only from the assets of the corporation and no creditor has a right of action against the state.

Section 42.40.510 The corporation must obtain a fidelity bond for its board members and officers responsible for finances.

Section 42.40.520 The corporation must keep in force public liability insurance covering potential claims against the corporation or the state related to corporation activities.

March 30, 1984

Section 42.40.530 Revenue generated by or appropriated to the corporation shall be retained and used for railroad purposes by the corporation.

This raises a question concerning the application of Article IX, Section 7, of the constitution. As interpreted in State v. Alex 646 P. 2d 203 (Alaska, 1982), that prohibition against dedicated funds extends to all sources of public revenue, so it would apply to money generated by the Alaska Railroad. (See also 1982 Op. Att'y Gen., Nos. J66-785-81 and J66-649-80.) This legislation requires that revenue generated by the railroad corporation be retained for railroad purposes in contravention of the prohibition against dedicated funds. However, the federal law providing for the transfer of the railroad to the state requires that revenues generated by the state-owned railroad be kept by the railroad and used for railroad purposes. (45 U.S.C. 1207 (a)(5)) Faced with this requirement in federal law, it is likely that the Alaska Supreme Court will strain to fit this into the exception to the prohibition against dedicated funds as being ". . . required by the federal government for state participation in federal programs." (Article IX, Section 7, Constitution of the State of Alaska) In any case, there appears to be little the legislature can do to resolve the conflict between the federal railroad transfer law and the state constitution.

Section 42.40.540 With the concurrence of the governor, the corporation may request an appropriation from the legislature to assist it in carrying out AS 42.40.

Section 42.40.600 The corporation may issue bonds and bond anticipation notes. The board shall by resolution establish the form and manner of execution of bonds or bond notes. They may be sold as determined by the board and bonds shall mature at the time, not exceeding 50 years from their date, determined by the board.

Section 42.40.610 Bonds and notes issued by the corporation are negotiable instruments.

Section 42.40.620 Bonds and notes issued by the corporation are securities in which all public bodies of the state and other financial entities may invest funds.

Section 42.40.630 Bonds or notes are payable from corporation assets. Bonds or notes may be additionally secured from any source.

Section 42.40.640 An issue of bonds may be secured by a trust indenture or by a secured loan agreement giving powers to a corporate trustee by means of which the corporation may enter into any agreements with the trustees or holders of the bonds, pledge assets, and provide of any matter that affects the security of the bonds.

Section 42.40.650 In negotiating the sale of bonds or notes to an underwriter, the board must retain a financial advisor who is independent from the underwriter.

Section 42.40.660 If an officer whose signature appears on bonds, notes, or coupons attached to them ceases to be an officer before delivery of the bonds, notes, or coupons, the signature is valid.

Section 42.40.670 The pledge of assets of the corporation to the payment of bonds or notes is valid and the assets are subject to the lien of the pledge without physical delivery or other act. The corporation is not prohibited from selling assets subject to a pledge.

Section 42.40.680 A holder of bonds or notes or a trustee may enforce all rights under this chapter, the trust agreement or resolution, or any other contract executed by the corporation relating to the bonds or notes and may compel the performance of duties of the corporation required by law or the trust agreement or resolution.

Section 42.40.690 The state is not liable for the debts of the corporation. Bonds and notes are payable solely from the revenue or assets of the corporation and are not a liability of the state or a pledge of the faith and credit of the state. Each bond and note issued by the corporation must contain a statement that the corporation is not obligated to pay it except from the revenue or assets pledged for it, and neither the faith and credit nor the taxing power of the state is pledged to the payment of it.

Section 42.40.700 A board member or employee of the corporation is not subject to personal liability because of the execution or issuance of bonds or notes.

Section 42.40.710 Employees of the railroad are employees of the corporation and not of the state. Laws relating to public employees do not apply.

Section 42.40.720 Provisions relating to collective bargaining rights of public employees do not apply to the corporation's employees, but employees who are not executive officers may organize and engage in collective bargaining.

Section 42.40.730 A railroad labor relations agency is established to carry out the provisions of this article. Members receive no compensation but are entitled to per diem and travel expenses.

Section 42.40.740 The railroad labor relations agency shall decide the unit appropriate for the purposes of collective bargaining.

Section 42.40.750 The railroad labor relations agency must investigate a petition submitted by employees or a group of employees or organization alleging that 30 percent of the employees of a proposed bargaining unit want to be represented by an organization or that the organization reorganized by the corporation no longer represents the majority of employees in the unit. The railroad labor relations agency must also investigate a petition submitted by the corporation alleging that an organization has presented a claim to be recognized as representative of a majority of employees in a unit. The railroad labor relations agency must provide for a hearing on a question of representation and an election on the question if it finds that there is a question of representation. An election may not be held in a bargaining unit in which there is in force a valid collective bargaining agreement, except during a 90-day period preceding the expiration of the agreement.

Section 42.40.760 Action that constitutes an unfair labor practice is set out.

Section 42.40.770 If a complaint that an unfair labor practice has occurred is filed with the railroad labor relations agency, it shall investigate the complaint and shall try to eliminate any prohibited practice found to exist by informal methods of conference.

Section 42.40.780 If the railroad labor relations agency fails to eliminate a prohibited practice by conference it may serve a copy of the complaint on the respondent and the complaint shall be handled under the administrative adjudication portion of the Administrative Procedure Act.

Section 42.40.790 If the railroad labor relations agency finds that a person has engaged in a prohibited practice, the agency shall issue an order requiring the person to desist and carry out the provisions of this Article. If the agency finds that a person named in a complaint has not engaged in a prohibited practice, the agency shall dismiss the complaint.

Section 42.40.800 The railroad labor relations agency may apply for an order from the court enjoining prohibited acts.

Section 42.40.810 The railroad labor relations agency may issue subpoenas, administer oaths, examine witnesses, and receive evidence.

Section 42.40.820 The railroad labor relations agency is required to adopt regulations to carry out this article.

Section 42.40.840 When negotiation of a collective bargaining agreement reaches an impasse, the railroad labor relations agency appoints a person to act as mediator. The mediator must attempt to bring the parties together to effectuate a settlement, but may not compel a settlement.

Section 42.40.850 After a decision by a mediator, the employees may strike for a limited time. The strike may be enjoined if it has begun to threaten the health, safety, or welfare of the public. After an injunction is issued, if an impasse still exists the dispute shall be submitted to binding arbitration.

Section 42.40.860 The corporation shall seek advice from the Department of Administration before entering into a collective bargaining agreement, but the final decision regarding the agreement shall be made by the board. An agreement shall be in writing and shall include a grievance procedure. Either party may enforce an agreement by petition to the railroad labor relations agency.

Section 42.40.870 On written authorization the corporation shall deduct from the payroll of an employee the amount of dues and employee benefits as certified by the secretary of the exclusive bargaining representative and shall deliver the money deducted to that bargaining representative.

Section 42.40.880 A collective bargaining agreement that incorporates union security provisions shall safeguard the

rights of nonassociation of employees with bona fide religious convictions and shall declare an employee exempt from becoming a member upon submission of proof of religious conviction. The employee must pay an amount equal to regular dues to the organization and the organization shall contribute it to a charity.

Section 42.40.890 Definitions of "collective bargaining", "election", and "organization" for purposes of this Article are provided.

Section 42.40.900 Claims involving activities of the railroad shall be brought against the corporation and not against the state. Certain laws applicable to claims against the state do not apply to the corporation.

Section 42.40.910 The property of the corporation and its assets are exempt from taxes and special assessments of the state or a political subdivision of the state. Bonds and notes issued by the corporation are exempt from taxation except for inheritance, transfer, and estate taxes.

Section 42.40.920 Certain state laws listed in this section do not apply to the corporation. The railroad is not subject to the jurisdiction of the Alaska Transportation Commission.

Section 42.40.930 If provisions of this Act conflict with the provisions of other state law, the provisions of this Act prevail. Where possible, provisions of this Act shall be construed so that they do not conflict with the Alaska Railroad Transfer Act of 1982.

Section 42.40.940 The assets of the corporation revert to the state if it ceases to exist.

Section 42.40.980 Definitions for the chapter are provided.

Section 42.40.990 The short title of this chapter is the Alaska Railroad Corporation Act.

The following provisions take effect when a constitutional amendment is adopted:

\* Section 3 The provision that the corporation is in the Department of Commerce and Economic Development is deleted.

\* Section 4 The commissioner of commerce and economic development is eliminated from the board and another appointed member is added.

\* Section 5 Reference to the commissioner of commerce and economic development is deleted.

\* Section 6 Reference to the commissioner is deleted and the board members no longer serve at the pleasure of the governor.

\* Section 7 The governor may remove a board member only for certain itemized causes.

\* Section 8 The reference to the commissioner is deleted.

The following temporary law sections take effect immediately:

\* Section 9 The corporation must prepare a report for the governor and the legislature on the long-term operations of the railroad. The report is due on January 1, 1988 and must contain specific recommendations on operational alternatives and the transfer of the railroad's operations to the private sector.

\* Section 10 Members of the first board of directors serve terms that differ in length and will result in staggered terms for members that follow.

\* Section 11 Before transfer of the railroad to the state, the corporation and its employees shall adopt collective bargaining agreements that continue the provisions in effect between the Alaska Railroad and its employees on the date of transfer. The agreements adopted under this section remain in effect to the extent required under the Alaska Railroad Transfer Act. On or before the date of transfer the board shall adopt personnel rules necessary to prevent an interruption of services, within 180 days after the first meeting of the board, the board and representatives of employee bargaining units shall establish procedures for the renegotiation of collective bargaining agreements. The board shall renegotiate all agreements adopted under this section within two years after the date of transfer.

The following sections contain effective dates:

Representative Joe Hayes  
Page 13  
March 30, 1984

\* Section 12 Section 3 - 8 take effect on the effective date of a constitutional amendment relating to the Alaska Railroad.

\* Section 13 The rest of the Act takes effect immediately.

TBC:ojb  
J5/026

**HB 512  
ARTICLE 7**

**COMPARISON OF 3/15/84 WORK DRAFT  
WITH PROPOSED DRAFT**

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

*Our draft is identical, except that we have made the "conflict of interest" provisions of AS 39 apply to the board and all appointed executive officers.*

(b) The collective bargaining agreements in effect on the date of transfer between the corporation and its employees shall remain in effect until they expire by their terms or, as required under 45 U.S.C. 1206 (Alaska Railroad Transfer Act of 1982), they are renegotiated, subject to the approval of the board.

*This language is not included in our draft because similar language is already included in the "temporary law" section of the bill.*

(c) Subject to the provisions of 45 U.S.C. 1206 (Alaska Railroad Transfer Act) within 180 days of the first meeting of the board, the board and representatives of employee bargaining units shall implement ground rules for the re-negotiation of collective bargaining agreements.

*This language is not included in our draft, but could be included in the "temporary law" section of the bill.*

Sec. 42.40.710 COLLECTIVE BARGAINING (a) The provisions of AS 23.40.01C - 23.40.080, AS 23.40.110, AS 23.40.200 - 23.40.260 (Public Employee Relations Act) do not apply to the corporation or to its employees. However, employees that are not executive officers may

organize, and form, join, or assist an organization to engage in collective bargaining with respect to wages, hours and other terms and conditions of employment.

*This language provides that selected sections of the Public Employees ~~Relationship~~ Act (PERA) apply to the railroad corporation, and exempts them from other sections. The language in our draft exempts them from all of the provisions of PERA, and incorporates language from appropriate provisions of PERA as part of the railroad bill.*

(b) The Department of Administration may participate in labor negotiations between the corporation and an employee organization. The corporation shall seek advice of the Department of Administration prior to entering into a collective bargaining agreement concerning wages, hours, and other terms and conditions of employment. However, the final decision regarding collective bargaining agreements shall be made by the board.

*This language is not consistent with the position of the Administration. But, to be consistent with the Committee's draft we have included the same language in Sec. 42.40.850 (b) of our draft (except that we have changed may participate to shall participate).*

(c) An agreement executed between the corporation and an employee organization shall provide for a grievance procedure in which the final step is binding arbitration. The agreement shall define "grievance" for purposes of this section.

*Our draft includes comparable language in Sec. 42.40.850 (a).*

Sec. 42.40.720 RAILROAD EMPLOYEES LABOR RELATIONS AGENCY (a)  
There is established a railroad employees labor relations agency that consists of three members appointed by the governor. One member shall be a member of the state personnel board. Members serve at the pleasure

of the governor.

*Our draft includes similiar langauge in Sec. 42.40.720*

(b) The railroad labor relations agency shall perform the functions described in AS 23.40.090 - 23.40.100, and AS 23.40.120 - 23.40.190.

*Our draft contains similiar language. But, some of the sections of AS 23.40 referenced in this language are incorporated into the language of our draft.*

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

*Our draft contains the same language.*

Sec. 42.40.730 ADVISORY ARBITRATION (a) If efforts at mediation under AS 23.40.190 fail to resolve a dispute, the dispute shall be submitted to advisory arbitration. The corporation shall choose one of the arbitrators, and the railroad employees labor relations board shall choose one of the arbitrators.

(b) Arbitration of the dispute shall be conducted under AS 09.43.100 to the extent that the sections do not conflict with this section. A decision reached by the arbitrators shall not be binding upon the parties.

*Our draft substitutes Sec. 42.40.830 (MEDIATION) for this section.*

Sec. 42.40.740 STRIKES (a) After submitting a dispute to advisory arbitration, employees may engage in a strike of a majority of all employees in collective bargaining units vote by secret ballot to do so.

*We include a strike section in Sec. 42.40.840 but have added a provision for a 90 day "cooling off" period, and have revised the language to assure equal representation for each employee.*

(b) Notwithstanding the provisions of (a) of this section, the employees of the corporation may agree in writing to submit a dispute arising from interpretation or application of a collective bargaining agreement to arbitration.

*We have deleted this section because it is redundant. Sec. 23.40.710 (c) of the House draft and Sec. 42.40.850 (a) of our draft already provide for this.*

Sec. 42.40.750 POLITICAL ACTIVITIES (a) Money, assets, or property of the corporation may not be used for political activity. However, board members and employees of the corporation may communicate with and appear before committees of Congress, the State legislature, and municipal governing bodies in connection with matters directly affecting the corporation.

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

*This section is not in our draft, but there is no objection to including it.*

Sec. 42.40.760 PROHIBITED ACTS (a) The railroad chief executive officer, or any person employed by the corporation may not directly or indirectly:

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

(2) require or coerce any employee of the corporation to make any report concerning any of his/her activities or undertakings unless the activity or undertaking is related to the performance of his official duties.

(3) except as directly related to the performance of his/her official duties, require or coerce any employee of the corporation to submit to any interrogation or examination or psychological test which is designed to elicit from him information concerning

(A) his personal relationship with any person connected with him

by blood or marriage,

(B) his/her religious beliefs or practices,

(C) sexual matters

(D) his/her political affiliation or philosophy

(4) coerce any employee of the corporation to invest or contribute his earnings in any manner or for any purpose;

(5) restrict or attempt to restrict after-working-hour statements, pronouncements or other activities, not otherwise prohibited by law or personnel rule, of any employee of the corporation, if the employee does not proprot to speak or act in an official activity.

(b) The provisions of (a) of this section do not diminish the authority of an authorized law enforcement agency to conduct criminal investigations of corporation employees suspected of being involved in criminal activity.

*This section is not included in our draft because we assume that these provisions would be included in the personnel rules of the corporation. There is no objection to including the language in the law.*

SIDE-BY-SIDE COMPARISON  
OF CSHB 512 (TRANSPORTATION)  
AND  
CSSB 352 (TRANSPORTATION)

Prepared By:  
House Transportation Committee Staff  
March 27, 1984

TABLE OF CONTENTS

	<u>PAGE NUMBER</u>
Legislative Findings and Purpose	1
Establishment of the Corporation	3
Board of Directors	4
Term of Office	5
Vacancies	6
Compensation and Expenses	7
Board Officers	8
Management by the Board	9
Executive Officers	10
Delegation	11
Meetings of the Board	13
Quorum and Voting	14
Executive Sessions	15
Rules	16
Previously Adopted Rules and Orders	17
Public Disclosure of Information	18
Conflicts of Interest	19
Emergency Rules	20

Validity of Rules	21
General Powers	22
Annual Report	25
Audits	26
State Oversight Reports	27
Long Range Program and Capital Improvement Plans	28
Long Range Capital Improvement and Program Plan	28
Use of Corporation Assets	29
Indemnification	30
Land	31
Request for Land	32
Conveyance of Land	33
Use of State Land	34
Eminent Domain	35
Vacation of Land	36
Land Use Rules	37
Federal Land	38
Municipal Rights-of-Way	39
Municipal Use of Railroad Land	39
Acquisition of Government Property	40

Use of Pesticides and Herbicides	41
Limitation of Liability	42
Fidelity Bond	43
Insurance	44
Revenue	45
Appropriations	46
General Provisions	47
Negotiable Instruments	48
Bonds and Notes Eligible for Investment	49
Payment of Bonds and Notes	50
Security for Bonds	51
Agreements with Holders	51
Independent Financial Advisor	53
Validity of Signatures	54
Validity of Pledge	55
Remedies	56
Credit of State Not Pledged	57
Limitation on Personal Liability	58
Interim Receipts, Temporary Bonds, and Temporary Bond Anticipation Notes	59

Refunding Bonds	60
Corporation Employees	61
Collective Bargaining Rights	62
Railroad Labor Relations Agency	63
Railroad Employees Labor Relations Agency	63
Collective Bargaining Unit	64
Representatives and Elections	65
Unfair Labor Practices	67
Prohibited Acts	67
Investigation and Conciliation of Complaints	68
Complaint and Accusation	69
Orders and Decisions	70
Enforcement by Injunction	71
Power to Investigate and Compel Testimony	72
Regulations	73
Penalty for Violations of Order or Decision	74
Mediation	75
Strikes	76
Agreements	77
Organization Dues and Employee Benefits, Deductions and Authorizations	78

Exemption	79
Definitions	80
Political Activities	81
Claims	82
Exemption from Taxation	83
Application of Existing Laws	84
Conflicting Laws Inapplicable	85
Reversion of Assets	86
Definitions	87
Short Title	88
Effective On The Passage Of The Constitutional Amendment	
Sec. 3 AS 42.40.010 amended Establishment of the Corporation	89
Sec. 4 AS 42.40.020 amended Board of Directors	90
Sec. 5 AS 42.40.020 (e) amended Board of Directors	91
Sec. 6 AS 42.40.030 amended Term of Office; Removal	92
Sec. 7 AS 42.40.030 amended Term of Office; Removal	93
Sec. 8 AS 42.40.040 (a) amended (House) Vacancies	94
Sec. 8 AS 42.40.180 repealed and reenacted (Senate) Fines	95

Sec. 12 AS 42.40.190 and AS 42.40.200 Emergency Rules and Validity of Rules	101
Special Report	96
Appointment of First Board of Directors of Alaska Railroad Corporation	97
Collective Bargaining Agreements	98
Sec. 12 Effective Dates (House)	99
Sec. 13 Effective Dates (Senate)	99
Sec. 13 Effective Dates (House)	100
Sec. 14 Effective Dates (Senate)	100

# CSSB 352(T)

# CSHB 512(T)

Original sponsors: Kerttula, Falks,  
Halford, et al

1 IN THE SENATE BY THE TRANSPORTATION COMMITTEE  
2 CS FOR SENATE BILL NO. 352 (Transportation)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Alaska Railroad Corpora-  
7 tion to operate the Alaska Railroad with a board of  
8 nine directors responsible for management of the  
9 corporation; requiring the board to appoint a chief  
10 executive officer to manage the daily affairs and  
11 operations of the corporation; authorizing the  
12 board to adopt rules to carry out its functions;  
13 authorizing the corporation to issue bonds and notes;  
14 authorizing the corporation to own and manage all  
15 property acquired by the corporation or transferred  
16 to the state under 45 U.S.C. 1201 - 1214 (Alaska  
17 Railroad Transfer Act of 1982); authorizing the  
18 corporation to exercise eminent domain; exempting  
19 the corporation from AS 19, AS 23.40, AS 30.15,  
20 AS 35, AS 37.05, AS 37.07, AS 37.10.010 - 37.10.060,  
21 37.10.085, AS 37.20, AS 37.25, AS 38, AS 39, and  
22 AS 44.62.040 - 44.62.320; and providing for an  
23 effective date."

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

25 \* Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature  
26 finds that

27 (1) it is the policy of the state to

28 (A) provide safe, economical, and efficient transportation  
29 to residents, businesses, visitors, and military installations in the  
30 state;

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

33 (C) develop and implement plans for a transportation net-  
34 work;

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

Original sponsors: Hayes, Ringstad,  
Shultz, et al

1 IN THE HOUSE BY THE TRANSPORTATION COMMITTEE  
2 CS FOR HOUSE BILL NO. 312 (Transportation)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

12 (1) it is the policy of the state to

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

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

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

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

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

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

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

29 (5) there is vast potential in Alaska's natural resource areas  
30 and extension of the Alaska Railroad into natural resource areas is neces-  
31 sary for long-term economic growth.

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

33 (1) create a viable economic entity with the powers and duties  
34 necessary to operate and manage the Alaska Railroad pending eventual trans-  
35 fer of the railroad to the private sector for its ownership or operation or  
36 both consistent with 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of  
37 1982);

## CSSB 352(T)

## CSHB 512(T)

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

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

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

(b) It is the purpose of this Act to

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

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

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

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

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

(C) have the ability to raise capital by issuing obligations exempt from federal and state taxation and applying for federal money to which the state may be entitled or that may be available;

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

(E) provide the best possible combination of types and levels of safe, efficient, and economical transportation to meet the overall needs of the state, supported when necessary by state investment;

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

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

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

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

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

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

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

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

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

(E) provide the best possible combination of types and levels of safe, efficient, and economical transportation to meet the overall needs of the state, supported when necessary by state investment;

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

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

# CSSB 352(T)

# CSHB 512(T)

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

20 CHAPTER 40. ALASKA RAILROAD CORPORATION.

21 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

22 Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is  
23 established the Alaska Railroad Corporation. The corporation is a  
24 public corporation and is an instrumentality of the state within the  
25 Department of Commerce and Economic Development. The corporation has  
26 a legal existence independent of and separate from the state. The  
27 exercise by the corporation of the powers provided in this chapter is  
28 considered an essential government function of the state.

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

5 CHAPTER 40. ALASKA RAILROAD CORPORATION.

6 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

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

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Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the corporation are vested in the board of directors. The board consists of the commissioner of commerce and economic development, the chief executive officer of the corporation, and seven members appointed by the governor. The seven appointed members must be registered voters in the state except as provided in (b) and (c) of this section. No more than two appointed members may be from any one of the four judicial districts in the state. Two of the appointed members must have at least five years experience as owners or managers of a business in the state. Except for the commissioner, the chief executive officer, and the member appointed under (d) of this section, a member may not be a state officer or employee.

(b) One member of the board shall be a person who has at least 10 years of experience in railroad management. A person who is not a resident of the state may be appointed under this subsection.

(c) One member of the board shall be or have been an executive official of a United States railroad and shall be selected in accordance with any requirements imposed under 49 U.S.C. (Interstate Commerce Act). A person who is not a resident of the state may be appointed under this subsection.

(d) One member shall be an employee who is a member of a bargaining unit representing employees of the corporation.

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

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

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

(c) One member of the board may be or have been an executive official of a United States railroad that is not now and never was a connecting carrier of the Alaska Railroad.

(d) One member shall be an employee who is a member of a bargaining unit representing employees of the corporation.

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

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

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

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

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

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

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

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

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

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Sec. 42.40.050. COMPENSATION AND EXPENSES. (a) An appointed member of the board is entitled to compensation at a rate of \$250 for each day the member is engaged in the actual performance of duties as a member of the board. The board may provide by rule for compensation for partial days during which an appointed member is engaged in actual performance of duties as a member of the board.

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

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

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

# CSSB 352(T)

# CSHB 512(T)

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

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

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# CSSB 352(T)

# CSHB 512(T)

ARTICLE 2. MANAGEMENT.

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

- (1) be responsible for the management of the financial and legal obligations of the Alaska Railroad;
- (2) operate the Alaska Railroad as a common carrier subject to the jurisdiction of the United States Interstate Commerce Commission consistent with 45 U.S.C. 1207;
- (3) generally manage the corporation on a self-sustaining basis;
- (4) apply to the legislature for an appropriation to be used to provide a particular service that is not otherwise self-sustaining if a subsidy is required to maintain that service;
- (5) provide for safe, efficient, and economical transportation to meet the overall needs of the state;
- (6) raise needed capital by issuing obligations of the corporation while ensuring that borrowing by the corporation does not directly or indirectly endanger the state's own borrowing capacity;
- (7) review all private and state land disposal proposals to aid in planning for future development or expansion of transportation services;
- (8) ensure that the accounting and procurement procedures of the corporation meet accepted railroad industry standards.

ARTICLE 2. MANAGEMENT.

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- (3) generally manage the corporation on a self-sustaining basis;
- (4) provide for safe, efficient, and economical transportation to meet the overall needs of the state;
- (5) raise needed capital by issuing obligations of the corporation while ensuring that borrowing by the corporation does not directly or indirectly endanger the state's own borrowing capacity;
- (6) review state and other land disposal proposals to aid in planning for future development or expansion of transportation services;
- (7) ensure that the accounting and procurement procedures of the corporation meet accepted railroad industry standards.

# CSSB 352(T)

# CSHB 512(T)

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Sec. 42.40.110. EXECUTIVE OFFICERS. (a) The board shall appoint the chief executive officer of the corporation who serves at the pleasure of the board. The board shall fix compensation for the chief executive officer.

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

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Sec. 42.40.110. EXECUTIVE OFFICERS. (a) The board shall appoint the chief executive officer of the corporation who serves at the pleasure of the board. The board shall fix compensation for the chief executive officer.

(b) The chief executive officer of the corporation shall appoint and fix the compensation for other executive officers. The appointment of other executive officers and their compensation are subject to board approval.

# CSSB 352(T)

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

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

- (1) leasing, granting easements in, issuing permits for the use of, or conveying other interests in property;
- (2) establishing specific rates, tariffs, divisions, and contract rate agreements;
- (3) making routine changes in service levels;
- (4) establishing procurement and accounting procedures for the corporation; and
- (5) performing procurement activities.

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

- (1) conveying the corporation's entire interest in land;
- (2) issuing notes, debentures, and bonds;
- (3) mortgaging or pledging corporation assets;
- (4) donating property or other assets belonging to the corporation;
- (5) acting as a surety or guarantor;
- (6) adopting a long-range capital improvement and program plan;
- (7) certifying annual reports;
- (8) effecting generally applicable increases and decreases in rates other than those periodically approved by the United States Interstate Commerce Commission;
- (9) expanding or reducing services in a major unit;
- (10) expanding the main or branch rail lines, other than performing routine track alignment as necessary to maintain service levels in effect on the date of transfer;
- (11) selecting independent auditors and accountants;
- (12) exercising the power of eminent domain;
- (13) entering into collective bargaining agreements; and
- (14) adopting annual budgets.

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Sec. 42.40.120. DELEGATION. (a) The board shall by rule delegate to the chief executive officer powers and duties necessary or appropriate for the management of the daily affairs and operations of the corporation.

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

- (1) leasing, granting easements in, issuing permits for the use of, or conveying other interests in property;
- (2) establishing specific rates, tariffs, divisions, and contract rate agreements;
- (3) making routine changes in service levels;
- (4) establishing procurement and accounting procedures for the corporation; and
- (5) performing procurement activities.

(c) The board may by rule require the exercise of a power or duty delegated under (a) or (b) of this section to be subject to board approval. Specific board approval is required for the following:

- (1) except for executing a release of a mortgage or other lien after payment is received, conveying the corporation's entire interest in land;
- (2) issuing notes, debentures, and bonds;
- (3) mortgaging or pledging corporation assets;
- (4) donating property or other assets belonging to the corporation;
- (5) acting as a surety or guarantor;
- (6) adopting a long-range program or capital improvement plan;
- (7) certifying annual reports;
- (8) effecting generally applicable increases and decreases in rates other than those periodically approved by the United States Interstate Commerce Commission;
- (9) diversifying, expanding, or reducing services provided on the date of transfer;
- (10) expanding the main or branch rail lines, other than performing routine track alignment as necessary to maintain service levels in effect on the date of transfer;

# CSSB 352(T)

# CSHB 512(T)

- 23 (11) selecting independent auditors and accountants;
- 24 (12) exercising the power of eminent domain;
- 25 (13) entering into collective bargaining agreements;
- 26 (14) adopting annual budgets; and
- 27 (15) beginning capital projects with an estimated completion
- 28 cost of more than \$500,000 or an estimated completion time of more
- 29 than one year.

# CSSB 352(T)

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## ARTICLE 3. ADMINISTRATIVE PROVISIONS.

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

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

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

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

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

# CSSB 352(T)

# CSHB 512(T)

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

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

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

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Sec. 42.40.170. EXECUTIVE SESSIONS. (a) The question of holding an executive session shall be determined by a majority vote of the board. A subject may not be considered at an executive session unless it is mentioned in the motion calling for the executive session or is auxiliary to a subject mentioned. An action may not be taken at an executive session.

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

- (1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the corporation;
- (2) unless the person has requested to have the subjects discussed in public, subjects that tend to prejudice the reputation and character of a person;
- (3) matters that, by law or municipal charter or ordinance, are permitted to be kept confidential from public disclosure;
- (4) matters pertaining to personnel;
- (5) matters pertaining to the corporation's legal position;
- (6) land acquisition or disposal; and
- (7) proprietary or other information of a type treated as confidential under the standards and practices of the United States Interstate Commerce Commission, including practices that protect information associated with specific shippers, divisions, and contract rate agreements.

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Sec. 42.40.170. EXECUTIVE SESSIONS. The board may consider in an executive session matters that pertain to personnel, the corporation's legal position, land acquisition or disposal, or proprietary or other information of a type treated as confidential under the standards and practices of the United States Interstate Commerce Commission, including practices that protect information associated with specific shippers, divisions, and contract rate agreements.

# CSSB 352(T)

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Sec. 42.40.180. RULES. (a) The board shall adopt rules to carry out its functions and the purposes of this chapter, including rules to safeguard property owned, managed, or transported by the corporation and to protect employees and persons using the corporation's property or services. At least 15 days before the adoption, amendment, or repeal of a rule the board shall give public notice of the proposed action by publishing a notice in at least three newspapers of general circulation in the state and by mailing a copy of the notice to each person who has requested notice of proposed changes to rules. The notice must state the time, place, and nature of the proceedings and must contain a summary of the subject of the proposed change.

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

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

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

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Sec. 42.40.180. RULES. (a) The board may adopt rules  
(1) governing the business of the corporation; and  
(2) designed to safeguard property owned, managed, or transported by the corporation and to protect employees and persons using the corporation's property or services.

(b) Within 90 days after its first meeting, the board shall establish a procedure for adopting, amending, and repealing rules to carry out the functions and the purposes of this chapter. The procedures shall provide for advance public notice and opportunity for public comment on proposed rules or changes to rules that, in the determination of the board, will have a substantial impact on the public or be used in the corporation's dealings with a significant segment of the public.

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

# CSSB 352(T)

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

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Sec. 42.40.190. PREVIOUSLY ADOPTED RULES AND ORDERS. The board may provide by resolution that rules and orders in effect on the date of transfer that are not inconsistent with this chapter or other state law remain in effect until amended or repealed by the board. The board may adopt the substance of former federal rules or orders relating to the Alaska Railroad and this may not be considered a continuation of the federal rules or orders if adopted by the board in accordance with procedural requirements of this chapter or other law.

# CSSB 352(T)

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

(b) The corporation may by rule designate and withhold public disclosure of matters of a nonpublic, privileged, or proprietary nature. Those matters include personnel records, communications with and work product of legal counsel, and consistent with the standards and practices of the United States Interstate Commerce Commission for the protection of these matters, other information including proprietary information associated with specific shippers, divisions and contract rate agreements.

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

(b) The corporation may by rule designate as confidential and withhold public disclosure of matters of a nonpublic, privileged, or proprietary nature. Those matters include personnel records, communications with and work product of legal counsel, and consistent with the standards and practices of the United States Interstate Commerce Commission for the protection of these matters, other information including proprietary information associated with specific shippers, divisions and contract rate agreements.

## CSSB 352(T)

## CSHB 512(T)

NO COMPARABLE PROVISION

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

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

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

(d) Within 120 days of the first meeting of the board, the board shall adopt and may subsequently amend rules implementing this section, providing additional conflict of interest and ethical rules it considers appropriate, and providing for the removal by the board of a board member or executive officer who intentionally violates a

prohibition contained in this section.

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

## CSSB 352(T)

## CSHB 512(T)

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Sec. 42.40.190. EMERGENCY RULES. (a) The board shall establish in the bylaws of the corporation a procedure for the adoption, amendment, or repeal of a rule on an emergency basis. An emergency change may be made only when necessary for the orderly operation of the corporation's facilities or programs. The requirements of AS 42.40.180 do not apply to actions taken under this section. However, within 10 days after the adoption, amendment, or repeal of a rule on an emergency basis the board shall give notice of its action that substantially complies with the notice requirements of AS 42.40.180(a).

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

SEE PAGE 16, PARAGRAPH C  
LINE 9  
FOR EMERGENCY RULES

**CSSB 352(T)****CSHB 512(T)**

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

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

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

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

**NO COMPARABLE PROVISION**

# CSSB 352(T)

# CSHB 512(T)

CONFIDENTIAL

## ARTICLE 4. POWERS AND DUTIES.

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

- (1) adopt a seal;
- (2) adopt bylaws governing the business of the corporation;
- (3) sue and be sued;
- (4) appoint trustees and agents of the corporation and prescribe their powers and duties;
- (5) hire legal counsel to represent the corporation;
- (6) make contracts and execute instruments necessary or convenient in the exercise of its powers and duties;
- (7) acquire by purchase, lease, bequest, devise, gift, exchange, the satisfaction of debts, the foreclosure of mortgages, or otherwise, personal property, rights, rights-of-way, franchises, easements, and other interest in land, and acquire by appropriation water rights that are located in the state, taking title to the property in the name of the corporation;
- (8) hold, maintain, use, operate, lease, exchange, donate, improve, convey, alienate, dispose of, or transfer land or personal property, subject to other provisions of this chapter;
- (9) contract with and accept transfers, gifts, grants or loans of funds or property from the United States and the state or its political subdivisions, subject to other provisions of federal or state law or municipal ordinances;
- (10) undertake and provide for the management, operation, maintenance, use, and control of all of the property of the corporation, including all land and personal property of the Alaska Railroad transferred under 45 U.S.C. 1201(a) and described in the report dated July 14, 1983, as amended, submitted to Congress and the legislature under 45 U.S.C. 1204(a);
- (11) recommend to the legislature and the governor any tax, financing, or financial arrangement the corporation considers appropriate for expansion or extension and operation of the Alaska Railroad;
- (12) maintain offices and facilities at places it designates;
- (13) apply to the state, the United States, and foreign countries or other proper agencies for the permits, licenses, or approvals necessary to construct, maintain, and operate railroad transportation services, and obtain, hold, and reuse the licenses and permits in the same manner as other railroad operators;

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- (2) adopt bylaw governing the business of the corporation;
- (3) sue and be sued;
- (4) appoint trustees and agents of the corporation and prescribe their powers and duties;
- (5) hire legal counsel to represent the corporation;
- (6) make contracts and execute instruments necessary or convenient in the exercise of its powers and duties;
- (7) acquire by purchase, lease, bequest, devise, gift, exchange, the satisfaction of debts, the foreclosure of mortgages, or otherwise, personal property, rights, rights-of-way, franchises, easements, and other interest in land, and acquire by appropriation water rights that are located in the state, taking title to the property in the name of the corporation;
- (8) hold, maintain, use, operate, lease, exchange, donate, improve, convey, alienate, dispose of, mortgage, encumber, and otherwise grant security interests in or transfer land or personal property, subject to other provisions of this chapter;
- (9) contract with and accept transfers, gifts, grants or loans of funds or property from the United States and the state or its political subdivisions, subject to other provisions of federal or state law or municipal ordinances;
- (10) undertake and provide for the management, operation, maintenance, use, and control of all of the property of the corporation, including tracks, equipment and other property transferred to the corporation by the federal government or any person;
- (11) recommend to the legislature and the governor any tax, financing, or financial arrangement the corporation considers appropriate to carry out the duties under this chapter;
- (12) maintain offices and facilities at places it designates;
- (13) apply to the state, the United States, and foreign countries or other proper agencies for the permits, licenses, or approvals necessary to construct, maintain, and operate railroad transportation services, and obtain, hold, and reuse the licenses and permits in the same manner as other railroad operators;

## CSSB 352(T)

## CSHB 512(T)

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

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

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

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

28 (18) hire and discharge railroad personnel and determine  
29 benefits and other terms of employment, in accordance with 45 U.S.C.  
1 1201 - 1214 (Alaska Railroad Transfer Act of 1982);

2 (19) assume and satisfy liabilities of the United States in  
3 accordance with 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of  
4 1982) and the closing report of July 14, 1983, as amended, prepared  
5 and submitted to Congress and the Legislature under 45 U.S.C. 1204(a);

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

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

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

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

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

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

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

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

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

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

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

1 (18) hire and discharge railroad personnel and determine  
2 benefits and other terms of employment, in accordance with 45 U.S.C.  
3 1201 - 1214 (Alaska Railroad Transfer Act of 1982);

4 (19) assume and satisfy liabilities of the United States in  
5 accordance with 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of  
6 1982);

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

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

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

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

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

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

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

## CSSB 352(T)

## CSHB 512(T)

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

1 | (27) acquire, hold, and dispose of stocks, memberships,  
 2 | contracts, bonds, general or limited partnership interests or other  
 3 | interests in another corporation, association, partnership, joint  
 4 | venture, or other legal entity, and exercise the powers or rights in  
 5 | connection with these interests that are provided in contracts or  
 6 | agreements and that are allowed by law concerning the satisfaction of  
 7 | debts;

8 | (28) undertake and provide for the acquisition, construc-  
 9 | tion, maintenance, equipping, and operation of connecting, switching,  
 10 | terminal, or other railroads and railroad facilities in the state;

11 | (29) do all things necessary or desirable to carry out the  
 12 | powers and duties of the corporation granted or necessarily implied in  
 13 | this chapter or other laws of the state or the laws or regulations of  
 14 | the federal government.

# CSSB 352(T)

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Sec. 42.40.260. ANNUAL REPORT. Within 90 days following the end of the fiscal year of the Alaska Railroad the board shall direct preparation of, certify and distribute to the governor and to the legislature a report describing the operations and financial condition of the corporation during the preceding fiscal year. The report shall itemize the cost of providing each category of service offered by the railroad and the income generated by each category.

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

# CSSB 352(T)

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Sec. 42.40.270. AUDITS. (a) The board shall have the financial records of the corporation audited annually by an independent certified public accountant experienced in railroad accounting. The board shall have an annual performance audit conducted by a recognized railroad management expert to assure that the railroad is being managed and operated effectively and efficiently in accordance with the requirements of this chapter.

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

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

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

# CSSB 352(T)

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**NO COMPARABLE PROVISION**

6                   Sec. 42.40.280. STATE OVERSIGHT REPORTS. (a) The board shall  
7 provide a state oversight report to the governor and the legislature  
8 before undertaking  
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10                   (1) expansion, reduction, or diversification of services  
11 provided by the railroad upon the date of transfer or as provided  
12 under this chapter that the board determines would represent a signif-  
13 icant and permanent change in the level and nature of services pro-  
14 vided;  
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16                   (2) extension of the main or branch lines by more than 25  
17 miles or five percent of the railroad's total track mileage, whichever  
18 is greater; or  
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20                   (3) the issuance of securities, notes, bonds or con-  
21 tracts with a term in excess of one year and in an amount exceeding  
22 \$5,000,000;  
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24                   (4) an application for an appropriation to be used for  
25 providing any service that is not self-sustaining.  
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27                   (b) The report under (a) of this section shall be in writing,  
28 describe the proposed undertaking in detail, and specify  
29                   (1) its financial impact on the corporation;  
30                   (2) its impact on the level and nature of services provided  
31 by the corporation;  
32                   (3) the reasons the action is necessary or desirable to  
33 achieve the purposes of this chapter; and  
34                   (4) whether and when the undertaking is expected to be  
35 self-sustaining financially.

# CSSB 352(T)

# CSHB 512(T)

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Sec. 42.40.200. LONG RANGE CAPITAL IMPROVEMENT AND PROGRAM PLAN.

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

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

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

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

# CSSB 352(T)

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Sec. 42.40.290. USE OF CORPORATION ASSETS. The corporation shall apply all money, property, other assets, and credit of the corporation toward activities authorized by this chapter. The corporation may not issue shares of stock, pay dividends, make private distributions of assets, make loans to board members or employees, or engage in business for private benefit. The use of money, property, other assets, or credit of the corporation for a purpose not authorized by law by a person having the possession or control of it is prohibited.

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Sec. 42.40.300. USE OF CORPORATION ASSETS. The corporation shall apply all money, property, other assets, and credit of the corporation toward activities authorized by this chapter. The corporation may not issue shares of stock, pay dividends, make private distributions of assets, make loans to board members or employees, or engage in business for private benefit. The use of money, property, other assets, or credit of the corporation for a purpose not authorized by law by a person having the possession or control of it is prohibited.

## CSSB 352(T)

## CSHB 512(T)

13 Sec. 42.40.300. INDEMNIFICATION. (a) The corporation may  
 14 defend and indemnify a current or former member of the board, em-  
 15 ployee, or agent of the corporation against all costs, expenses, judg-  
 16 ments, and liabilities, including attorney's fees, incurred by or  
 17 imposed upon that person in connection with a civil or criminal action  
 18 in which the person is involved by affiliation with the corporation,  
 19 if the person acted in good faith on behalf of the corporation and  
 20 within the scope of official duties or powers.

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

28 Sec. 42.40.310. INDEMNIFICATION. (a) The corporation may  
 29 defend and indemnify a current or former member of the board,  
 1 employee, or agent of the corporation against all costs, expenses,  
 2 judgments, and liabilities, including attorney's fees, incurred by or  
 3 imposed upon that person in connection with a civil or criminal action  
 4 in which the person is involved by affiliation with the corporation,  
 5 if the person acted in good faith on behalf of the corporation and  
 6 within the scope of official duties or powers.

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

# CSSB 352(T)

# CSHB 512(T)

ARTICLE 5. CORPORATION PROPERTY.

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Sec. 42.40.350. LAND. (a) All land transferred under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982) or otherwise acquired by the corporation is under the control of the corporation. All land that is transferred or acquired by the corporation is designated as follows:

(1) railroad rights-of-way or easements or railroad utility corridors;

(2) land other than railroad rights-of-way or easements is rail land.

(b) Railroad utility corridors shall be of a width at least 100 feet on both sides of the centerline of the extended main or branch line, or may be of lesser width if the adjoining land is not rail land, and may be surveyed by the metes and bounds method. The corporation may not convey land within a utility corridor. However, the corporation may lease, grant easements or permits, or otherwise authorize use of portions of a utility corridor for transportation, communication, and transmission purposes and support functions associated with those purposes, and for other uses authorized under this chapter if the use does not restrict other parallel uses of the utility corridor.

(c) The corporation may convey, lease, grant easements or permits, or otherwise authorize use of portions of rail land.

ARTICLE 5. CORPORATION PROPERTY.

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Sec. 42.40.350. LAND. (a) All land transferred under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982) or otherwise acquired by the corporation is under the control of the corporation. All land that is transferred or acquired by the corporation is designated as follows:

(1) railroad rights-of-way or easements or railroad utility corridors;

(2) land other than railroad rights-of-way or easements is rail land.

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

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

# CSSB 352(T)

# CSHB 512(T)

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Sec. 42.40.360. REQUEST FOR LAND. (a) The board may nominate federal land necessary or useful for present, future or intended railroad purposes and request the commissioner of natural resources to select the land for the state through the federal land selection process.

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

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

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

# CSSB 352(T)

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

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

(2) notify the corporation of reasons for refusal to designate the identified land for railroad purposes; or

(3) approve in part and deny in part the request.

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

(c) In the absence of a reservation to the contrary, a conveyance of land under this section vests in the corporation ownership, control of the surface and subsurface, and the exclusive right to extract or use timber and other construction materials, sand, gravel, rock, and the right to tunnel, ditch, recontour, excavate, or otherwise use the land for railroad, transportation, transmission, and related purposes without regard to the classification of the resources as part of the surface or subsurface estate.

(d) The corporation may reconvey to the state land received under this section that the corporation and the commissioner of natural resources jointly identify as unnecessary or unsuitable for the corporation's purposes.

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

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

(2) notify the corporation of reasons for refusal to designate the identified land for railroad purposes; or

(3) approve in part and deny in part the request for designation of the identified land and convey as appropriate.

(b) In the absence of a reservation to the contrary, a conveyance of land under this section vests in the corporation ownership, control of the surface and subsurface, and the exclusive right to extract or use timber and other construction materials, sand, gravel, rock, and the right to tunnel, ditch, recontour, excavate, or otherwise use the land for railroad, transportation, transmission, and communication services without regard to the classification of the resources as part of the surface or subsurface estate.

(c) The corporation may reconvey to the state land received under this section or under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1962) that the corporation and the commissioner of natural resources jointly identify as unnecessary or unsuitable for the corporation's purposes.

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

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Sec. 42.40.380. USE OF STATE LAND. When physical conditions require that track or other right-of-way fixtures of the corporation be moved from the existing location and relocated on state land adjacent to or in the vicinity of the existing right-of-way and the chief executive officer determines that relocation is necessary to maintain safe and adequate rail operations, the corporation may effect the relocation with the concurrence of the Department of Natural Resources. The relocation must affect only the amount of state land necessary to adequately restore or continue safe rail operations at a normal level.

**CSSB 352(T)****CSHB 512(T)**

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Sec. 42.40.400. EMINENT DOMAIN. (a) The corporation may exercise the power of eminent domain under AS 09.55.240 - 09.55.460 to acquire land for lawful purposes consistent with this chapter. The corporation may acquire a fee simple title whenever, in the judgment of the board, ownership of a fee simple title is necessary to carry out the lawful purposes in condemning the land.

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

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

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

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

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

**CSSB 352(T)****CSHB 512(T)**

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Sec. 42.40.410. VACATION OF LAND. The corporation may vacate land acquired for railroad purposes by executing and filing a deed in the appropriate recording district. Upon filing the deed the state shall acquire title to the land.

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

**CSSB 352(T)****CSHB 512(T)**

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

**NO COMPARABLE PROVISION**

# CSSB 352(T)

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Sec. 42.40.420. FEDERAL LAND. The corporation may submit applications on its own behalf as an instrumentality of the state for acquisition of federal land available under federal law that will enhance the operations of the corporation. The corporation may receive in its own name conveyances of all interests in federal land.

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Sec. 42.40.410. FEDERAL LAND. The corporation may submit applications on its own behalf as an instrumentality of the state for acquisition of federal land available under federal law that will enhance the operations of the corporation. The corporation may receive in its own name conveyances of all interests in federal land.

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Sec. 42.40.430. MUNICIPAL USE OF RAILROAD LAND. Upon request the corporation may authorize use of railroad land for municipal purposes. Subject to AS 42.40.350(b), the corporation may authorize a municipality to establish a walkway or trail over a utility corridor. Before authorizing a use under this section the board shall require the municipality to execute an agreement in a form approved by the board to

(1) hold the corporation harmless and indemnify the corporation for any use made of the railroad land including

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

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

(2) stop the use of railroad land upon request of the corporation if, as determined by the corporation, the use interferes with expansion or replacement of railroad facilities.

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Sec. 42.40.420. MUNICIPAL RIGHTS-OF-WAY. Upon request of a municipality the corporation may grant to the municipality a right-of-way in a railroad utility corridor or in rail land to be used for a pedestrian walkway or trail. Before granting a right-of-way under this section the board shall require the municipality to execute an agreement in a form approved by the board to

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

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

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

(2) vacate the right-of-way upon request of the corporation if the right-of-way interferes with expansion or replacement of railroad facilities.

**CSSB 352(T)****CSHB 512(T)**

1       Sec. 42.40.440. ACQUISITION OF GOVERNMENT PROPERTY. The corpor-  
2 ation, as an instrumentality of the state, may acquire in its own name  
3 from the United States under 50 App U.S.C. 1622 et seq. (Surplus  
4 Property Act of 1944), 40 U.S.C. 471 et seq. (Federal Property and  
5 Administrative Services Act of 1949), or other law, property under the  
6 control of a federal department or agency that is useful for the  
7 corporation's purposes. The corporation may acquire from the Depart-  
8 ment of Administration property of the state made available under  
9 AS 44.71.010 - 44.71.040.

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

# CSSB 352(T)

# CSHB 512(T)

**NO COMPARABLE PROVISION**

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

# CSSB 352(T)

# CSHB 512(T)

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ARTICLE 6. FINANCIAL PROVISIONS.

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

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ARTICLE 6. FINANCIAL PROVISIONS.

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

# CSSB 352(T)

# CSHB 512(T)

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

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

**CSSB 352(T)****CSHB 512(T)**

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Sec. 42.40.520. INSURANCE. Except as provided in AS 42.40.300-  
(b), the corporation shall protect its assets, services, and employees  
by purchasing insurance or providing for certain self-insurance re-  
tentions. The corporation shall also maintain casualty, property,  
business interruption, marine, boiler and machinery, pollution liabil-  
ity, and other insurance in amounts reasonably calculated to cover  
potential claims against the corporation or state for bodily injury,  
death or disability and property damage that may arise from or be  
related to corporation operations and activities.

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

**CSSB 352(T)****CSHB 512(T)**

1       Sec. 42.40.530. REVENUE. Revenue generated by or appropriated  
2 to the corporation shall be retained and managed by the corporation  
3 for railroad and related purposes in accordance with 45 U.S.C. 1207-  
4 (a)(5) (Alaska Railroad Transfer Act of 1962).

9       Sec. 42.40.530. REVENUE. Revenue generated by or appropriated  
10 to the corporation shall be retained and managed by the corporation  
11 for railroad and related purposes in accordance with 45 U.S.C. 1207-  
12 (a)(5) (Alaska Railroad Transfer Act of 1962).

# CSSB 352(T)

# CSHB 512(T)

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

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

## CSSB 352(T)

## CSHB 512(T)

## ARTICLE 7. BONDS AND NOTES.

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Sec. 42.40.606. GENERAL PROVISIONS. (a) The corporation by resolution may issue bonds and bond anticipation notes to provide money to carry out its purposes. However, the proceeds may not be used for activities other than those specifically related to the purposes for which the instruments are originally issued.

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

(1) be dated;

(2) bear interest at a required rate or rates per year or within a maximum rate;

(3) be in a required denomination;

(4) be in a coupon or registered form;

(5) carry conversion or registration provisions;

(6) have a required rank or priority;

(7) be executed in the required manner and form;

(8) be payable as required from the sources, in the medium of payment, and place or places inside or outside the state;

(9) be subject to authentication by a trustee or fiscal agent; and

(10) be subject to terms of redemption with or without premium.

(c) Bonds or bond anticipation notes may be sold in the manner, on the terms, and at the price the board determines. Bond anticipation notes shall mature at the time or times determined by the board. Bonds shall mature at the time, not exceeding 50 years from their date, determined by the board.

## ARTICLE 7. BONDS AND NOTES.

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Sec. 42.40.606. GENERAL PROVISIONS. (a) The corporation by resolution may issue bonds and notes to provide money to carry out its purposes.

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

(1) be dated;

(2) bear interest at a required rate or rates per year or within a maximum rate;

(3) be in a required denomination;

(4) be in a coupon or registered form;

(5) carry conversion or registration provisions;

(6) have a required rank or priority;

(7) be executed in the required manner and form;

(8) be payable as required from the sources, in the medium of payment, and place or places inside or outside the state;

(9) be subject to authentication by a trustee or fiscal agent; and

(10) be subject to terms of redemption with or without premium.

(c) Bonds and notes may be sold in the manner, on the terms, and at the price the board determines. Notes shall mature at the time or times determined by the board. Bonds shall mature at the time, not exceeding 50 years from their date, determined by the board.

**CSSB 352(T)****CSHB 512(T)**

7 |           Sec. 42.40.610. NEGOTIABLE INSTRUMENTS. Bonds and notes issued  
8 | under this chapter and interest coupons attached to them are nego-  
9 | tiable instruments under the laws of this state, subject only to  
10 | applicable provisions for registration.

12 |           Sec. 42.40.610. NEGOTIABLE INSTRUMENTS. Bonds and notes issued  
13 | under this chapter and interest coupons attached to them are nego-  
14 | tiable instruments under the laws of this state, subject only to  
15 | applicable provisions for registration.  
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**CSSB 352(T)****CSHB 512(T)**

11       Sec. 42.40.620. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds  
12 and notes issued under this chapter are securities in which all public  
13 officers and public bodies of the state and its political subdivi-  
14 sions, all insurance companies, trust companies, banking associations,  
15 investment companies, executors, administrators, trustees and other  
16 fiduciaries may properly and legally invest funds, including capital  
17 in their control or belonging to them. These bonds and notes may be  
18 deposited with a state or municipal officer of an agency or political  
19 subdivision of the state for any purpose for which the deposit of  
20 bonds or notes of the state is authorized by law.

17       Sec. 42.40.620. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds  
18 and notes issued under this chapter are securities in which all public  
19 officers and public bodies of the state and its political subdivi-  
20 sions, all insurance companies, trust companies, banking associations,  
21 investment companies, executors, administrators, trustees and other  
22 fiduciaries may properly and legally invest funds, including capital  
23 in their control or belonging to them. These bonds and notes may be  
24 deposited with a state or municipal officer of an agency or political  
25 subdivision of the state for any purpose for which the deposit of  
bonds or notes of the state is authorized by law.

## CSSB 352(T)

## CSHB 512(T)

21 Sec. 42.40.630. PAYMENT OF BONDS AND NOTES. (a) The principal  
22 and interest on bonds or notes of the corporation is payable from  
23 corporation money or assets. Bonds or notes may be additionally  
24 secured by a pledge of a grant or contribution from the federal gov-  
25 ernment or a corporation, association, institution or person, or a  
26 pledge of money, income, or revenue of the corporation from any  
27 source.

28 (b) Bond anticipation notes may be payable from the proceeds of  
29 the sale of bonds or other bond anticipation notes, or, if bond or  
1 bond anticipation note proceeds are not available, from other money or  
2 assets of the corporation.

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

# CSSB 352(T)

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Sec. 42.40.640. AGREEMENTS WITH HOLDERS. The corporation may by provisions in a resolution authorizing or relating to the issuance of bonds or bond anticipation notes enter into the following agreements with the holders of the instruments:

- (1) pledge all or part of its revenue to which its right then exists or may thereafter exist, the money derived from the revenue, and the proceeds of its bonds or notes;
- (2) covenant against pledging all or part of its revenue, or against permitting or suffering a lien on its revenue or property;
- (3) covenant as to establishment of reserves or sinking funds and provide for, regulate, and dispose of the reserves or sinking funds;
- (4) covenant regarding limitations on a right to sell or otherwise dispose of property of any kind;
- (5) covenant as to bonds and notes to be issued, their limitations, terms and conditions, the custody, application and disposition of the proceeds of the bonds and notes;
- (6) covenant as to the issuance of additional bonds or notes, or limitations on the issuance of additional bonds or notes, and the incurring of other debts;
- (7) covenant as to the payment of the principal of or interest on the bonds or notes, the sources and methods of payment, the rank or priority of the bonds or notes with respect to a lien or security, or the acceleration of the maturity of the bonds or notes;
- (8) provide for the replacement of lost, stolen, destroyed or mutilated bonds or notes;
- (9) covenant against extending the time for the payment of bonds or notes, or interest on the bonds or notes;
- (10) covenant as to the redemption of bonds or notes and privileges of their exchange for other bonds or notes of the corporation;
- (11) covenant to create or authorize the creation of special funds of money to be held in pledge or otherwise for operating expenses, payment or redemption of bonds or notes, reserves or other purposes, and as to the use and disposition of the money held in the funds;
- (12) establish the procedure by which the terms of a contract or covenant with or for the benefit of the holders of bonds or notes may be amended or abrogated, the amount of bonds or notes the holders of which must consent to amendment or abrogation, and the manner in which the consent may be given;

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

- (1) make and enter into any and all the covenants and agreements with the trustees or the holders of the bonds that the corporation may determine to be necessary or desirable, including covenants, provisions, limitations and agreements as to
  - (A) the application, investment, deposit, use and disposition of the proceeds of bonds of the corporation or of money or other property of the corporation or in which it has an interest;
  - (B) the fixing and collection of rentals, charges, fees or other consideration for, and the other terms to be incorporated in, contracts with respect to the use of any of the corporation's property;
  - (C) the fixing and collection of tariffs, fees, charges or other consideration for the use or service of the Alaska Railroad by passengers, and other users and freight;
  - (D) the terms and conditions upon which additional bonds of the corporation may be issued;
  - (E) the vesting in the trustee of rights and remedies exercisable by the trustee for the protection of the holders of bonds of the corporation and not otherwise in violation of law and the restriction of the rights of an individual holder of bonds of the corporation;
- (2) pledge, mortgage or assign money, leases, agreements, property, or other assets of the corporation either presently in hand or to be received in the future, or both; and
- (3) provide for any other matters of like or different character that in any way affect the security or protection of the bonds.

# CSSB 352(T)

# CSHB 512(T)

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(13) covenant as to the custody of any of its properties or investments, their safekeeping and insurance, and the use and disposition of insurance money;

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

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

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

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

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

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

# CSSB 352(T)

# CSHB 512(T)

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Sec. 42.40.670. INDEPENDENT FINANCIAL ADVISOR. In negotiating the private or public sale of bonds or bond anticipation notes to an underwriter, the board shall retain a financial advisor who is independent from the underwriter.

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

# CSSB 352(T)

# CSHB 512(T)

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Sec. 42.40.680. VALIDITY OF SIGNATURES. If an officer of the corporation whose signature or a facsimile of whose signature appears on bonds, notes, or coupons attached to them ceases to be an officer before the delivery of the bond, note, or coupon, the signature or facsimile is valid the same as if the person had remained in office until delivery.

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

# CSSB 352(T)

# CSHB 512(T)

1           Sec. 42.40.670. VALIDITY OF PLEDGE. (a) The pledge of assets  
 2 or revenue of the corporation to the payment of the principal or  
 3 interest on bonds or notes of the corporation is valid and binding  
 4 from the time the pledge is made and the assets or revenue are immedi-  
 5 ately subject to the lien of the pledge without physical delivery or  
 6 further act. The lien of a pledge is valid and binding against all  
 7 parties having claims of any kind against the corporation, irrespec-  
 8 tive of whether those parties have notice of the lien of the pledge.  
 9           (b) Nothing in this section prohibits the corporation from  
 10 selling assets subject to a pledge, except that a sale may be re-  
 11 stricted by the trust agreement or resolution providing for the issu-  
 12 ance of the bonds or notes.

20           Sec. 42.40.670. VALIDITY OF PLEDGE. (a) The pledge of assets  
 21 or revenue of the corporation to the payment of the principal or  
 22 interest on bonds or notes of the corporation is valid and binding  
 23 from the time the pledge is made and the assets or revenue are immedi-  
 24 ately subject to the lien of the pledge without physical delivery or  
 25 further act. The lien of a pledge is valid and binding against all  
 26 parties having claims of any kind against the corporation, irrespec-  
 27 tive of whether those parties have notice of the lien of the pledge.  
 28           (b) Nothing in this section prohibits the corporation from  
 29 selling assets subject to a pledge, except that a sale may be re-  
 1   stricted by the trust agreement or resolution providing for the  
 issuance of the bonds or notes.

# CSSB 352(T)

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Sec. 42.40.700. REMEDIES. A holder of bonds or notes issued under this chapter or of coupons attached to them, and a trustee under a trust agreement or resolution authorizing the issuance of the bonds or notes, except as restricted by a trust agreement or resolution, either at law or in equity, may

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

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

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

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

(2) .spel the performance of all duties of the corporation required by thi. chapter or by the trust agreement or resolution.

## CSSB 352(T)

## CSHB 512(T)

24 Sec. 42.40.71C. CREDIT OF STATE NOT PLEDGED. (a) The state and  
 25 its political subdivisions are not liable for the debts of the corpo-  
 26 ration. Bonds and notes issued under this chapter are payable solely  
 27 from the revenue or assets of the corporation and do not constitute a

28 (1) debt, liability, or obligation of the state or of a  
 29 political subdivision of the state; or

30 (2) pledge of the faith and credit of the state or of a  
 31 political subdivision of the state.

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

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

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

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

16 (1) debt, liability, or obligation of the state or of a  
 17 political subdivision of the state; or

18 (2) pledge of the faith and credit of the state or of a  
 19 political subdivision of the state.

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

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

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

**CSSB 352(T)****CSHB 512(T)**

10 |           Sec. 42.40.720. LIMITATION ON PERSONAL LIABILITY. A board  
11 | member or employee of the corporation is not subject to personal  
12 | liability or accountability because of the execution or issuance of  
13 | bonds or notes.  
14 |

28 |           Sec. 42.40.700. LIMITATION ON PERSONAL LIABILITY. A board  
29 | member or employee of the corporation is not subject to personal  
1 | liability or accountability because of the execution or issuance of  
2 | bonds or notes.

**CSSB 352(T)****CSHB 512(T)**

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Sec. 42.40.650. INTERIM RECEIPTS, TEMPORARY BONDS, AND TEMPORARY BOND ANTICIPATION NOTES. Before the preparation of definitive bonds or bond anticipation notes, the corporation may issue interim receipts or temporary bonds or bond anticipation notes, with or without coupons, exchangeable for bonds or bond anticipation notes when those definitive bonds or bond anticipation notes have been executed and are available for delivery.

**NO COMPARABLE PROVISION**

# CSSB 352(T)

# CSHB 512(T)

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Sec. 42.40.660. REFUNDING BONDS. (a) The corporation may provide for the issuance of refunding bonds for the purpose of refunding bonds then outstanding that have been issued under this chapter, including the payment of a redemption premium on them and interest that accrues to the date of redemption of the bonds. Refunding bonds shall be issued in accordance with provisions of this chapter that relate to the issuance of bonds to the extent those provisions are appropriate.

(b) Refunding bonds may be sold or exchanged for outstanding bonds issued under this chapter and the proceeds may be applied to the purchase, redemption or payment of the outstanding bonds in addition to other authorized purposes. Pending the application of the proceeds of refunding bonds to the payment of the principal, accrued interest and redemption premium on the bonds being refunded, and, if permitted in the resolution authorizing the issuance of the refunding bonds or in the trust agreement securing them, to the payment of interest on the refunding bonds and expenses in connection with the refunding, the proceeds may be invested in direct obligations of the United States or obligations the principal of and the interest on which are unconditionally guaranteed by the United States that mature or may be redeemed not later than the date the proceeds of the refunding bonds, together with the interest accruing on them, will be required for the purposes intended.

**NO COMPARABLE PROVISION**

# CSSB 352(T)

# CSHB 512(T)

ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

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Sec. 42.40.750 CORPORATION EMPLOYEES. (a) Employees of the Alaska Railroad are employees of the corporation and not of the state. The provisions of AS 39 do not apply to employees of the corporation.

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ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

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

# CSSB 352(T)

# CSHB 512(T)

19 Sec. 42.40.760. COLLECTIVE BARGAINING RIGHTS. The provisions of  
20 AS 23.40 (Public Employee Relations Act) do not apply to the corpo-  
21 ration or to its employees. However, employees that are not executive  
22 officers may organize and form, join, or assist an organization to  
23 engage in collective bargaining with respect to wages, hours and other  
terms and conditions of employment.

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  
11 collective bargaining through representatives of their own choosing  
12 and engage in concerted activities for the purpose of collective  
13 bargaining or other mutual aid or protection.

**CSSB 352(T)****CSHB 512(T)**

4           Sec. 42.40.769. RAILROAD EMPLOYEES LABOR RELATIONS AGENCY. (a)  
5     There is established a railroad employees labor relations agency that  
6     consists of three members appointed by the governor. One member shall  
7     be a member of the state personnel board. Members serve at the plea-  
8     sure of the governor.

9           (b) The railroad labor relations agency shall perform the func-  
10    tions described in AS 23.40.090 - 23.40.190 and carry out the provi-  
11    sions of AS 42.40.750 - 42.40.810.

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

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.

# CSSB 352(T)

# CSHB 512(T)

**NO COMPARABLE PROVISION**

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Sec. 42.40.740. COLLECTIVE BARGAINING UNIT. The railroad labor relations agency shall decide in each case, in order to ensure employees the fullest freedom in exercising the rights guaranteed by AS 42.40.710 - 42.40.890 the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. Bargaining units shall be as large as is reasonable, and unnecessary fragmenting shall be avoided.

## CSSB 352(T)

## CSHB 512(T)

**NO COMPARABLE PROVISION**

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 labor relations agency by

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

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

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

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

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

31 (c) The railroad labor relations agency shall determine who is  
32 eligible to vote in an election held under this section and shall  
33 establish rules governing the election. In an election in which none  
34 of the choices on the ballot receive a majority of the votes cast, a  
35 runoff election shall be conducted, the ballot providing for selection  
36 between the two choices receiving the largest number of valid votes  
37 cast in the election. If an organization receives the majority of the  
38 votes cast in the election it shall be certified by the railroad labor  
39 relations agency as exclusive representative of all the employees in  
40 the bargaining unit. An election may not be held in a bargaining unit  
41 or in a subdivision of a bargaining unit if a valid election has been  
42 held within the preceding 12 months.  
43

**CSSB 352(T)****CSHB 512(T)**

14 (d) Nothing in this chapter prohibits recognition of an  
15 organization as the exclusive representative by the corporation by  
16 mutual consent.

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

## CSSB 352(T)

## CSHB 512(T)

2 Sec. 42.40.810. PROHIBITED ACTS. (a) The corporation or an  
3 employee may not directly or indirectly:

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

7 (2) require or coerce an employee to make any report con-  
8 cerning an activity or undertaking of the employee's activities or  
9 undertakings unless the activity or undertaking is related to the  
10 performance of official duties;

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

15 (A) a personal relationship with a person connected  
16 with the employee by blood or marriage,

17 (B) the employee's religious beliefs or practices,

18 (C) sexual matters,

19 (D) the employee's political affiliation or philoso-  
20 phy;

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

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

27 (b) The provisions of (a) of this section do not diminish the  
28 authority of an authorized law enforcement agency to conduct criminal  
29 investigations of employees suspected of being involved in criminal  
30 activity.

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CSSC 352(T)sp1

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

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

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

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

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

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

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

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

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

21 (c) An organization or its agents may not

22 (1) restrain or coerce

23 (A) an employee in the exercise of the rights  
24 guaranteed in AS 42.40.720; or

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

28 (2) refuse to bargain collectively in good faith with the  
29 corporation, if it has been designated in accordance with  
1 AS 42.40.710 - 42.40.890 as the exclusive representative of employees  
2 in an appropriate unit.

**CSSB 352(T)****CSHB 512(T)****NO COMPARABLE PROVISION**

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

**CSSB 352(T)****CSHB 512(T)**

**NO COMPARABLE PROVISION**

14           Sec. 42.40.780. COMPLAINT AND ACCUSATION. If the railroad labor  
15 relations agency fails to eliminate the prohibited practice by  
16 conciliation and to obtain voluntary compliance with AS 42.40.710 -  
17 42.40.890 or before it attempts conciliation, it may serve a copy of  
18 the complaint or accusation upon the respondent. The complaint or  
19 accusation and the subsequent procedures shall be handled in accor-  
20 dance with the administrative adjudication portion of the  
21 Administrative Procedure Act (AS 44.62).

# CSSB 352(T)

# CSHB 512(T)

**NO COMPARABLE PROVISION**

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Sec. 42.40.790. ORDERS AND DECISIONS. If the railroad labor relations agency finds that a person named in the written complaint or accusation has engaged in a prohibited practice, the railroad labor relations agency shall issue and serve on the person an order or decision requiring the person to cease and desist from the prohibited practice and to take affirmative action that will carry out the provisions of AS 42.40.710 - 42.40.890. If the railroad labor relations agency finds that a person named in the complaint or accusation has not engaged or is not engaging in a prohibited practice, the railroad labor relations agency shall state its findings of fact and issue an order dismissing the complaint or accusation.

# CSSB 352(T)

# CSHB 512(T)

**NO COMPARABLE PROVISION**

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

**NO COMPARABLE PROVISION**

13                   Sec. 42.40.810. POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a)  
14                   For the purpose of the investigations, proceedings, or hearings that  
15                   the railroad labor relations agency considers necessary to carry out  
16                   AS 42.40.710 - 42.40.890, the railroad labor relations agency may  
17                   issue subpoenas requiring the attendance and testimony of witnesses  
18                   and the production of relevant evidence.  
19                   (b) The railroad labor relations agency may administer oaths,  
20                   examine witnesses, and receive evidence.  
21                   (c) The attendance of witnesses and the production of evidence  
22                   may be required from any place in the state at any designated place of  
23                   hearing.  
24                   (d) If a person refuses to obey a subpoena issued under  
25                   AS 42.40.710 - 42.40.890, the superior court in the district in which  
26                   the person resides or is found may, upon application by the railroad  
27                   labor relations agency, issue an order requiring the person to comply  
28                   with the subpoena.

**NO COMPARABLE PROVISION**

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Sec. 42.40.910. REGULATIONS. The railroad labor relations agency shall adopt regulations under the Administrative Procedure Act (AS 44.62) to carry out AS 42.40.710 - 42.40.890.

**NO COMPARABLE PROVISION**

3           Sec. 42.40.810. PENALTY FOR VIOLATION OF ORDER OR DECISION. A  
4 person who violates a provision of an order or decision of the  
5 railroad labor relations agency is guilty of a misdemeanor and is  
6 punishable by a fine of not more than \$500.

# CSSB 352(T)

# CSHB 512(T)

**NO COMPARABLE PROVISION**

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

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

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

# CSSB 352(T)

# CSHB 512(T)

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Sec. 42.40.790. STRIKES. (a) Employees may engage in a strike if a majority of the employees in a collective bargaining unit vote by secret ballot to do so.

(b) Notwithstanding the provisions of (a) of this section, the employees and the corporation may agree in writing to submit a dispute arising from interpretation or application of a collective bargaining agreement to arbitration.

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

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

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

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

# CSSB 352(T)

# CSHB 512(T)

25 Sec. 42.40.770. AGREEMENT. (a) At the request of the board or  
 26 corporation employee organization, the Department of Administration  
 27 shall participate in negotiations between the corporation and the  
 28 employee organization.

29 (b) An agreement executed between the corporation and an em-  
 1 ployee organization shall provide for a grievance procedure in which  
 2 the final step in the procedure is binding arbitration. The agreement  
 shall define "grievance" for purposes of this section.

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

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

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

**CSSB 352(T)****CSHB 512(T)****NO COMPARABLE PROVISION**

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

**CSSB 352(T)****CSHB 512(T)****NO COMPARABLE PROVISION**

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

# CSSB 352(T)

# CSHB 512(T)

**NO COMPARABLE PROVISION**

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Sec. 42.40.890. DEFINITIONS. In AS 42.40.710 - 42.40.890

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

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

(3) "organization" means a labor or employee organization of any kind in which employees participate and that exists for the primary purpose of dealing with the corporation concerning grievances, labor disputes, wages, rates of pay, hours of employment and conditions of employment;

**CSSB 352(T)****CSHB 512(T)**

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Sec. 42.40.800. POLITICAL ACTIVITIES. (a) Money, assets, or property of the corporation may not be used for political activity. However, board members and employees may communicate with and appear before committees of Congress, the state legislature, and municipal governing bodies in connection with matters directly affecting the corporation.

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

**NO COMPARABLE PROVISION**

## CSSB 352(T)

## CSHB 512(T)

## ARTICLE 9. GENERAL PROVISIONS.

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

7           (b) For the purposes of actionable claims, undertakings, pay-  
8 ments of judgments, execution, interest, punitive damages, statutes of  
9 limitations, bonds, costs, and similar matters related to the pres-  
10 entation and prosecution of claims by and against the corporation, the  
11 corporation and its board members and employees enjoy the same rights,  
12 privileges, and immunities as the state and state officers.

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

15           (d) The corporation is not subject to the provisions of AS 44.-  
16 80.010, regarding the state as a party to an action.

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27 limitations, bonds, costs, and similar matters related to the pres-  
28 entation and prosecution of claims by and against the corporation, the  
29 corporation and its board members and employees enjoy the same rights,  
1 privileges, and immunities as the state and state officers under  
2 AS 09.10.120, AS 09.50.250 - 09.50.290, and AS 09.65.040.

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

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

## CSSB 352(T)

## CSHB 512(T)

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

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

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

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

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# CSSB 352(T)

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Sec. 42.40.920. APPLICATION OF EXISTING LAWS. (a) The corporation is not subject to the jurisdiction of the Alaska Transportation Commission.

(b) The following laws do not apply to the operations of the corporation:

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

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Sec. 42.40.920. APPLICATION OF EXISTING LAWS. (a) The corporation is not subject to the jurisdiction of the Alaska Transportation Commission.

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

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

# CSSB 352(T)

# CSHB 512(T)

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

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



# CSSB 352(T)

# CSHB 512(T)

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

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

(2) "collective bargaining" means negotiating with an employees organization and representing employees on matters pertaining to conditions of employment;

(3) "corporation" means the Alaska Railroad Corporation;

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

(5) "employees" means all persons employed by the corporation including executive officers;

(6) "executive officer" means the corporation's chief executive officer, assistant chief executive officer, assistant to the chief executive officer, chief of administration, superintendent of transportation, manager of marketing and sales, chief engineer, chief mechanical officer, manager of industrial development and real estate, manager of budget and accounting, manager of planning, manager of personnel, manager of supply and procurement, chief of security, manager of operating rules, manager of data processing, manager of strategy, manager of operations planning, manager of supply, manager of procurement, manager of safety, manager of administrative procedure, chief counsel, or, if so designated by the board, any employee who fulfills these management functions under a different title or who exercises a similar or comparable level of responsibility;

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

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

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

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

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

(4) "employees" means all persons employed by the corporation including executive officers;

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

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

# CSSB 352(T)

# CSHB 512(T)

1 | Sec. 42.40.990. SHORT TITLE. This chapter may be referred to as  
2 | the Alaska Railroad Corporation Act.

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

**CSSB 352(T)****CSHB 512(T)**

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

4       Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is  
5 established the Alaska Railroad Corporation. The corporation is a  
6 public corporation and is an instrumentality of the state [WITHIN THE  
7 DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT]. The corporation has  
8 a legal existence independent of and separate from the state. The  
9 exercise by the corporation of the powers provided in this chapter is  
10 considered an essential government function of the state.  
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12 \* Sec. 3. AS 42.40.010 is amended to read:

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 exercise by the corporation of the powers provided in this chapter is  
19 considered an essential government function of the state.

# CSSB 352(T)

# CSHB 512(T)

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

12 (a) The powers of the corporation are vested in the board of  
 13 directors. The board consists of [THE COMMISSIONER OF COMMERCE AND  
 14 ECONOMIC DEVELOPMENT,] the chief executive officer of the corporation,  
 15 and eight [SEVEN] members appointed by the governor. The eight  
 16 [SEVEN] appointed members must be registered voters in the state  
 17 except as provided in (b) and (c) of this section. No more than two  
 18 appointed members may be from any one of the four judicial districts  
 19 in the state. Two of the appointed members must have at least five  
 20 years experience as owners or managers of a business in the state.  
 21 Except for [THE COMMISSIONER,] the chief executive officer [,] and the  
 22 member appointed under (d) of this section, a member may not be a  
 23 state officer or employee.

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

21 (a) The powers of the corporation are vested in the board of  
 22 directors. The board consists of [THE COMMISSIONER OF COMMERCE AND  
 23 ECONOMIC DEVELOPMENT,] the chief executive officer of the corporation,  
 24 and eight [SEVEN] members appointed by the governor. At least six  
 25 [FIVE] of the eight [SEVEN] appointed members must be registered  
 26 voters in the state. No more than two appointed members may be from  
 27 any one of the four judicial districts in the state. The appointed  
 28 members must have substantial experience or professional training and  
 29 expertise in fields relevant to the purposes of this chapter,  
 1 including transportation, business, and finance. Except for [THE COM-  
 2 MISSIONER,] the chief executive officer [,] and the member appointed  
 3 under (d) of this section, a member may not be a state officer or  
 4 employee.

# CSSB 352(T)

# CSHB 512(T)

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

(e) Except for [THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT AND] the chief executive officer of the corporation, the members of the board shall be confirmed by a majority of the members of each house of the legislature in joint session. A member appointed by the governor has the full powers and responsibilities of a confirmed board member until the member is rejected by the legislature.

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

(e) Except for [THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT AND] the chief executive officer of the corporation, the members of the board shall be confirmed by a majority of the members of each house of the legislature in joint session. A member appointed by the governor has the full powers and responsibilities of a confirmed board member until the member is rejected by the legislature.

# CSSB 352(T)

# CSHB 512(T)

2 | \* Sec. 6. AS 42.40.030 is amended to read:  
 3 |     Sec. 42.40.030. TERM OF OFFICE; REMOVAL. (a) Except for (THE  
 4 | COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT AND) the chief  
 5 | executive officer of the corporation, members of the board serve for  
 6 | staggered terms of five years each (AT THE PLEASURE OF THE GOVERNOR).

12 | \* Sec. 6. AS 42.40.030 is amended to read:  
 13 |     Sec. 42.40.030. TERM OF OFFICE; REMOVAL. (a) Except for (THE  
 14 | COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT AND) the chief  
 15 | executive officer of the corporation, members of the board serve for  
 16 | staggered terms of five years each (AT THE PLEASURE OF THE GOVERNOR).

# CSSB 352(T)

# CSHB 512(T)

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

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

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

12 (2) continued refusal or inability to attend meetings of  
13 the board; or

14 (3) conviction of a felony.

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

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

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

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

24 (3) conviction of a felony; or

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

# CSSB 352(T)

# CSHB 512(T)

**NO COMPARABLE PROVISION**

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

28 (a) Except for the (COMMISSIONER OF COMMERCE AND ECONOMIC

29 DEVELOPMENT AND THE) chief executive officer, a vacancy on the board

1 is filled by appointment by the governor, and the appointment must be

2 confirmed by the members of each house of the legislature in joint

3 session. A member appointed to fill a vacancy holds office for the

4 balance of the term for which the member's predecessor was appointed.

**CSSB 352(T)****CSHB 512(T)**

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16 \* Sec. 8. AS 42.40.180 is repealed and reenacted to read:

17       Sec. 42.40.180. RULES. (a) The board shall establish a proce-  
18       dure for adopting, amending, and repealing rules to carry out its  
19       functions and the purposes of this chapter, including a procedure for  
20       the adoption or change of rules on an emergency basis when essential  
21       to continue or to reinstate the orderly operation of the corporation's  
22       facilities or programs.

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

SEE RULES SECTION PAGE 16

# CSSB 352(T)

# CSHB 512(T)

26 \* Sec. 9. SPECIAL REPORT. The governor shall contract with a private  
 27 consultant for the preparation of a report on the long-term operations of  
 28 the Alaska Railroad that are in the best interest of the state. The report  
 29 shall be submitted to the governor and the legislature by January 1, 1988.  
 30 It shall contain specific recommendations on operational alternatives and  
 31 the transfer of all or part of the railroad operation to the private sec-  
 32 tor.

5 \* Sec. 9. SPECIAL REPORT. The corporation shall prepare a report for  
 6 the governor and the legislature on the long-term operations of the Alaska  
 7 Railroad that are in the best interest of the state. The report shall be  
 8 submitted by January 1, 1983. It shall contain specific recommendations on  
 9 operational alternatives and the transfer of all or part of the railroad's  
 10 operation's is to the private sector.

**CSSB 352(T)****CSHB 512(T)**

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

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

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

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

# CSSB 352(T)

# CSHB 512(T)

11 \* Sec. 11. COLLECTIVE BARGAINING AGREEMENTS. (a) As soon as  
 12 practicable before transfer of the Alaska Railroad to the state, the Alaska  
 13 Railroad Corporation and its employees shall adopt collective bargaining  
 14 agreements that continue the provisions of the agreements in effect between  
 15 the Alaska Railroad and its employees on the date of transfer of the  
 16 railroad. The collective bargaining agreements adopted under this section  
 17 between the corporation and its employees shall remain in effect to the  
 18 extent required under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act  
 19 of 1982).

20 (b) Within 180 days after the first meeting of the board of directors  
 21 of the Alaska Railroad Corporation, the board and representatives of  
 22 employee bargaining units shall establish procedures for the renegotiation  
 23 of bargaining agreements adopted under (a) of this section.

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

28 (b) The board of directors of the Alaska Railroad Corporation shall  
 29 on or before the date of transfer of the Alaska Railroad to the state adopt  
 1 personnel rules necessary to prevent an interruption of services of the  
 2 railroad.

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

# CSSB 352(T)

# CSHB 512(T)

25 \* Sec. 13. Sections 3 - 6 and 12 of this Act take effect on the effective date of an amendment to the Constitution of the State of Alaska relating to the Alaska Railroad.

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

# CSSB 352(T)

# CSHB 512(T)

COMPARISON

23 | \* Sec. 14. Sections 1, 2, and 3 - 11 of this Act take effect immediately in accordance with AS 01.10.070(c).

-37-

CSSB 352(Trsp)

14 | \* Sec. 13. Sections 1, 2, and 9 - 11 of this Act take effect immediately in accordance with AS 01.10.070(c).

# CSSB 352(T)

# CSHB 512(T)

Sec. 12. AS 42.40.190 and 42.40.200 are repealed.

NO COMPARABLE PROVISION