

AK.

RAILROAD

Bill Drafts

#1

3/22/84 Draft

1
2 IN THE HOUSE

3 HOUSE BILL NO. 512

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 THIRTEENTH LEGISLATURE - SECOND SESSION

6 A BILL

7 For an Act entitled: "An Act establishing the Alaska Railroad
8 Corporation to manage and operate the Alaska
9 Railroad; and providing for an effective date."

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

11 * Section 1. LEGISLATIVE FINDINGS AND PURPOSE.

12 (a) The Legislature finds that

13 (1) It is the policy of the state to

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

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

19 (C) develop and implement plans for a transportation
20 network;

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

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

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

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

government;

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

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

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

(2) 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 insuring 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; and

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

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

CHAPTER 40. ALASKA RAILROAD CORPORATION.

ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

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

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 the Department of Commerce and Economic Development, the Chief Executive Officer and seven voting members appointed by the governor. Of the seven voting members, at least five must be residents of and registered voters in the state except as provided in (b) and (c) of this section. No more than two of these members may be from any one of the four judicial districts in the state. The public [voting] members must have substantial experience or professional training and expertise in fields relevant to the purposes of this chapter, .. including, but not limited to transportation, business, and finance.

1 Except for the commissioner of commerce and economic development, a
2 voting member may not be a state officer or employee.

3 (1) One voting member [shall] may be or have been an
4 executive official of an American railroad that is not now or was
5 ne ar a connecting carrier of the Alaska railroad.

6 (2) One person may be appointed by the governor to be a
7 voting member of the board, if, at the time of appointment, the person
8 has at least 10 years of experience in management of railroads.

9 (3) One [an] employee of the corporation. from an empolyee
10 bargaining unit appointed by the governor to represent the employees;

11 (4) the chief executive officer of the corporation.

12 (b) The voting members of the board shall be confirmed by a
13 majority of the membership of the legislature in joint session. A
14 member appointed by the governor has the full powers and responsibili-
15 ties of a confirmed board member unless and until the member has been
16 rejected by the legislature.

17 (c) The board shall elect from its membership a chairperson and
18 vice-chairperson and prescribe their specific duties by rule.

19 (d) The board shall appoint a secretary and prescribe the spe-
20 cific duties of the secretary.

21 (e) The chairperson shall call meetings of the board at least
22 once every three months. The chairperson may call other meetings of
23 the board as the chairperson considers necessary. The chairperson
24 shall preside at meetings of the board.

25 Sec. 42.40.030. TERM OF OFFICE AND REMOVAL. Except for the
26 commissioner of commerce and economic development, the appointed
27 members of the board serve for staggered terms of five years each, and
28 serve at the pleasure of the governor during their terms..
29

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

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

9 (c) A member whose term has expired shall serve until a succe-
10 sor has been appointed.

11 Sec. 42.40.050. COMPENSATION AND EXPENSES. (a) An appointed
12 member of the board is entitled to compensation at a rate of [\$250]
13 \$400 for each day the member is engaged in the actual performance of
14 duties as a member of the board. The board may provide by rule for
15 compensation for partial days during which a member is engaged in the
16 actual performance of duties.

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

20 Sec. 42.40.060. QUORUM. [Four] Five voting members of the board
21 constitute a quorum for the transaction of business.

22 Sec. 42.40.070. VOTING. [Four] Five affirmative votes are
23 required for board action. The board shall provide by rule for the
24 manner of voting, except that the board may not provide for voting by
25 proxy. The rules may provide for voting and conferring by means of
26 telecommunication devices.

27 ARTICLE 2. MANAGEMENT.

28 Sec. 42.40.080. MANAGEMENT BY THE BOARD. The board is
29 responsible

1 for the management of the corporation but shall delegate certain
2 powers and duties to the chief executive officer in accordance with AS
3 42.40.110. In carrying out its responsibilities under this section
4 the board shall, subject to AS 42.40.110,

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

7 (2) operate the Alaska Railroad as a common carrier;
8 subject to the jurisdiction of the United States Interstate Commerce
9 Commission consistent with 45 U.S.C. 1207;

10 (3) Generally manage the corporation on a self-sustaining
11 basis

12 (4) provide for safe, efficient, and economical
13 transportation to meet the overall needs of the state;

14 (5) raise needed capital by issuing obligations of the
15 corporation while insuring that borrowing by the corporation does not
16 directly or indirectly endanger the state's own borrowing capacity.

17 (6) review state and other land disposals in planning for
18 future development or expansion.

19 (7) insure that accepted railroad industry standards are
20 used for the corporation's accounting and procurement systems.

21 Sec. 42.40.090. STATE OVERSIGHT (a). The board shall notify
22 the governor and the leadership of the legislature before undertaking

23 (1) expansion, reduction, or diversification of services
24 provided by the railroad upon the date of transfer to the authority or
25 as provided under this chapter that the board determines would
26 represent a significant and permanent change in the level and nature
27 of services provided;

28 (2) extension of the main or branch lines by more than 25
29 miles or 5 percent of the railroads total track mileage, whichever is

greater; or

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

(4) any possible application for state appropriation for any service which is not self-sustaining.

(b) The notice required by (a) of this section must be in writing and describe the proposed undertaking in detail, specifying

(1) its financial impact on the corporation;

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

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

(4) whether and when the undertaking will be self-sustaining financially.

Sec. 42.40.100. EXECUTIVE OFFICERS. (a) The board shall appoint the chief executive officer of the corporation. [subject to the approval by the Governor.] The chief executive officer 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.

Sec. 42.40.110. DELEGATION. (a) The board shall by rule delegate powers and duties necessary and appropriate for the management of the daily affairs and operations of the corporation to the chief executive officer, subject to a requirement of board concurrence or authorization imposed by the rules.

1 (b) Within 180 days of the first meeting of the board, the board
2 shall by rule delegate the following activities of the corporation to
3 the chief executive officer or other executive officers designated by
4 the board:

5 (1) leasing, granting easements in, issuing permits for the
6 use of, or conveying other interests that do not constitute a transfer
7 of the corporation's entire interest in real property of the corpora-
8 tion;

9 (2) establishing specific rates, tariffs, divisions, and
10 contract rate agreements;

11 (3) making routine changes in service levels; and

12 (4) performing procurement activities.

13 (5) establish and maintain the Railroad's procurement and
14 accounting systems.

15 (c) Specific board approval [authorization or concurrence] is
16 required for the following:

17 (1) transferring the corporation's entire interest in real
18 property; other than the execution of a release of a lien or
19 satisfaction of a mortgage after payment has been received;

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

21 (3) mortgaging or pledging corporation assets;

22 (4) donating property, or other assets belonging to the
23 corporation;

24 (5) acting as a surety or guarantor;

25 (6) adopting a long-range program and capital improvement
26 plan subject to Sec. 42.40.310;

27 (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) diversification and major expansion or reducing services beyond those provided on the date of transfer or as provided under this chapter;

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

(11) selecting independent auditors and accountants.

(12) certifying collective bargaining agreements with railroad employees as provided by AS. 42.40.100;

(13) capital projects with an estimated completion cost in excess of \$500,000 or an estimated completion time of more than one year;

(14) the exercise of the power of eminent domain;

(15) adopting annual budgets.

ARTICLE 3. ADMINISTRATIVE PROVISIONS.

Sec. 42.40.200. CONFLICTS OF INTEREST. (a) Except as provided in this section, a board member or employee of the corporation [authority] may not participate in a decision of the corporation [authority] 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. 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.

(b) A board member or employee may participate in a decision if that person or a member of that person's immediate family has only a

1 remote interest and if the fact and extent of the interest is
2 disclosed to the board in a public meeting and is noted in the minutes
3 of the board before any participation by the member or employee in the
4 decision, and thereafter in a public meeting the board authorizes or
5 approves the participation by a vote of its membership excluding the
6 interested member or employee. As used in this subsection, "remote
7 interest" means interests that in good faith are defined as remote by
8 rules adopted by the corporation.

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

13 (d) Within 120 days of the first meeting of the board, the board
14 shall adopt and may subsequently amend rules implementing this
15 section, providing additional conflict of interest and ethical rules
16 it considers appropriate, and providing for the removal by the board
17 of a board member or employee who intentionally violates a prohibition
18 contained in this section.

19 Sec. 42.40.210. PUBLIC BOARD MEETINGS. (a) The meetings of the
20 board are public with the exception of an executive session conducted
21 under AS 44.62.310 and (b) of this section.

22 (b) In addition to those subjects that may be discussed in
23 executive session, the board may consider in executive session matters
24 that pertain to personnel, the corporation's legal position, land
25 acquisition or disposal, or proprietary information, as defined in a
26 manner consistent with the standards and practices of the United
27 States Interstate Commerce Commission for protection of information
28 including but not limited to proprietary information associated with
29 specific shippers, divisions, and contract rate agreements.

1 Sec 42.40.220. MINUTES AND NOTICE OF MEETINGS. The board shall
2 keep minutes of each meeting and shall send a certified copy of the
3 minutes of the public portion of each meeting to the governor and the
4 leadership of the legislature. The board shall provide by rule for
5 advance public notice for its meetings.

6 ***** Sec. 42.40.230. RULES. (a) The board shall establish a
7 procedure for adopting rules to carry out its functions and the
8 purposes of this chapter. Within 90 days after its first meeting the
9 board shall adopt rules establishing a procedure for giving advance
10 public notice and an opportunity for the public to comment on proposed
11 regulations of the authority that in the determination of the board,
12 will have a substantial impact on the public or be used in the
13 corporations dealings with a significant segment of the public.

14 (b) The rules shall also include a procedure for the
15 adoption of emergency rules when the adoption of an emergency rule is
16 essential to continue or to reinstate the orderly operation of the
17 corporation's facilities or program.

18 (c) The Board of Directors of the Alaska Railroad
19 Corporation, by resolution, may continue in force after date of
20 transfer all or part of the rules, regulations, and orders of the
21 Alaska Railroad which were in effect one day before the date of
22 transfer and are not inconsistent with this chapter or other state
23 law. The Board of Directors may adopt in its rules, regulations, and
24 orders the substance of former federal authorities relating to the
25 Alaska Railroad. This adoption is not considered a continuation of
26 the federal authorities if made in compliance with the procedural
27 requirements of this chapter and other applicable law.

28 Sec. 42.40.240. PUBLIC DISCLOSURE OF INFORMATION. (a) ..Except
29 as provided by rule of the corporation under (b) of this section,

1 information in the possession of the corporation is public and is open to
2 public inspection at reasonable times.

3 (b) The corporation may by rule designate and withhold public
4 disclosure of matters of a nonpublic, privileged, or proprietary
5 nature. Those matters include personnel records, communications with
6 and work product of counsel consistent with the standards and
7 practices of the United States Interstate Commerce Commission for the
8 protection of these matters, and information including but not limited
9 to specific shippers, divisions, and contract rate agreements.

10 Sec. 42.40.260. ANNUAL REPORT. Within 90 days following the end
11 of the fiscal year of the railroad the board shall direct preparation
12 of, certify and distribute to the governor and to the legislature a
13 report describing the operations and financial condition of the corpo-
14 ration during the preceding fiscal year. The plans may include
15 suggestions for legislation relating to the structure, powers, or
16 duties of the corporation or relating to operation of facilities of
17 the corporation. This report shall include a breakdown of a service's
18 real costs and income in each category of railroad operations.

19 Sec. 42.40.270. ANNUAL AUDIT. The board shall have the finan-
20 cial records of the corporation audited annually by an independent
21 certified public accountant experienced in railroad accounting. The
22 corporation shall make all of its financial records available to an
23 auditor appointed by the governor or to the legislative audit division
24 for examination. Disclosure to the public by the auditor or legisla-
25 tive audit division of this information is subject to AS 42.40.240 and
26 rules implementing that section.

27 Sec. 42.40.280. PERFORMANCE AUDIT. The board shall have a
28 performance audit conducted by a qualified professional preformance
29 auditing firm to assure thst the railroad is bei , managed and

operated effectively and efficiently in accordance with the requirements of this Chapter.

ARTICLE 4. POWERS AND DUTIES.

Sec. 42.40.300. GENERAL POWERS. In addition to the exercise of other powers authorized by law, the corporation may

- (1) adopt a seal;
- (2) adopt rules and 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, real or personal property, rights, rights-of-way, franchises, easements, and other interest in land, including land lying under water and appropriation of water rights that are located in the state, taking title to the property in the name of the corporation;
- (8) acquire property by eminent domain in accordance with AS 42.40.430;
- (9) hold, maintain, use, operate, lease, exchange, donate, improve, convey, alienate, dispose of, mortgage, encumber, and otherwise grant security interests in or transfer any real or personal property including facilities and equipment;
- (10) 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 the provisions of federal, state, or local programs;

(11) undertake and provide for the management, operation, maintenance, use, and control of all of the properties of the corporation including, the tracks, equipment and other property transferred to it by the federal government or by any person;

(12) 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 .

(13) maintain offices and facilities at places it designates;

(14) acquire, hold, and disperse of Stocks, memberships, contracts, bonds, general or limited partnership interests or other interests in another corporation, association, partnership, joint venture, or other legal entity, and exercise the powers or rights in connection with these interests which are provided in contracts or agreements and that are allowed by law concerning the satisfaction of debts;

(15) undertake and provide for the acquisition, construction, maintenance, equipping, and operation of connecting, switching, terminal, or other railroads and railroad facilities in the state;

(16) apply to the appropriate agencies of the state, the United States, and a foreign country or other proper agencies for the permits, licenses, or approvals necessary to construct, maintain, and operate railroad transportation services, and to obtain, hold, and reuse the licenses and permits in the same manner as other operating units or persons;

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

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

3 (19) enter into contracts, leases or other agreements with
4 connecting carriers and shippers, and other persons concerning the
5 services, activities, operations, properties, and facilities of the
6 railroad. including contracts leases and other agreements that contain
7 provisions intended to preserve and expand the railroad's traffic
8 base;

9 (20) plan for and undertake expansion of the railroad and
10 railroad activities, including extension of the Alaska Railroad's rail
11 system, and contract with other modes of transportation service con-
12 necting to the railroad's rail services;

13 (21) adopt rules that are designed to safeguard property
14 owned, managed, or transported by the corporation and to protect
15 employees and persons using the corporation's property or services;

16 (22) hire and discharge railroad personnel and determine
17 benefits and other terms and conditions of employment established in
18 accordance with obligations imposed by 45 U.S.C. 1201-1214 (Alaska
19 Railroad Transfer Act of 1982);

20 (23) assume and satisfy liabilities of the United States or
21 its agencies as provided by 45 U.S.C. 1201-1214 (Alaska Railroad
22 Transfer Act of 1982;

23 (24) maintain or provide for a security force to enforce
24 state law and the corporations rules with respect to violations that
25 occur on or to property owned, managed or transported by the
26 corporation;

27 (25) borrow money and issue its bonds or notes and provide
28 for and secure their payment, provide for the rights of their holders
29 and purchase, hold, or dispose of its bonds or notes;

1 (26) secure the payment of its obligations by pledge or
2 mortgage or other lien on its contracts, revenues, income, or proper-
3 ty;

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

8 (28) include in any borrowing the amounts necessary to
9 establish reasonable reserves and pay financing charges and interest
10 on the obligations for a reasonable period after which the corporation
11 estimates funds will be otherwise available to pay the interest,
12 consultant, advisory, and legal fees, and other expenses necessary or
13 incident to borrowing;

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

16 (30) cancel bonds purchased under (29) of this section;

17 (31) adopt rules having the force of law that require
18 designated classes of proprietary information and communications to be
19 held confidential;

20 (32) do all things necessary, convenient and desirable to
21 carry out the powers and duties expressly granted or necessarily
22 implied in this chapter or under other laws of the state or the laws
23 and regulations of the federal government.

24 Sec. 42.40.310. LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT
25 PLANS. (a) The corporation shall prepare and the board shall adopt a
26 long-range program plan and a capital improvement plan. The board
27 shall consult [interface] with affected [other related] state agencies
28 in preparation of the plans. The long-range program plan shall
29 delineate the manner in which the corporation intends to accomplish

1 the purposes of this chapter during each of the five years after the
2 plan is adopted. The capital improvement plan shall present and
3 explain the corporation's anticipated capital improvements for each of
4 the five years after the plan is adopted and shall reflect efforts to
5 upgrade the railway and develop safer, more cost-effective rail
6 operations.

7 (b) The board shall annually review and update the plans re-
8 quired under (a) of this section. [The board may not contract for the
9 preparation or revision of either the long-range program plan or the
10 capital improvement plan, but shall require their preparation and
11 revision by employees of the corporation.]

12 (c) The board shall provide copies of its updated plans to the
13 governor and the legislature by December 1 of each year.

14 Sec. 42.40.320. USE OF CORPORATION ASSETS. (a) The corporation
15 shall apply all money, property, other assets, and credit of the
16 corporation toward activities authorized by this chapter. The corpo-
17 ration may not issue shares of stock, pay dividends, make private
18 distributions of assets, make loans to board members or employees, or
19 engage in business for private benefit. The use of money, property,
20 other assets, or credit of the corporation for purposes not authorized
21 by law by persons having the possession or control of it is prohibi-
22 ted.

23 (b) Notwithstanding the provisions of this section, the corpo-
24 ration may purchase insurance to protect and hold personally harmless
25 its employees, agents, and board members from an action, claim, or
26 proceeding instituted against these individuals arising out of the
27 performance, purported performance, or failure of performance, in good
28 faith, of duties for, or employment with, the corporation and to hold
29 these individuals harmless from expenses connected with the defense,

1 settlement, or monetary judgments from that action, claim, or
2 proceeding; the purchase of insurance and its policy limits are dis-
3 cretionary with the board and insurance is not considered to be com-
4 pensation to the insured individual.

5 ARTICLE 5. RAIL PROPERTIES.

6 Sec. 42.40.400. LAND. All land among the rail properties trans-
7 ferred under 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of
8 1982) or otherwise acquired by the corporation is under the control of
9 the corporation. All lands transferred or acquired are designated as
10 follows

11 (1) railroad rights-of-way or easements transferred under
12 the Transfer Act or otherwise acquired shall be classified as railroad
13 utility corridors;

14 (2) all other real property transferred under the Transfer
15 Act or otherwise acquired, are rail lands.

16 (b) Railroad utility corridors shall be of a width at least 100
17 feet on both sides of the centerline of the extended main or branch
18 line, or may be of lesser width only if the adjoining land is not rail
19 property, and may be surveyed by the metes and bounds method; and

20 (c) The corporation may not sell land within the railroad
21 corridor. [However], Except as provided in AS 42.40.460, the
22 corporation may lease, grant easements or permits or otherwise
23 authorize use of portions of the utility corridor but only for
24 transportation, transmission, or communication purposes and for
25 support functions associated with such purposes, so long as parallel
26 uses of the railroad corridor are

27 not restricted.

28 (d) The corporation may convey, lease, grant easements or permits
29 or otherwise authorize use of portions of rail lands for other

1 services including but not limited to transportation, transmission,
2 and communication purposes and for support functions associated with
3 such purposes. Final sale of land must be approved by
4 the legislature.

5 (e) Vegetation control involving the use of pesticided and
6 herbicides on lands owned or managed by the Corporation shall be
7 conducted in compliance with state requirements otherwise applicable
8 with state requirements otherwise applicable to state pesticide and
9 herbicide projects.

10 Sec. 42.40.410 NOMINATION OF LAND The board may nominate
11 federal land for state selection through the Department of Natural
12 Resources for railroad purposes.

13 Sec. 42.40.420. CLASSIFICATION, ACQUISITION, AND USE OF STATE
14 LAND FOR RAILROAD PURPOSES. (a) The board [by rule] may identify and
15 request conveyance of land owned by or tentatively approved for
16 transfer to [subject to selection by] the state, including tide and
17 submerged land and land not adjacent to a railroad corridor, as
18 necessary or useful for present, or future [or intended] railroad
19 purposes. The request must include a statement of and justification
20 for the present or future [or intended] railroad use. Upon submission
21 of a request for [classification and] conveyance to the commissioner
22 of natural resources, the commissioner shall temporarily [classify
23 and] reserve the land identified in the request for railroad purposes
24 and shall temporarily [vacate a classification allowing] hold in
25 abeyance any disposal or lease of that land other than to the
26 corporation under laws or programs of the state. [A temporary
27 classification and vacation] such lands held by the department of
28 natural resources under this section is subject to valid existing
29 rights and remains in effect for 180 days.

1 (b) Within 90 days after receiving a request under (a) of this
2 section, the commissioner of natural resources by written decision
3 shall;

4 (1) designate [classify] that land for railroad purposes
5 and, subject to valid existing rights, convey the state's interests to
6 the corporation; or

7 (2) notify the corporation of reasons for refusal to
8 designate [classify] the land for railroad purposes.

9 (3) approve in part and deny in part the request for
10 designation [classification] under this section and convey as
11 appropriate.

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

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

26 (e) When physical conditions require that track or other right-
27 of-way fixtures of the corporation be moved from the existing location
28 and relocated on state-owned land adjacent to or in the vicinity of
29 the existing right-of-way, and the chief executive officer determines

1 that relocation is necessary to maintain safe and adequate rail op-
2 erations, the corporation may effect the relocation with concurrence
3 of the Department of Natural Resources. The relocation must be limi-
4 ted to land adequate to restore or continue ~~state~~ rail operations at a
5 normal level.

6 Sec. 42.40.430. EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND
7 MATERIALS. (a) The corporation may exercise the power of eminent
8 domain under AS 09.55.240 - 09.55.460 to acquire land or an interest
9 in land for railroad [lawful] purposes consistent with this chapter.

10 (b) The corporation may acquire a fee simple title whenever, in
11 the judgment of the board, ownership of a fee simple is necessary to
12 carry out the [state's lawful] purposes of this chapter [in condemning
13 property].

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

16 (d) The power of eminent domain conferred under this section
17 includes the power to obtain material, including clay, gravel, sand,
18 timber, or rock for railroad use, the land necessary to obtain the
19 material, and access to the land and material.

20 (e) The corporation may vacate land, or part of it, or rights in
21 land acquired for railroad purposes by executing and filing a deed in
22 the appropriate recording district. Upon filing of the deed, title
23 reverts to the State of Alaska, if compensation has been paid.

24 Sec. 42.40.450. OTHER ASSETS. (a) The corporation may submit
25 applications on its own behalf as an instrumentality of the state for
26 acquisition of interests in federal land available under federal law
27 that will enhance the operations of the corporation and may receive
28 conveyances of all interests in its own name.

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

9 Sec. 42.40.460. MUNICIPAL RIGHTS -OF-WAY. Upon request of a
10 municipality the corporation may grant to the municipality a
11 right-of-way in a railroad utility corridor or in land owned by the
12 corporation to be used for a pedestrian walkway or trail. Before
13 granting a right-of-way under this section the board shall require the
14 municipality to execute an agreement in a form approved by the board
15 to

16 (1) hold the corporation harmless and indemnify the
17 corporation for any use made of the right-of-way including but
18 not limited to

19 (a) defending the corporation in any cause of action brought
20 against the railroad as a result of such use.

21 (b) indemnifying the corporation for the amount of any judgement
22 rendered against the railroad including prejudgement interest, costs,
23 and attorney's fees; and

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

27 ARTICLE 6. FINANCIAL PROVISIONS.

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

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

4 Sec. 42.40.520. FIDELITY BOND. The corporation shall obtain a
5 fidelity bond in an amount determined by the board for its members and
6 any officer responsible for accounts and finances. A bond must be in
7 effect during the entire tenure in office of the bonded person.

8 Sec. 42.40.530. INSURANCE. The corporation shall keep in
9 force public liability insurance in an amount reasonably calculated to
10 cover potential claims for bodily injury, death or disability and
11 property damage that may arise from or be related to its operations
12 and activities, naming the state as an additional insured.

13 Sec. 42.40.540. CLAIMS. (a) All claims and lawsuits involving
14 activities of the railroad, including suits in contract, quasi-con-
15 tract, or tort, shall be brought against the corporation, and not
16 against the state.

17 (b) For the purposes of actionable claims, undertakings, pay-
18 ments of judgments, execution, interest, punitive damages, statutes of
19 limitations, bonds, costs, and similar matters related to the pres-
20 entation and prosecution of claims by and against the corporation, the
21 corporation and its board members and employees enjoy the same rights,
22 privileges, and immunities as the state and state officers as provided
23 in AS 09.10.120, AS 09.50.250 - 09.50.290, and AS 09.65.040.

24 (c) Claims against the corporation are not subject to the
25 provisions of AS 44.77.010 - 44.77.070 regarding claims against the
26 state.

27 (d) The corporation is not subject to the provisions of AS 44.-
28 80.010, regarding the state as a party to an action.

29 (e) The corporation may defend and indemnify a current or former

1 employee, agent, or board member of the corporation and their
2 successors against all costs, expenses, judgments, and liabilities,
3 including attorney fees, incurred by or imposed upon that person in
4 connection with a civil or criminal action in which the person is
5 involved by affiliation with the corporation, if the person acted in
6 good faith on behalf of the corporation and within the scope of
7 official duties or powers.

8 Sec. 42.40.550. REVENUE. Revenue generated by or appropriated
9 to the corporation shall be retained and managed by the corporation
10 for railroad and related purposes as required by 45 U.S.C. 1207(a)(5)
11 (Alaska Railroad Transfer Act of 1982).

12 Sec. 42.40.560. APPROPRIATIONS. The corporation may request,
13 with the concurrence of the governor, a direct appropriation or grant
14 from the legislature to assist in carrying out the provisions of this
15 chapter [AS 42.40.300 and 42.40.310].

16 ARTICLE 7 BONDS AND NOTES

17 Sec. 42.40.570. BONDS AND NOTES. (a) The corporation by resolution
18 may issue bonds and [bond anticipation] notes to provide money to
19 carry out its purposes.

20 (b) The principal and interest on bonds or notes of the corpo-
21 ration is payable from corporation money or assets. Bonds or notes
22 may be additionally secured by a pledge of a grant or contribution
23 from the federal, state, or local government or a corporation,
24 association, institution or person, or a pledge of money, income, or
25 revenue of the corporation from any source.

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

28 (1) be dated;
29

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

3 (3) be in a required denomination;

4 (4) be in a coupon or registered form;

5 (5) carry conversion or registration provisions;

6 (6) have a required rank or priority;

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

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

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

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

14 (e) Bonds and notes may be sold in the manner, on the terms, and
15 at the price the board determines. [Bond anticipation] notes shall
16 mature at the time or times determined by the board. Bonds shall
17 mature at the time, not exceeding 50 years from their date, determined
18 by the board.

19 (f) In the discretion of the board, an issue of bonds may be
20 secured by a trust indenture (which may be a trust company, bank or
21 national banking association, with corporate trust powers, located
22 inside or outside the state) or by a secured loan agreement or other
23 instrument or under resolution giving powers to a corporate trustee by
24 means of which the corporation may

25 (1) make and enter into any and all the covenants and
26 agreements with the trustees or the holders of the bonds which the
27 corporation may determine to be necessary or desirable, including,
28 without limitation, covenants, provisions, limitations and agreements
29 as to

1 (A) the application, investment, deposit, use and
2 disposition of the proceeds of bonds of the corporation or of money or
3 other property of the corporation or in which it has an interest;

4 (B) the fixing and collection of rentals, charges,
5 fees or other consideration for, and the other terms to be
6 incorporated in, contracts with respect to the use of any of the
7 corporation's property;

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

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

13 (E) the vesting in the trustee of rights and remedies
14 exercisable by the trustee for the protection of the holders of bonds
15 of the corporation and not otherwise in violation of law and the
16 restriction of the rights of an individual holder of bonds of the
17 corporation;

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

21 (3) provide for any other matters of like or different
22 character which in any way affect the security or protection of the
23 bonds.

24 Sec. 42.40.590. VALIDITY OF SIGNATURES. If an officer whose
25 signature or a facsimile of whose signature appears on bonds, notes,
26 or coupons attached to them ceases to be an officer before the de-
27 livery of the bond, note, or coupon, the signature or facsimile is
28 valid the same as if the person had remained in office until delivery.
29

1 Sec. 42.40.600. INDEPENDENT FINANCIAL ADVISOR. In negotiating
2 the private or public sale of bonds or bond anticipation notes to an
3 underwriter, the board shall retain a financial advisor who is
4 independent from the underwriter.

5 Sec. 42.40.610. VALIDITY OF PLEDGE. (a) The pledge of assets
6 or revenue of the corporation to the payment of the principal or
7 interest on bonds or notes of the corporation is valid and binding
8 from the time the pledge is made and the assets or revenue are immedi-
9 ately subject to the lien of the pledge without physical delivery or
10 further act. The lien of a pledge is valid and binding against all
11 parties having claims of any kind in tort contract or otherwise
12 against the corporation, irrespective of whether those parties have
13 notice of the lien of the pledge.

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

18 Sec. 42.40.620. REMEDIES. A holder of bonds or notes issued
19 under this chapter or of coupons attached to them, and a trustee under
20 a trust agreement or resolution authorizing the issuance of the bonds
21 or notes, except as restricted by a trust agreement or resolution,
22 either at law or in equity, may

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

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

28 Sec. 42.40.630. NEGOTIABLE INSTRUMENTS. Bonds and notes issued
29 under this chapter and interest coupons attached to them are

negotiable instruments under the laws of this state, subject only to applicable provisions for registration.

Sec. 42.40.640. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds and notes issued under this chapter are securities in which all public officers and public bodies of the state and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. These bonds and notes may be deposited with a state or municipal officer of an agency or political subdivision of the state for any purpose for which the deposit of bonds or notes of the state is authorized by law.

Sec. 42.40.660. CREDIT OF STATE NOT PLEDGED. (a) The state and its political subdivisions are not liable for the debts of the corporation. Bonds and notes issued under this chapter are payable solely from the revenue or assets of the corporation and do not constitute a

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

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

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

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

(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.

1 Sec. 42.40.670. OFFICERS NOT LIABLE. An officer or employee of
2 the corporation is not subject to personal liability or accountability
3 because of the execution or issuance of bonds or notes.

4 Sec. 42.40.680. EXEMPTION FROM TAXATION. (a) The real and
5 personal property of the corporation and its assets, income, and
6 receipts are exempt from all taxes and special assessments of the
7 state or a political subdivision of the state.

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

13 *** (c) The exercise of the powers granted by this chapter shall
14 be in all respects for the benefit of the people of the state, for
15 their well-being and prosperity, and for the improvement of their
16 social and economic conditions. Therefore, the corporation is not
17 required to pay a tax or assessment on property owned by the
18 corporation under the provisions of this chapter or on the income from
19 the property.

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

27 Sec. 42.40.690. REVERSION OF ASSETS. If the corporation ceases
28 to exist, for whatever reason, its assets revert to the state...

29 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

1 Sec. 42.40.700 PERSONNEL. Employees of the Alaska Railroad are
2 employees of the corporation and not of the state. The provisions of AS 39
3 do not apply to employees of the corporation.[, except that the provisions
4 of AS 39.50.010-39.50.200 shall apply to the members of the board and all
5 appointed executive officers.]

6 Sec. 42.40.710 COLLECTIVE BARGAINING RIGHTS. The provisions of the
7 Public Employee Relations Act (AS 23.40.070-23.40.260) do not apply to the
8 corporation or to its employees. However, employees of the corporation,
9 except the chief executive officer and other executive officers appointed
10 by the chief executive officer, may self organize and form, join or assist
11 an organization to bargain collectively through representatives of their
12 own choosing, and engage in concerted activities for the purpose of
13 collective bargaining or other mutual aid or protection.

14 Sec. 42.40.720 RAILROAD LABOR RELATIONS AGENCY. (a) There is
15 established a railroad labor relations agency which consists of three
16 members appointed by the governor. One member shall be a member of the
17 state labor relations agency (AS23.40). Members serve at the pleasure of
18 the governor.

19 (b) The railroad labor relations agency shall perform the functions
20 described in AS 42.40.700-42.40.990 to carry out the provisions of this
21 article.

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

25 Sec. 42.40.730. COLLECTIVE BARGAINING UNIT. The railroad labor
26 relations agency shall decide in each case, in order to assure to employees
27 the fullest freedom in exercising the rights guaranteed by
28 AS.42.40.700-42.40.990 the unit appropriate for the purposes of collective
29 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.

Sec. 42.40.740. REPRESENTATIVES AND ELECTIONS. (a) The railroad labor relations agency shall investigate a petition if it is submitted in a manner prescribed by the labor relations agency and is

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

(A) want to be represented for collective bargaining by a labor or employee organization as exclusive representative, or

(B) assert that the organization which has been certified or is currently being recognized by the corporation as bargaining representative is no longer the representative of the majority of employees in an appropriate unit; or

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

(b) If the railroad labor relations agency has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice. If the railroad labor relations agency finds that there is a question of representation, it shall direct an election by secret ballot to determine whether or by which organization the employees desire to be represented and shall certify the results of the election. Nothing in this section prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the regulations of the railroad labor relations agency or an election in a bargaining unit agreed upon by the parties. The railroad labor relations

agency shall determine who is eligible to vote in an election and shall establish rules governing the election. In an election in which none of the choices on the ballot receives a majority of the votes cast, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest number of valid votes cast in the election. If an organization receives the majority of the votes cast in the election it shall be certified by the railroad labor relations agency as exclusive representative of all the employees in the bargaining unit.

(c) An election may not be held in a bargaining unit or in a subdivision of a bargaining unit if a valid election has been held within the preceding 12 months.

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

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

Sec. 42.40.750. UNFAIR LABOR PRACTICES. (a) The corporation or its agent may not

(1) interfere, restrain or coerce an employee in the exercise of his rights guaranteed in AS 42.40.710;

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

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

(4) discharge or discriminate against an employee because he has signed or filed an affidavit, petition or complaint or given testimony under AS 42.40.010-42.40.990;

(5) refuse to bargain collectively in good faith with an organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

(b) Nothing in this article prohibits the corporation from making an agreement with an organization to require as a condition of employment

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

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

(c) A labor or employee organization or its agents may not

(1) restrain or coerce

(A) an employee in the exercise of the rights guaranteed in AS 42.40.710 or

(B) the corporation in the selection of his representative for the purposes of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with the corporation, if it has been designated in accordance with the provision of AS 42.40.700-42.40.990 as the exclusive representative of employees in an appropriate unit.

Sec. 42.40.760. INVESTIGATION AND CONCILIATION OF COMPLAINTS. If a verified written complaint by or for a person claiming to be aggrieved by a practice prohibited by AS 42.40.750 or a written accusation that a person subject to AS 42.40.700-42.40.990 has engaged in a prohibited practice, is

1 filed with the railroad labor relations agency, it shall investigate the
2 complaint or accusation. If it determines after th preliminary
3 investigation that probably cause exists in support of the complaint or
4 accusation, is shall try to eliminate the prohibited practice by informal
5 methods of conference, conciliation, and persuasion. Nothing said or done
6 during this endeavor may be used as evidence in a subsequent proceeding.

7 Sec. 42.40.770 COMPLAINT AND ACCUSATION. If the railroad labor
8 relations agency fails to eliminate the prohibited practice by conciliation
9 and to obtain voluntary compliance with AS 42.40.700-42.40.990, or before
10 it attempts conciliation, it may serve a copy of the complaint or
11 accusation upon the respondent. The complaint or accusation and the
12 subsequent procedures shall be handled in accordance with the
13 administrative adjudication portion of the Administrative Procedures Act
14 (AS 44.62).

15 Sec. 42.40.780 ORDERS AND DECISIONS. If the railroad labor relations
16 agency finds that a person named in the written complaint or accusation has
17 engaged in a prohibited practice, the railroad labor relations agency shall
18 issue and serve on the person an order or decision requiring him to cease
19 and desist from the prohibited practice and to take affirmative action
20 which will carry out the provisions of AS 42.40. 00-42.40.990. If the
21 railroad labor relations agency finds that a person named in the complaint
22 or accusation has not engaged or is not engaging in a prohibited practice,
23 the railroad labor relations agency shall state its findings of fact and
24 issue an order dismissing the complaint or accusation.

25 Sec. 42.40.790 ENFORCEMENT BY INJUNCTION. The railroad labor
26 relations agency may apply to the superior court in the judicial district
27 in which the prohibited practice occurred for an order enjoining the
28 prohibited acts specified in the order or decision of the railroad labor
29 relations agency. Upon showing by the railroad labor relations agency that

1 the person has engaged or is about to engage in the practice, an injunction
2 restraining order, or other order which is appropriate may be granted by
3 the court and shall be without bond.

4 Sec. 42.40.800 POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a) For
5 the purpose of the investigations, proceedings, or hearings which the
6 railroad labor relations agency considers necessary to carry out the
7 provisions of AS 42.40.700-42.40.990, the railroad labor relations agency
8 may issue subpoenas requiring the attendance and testimony of witnesses and
9 the production of relevant evidence.

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

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

14 (d) If a person refuses to obey a subpoena issued under AS
15 42.40.700-42.40.990, the superior court in the district in which the person
16 resides or is found may, upon application by the railroad labor relations
17 agency, issue an order requiring him to comply with the subpoena.

18 Sec. 42.40.810 REGULATIONS. The railroad labor relations agency
19 shall adopt regulations under the Administrative Procedure Act (AS 44.62)
20 to carry out the provisions of AS 42.40.700-42.40.990.

21 Sec. 42.40.820. PENALTY FOR VIOLATION OF ORDER OR DECISION. A person
22 who violates a provision of an order or decision of the railroad labor
23 relations agency is guilty of a misdemeanor and is punishable by fine of
24 not more than \$500.

25 Sec. 42.40.830. MEDIATION. If after a reasonable period of
26 negotiation over the terms of a collective bargaining agreement, an impasse
27 exists between the corporation and an organization, the railroad labor
28 relations agency shall appoint a person, mutually agreeable to the parties
29

from a list of qualified mediator/arbitrators knowledgeable in railway labor agreements to act as mediator in the dispute.

(b) Prior to a 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 voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the railroad labor relations agency has any power of compulsion in mediation proceedings.

Sec. 42.40.840. 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 the interest of the health, safety or welfare of the public. 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 or is about to threaten the health, safety or welfare of the public. A court, in deciding whether or not to enjoin the strike, shall consider the total equities in the particular class. "Total equities" includes not only the impact of a strike on the public but also the extent to which an employee organization and the corporation have met their statutory obligations. 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 Sec. 42.40.830 and shall fashion the award as he/she deems equitable.

(b) Notwithstanding the provisions of (a) of this section, the parties to the dispute may mutually agree to submit the dispute to binding arbitration.

1 Sec. 42.40.850. AGREEMENT. (a) Upon the completion of negotiations
2 between an organization and the corporation, if a settlement is reached,
3 the corporation shall reduce it to writing in the form of an agreement.
4 The agreement shall include a grievance procedure which shall have binding
5 arbitration as its final step. Either party to the agreement has a right
6 of action to enforce the agreement by petition to the labor relations
7 agency.

8 (b) The parties to an agreement under this section may agree to terms
9 which specify an expiration date for the agreement. If a specific term is
10 set for which an agreement will remain in effect, provisions shall be
11 included prohibiting any strikes or lockouts during the term of the
12 agreement during and establishing a process for minor amendments to the
13 agreement during the term of the agreement, which shall have binding
14 arbitration as its final step.

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

21 Sec. 42.40.860. LABOR OR EMPLOYEE ORGANIZATION DUES AND EMPLOYEE
22 BENEFITS, DEDUCTION AND AUTHORIZATION. Upon written authorization of a
23 corporation employee within a bargaining unit, the corporation shall deduct
24 from the payroll of the employee the monthly amount of dues, fees and other
25 employee benefits as certified by the secretary of the exclusive bargaining
26 representative and shall deliver it to the chief fiscal officer of the
27 exclusive bargaining representative.

28 Sec. 42.40.870. EXEMPTION FROM ARTICLE 7. Notwithstanding the
29 provisions of AS 42.40.860, a collective bargaining settlement reached, or

1 agreement entered into, under AS 42.40.850 that incorporates union security
2 provisions, including but not limited to a union shop or agency shop
3 provision or agreement, shall safeguard the rights of nonassociation of
4 employees having bona fide religious convictions based on tenets or
5 teachings of a church or religious body of which an employee is a member.
6 Upon submission of proper proof of religious conviction to the railroad
7 labor relations agency, the agency shall declare the employee exempt from
8 becoming a member of a labor organization or employee association. The
9 employee shall pay an amount of money equivalent to regular union or
10 association dues, initiation fees, and assessments to the union or
11 association. Nonpayment of this money subjects the employee to the same
12 penalty as if it were nonpayment of dues. The receiving union or
13 association shall contribute an equivalent amount of money to a charity of
14 its choice not affiliated with a religious, labor or employee organization.
15 The union or association shall submit proof of contribution to the railroad
16 labor relations agency.

17 ARTICLE 9. GENERAL PROVISIONS.

18 Sec. 42.40.900. APPLICATION OF EXISTING STANDARDS. The Alaska
19 Railroad Corporation is not subject to the jurisdiction of the Alaska
20 Transportation Commission. The following laws do not apply to the
21 operations of the Alaska Railroad Corporation:

- 22 (1) AS 19;
23 (2) AS 30.15;
24 (3) AS 35;
25 (4) AS 37.05;
26 (5) AS 37.07;
27 (6) AS 37.10.010 - 37.10.060;
28 (7) AS 37.10.085;
29 (8) AS 37.20;

(9) AS 37.25;

(10) AS 38;

(11) AS 44.62.040 - 44.62.320.

Sec. 42.40.910. SPECIAL REPORT. The corporation shall investigate and prepare a report for the governor and the legislature on the long-term operations of the railroad that are in the best interest of the state. The report shall be due January 1, 1988. It shall make specific recommendations on operational alternatives and the transfer of all or part of the railroads operations to the private sector.

Sec. 42.40.950. DEFINITIONS. In this chapter,

(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 [deed of conveyance] transfer documents for the properties of the Alaska Railroad under 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of 1982);

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

(5) "railroad utility corridor" means a right-of-way for railroad and related purposes as defined in 45 U.S.C. 1202(11) (Alaska Railroad Transfer Act of 1982).

(6) "land" means all interest in real property, including tide and submerged land;

(7) "rail properties" means all real and personal property, tangible and intangible, of the corporation;

(8) "executive officials" means the employees occupying the following positions at the Alaska Railroad as of the day before the date of transfer: General Manager, Assistant General Manager,

Assistant to the General Manager, Chief of Administration and General Counsel.

(9) "railroad labor relations agency" means railroad employee labor relations agency with regard to the corporation and employees of the corporation.

(10) "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 42.40.700-42.40.990

(11) "organization" means a labor or employee organization of any kind in which employees participate and which 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.

(12) "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;

(13) "terms and conditions of employment" means the hours of employment, the compensation and fringe benefits affecting the working conditions of the employees; but does not mean the general policies describing the function and purposes of the corporation.

Sec. 42.40.990. SHORT TITLE. This chapter may be referred to as

the Alaska Railroad Corporation Act.

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

Sec. 42.40.010 ESTABLISHMENT OF THE CORPORATION

Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is established the Alaska Railroad Corporation. The corporation is a public corporation and, is an instrumentality of the state [within the Department of Commerce and Economic Development], but the corporation has a legal existence independent of and separate from the state. The exercise by the corporation of the powers provided in this chapter is considered an essential governmental function of the state.

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

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 the Department of Commerce and Economic Development, the Chief Executive Officer and eight [seven] voting members appointed by the governor. These eight members must be residents of and registered voters in the state except as provided in (b) and (c) of this section. No more than two of these members may be from any one of the four judicial districts in the state. The public [voting] members must have substantial experience or professional training and expertise in fields relevant to the purposes of this chapter, including, but not limited to transportation, business, and finance. Except for [the commissioner of commerce and economic development], the chief executive officer, and the member appointed under (d) of this section, a voting member may not be a state officer or employee.

(1) One voting member [shall] may be or have been an executive official of an American railroad that is not now or was never a connecting carrier of the Alaska railroad.

1 (2) One person may be appointed by the governor to be a
2 voting member of the board, if, at the time of appointment, the person
3 has at least 10 years of experience in management of railroads.

4 (3) One [an] employee of the corporation from an employee
5 bargaining unit appointed by the governor to represent the employees;

6 (4) the chief executive officer of the corporation.

7 (b) Except for [the commissioner of commerce and economic
8 development and] the chief executive officer of the corporation, the
9 voting members of the board shall be confirmed by a majority of the
10 membership of the legislature in joint session. A member appointed by
11 the governor has the full powers and responsibilities of a confirmed
12 board member unless and until the member has been rejected by the
13 legislature.

14 (c) The board shall elect from its membership a chairperson and
15 vice-chairperson and prescribe their specific duties by rule.

16 (d) The board shall appoint a secretary and prescribe the spe-
17 cific duties of the secretary.

18 (e) The chairperson shall call meetings of the board at least
19 once every three months. The chairperson may call other meetings of
20 the board as the chairperson considers necessary. The chairperson
21 shall preside at meetings of the board.

22 * Sec. 5. AS 42.40.030 is amended to read:

23 Sec. 42.40.030. TERM OF OFFICE: REMOVAL. (a) Except for the
24 commissioner of Commerce and Economic Development, the voting members of
25 the board serve for staggered terms of five years each [, AND SERVE AT THE
26 PLEASURE OF THE GOVERNOR DURING THEIR TERMS].

27 * Sec. 6. AS.42.40.030 is amended by adding a new subsection to read:

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

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

3 (2) continued refusal or inability to attend meetings of the
4 board; or

5 (3) conviction of a felony.

6 (4) any conduct that was intended to harm the corporation
7 whether or not it constitutes a crime

8 * Sec. 7. AS 42.40.100(a) is amended to read:

9 (a) The board shall appoint the chief executive officer of the
10 corporation [SUBJECT TO THE APPROVAL BY THE GOVERNOR]. The chief executive
11 officer serves at the pleasure of the board. The board shall fix
12 compensation for the chief executive officer.

13 * Sec. 8. CONFLICTING LAWS INAPPLICABLE. If provisions of this Act
14 are in conflict with the provisions of other state law, the provisions of
15 this Act prevail. [Where possible], Provisions of this Act shall be
16 construed so that they do not conflict with 45 U.S.C. 1201-1214 (Alaska
17 Railroad Transfer Act of 1982).

18 * Sec. 9. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD
19 CORPORATION. Notwithstanding AS 42.40.020 enacted in sec. 1 of this Act,
20 the governor shall designate the terms of the appointed members of the
21 first board of directors of the Alaska Railroad Corporation as follows:

22 (1) one shall serve a term of two years;

23 (2) two shall serve a term of three years;

24 (3) two shall serve a term of four years; and

25 (4) two shall serve a term of five years.

26 * Sec. 10. COLLECTIVE BARGAINING AGREEMENT BETWEEN THE ALASKA
27 RAILROAD CORPORATION AND EMPLOYEES. (a) As soon as practicable after
28 establishment of the corporation and prior to transfer of the Alaska
29 Railroad, the Alaska Railroad Corporation and its employees shall adopt

collective bargaining agreements that continue the provisions of the agreements in effect between the Alaska Railroad and its employees immediately before transfer of the Alaska Railroad. The collective bargaining agreements between the corporation and its employees shall remain in effect consistent with 45 U.S.C. 1202-1214 (Alaska Railroad Transfer Act of 1982).

(b) The board shall by rule on or before the date of transfer under the authority granted in Sec. 42.40.230(c) adopt personnel rules and other rules and regulations as necessary to prevent an interruption of services.

(c) The board shall renegotiate all collective bargaining agreements during the two-years period following transfer in accordance with 45 U.S.C. 1202-1214, unless the parties agree to the contrary.

(d) Subject to the provisions of 45 U.S.C. 1202-1214 (Alaska Railroad Transfer Act of 1982) within 180 days of the first meeting of the board, the board and representatives of employee bargaining units shall implement ground rules for the renegotiation of collective bargaining agreements.

* Sec 11. Sections 3 - 7 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.

* Sec. 12. Sections 1,2,8-11 of this Act take effect immediately in accordance with AS 01.10.070.(c).

* Sec. 13. EFFECTIVE DATE. This Act takes effect immediately in accordance with AS 01.10.070(c).

3/15/84 Draft
X1
2 IN THE HOUSE

3 HOUSE BILL NO. 512

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 THIRTEENTH LEGISLATURE - SECOND SESSION

6 A BILL

7 For an Act entitled: "An Act establishing the Alaska Railroad
8 Corporation to manage and operate the Alaska
9 Railroad; and providing for an effective date."

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

11 * Section 1. LEGISLATIVE FINDINGS AND PURPOSE.

12 (a) The Legislature finds that

13 (1) It is the policy of the state to

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

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

19 (C) develop and implement plans for a transportation
20 network;

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

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

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

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

government;

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

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

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

(2) 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 insuring 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) 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

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

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

CHAPTER 40. ALASKA RAILROAD CORPORATION.

ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is established the Alaska Railroad Corporation. The corporation is a public corporation and for the purposes of art. III, sec. 22, Constitution of the State of Alaska, is an instrumentality of the state within the Department of Commerce and Economic Development, but the corporation has a legal existence independent of and separate from the state. The exercise by the corporation of the powers provided in this chapter is considered an essential governmental function of the state.

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 the Department of Commerce and Economic Development, the Chief Executive Officer and seven voting members appointed by the governor. These eight members must be residents of and registered voters in the state except as provided in (b) and (c) of this section. No more than two of these members may be from any one of the four judicial districts in the state. The public [voting] members must have substantial experience or professional training and expertise in fields relevant to the purposes of this chapter,

1 including, but not limited to transportation, business, and finance.
2 Except for the commissioner of commerce and economic development, a
3 voting member may not be a state officer or employee.

4 (1) One voting member [shall] may be or have been an
5 executive official of an American railroad that is not now or was
6 never a connecting carrier of the Alaska railroad.

7 (2) One person may be appointed by the governor to be a
8 voting member of the board, if, at the time of appointment, the person
9 has at least 10 years of experience in management of railroads.

10 (3) One [an] employee of the corporation from an employee
11 bargaining unit appointed by the governor to represent the employees;

12 (4) the chief executive officer of the corporation.

13 (b) The voting members of the board shall be confirmed by a
14 majority of the membership of the legislature in joint session. A
15 member appointed by the governor has the full powers and responsibili-
16 ties of a confirmed board member unless and until the member has been
17 rejected by the legislature.

18 (c) The board shall elect from its membership a chairperson and
19 vice-chairperson and prescribe their specific duties by rule.

20 (d) The board shall appoint a secretary and prescribe the spe-
21 cific duties of the secretary.

22 (e) The chairperson shall call meetings of the board at least
23 once every three months. The chairperson may call other meetings of
24 the board as the chairperson considers necessary. The chairperson
25 shall preside at meetings of the board.

26 Sec. 42.40.030. TERM OF OFFICE AND REMOVAL. Except for the
27 commissioner of commerce and economic development, the appointed
28 members of the board serve for staggered terms of five years each, and
29 serve at the pleasure of the governor during their terms..

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

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

9 (c) A member whose term has expired shall serve until a succes-
10 sor has been appointed.

11 Sec. 42.40.050. COMPENSATION AND EXPENSES. (a) An appointed
12 member of the board is entitled to compensation at a rate of [\$250]
13 \$400 for each day the member is engaged in the actual performance of
14 duties as a member of the board. The board may provide by rule for
15 compensation for partial days during which a member is engaged in the
16 actual performance of duties.

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

20 Sec. 42.40.060. QUORUM. [Four] Five voting members of the board
21 constitute a quorum for the transaction of business.

22 Sec. 42.40.070. VOTING. [Four] Five affirmative votes are
23 required for board action. The board shall provide by rule for the
24 manner of voting, except that the board may not provide for voting by
25 proxy. The rules may provide for voting and conferring by means of
26 telecommunication devices.

27 ARTICLE 2. MANAGEMENT.

28 Sec. 42.40.080. MANAGEMENT BY THE BOARD. The board is
29 responsible

for the management of the corporation but shall delegate certain powers and duties to the chief executive officer in accordance with AS 42.40.110. In carrying out its responsibilities under this section the board shall, subject to AS 42.40.110,

(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

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

(7) review all public and private land disposals in planning for future development or expansion.

(8) insure that accepted railroad industry standards are used for the corporation's accounting and procurement systems.

Sec. 42.40.090. STATE OVERSIGHT (a). The board shall notify the governor and the leadership of the legislature before undertaking

(1) expansion, reduction, or diversification of services provided by the railroad upon the date of transfer to the authority or as provided under this chapter that the board determines would represent a significant and permanent change in the level and nature of services provided;

(2) extension of the main or branch lines by more than 25 miles or 5 percent of the railroads total track mileage, whichever is

greater; or

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

(4) any possible application for state appropriation for any service which is not self-sustaining.

(b) The notice required by (a) of this section must be in writing and describe the proposed undertaking in detail, specifying

(1) its financial impact on the corporation;

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

(3) why the project is necessary or desirable to achieve the purposes of this chapter and;

(4) whether and when the undertaking will be self-sustaining financially.

Sec. 42.40.100. EXECUTIVE OFFICERS. (a) The board shall appoint the chief executive officer of the corporation. [subject to the approval by the Governor.] The chief executive officer 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.

Sec. 42.40.110. DELEGATION. (a) The board shall by rule delegate powers and duties necessary and appropriate for the management of the daily affairs and operations of the corporation to the chief executive officer, subject to a requirement of board concurrence or authorization imposed by the rules.

1 (b) Within 180 days of the first meeting of the board, the board
2 shall by rule delegate the following activities of the corporation to
3 the chief executive officer or other executive officers designated by
4 the board:

5 (1) leasing, granting easements in, issuing permits for the
6 use of, or conveying other interests that do not constitute a transfer
7 of the corporation's entire interest in real property of the corpora-
8 tion;

9 (2) establishing specific rates, tariffs, divisions, and
10 contract rate agreements;

11 (3) making routine changes in service levels; and

12 (4) performing procurement activities.

13 (5) establish and maintain the Railroad's procurement and
14 accounting systems.

15 (c) Specific board approval [authorization or concurrence] is
16 required for the following:

17 (1) transferring the corporation's entire interest in real
18 property; other than the execution of a release of a lien or
19 satisfaction of a mortgage after payment has been received;

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

21 (3) mortgaging or pledging corporation assets;

22 (4) donating property, or other assets belonging to the
23 corporation;

24 (5) acting as a surety or guarantor;

25 (6) adopting a long-range program and capital improvement
26 plan subject to Sec. 42.40.310;

27 (7) certifying annual reports;
28
29

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

4 (9) diversification and major expansion or reducing
5 services beyond those provided on the date of transfer or as provided
6 under this chapter;

7 (10) expanding the main or branch lines, other than perform-
8 ing routine track alignment as necessary to maintain service levels in
9 effect on the date of transfer; and

10 (11) selecting independent auditors and accountants.

11 (12) certifying collective bargaining agreements with
12 railroad employees as provided by AS. 42.40.700;

13 (13) capital projects with an estimated completion cost in
14 excess of \$500,000 or an estimated completion time of more than one
15 year;

16 (14) the exercise of the power of eminent domain.

17 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

18 Sec. 42.40.200. CONFLICTS OF INTEREST. (a) Except as provided
19 in this section, a board member or employee of the corporation [authority]
20 may not participate in a decision of the corporation [authority] in which
21 that person or a member of that person's immediate family has a direct or
22 indirect financial interest unless the financial interest is a remote
23 financial interest and participation is approved under (b) of this section.
24 For purposes of this section, "participate in a decision" includes all
25 discussions, deliberations, preliminary negotiations, and votes concerning
26 a matter that is the subject of formal action by the board.

27 (b) A board member or employee may participate in a decision if
28 that person or a member of that persons immediate family has only a
29 remote interest and if 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 employee in the decision, and thereafter in a public meeting the board authorizes or approves the participation by a vote of its membership excluding the interested member or employee. As used in this subsection, "remote interest" means interests that in good faith are defined as remote by rules adopted by the corporation.

(c) A board member or employee 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 employee who intentionally violates a prohibition contained in this section.

Sec. 42.40.210. PUBLIC BOARD MEETINGS. (a) The meetings of the board are public with the exception of an executive session conducted under AS 44.62.310 and (b) of this section.

(b) In addition to those subjects that may be discussed in executive session under AS 44.62.310, the board may consider in executive session matters that pertain to personnel, the corporation's legal position, land acquisition or disposal, or proprietary information, as defined in a manner consistent with the standards and practices of the United States Interstate Commerce Commission for protection of information including but not limited to proprietary information associated with specific shippers, divisions, and contract rate agreements.

1 Sec 42.40.220. MINUTES AND NOTICE OF MEETINGS. The board shall
2 keep minutes of each meeting and shall send a certified copy of the
3 minutes of the public portion of each meeting to the governor and the
4 leadership of the legislature. The board shall provide by rule for
5 advance public notice for its meetings.

6 ***** Sec. 42.40.230. RULES. (a) The board shall establish a
7 procedure for adopting rules to carry out its functions and the
8 purposes of this chapter. Within 90 days after its first meeting the
9 board shall adopt rules establishing a procedure for giving advance
10 public notice and an opportunity for the public to comment on proposed
11 regulations of the authority that in the determination of the board,
12 will have a substantial impact on the public or be used in the
13 corporations dealings with a significant segment of the public.

14 (b) The rules shall also include a procedure for the
15 adoption of emergency rules when the adoption of an emergency rule is
16 essential to continue or to reinstate the orderly operation of the
17 corporation's facilities or program.

18 (c) The Board of Directors of the Alaska Railroad
19 Corporation, by resolution, may continue in force after date of
20 transfer all or part of the rules, regulations, and orders of the
21 Alaska Railroad which were in effect one day before the date of
22 transfer and are not inconsistent with this chapter or other state
23 law. The Board of Directors may adopt in its rules, regulations, and
24 orders the substance of former federal authorities relating to the
25 Alaska Railroad. This adoption is not considered a continuation of
26 the federal authorities if made in compliance with the procedural
27 requirements of this chapter and other applicable law.

28 Sec. 42.40.240. PUBLIC DISCLOSURE OF INFORMATION. (a) Except
29 as provided by rule of the corporation under (b) of this section,

1 information in the possession of the corporation is public and is open to
2 public inspection at reasonable times.

3 (b) The corporation may by rule designate and withhold public
4 disclosure of matters of a nonpublic, privileged, or proprietary
5 nature. Those matters include personnel records, communications with
6 and work product of counsel consistent with the standards and
7 practices of the United States Interstate Commerce Commission for the
8 protection of these matters, and information including but not limited
9 to specific shippers, divisions, and contract rate agreements.

10 Sec. 42.40.260. ANNUAL REPORT. Within 90 days following the end
11 of the fiscal year of the railroad the board shall direct preparation
12 of, certify and distribute to the governor and to the legislature a
13 report describing the operations and financial condition of the corpo-
14 ration during the preceding fiscal year. The plans may include
15 suggestions for legislation relating to the structure, powers, or
16 duties of the corporation or relating to operation of facilities of
17 the corporation. This report shall include a breakdown of a service's
18 real costs and income in each category of railroad operations.

19 Sec. 42.40.270. ANNUAL AUDIT. The board shall have the finan-
20 cial records of the corporation audited annually by an independent
21 certified public accountant experienced in railroad accounting. The
22 corporation shall make all of its financial records available to an
23 auditor appointed by the governor or to the legislative audit division
24 for examination. Disclosure to the public by the auditor or legisla-
25 tive audit division of this information is subject to AS 42.40.240 and
26 rules implementing that section.

27 Sec. 42.40.280. PERFORMANCE AUDIT. The board shall have a
28 performance audit conducted by a qualified professional preformance
29 auditing firm to assure thst the railroad is being managed and

operated in accordance with the requirements of this Act.

ARTICLE 4. POWERS AND DUTIES.

Sec. 42.40.300. GENERAL POWERS. In addition to the exercise of other powers authorized by law, the corporation may

- (1) adopt a seal;
- (2) adopt rules and 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, real or personal property, rights, rights-of-way, franchises, easements, and other interest in land, including land lying under water and appropriation of water rights that are located in the state, taking title to the property in the name of the corporation;
- (8) acquire property by eminent domain in accordance with AS 42.40.430;
- (9) hold, maintain, use, operate, lease, exchange, donate, improve, convey, alienate, dispose of, mortgage, encumber, and otherwise grant security interests in or transfer any real or personal property including facilities and equipment;
- (10) 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 the provisions of federal, state, or local programs;

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

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

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

10 (14) acquire, hold, and disperse of Stocks, memberships,
11 contracts, bonds, general or limited partnership interests or other
12 interests in another corporation, association, partnership, joint venture,
13 or other legal entity, and exercise the powers or right in connection with
14 these interests which are provided in contracts or agreements and that are
15 allowed by law concerning the satisfaction of debts;

16 (15) undertake and provide for the acquisition, construction,
17 maintenance, equipping, and operation of connecting, switching, terminal, or
18 other railroads and railroad facilities in the state;

19 (16) apply to the appropriate agencies of the state, the
20 United States, and a foreign country or other proper agencies for the
21 permits, licenses, or approvals necessary to construct, maintain, and
22 operate railroad transportation services, and to obtain, hold, and
23 reuse the licenses and permits in the same manner as other operating
24 units or persons;

25 (17) prescribe rates to be charged for services provided by
26 the Alaska Railroad in accordance with 45 U.S.C. 1201-1214 (Alaska
27 Railroad Transfer Act of 1982);

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

1 (19) enter into contracts, leases or other agreements with
2 connecting carriers and shippers, and other persons concerning the
3 services, activities, operations, properties, and facilities of the
4 railroad. including contracts leases and other agreements that contain
5 provisions intended to preserve and expand the railroad's traffic
6 base;

7 (20) plan for and undertake expansion of the railroad and
8 railroad activities, including extension of the Alaska Railroad's rail
9 system, and contract with other modes of transportation service con-
10 necting to the railroad's rail services;

11 (21) adopt rules that are designed to safeguard property
12 owned, managed, or transported by the corporation and to protect
13 employees and persons using the corporation's property or services;

14 (22) hire and discharge railroad personnel and determine
15 benefits and other terms and conditions of employment established in
16 accordance with obligations imposed by 45 U.S.C. 1201-1214 (Alaska
17 Railroad Transfer Act of 1982);

18 (23) assume and satisfy liabilities of the United States or
19 its agencies as provided by 45 U.S.C. 1201-1214 (Alaska Railroad
20 Transfer Act of 1982 *****and the closing report or its substantive
21 equivalent as accepted by the legislature;

22 (24) maintain a security force to enforce state law and the
23 corporations rules with respect to violations that occur on or to
24 property owned, managed or transported by the corporation;

25 (25) borrow money and issue its bonds or notes and provide
26 for and secure their payment, provide for the rights of their holders
27 and purchase, hold, or dispose of its bonds or notes;

1 (26) secure the payment of its obligations by pledge or
2 mortgage or other lien on its contracts, revenues, income, or proper-
3 ty;

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

8 (28) include in any borrowing the amounts necessary to
9 establish reasonable reserves and pay financing charges and interest
10 on the obligations for a reasonable period after which the corporation
11 estimates funds will be otherwise available to pay the interest,
12 consultant, advisory, and legal fees, and other expenses necessary or
13 incident to borrowing;

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

16 (30) cancel bonds purchased under (29) of this section;

17 (31) adopt rules having the force of law that require
18 designated classes of proprietary information and communications to be
19 held confidential;

20 (32) do all things necessary, convenient and desirable to
21 carry out the powers and duties expressly granted or necessarily
22 implied in this chapter or under other laws of the state or the laws
23 and regulations of the federal government.

24 Sec. 42.40.310. LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT
25 PLANS. (a) The corporation shall prepare and the board shall adopt a
26 long-range program plan and a capital improvement plan. The board
27 shall consult [interface] with affected [other related] state agencies
28 in preparation of the plans. The long-range program plan shall
29 delineate the manner in which the corporation intends to accomplish

1 the purposes of this chapter during each of the five years after the
2 plan is adopted. The capital improvement plan shall present and
3 explain the corporation's anticipated capital improvements for each of
4 the five years after the plan is adopted and shall reflect efforts to
5 upgrade the railway and develop safer, more cost-effective rail
6 operations.

7 (b) The board shall annually review and update the plans re-
8 quired under (a) of this section. [The board may not contract for the
9 preparation or revision of either the long-range program plan or the
10 capital improvement plan, but shall require their preparation and
11 revision by employees of the corporation.]

12 (c) The board shall provide copies of its updated plans to the
13 governor and the legislature by December 1 of each year.

14 Sec. 42.40.320. USE OF CORPORATION ASSETS. (a) The corporation
15 shall apply all money, property, other assets, and credit of the
16 corporation toward activities authorized by this chapter. The corpo-
17 ration may not issue shares of stock, pay dividends, make private
18 distributions of assets, make loans to board members or employees, or
19 engage in business for private benefit. The use of money, property,
20 other assets, or credit of the corporation for purposes not authorized
21 by law by persons having the possession or control of it is prohibi-
22 ted.

23 (b) Notwithstanding the provisions of this section, the corpo-
24 ration may purchase insurance to protect and hold personally harmless
25 its employees, agents, and board members from an action, claim, or
26 proceeding instituted against these individuals arising out of the
27 performance, purported performance, or failure of performance, in good
28 faith, of duties for, or employment with, the corporation and to hold
29 these individuals harmless from expenses connected with the defense,

1 settlement, or monetary judgments from that action, claim, or
2 proceeding; the purchase of insurance and its policy limits are dis-
3 cretionary with the board and insurance is not considered to be com-
4 pensation to the insured individual.

5 ARTICLE 5. RAIL PROPERTIES.

6 Sec. 42.40.400. LAND. All land among the rail properties trans-
7 ferred under 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of
8 1982) or otherwise acquired by the corporation is under the control of
9 the corporation. All lands transferred or acquired shall be
10 designated as follows

11 (1) railroad rights-of-way or easements transferred under
12 the Transfer Act or otherwise acquired shall be classified as railroad
13 utility corridors;

14 (2) all other real property transferred under the Transfer
15 Act or otherwise acquired, are rail lands.

16 (b) Railroad utility corridors shall be of a width at least 100
17 feet on both sides of the centerline of the extended main or branch
18 line, or may be of lesser width only if the adjoining land is not rail
19 property, and may be surveyed by the metes and bounds method; and

20 (c) The corporation may not sell land within the railroad
21 corridor. [However], Except as provided in AS 42.40.460, the
22 corporation may lease, grant easements or permits or otherwise
23 authorize use of portions of the utility corridor but only for
24 transportation, transmission, or communication purposes and for
25 support functions associated with such purposes, so long as parallel
26 uses of the railroad corridor are

27 not restricted.

28 (d) The corporation may sell, lease, grant easements or permits
29 or otherwise authorize use of portions of rail lands for other

1 services including but not limited to transportation, transmission,
2 and communication purposes and for support functions associated with
3 such purposes. Final sale [or disposal] of land must be approved by
4 the legislature.

5 (e) Vegetation control involving the use of pesticided and
6 herbicides on lands owned or managed by the Corporation shall be
7 conducted in compliance with state requirements otherwise applicable
8 with state requirements otherwise applicable to state pesticide and
9 herbicide projects.

10 Sec. 42.40.410 NOMINATION OF LAND The board may [by rule]
11 identify and request through the Department of Natural Resources
12 federal land to be nominated for state selection for railroad
13 purposes.

14 Sec. 42.40.420. CLASSIFICATION, ACQUISITION, AND USE OF STATE
15 LAND FOR RAILROAD PURPOSES. (a) The board [by rule] may identify and
16 request conveyance of land owned by or tentatively approved for
17 transfer to [subject to selection by] the state, including tide and
18 submerged land and land not adjacent to a railroad corridor, as
19 necessary or useful for present, or future [or intended] railroad
20 purposes. The request must include a statement of and justification
21 for the present or future [or intended] railroad use. Upon submission
22 of a request for [classification and] conveyance to the commissioner
23 of natural resources, the commissioner shall temporarily [classify
24 and] reserve the land identified in the request for railroad purposes
25 and shall temporarily [vacate a classification allowing] hold in
26 abeyance any disposal or lease of that land other than to the
27 corporation under laws or programs of the state. [A temporary
28 classification and vacation] such lands held by the department of
29

1 natural resources under this section is subject to valid existing
2 rights and remains in effect for 180 days.

3 (b) Within 90 days after receiving a request under (a) of this
4 section, the commissioner of natural resources by departmental order
5 shall;

6 (1) designate [classify] that land for railroad purposes
7 and, subject to valid existing rights, convey the state's interests to
8 the corporation; or

9 (2) notify the corporation of reasons for refusal to
10 designate [classify] the land for railroad purposes.

11 (3) approve in part and deny in part the request for
12 designation [classification] under this section and convey as
13 appropriate.

14 (c) In the absence of a reservation to the contrary, a
15 conveyance under (b) of this section vests in the corporation
16 ownership, control of the surface and subsurface, and the exclusive
17 right to extract and use for its purposes sand, gravel, rock, timber
18 and other construction materials and the right to tunnel, ditch,
19 recontour, excavate or otherwise use the sub-surface for railroad,
20 transportation, transmission, or communication and related services
21 without regard to the classification of the resources as part of the
22 surface or sub-surface estate.

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

28 (e) When physical conditions require that track or other right-
29 of-way fixtures of the corporation be moved from the existing location

1 and relocated on state-owned land adjacent to or in the vicinity of
2 the existing right-of-way, and the chief executive officer determines
3 that relocation is necessary to maintain safe and adequate rail op-
4 erations, the corporation may effect the relocation with concurrence
5 of the Department of Natural Resources. The relocation must be limi-
6 ted to land adequate to restore or continue safe rail operations at a
7 normal level.

8 Sec. 42.40.430. EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND
9 MATERIALS. (a) The corporation may exercise the power of eminent
10 domain under AS 09.55.240 - 09.55.460 to acquire land or an interest
11 in land for railroad [lawful] purposes consistent with this chapter.

12 (b) The corporation may acquire a fee simple title whenever, in
13 the judgment of the board, ownership of a fee simple is necessary to
14 carry out the [state's lawful] purposes of this chapter [in condemning
15 property].

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

18 (d) The power of eminent domain conferred under this section
19 includes the power to obtain material, including clay, gravel, sand,
20 timber, or rock for railroad use, the land necessary to obtain the
21 material, and access to the land and material.

22 (e) The corporation may vacate land, or part of it, or rights in
23 land acquired for railroad purposes by executing and filing a deed in
24 the appropriate recording district. Upon filing of the deed, title
25 reverts to the State of Alaska, if compensation has been paid.

26 Sec. 42.40.450. OTHER ASSETS. (a) The corporation may submit
27 applications on its own behalf as an instrumentality of the state for
28 acquisition of interests in federal land available under federal law
29

1 that will enhance the operations of the corporation and may receive
2 conveyance of all interests in its own name.

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

11 Sec. 42.40.460. MUNICIPAL RIGHTS -OF-WAY. Upon request of a
12 municipality the corporation may grant to the municipality a
13 right-of-way in a railroad utility corridor or in land owned by the
14 corporation to be used for a pedestrian walkway or trail. Before
15 granting a right-of-way under this section the board shall require the
16 municipality to execute an agreement in a form approved by the board
17 to

18 (1) hold the corporation harmless and indemnify the
19 corporation for any use made of the right-of-way including but
20 not limited to

21 (a) defending the corporation in any cause of action brought
22 against the railroad as a result of such use.

23 (b) indemnifying the corporation for the amount of any judgement
24 rendered against the railroad including prejudgement interest, costs,
25 and attorney's fees; and

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

29 ARTICLE 6. FINANCIAL PROVISIONS.

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

6 Sec. 42.40.520. FIDELITY BOND. The corporation shall obtain a
7 fidelity bond in an amount determined by the board for its members and
8 any officer responsible for accounts and finances. A bond must be in
9 effect during the entire tenure in office of the bonded person.

10 Sec. 42.40.530. INSURANCE. The corporation shall keep in
11 force public liability insurance in an amount reasonably calculated to
12 cover potential claims for bodily injury, death or disability and
13 property damage that may arise from or be related to its operations
14 and activities, naming the state as an additional insured.

15 Sec. 42.40.540. CLAIMS. (a) All claims and lawsuits involving
16 activities of the railroad, including suits in contract, quasi-con-
17 tract, or tort, shall be brought against the corporation, and not
18 against the state.

19 (b) In a claim or other legal action against the corporation
20 involving its activities, including the expansion, extension and
21 construction of the railroad, in which the corporation is the
22 prevailing party, the party or parties that maintained the action
23 shall be liable to the corporation for its full costs and legal fees
24 in defending the action and for the financial losses to the
25 corporation that are directly attributable to the maintenance of that
26 action.

27 (c) For the purposes of actionable claims, undertakings, pay-
28 ments of judgments, execution, interest, punitive damages, statutes of
29 limitations, bonds, costs, and similar matters related to the

1 presentation and prosecution of claims by and against the corporation,
2 the corporation and its board members and employees enjoy the same
3 rights, privileges, and immunities as the state and state officers as
4 provided in AS 09.10.120, AS 09.50.250 - 09.50.290, and AS 09.65.040.

5 (d) Claims against the corporation are not subject to the
6 provisions of AS 44.77.010 - 44.77.070 regarding claims against the
7 state.

8 (e) The corporation is not subject to the provisions of AS 44.-
9 80.010, regarding the state as a party to an action..

10 (f) The corporation may defend and indemnify a current or former
11 employee, agent, or board member of the corporation and their
12 successors against all costs, expenses, judgments, and liabilities,
13 including attorney fees, incurred by or imposed upon that person in
14 connection with a civil or criminal action in which the person is
15 involved by affiliation with the corporation, if the person acted in
16 good faith on behalf of the corporation and within the scope of
17 official duties or powers.

18 Sec. 42.40.550. REVENUE. Revenue generated by or appropriated
19 to the corporation shall be retained and managed by the corporation
20 for railroad and related purposes as required by 45 U.S.C. 1207(a)(5)
21 (Alaska Railroad Transfer Act of 1982).

22 Sec. 42.40.560. APPROPRIATIONS. The corporation may request,
23 with the concurrence of the governor, a direct appropriation or grant
24 from the legislature to assist in carrying out the provisions of this
25 chapter [AS 42.40.300 and 42.40.310].

26 ARTICLE 7 BONDS AND NOTES

27 Sec. 42.40.570. BONDS AND NOTES. (a) The corporation by resolution
28 may issue bonds and [bond anticipation] notes to provide money to
29 carry out its purposes.

1 (b) The principal and interest on bonds or notes of the corpo-
2 ration is payable from corporation money or assets. Bonds or notes
3 may be additionally secured by a pledge of a grant or contribution
4 from the federal, state, or local government or a corporation,
5 association, institution or person, or a pledge of money, income, or
6 revenue of the corporation from any source.

7 [*** (c) Bond anticipation notes may be payable from the proceeds
8 of the sale of bonds or other bond anticipation notes, or, if bond or
9 bond anticipation note proceeds are not available, from other money or
10 assets of the corporation.]

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

13 (1) be dated;

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

16 (3) be in a required denomination;

17 (4) be in a coupon or registered form;

18 (5) carry conversion or registration provisions;

19 (6) have a required rank or priority;

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

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

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

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

27 (e) Bonds or [bond anticipation] notes may be sold in the
28 manner, on the terms, and at the price the board determines. [Bond
29 anticipation] notes shall mature at the time or times determined by

1 the board. Bonds shall mature at the time, not exceeding 50 years
2 from their date, determined by the board.

3 (f) In the discretion of the board, an issue of bonds may be
4 secured by a trust indenture (which may be a trust company, bank or
5 national banking association, with corporate trust powers, located
6 inside or outside the state) or by a secured loan agreement or other
7 instrument or under resolution giving powers to a corporate trustee by
8 means of which the corporation may

9 (1) make and enter into any and all the covenants and
10 agreements with the trustees or the holders of the bonds which the
11 corporation may determine to be necessary or desirable, including,
12 without limitation, covenants, provisions, limitations and agreements
13 as to

14 (A) the application, investment, deposit, use and
15 disposition of the proceeds of bonds of the corporation or of money or
16 other property of the corporation or in which it has an interest;

17 (B) the fixing and collection of rentals, charges,
18 fees or other consideration for, and the other terms to be
19 incorporated in, contracts with respect to the use of any of the
20 corporation's property;

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

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

26 (E) the vesting in the trustee of rights and remedies
27 exercisable by the trustee for the protection of the holders of bonds
28 of the corporation and not otherwise in violation of law and the
29 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 which in any way affect the security or protection of the bonds.

Sec. 42.40.590. VALIDITY OF SIGNATURES. If an officer 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.

Sec. 42.40.600. 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.

Sec. 42.40.610. VALIDITY OF PLEDGE. (a) The pledge of assets or revenue of the corporation to the payment of the principal or interest on bonds or notes of the corporation is valid and binding from the time the pledge is made and the assets or revenue are immediately subject to the lien of the pledge without physical delivery or further act. The lien of a pledge is valid and binding against all parties having claims of any kind in tort contract or otherwise against the corporation, irrespective of whether those parties have notice of the lien of the pledge.

(b) Nothing in this section prohibits the corporation from selling assets subject to a pledge, except that a sale may be restricted by the trust agreement or resolution providing for the issuance of the bonds or notes.

1 Sec. 42.40.620. REMEDIES. A holder of bonds or notes issued
2 under this chapter or of coupons attached to them, and a trustee under
3 a trust agreement or resolution authorizing the issuance of the bonds
4 or notes, except as restricted by a trust agreement or resolution,
5 either at law or in equity, may

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

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

11 Sec. 42.40.630. NEGOTIABLE INSTRUMENTS. Bonds and notes issued
12 under this chapter and interest coupons attached to them are nego-
13 tiable instruments under the laws of this state, subject only to
14 applicable provisions for registration.

15 Sec. 42.40.640. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds
16 and notes issued under this chapter are securities in which all public
17 officers and public bodies of the state and its political subdivi-
18 sions, all insurance companies, trust companies, banking associations,
19 investment companies, executors, administrators, trustees and other
20 fiduciaries may properly and legally invest funds, including capital
21 in their control or belonging to them. These bonds and notes may be
22 deposited with a state or municipal officer of an agency or political
23 subdivision of the state for any purpose for which the deposit of
24 bonds or notes of the state is authorized by law.

25 Sec. 42.40.660. CREDIT OF STATE NOT PLEDGED. (a) The state and
26 its political subdivisions are not liable for the debts of the corpo-
27 ration. Bonds and notes issued under this chapter are payable solely
28 from the revenue or assets of the corporation and do not constitute a
29

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

3 (2) pledge of the faith and credit of the state or of a
4 political subdivision of the state.

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

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

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

13 Sec. 42.40.670. OFFICERS NOT LIABLE. An officer or employee of
14 the corporation is not subject to personal liability or accountability
15 because of the execution or issuance of bonds or notes.

16 Sec. 42.40.680. EXEMPTION FROM TAXATION. (a) The real and
17 personal property of the corporation and its assets, income, and
18 receipts are exempt from all taxes and special assessments of the
19 state or a political subdivision of the state.

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

25 *** (c) The exercise of the powers granted by this chapter shall
26 be in all respects for the benefit of the people of the state, for
27 their well-being and prosperity, and for the improvement of their
28 social and economic conditions. Therefore, the corporation is not
29 required to pay a tax or assessment on property owned by the

corporation under the provisions of this chapter or on the income from the property.

(d) 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.

Sec. 42.40.690. REVERSION OF ASSETS. If the corporation ceases to exist, for whatever reason, its assets revert to the state.

ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

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.

(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.

(c) Subject to the provisions of 45 USC 1206 (Alaska Railroad Transfer Act of 1982) 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.

NOTE: Sec. 42.40.710 COLLECTIVE BARGAINING (a) The provisions of AS. 23.40.010- 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 it's employees. However, employees that are not executive officers

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

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

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

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

20 (b) The railroad labor relations agency shall perform the
21 functions described in AS. 23.40.090 - 23.40.100, and AS.
22 23.40.120-23.40.190 .

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

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

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

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

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.

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 purport to speak or act in an official capacity.

(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.

ARTICLE 9. GENERAL PROVISIONS.

1 Sec. 42.40.900. APPLICATION OF EXISTING STANDARDS. The Alaska
2 Railroad Corporation is not subject to the jurisdiction of the Alaska
3 Transportation Commission. The following laws do not apply to the
4 Operations of the Alaska Railroad Corporation:

5 (1) AS 19;

6 (2) AS 30.15;

7 (3) AS 35;

8 (4) AS 37.05;

9 (5) AS 37.07;

10 (6) AS 37.10.010 - 37.10.060;

11 (7) AS 37.10.085;

12 (8) AS 37.20;

13 (9) AS 37.25;

14 (10) AS 44.62.040 - 44.62.320.

15 Sec. 42.40.10. SPECIAL REPORT. The corporation shall investi-
16 gate and prepare a report for the governor and the legislature on the
17 long-term operations of the railroad that are in the best interest of
18 the state. The report shall be due January 1, 1988. It shall make
19 specific recommendations on operational alternatives and the transfer
20 of all or part of the railroads operations to the private sector.

21 Sec. 42.40.950. DEFINITIONS. In this chapter,

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

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

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

1 (4) "employees" means all persons employed by the
2 corporation including executive officials;

3 (5) "railroad utility corridor" means a right-of-way for
4 railroad and related purposes as defined in 45 U.S.C. 1202(17) (Alaska
5 Railroad Transfer Act of 1982).

6 (6) "land" means all interest in real property, including
7 tide and submerged land;

8 (7) "rail properties" means all real and personal property,
9 tangible and intangible, of the corporation:

10 (8) "executive officials" means the employees occupying the
11 following positions at the Alaska Railroad as of the day before the
12 date of transfer: General Manager, Assistant General Manager,
13 Assistant to the General Manager, Chief of Administration and General
14 Counsel.

15 (9) "collective bargaining" is defined as negotiating with
16 an employees organization, representing employees of The Alaska
17 Railroad Corporation on matters pertaining to conditions of
18 employment.

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

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

22 Sec. 42.40.010 ESTABLISHMENT OF THE CORPORATION

23 Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is
24 established the Alaska Railroad Corporation. The corporation is a
25 public corporation and for the purposes of art. III, sec. 22,
26 Constitution of the State of Alaska, is an instrumentality of the
27 state [within the Department of Commerce and Economic Development],
28 but the corporation has a legal existence independent of and separate
29 from the state. The exercise by the corporation of the powers

provided in this chapter is considered an essential governmental function of the state.

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

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 the Department of Commerce and Economic Development, the Chief Executive Officer and eight [seven] voting members appointed by the governor. These eight members must be residents of and registered voters in the state except as provided in (b) and (c) of this section. No more than two of these members may be from any one of the four judicial districts in the state. The public [voting] members must have substantial experience or professional training and expertise in fields relevant to the purposes of this chapter, including, but not limited to transportation, business, and finance. Except for [the commissioner of commerce and economic development], the chief executive officer, and the member appointed under (d) of this section, a voting member may not be a state officer or employee.

(1) One voting member [shall] may be or have been an executive official of an American railroad that is not now or was never a connecting carrier of the Alaska railroad.

(2) One person may be appointed by the governor to be a voting member of the board, if, at the time of appointment, the person has at least 10 years of experience in management of railroads.

(3) One [an] employee of the corporation from an employee bargaining unit appointed by the governor to represent the employees;

(4) the chief executive officer of the corporation.

(b) Except for [the commissioner of commerce and economic development and] the chief executive officer of the corporation, the

1 voting members of the board shall be confirmed by a majority of the
2 membership of the legislature in joint session. A member appointed by
3 the governor has the full powers and responsibilities of a confirmed
4 board member unless and until the member has been rejected by the
5 legislature.

6 (c) The board shall elect from its membership a chairperson and
7 vice-chairperson and prescribe their specific duties by rule.

8 (d) The board shall appoint a secretary and prescribe the spe-
9 cific duties of the secretary.

10 (e) The chairperson shall call meetings of the board at least
11 once every three months. The chairperson may call other meetings of
12 the board as the chairperson considers necessary. The chairperson
13 shall preside at meetings of the board.

14 * Sec. 5. AS 42.40.030 is amended to read:

15 Sec. 42.40.030. TERM OF OFFICE: REMOVAL. (a) Except for the
16 commissioner of Commerce and Economic Development, the voting members of
17 the board serve for staggered terms of five years each [, AND SERVE AT THE
18 PLEASURE OF THE GOVERNOR DURING THEIR TERMS].

19 * Sec. 6. AS.42.40.030 is amended by adding a new subsection to read:

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

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

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

26 (3) conviction of a felony.

27 (4) any conduct that was intended to harm the corporation
28 whether or not it constitutes a crime

29 * Sec. 7. AS 42.40.100(a) is amended to read:

1 (a) The board shall appoint the chief executive officer of the
2 corporation [SUBJECT TO THE APPROVAL BY THE GOVERNOR]. The chief executive
3 officer serves at the pleasure of the board. The board shall fix
4 compensation for the chief executive officer.

5 * Sec. 8. CONFLICTING LAWS INAPPLICABLE. If provisions of this Act
6 are in conflict with the provisions of other state law, the provisions of
7 this Act prevail. [Where possible], Provisions of this Act shall be
8 construed so that they do not conflict with 45 U.S.C. 1201-1214 (Alaska
9 Railroad Transfer Act of 1982).

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

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

18 * Sec. 10. COLLECTIVE BARGAINING AGREEMENT BETWEEN THE ALASKA
19 RAILROAD CORPORATION AND EMPLOYEES. As soon as practicable after
20 establishment of the corporation and prior to transfer of the Alaska
21 Railroad, the Alaska Railroad Corporation and its employees shall adopt
22 collective bargaining agreements that continue the provisions of the
23 agreements in effect between the Alaska Railroad and its employees
24 immediately before transfer of the Alaska Railroad. The collective
25 bargaining agreements between the corporation and its employees shall
26 remain in effect consistent with 45 U.S.C. 1202-1214 (Alaska Railroad
27 Transfer Act of 1982).

1 * Sec 11. Sections 3 - 7 of this Act take effect on the effective
2 date of an amendment to the Constitution of the State of Alaska relating to
3 the Alaska Railroad.

4 * Sec. 12. Sections 1,2,8-11 of this Act take effect immediately in
5 accordance with AS 01.10.070.(c).

6 * Sec. 13. EFFECTIVE DATE. This Act takes effect immediately in
7 accordance with AS 01.10.070(c).

3/14/84 Draft

1
2 IN THE HOUSE

3 HOUSE BILL NO. 512

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 THIRTEENTH LEGISLATURE - SECOND SESSION

6 A BILL

7 For an Act entitled: "An Act establishing the Alaska Railroad
8 Corporation to manage and operate the Alaska
9 Railroad; and providing for an effective date."

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

11 * Section 1. LEGISLATIVE FINDINGS AND PURPOSE.

12 (a) The Legislature finds that

13 (1) It is the policy of the state to

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

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

19 (C) develop and implement plans for a transportation
20 network;

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

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

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

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

government;

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

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

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

(2) 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 insuring 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) 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

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

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

CHAPTER 40. ALASKA RAILROAD CORPORATION.

ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is established the Alaska Railroad Corporation. The corporation is a public corporation and for the purposes of art. III, sec. 22, Constitution of the State of Alaska, is an instrumentality of the state within the Department of Commerce and Economic Development, but the corporation has a legal existence independent of and separate from the state. The exercise by the corporation of the powers provided in this chapter is considered an essential governmental function of the state.

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 the Department of Commerce and Economic Development, the Chief Executive Officer and seven voting members appointed by the governor. These ~~eight~~ members must be residents of and registered voters in the state except as provided in (b) and (c) of this section. No more than two of these members may be from any one of the four judicial districts in the state. The public [voting] members must have substantial experience or professional training and expertise in fields relevant to the purposes of this chapter,

including, but not limited to transportation, business, and finance.
Except for the commissioner of commerce and economic development, a voting member may not be a state officer or employee.

(1) One voting member [shall] may be or have been an executive official of an American railroad that is not now or was never a connecting carrier of the Alaska railroad.

(2) One person may be appointed by the governor to be a voting member of the board, if, at the time of appointment, the person has at least 10 years of experience in management of railroads.

(3) One [an] employee of the corporation from an employee bargaining unit appointed by the governor to represent the employees;

(4) the chief executive officer of the corporation.

(b) The voting members of the board shall be confirmed by a majority of the membership of the legislature in joint session. A member appointed by the governor has the full powers and responsibilities of a confirmed board member unless and until the member has been rejected by the legislature.

(c) The board shall elect from its membership a chairperson and vice-chairperson and prescribe their specific duties by rule.

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

(e) The chairperson shall call meetings of the board at least once every three months. The chairperson may call other meetings of the board as the chairperson considers necessary. The chairperson shall preside at meetings of the board.

Sec. 42.40.030. TERM OF OFFICE AND REMOVAL. Except for the commissioner of commerce and economic development, the appointed members of the board serve for staggered terms of five years each, and serve at the pleasure of the governor during their terms..

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

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

9 (c) A member whose term has expired shall serve until a succes-
10 sor has been appointed.

11 Sec. 42.40.050. COMPENSATION AND EXPENSES. (a) An appointed
12 member of the board is entitled to compensation at a rate of [\$250]
13 \$400 for each day the member is engaged in the actual performance of
14 duties as a member of the board. The board may provide by rule for
15 compensation for partial days during which a member is engaged in the
16 actual performance of duties.

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

20 Sec. 42.40.060. QUORUM. [Four] Five voting members of the board
21 constitute a quorum for the transaction of business.

22 Sec. 42.40.070. VOTING. [Four] Five affirmative votes are
23 required for board action. The board shall provide by rule for the
24 manner of voting, except that the board may not provide for voting by
25 proxy. The rules may provide for voting and conferring by means of
26 telecommunication devices.

27 ARTICLE 2. MANAGEMENT.

28 Sec. 42.40.080. MANAGEMENT BY THE BOARD. The board is
29 responsible

for the management of the corporation but shall delegate certain powers and duties to the chief executive officer in accordance with AS 42.40.110. In carrying out its responsibilities under this section the board shall, subject to AS 42.40.110,

(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

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

(7) review all public and private land disposals in planning for future development or expansion.

(8) insure that accepted railroad industry standards are used for the corporation's accounting and procurement systems.

Sec. 42.40.090. STATE OVERSIGHT (a). The board shall notify the governor and the leadership of the legislature before undertaking

(1) expansion, reduction, or diversification of services provided by the railroad upon the date of transfer to the authority or as provided under this chapter that the board determines would represent a significant and permanent change in the level and nature of services provided;

(2) extension of the main or branch lines by more than 25 miles or 5 percent of the railroads total track mileage, whichever is

greater; or

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

(4) any possible application for state appropriation for any service which is not self-sustaining.

(b) The notice required by (a) of this section must be in writing and describe the proposed undertaking in detail, specifying

(1) its financial impact on the corporation;

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

(3) why the project is necessary or desirable to achieve the purposes of this chapter and;

(4) whether and when the undertaking will be self-sustaining financially.

Sec. 42.40.100. EXECUTIVE OFFICERS. (a) The board shall appoint the chief executive officer of the corporation. [subject to the approval by the Governor.] The chief executive officer 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.

Sec. 42.40.110. DELEGATION. (a) The board shall by rule delegate powers and duties necessary and appropriate for the management of the daily affairs and operations of the corporation to the chief executive officer, subject to a requirement of board concurrence or authorization imposed by the rules.

1 (b) Within 180 days of the first meeting of the board, the board
2 shall by rule delegate the following activities of the corporation to
3 the chief executive officer or other executive officers designated by
4 the board:

5 (1) leasing, granting easements in, issuing permits for the
6 use of, or conveying other interests that do not constitute a transfer
7 of the corporation's entire interest in real property of the corpora-
8 tion;

9 (2) establishing specific rates, tariffs, divisions, and
10 contract rate agreements;

11 (3) making routine changes in service levels; and

12 (4) performing procurement activities.

13 (5) establish and maintain the Railroad's procurement and
14 accounting systems.

15 (c) Specific board approval [authorization or concurrence] is
16 required for the following:

17 (1) transferring the corporation's entire interest in real
18 property; other than the execution of a release of a lien or
19 satisfaction of a mortgage after payment has been received;

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

21 (3) mortgaging or pledging corporation assets;

22 (4) donating property, or other assets belonging to the
23 corporation;

24 (5) acting as a surety or guarantor;

25 (6) adopting a long-range program and capital improvement
26 plan subject to Sec. 42.40.310;

27 (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) diversification and major expansion or reducing services beyond those provided on the date of transfer or as provided under this chapter;

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

(11) selecting independent auditors and accountants.

(12) certifying collective bargaining agreements with railroad employees as provided by AS. 42.40.700;

(13) capital projects with an estimated completion cost in excess of \$500,000 or an estimated completion time of more than one year;

(14) the exercise of the power of eminent domain.

ARTICLE 3. ADMINISTRATIVE PROVISIONS.

Sec. 42.40.200. CONFLICTS OF INTEREST. (a) Except as provided in this section, a board member or employee of the corporation [authority] may not participate in a decision of the corporation [authority] 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. 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.

(b) A board member or employee may participate in a decision if that person or a member of that person's immediate family has only a remote interest and if 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 employee in the decision, and thereafter in a public meeting the board authorizes or approves the participation by a vote of its membership excluding the interested member or employee. As used in this subsection, "remote interest" means interests that in good faith are defined as remote by rules adopted by the corporation.

(c) A board member or employee 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 employee who intentionally violates a prohibition contained in this section.

Sec. 42.40.210. PUBLIC BOARD MEETINGS. (a) The meetings of the board are public with the exception of an executive session conducted under AS 44.62.310 and (b) of this section.

(b) In addition to those subjects that may be discussed in executive session under AS 44.62.310, the board may consider in executive session matters that pertain to personnel, the corporation's legal position, land acquisition or disposal, or proprietary information, as defined in a manner consistent with the standards and practices of the United States Interstate Commerce Commission for protection of information including but not limited to proprietary information associated with specific shippers, divisions, and contract rate agreements.

1 Sec 42.40.220. MINUTES AND NOTICE OF MEETINGS. The board shall
2 keep minutes of each meeting and shall send a certified copy of the
3 minutes of the public portion of each meeting to the governor and the
4 leadership of the legislature. The board shall provide by rule for
5 advance public notice for its meetings.

6 ***** Sec. 42.40.230. RULES. (a) The board shall establish a
7 procedure for adopting rules to carry out its functions and the
8 purposes of this chapter. Within 90 days after its first meeting the
9 board shall adopt rules establishing a procedure for giving advance
10 public notice and an opportunity for the public to comment on proposed
11 regulations of the authority that in the determination of the board,
12 will have a substantial impact on the public or be used in the
13 corporations dealings with a significant segment of the public.

14 (b) The rules shall also include a procedure for the
15 adoption of emergency rules when the adoption of an emergency rule is
16 essential to continue or to reinstate the orderly operation of the
17 corporation's facilities or program.

18 (c) The Board of Directors of the Alaska Railroad
19 Corporation, by resolution, may continue in force after date of
20 transfer all or part of the rules, regulations, and orders of the
21 Alaska Railroad which were in effect one day before the date of
22 transfer and are not inconsistent with this chapter or other state
23 law. The Board of Directors may adopt in its rules, regulations, and
24 orders the substance of former federal authorities relating to the
25 Alaska Railroad. This adoption is not considered a continuation of
26 the federal authorities if made in compliance with the procedural
27 requirements of this chapter and other applicable law.

28 Sec. 42.40.240. PUBLIC DISCLOSURE OF INFORMATION. (a) Except
29 as provided by rule of the corporation 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 counsel consistent with the standards and practices of the United States Interstate Commerce Commission for the protection of these matters, and information including but not limited to specific shippers, divisions, and contract rate agreements.

Sec. 42.40.260. ANNUAL REPORT. Within 90 days following the end of the fiscal year of the 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 plans may include suggestions for legislation relating to the structure, powers, or duties of the corporation or relating to operation of facilities of the corporation. This report shall include a breakdown of a service's real costs and income in each category of railroad operations.

Sec. 42.40.270. ANNUAL AUDIT. The board shall have the financial records of the corporation audited annually by an independent certified public accountant experienced in railroad accounting. The corporation shall make all of its financial records available to an auditor appointed by the governor or 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 42.40.240 and rules implementing that section.

Sec. 42.40.280. PERFORMANCE AUDIT. The board shall have a performance audit conducted by a qualified professional performance auditing firm to assure that the railroad is being managed and

operated in accordance with the requirements of this Act.

ARTICLE 4. POWERS AND DUTIES.

Sec. 42.40.300. GENERAL POWERS. In addition to the exercise of other powers authorized by law, the corporation may

(1) adopt a seal;

(2) adopt rules and 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, real or personal property, rights, rights-of-way, franchises, easements, and other interest in land, including land lying under water and appropriation of water rights that are located in the state, taking title to the property in the name of the corporation;

(8) acquire property by eminent domain in accordance with AS 42.40.430;

(9) hold, maintain, use, operate, lease, exchange, donate, improve, convey, alienate, dispose of, mortgage, encumber, and otherwise grant security interests in or transfer any real or personal property including facilities and equipment;

(10) 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 the provisions of federal, state, or local programs;

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

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

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

10 (14) acquire, hold, and disperse of Stocks, memberships,
11 contracts, bonds, general or limited partnership interests or other
12 interests in another corporation, association, partnership, joint venture,
13 or other legal entity, and exercise the powers or rights in connection with
14 these interests which are provided in contracts or agreements and that are
15 allowed by law concerning the satisfaction of debts;

16 (15) undertake and provide for the acquisition, construction,
17 maintenance, equipping, and operation of connecting, switching, terminal, or
18 other railroads and railroad facilities in the state;

19 (16) apply to the appropriate agencies of the state, the
20 United States, and a foreign country or other proper agencies for the
21 permits, licenses, or approvals necessary to construct, maintain, and
22 operate railroad transportation services, and to obtain, hold, and
23 reuse the licenses and permits in the same manner as other operating
24 units or persons;

25 (17) prescribe rates to be charged for services provided by
26 the Alaska Railroad in accordance with 45 U.S.C. 1201-1214 (Alaska
27 Railroad Transfer Act of 1982);

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

1 (19) enter into contracts, leases or other agreements with
2 connecting carriers and shippers, and other persons concerning the
3 services, activities, operations, properties, and facilities of the
4 railroad. including contracts leases and other agreements that contain
5 provisions intended to preserve and expand the railroad's traffic
6 base;

7 (20) plan for and undertake expansion of the railroad and
8 railroad activities, including extension of the Alaska Railroad's rail
9 system, and contract with other modes of transportation service con-
10 necting to the railroad's rail services;

11 (21) adopt rules that are designed to safeguard property
12 owned, managed, or transported by the corporation and to protect
13 employees and persons using the corporation's property or services;

14 (22) hire and discharge railroad personnel and determine
15 benefits and other terms and conditions of employment established in
16 accordance with obligations imposed by 45 U.S.C. 1201-1214 (Alaska
17 Railroad Transfer Act of 1982);

18 (23) assume and satisfy liabilities of the United States or
19 its agencies as provided by 45 U.S.C. 1201-1214 (Alaska Railroad
20 Transfer Act of 1982 *****and the closing report or its substantive
21 equivalent as accepted by the legislature;

22 (24) maintain a security force to enforce state law and the
23 corporations rules with respect to violations that occur on or to
24 property owned, managed or transported by the corporation;

25 (25) borrow money and issue its bonds or notes and provide
26 for and secure their payment, provide for the rights of their holders
27 and purchase, hold, or dispose of its bonds or notes;

1 (26) secure the payment of its obligations by pledge or
2 mortgage or other lien on its contracts, revenues, income, or proper-
3 ty;

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

8 (28) include in any borrowing the amounts necessary to
9 establish reasonable reserves and pay financing charges and interest
10 on the obligations for a reasonable period after which the corporation
11 estimates funds will be otherwise available to pay the interest,
12 consultant, advisory, and legal fees, and other expenses necessary or
13 incident to borrowing;

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

16 (30) cancel bonds purchased under (29) of this section;

17 (31) adopt rules having the force of law that require
18 designated classes of proprietary information and communications to be
19 held confidential;

20 (32) do all things necessary, convenient and desirable to
21 carry out the powers and duties expressly granted or necessarily
22 implied in this chapter or under other laws of the state or the laws
23 and regulations of the federal government.

24 Sec. 42.40.310. LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT
25 PLANS. (a) The corporation shall prepare and the board shall adopt a
26 long-range program plan and a capital improvement plan. The board
27 shall consult [interface] with affected [other related] state agencies
28 in preparation of the plans. The long-range program plan shall
29 delineate the manner in which the corporation intends to accomplish

1 the purposes of this chapter during each of the five years after the
2 plan is adopted. The capital improvement plan shall present and
3 explain the corporation's anticipated capital improvements for each of
4 the five years after the plan is adopted and shall reflect efforts to
5 upgrade the railway and develop safer, more cost-effective rail
6 operations.

7 (b) The board shall annually review and update the plans re-
8 quired under (a) of this section. [The board may not contract for the
9 preparation or revision of either the long-range program plan or the
10 capital improvement plan, but shall require their preparation and
11 revision by employees of the corporation.]

12 (c) The board shall provide copies of its updated plans to the
13 governor and the legislature by December 1 of each year.

14 Sec. 42.40.320. USE OF CORPORATION ASSETS. (a) The corporation
15 shall apply all money, property, other assets, and credit of the
16 corporation toward activities authorized by this chapter. The corpo-
17 ration may not issue shares of stock, pay dividends, make private
18 distributions of assets, make loans to board members or employees, or
19 engage in business for private benefit. The use of money, property,
20 other assets, or credit of the corporation for purposes not authorized
21 by law by persons having the possession or control of it is prohibi-
22 ted.

23 (b) Notwithstanding the provisions of this section, the corpo-
24 ration may purchase insurance to protect and hold personally harmless
25 its employees, agents, and board members from an action, claim, or
26 proceeding instituted against these individuals arising out of the
27 performance, purported performance, or failure of performance, in good
28 faith, of duties for, or employment with, the corporation and to hold
29 these individuals harmless from expenses connected with the defense,

1 settlement, or monetary judgments from that action, claim, or
2 proceeding; the purchase of insurance and its policy limits are dis-
3 cretionary with the board and insurance is not considered to be com-
4 pensation to the insured individual.

5 "ARTICLE 5. RAIL PROPERTIES.

6 Sec. 42.40.400. LAND. All land among the rail properties trans-
7 ferred under 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of
8 1982) or otherwise acquired by the corporation is under the control of
9 the corporation. All lands transferred or acquired shall be
10 designated as follows

11 (1) railroad rights-of-way or easements transferred under
12 the Transfer Act or otherwise acquired shall be classified as railroad
13 utility corridors;

14 (2) all other real property transferred under the Transfer
15 Act or otherwise acquired, are rail lands.

16 (b) Railroad utility corridors shall be of a width at least 100
17 feet on both sides of the centerline of the extended main or branch
18 line, or may be of lesser width only if the adjoining land is not rail
19 property, and may be surveyed by the metes and bounds method; and

20 (c) The corporation may not sell land within the railroad
21 corridor. [However], Except as provided in AS 42.40.460, the
22 corporation may lease, grant easements or permits or otherwise
23 authorize use of portions of the utility corridor but only for
24 transportation, transmission, or communication purposes and for
25 support functions associated with such purposes, so long as parallel
26 uses of the railroad corridor are
27 not restricted.

28 (d) The corporation may sell, lease, grant easements or permits
29 or otherwise authorize use of portions of rail lands for other

1 services including but not limited to transportation, transmission,
2 and communication purposes and for support functions associated with
3 suc' purposes. Final sale or disposal of land must be approved by
4 the legislature.

5 (e) Vegetation control involving the use of pesticided and
6 herbicides on lands owned or managed by the Corporation shall be
7 conducted in compliance with state requirements otherwise applicable
8 with state requirements otherwise applicable to state pesticide and
9 herbicide projects.

10 Sec. 42.40.410 NOMINATION OF LAND The board may [by rule]
11 identify and request through the Department of Natural Resources
12 federal land to be nominated for state selection for railroad
13 purposes.

14 Sec. 42.40.420. CLASSIFICATION, ACQUISITION, AND USE OF STATE
15 LAND FOR RAILROAD PURPOSES. (a) The board [by rule] may identify and
16 request conveyance of land owned by or tentatively approved for
17 transfer to [subject to selection by] the state, including tide and
18 submerged land and land not adjacent to a railroad corridor, as
19 necessary or useful for present, or future [or intended] railroad
20 purposes. The request must include a statement of and justification
21 for the present or future [or intended] railroad use. Upon submission
22 of a request for [classification and] conveyance to the commissioner
23 of natural resources, the commissioner shall temporarily [classify
24 and] reserve the land identified in the request for railroad purposes
25 and shall temporarily [vacate a classification allowing] hold in
26 abeyance any disposal or lease of that land other than to the
27 corporation under laws or programs of the state. [A temporary
28 classification and vacation] such lands held by the department of
29

1 natural resources under this section is subject to valid existing
2 rights and remains in effect for 180 days.

3 (b) Within 90 days after receiving a request under (a) of this
4 section, the commissioner of natural resources by departmental order
5 shall;

6 (1) designate [classify] that land for railroad purposes
7 and, subject to valid existing rights, convey the state's interests to
8 the corporation; or

9 (2) notify the corporation of reasons for refusal to
10 designate [classify] the land for railroad purposes.

11 (3) approve in part and deny in part the request for
12 designation [classification] under this section and convey as
13 appropriate.

14 (c) In the absence of a reservation to the contrary, a
15 conveyance under (b) of this section vests in the corporation
16 ownership, control of the surface and subsurface, and the exclusive
17 right to extract and use for its purposes sand, gravel, rock, timber
18 and other construction materials and the right to tunnel, ditch,
19 recontour, excavate or otherwise use the sub-surface for railroad,
20 transportation, transmission, or communication and related services
21 without regard to the classification of the resources as part of the
22 surface or sub-surface estate.

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

27 (e) When physical conditions require that track or other right-
28 of-way fixtures of the corporation be moved from the existing location
29 and relocated on state-owned land adjacent to or in the vicinity of

1 the existing right-of-way, and the chief executive officer determines
2 that relocation is necessary to maintain safe and adequate rail op-
3 erations, the corporation may effect the relocation with concurrence
4 of the Department of Natural Resources. The relocation must be limi-
5 ted to land adequate to restore or continue safe rail operations at a
6 normal level.

7 Sec. 42.40.430. EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND
8 MATERIALS. (a) The corporation may exercise the power of eminent
9 domain under AS 09.55.240 - 09.55.460 to acquire land or an interest
10 in land for railroad [lawful] purposes consistent with this chapter.

11 (b) The corporation may acquire a fee simple title whenever, in
12 the judgment of the board, ownership of a fee simple is necessary to
13 carry out the [state's lawful] purposes of this chapter [in condemning
14 property].

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

17 (d) The power of eminent domain conferred under this section
18 includes the power to obtain material, including clay, gravel, and,
19 timber, or rock for railroad use, the land necessary to obtain the
20 material, and access to the land and material.

21 (e) The corporation may vacate land, or part of it, or rights in
22 land acquired for railroad purposes by executing and filing a deed in
23 the appropriate recording district. Upon filing of the deed, title
24 reverts to the State of Alaska, if compensation has been paid.

25 Sec. 42.40.450. OTHER ASSETS. (a) The corporation may submit
26 applications on its own behalf as an instrumentality of the state for
27 acquisition of interests in federal land available under federal law
28 that will enhance the operations of the corporation and may receive
29 conveyances of all interests in its own name.

(b) The corporation, as an agency of the state, may acquire in its own name from the United States under 50 App U.S.C. 1622 et seq (the Surplus Property Act of 1944), 40 U.S.C. 471 et seq as amended (the Federal Property and Administrative Services Act of 1949), or other law, property under the control of a federal department or agency that is useful for the corporation's purposes and may acquire from the Department of Administration property of the state made available under AS 44.71.010 - 44.71.040.

Sec. 42.40.460. 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 land owned by the corporation 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 but not limited to

(a) defending the corporation in any cause of action brought against the railroad as a result of such use.

(b) indemnifying the corporation for the amount of any judgement rendered against the railroad including prejudgement 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.

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

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

4 Sec. 42.40.520. FIDELITY BOND. The corporation shall obtain a
5 fidelity bond in an amount determined by the board for its members and
6 any officer responsible for accounts and finances. A bond must be in
7 effect during the entire tenure in office of the bonded person.

8 Sec. 42.40.530. INSURANCE. The corporation shall keep in
9 force public liability insurance in an amount reasonably calculated to
10 cover potential claims for bodily injury, death or disability and
11 property damage that may arise from or be related to its operations
12 and activities, naming the state as an additional insured.

13 Sec. 42.40.540. CLAIMS. (a) All claims and lawsuits involving
14 activities of the railroad, including suits in contract, quasi-con-
15 tract, or tort, shall be brought against the corporation, and not
16 against the state.

17 (b) In a claim or other legal action against the corporation
18 involving its activities, including the expansion, extension and
19 construction of the railroad, in which the corporation is the
20 prevailing party, the party or parties that maintained the action
21 shall be liable to the corporation for its full costs and legal fees
22 in defending the action and for the financial losses to the
23 corporation that are directly attributable to the maintenance of that
24 action.

25 (c) For the purposes of actionable claims, undertakings, pay-
26 ments of judgments, execution, interest, punitive damages, statutes of
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 as provided
2 in AS 09.10.120, AS 09.50.250 - 09.50.290, and AS 09.65.040.

3 (d) Claims against the corporation are not subject to the
4 provisions of AS 44.77.010 - 44.77.070 regarding claims against the
5 state.

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

8 (f) The corporation may defend and indemnify a current or former
9 employee, agent, or board member of the corporation and their
10 successors against all costs, expenses, judgments, and liabilities,
11 including attorney fees, incurred by or imposed upon that person in
12 connection with a civil or criminal action in which the person is
13 involved by affiliation with the corporation, if the person acted in
14 good faith on behalf of the corporation and within the scope of
15 official duties or powers.

16 Sec. 42.40.550. REVENUE. Revenue generated by or appropriated
17 to the corporation shall be retained and managed by the corporation
18 for railroad and related purposes as required by 45 U.S.C. 1207(a)(5)
19 (Alaska Railroad Transfer Act of 1982).

20 Sec. 42.40.560. APPROPRIATIONS. The corporation may request,
21 with the concurrence of the governor, a direct appropriation or grant
22 from the legislature to assist in carrying out the provisions of
23 AS 42.40.300 and 42.40.310.

24 ARTICLE 7 BONDS AND NOTES

25 Sec. 42.40.570. BONDS AND NOTES. (a) The corporation by resolution
26 may issue bonds and bond anticipation notes to provide money to carry
27 out its purposes.

28 (b) The principal and interest on bonds or notes of the corpo-
29 ration is payable from corporation money or assets. Bonds or notes

1 may be additionally secured by a pledge of a grant or contribution
2 from the federal government or a corporation, association, institution
3 or person, or a pledge of money, income, or revenue of the corporation
4 from any source.

5 *** (c) Bond anticipation notes may be payable from the proceeds
6 of the sale of bonds or other bond anticipation notes, or, if bond or
7 bond anticipation note proceeds are not available, from other money or
8 assets of the corporation.

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

11 (1) be dated;

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

14 (3) be in a required denomination;

15 (4) be in a coupon or registered form;

16 (5) carry conversion or registration provisions;

17 (6) have a required rank or priority;

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

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

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

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

25 (e) Bonds or bond anticipation notes may be sold in the manner,
26 on the terms, and at the price the board determines. Bond anticipa-
27 tion notes shall mature at the time or times determined by the board.
28 Bonds shall mature at the time, not exceeding 50 years from their
29 date, determined by the board.

1 (f) The corporation may by provisions in a resolution authoriz-
2 ing or relating to the issuance of bonds or bond anticipation notes
3 enter into the following agreements with the holders of the bonds or
4 bond anticipation notes:

5 (1) pledge all or part of its revenue to which its right
6 then exists or may thereafter exist, the money derived from the reve-
7 nue, and the proceeds of its bonds or notes;

8 (2) covenant against pledging all or part of its revenue,
9 or against permitting or suffering a lien on its revenue or property;

10 (3) covenant as to establishment of reserves or sinking
11 funds and provide for, regulate, and dispose of the reserves or sink-
12 ing funds;

13 (4) covenant regarding limitations on a right to sell or
14 otherwise dispose of property of any kind;

15 (5) covenant as to bonds and notes to be issued, their
16 limitations, terms and conditions, the custody, application and dispo-
17 sition of the proceeds of the bonds and notes;

18 (6) covenant as to the issuance of additional bonds or
19 notes, or limitations on the issuance of additional bonds or notes,
20 and the incurring of other debts;

21 *** (7) covenant as to the payment of the principal of or
22 interest on the bonds or notes, the sources and methods of payment,
23 the rank or priority of the bonds or notes with respect to a lien or
24 security, or the acceleration of the maturity of the bonds or notes;

25 *** (8) provide for the replacement of lost, stolen,
26 destroyed or mutilated bonds or notes;

27 *** (9) covenant against extending the time for the payment
28 of bonds or notes, or interest on the bonds or notes;
29

1 *** (10) covenant as to the redemption of bonds or notes and
2 privileges of their exchange for other bonds or notes of the corpo-
3 ration;

4 *** (11) covenant to create or authorize the creation of
5 special funds of money to be held in pledge or otherwise for operating
6 expenses, payment or redemption of bonds or notes, reserves or other
7 purposes, and as to the use and disposition of the money held in the
8 funds;

9 *** (12) establish the procedure by which the terms of a con-
10 tract or covenant with or for the benefit of the holders of bonds or
11 notes may be amended or abrogated, the amount of bonds or notes the
12 holders of which must consent to amendment or abrogation, and the
13 manner in which the consent may be given;

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

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

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

28 (16) agree with a corporation trustee, that may be a trust
29 company or bank having the powers of a trust company inside or outside

1 the state, as to the pledging or assigning of revenue or funds that or
2 in which the corporation has a right or interest; the agreement may
3 provide for other rights and remedies exercisable by the trustee for
4 the protection of the holders of bonds or notes of the corporation and
5 not otherwise in violation of law, and may provide for the restriction
6 of the rights of an individual holder of bonds or notes of the
7 corporation;

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

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

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

19 ***Sec. 42.40.580. INTERIM RECEIPTS, TEMPORARY BONDS, AND
20 TEMPORARY BOND ANTICIPATION NOTES. Before the preparation of
21 definitive bonds or bond anticipation notes, the corporation may issue
22 interim receipts or temporary bonds or bond anticipation notes, with
23 or without coupons, exchangeable for bonds or bond anticipation notes
24 when these definitive bonds or bond anticipation notes have been
25 executed and are available for delivery.

26 Sec. 42.40.590. VALIDITY OF SIGNATURES. If an officer whose
27 signature or a facsimile of whose signature appears on bonds, notes,
28 or coupons attached to them ceases to be an officer before the
29

1 delivery of the bond, note, or coupon, the signature or facsimile is
2 valid the same as if the person had remained in office until delivery.

3 Sec. 42.40.600. INDEPENDENT FINANCIAL ADVISOR. In negotiating
4 the private sale of bonds or bond anticipation notes to an under-
5 writer, the board shall retain a financial advisor who is independent
6 from the underwriter.

7 Sec. 42.40.610. VALIDITY OF PLEDGE. (a) The pledge of assets
8 or revenue of the corporation to the payment of the principal or
9 interest on bonds or notes of the corporation is valid and binding
10 from the time the pledge is made and the assets or revenue are immedi-
11 ately subject to the lien of the pledge without physical delivery or
12 further act. The lien of a pledge is valid and binding against all
13 parties having claims of any kind in tort contract or otherwise
14 against the corporation, irrespective of whether those parties have
15 notice of the lien of the pledge.

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

20 Sec. 42.40.620. REMEDIES. A holder of bonds or notes issued
21 under this chapter or of coupons attached to them, and a trustee under
22 a trust agreement or resolution authorizing the issuance of the bonds
23 or notes, except as restricted by a trust agreement or resolution,
24 either at law or in equity, may

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

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

1 Sec. 42.40.630. NEGOTIABLE INSTRUMENTS. Bonds and notes issued
2 under this chapter and interest coupons attached to them are nego-
3 tiable instruments under the laws of this state, subject only to
4 applicable provisions for registration.

5 Sec. 42.40.640. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds
6 and notes issued under this chapter are securities in which all public
7 officers and public bodies of the state and its political subdivi-
8 sions, all insurance companies, trust companies, banking associations,
9 investment companies, executors, administrators, trustees and other
10 fiduciaries may properly and legally invest funds, including capital
11 in their control or belonging to them. These bonds and notes may be
12 deposited with a state or municipal officer of an agency or political
13 subdivision of the state for any purpose for which the deposit of
14 bonds or notes of the state is authorized by law.

15 ***Sec. 42.40.650. REFUNDING BONDS. (a) The corporation may
16 provide for the issuance of refunding bonds for the purpose of refund-
17 ing bonds then outstanding that have been issued under this chapter,
18 including the payment of a redemption premium on them and interest
19 that accrues to the date of redemption of the bonds. Refunding bonds
20 shall be issued in accordance with provisions of this chapter that
21 relate to the issuance of bonds to the extent those provisions are
22 appropriate.

23 (b) Refunding bonds may be sold or exchanged for outstanding
24 bonds issued under this chapter and the proceeds may be applied to the
25 purchase, redemption or payment of the outstanding bonds in addition
26 to other authorized purposes. Pending the application of the proceeds
27 of refunding bonds to the payment of the principal, accrued interest
28 and redemption premium on the bonds being refunded, and, if permitted
29 in the resolution authorizing the issuance of the refunding bonds or

1 in the trust agreement securing them, to the payment of interest on
2 the refunding bonds and expenses in connection with the refunding, the
3 proceeds may be invested in direct obligations of the United States or
4 obligations the principal of and the interest on which are uncondi-
5 tionally guaranteed by the United States that mature or may be re-
6 deemed not later than the date the proceeds of the refunding bonds,
7 together with the interest accruing on them, will be required for the
8 purposes intended.

9 Sec. 42.40.660. CREDIT OF STATE NOT PLEDGED. (a) The state and
10 its political subdivisions are not liable for the debts of the corpo-
11 ration. Bonds and notes issued under this chapter are payable solely
12 from the revenue or assets of the corporation and do not constitute a

13 (1) debt, liability, or obligation of the state or of a
14 political subdivision of the state; or

15 (2) pledge of the faith and credit of the state or of a
16 political subdivision of the state.

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

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

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

25 Sec. 42.40.670. OFFICERS NOT LIABLE. An officer or employee of
26 the corporation is not subject to personal liability or accountability
27 because of the execution or issuance of bonds or notes.

28 Sec. 42.40.680. EXEMPTION FROM TAXATION. (a) The real and
29 personal property of the corporation and its assets, income, and

1 receipts are exempt from all taxes and special assessments of the
2 state or a political subdivision of the state.

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

8 *** (c) The exercise of the powers granted by this chapter shall
9 be in all respects for the benefit of the people of the state, for
10 their well-being and prosperity, and for the improvement of their
11 social and economic conditions. Therefore, the corporation is not
12 required to pay a tax or assessment on property owned by the
13 corporation under the provisions of this chapter or on the income from
14 the property.

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

22 Sec. 42.40.690. REVERSION OF ASSETS. If the corporation ceases
23 to exist, for whatever reason, its assets revert to the state.

24 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

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

28 (b) The collective bargaining agreements in effect on the date
29 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.

(c) Subject to the provisions of 45 USC 1206 (Alaska Railroad Transfer Act of 1982) 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.

Sec. 42.40.710 COLLECTIVE BARGAINING (a) Unless specifically provided in this Act, the provisions of AS. 23.40 (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.

(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.

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

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

1 be a member of the state personnel board. Members serve at the
2 pleasure of the governor.

3 (b) The railroad labor relations agency shall perform the
4 functions described in AS. 23.40.090 - 23.40.190 and carry out the
5 provisions of AS 42.40.750-810.

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

9 Sec. 42.40.730 STRIKES (a) Employees may engage in a strike if a
10 majority of the employees in all collective bargaining units vote by
11 secret ballot to do so.

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

16 Sec. 42.40.730. POLITICAL ACTIVITIES. (a) Money, assets, or
17 property of the corporation may not be used for political activity.
18 However, board members and employees of the corporation may
19 communicate with and appear before committees of Congress, the state
20 legislature, and municipal governing bodies in connection with matters
21 directly affecting the corporation.

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

26 Sec. 42.40.760. PROHIBITED ACTS. (a) The railroad Chief
27 Executive Officer, or any person employed by the corporation may not
28 directly or indirectly:

29 (1) require or coerce any employee of the corporation to

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

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

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

13 (A) his personal relationship with any person
14 connected with him by blood or marriage,

15 (B) his/her religious beliefs or practices,

16 (C) sexual matters;

17 (D) his/her political affiliation or philosophy

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

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

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

29 ARTICLE 9. GENERAL PROVISIONS.

1 Sec. 42.40.900. APPLICATION OF EXISTING STANDARDS. The Alaska
2 Railroad Corporation is not subject to the jurisdiction of the Alaska
3 Transportation Commission. The following laws do not apply to the
4 operations of the Alaska Railroad Corporation:

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

15 Sec. 42.40.910. SPECIAL REPORT. The corporation shall investi-
16 gate and prepare a report for the governor and the legislature on the
17 long-term operations of the railroad that are in the best interest of
18 the state. The report shall be due January 1, 1988. It shall make
19 specific recommendations on operational alternatives and the transfer
20 of all or part of the railroads operations to the private sector.

21 Sec. 42.40.950. DEFINITIONS. In this chapter,

- 22 (1) "board" means the board of directors of the Alaska
23 Railroad Corporation;
24 (2) "corporation" means the Alaska Railroad Corporation;
25 (3) "date of transfer" means the date on which the United
26 States Secretary of Transportation delivers the [deed of conveyance]
27 transfer documents for the properties of the Alaska Railroad under 45
28 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of 1982);
29

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

(5) "railroad utility corridor" means a right-of-way for railroad and related purposes as defined in 45 U.S.C. 1202(11) (Alaska Railroad Transfer Act of 1982).

(6) "land" means all interest in real property, including tide and submerged land;

(7) "rail properties" means all real and personal property, tangible and intangible, of the corporation:

(8) "executive officials" means the employees occupying the following positions at the Alaska Railroad as of the day before the date of transfer: General Manager, Assistant General Manager, Assistant to the General Manager, Chief of Administration and General Counsel.

(9) "collective bargaining" is defined as negotiating with an employees organization, representing employees of The Alaska Railroad Corporation on matters pertaining to conditions of employment.

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

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

Sec. 42.40.010 ESTABLISHMENT OF THE CORPORATION

Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is established the Alaska Railroad Corporation. The corporation is a public corporation and for the purposes of art. III, sec. 22, Constitution of the State of Alaska, is an instrumentality of the state [within the Department of Commerce and Economic Development], but the corporation has a legal existence independent of and separate from the state. The exercise by the corporation of the powers

provided in this chapter is considered an essential governmental function of the state.

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

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 the Department of Commerce and Economic Development, the Chief Executive Officer and eight [seven] voting members appointed by the governor. These eight members must be residents of and registered voters in the state except as provided in (b) and (c) of this section. No more than two of these members may be from any one of the four judicial districts in the state. The public [voting] members must have substantial experience or professional training and expertise in fields relevant to the purposes of this chapter, including, but not limited to transportation, business, and finance. Except for [the commissioner of commerce and economic development], the chief executive officer, and the member appointed under (d) of this section, a voting member may not be a state officer or employee.

(b) Except for [the commissioner of commerce and economic development and] the chief executive officer of the corporation, the voting members of the board shall be confirmed by a majority of the membership of the legislature in joint session. A member appointed by the governor has the full powers and responsibilities of a confirmed board member unless and until the member has been rejected by the legislature.

(c) The board shall elect from its membership a chairperson and vice-chairperson and prescribe their specific duties by rule.

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

(e) The chairperson shall call meetings of the board at least once every three months. The chairperson may call other meetings of the board as the chairperson considers necessary. The chairperson shall preside at meetings of the board.

* Sec. 5. AS 42.40.030 is amended to read:

Sec. 42.40.030. TERM OF OFFICE: REMOVAL. (a) Except for the commissioner of Commerce and Economic Development, the voting members of the board serve for staggered terms of five years each [, AND SERVE AT THE PLEASURE OF THE GOVERNOR DURING THEIR TERMS].

* Sec. 6. AS.42.40.030 is amended by adding a new subsection to read:

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

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

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

(3) conviction of a felony.

(4) any conduct that was intended to harm the corporation whether or not it constitutes a crime

* Sec. 7. AS 42.40.100(a) is amended to read:

(a) The board shall appoint the chief executive officer of the corporation [SUBJECT TO THE APPROVAL BY THE GOVERNOR]. The chief executive officer serves at the pleasure of the board. The board shall fix compensation for the chief executive officer.

* Sec. 8. CONFLICTING LAWS INAPPLICABLE. If provisions of this Act are in 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 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of 1982).

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

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

* Sec. 10. COLLECTIVE BARGAINING AGREEMENT BETWEEN THE ALASKA RAILROAD CORPORATION AND EMPLOYEES. As soon as practicable after establishment of the corporation and prior to transfer of the Alaska Railroad, the Alaska Railroad Corporation and its employees shall adopt collective bargaining agreements that continue the provisions of the agreements in effect between the Alaska Railroad and its employees immediately before transfer of the Alaska Railroad. The collective bargaining agreements between the corporation and its employees shall remain in effect consistent with 45 U.S.C. 1202-1214 (Alaska Railroad Transfer Act of 1982).

* Sec 11. Sections 3 - 7 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.

* Sec. 12. Sections 1,2,8-11 of this Act take effect immediately in accordance with AS 01.10.070.(c).

* Sec. 13. EFFECTIVE DATE. This Act takes effect immediately in accordance with AS 01.10.070(c).

1
2 IN THE HOUSE

3 HOUSE BILL NO. 512

4 IN THE LEGISLATURE OF THE STATE OF ALASKA
5 THIRTEENTH LEGISLATURE - SECOND SESSION

6 A BILL

7 For an Act entitled: "An Act establishing the Alaska Railroad
8 Corporation to manage and operate the Alaska
9 Railroad; and providing for an effective date."

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

11 * Section 1. LEGISLATIVE FINDINGS AND PURPOSE.

12 (a) The Legislature finds that

13 (1) It is the policy of the state to

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

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

19 (C) develop and implement plans for a transportation
20 network;

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

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

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

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

1 government;

2 (5) there is vast potential in Alaska's natural resource areas
3 and extension of the Alaska Railroad into natural resource areas is
4 necessary for long-term economic growth.

5 (b) It is the purpose of this Act to create a viable economic entity
6 with the powers and duties necessary to operate and manage the Alaska
7 Railroad pending eventual transfer to the private sector for ownership
8 or operation or both consistent with 45 U.S.C. 1201-1214 (Alaska
9 Railroad Transfer Act of 1982). It is the purpose of the legislature
10 to

11 (1) provide for the level of service that best satisfies the
12 needs of the people of the state;

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

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

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

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

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

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

1 investment;

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

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

6
7 * Sec. 2. AS 42 is amended by adding a new chapter to read:

8 CHAPTER 40. ALASKA RAILROAD CORPORATION.

9 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

10 Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is
11 established the Alaska Railroad Corporation. The corporation is a
12 public corporation and for the purposes of art. III, sec. 22,
13 Constitution of the State of Alaska, is an instrumentality of the
14 state within the Department of Commerce and Economic Development, but
15 the corporation has a legal existence independent of and separate from
16 the state. The exercise by the corporation of the powers provided in
17 this chapter is considered an essential governmental function of the
18 state.

19
20 Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the
21 corporation are vested in the board of directors. The board consists
22 of the commissioner of the Department of Commerce and Economic
23 Development and seven voting members appointed by the governor. These
24 seven members must be residents of and registered voters in the state
25 except
26 as provided in (b) and (c) of this section. No more than two of these
27 members may be from any one of the four judicial districts in the
28 state. The voting members must have experience or professional
29 training and expertise in fields relevant to the purposes of this

1 chapter, including, but not limited to transportation, business, and
2 finance. A voting member may not be a state officer or employee.

3 (b) Unless prohibited by law, one voting member shall be or have
4 been an executive official of an American railroad that is not now or
5 was never a connecting carrier of the Alaska railroad.

6 (c) One person may be appointed by the governor to be a voting
7 member of the board, if, at the time of appointment, the person has at
8 least 10 years of experience in management of railroads.

9 (c) In addition to the voting members, the following nonvoting
10 members shall serve on the board:

11 (1) an employee of the corporation appointed by the gover-
12 nor to represent the employees;

13 (2) the chief executive officer of the corporation.

14 (d) The voting members of the board shall be confirmed by a
15 majority of the membership of the legislature in joint session. A
16 member appointed by the governor has the full powers and responsibili-
17 ties of a confirmed board member unless and until the member has been
18 rejected by the legislature.

19 (e) The board shall elect from its membership a chairperson and
20 vice-chairperson and prescribe their specific duties by rule.

21 (f) The board shall appoint a secretary and prescribe the spe-
22 cific duties of the secretary.

23 (g) The chairperson shall call meetings of the board at least
24 once every three months. The chairperson may call other meetings of
25 the board as the chairperson considers necessary. The chairperson
26 shall preside at meetings of the board.

27 ***** (h) The governor may, by written notice to the member, remove a
28 member from the board for

29 (1) incapacitation caused by injury or sickness that leaves

1 the member unable to perform duties under this chapter;

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

4 (3) Conviction of a felony

5 *****

6 Sec. 42.40.030. TERM OF OFFICE AND REMOVAL. The appointed
7 members of the board serve for staggered terms of five years each, and
8 serve at the pleasure of the governor during their terms..

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

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

17 (c) A member whose term has expired shall serve until a succes-
18 sor has been appointed.

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

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

28 Sec. 42.40.060. QUORUM. Four voting members of the board
29 constitute a quorum for the transaction of business.

1 Sec. 42.40.070. VOTING. Four affirmative votes are required for
2 board action. The board shall provide by rule for the manner of
3 voting, except that the board may not provide for voting by proxy.
4 The rules may provide for voting and conferring by means of telecommu-
5 nication devices. The rules may provide for excluding non-voting
6 members during executive sessions.

7 ARTICLE 2. MANAGEMENT.

8 Sec. 42.40.090. MANAGEMENT BY THE BOARD. The board is responsible
9 for the management of the corporation but shall delegate certain
10 powers and duties to the chief executive officer in accordance with AS
11 42.40.110. In carrying out its responsibilities under this section
12 the board shall, subject to AS 42.40.110,

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

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

18 (3) provide for safe, efficient, and economical
19 transportation to meet the overall needs of the state;

20 (4) raise needed capital by issuing obligations of the
21 corporation while insuring that borrowing by the corporation does not
22 directly or indirectly endanger the state's own borrowing capacity.

23 Sec. 42.40.100. EXECUTIVE OFFICERS. (a) The board shall appoint the
24 chief executive officer of the corporation subject to the approval by
25 the Governor. The chief executive officer serves at the pleasure of
26 the board. The board shall fix compensation for the chief executive
27 officer.

28 (b) The chief executive officer of the corporation shall appoint
29 and fix the compensation for other executive officers. The

1 appointment of other executive officers and their compensation are
2 subject to board approval.

3 Sec. 42.40.110. DELEGATION. (a) The board shall by rule delegate
4 powers and duties necessary and appropriate for the management of the
5 daily affairs and operations of the corporation to the chief executive
6 officer, subject to a requirement of board concurrence or
7 authorization imposed by the rules.

8 (b) Within 180 days of the first meeting of the board, the board
9 shall by rule delegate the following activities of the corporation to
10 the chief executive officer or other executive officers designated by
11 the board:

12 (1) leasing, granting easements in, issuing permits for the
13 use of, or conveying other interests that do not constitute a transfer
14 of the corporation's entire interest in real property of the corpora-
15 tion other than the execution of a release of a lien or satisfaction
16 of a mortgage after payment has been received;

17 (2) establishing specific rates, tariffs, divisions, and
18 contract rate agreements;

19 (3) making routine changes in service levels; and

20 (4) performing procurement activities.

21 (c) Board authorization or concurrence is required for the
22 following:

23 (1) transferring the corporation's entire interest in real
24 property;

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

26 (3) mortgaging or pledging corporation assets;

27 (4) donating property, or other assets belonging to the
28 corporation;

29 (5) acting as a surety or guarantor;

1 (6) adopting a long-range program and capital improvement
2 plan subject to Sec. 42.40.310;

3 (7) certifying annual reports;

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

7 (9) diversification and major expansion or reducing
8 services beyond those provided on the date of transfer or as provided
9 under this chapter;

10 (10) expanding the main or branch lines, other than perform-
11 ing routine track alignment as necessary to maintain service levels in
12 effect on the date of transfer; and

13 (11) selecting independent auditors and accountants.

14 (12) certifying collective bargaining agreements with
15 railroad employees.

16 (13) capital projects with an estimated completion cost in
17 excess of \$500,000 or an estimated completion time of more than one
18 year.

19 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

20 Sec. 42.40.200. CONFLICTS OF INTEREST. (a) Except as provided
21 in this section, a board member or employee of the authority may not
22 participate in a decision of the authority in which that person or a member
23 of that person's immediate family has a direct or indirect financial
24 interest unless the financial interest is a remote financial interest and
25 participation is approved under (b) of this section. For purposes of this
26 section, "participate in a decision" includes all discussions,
27 deliberations, preliminary negotiations, and votes concerning a matter that
28 is the subject of formal action by the board.

29 (b) A board member or employee may participate in a decision if:

1 that person or a member of that persons immediate family has only a
2 remote interest and if the fact and extent of the interest is
3 disclosed to the board in a public meeting and is noted in the minutes
4 of the board before any participation by the member or employee in the
5 decision, and thereafter in a public meeting the board authorizes or
6 approves the participation by a vote of its membership excluding the
7 interested member or employee. As used in this subsection, "remote
8 interest" means interests that in good faith are defined as remote by
9 rules adopted by the corporation.

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

14 (d) Within 120 days of the first meeting of the board, the board
15 shall adopt and may subsequently amend rules implementing this
16 section, providing additional conflict of interest and ethical rules
17 it considers appropriate, and providing for the removal by the board
18 of a board member or employee who intentionally violates a prohibition
19 contained in this section.

20 Sec. 42.40.210. PUBLIC BOARD MEETINGS. (a) The meetings of the
21 board are public with the exception of an executive session conducted
22 under AS 44.62.310 and (b) of this section.

23 (b) In addition to those subjects that may be discussed in
24 executive session under AS 44.62.310, the board may consider in execu-
25 tive session matters that pertain to personnel, the corporation's
26 legal position, land acquisition or disposal, or proprietary informa-
27 tion, as defined in a manner consistent with the standards and prac-
28 tices of the United States Interstate Commerce Commission for protec-
29 tion of information including but not limited to proprietary

1 information associated with specific shippers, divisions, and contract
2 rate agreements.

3 Sec 42.40.220: MINUTES OF MEETINGS. The board shall keep
4 minutes of each meeting and shall send a certified copy of the minutes
5 of the public portion of each meeting to the governor and the
6 leadership of the legislature.

7 ***** Sec. 42.40.230. RULES. The board shall establish a
8 procedure for adopting rules to carry out its functions and the
9 purposes of this chapter. The rules shall include a procedure for the
10 adoption of emergency rules when the adoption of an emergency rule is
11 essential to continue or to reinstate the orderly operation of the
12 corporation's facilities or program.

13 Sec. 42.40.240. PUBLIC DISCLOSURE OF INFORMATION. (a) Except
14 as provided by rule of the corporation under (b) of this section,
15 information in the possession of the corporation is public and is open
16 to public inspection at reasonable times.

17 (b) Except as provided in AS 42.40.270, the corporation may by
18 rule designate and withhold disclosure of matters of a nonpublic,
19 privileged, or proprietary nature. Those matters include personnel
20 records, communications with and work product of counsel consistent
21 with the standards and practices of the United States Interstate
22 Commerce Commission for the protection of these matters, and
23 information including but not limited to specific shippers, divisions,
24 and contract rate agreements.

25 Sec. 42.40.250. SPECIAL REPORT. The corporation shall investi-
26 gate and prepare a report for the governor and the legislature on the
27 long-term operations of the railroad that are in the best interest of
28 the state. The report shall be due January 1, 1988. It shall make
29

specific recommendations on operational alternatives and the transfer of all or part of the railroads operations to the private sector.

Sec. 42.40.260. ANNUAL REPORT. Within 90 days following the end of the fiscal year of the 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 plans may include suggestions for legislation relating to the structure, powers, or duties of the authority or relating to operation of facilities of the authority.

Sec. 42.40.270. ANNUAL AUDIT. The board shall have the financial records of the corporation audited annually by an independent certified public accountant experienced in railroad accounting. The corporation shall make all of its financial records available to an auditor appointed by the governor or 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 42.40.240 and rules implementing that section.

ARTICLE 4. POWERS AND DUTIES.

Sec. 42.40.300. GENERAL POWERS. In addition to the exercise of other powers authorized by law, the corporation may

- (1) adopt a seal;
- (2) adopt rules and 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;

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

3 (7) acquire by purchase, lease, bequest, devise, gift,
4 exchange, the satisfaction of debts, the foreclosure of mortgages, or
5 otherwise, real or personal property, rights, rights-of-way, fran-
6 chises, easements, and other interest in land, including land lying
7 under water and appropriation of water rights that are located in the
8 state, taking title to the property in the name of the corporation;

9 (8) acquire property by eminent domain in accordance with
10 AS 42.40.430 or by declaration of taking;

11 (9) hold, maintain, use, operate, lease, exchange, donate,
12 improve, convey, alienate, dispose of, mortgage, encumber, and
13 otherwise grant security interests in or transfer any real or personal
14 property including facilities and equipment;

15 (10) contract with and accept transfers, gifts, grants or
16 loans of funds or property from the United States and the state or its
17 political subdivisions, subject to the provisions of federal, state,
18 or local programs;

19 (11) undertake and provide for the management, operation,
20 maintenance, use, and control of all of the properties of the corpo-
21 ration including, the tracks, equipment and other property transferred
22 to it by the federal government or by any person;

23 (12) recommend to the legislature and the governor any tax,
24 financing, or financial arrangement the corporation considers appro-
25 priate to carry out the duties under this chapter

26 (13) maintain offices and facilities at places it desig-
27 nates;

28 (14) acquire, hold, and dispose of Stocks, memberships,
29 contracts, bonds, general or limited partnership interests or other

1 interests in another corporation, association, partnership, joint venture,
2 or other legal entity, and exercise the powers or rights in connection with
3 these interests which are provided in contracts or agreements and that are
4 allowed by law concerning the satisfaction of debts;

5 (15) undertake and provide for the acquisition, construction,
6 maintenance, equipping, and operation of connecting, switching, terminal, or
7 other railroads and railroad facilities in the state;

8 (16) apply to the appropriate agencies of the state, the
9 United States, and a foreign country or other proper agencies for the
10 permits, licenses, or approvals necessary to construct, maintain, and
11 operate railroad transportation services, and to obtain, hold, and
12 reuse the licenses and permits in the same manner as other operating
13 units or persons;

14 (17) prescribe rates to be charged for services provided by
15 the Alaska Railroad;

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

18 (19) enter into contracts and leases with connecting carri-
19 ers and shippers, and other persons concerning the services,
20 activities, operations, properties, and facilities of the railroad.
21 Including contracts leases and other agreements that contain
22 provisions to preserve and expand the railroad's traffic base;

23 (20) plan for and undertake expansion of the railroad and
24 railroad activities, including extension of the Alaska Railroad's rail
25 system, and contract with other modes of transportation service con-
26 necting to the railroad's rail services;

27 (21) adopt rules that are designed to safeguard property
28 owned, managed, or transported by the corporation and to protect
29 employees and persons using the corporation's property or services;

1 (22) hire and discharge railroad personnel and determine
2 benefits and other terms and conditions of employment established in
3 accordance with obligations imposed by 45 U.S.C. 1201-1214 (Alaska
4 Railroad Transfer Act of 1982);

5 (23) assume and satisfy liabilities of the United States or
6 its agencies as provided by 45 U.S.C. 1201-1214 (Alaska Railroad
7 Transfer Act of 1982 and the closing report or its substantive
8 equivalent as accepted by the legislature;

9 (24) maintain a security force to enforce state law and the
10 corporations rules with respect to violations that occur on or to
11 property owned, managed or transported by the corporation;

12 (25) borrow money and issue its bonds or notes and provide
13 for and secure their payment, provide for the rights of their holders
14 and purchase, hold, or dispose of its bonds or notes;

15 (26) secure the payment of its obligations by pledge or
16 mortgage or other lien on its contracts, revenues, income, or proper-
17 ty;

18 (27) 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 (28) include in any borrowing the amounts necessary to
23 establish reasonable reserves and pay financing charges and interest
24 on the obligations for a reasonable period after which the corporation
25 estimates funds will be otherwise available to pay the interest,
26 consultant, advisory, and legal fees, and other expenses necessary or
27 incident to borrowing;

28 (29) purchase the corporation's bonds at a price not more
29 than the principal amount of them plus interest; and

1 (30) cancel bonds purchased under (21) of this section;

2 (31) adopt rules having the force of law that require
3 designated classes of proprietary information and communications to be
4 held confidential;

5 (32) do all things necessary, convenient and desirable to
6 carry out the powers and duties expressly granted or necessarily
7 implied in this chapter or under other laws of the state or the laws
8 and regulations of the federal government.

9 Sec. 42.40.310. LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT
10 PLANS. (a) The corporation shall prepare and the board shall adopt a
11 long-range program plan and a capital improvement plan. The board
12 shall interface with other related state agencies in preparation of
13 the plans. The long-range program plan shall delineate the manner in
14 which the corporation intends to accomplish the purposes of this
15 chapter during each of the five years after the plan is adopted. The
16 capital improvement plan shall present and explain the corporation's
17 anticipated capital improvements for each of the five years after the
18 plan is adopted.

19 (b) The board shall annually review and update the plans re-
20 quired under (a) of this section. The board may not contract for the
21 preparation or revision of either the long-range program plan or the
22 capital improvement plan, but shall require their preparation and
23 revision by employees of the corporation.

24 (c) The board shall provide copies of its updated plans to the
25 governor and the legislature by December 1 of each year.

26 Sec. 42.40.320. USE OF CORPORATION ASSETS. (a) The corporation
27 shall apply all money, property, other assets, and credit of the
28 corporation toward activities authorized by this chapter. The corpo-
29 ration may not issue shares of stock, pay dividends, make private

1 distributions of assets, make loans to board members or employees, or
2 engage in business for private benefit. The use of money, property,
3 other assets, or credit of the corporation for purposes not authorized
4 by law by persons having the possession or control of it is prohibi-
5 ted.

6 ARTICLE 5. RAIL PROPERTIES.

7 Sec. 42.40.400. LAND. All land among the rail properties trans-
8 ferred under 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of
9 1982) or otherwise acquired by the corporation is under the control of
10 the corporation. As to all land that is transferred or acquired

11 (1) railroad rights-of-way or easements transferred under
12 the federal act or otherwise acquired shall be classified as railroad
13 utility corridors;

14 (2) future railroad utility corridors shall be of a width
15 at least 100 feet on both sides of the centerline of the extended main
16 or branch line, or may be of other width as designated by the corpo-
17 ration, and may be surveyed by the metes and bounds method; and

18 (3) the corporation may lease or rent portions of the
19 utility corridor for other transportation services.

20 Sec. 42.40.420. CLASSIFICATION, ACQUISITION, AND USE OF STATE
21 LAND FOR RAILROAD PURPOSES. (a) The board by rule may identify and
22 request conveyance of land owned by or subject to selection by the
23 state, including tide and submerged land and land not adjacent to a
24 railroad corridor, as necessary or useful for present, future or
25 intended railroad purposes. The request must include a statement of
26 and justification for the present, future or intended railroad use.
27 Upon submission of a request for classification and conveyance to the
28 commissioner of natural resources, the commissioner shall temporarily
29 classify and reserve the land identified in the request for railroad

1 purposes and shall temporarily vacate a classification allowing dis-
2 posal or lease of that land under laws or programs of the state. A
3 temporary classification and vacation is subject to valid existing
4 rights and remains in effect for 180 days.

5 (b) Within 90 days after receiving a request under (a) of this
6 section, the commissioner of natural resources by departmental order
7 shall;

8 (1) classify that land for railroad purposes and, subject
9 to valid existing rights, convey the state's interests to the corpo-
10 ration; or

11 (2) notify the corporation of reasons for refusal to clas-
12 sify the land for railroad purposes.

13 (3) approve in part and deny in part the request for
14 classification under this section.

15 (c) A conveyance under (b)(1) or (3) of this section vests in
16 the corporation the exclusive right to extract and use for its
17 purposes sand, gravel, rock, timber and other construction materials
18 the land conveyed without regard to the classification of the
19 resources as part of the surface or subsurface estate.

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

24 (e) The corporation's ownership of state land entitles it to
25 exclusive use and control of the surface, subsurface, complete sub-
26 jacent and lateral support of the surface, subsurface, and the right
27 to tunnel, ditch, recontour, excavate or otherwise use the subsurface
28 for railroad, transportation, transmission, and related purposes.
29

1 (f) When physical conditions require that track or other right-
2 of-way fixtures of the corporation be moved from the existing location
3 and relocated on state-owned land adjacent to or in the vicinity of
4 the existing right-of-way, and the chief executive officer determines
5 that relocation is necessary to maintain safe and adequate rail op-
6 erations, the corporation may effect the relocation with concurrence
7 of the Department of Natural Resources. The relocation must be limi-
8 ted to land adequate to restore or continue safe rail operations at a
9 normal level.

10 Sec. 42.40.430. EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND
11 MATERIALS. (a) The corporation may exercise the power of eminent
12 domain under AS 09.55.240 - 09.55.460 to acquire land or an interest
13 in land for lawful purposes consistent with this chapter.

14 (b) The corporation may acquire a fee simple title whenever, in
15 the judgment of the board, ownership of a fee simple is necessary to
16 carry out the state's lawful purposes in condemning property.

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

19 (d) The power of eminent domain conferred under this section
20 includes the power to obtain material, including clay, gravel, sand,
21 timber, or rock for railroad use, the land necessary to obtain the
22 material, and access to the land and material.

23 Sec. 42.40.450. OTHER ASSETS. (a) The corporation may submit
24 applications on its own behalf as an instrumentality of the state for
25 acquisition of interests in federal land available under federal law
26 that will enhance the operations of the corporation and may receive
27 conveyances of all interests in its own name.

28 (b) The corporation, as an agency of the state, may acquire in
29 its own name from the United States under 50 App U.S.C. 1622 et seq

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

7 ARTICLE 6. FINANCIAL PROVISIONS.

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

13 Sec. 42.40.520. FIDELITY BOND. The corporation shall obtain a
14 fidelity bond in an amount determined by the board for its members and
15 any officer responsible for accounts and finances. A bond must be in
16 effect during the entire tenure in office of the bonded person.

17 Sec. 42.40.530. INSURANCE. (a) The corporation shall keep in
18 force public liability insurance in an amount reasonably calculated to
19 cover potential claims for bodily injury, death or disability and
20 property damage that may arise from or be related to its operations
21 and activities, naming the state as an additional insured.

22 (b) Notwithstanding the provisions of this section, the corpo-
23 ration may purchase insurance to protect and hold personally harmless
24 its employees, agents, and board members from an action, claim, or
25 proceeding instituted against these individuals arising out of the
26 performance, purported performance, or failure of performance, in good
27 faith, of duties for, or employment with, the corporation and to hold
28 these individuals harmless from expenses connected with the defense,
29 settlement, or monetary judgments from that action, claim, or

1 proceeding; the purchase of insurance and its policy limits are dis-
2 cretionary with the board and insurance is not considered to be com-
3 pensation to the insured individual.

4 Sec. 42.40.540. CLAIMS. (a) All claims and lawsuits involving
5 activities of the railroad, including suits in contract, quasi-con-
6 tract, or tort, shall be brought against the corporation, and not
7 against the state.

8 (b) In a claim or other legal action against the corporation
9 involving its activities, including the expansion, extension and
10 construction of the railroad, in which the corporation is the
11 prevailing party, the party or parties that maintained the action
12 shall be liable to the corporation for its full costs and legal fees
13 in defending the action and for the financial losses to the
14 corporation that are directly attributable to the maintenance of that
15 action.

16 (c) For the purposes of actionable claims, undertakings, pay-
17 ments of judgments, execution, interest, punitive damages, statutes of
18 limitations, bonds, costs, and similar matters related to the pres-
19 entation and prosecution of claims by and against the corporation, the
20 corporation and its board members and employees enjoy the same rights,
21 privileges, and immunities as the state and state officers as provided
22 in AS 09.10.120, AS 09.50.250 - 09.50.290, and AS 09.65.040.

23 (d) Claims against the corporation are not subject to the
24 provisions of AS 44.77.010 - 44.77.070 regarding claims against the
25 state.

26 (e) The corporation is not subject to the provisions of AS 44.-
27 80.010, regarding the state as a party to an action.

28 (f) The corporation may defend and indemnify a current or former
29 employee, agent, or board member of the corporation and their

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

7 Sec. 42.40.550. REVENUE. Revenue generated by or appropriated
8 to the corporation shall be retained and managed by the corporation
9 for railroad and related purposes as required by 45 U.S.C. 1207(a)(5)
10 (Alaska Railroad Transfer Act of 1982).

11 Sec. 42.40.560. APPROPRIATIONS. The corporation may request,
12 with the concurrence of the governor, a direct appropriation or grant
13 from the legislature to assist in carrying out the provisions of
14 AS 42.40.300 and 42.40.310.

15 Sec. 42.40.570. BONDS AND NOTES. (a) The corporation by reso-
16 lution may issue bonds and bond anticipation notes to provide money to
17 carry out its purposes.

18 (b) The principal and interest on bonds or notes of the corpo-
19 ration is payable from corporation money or assets. Bonds or notes
20 may be additionally secured by a pledge of a grant or contribution
21 from the federal government or a corporation, association, institution
22 or person, or a pledge of money, income, or revenue of the corporation
23 from any source.

24 (c) Bond anticipation notes may be payable from the proceeds of
25 the sale of bonds or other bond anticipation notes, or, if bond or
26 bond anticipation note proceeds are not available, from other money or
27 assets of the corporation.

28 (d) Bonds or bond anticipation notes may be issued in one or
29 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.

(e) 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.

(f) 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 bonds or bond anticipation notes:

(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;

1 (3) covenant as to establishment of reserves or sinking
2 funds and provide for, regulate, and dispose of the reserves or sink-
3 ing funds;

4 (4) covenant regarding limitations on a right to sell or
5 otherwise dispose of property of any kind;

6 (5) covenant as to bonds and notes to be issued, their
7 limitations, terms and conditions, the custody, application and dispo-
8 sition of the proceeds of the bonds and notes;

9 (6) covenant as to the issuance of additional bonds or
10 notes, or limitations on the issuance of additional bonds or notes,
11 and the incurring of other debts;

12 (7) covenant as to the payment of the principal of or
13 interest on the bonds or notes, the sources and methods of payment,
14 the rank or priority of the bonds or notes with respect to a lien or
15 security, or the acceleration of the maturity of the bonds or notes;

16 (8) provide for the replacement of lost, stolen, destroyed
17 or mutilated bonds or notes;

18 (9) covenant against extending the time for the payment of
19 bonds or notes, or interest on the bonds or notes;

20 (10) covenant as to the redemption of bonds or notes and
21 privileges of their exchange for other bonds or notes of the corpo-
22 ration;

23 (11) covenant to create or authorize the creation of special
24 funds of money to be held in pledge or otherwise for operating ex-
25 penses, payment or redemption of bonds or notes, reserves or other
26 purposes, and as to the use and disposition of the money held in the
27 funds;

28 (12) establish the procedure by which the terms of a con-
29 tract or covenant with or for the benefit of the holders of bonds or

1 notes may be amended or abrogated, the amount of bonds or notes the
2 holders of which must consent to amendment or abrogation, and the
3 manner in which the consent may be given;

4 (13) covenant as to the custody of any of its properties or
5 investments, their safekeeping and insurance, and the use and disposi-
6 tion of insurance money;

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

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

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

27 (17) appoint and provide for the duties and obligations of a
28 paying agent or other fiduciary inside or outside the state;
29

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

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

10 Sec. 42.40.580. INTERIM RECEIPTS, TEMPORARY BONDS, AND TEMPORARY
11 BOND ANTICIPATION NOTES. Before the preparation of definitive bonds
12 or bond anticipation notes, the corporation may issue interim receipts
13 or temporary bonds or bond anticipation notes, with or without cou-
14 pons, exchangeable for bonds or bond anticipation notes when these
15 definitive bonds or bond anticipation notes have been executed and are
16 available for delivery.

17 Sec. 42.40.590. VALIDITY OF SIGNATURES. If an officer whose
18 signature or a facsimile of whose signature appears on bonds, notes,
19 or coupons attached to them ceases to be an officer before the de-
20 livery of the bond, note, or coupon, the signature or facsimile is
21 valid the same as if the person had remained in office until delivery.

22 Sec. 42.40.600. INDEPENDENT FINANCIAL ADVISOR. In negotiating
23 the private sale of bonds or bond anticipation notes to an under-
24 writer, the board shall retain a financial advisor who is independent
25 from the underwriter.

26 Sec. 42.40.610. VALIDITY OF PLEDGE. (a) The pledge of assets
27 or revenue of the corporation to the payment of the principal or
28 interest on bonds or notes of the corporation is valid and binding
29 from the time the pledge is made and the assets or revenue are

1 immediately subject to the lien of the pledge without physical
2 delivery or further act. The lien of a pledge is valid and binding
3 against all parties having claims of any kind in tort contract or
4 otherwise against the corporation, irrespective of whether those
5 parties have notice of the lien of the pledge.

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

10 Sec. 42.40.620. REMEDIES. A holder of bonds or notes issued
11 under this chapter or of coupons attached to them, and a trustee under
12 a trust agreement or resolution authorizing the issuance of the bonds
13 or notes, except as restricted by a trust agreement or resolution,
14 either at law or in equity, may

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

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

20 Sec. 42.40.630. NEGOTIABLE INSTRUMENTS. Bonds and notes issued
21 under this chapter and interest coupons attached to them are nego-
22 tiable instruments under the laws of this state, subject only to
23 applicable provisions for registration.

24 Sec. 42.40.640. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds
25 and notes issued under this chapter are securities in which all public
26 officers and public bodies of the state and its political subdivi-
27 sions, all insurance companies, trust companies, banking associations,
28 investment companies, executors, administrators, trustees and other
29 fiduciaries may properly and legally invest funds, including capital.

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

5 Sec. 42.40.650. REFUNDING BONDS. (a) The corporation may
6 provide for the issuance of refunding bonds for the purpose of refund-
7 ing bonds then outstanding that have been issued under this chapter,
8 including the payment of a redemption premium on them and interest
9 that accrues to the date of redemption of the bonds. Refunding bonds
10 shall be issued in accordance with provisions of this chapter that
11 relate to the issuance of bonds to the extent those provisions are
12 appropriate.

13 (b) Refunding bonds may be sold or exchanged for outstanding
14 bonds issued under this chapter and the proceeds may be applied to the
15 purchase, redemption or payment of the outstanding bonds in addition
16 to other authorized purposes. Pending the application of the proceeds
17 of refunding bonds to the payment of the principal, accrued interest
18 and redemption premium on the bonds being refunded, and, if permitted
19 in the resolution authorizing the issuance of the refunding bonds or
20 in the trust agreement securing them, to the payment of interest on
21 the refunding bonds and expenses in connection with the refunding, the
22 proceeds may be invested in direct obligations of the United States or
23 obligations the principal of and the interest on which are uncondi-
24 tionally guaranteed by the United States that mature or may be re-
25 deemed not later than the date the proceeds of the refunding bonds,
26 together with the interest accruing on them, will be required for the
27 purposes intended.

28 Sec. 42.40.660. CREDIT OF STATE NOT PLEDGED. (a) The state and
29 its political subdivisions are not liable for the debts of the

1 corporation. Bonds and notes issued under this chapter are payable
2 solely from the revenue or assets of the corporation and do not
3 constitute a

4 (1) debt, liability, or obligation of the state or of a
5 political subdivision of the state; or

6 (2) pledge of the faith and credit of the state or of a
7 political subdivision of the state.

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

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

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

16 Sec. 42.40.670. OFFICERS NOT LIABLE. An officer or employee of
17 the corporation is not subject to personal liability or accountability
18 because of the execution or issuance of bonds or notes.

19 Sec. 42.40.680. EXEMPTION FROM TAXATION. (a) The real and
20 personal property of the corporation and its assets, income, and
21 receipts are exempt from all taxes and special assessments of the
22 state or a political subdivision of the state.

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

28 (c) The exercise of the powers granted by this chapter shall be
29 in all respects for the benefit of the people of the state, for their

1 well-being and prosperity, and for the improvement of their social and
2 economic conditions. Therefore, the corporation is not required to
3 pay a tax or assessment on property owned by the corporation under the
4 provisions of this chapter or on the income from the property.

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

12 Sec. 42.40.690. REVERSION OF ASSETS. If the corporation ceases
13 to exist, for whatever reason, its assets revert to the state.

14 ARTICLE 7. PERSONNEL AND LABOR RELATIONS.

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

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

23 (c) The corporation may not enter into a collective bargaining
24 agreement concerning wages, hours, working conditions or other
25 employment terms, conditions and benefits with an organization
26 representing the corporation's chief executive official or executive
27 officials appointed by the chief executive official.

28 Sec. 42.40.710. POLITICAL ACTIVITIES. (a) Money, assets, or
29 property of the corporation may not be used for political activity.

1 However, board members and employees of the corporation may
2 communicate with and appear before committees of Congress, the state
3 legislature, and municipal governing bodies in connection with matters
4 directly affecting the corporation.

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

9 ARTICLE 8. STATE OVERSIGHT AND REVIEW

10 Sec. 42.40.300. STATE OVERSIGHT (a). The board shall notify
11 the governor and the leadership of the legislature before undertaking

12 (1) expansion, reduction, or diversification of services
13 provided by the railroad upon the date of transfer to the authority or
14 as provided under this chapter that the board determines would
15 represent a significant and permanent change in the level and nature
16 of services provided;

17 (2) extension of the main or branch lines by more than 25
18 miles or 5 percent of the railroads total track mileage, whichever is
19 greater; or

20 (3) the issuance of securities, notes, bonds or contracts
21 with a term in excess of one year and in an amount exceeding
22 \$5,000,000.

23
24
25
26 ARTICLE 8. GENERAL PROVISIONS.

27 Sec. 42.40.900. APPLICATION OF EXISTING STANDARDS. The Alaska
28 Railroad Corporation is not subject to the jurisdiction of the Alaska
29

1 Transportation Commission. The following laws do not apply to the
2 operations of the Alaska Railroad Corporation:

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

13 Sec. 42.40.950. DEFINITIONS. In this chapter,

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

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

17 (3) "date of transfer" means the date on which the United
18 States Secretary of Transportation delivers the deed of conveyance for
19 the properties of the Alaska Railroad under 45 U.S.C. 1201-1214
20 (Alaska Railroad Transfer Act of 1982);

21 (4) "employees" means all persons employed by the
22 corporation including executive officials;

23 (5) "railroad utility corridor" means a right-of-way for
24 railroad and related purposes as defined in 45 U.S.C. 1202(11) (Alaska
25 Railroad Transfer Act of 1982).

26 (6) "land" means all real property, including tide and
27 submerged land;

28 (7) "rail properties" means all real and personal property,
29 tangible and intangible, of the corporation:

1 (8) "executive officials" means the employees occupying the
2 following positions at the Alaska Railroad as of the day before the
3 date of transfer: General Manager, Assistant General Manager,
4 Assistant to the General Manager, Chief of Administration and General
5 Counsel.

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

8 * Sec. 3. CONFLICTING LAWS INAPPLICABLE. If provisions of this Act are
9 in conflict with the provisions of other law, the provisions of this Act
10 prevail. Where possible, provisions of this Act shall be construed so that
11 they do not conflict with 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act
12 of 1982).

13 * Sec. 4. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD
14 CORPORATION. Notwithstanding AS 42.40.020 enacted in sec. 1 of this Act,
15 the governor shall designate the terms of the appointed members of the
16 first board of directors of the Alaska Railroad Corporation as follows:

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

21 * Sec. 5. EFFECTIVE DATE. This Act takes effect immediately in
22 accordance with AS 01.10.070(c).

Cook
4/28/84 ✓

Original sponsors: Hayes, Ringstad,
Shultz, et al

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 512 (Finance)

3 IN THE LEG LATURE 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 operate the Alaska Railroad with a board of nine
8 directors responsible for management of the corpora-
9 tion; requiring the board to appoint a chief execu-
10 tive officer to manage the daily affairs and opera-
11 tions of the corporation; authorizing the board to
12 adopt rules to carry out its functions; authorizing
13 the corporation to issue bonds and notes; authorizing
14 the corporation to own and manage all property ac-
15 quired by the corporation or transferred to the state
16 under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer
17 Act of 1982); authorizing the corporation to exercise
18 eminent domain; exempting the corporation from AS 19,
19 AS 23.40.070 - 23.40.260, AS 30.15, AS 35, AS 37.05,
20 AS 37.07, AS 37.10.010 - 37.10.060, 37.10.085,
21 AS 37.20, AS 37.25, AS 38, AS 39, and AS 44.62.040 -
22 44.62.320; and providing for an effective date."

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

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

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

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

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

3 (C) develop and implement plans for a transportation net-
4 work;

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

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

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

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

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

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

18 (1) create a viable economic entity with the powers and duties
19 necessary to operate and manage the Alaska Railroad pending eventual trans-
20 fer of the railroad to the private sector for its ownership or operation or
21 both consistent with 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of
22 1982);

23 (2) provide for the level of railroad service that best satis-
24 fies the needs of the people of the state;

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

29 (A) be exclusively responsible for the management of the

1 financial and legal obligations of the Alaska Railroad;

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

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

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

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

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

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

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

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

21 CHAPTER 40. ALASKA RAILROAD CORPORATION.

22 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

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

29 Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the

1 corporation are vested in the board of directors. The board consists
2 of the chief executive officer of the corporation, and eight members
3 appointed by the governor. The eight appointed members must be regis-
4 tered voters in the state except as provided in (1) and (2) of this
5 subsection. Except for the member appointed under (3) of this sub-
6 section, no more than two appointed members may be from any one of the
7 four judicial districts in the state. Except for the chief executive
8 officer and the member appointed under (3) of this subsection, a
9 member may not be a state officer or employee. Appointed members
10 shall have the following qualifications:

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

14 (2) one member of the board shall be or have been an execu-
15 tive official of a United States railroad and shall be selected in
16 accordance with 49 U.S.C. (Interstate Commerce Act); a person who is
17 not a resident of the state may be appointed under this paragraph;

18 (3) one member shall be an employee who is a member of a
19 bargaining unit representing employees of the corporation;

20 (4) two members shall have at least five years of experi-
21 ence as owners or managers of a business in the state;

22 (5) one member shall be a public member with no direct or
23 indirect financial interest in a transportation industry, except as a
24 consumer of transportation services.

25 (b) The appointed members of the board shall be confirmed by a
26 majority of the members of each house of the legislature in joint
27 session. A member appointed by the governor has the full powers and
28 responsibilities of a confirmed board member until the member is
29 rejected by the legislature.

1 Sec. 42.40.030. TERM OF OFFICE; REMOVAL. (a) The appointed
2 members of the board serve for staggered terms of five years each.

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

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

7 (2) continued refusal or inability to attend meetings of
8 the board;

9 (3) conviction of a felony; or

10 (4) any conduct intended to harm the corporation, even if
11 it does not constitute a crime.

12 Sec. 42.40.040. VACANCIES. (a) Except for the chief executive
13 officer of the corporation, a vacancy on the board is filled by ap-
14 pointment by the governor, and the appointment must be confirmed by
15 the members of each house of the legislature in joint session. A
16 member appointed to fill a vacancy holds office for the balance of the
17 term for which the member's predecessor was appointed.

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

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

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

29 (b) In addition to compensation under (a) of this section, an

1 appointed member of the board is entitled to per diem and travel
2 expenses authorized by law for state boards and commissions.

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

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

8 ARTICLE 2. MANAGEMENT.

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

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

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

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

20 (4) provide for safe, efficient, and economical railroad
21 transportation to meet the overall needs of the state;

22 (5) raise needed capital by issuing bonds of the corpo-
23 ration while ensuring that borrowing by the corporation does not
24 directly or indirectly endanger the state's own borrowing capacity;

25 (6) review state and other land disposal proposals to aid
26 in planning for future development or expansion of railroad transpor-
27 tation services;

28 (7) ensure that the accounting procedures of the corpora-
29 tion meet generally accepted accounting principals consistent with

1 railroad industry standards;

2 (8) ensure that the procurement procedures of the corpora-
3 tion comply with the procurement standards and procedures established
4 for state agencies to the extent practicable consistent with efficient
5 railroad operations;

6 (9) apply to the legislature for an appropriation to be
7 used to provide a service that is not otherwise self-sustaining if a
8 subsidy is required to maintain that service.

9 Sec. 42.40.110. EXECUTIVE OFFICERS. (a) The board shall ap-
10 point the chief executive officer of the corporation who serves at the
11 pleasure of the board. The board shall fix the compensation for the
12 chief executive officer.

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

17 Sec. 42.40.120. DELEGATION. (a) The board may by rule delegate
18 to the chief executive officer powers and duties necessary or appro-
19 priate for the management of the daily affairs and operations of the
20 corporation.

21 (b) The board shall by rule establish procedures for carrying
22 out the following powers and duties of the corporation and may dele-
23 gate the exercise of the following powers and duties in accordance
24 with the procedures to the chief executive officer or other executive
25 officers designated by the board:

26 (1) leasing, granting easements in, issuing permits for the
27 use of, or conveying other interests in property, except the corpo-
28 ration's entire interest in land;

29 (2) establishing specific rates, tariffs, divisions, and

1 contract rate agreements;

2 (3) making routine changes in service levels;

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

5 (5) performing procurement activities.

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

9 (1) issuing bonds;

10 (2) mortgaging or pledging corporation assets;

11 (3) donating property or other assets belonging to the
12 corporation;

13 (4) acting as a surety or guarantor;

14 (5) adopting a long-range program or capital improvement
15 plan;

16 (6) adopting annual reports;

17 (7) effecting general, comprehensive increases and de-
18 creases in rates;

19 (8) diversifying, expanding, or reducing services in a
20 major way;

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

24 (10) selecting independent auditors and accountants;

25 (11) exercising the power of eminent domain;

26 (12) entering into collective bargaining agreements;

27 (13) adopting annual budgets; and

28 (14) beginning capital projects with an estimated completion
29 cost of more than \$500,000 or an estimated completion time of more

1 than one year.

2 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

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

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

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

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

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

17 Sec. 42.40.170. EXECUTIVE SESSIONS. (a) The question of hold-
18 ing an executive session shall be determined in accordance with
19 AS 42.40.160. A subject may not be considered at an executive session
20 unless it is mentioned in the motion calling for the executive session
21 or is auxiliary to a subject mentioned. An action may not be taken at
22 an executive session.

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

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

27 (2) unless one person has requested to have the subjects
28 discussed in public, subjects that tend to prejudice the reputation
29 and character of a person;

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

3 (4) matters pertaining to personnel;

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

5 (6) land acquisition or disposal; and

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

11 Sec. 42.40.175. RULES. (a) The board shall adopt rules to
12 carry out its functions and the purposes of this chapter, including
13 rules to safeguard property owned, managed, or transported by the
14 corporation and to protect employees and persons using the corpora-
15 tion's property or services. At least 15 days before the adoption of
16 a rule, the board shall give public notice of the proposed action by
17 publishing a notice in at least three newspapers of general
18 circulation in the state and by mailing a copy of the notice to each
19 person who has requested notice of proposed rules. The notice must
20 state the time, place, and nature of the proceedings and must contain
21 a summary of the subject of the proposed change.

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

28 (c) The board shall consider all relevant matters presented to
29 it before adopting a rule. The board may take action on a rule that

1 varies in content from the summary provided with the notice of the
2 proposed rule if the subject of the rule was reflected in the summary
3 and it provided reasonable notice to the public as to whether their
4 interests could be affected by the board's action on that subject.

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

7 Sec. 42.40.180. EMERGENCY RULES. (a) The board shall establish
8 in the bylaws of the corporation a procedure for the adoption of a
9 rule on an emergency basis. An emergency rule may be adopted only
10 when necessary for the orderly operation of the corporation's
11 facilities or programs. The requirements of AS 42.40.175 do not apply
12 to actions taken under this section. However, within 10 days after
13 the adoption of a rule on an emergency basis the board shall give
14 notice of its action that substantially complies with the notice
15 requirements of AS 42.40.175(a).

16 (b) An action taken under this section remains in effect for not
17 more than 120 days. To prevent an emergency rule from lapsing the
18 board may adopt the same rule under AS 42.40.180 before the end of the
19 120-day period.

20 Sec. 42.40.185. VALIDITY OF RULES. (a) Failure to mail notice
21 to a person under AS 42.40.175(a) or 42.40.180(a) does not invalidate
22 an action taken by the board.

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

26 (1) for substantial failure by the board to comply with
27 AS 42.40.175 or 42.40.180; or

28 (2) if the rule was adopted under AS 42.40.180, upon the
29 grounds that the emergency rule was not necessary for the orderly

1 operation of the corporation's facilities or programs.

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

10 (b) AS 42.40.175 does not apply to actions taken under this
11 section.

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

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

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

1 this section.

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

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

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

23 (e) For purposes of this section

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

26 (2) "immediate family" means

27 (A) spouse;

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

1 Sec. 42.40.220. COMPLAINT PROCEDURE. The board shall provide by
2 rule for a formal procedure for the receipt and consideration of
3 complaints or suggestions regarding activities of the corporation.

4 ARTICLE 4. POWERS AND DUTIES.

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

- 7 (1) adopt a seal;
- 8 (2) adopt bylaws governing the business of the corporation;
- 9 (3) sue and be sued;
- 10 (4) appoint trustees and agents of the corporation and
11 prescribe their powers and duties;
- 12 (5) hire legal counsel to represent the corporation;
- 13 (6) make contracts and execute instruments necessary or
14 convenient in the exercise of its powers and duties;
- 15 (7) acquire by purchase, lease, bequest, devise, gift,
16 exchange, the satisfaction of debts, the foreclosure of mortgages, or
17 otherwise, personal property, rights, rights-of-way, franchises,
18 easements, and other interest in land, and acquire by appropriation
19 water rights that are located in the state, taking title to the prop-
20 erty in the name of the corporation;
- 21 (8) hold, maintain, use, operate, improve, lease, encumber
22 and otherwise grant security interests in land or personal property
23 and exchange, donate, convey, alienate, or otherwise dispose of per-
24 sonal property, subject to other provisions of this chapter;
- 25 (9) contract with and accept transfers, gifts, grants or
26 loans of funds or property from the United States and the state or its
27 political subdivisions, subject to other provisions of federal or
28 state law or municipal ordinances;
- 29 (10) undertake and provide for the management, operation,

1 maintenance, use, and control of all of the property of the corpo-
2 ration, including tracks, equipment and other property transferred to
3 the corporation by the federal government or any person;

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

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

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

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 corporation, including agreements that contain provisions to preserve
23 and 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 and conditions of employment;

1 maintenance, use, and control of all of the property of the corpo-
2 ration, including tracks, equipment and other property transferred to
3 the corporation by the federal government or any person;

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

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

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

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 corporation, including agreements that contain provisions to preserve
23 and 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 and conditions of employment;

1 (19) assume all rights, liabilities, and obligations of the
2 Alaska Railroad consistent with 45 U.S.C. 1201 - 1214 (Alaska Railroad
3 Transfer Act of 1982);

4 (20) maintain or provide for a security force to protect
5 property owned, managed or transported by the corporation and persons
6 using railroad transportation services provided by the corporation;

7 (21) issue its bonds and provide for and secure their pay-
8 ment, provide for the rights of their holders and hold or dispose of
9 them;

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

12 (23) cancel bonds of the corporation purchased by the corpo-
13 ration;

14 (24) secure the payment of its bonds by pledge, mortgage, or
15 other lien on its contracts, revenue, income, or property;

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

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

26 (27) acquire, hold, and dispose of stocks, memberships,
27 contracts, bonds, general or limited partnership interests or other
28 interes in another corporation, association, partnership, joint
29 venture, or other legal entity, and exercise the powers or rights in

1 connection with these interests that are provided in contracts or
2 agreements and that are allowed by law concerning the satisfaction of
3 debts;

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

7 (29) do all things necessary or desirable to carry out the
8 powers and duties of the corporation granted or necessarily implied in
9 this chapter or other laws of the state or the laws or regulations of
10 the federal government.

11 Sec. 42.40.260. ANNUAL REPORT. Within 90 days following the end
12 of the fiscal year of the Alaska Railroad the board shall distribute
13 to the governor and to the legislature a report describing the opera-
14 tions and financial condition of the corporation during the preceding
15 fiscal year. The report may include suggestions for legislation
16 relating to the structure, powers or duties of the corporation or to
17 operation facilities of the corporation. Subject to AS 42.40.200, the
18 report shall itemize the cost of providing each category of service
19 offered by the railroad and the income generated by each category.
20 The report shall list all complaints and suggestions received by the
21 corporation during the previous fiscal year and describe the action
22 taken on the complaint or suggestion.

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

1 (b) The corporation shall make all of its financial records
2 available to an auditor appointed by the governor and to the legisla-
3 tive audit division for examination. Disclosure to the public by the
4 auditor or legislative audit division of this information is subject
5 to AS 42.40.200 and rules implementing that action.

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

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

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

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

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

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

23 (1) its financial impact on the corporation;

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

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

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

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

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

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

25 Sec. 42.40.310. INDEMNIFICATION. (a) The corporation may
26 defend and indemnify a current or former member of the board, em-
27 ployee, or agent of the corporation against all costs, expenses, judg-
28 ments, and liabilities, including attorney's fees, incurred by or
29 imposed upon that person in connection with a civil or criminal action

1 which the person is involved by affiliation with the corporation,
2 the person acted in good faith on behalf of the corporation and
3 within the scope of official duties or powers.

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

13 ARTICLE 5. CORPORATION PROPERTY.

14 Sec. 42.40.350. LAND. (a) The corporation shall take title in
15 its own name to all land transferred under 45 U.S.C. 1201 - 1214
16 (Alaska Railroad Transfer Act of 1982). All land that is transferred
17 or acquired by the corporation is designated as follows:

- 18 (1) railroad rights-of-way are railroad utility corridors;
19 (2) land outside the railroad utility corridors is rail
20 land.

21 (b) A railroad utility corridor shall be of a width at least 100
22 feet on both sides of the centerline of the extended main or branch
23 line, unless the corporation does not own or control sufficient land
24 for a corridor of that width. A railroad utility corridor may be
25 surveyed by the metes and bounds method. The corporation may not
26 convey its entire interest in land within a railroad utility corridor
27 except as provided in AS 42.40.400 and 42.40.370(d). The corporation
28 may lease, grant easements or permits, or otherwise authorize use of
29 portions of a utility corridor for transportation, communication, and

1 transmission purposes and support functions associated with those
2 purposes and for commercial and other uses if the use does not re-
3 strict other parallel uses of the utility corridor.

4 (c) The corporation may lease, grant easements or permits, or
5 otherwise authorize use of portions of rail land. However, the corpo-
6 ration may not convey its entire interest in rail land except as
7 provided in AS 42.40.³⁷⁰~~360~~(d) and 42.40.400~~(d)~~.

8 (d) A lease by the corporation to a party other than the state
9 shall be made at fair market value as determine^d by appraisal by a
10 qualified appraiser or by competitive bid.

11 Sec. 42.40.360. REQUEST FOR LAND. (a) The board may nominate
12 federal land it determines may be useful for railroad purposes and
13 request the commissioner of natural resources to select the land for
14 the state through the federal land selection process.

15 (b) The board may identify and request the commissioner of
16 natural resources to convey land necessary or useful for present or
17 future railroad purposes owned by or tentatively approved for transfer
18 to the state, including land not contiguous to land already held by
19 the corporation. The request must include a statement of and justi-
20 fication for the present or future railroad use. Upon receipt of a
21 request, the commissioner shall temporarily reserve the land iden-
22 tified in the request for railroad purposes and defer disposal or
23 lease of that land under other laws to a party other than the corpo-
24 ration. The temporary reservation of land is subject to valid exist-
25 ing rights and remains in effect for 180 days.

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

29 (1) designate the identified land for railroad purposes

1 and, subject to valid existing rights, convey the state's interests in
2 the land to the corporation;

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

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

7 (b) A conveyance of land under this section may be for less than
8 fair market value as determined by the commissioner of natural re-
9 sources.

10 (c) In the absence of a reservation to the contrary, a convey-
11 ance of land under this section vests in the corporation ownership,
12 control of the surface, material, and mineral estate, including the
13 right to extract or use timber and other construction materials, sand,
14 gravel, rock, and the right to tunnel, ditch, recontour, excavate, or
15 otherwise use the land for railroad, transportation, transmission, or
16 communication services.

17 (d) The corporation may reconvey to the state land received
18 under this section, under 45 U.S.C. 1201 - 1214 (Alaska Railroad
19 Transfer Act of 1982), by eminent domain, or otherwise that the corpo-
20 ration and the commissioner of natural resources jointly identify as
21 unnecessary or unsuitable for the corporation's purposes.

22 Sec. 42.40.380. USE OF STATE LAND. When emergency conditions
23 require that track or other right-of-way fixtures of the corporation
24 be moved from the existing location and relocated on state land adja-
25 cent to or in the vicinity of the existing right-of-way and the chief
26 executive officer determines that relocation is necessary to maintain
27 safe and adequate rail operations, the corporation may effect the
28 relocation with the concurrence of the Department of Natural Re-
29 sources. The relocation must affect only the amount of state land

1 necessary to adequately restore or continue safe rail operations at a
2 normal level.

3 Sec. 42.40.390. EMINENT DOMAIN. (a) The corporation may exer-
4 cise the power of eminent domain under AS 09.55.240 - 09.55.460 to
5 acquire land for railroad purposes consistent with this chapter.
6 Notwithstanding AS 09.55.250, the corporation may acquire a fee simple
7 title whenever, in the judgment of the board, ownership of a fee
8 simple title is necessary to carry out the purposes of this chapter.

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

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

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

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

27 Sec. 42.40.420. MUNICIPAL USE OF LAND. Upon request of a
28 municipality the corporation may authorize use of the railroad utility
29 corridor or rail land for a pedestrian walkway or trail. Before

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

4 (1) hold the corporation harmless from and indemnify the
5 corporation for liability and claims arising from any use authorized
6 under this section including -

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

9 (B) indemnifying the corporation for the amount of a
10 judgment, including prejudgment and postjudgment interest, rendered against the corporation or for the amount of a settlement
11 entered into by the corporation, and for all costs and attorney's
12 fees incurred by the corporation in settling or defending the
13 claim; and
14

15 (2) stop the use upon request of the corporation if the use
16 interferes with expansion or replacement of railroad facilities,
17 creates a safety hazard, or interferes with railroad operations.

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

27 (b) The corporation is an instrumentality and agency of the
28 state for purposes of exchanging land with the United States, municipalities,
29 corporations including corporations formed under 43 U.S.C.

1 1601 - 1628 (Alaska Native Claims Settlement Act), and individuals.

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

7 Sec. 42.40.450. ADVERSE POSSESSION. No prescription or statute
8 of limitations runs against the title or interest of the corporation
9 to or in land owned by the corporation or under its jurisdiction.
10 Title to or interest in land owned by the corporation or under its
11 jurisdiction may not be acquired by adverse possession or prescrip-
12 tion, or in any other manner except by conveyance from or formal
13 vacation by the corporation.

14 ARTICLE 6. FINANCIAL PROVISIONS.

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

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

25 Sec. 42.40.520. INSURANCE. Except as provided in AS 42.40.-
26 310(b), the corporation shall protect its assets, services, and em-
27 ployees by purchasing insurance or providing for certain self-
28 insurance retentions. The corporation shall also maintain casualty,
29 property, business interruption, marine, boiler and machinery,

1 pollution liability, and other insurance in amounts reasonably
2 calculated to cover potential claims against the corporation or state
3 for bodily injury, death or disability, and property damage that may
4 arise from or be related to corporation operations and activities.

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

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

13 ARTICLE 7. BONDS.

14 Sec. 42.40.600. GENERAL PROVISIONS. (a) The corporation by
15 resolution may issue bonds to provide money to carry out its purposes.

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

- 18 (1) be dated;
- 19 (2) bear fixed or variable interest at a required rate or
20 rates per year or within a maximum rate;
- 21 (3) be in a required denomination or denominations;
- 22 (4) be in a coupon or registered form;
- 23 (5) carry conversion or registration provisions;
- 24 (6) have a required rank or priority;
- 25 (7) be executed in the required manner and form;
- 26 (8) be payable as required from the sources, in the medium
27 of payment, and place or places inside or outside the state;
- 28 (9) be subject to authentication by a trustee or fiscal
29 agent; and

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

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

7 Sec. 42.40.610. NEGOTIABLE INSTRUMENTS. Bonds issued under this
8 chapter and interest coupons attached to them are negotiable instru-
9 ments under the laws of this state, subject only to applicable pro-
10 visions for registration.

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

21 Sec. 42.40.630. PAYMENT OF BONDS. The principal and interest on
22 bonds of the corporation is payable from corporation money or assets.
23 Bonds may be additionally secured by a pledge of a grant or contribu-
24 tion from the federal, state, or municipal government or a corpora-
25 tion, association, institution or person, or a pledge of money, in-
26 come, or revenue of the corporation from any source.

27 Sec. 42.40.640. SECURITY FOR BONDS. In the discretion of the
28 board, an issue of bonds may be secured by a trust indenture, which
29 may be a trust company, bank or national banking association, with

1 corporate trust powers, located inside or outside the state, or by a
2 secured loan agreement or other instrument or under resolution giving
3 powers to a corporate trustee by means of which the corporation may

4 (1) make, and enter into any and all the covenants and
5 agreements with the trustees or the holders of the bonds that the
6 corporation may determine to be necessary or desirable, including
7 covenants, provisions, limitations and agreements as to

8 (A) the application, investment, deposit, use and
9 disposition of the proceeds of bonds of the corporation or of
10 money or other property of the corporation or in which it has an
11 interest;

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

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

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

21 (E) the vesting in the trustee of rights and remedies
22 exercisable by the trustee for the protection of the holders of
23 bonds of the corporation and not otherwise in violation of law
24 and the restriction of the rights of an individual holder of
25 bonds of the corporation;

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

29 (3) provide for any other matters of like or different

1 character that in any way affect the security or protection of the
2 bonds.

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

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

11 Sec. 42.40.670. VALIDITY OF PLEDGE. (a) The pledge of assets
12 or revenue of the corporation to the payment of the principal or
13 interest on bonds of the corporation is valid and binding from the
14 time the pledge is made and the assets or revenue are immediately
15 subject to the lien of the pledge without physical delivery or further
16 act. The lien of a pledge is valid and binding against all parties
17 having claims of any kind against the corporation, irrespective of
18 whether those parties have notice of the lien of the pledge.

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

23 Sec. 42.40.675. PLEDGE OF THE STATE. The state pledges to and
24 agrees with the holders of bonds issued under this chapter and with
25 the federal agency that loans or contributes funds in respect to a
26 project, that the state will not limit or alter the rights and powers
27 vested in the corporation by this chapter to fulfill the terms of a
28 contract made by the corporation with the holders or federal agency,
29 or in any way impair the rights and remedies of the holders until the

1 bonds together with the interest on them with interest on unpaid
2 installments of interest, and all costs and expenses in connection
3 with an action or proceeding by or on behalf of the holders, are fully
4 met and discharged. The corporation is authorized to include this
5 pledge and agreement of the state, insofar as it refers to holders of
6 bonds of the corporation, in a contract with the holders and insofar
7 as it relates to a federal agency, in a contract with the federal
8 agency.

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

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

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

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

23 (1) debt, liability, or obligation of the state or of a
24 political subdivision of the state; or

25 (2) pledge of the faith and credit of the state or of a
26 political subdivision of the state.

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

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

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

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

10 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

11 Sec. 42.40.705. POLITICAL ACTIVITIES. (a) Money, assets, or
12 property of the corporation may not be used for political activity.
13 However, board members and employees may communicate with and appear
14 before committees of Congress, the state legislature, and municipal
15 governing bodies in connection with matters directly affecting the
16 corporation.

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

21 Sec. 42.40.710. CORPORATION EMPLOYEES. Employees of the Alaska
22 Railroad are employees of the corporation and not of the state. The
23 provisions of AS 39 do not apply to employees of the corporation.

24 Sec. 42.40.720. COLLECTIVE BARGAINING RIGHTS. The provisions of
25 AS 23.40.070 - 23.40.260 do not apply to the corporation or to its
26 employees. However, employees who are not executive officers may
27 organize and form, join, or assist an organization to engage in col-
28 lective bargaining through representatives of their own choosing and
29 engage in concerted activities for the purpose of collective

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

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

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

10 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

11 Sec. 42.40.705. POLITICAL ACTIVITIES. (a) Money, assets, or
12 property of the corporation may not be used for political activity.
13 However, board members and employees may communicate with and appear
14 before committees of Congress, the state legislature, and municipal
15 governing bodies in connection with matters directly affecting the
16 corporation.

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

21 Sec. 42.40.710. CORPORATION EMPLOYEES. Employees of the Alaska
22 Railroad are employees of the corporation and not of the state. The
23 provisions of AS 39 do not apply to employees of the corporation.

24 Sec. 42.40.720. COLLECTIVE BARGAINING RIGHTS. The provisions of
25 AS 23.40.070 - 23.40.260 do not apply to the corporation or to its
26 employees. However, employees who are not executive officers may
27 organize and form, join, or assist an organization to engage in col-
28 lective bargaining through representatives of their own choosing and
29 engage in concerted activities for the purpose of collective

1 bargaining or other mutual aid or protection.

2 Sec. 42.40.730. RAILROAD LABOR RELATIONS AGENCY. (a) There is
3 established a railroad labor relations agency that consists of three
4 members appointed by the governor. One member shall be a member of
5 the state personnel board. Members serve at the pleasure of the
6 governor.

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

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

12 Sec. 42.40.740. COLLECTIVE BARGAINING UNIT. The railroad labor
13 relations agency shall decide in each case, in order to ensure employ-
14 ees the fullest freedom in exercising the rights guaranteed by AS 42.-
15 40.710 - 42.40.890 the unit appropriate for the purposes of collective
16 bargaining, based on such factors as community of interest, wages,
17 hours and other working conditions of the employees involved, the
18 history of collective bargaining, and the desires of the employees.
19 Bargaining units shall be as large as is reasonable, and unnecessary
20 fragmenting shall be avoided.

21 Sec. 42.40.750. REPRESENTATIVES AND ELECTIONS. (a) The rail-
22 road labor relations agency shall investigate a petition if it is
23 submitted in a manner prescribed by the railroad labor relations
24 agency by

25 (1) an employee or group of employees or an organization
26 acting in their behalf alleging that 30 percent of the employees of a
27 proposed bargaining unit

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

1 or

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

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

9 (b) If the railroad labor relations agency has reasonable cause
10 to believe that a question of representation exists, it shall provide
11 for a hearing upon due notice. If the railroad labor relations agency
12 finds that there is a question of representation, it shall direct an
13 election by secret ballot to determine whether or by which organiza-
14 tion the employees desire to be represented and shall certify the
15 results of the election. Nothing in this subsection prohibits the
16 waiving of hearings by stipulation for the purpose of a consent elec-
17 tion in conformity with the regulations of the railroad labor rela-
18 tions agency or an election in a bargaining unit agreed upon by the
19 parties.

20 (c) The railroad labor relations agency shall determine who is
21 eligible to vote in an election held under this section and shall
22 establish rules governing the election. In an election in which none
23 of the choices on the ballot receives a majority of the votes cast, a
24 runoff election shall be conducted, the ballot providing for selection
25 between the two choices receiving the largest number of valid votes
26 cast in the election. If an organization receives the majority of the
27 votes cast in the election it shall be certified by the railroad labor
28 relations agency as exclusive representative of all the employees in
29 the bargaining unit. An election may not be held in a bargaining unit

1 or in a subdivision of a bargaining unit if a valid election has been
2 held within the preceding 12 months.

3 (d) Nothing in this chapter prohibits recognition of an orga-
4 nization as the exclusive representative by the corporation by mutual
5 consent.

6 (e) An election may not be directed by the railroad labor rela-
7 tions agency in a bargaining unit in which there is in force a valid
8 collective bargaining agreement, except during a 90-day period preced-
9 ing the expiration date. However, no collective bargaining agreement
10 may bar an election upon petition of employees in the bargaining unit
11 but not parties to the agreement if more than three years have elapsed
12 since the execution of the agreement or the last timely renewal,
13 whichever was later.

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

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

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

20 (3) discriminate in regard to hire or tenure of employment
21 or a term or condition of employment to encourage or discourage mem-
22 bership in an organization;

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

26 (5) refuse to bargain collectively in good faith with an
27 organization that is the exclusive representative of employees in an
28 appropriate unit, including the discussing of grievances with the
29 exclusive representative.

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

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

7 (2) payment by the employee to the exclusive bargaining
8 agent of a service fee to reimburse the exclusive bargaining agency
9 for the expense of representing the members of the bargaining unit.

10 (c) An organization or its agents may not

11 (1) restrain or coerce

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

14 (B) the corporation in the selection of a representa-
15 tive for the purposes of collective bargaining or the adjustment
16 of grievances;

17 (2) refuse to bargain collectively in good faith with the
18 corporation, if it has been designated in accordance with AS 42.40.-
19 710 - 42.40.890 as the exclusive representative of employees in an
20 appropriate unit.

21 Sec. 42.40.770. INVESTIGATION AND CONCILIATION OF COMPLAINTS.
22 If a verified written complaint by or for a person claiming to be
23 aggrieved by a practice prohibited by AS 42.40.760 or a written accu-
24 sation that a person subject to AS 42.40.710 - 42.40.890 has engaged
25 in a prohibited practice, is filed with the railroad labor relations
26 agency, it shall investigate the complaint or accusation. If it
27 determines after a preliminary investigation that probable cause
28 exists in support of the complaint or accusation, it shall try to
29 eliminate the prohibited practice by informal methods of conference.

1 conciliation, and persuasion. Nothing said or done during this en-
2 deavor may be used as evidence in a subsequent proceeding.

3 Sec. 42.40.780. COMPLAINT AND ACCUSATION. If the railroad labor
4 relations agency fails to eliminate the prohibited practice by concil-
5 iation and to obtain voluntary compliance with AS 42.40.710 - 42.40.-
6 890 or before it attempts conciliation, it may serve a copy of the
7 complaint or accusation upon the respondent. The complaint or accusa-
8 tion and the subsequent procedures shall be handled in accordance with
9 the administrative adjudication portion of the Administrative Proce-
10 dure Act (AS 44.62).

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

22 Sec. 42.40.800. ENFORCEMENT BY INJUNCTION. The railroad labor
23 relations agency may apply to the superior court in the judicial
24 district in which the prohibited practice occurred for an order en-
25 joining the prohibited acts specified in the order or decision of the
26 railroad labor relations agency. Upon showing by the railroad labor
27 relations agency that the person has engaged or is about to engage in
28 the practice, an injunction, restraining order, or other order that is
29 appropriate may be granted by the court and shall be without bond.

1 Sec. 42.40.810. POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a)
2 For the purpose of the investigations, proceedings, or hearings that
3 the railroad labor relations agency considers necessary to carry out
4 AS 42.40.710 - 42.40.890, the railroad labor relations agency may
5 issue subpoenas requiring the attendance and testimony of witnesses
6 and the production of relevant evidence.

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

9 (c) The attendance of witnesses and the production of evidence
10 may be required from any place in the state at any designated place of
11 hearing.

12 (d) If a person refuses to obey a subpoena issued under AS 42.-
13 40.710 - 42.40.890, the superior court in the district in which the
14 person resides or is found may, upon application by the railroad labor
15 relations agency, issue an order requiring the person to comply with
16 the subpoena.

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

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

24 Sec. 42.40.840. MEDIATION. (a) If, after a reasonable period
25 of negotiation over the terms of a collective bargaining agreement, an
26 impasse as determined by the railroad labor relations agency exists
27 between the corporation and an organization, the railroad labor re-
28 lations agency shall appoint a person mutually agreeable to the
29 parties from a list of seven qualified mediators/arbitrators

1 knowledgeable in railway labor agreements to act as mediator in the
2 dispute.

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

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

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

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

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

29 Sec. 42.40.860. AGREEMENTS. (a) The Department of

Administration may participate in labor negotiations between the corporation and an organization. The corporation shall seek advice of the Department of Administration before 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.

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

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

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

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

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

1 agreement, shall safeguard the rights of nonassociation of employees
2 having bona fide religious convictions based on tenets or teachings of
3 a church or religious body of which an employee is a member. Upon
4 submission of proper proof of religious conviction to the railroad
5 labor relations agency, the agency shall declare the employee exempt
6 from becoming a member of an organization. The employee shall pay an
7 amount of money equivalent to regular organization dues, initiation
8 fees, and assessments to the organization. Nonpayment of this money
9 subjects the employee to the same penalty as if it were nonpayment of
10 dues. The receiving organization shall contribute an equivalent
11 amount of money to a charity of its choice not affiliated with a
12 religious, labor, or employee organization. The organization shall
13 submit to the railroad labor relations agency proof of contribution.

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

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

19 (2) require or coerce an employee to make any report con-
20 cerning an activity or undertaking of the employee's activities or
21 undertakings unless the activity or undertaking is related to the
22 performance of official duties;

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

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

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

1 (C) sexual matters,

2 (D) the employee's political affiliation or philoso-
3 phy;

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

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

10 (b) The provisions of (a) of this section do not diminish the
11 authority of an authorized law enforcement agency to conduct criminal
12 investigations of employees suspected of being involved in criminal
13 activity or to investigate other activity directly related to official
14 railroad business.

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

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

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

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

6 (4) "terms and conditions of employment" means the hours of
7 employment, the compensation and fringe benefits, and the employer's
8 personnel policies affecting the working conditions of the employees,
9 but does not mean the general policies describing the function and
10 purposes of an employer.

11 ARTICLE 9. GENERAL PROVISIONS.

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

16 (b) For the purposes of actionable claims, undertakings, pay-
17 ments of judgments, execution, interest, punitive damages, statutes of
18 limitations, bonds, costs, and similar matters related to the pres-
19 entation and prosecution of claims by and against the corporation, the
20 corporation and its board members and employees enjoy the same rights,
21 privileges, and immunities as the state and state officers under
22 AS 09.10.120, AS 09.50.250 - 09.50.290, and AS 09.65.040.

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

25 (d) The corporation is not subject to the provisions of AS 44.-
26 80.010, regarding the state as a party to an action.

27 Sec. 42.40.905. NOTICE OF LEGAL ACTIONS. (a) The corporation
28 shall notify the Department of Law within 30 days before initiating
29 legal action unless special circumstances exist that require immediate

1 legal action to protect the corporation assets or to continue existing
2 service.

3 (b) If notice of legal action is not given under (a) of this
4 section, within 15 days of taking action the board shall notify the
5 Department of Law of the action taken and of the special circumstances
6 that exempted the action from the requirements of (a) of this section.

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

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

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

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

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

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

14 (c) The corporation is subject to AS 45.50.562 - 45.50.596.

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

20 Sec. 42.40.940. RAILROAD FACILITIES CODE COMPLIANCE. (a) Not
21 later than two years after the date of transfer, the Department of
22 Labor in consultation with the corporation shall develop and the
23 corporation, shall adopt a plan to achieve compliance with AS 18.60.
24 The plan shall be implemented and compliance achieved within five
25 years after it is adopted.

26 (b) No later than two years after the date of transfer, the
27 corporation in consultation with the Department of Public Safety and
28 appropriate municipal officials, shall develop and adopt a plan to
29 achieve compliance with building and related safety codes applicable

1 to facilities of the corporation. The plan shall be implemented and
2 compliance achieved within five years after it is adopted. In the
3 sole determination of the commissioner of public safety, any existing
4 building owned or controlled by the corporation that does not present
5 a serious safety hazard and for which compliance would be uneconomical
6 in consideration of its remaining useful life shall be exempted from
7 compliance with state or municipal safety codes.

8 Sec. 42.40.950. REVERSION OF ASSETS. If the corporation ceases
9 to exist, for whatever reason, its assets revert to the state.

10 Sec. 42.40.980. DEFINITIONS. In this chapter, unless the con-
11 text otherwise requires,

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

14 (2) "bonds" means bonds, bond anticipation notes, notes,
15 refunding bonds, or other obligations;

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

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

20 (5) "employees" means all persons employed by the corpo-
21 ration including executive officers;

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

28 (7) "land" means any interest in real property, including
29 tide and submerged land and any right appurtenant to the interest;

1 (8) "rule" means a standard of general application or the
2 amendment, supplement, revision, or repeal of a standard adopted by
3 the corporation to implement, interpret, or make specific the law
4 enforced or administered by it to govern its procedure except one that

5 (A) relates only to the internal management of the
6 corporation;

7 (B) relates to specific rates, tariffs, divisions, and
8 contract rate agreements;

9 (C) relates to service schedules of the railroad;

10 (D) is directed to a specifically named person or to a
11 group of persons and does not apply to the general public; or

12 (E) relates to the use of public works under the
13 jurisdiction of the corporation if the effect of the order is
14 indicated to the public by means of signs or signals.

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

17 * Sec. 3. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD
18 CORPORATION. Notwithstanding AS 42.40.020 enacted in sec. 1 of this Act,
19 the terms of the appointed members of the first board of directors of the
20 Alaska Railroad Corporation are as follows:

- 21 (1) one shall serve a term of two years;
22 (2) two shall serve a term of three years;
23 (3) two shall serve a term of four years; and
24 (4) two shall serve a term of five years.

25 * Sec. 4. COLLECTIVE BARGAINING AGREEMENTS. (a) As soon as practi-
26 cable after establishment of the Alaska Railroad Corporation and before
27 transfer of the Alaska Railroad to the state, the Alaska Railroad Corpora-
28 tion and its employees shall adopt collective bargaining agreements that
29 continue the provisions of the agreements in effect between the Alaska

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

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

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

17 * Sec. 5. SALE OF RAILROAD. (a) Not later than two years following
18 the date of the transfer of the Alaska Railroad to the state, the Board of
19 Directors of the Alaska Railroad Corporation, in consultation with the
20 state, shall request proposals from the private sector for the acquisition
21 or operation of the Alaska Railroad. The board may engage the services of
22 an investment banking firm or other professional expertise to assist in the
23 development of the request and evaluation of proposals received. The board
24 shall consider every proposal from the private sector for the acquisition
25 or operation of the Alaska Railroad, even if it is not made in response to
26 a request for proposals under this subsection.

27 (b) In order to be considered responsive, a proposal must

28 (1) ensure continued or improved rail service;

29 (2) return to the state its investment in the Alaska Railroad to

1 the extent possible;

2 (3) be consistent with the terms and conditions of 45 U.S.C.
3 1201 - 1214 (Alaska Railroad Transfer Act of 1982), and not activate the
4 reversion provisions of 45 U.S.C. 1209 (Alaska Railroad Transfer Act of
5 1982);

6 (4) demonstrate with reasonable certainty that the railroad
7 after acquisition by the private sector will be operated as a profitable
8 carrier; as used in this paragraph, "profitable carrier" means a carrier
9 that will be able to

10 (A) generate sufficient revenue to meet its expenses,
11 including reasonable maintenance of necessary equipment and facil-
12 ities; and

13 (B) finance its capital needs in the private market; and

14 (5) demonstrate how the railroad can continue operation of
15 services, including current levels of passenger service.

16 (c) The board may negotiate the details of any proposal found to be
17 responsive, including the execution of a letter of intent to conclude a
18 transfer upon approval of the governor and the legislature.

19 (d) Within one year after requesting proposals under (a) of this
20 section, the board shall submit a report on the results of the process to
21 the governor, including its specific findings on the responsiveness of any
22 proposal received and its recommendations for conclusion of a transfer of
23 the railroad or its management to the private sector.

24 (e) Within 120 days after receipt of the board's report, if the board
25 has recommended transfer of the Alaska Railroad or its management to the
26 private sector, the governor shall

27 (1) disapprove the proposed transfer; or

28 (2) submit the report and recommendations to the legislature.

29 (f) Failure by the governor to act within 120 days after receipt of

1 the board's report shall be considered disapproval.

2 (g) The legislature shall approve or disapprove a proposed transfer
3 without modification. The approval of the legislature is required before
4 the board is authorized to complete the transfer.

5 (h) Unless a proposal under (a) of this section is approved, the
6 process provided in this section shall be repeated every two years.

7 (i) The board shall, within five years after the date of transfer of
8 the Alaska Railroad to the state, prepare a report for the governor and the
9 legislature on the feasibility of other operational alternatives for trans-
10 fer consistent with the criteria under (b) of this section of all or part
11 of the railroad to the private sector, including allowing recipients of
12 permanent fund dividends to direct their dividends to a railroad purchase
13 fund.

14 * Sec. 6. SPECIAL REPORT. The corporation shall study any problems
15 created by vibrations due to operating the railroad from Ship Creek through
16 Inlet View to the Turnagain Area and extending to Potter's Marsh. The
17 study shall include consideration of any potential for problems that may be
18 created by hauling coal and larger quantities of gravel along that portion
19 of the rail line. By February 1, 1986, the corporation shall present a
20 report to the legislature on the study containing recommendations for
21 correcting any problems identified.

22 * Sec. 7. This Act takes effect on the effective date of an amendment
23 to the constitution of the State of Alaska relating to the Alaska Railroad.
24
25
26
27
28
29

Cook
5/1/84✓

Original sponsors: Hayes, Ringstad,
Shultz, et al

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 512 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (2) provide for the level of railroad service that best satis-
10 fies the needs of the people of the state consistent with the other find-
11 ings and policies of this section;

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

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

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

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

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

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

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

1 according to sound business management practices;

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

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

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

7 CHAPTER 40. ALASKA RAILROAD CORPORATION.

8 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

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

16 Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the
17 corporation are vested in the board of directors. The board con-
18 sists of the commissioner of commerce and economic development
19 the commissioner of transportation and public facilities, and seven
20 members appointed by the governor. The seven appointed members
21 must be registered voters in the state except as provided in (1)
22 and (2) of this subsection. At least two appointed members shall be
23 from each judicial district directly served by the Alaska Railroad.
24 Except for the commissioners, a member may not be a state officer
25 or employee. Appointed members shall have the following qualifica-
26 tions:

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

1 (2) one member of the board shall be or have been an execu-
2 tive official of a United States railroad and shall be selected in
3 accordance with 49 U.S.C. (Interstate Commerce Act); a person who is
4 not a resident of the state may be appointed under this paragraph;

5 (3) two members shall have at least five years of experi-
6 ence as owners or managers of a business in the state.

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

13 Sec. 42.40.030. TERM OF OFFICE; REMOVAL. (a) Except for the
14 commissioner of commerce and economic development, and the commission-
15 er of transportation and public facilities, the members of the board
16 serve for staggered terms of five years each.

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

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

21 (2) continued refusal or inability to attend meetings of
22 the board;

23 (3) conviction of a felony;

24 (4) any conduct intended to harm the corporation, even if
25 it does not constitute a crime; or

26 (5) malfeasance and misfeasance.

27 Sec. 42.40.040. VACANCIES. (a) Except for the commissioner of
28 commerce and the commissioner of transportation and public facilities,
29 a vacancy on the board is filled by appointment by the governor, and

1 the appointment must be confirmed by the members of each house of the
2 legislature in joint session. A member appointed to fill a vacancy
3 holds office for the balance of the term for which the member's prede-
4 cessor was appointed.

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

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

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

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

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

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

24 ARTICLE 2. MANAGEMENT.

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

29 (1) be responsible for the management of the financial and

1 legal obligations of the Alaska Railroad;

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

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

7 (4) provide for safe, efficient, and economical railroad
8 transportation to meet the overall needs of the state;

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

12 (6) review state and other land disposal proposals to aid
13 in planning for future development or expansion of railroad transpor-
14 tation services;

15 (7) ensure that standards of the United States Interstate
16 Commerce Commission for class I railroads are used for accounting
17 purposes by the corporation;

18 (8) ensure that the procurement procedures of the corpora-
19 tion comply with the procurement standards and procedures established
20 for state agencies to the extent practicable consistent with efficient
21 railroad operations;

22 (9) apply to the legislature for an appropriation to be
23 used to provide a service that is not otherwise self-sustaining if a
24 subsidy is required to maintain that service.

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

29 (b) The chief executive officer of the corporation shall appoint

1 and fix the compensation for other executive officers. The compensa-
2 tion for an executive officer appointed under this subsection is
3 subject to board approval.

4 Sec. 42.40.120. DELEGATION. (a) The board may by rule delegate
5 to the chief executive officer powers and duties necessary or appro-
6 priate for the management of the daily affairs and operations of the
7 corporation.

8 (b) The board shall by rule establish procedures for carrying
9 out the following powers and duties of the corporation and may dele-
10 gate the exercise of the following powers and duties in accordance
11 with the procedures to the chief executive officer or other executive
12 officers designated by the board:

13 (1) leasing, granting easements in, issuing permits for the
14 use of, or conveying other interests in property, except the corpo-
15 ration's entire interest in land;

16 (2) establishing specific rates, tariffs, divisions, and
17 contract rate agreements;

18 (3) making routine changes in service levels;

19 (4) establishing procurement and accounting procedures for
20 the corporation; and

21 (5) performing procurement activities.

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

25 (1) issuing bonds;

26 (2) mortgaging or pledging corporation assets;

27 (3) donating property or other assets belonging to the
28 corporation;

29 (4) acting as a surety or guarantor;

1 (5) adopting a long-range program or capital improvement
2 plan;

3 (6) adopting annual reports;

4 (7) effecting general, comprehensive increases and de-
5 creases in rates;

6 (8) diversifying, expanding, or reducing services in a
7 major way;

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

11 (10) selecting independent auditors and accountants;

12 (11) exercising the power of eminent domain;

13 (12) entering into collective bargaining agreements;

14 (13) adopting annual budgets; and

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

18 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

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

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

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

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

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

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

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

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

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

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

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

19 (4) matters pertaining to personnel;

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

21 (6) land acquisition or disposal; and

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

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

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

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

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

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

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

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

3 (b) An action taken under this section remains in effect for not
4 more than 120 days. To prevent an emergency rule from lapsing the
5 board may adopt the same rule under AS 42.40.190 before the end of the
6 120-day period.

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

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

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

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

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

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

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

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

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

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

1 Sec. 42.40.210. PREVIOUSLY ADOPTED RULES AND ORDERS. (a) The
2 board may provide by resolution that rules and orders in effect on the
3 date of transfer remain in effect until amended or repealed by the
4 board. The board may adopt the substance of former federal rules or
5 orders relating to the Alaska Railroad and this may not be considered
6 a continuation of the federal rules or orders if adopted by the board
7 in accordance with procedural requirements of this chapter or other
8 law.

9 (b) AS 42.40.180 does not apply to actions taken under this
10 section.

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

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

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

1 (b) A board member or executive officer may participate in
2 decision if that person or a member of that person's immediate famil
3 has only a remote interest, the fact and extent of the interest is
4 disclosed to the board in a public meeting and is noted in the minute
5 of the board before any participation by the member or in the deci
6 sion, and thereafter in a public meeting the board by vote authorize
7 or approves the participation. If the person whose participation is
8 under consideration is a board member, that person may not vote unde
9 this subsection. For purposes of this subsection, "remote interest"
10 means an interest that in good faith is defined as remote by rules
11 adopted by the corporation.

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

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

22 (e) For purposes of this section

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

25 (2) "immediate family" means

26 (A) spouse;

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

29 Sec. 42.40.240. COMPLAINT PROCEDURE. The board shall provide by

1 rule for a formal procedure for the receipt and consideration of
2 complaints or suggestions regarding activities of the corporation.

3 ARTICLE 4. POWERS AND DUTIES.

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

- 6 (1) adopt a seal;
- 7 (2) adopt bylaws governing the business of the corporation;
- 8 (3) sue and be sued;
- 9 (4) appoint trustees and agents of the corporation and
10 prescribe their powers and duties;
- 11 (5) hire legal counsel to represent the corporation;
- 12 (6) make contracts and execute instruments necessary or
13 convenient in the exercise of its powers and duties;
- 14 (7) acquire by purchase, lease, bequest, devise, gift,
15 exchange, the satisfaction of debts, the foreclosure of mortgages, or
16 otherwise, personal property, rights, rights-of-way, franchises,
17 easements, and other interest in land, and acquire by appropriation
18 water rights that are located in the state, taking title to the prop-
19 erty in the name of the corporation;
- 20 (8) hold, maintain, use, operate, improve, lease, encumber
21 and otherwise grant security interests in land or personal property
22 and exchange, donate, convey, alienate, or otherwise dispose of per-
23 sonal property, subject to other provisions of this chapter;
- 24 (9) contract with and accept transfers, gifts, grants or
25 loans of funds or property from the United States and the state or its
26 political subdivisions, subject to other provisions of federal or
27 state law or municipal ordinances;
- 28 (10) undertake and provide for the management, operation,
29 maintenance, use, and control of all of the property of the

1 corporation, including tracks, equipment and other property trans-
2 ferred to the corporation by the federal government or any person;

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

6 (12) maintain offices and facilities at places it desig-
7 nates;

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

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

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

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

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

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

29 (19) assume all rights, liabilities, and obligations of the

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

3 (20) maintain or provide for a security force to protect
4 property owned, managed or transported by the corporation and persons
5 using railroad transportation services provided by the corporation;

6 (21) issue its bonds and provide for and secure their pay-
7 ment, provide for the rights of their holders and hold or dispose of
8 them;

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

11 (23) cancel bonds of the corporation purchased by the corpo-
12 ration;

13 (24) secure the payment of its bonds by pledge, mortgage, or
14 other lien on its contracts, revenue, income, or property;

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

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

25 (27) acquire, hold, and dispose of stocks, memberships,
26 contracts, bonds, general or limited partnership interests or other
27 interests in another corporation, association, partnership, joint
28 venture, or other legal entity, and exercise the powers or rights in
29 connection with these interests that are provided in contracts or

1 agreements and that are allowed by law concerning the satisfaction of
2 debts;

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

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

10 Sec. 42.40.260. ANNUAL REPORT. Within 90 days following the end
11 of the fiscal year of the Alaska Railroad the board shall distribute
12 to the governor and to the legislature a report describing the opera-
13 tions and financial condition of the corporation during the preceding
14 fiscal year. The report may include suggestions for legislation
15 relating to the structure, powers or duties of the corporation or to
16 operation facilities of the corporation. Subject to AS 42.40.200, the
17 report shall itemize the cost of providing each category of service
18 offered by the railroad and the income generated by each category.

19 Sec. 42.40.270. AUDITS. (a) The board shall have the financial
20 records of the corporation audited annually by an independent cer-
21 tified public accountant experienced in railroad accounting. The
22 board shall have an annual performance audit conducted by a recognized
23 railroad management expert to assure that the railroad is being man-
24 aged and operated effectively and efficiently in accordance with the
25 requirements of this chapter. Auditors shall use the standards of the
26 United States Interstate Commerce Commission for Class I railroads.

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

1 auditor or legislative audit division of this information is subject
2 to AS 42.40.200 and rules implementing that section.

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

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

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

14 (3) the issuance of securities, bonds or contracts in an
15 amount exceeding \$5,000,000; or

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

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

20 (1) its financial impact on the corporation;

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

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

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

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

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

1 interest in land;

2 (2) issue securities, bonds, or contracts in an amount
3 exceeding \$5,000,000;

4 (3) extend main or branch lines by more than 25 miles or
5 five percent of the railroad's total track mileage, whichever is
6 greater.

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

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

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

1 prohibited.

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

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

19 ARTICLE 5. CORPORATION PROPERTY.

20 Sec. 42.40.350. LAND. (a) The corporation shall take title in
21 its own name to all land transferred under 45 U.S.C. 1201 - 1214
22 (Alaska Railroad Transfer Act of 1982). All land that is transferred
23 or acquired by the corporation is designated as follows:

- 24 (1) railroad rights-of-way are railroad utility corridors;
25 (2) land outside the railroad utility corridors is rail
26 land.

27 (b) A railroad utility corridor shall be of a width at least 100
28 feet on both sides of the centerline of the extended main or branch
29 line, unless the corporation does not own or control sufficient land

1 for a corridor of that width. A railroad utility corridor may be
2 surveyed by the metes and bounds method. The corporation may not
3 convey its entire interest in land within a railroad utility corridor
4 except as provided in AS 42.40.285, 42.40.370(d), and 42.40.400. The
5 corporation may lease, grant easements or permits, or otherwise autho-
6 rize use of portions of a utility corridor for transportation, commu-
7 nication, and transmission purposes, including pipelines and support
8 functions associated with those purposes and for commercial and other
9 uses if the use does not restrict other parallel uses of the utility
10 corridor.

11 (c) The corporation may lease, grant easements or permits, or
12 otherwise authorize use of portions of rail land. However, the corpo-
13 ration may not convey its entire interest in rail land except as
14 provided in AS 42.40.285, 42.40.370(d), and 42.40.400.

15 (d) A lease by the corporation to a party other than the state
16 shall be made at fair market value as determined by appraisal by a
17 qualified appraiser or by competitive bid.

18 Sec. 42.40.360. REQUEST FOR LAND. (a) The board may nominate
19 federal land it determines may be useful for railroad purposes and
20 request the commissioner of natural resources to select the land for
21 the state through the federal land selection process.

22 (b) The board may identify and request the commissioner of
23 natural resources to convey land necessary or useful for present or
24 future railroad purposes owned by or tentatively approved for transfer
25 to the state, including land not contiguous to land already held by
26 the corporation. The request must include a statement of and justi-
27 fication for the present or future railroad use. Upon receipt of a
28 request, the commissioner shall temporarily reserve the land iden-
29 tified in the request for railroad purposes and defer disposal or

1 lease of that land under other laws to a party other than the corpo-
2 ration. The temporary reservation of land is subject to valid exist-
3 ing rights and remains in effect for 180 days.

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

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

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

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

14 (b) A conveyance of land under this section may be for less than
15 fair market value as determined by the commissioner of natural re-
16 sources.

17 (c) In the absence of a reservation to the contrary, a convey-
18 ance of land under this section vests in the corporation ownership,
19 control of the surface, material, and mineral estate, including the
20 right to extract or use timber and other construction materials, sand,
21 gravel, rock, and the right to tunnel, ditch, recontour, excavate, or
22 otherwise use the land for railroad, transportation, transmission, or
23 communication services.

24 (d) The corporation may reconvey to the state land received
25 under this section, under 45 U.S.C. 1201 - 1214 (Alaska Railroad
26 Transfer Act of 1982), by eminent domain, or otherwise that the corpo-
27 ration and the commissioner of natural resources jointly identify as
28 unnecessary or unsuitable for the corporation's purposes.

29 Sec. 42.40.380. USE OF STATE LAND. When emergency conditions

1 require that track or other right-of-way fixtures of the corporation
2 be moved from the existing location and relocated on state land adja-
3 cent to or in the vicinity of the existing right-of-way and the chief
4 executive officer determines that relocation is necessary to maintain
5 safe and adequate rail operations, the corporation may effect the
6 relocation with the concurrence of the Department of Natural Re-
7 sources. The relocation must affect only the amount of state land
8 necessary to adequately restore or continue safe rail operations at a
9 normal level.

10 Sec. 42.40.390. EMINENT DOMAIN. (a) The corporation may exer-
11 cise the power of eminent domain under AS 09.55.240 - 09.55.460 to
12 acquire land for railroad purposes consistent with this chapter.
13 Notwithstanding AS 09.55.250, the corporation may acquire a fee simple
14 title whenever, in the judgment of the board, ownership of a fee
15 simple title is necessary to carry out the purposes of this chapter.

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

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

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

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

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

5 Sec. 42.40.420. MUNICIPAL USE OF LAND. Upon request of a munic-
6 ipality the corporation may authorize use of the railroad utility
7 corridor or rail land for a pedestrian walkway or trail. Before
8 authorizing a use under this section the board shall require the
9 municipality to execute an agreement in a form approved by the board
10 to

11 (1) hold the corporation harmless from and indemnify the
12 corporation for liability and claims arising from any use authorized
13 under this section including

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

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

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

25 Sec. 42.40.430. ACQUISITION OF GOVERNMENT PROPERTY. The corpor-
26 ation, as an instrumentality of the state, may acquire in its own name
27 from the United States under 50 App U.S.C. 1622 - 1622c (Surplus
28 Property Act of 1944), 40 U.S.C. 471 et seq. (Federal Property and
29 Administrative Services Act of 1949), or other law, property under the

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

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

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

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

23 ARTICLE 6. FINANCIAL PROVISIONS.

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

29 Sec. 42.40.510. FIDELITY BOND. The corporation shall obtain a

1 fidelity bond in an amount determined by the board for board members
2 and each officer of the corporation responsible for accounts and
3 finances. A bond must be in effect during the entire tenure in office
4 of the bonded person.

5 Sec. 42.40.520. INSURANCE. Except as provided in AS 42.40.-
6 310(b), the corporation shall protect its assets, services, and em-
7 ployees by purchasing insurance or providing for certain self-insur-
8 ance retentions. The corporation shall also maintain casualty, prop-
9 erty, business interruption, marine, boiler and machinery, pollution
10 liability, and other insurance in amounts reasonably calculated to
11 cover potential claims against the corporation or state for bodily
12 injury, death or disability, and property damage that may arise from
13 or be related to corporation operations and activities.

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

18 Sec. 42.40.540. APPROPRIATIONS. The corporation may request a
19 direct appropriation or grant from the legislature to assist in carry-
20 ing out the provisions of this chapter.

21 ARTICLE 7. BONDS.

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

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

26 (1) be dated;

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

29 (3) be in a required denomination or denominations;

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

Sec. 42.40.610. NEGOTIABLE INSTRUMENTS. Bonds issued under this chapter and interest coupons attached to them are negotiable instruments under the laws of this state, subject only to applicable provisions for registration.

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

Sec. 42.40.630. PAYMENT OF BONDS. The principal and interest on

1 bonds of the corporation is payable from corporation money or assets.
2 Bonds may be additionally secured by a pledge of a grant or contribu-
3 tion from the federal, state, or municipal government or a corpora-
4 tion, association, institution or person, or a pledge of money, in-
5 come, or revenue of the corporation from any source.

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

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

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

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

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

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

29 (E) the vesting in the trustee of rights and remedies

1 exercisable by the trustee for the protection of the holders of
2 bonds of the corporation and not otherwise in violation of law
3 and the restriction of the rights of an individual holder of
4 bonds of the corporation;

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

8 (3) provide for any other matters of like or different
9 character that in any way affect the security or protection of the
10 bonds.

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

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

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

27 (b) Nothing in this section prohibits the corporation from
28 selling assets subject to a pledge, except that a sale may be re-
29 stricted by the trust agreement or resolution providing for the

1 issuance of the bonds.

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

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

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

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

27 Sec. 42.40.690. CREDIT OF STATE NOT PLEDGED. (a) The state and
28 its political subdivisions are not liable for the debts of the corpo-
29 ration. Bonds issued under this chapter are payable solely from the

1 revenue or assets of the corporation and do not constitute a

2 (1) debt, liability, or obligation of the state or of a
3 political subdivision of the state; or

4 (2) pledge of the faith and credit of the state or of a
5 political subdivision of the state.

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

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

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

14 Sec. 42.40.700. LIMITATION ON PERSONAL LIABILITY. A board
15 member or employee of the corporation is not subject to personal
16 liability or accountability because of the execution or issuance of
17 bonds.

18 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

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

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

29 Sec. 42.40.710. CORPORATION EMPLOYEES. Employees of the Alaska

1 Railroad are employees of the corporation and not of the state. The
2 provisions of AS 39 do not apply to employees of the corporation.

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

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

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

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

20 Sec. 42.40.740. COLLECTIVE BARGAINING UNIT. The railroad labor
21 relations agency shall decide in each case, in order to ensure employ-
22 ees the fullest freedom in exercising the rights guaranteed by AS 42.-
23 40.710 - 42.40.890 the unit appropriate for the purposes of collective
24 bargaining, based on such factors as community of interest, wages,
25 hours and other working conditions of the employees involved, the
26 history of collective bargaining, and the desires of the employees.
27 Bargaining units shall be as large as is reasonable, and unnecessary
28 fragmenting shall be avoided.

29 Sec. 42.40.750. REPRESENTATIVES AND ELECTIONS. (a) The

1 railroad labor relations agency shall investigate a petition if it is
2 submitted in a manner prescribed by the railroad labor relations
3 agency by

4 (1) an employee or group of employees or an organization
5 acting in their behalf alleging that 30 percent of the employees of a
6 proposed bargaining unit

7 (A) want to be represented for collective bargaining
8 by a labor or employee organization as exclusive representative;
9 or

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

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

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

28 (c) The railroad labor relations agency shall determine who is
29 eligible to vote in an election held under this section and shall

1 establish rules governing the election. In an election in which none
2 of the choices on the ballot receives a majority of the votes cast, a
3 runoff election shall be conducted, the ballot providing for selection
4 between the two choices receiving the largest number of valid votes
5 cast in the election. If an organization receives the majority of the
6 votes cast in the election it shall be certified by the railroad labor
7 relations agency as exclusive representative of all the employees in
8 the bargaining unit. An election may not be held in a bargaining unit
9 or in a subdivision of a bargaining unit if a valid election has been
10 held within the preceding 12 months.

11 (d) Nothing in this chapter prohibits recognition of an orga-
12 nization as the exclusive representative by the corporation by mutual
13 consent.

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

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

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

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

28 (3) discriminate in regard to hire or tenure of employment
29 or a term or condition of employment to encourage or discourage

1 membership in an organization;

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

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

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

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

15 (2) payment by the employee to the exclusive bargaining
16 agent of a service fee to reimburse the exclusive bargaining agency
17 for the expense of representing the members of the bargaining unit.

18 (c) An organization or its agents may not

19 (1) restrain or coerce

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

22 (B) the corporation in the selection of a representa-
23 tive for the purposes of collective bargaining or the adjustment
24 of grievances;

25 (2) refuse to bargain collectively in good faith with the
26 corporation, if it has been designated in accordance with AS 42.40.
27 710 - 42.40.890 as the exclusive representative of employees in an
28 appropriate unit.

29 Sec. 42.40.770. INVESTIGATION AND CONCILIATION OF COMPLAINTS

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

11 Sec. 42.40.780. COMPLAINT AND ACCUSATION. If the railroad labor
12 relations agency fails to eliminate the prohibited practice by concil-
13 iation and to obtain voluntary compliance with AS 42.40.710 - 42.40.-
14 890 or before it attempts conciliation, it may serve a copy of the
15 complaint or accusation upon the respondent. The complaint or accusa-
16 tion and the subsequent procedures shall be handled in accordance with
17 the administrative adjudication portion of the Administrative Proce-
18 dure Act (AS 44.61).

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

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

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

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

17 (c) The attendance of witnesses and the production of evidence
18 may be required from any place in the state at any designated place of
19 hearing.

20 (d) If a person refuses to obey a subpoena issued under AS 42.
21 40.710 - 42.40.890, the superior court in the district in which the
22 person resides or is found may, upon application by the railroad labor
23 relations agency, issue an order requiring the person to comply with
24 the subpoena.

25 Sec. 42.40.820. REGULATIONS. The railroad labor relation
26 agency shall adopt regulations under the Administrative Procedure Act
27 (AS 44.62) to carry out AS 42.40.710 - 42.40.890.

28 Sec. 42.40.830. PENALTY FOR VIOLATION OF ORDER OR DECISION.
29 person who violates a provision of an order or decision of the

1 railroad labor relations agency is guilty of a misdemeanor and is
2 punishable by a fine of not more than \$500.

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

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

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

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

23 (b) The corporation may apply to the superior court in the
24 judicial district in which the strike is occurring for an order en-
25 joining the strike. A strike may not be enjoined unless it can be
26 shown that it has begun to threaten, or is about to threaten, the
27 health, safety, or welfare of the public. A court, in deciding wheth-
28 er to enjoin the strike, shall consider the total equities in the
29 particular case, including the impact of a strike on the public and

1 the extent to which an employee organization and the corporation have
2 met their statutory obligations.

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

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

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

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

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

27 Sec. 42.40.870. ORGANIZATION DUES AND EMPLOYEE BENEFITS, DEDUC-
28 TION AND AUTHORIZATION. Upon written authorization of an employee
29 within a bargaining unit, the corporation shall deduct from the

1 payroll of the employee the monthly amount of dues, fees, and other
2 employee benefits as certified by the secretary of the exclusive
3 bargaining representative and shall deliver it to the chief fiscal
4 officer of the exclusive bargaining representative.

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

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

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

27 (2) require or coerce an employee to make any report con-
28 cerning an activity or undertaking of the employee's activities or
29 undertakings unless the activity or undertaking is related to the

1 performance of official duties;

2 (3) except as directly related to the performance of official
3 duties, require or coerce an employee to submit to an interro-
4 ga tion, examination, or psychological test that is designed to elicit
5 information concerning

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

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

9 (C) sexual matters,

10 (D) the employee's political affiliation or philoso-
11 phy;

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

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

18 (b) The provisions of (a) of this section do not diminish the
19 authority of an authorized law enforcement agency to conduct criminal
20 inves t-gations of employees suspected of being involved in criminal
21 activity or to investigate other activity directly related to official
22 railroad business.

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

24 (1) "collective bargaining" means the performance of the
25 mutual obligation of the corporation or its designated representatives
26 and the representatives of the employees to meet at reasonable times,
27 including meetings in advance of the budget making process, and nego-
28 tiating in good faith with respect to wages, hours, and other terms
29 and conditions of employment, or the negotiation of an agreement, or

1 negotiation of a question arising under an agreement and the execution
2 of a written contract incorporating an agreement reached if requested
3 by either party, but these obligations do not compel either party to
4 agree to a proposal or require the making of a concession;

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

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

14 (4) "terms and conditions of employment" means the hours of
15 employment, the compensation and fringe benefits, and the employer's
16 personnel policies affecting the working conditions of the employees,
17 but does not mean the general policies describing the function and
18 purposes of an employer.

19 ARTICLE 9. GENERAL PROVISIONS.

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

24 (b) For the purposes of actionable claims, undertakings, pay-
25 ments of judgments, execution, interest, punitive damages, statutes of
26 limitations, bonds, costs, and similar matters related to the pres-
27 entation and prosecution of claims by and against the corporation, the
28 corporation and its board members and employees enjoy the same rights,
29 privileges, and immunities as the state and state officers under

1 AS 09.10.120, AS 09.50.250 - 09.50.290, and AS 09.65.040.

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

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

6 Sec. 42.40.905. NOTICE OF LEGAL ACTIONS. (a) The corporation
7 shall notify the Department of Law within 30 days before initiating
8 legal action unless special circumstances exist that require immediate
9 legal action to protect the corporation assets or to continue existing
10 service.

11 (b) If notice of legal action is not given under (a) of this
12 section, within seven days of taking action the board shall notify the
13 Department of Law of the action taken and of the special circumstances
14 that exempted the action from the requirements of (a) of this section.

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

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

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

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

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

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

22 (c) The corporation is subject to AS 45.50.562 - 45.50.596.

23 Sec. 42.40.930. CONFLICTING LAWS INAPPLICABLE. If provisions of
24 this chapter conflict with the provisions of other state law, the pro-
25 visions of this chapter prevail. Provisions of this chapter shall be
26 construed so that they do not conflict with 45 U.S.C. 1201 - 1214
27 (Alaska Railroad Transfer Act of 1932).

28 Sec. 42.40.935. RAILROAD FACILITIES CODE COMPLIANCE. (a) Not
29 later than two years after the date of transfer, the Department of

1 Labor in consultation with the corporation shall develop and the
2 corporation, shall adopt a plan to achieve compliance with AS 18.60.
3 The plan shall be implemented and compliance achieved within five
4 years after it is adopted.

5 (b) No later than two years after the date of transfer, the
6 corporation in consultation with the Department of Public Safety and
7 appropriate municipal officials, shall develop and adopt a plan to
8 achieve compliance with building and related safety codes applicable
9 to facilities of the corporation. The plan shall be implemented and
10 compliance achieved within five years after it is adopted. In the
11 sole determination of the commissioner of public safety, any existing
12 building owned or controlled by the corporation that does not present
13 a serious safety hazard and for which compliance would be uneconomical
14 in consideration of its remaining useful life shall be exempted from
15 compliance with state or municipal safety codes.

16 Sec. 42.40.940. NEGOTIATION FOR SALE OF THE RAILROAD. The
17 governor may require the board to negotiate in good faith the sale of
18 the Alaska Railroad.

19 Sec. 42.40.950. REVERSION OF ASSETS. If the corporation ceases
20 to exist, for reasons other than sale of the Alaska Railroad, its
21 assets revert to the state.

22 Sec. 42.40.980. DEFINITIONS. In this chapter, unless the con-
23 text otherwise requires,

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

26 (2) "bonds" means bonds, bond anticipation notes, notes,
27 refunding bonds, or other obligations;

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

29 (4) "date of transfer" means the date on which the United

1 States Secretary of Transportation delivers the transfer documents
2 under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982);

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

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

11 (7) "land" means any interest in real property, including
12 tide and submerged land and any right appurtenant to the interest;

13 (8) "rule" means a standard of general application or the
14 amendment, supplement, revision, or repeal of a standard adopted by
15 the corporation to implement, interpret, or make specific the law
16 enforced or administered by it to govern its procedure.

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

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

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

27 * Sec. 4. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD
28 CORPORATION. Notwithstanding AS 42.40.020 enacted in sec. 1 of this Act,
29 the terms of the appointed members of the first board of directors of the
CSHB 512(Fin)

1 Alaska Railroad Corporation are as follows:

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

6 * Sec. 5. COLLECTIVE BARGAINING AGREEMENTS. (a) As soon as practi-
7 cable after establishment of the Alaska Railroad Corporation and before
8 transfer of the Alaska Railroad to the state, the Alaska Railroad Corpora-
9 tion and its employees shall adopt collective bargaining agreements that
10 continue the provisions of the agreements in effect between the Alaska
11 Railroad and its employees on the date of transfer of the railroad. The
12 collective bargaining agreements adopted under this section between the
13 corporation and its employees shall remain in effect to the extent required
14 under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982).

15 (b) The board of directors of the Alaska Railroad Corporation shall
16 on or before the date of transfer of the Alaska Railroad to the state adopt
17 personnel rules necessary to prevent an interruption of services of the
18 railroad.

19 (c) Subject to 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of
20 1982), within 180 days after the first meeting of the board of directors of
21 the Alaska Railroad Corporation, the board and representatives of employee
22 bargaining units shall establish procedures for the renegotiation of col-
23 lective bargaining agreements adopted under (a) of this section. The board
24 shall renegotiate all agreements adopted under (a) of this section within
25 two years after the date of transfer of the Alaska Railroad to the state
26 unless the parties agree to the contrary.

27 * Sec. 6. SALE OF RAILROAD. (a) Not later than two years following
28 the date of the transfer of the Alaska Railroad to the state, the Board of
29 Directors of the Alaska Railroad Corporation, in consultation with the

1 state, shall request proposals from the private sector for the acquisition
2 or operation of the Alaska Railroad. The board may engage the services of
3 an investment banking firm or other professional expertise to assist in the
4 development of the request and evaluation of proposals received. The board
5 shall consider every proposal from the private sector for the acquisition
6 or operation of the Alaska Railroad, even if it is not made in response to
7 a request for proposals under this subsection.

8 (b) In order to be considered responsive, a proposal must

9 (1) ensure continued or improved rail service;

10 (2) return to the state its investment in the Alaska Railroad to
11 the extent possible;

12 (3) be consistent with the terms and conditions of 45 U.S.C.
13 1201 - 1214 (Alaska Railroad Transfer Act of 1982), and not activate the
14 reversion provisions of 45 U.S.C. 1209 (Alaska Railroad Transfer Act of
15 1982);

16 (4) demonstrate with reasonable certainty that the railroad
17 after acquisition by the private sector will be operated as a profitable
18 carrier; as used in this paragraph, "profitable carrier" means a carrier
19 that will be able to

20 (A) generate sufficient revenue to meet its expenses,
21 including reasonable maintenance of necessary equipment and facil-
22 ities; and

23 (B) finance its capital needs in the private market; and

24 (5) demonstrate how the railroad can continue operation of
25 services, including current levels of passenger service.

26 (c) The board may negotiate the details of any proposal found to be
27 responsive, including the execution of a letter of intent to conclude a
28 transfer upon approval of the governor and the legislature.

29 (d) Within one year after requesting proposals under (a) of this
CSHF 512(Fin)

1 section, the board shall submit a report on the results of the process to
2 the governor, including its specific findings on the responsiveness of any
3 proposal received and its recommendations for conclusion of a transfer of
4 the railroad or its management to the private sector.

5 (e) Within 120 days after receipt of the board's report, if the board
6 has recommended transfer of the Alaska Railroad or its management to the
7 private sector, the governor shall

8 (1) disapprove the proposed transfer; or

9 (2) submit the report and recommendations to the legislature.

10 (f) Failure by the governor to act within 120 days after receipt of
11 the board's report shall be considered approval.

12 (g) The legislature may disapprove a proposed transfer without modi-
13 fication by law enacted within 45 days after the proposal is submitted. If
14 a proposal is submitted while the legislature is not in session, the legis-
15 lature may disapprove the proposal with 45 days after the beginning of the
16 next regular session. Failure by the legislature to act within the period
17 required under this subsection shall be considered approval of the pro-
18 posal.

19 (h) Unless a proposal under (a) of this section is approved, the
20 process provided in this section shall be repeated every two years.

21 (i) The board shall, within five years after the date of transfer of
22 the Alaska Railroad to the state, prepare a report for the governor and the
23 legislature on the feasibility of other operational alternatives for trans-
24 fer consistent with the criteria under (b) of this section of all or part
25 of the railroad to the private sector, including allowing recipients of
26 permanent fund dividends to direct their dividends to a railroad purchase
27 fund.

28 * Sec. 7. SPECIAL REPORT. The corporation shall study any problems
29 created by vibrations due to operating the railroad from Ship Creek through

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

7 * Sec. 8. Section 3 of this Act takes effect on the effective date of
8 an amendment to the Constitution of the State of Alaska relating to the
9 Alaska Railroad.

10 * Sec. 9. Sections 1, 2, and 4 - 7 of this Act take effect immediately
11 in accordance with AS 01.10.070(c).
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM

March 12, 1984

SUBJECT: Alaska Railroad
(CSSB 352 (Trsp))

TO: Senator Pappy Moss
Chairman, Senate Transportation
Committee

FROM: Tamara Brandt Cook *TBC*
Deputy Director
Division of Legal Services

Here is a draft of CSSB 352 (Trsp) that you requested. Due to the general complexity of the bill and the fact that provisions were submitted to the Senate Transportation Committee from many sources, I have found a great many redundancies, ambiguities, and conflicts in this bill. In resolving these problems I have tried to conform to the apparent intent of the committee, but may have misconstrued some provisions. For this reason it is critical that you carefully review this draft and let me know if there are changes that should be made to it.

In addition, be alerted that I have reorganized portions of the bill, primarily by dividing very long sections into several smaller sections or moving sections from inappropriate articles and placing them elsewhere. I have changed certain wording so that it is consistent. For example, since "land" is defined to be all real property including tide and submerged land, I have replaced references to "real property" with "land" and removed superfluous references to tide and submerged land. Likewise, since "executive officer" and "executive official" appear to be interchangeable, I have consistently used the term "executive officer".

Section 42.40.020(e) provides for confirmation of board members. It is my understanding that you wish to retain this provision and that you understand that it can only function as a request to the governor to submit the members for confirmation, as has been done with certain other boards and

Senator Pappy Moss
Page 2
March 12, 1984

commissions. 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 1 (Alaska, 1976).

Section 42.40.390 appears to be an attempt to grant the power of land use regulation, such as platting and zoning, to the railroad corporation, which would contravene the requirement contained in Article X, section 2 that all local government powers shall be vested in boroughs and cities. If, on the other hand, the purpose of the section is to exclude rail property from municipal land use regulation, that should be done specifically. I would recommend that the section be clarified or eliminated.

Section 42.40.720 grants protection from liability resulting from the execution or issuance of bonds or notes to employees and executive officers. Both these terms are defined and neither includes members of the board of directors. Should they be specifically included within this section?

Section 42.40.900(b) provides that in claims brought against the corporation in which it is the prevailing party, it is not an abuse of discretion for a court to award full costs and attorney's fees. I note that, for some reason, actions brought by the corporation are not included within this section. More importantly, this appears to be an attempt to overrule the line of cases that overturns awards of full attorney's fees by trial courts as abuses of discretion. Continental Ins. Co. v. U.S. Fid. & Guar. Co., 552 P.2d 964 (Alaska 1976); Davis v. Hallett, 587 P.2d 1170 (Alaska 1978). An award of attorney's fees is always subject to review for possible abuse of discretion. To the extent that this section treats the railroad corporation differently from other litigants similarly situated by shielding an award of full attorney's fees from review, it may constitute a denial of equal protection of the law under both the state and federal constitutions. To the extent that this section can be construed not to discriminate in favor of the corporation, it serves no purpose. I would recommend that it be eliminated.

Please let me know if I can be of further assistance with this draft.

TBC:ojb

J4/066

Original sponsors: Kerttula, Faiks,
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 Corporation
7 to operate the Alaska Railroad with a board of nine
8 directors responsible for management of the corpo-
9 ration; requiring the board to appoint a chief
10 executive officer to manage the daily affairs and
11 operations of the corporation; authorizing the board
12 to adopt rules to carry out its functions; authoriz-
13 ing the corporation to issue bonds and notes; author-
14 izing the corporation to manage all property acquired
15 by the corporation or transferred to the state under
16 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act
17 of 1982); authorizing the corporation to exercise
18 eminent domain; exempting the corporation from cer-
19 tain laws; and providing for an effective date."

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

21 * Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature
22 finds that

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

24 (A) provide safe, economical, and efficient transportation
25 to residents, businesses, visitors, and military installations in the
26 state;

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

29 (C) develop and implement plans for a transportation

1 network;

2 (D) foster and promote the development of the st land
3 and natural resources;

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

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

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

11 (b) It is the purpose of this Act

12 (1) create a viable economic entity with the powers and duties
13 necessary to operate and manage the Alaska Railroad pending eventual trans-
14 fer of the railroad to the private sector for its ownership or operation or
15 both consistent with 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of
16 1982);

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

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

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

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

29 (C) have the ability to raise capital by issuing

1 obligations exempt from federal and state taxation and applying for
2 federal money to which the state may be entitled or that may be avail-
3 able;

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

6 (E) provide the best possible combination of types and
7 levels of safe, efficient, and economical transportation to meet the
8 overall needs of the state, supported when necessary by state invest-
9 ment;

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

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

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

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

17 CHAPTER 40. ALASKA RAILROAD CORPORATION.

18 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

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

26 Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the
27 corporation are vested in the board of directors. The board consists
28 of the commissioner of commerce and economic development, the chief
29 executive officer of the corporation, and seven members appointed by

1 the governor. The seven appointed members must be registered voters
2 in the state except as provided in (b) and (c) of this section. No
3 more than two appointed members may be from any one of the four judi-
4 cial districts in the state. Two of the appointed members must have
5 at least five years experience as owners or managers of a business in
6 the state. Except for the commissioner, the chief executive officer,
7 and the member appointed under (d) of this section, a member may not
8 be a state officer or employee.

9 (b) One person who is not a resident of the state may be ap-
10 pointed by the governor to be a member of the board, if, at the time
11 of appointment, the person has at least 10 years of experience in
12 railroad management.

13 (c) One member of the board shall be or have been an executive
14 official of a United States railroad and shall be selected in accor-
15 dance with any requirements imposed under 49 U.S.C. (Interstate Com-
16 merce Act). A person who is not a resident of the state may be ap-
17 pointed under this subsection.

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

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

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

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

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

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

11 Sec. 42.40.050. COMPENSATION AND EXPENSES. (a) An appointed
12 member of the board is entitled to compensation at a rate of \$250 for
13 each day the member is engaged in the actual performance of duties as
14 a member of the board.

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

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

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

23 ARTICLE 2. MANAGEMENT.

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

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

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

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

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

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

10 (6) raise needed capital by issuing obli- gations of the
11 corporation while ensuring that borrowing by the corporation does not
12 directly or indirectly endanger the state's own borrowing capacity;

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

16 (8) ensure that the accounting and procurement procedures
17 of the corporation meet accepted railroad industry standards.

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

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

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

1 delegated power or duty to be subject to board approval.

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

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

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

9 (3) making routine changes in service levels;

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

12 (5) performing procurement activities.

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

15 (1) conveying the corporation's entire interest in land;

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

17 (3) mortgaging or pledging corporation assets;

18 (4) donating property or other assets belonging to the
19 corporation;

20 (5) acting as a surety or guarantor;

21 (6) adopting a long-range capital improvement and program
22 plan;

23 (7) certifying annual reports;

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

27 (9) expanding or reducing services in a major way;

28 (10) expanding the main or branch rail lines, other than
29 performing routine track alignment as necessary to maintain service

1 levels in effect on the date of transfer;

2 (11) selecting independent auditors and accountants;

3 (12) exercising the power of eminent domain;

4 (13) entering into collective bargaining agreements; and

5 (14) adopting annual budgets.

6 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

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

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

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

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

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

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

27 (b) The board may exclude from an executive session the chief
28 executive officer of the corporation and the member appointed under
29 AS 42.40.020(d) if the subject of the session is related to labor

1 relations or personnel contracts.

2 (c) Only the following subjects may be discussed in an executive
3 session:

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

6 (2) subjects that tend to prejudice the reputation and
7 character of a person and that the person has not requested to have
8 discussed in public;

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

11 (4) matters pertaining to personnel;

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

13 (6) land acquisition or disposal; and

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

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

1 proposed change.

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

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

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

17 Sec. 42.40.190. EMERGENCY RULES. (a) The board shall establish
18 in the bylaws of the corporation a procedure for the adoption, amend-
19 ment, or repeal of a rule on an emergency basis. An emergency change
20 may be made only when necessary for the orderly operation of the
21 corporation's facilities or programs. The requirements of AS 42.-
22 40.180 do not apply to actions taken under this section. However,
23 within 10 days after the adoption, amendment, or repeal of a rule on
24 an emergency basis the board shall give notice of its action that
25 substantially complies with the notice requirements of AS 42.40.-
26 180(a).

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

1 the 120-day period.

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

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

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

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

13 Sec. 42.40.210. PREVIOUSLY ADOPTED RULES AND ORDERS. The board
14 may provide by resolution that rules and orders in effect on the date
15 of transfer remain in effect until amended or repealed by the board.

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

20 (b) The corporation may by rule designate and withhold public
21 disclosure of matters of a nonpublic, privileged, or proprietary
22 nature. Those matters include personnel records, communications with
23 and work product of legal counsel, and proprietary or other informa-
24 tion of a type treated as confidential under standards and practices
25 of the United States Interstate Commerce Commission, including prac-
26 tices that protect information associated with specific shippers,
27 divisions, and contract rate agreements.

28 ARTICLE 4. POWERS AND DUTIES.

29 Sec. 42.40.250. GENERAL POWERS. In addition to the exercise of

1 other powers authorized by law, the corporation may

2 (1) adopt a seal;

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

4 (3) sue and be sued;

5 (4) appoint trustees and agents of the corporation and
6 prescribe their powers and duties;

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

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

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

16 (8) hold, maintain, use, operate, lease, exchange, donate,
17 improve, convey, alienate, dispose of, or transfer land or personal
18 property, subject to other provisions of law;

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

23 (10) undertake and provide for the management, operation,
24 maintenance, use, and control of all of the property of the corpo-
25 ration, including rail properties transferred to it by the federal
26 government;

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

1 Railroad;

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

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

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

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

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

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

23 (18) hire and discharge railroad personnel and determine
24 benefits and other terms of employment, in accordance with 45 U.S.C.
25 1201 - 1214 (Alaska Railroad Transfer Act of 1982);

26 (19) assume and satisfy liabilities of the United States in
27 accordance with 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of
28 1982) and the closing report of July 14, 1983, as amended, prepared
29 and submitted to Congress and the Legislature under 45 U.S.C. 1204(a);

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

4 (21) issue its bonds or notes and provide for and secure
5 their payment, provide for the rights of their holders and hold or
6 dispose of them;

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

9 (23) cancel bonds of the corporation purchased by the corpo-
10 ration;

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

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

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

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

27 Sec. 42.40.260. ANNUAL REPORT. Within 90 days following the end
28 of the fiscal year of the Alaska Railroad the board shall direct
29 preparation of, certify and distribute to the governor and to the

1 legislature a report describing the operations and financial condition
2 of the corporation during the preceding fiscal year. The report shall
3 itemize the cost of providing each category of service offered by the
4 railroad and the income generated by each category.

5 Sec. 42.40.270. ANNUAL AUDIT. The board shall have the finan-
6 cial records of the corporation audited annually by an independent
7 certified public accountant experienced in railroad accounting. The
8 corporation shall make all of its financial records available to an
9 auditor appointed by the governor and to the legislative audit divi-
10 sion for examination. Disclosure to the public by the auditor or
11 legislative audit division of this information is subject to AS 42.-
12 40.220 and rules implementing that section.

13 Sec. 42.40.280. LONG RANGE CAPITAL IMPROVEMENT AND PROGRAM PLAN.
14 (a) The corporation shall prepare and the board shall adopt a long
15 range capital improvement and program plan. The plan shall explain
16 the manner in which the corporation intends to accomplish the purposes
17 of this chapter and the corporation's anticipated capital improvements
18 during each of the five years after the plan is adopted.

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

23 (c) The employees of the corporation shall prepare and revise
24 the long range capital improvement and program plan. The board may
25 not contract for the preparation or revision of the plan.

26 Sec. 42.40.290. USE OF CORPORATION ASSETS. The corporation
27 shall apply all money, property, other assets, and credit of the
28 corporation toward activities authorized by this chapter. The corpo-
29 ration may not issue shares of stock, pay dividends, make private

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

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

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

23 ARTICLE 5. RAIL PROPERTIES.

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

29 (1) railroad rights-of-way or easements are utility

1 corridors;

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

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

14 (c) The corporation may convey, lease, grant easements or per-
15 mits, or otherwise authorize use of portions of rail land for any
16 purpose that does not interfere with use of a utility corridor.

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

21 (b) The board by rule may identify and request the commissioner
22 of natural resources to convey land necessary or useful for present,
23 future, or intended railroad purposes owned by or tentatively approved
24 for transfer to the state, including land not adjacent to a utility
25 corridor. The request must include a statement of and justification
26 for the present, future or intended railroad use. Upon receipt of a
27 request, the commissioner shall temporarily reserve the land iden-
28 tified in the request for railroad purposes and delay disposal or
29 lease of that land under other laws to a party other than the

1 corporation. The temporary reservation of land is subject to valid
2 existing rights and remains in effect for 180 days.

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

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

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

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

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

20 (c) The corporation may reconvey to the state land received
21 under this section that the corporation and the commissioner of natu-
22 ral resources jointly identify as unnecessary or unsuitable for the
23 corporation's purposes.

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

1 relocation and notify the the Department of Natural Resources. The
2 relocation must affect only the amount of state land necessary to
3 adequately restore or continue safe rail operations at a normal level.

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

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

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

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

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

27 Sec. 42.40.420. FEDERAL LAND. The corporation may submit appli-
28 cations on its own behalf as an instrumentality of the state for
29 acquisition of federal land available under federal law that will

1 enhance the operations of the corporation. The corporation may re-
2 ceive in its own name conveyances of all interests in federal land.

3 Sec. 42.40.430. MUNICIPAL EASEMENTS. Upon request the corpo-
4 ration may grant to a municipality a limited use easement in rail land
5 or, subject to AS 42.40.350(b), over a utility corridor to be used for
6 a pedestrian walkway or trail. Before granting a limited use easement
7 under this section the board shall require the municipality to execute
8 an agreement in a form approved by the board to

9 (1) hold the corporation harmless and indemnify the corpo-
10 ration for any use made of the easement including

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

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

16 (2) vacate the easement upon request of the corporation if,
17 as determined by the corporation, the easement interferes with expan-
18 sion or replacement of railroad facilities.

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

28 ARTICLE 6. FINANCIAL PROVISIONS.

29 Sec. 42.40.500. LIMITATION OF LIABILITY. A liability incurred

1 by the corporation shall be satisfied exclusively from the assets or
2 revenue of the corporation and no creditor or other person has a right
3 of action against the state because of a debt, obligation, or liabil-
4 ity of the corporation.

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

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

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

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

27 ARTICLE 7. BONDS AND NOTES.

28 Sec. 42.40.600. GENERAL PROVISIONS. (a) The corporation by
29 resolution may issue bonds and bond anticipation notes to provide

1 money to carry out its purposes. However, the proceeds may not be
2 used for activities other than those specifically related to the
3 purposes for which the instruments are originally issued.

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

6 (1) be dated;

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

9 (3) be in a required denomination;

10 (4) be in a coupon or registered form;

11 (5) carry conversion or registration provisions;

12 (6) have a required rank or priority;

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

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

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

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

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

25 Sec. 42.40.610. NEGOTIABLE INSTRUMENTS. Bonds and notes issued
26 under this chapter and interest coupons attached to them are nego-
27 tiable instruments under the laws of this state, subject only to
28 applicable provisions for registration.

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

1 and notes issued under this chapter are securities in which all public
2 officers and public bodies of the state and its political subdivi-
3 sions, all insurance companies, trust companies, banking associations,
4 investment companies, executors, administrators, trustees and other
5 fiduciaries may properly and legally invest funds, including capital
6 in their control or belonging to them. These bonds and notes may be
7 deposited with a state or municipal officer of an agency or political
8 subdivision of the state for any purpose for which the deposit of
9 bonds or notes of the state is authorized by law.

10 Sec. 42.40.630. PAYMENT OF BONDS AND NOTES. (a) The principal
11 and interest on bonds or notes of the corporation is payable from
12 corporation money or assets. Bonds or notes may be additionally
13 secured by a pledge of a grant or contribution from the federal gov-
14 ernment or a corporation, association, institution or person, or a
15 pledge of money, income, or revenue of the corporation from any
16 source.

17 (b) Bond anticipation notes may be payable from the proceeds of
18 the sale of bonds or other bond anticipation notes, or, if bond or
19 bond anticipation note proceeds are not available, from other money or
20 assets of the corporation.

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

25 (1) pledge all or part of its revenue to which its right
26 then exists or may thereafter exist, the money derived from the reve-
27 nue, and the proceeds of its bonds or notes;

28 (2) covenant against pledging all or part of its revenue,
29 or against permitting or suffering a lien on its revenue or property;

1 (3) covenant as to establishment of reserves or sinking
2 funds and provide for, regulate, and dispose of the reserves or sink-
3 ing funds;

4 (4) covenant regarding limitations on a right to sell or
5 otherwise dispose of property of any kind;

6 (5) covenant as to bonds and notes to be issued, their
7 limitations, terms and conditions, the custody, application and dispo-
8 sition of the proceeds of the bonds and notes;

9 (6) covenant as to the issuance of additional bonds or
10 notes, or limitations on the issuance of additional bonds or notes,
11 and the incurring of other debts;

12 (7) covenant as to the payment of the principal of or
13 interest on the bonds or notes, the sources and methods of payment,
14 the rank or priority of the bonds or notes with respect to a lien or
15 security, or the acceleration of the maturity of the bonds or notes;

16 (8) provide for the replacement of lost, stolen, destroyed
17 or mutilated bonds or notes;

18 (9) covenant against extending the time for the payment of
19 bonds or notes, or interest on the bonds or notes;

20 (10) covenant as to the redemption of bonds or notes and
21 privileges of their exchange for other bonds or notes of the corpo-
22 ration;

23 (11) covenant to create or authorize the creation of special
24 funds of money to be held in pledge or otherwise for operating ex-
25 penses, payment or redemption of bonds or notes, reserves or other
26 purposes, and as to the use and disposition of the money held in the
27 funds;

28 (12) establish the procedure by which the terms of a con-
29 tract or covenant with or for the benefit of the holders of bonds or

1 notes may be amended or abrogated, the amount of bonds or notes the
2 holders of which must consent to amendment or abrogation, and the
3 manner in which the consent may be given;

4 (13) covenant as to the custody of any of its properties or
5 investments, their safekeeping and insurance, and the use and disposi-
6 tion of insurance money;

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

14 (15) to pay the costs or expenses incident to the enforce-
15 ment of the bonds or notes, of the provisions of the resolution, or of
16 a covenant or agreement of the corporation with the holders of its
17 bonds or notes;

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

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

29 (18) to limit the rights of the holders of bonds or notes of

1 the corporation to enforce a pledge or covenant securing the bonds or
2 notes; and

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

8 Sec. 42.40.650. INTERIM RECEIPTS, TEMPORARY BONDS, AND TEMPORARY
9 BOND ANTICIPATION NOTES. Before the preparation of definitive bonds
10 or bond anticipation notes, the corporation may issue interim receipts
11 or temporary bonds or bond anticipation notes, with or without cou-
12 pons, exchangeable for bonds or bond anticipation notes when those
13 definitive bonds or bond anticipation notes have been executed and are
14 available for delivery.

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

23 (b) Refunding bonds may be sold or exchanged for outstanding
24 bonds issued under this chapter and the proceeds may be applied to the
25 purchase, redemption or payment of the outstanding bonds in addition
26 to other authorized purposes. Pending the application of the proceeds
27 of rerunding bonds to the payment of the principal, accrued interest
28 and redemption premium on the bonds bei refunded, and, if permitted
29 in the resolution authorizing the issuance of the refunding bonds or

1 in the trust agreement securing them, to the payment of interest on
2 the refunding bonds and expenses in connection with the refunding, the
3 proceeds may be invested in direct obligations of the United States or
4 obligations the principal of and the interest on which are uncondi-
5 tionally guaranteed by the United States that mature or may be re-
6 deemed not later than the date the proceeds of the refunding bonds,
7 together with the interest accruing on them, will be required for the
8 purposes intended.

9 Sec. 42.40.670. INDEPENDENT FINANCIAL ADVISOR. In negotiating
10 the private sale of bonds or bond anticipation notes to an under-
11 writer, the board shall retain a financial advisor who is independent
12 from the underwriter.

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

19 Sec. 42.40.690. VALIDITY OF PLEDGE. (a) The pledge of assets
20 or revenue of the corporation to the payment of the principal or
21 interest on bonds or notes of the corporation is valid and binding
22 from the time the pledge is made and the assets or revenue are immedi-
23 ately subject to the lien of the pledge without physical delivery or
24 further act. The lien of a pledge is valid and binding against all
25 parties having claims of any kind against the corporation, irrespec-
26 tive of whether those parties have notice of the lien of the pledge.

27 (b) Nothing in this section prohibits the corporation from
28 selling assets subject to a pledge, except that a sale may be re-
29 stricted by the trust agreement or resolution providing for the

1 issuance of the bonds or notes.

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

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

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

12 Sec. 42.40.710. 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.

28 Sec. 42.40.720. OFFICERS AND EMPLOYEES NOT LIABLE. An executive
29 officer 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.

3 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

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

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

13 Sec. 42.40.770. AGREEMENT. (a) At the request of the board or
14 corporation employee organization, the Department of Administration
15 shall participate in negotiations between the corporation and the
16 employee organization.

17 *f add 1/4/5/12* (b) An agreement executed between the corporation and an em-
18 ployee organization shall provide for a grievance procedure in which
19 the final step in the procedure is binding arbitration. The agreement
20 shall define "grievance" for purposes of this section.

21 Sec. 42.40.780. RAILROAD EMPLOYEES LABOR RELATIONS AGENCY. (a)
22 There is established a railroad employees labor relations agency that
23 consists of three members appointed by the governor. One member shall
24 be a member of the state personnel board. Members serve at the plea-
25 sure of the governor.

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

29 (c) Members of the railroad employees labor relations agency

1 receive no compensation for their services, but are entitled to per
2 diem and travel expenses authorized for boards and commissions.

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

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

10 Sec. 42.40.800. POLITICAL ACTIVITIES. (a) Money, assets, or
11 property of the corporation may not be used for political activity.
12 However, board members and employees of the corporation may communi-
13 cate with and appear before committees of Congress, the state legisla-
14 ture, and municipal governing bodies in connection with matters di-
15 rectly affecting the corporation.

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

20 Sec. 42.40.810. PROHIBITED ACTS. (a) The corporation, an
21 executive officer, or employee may not directly or indirectly:

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

25 (2) require or coerce an employee to make any report con-
26 cerning an activity or undertaking of the employee's activities or
27 undertakings unless the activity or undertaking is related to the
28 performance of official duties;

29 (3) except as directly related to the performance of

1 official duties, require or coerce an employee to submit to an
2 interrogation, examination or psychological test that is designed to
3 elicit information concerning

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

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

7 (C) sexual matters,

8 (D) the employee's political affiliation or philoso-
9 phy;

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

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

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

20 ARTICLE 9. GENERAL PROVISIONS.

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

25 (b) In a claim or other legal action against the corporation
26 including actions involving the expansion, extension and construction
27 of the railroad, in which the corporation is the prevailing party, it
28 is not an abuse of discretion for a court to award full costs and
29 attorney's fees, including compensation for the financial losses to

1 official duties, require or coerce an employee to submit to an
2 interrogation, examination or psychological test that is designed to
3 elicit information concerning

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

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

7 (C) sexual matters,

8 (D) the employee's political affiliation or philoso-
9 phy;

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

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

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

20 ARTICLE 9. GENERAL PROVISIONS.

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

25 (b) In a claim or other legal action against the corporation
26 including actions involving the expansion, extension and construction
27 of the railroad, in which the corporation is the prevailing party, it
28 is not an abuse of discretion for a court to award full costs and
29 attorney's fees, including compensation for the financial losses to

1 the corporation that are directly attributable to the maintenance of
2 that action.

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

9 (d) Claims against the corporation are not subject to the pro-
10 visions of AS 44.77 regarding claims against the state.

11 (e) The corporation is not subject to the provisions of AS 44.-
12 80.010, regarding the state as a party to an action.

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

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

28 (c) This section does not affect or limit an exemption from
29 license fees, property taxes, or excise, income or other taxes,

1 provided under any other law, nor does it create a tax exemption with
2 respect to the interest of any business enterprise or other person,
3 other than the corporation.

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

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

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

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

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

26 Sec. 42.40.980. DEFINITIONS. In this chapter,

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

29 (2) "collective bargaining" means negotiating with an

1 employees organization and representing employees on matters pertain-
2 ing to conditions of employment;

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

4 (4) "date of transfer" means the date on which the United
5 States Secretary of Transportation delivers the deed of conveyance for
6 the properties of the Alaska Railroad under 45 U.S.C. 1201 - 1214
7 (Alaska Railroad Transfer Act of 1982);

8 (5) "employees" means all persons employed by the corpo-
9 ration including executive officers;

10 (6) "executive officer" means the corporation's chief
11 executive officer, assistant chief executive officer, assistant to the
12 chief executive officer, chief of administration, superintendent of
13 transportation, manager of marketing and sales, chief engineer, chief
14 mechanical officer, manager of industrial development and real estate,
15 manager of budget and accounting, manager of planning, manager of
16 personnel, manager of supply and procurement, chief of security,
17 manager of operating rules, manager of data processing, manager of
18 strategy, manager of operations planning, manager of supply, manager
19 of procurement, manager of safety, manager of administrative proce-
20 dure, chief counsel, or, if so designated by the board, any employee
21 who fulfills these management functions under a different title or who
22 exercises a similar or comparable level of responsibility;

23 (7) "land" means all real property, including tide and
24 submerged land;

25 (8) "rail properties" means all real and personal property,
26 tangible and intangible, of the corporation.

27 Sec. 42.40.990. SHORT TITLE. This chapter may be referred to as
28 the Alaska Railroad Corporation Act.

29 * Sec. 3. AS 42.40.010 is amended to read:

1 Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is
2 established the Alaska Railroad Corporation. The corporation is a
3 public corporation and is an instrumentality of the state [WITHIN THE
4 DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT]. The corporation has
5 a legal existence independent of and separate from the state. The
6 exercise by the corporation of the powers provided in this chapter is
7 considered an essential government function of the state.

8 * Sec. 4. AS 42.40.020(a) is amended to read:

9 (a) The powers of the corporation are vested in the board of
10 directors. The board consists of [THE COMMISSIONER OF COMMERCE AND
11 ECONOMIC DEVELOPMENT,] the chief executive officer of the corporation,
12 and eight [SEVEN] members appointed by the governor. The eight
13 [SEVEN] appointed members must be registered voters in the state
14 except as provided in (b) and (c) of this section. No more than two
15 appointed members may be from any one of the four judicial districts
16 in the state. Two of the appointed members must have at least five
17 years experience as owners or managers of a business in the state.
18 Except for [THE COMMISSIONER,] the chief executive officer [,] and the
19 member appointed under (d) of this section, a member may not be a
20 state officer or employee.

21 * Sec. 5. AS 42.40.020(e) is amended to read:

22 (e) Except for [THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVEL-
23 OPMENT AND] the chief executive officer of the corporation, the mem-
24 bers of the board shall be confirmed by a majority of the members of
25 each house of the legislature in joint session. A member appointed by
26 the governor has the full powers and responsibilities of a confirmed
27 board member until the member is rejected by the legislature.

28 * Sec. 6. AS 42.40.030 is amended to read:

29 Sec. 42.40.030. TERM OF OFFICE; REMOVAL. (a) Except for [THE

1 COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT AND] the chief
2 executive officer of the corporation, members of the board serve for
3 staggered terms of five years each [AT THE PLEASURE OF THE GOVERNOR].

4 * Sec. 7. AS 42.40.030 is amended by adding a new subsection to read:

5 (b) The governor may, by written notice to the member, remove a
6 member from the board for

7 (1) incapacitation caused by injury or sickness that leaves
8 the member unable to perform duties under this chapter;

9 (2) continued refusal or inability to attend meetings of
0 the board; or

1 (3) conviction of a felony.

2 * Sec. 8. AS 42.40.180 is repealed and reenacted to read:

3 Sec. 42.40.180. RULES. (a) The board shall establish a proce-
4 dure for adopting, amending, and repealing rules to carry out its
5 functions and the purposes of this chapter, including a procedure for
6 the adoption or change of rules on an emergency basis when essential
7 to continue or to reinstate the orderly operation of the corporation's
8 facilities or programs.

9 (b) The board shall adopt rules to safeguard property owned,
0 managed, or transported by the corporation and to protect employees
1 and persons using the corporation's property or services.

2 * Sec. 9. SPECIAL REPORT. The governor shall contract with a private
3 consultant for the preparation of a report on the long-term operations of
4 the Alaska Railroad that are in the best interest of the state. The report
5 shall be submitted to the governor and the legislature by January 1, 1988.
6 It shall contain specific recommendations on operational alternatives and
7 the transfer of all or part of the railroad operation to the private sec-
8 tor.

9 * Sec. 10. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD
CSSB 352(Trsp)

Original sponsors: Kerttula, Faiks,
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

1 state;

2 (B) foster and promote the long-term economic growth and
3 development of the state;

4 (C) develop and implement plans for a transportation net-
5 work;

6 (D) foster and promote the development of the state's land
7 and natural resources;

8 (2) the Alaska Railroad is an essential part of the state trans-
9 portation network that may, unless preserved by state action, cease to be a
10 transportation option in Alaska;

11 (3) the federal government has offered to the state the option
12 of taking over the Alaska Railroad to ensure its continued existence; and

13 (4) it is in the state's best interest to accept the railroad
14 under the terms and conditions offered by the United States government.

15 (b) It is the purpose of this Act to

16 (1) create a viable economic entity with the powers and duties
17 necessary to operate and manage the Alaska Railroad pending eventual trans-
18 fer of the railroad to the private sector for its ownership or operation or
19 both consistent with 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of
20 1982);

21 (2) provide for the level of transportation service that best
22 satisfies the needs of the people of the state consistent with the other
23 findings and policies of this section;

24 (3) create a public corporation with the powers, duties, and
25 functions needed to operate the Alaska Railroad and manage its rail, indus-
26 trial, port and other properties in the best interest of the people of the
27 state by ensuring that the corporation will

28 (A) be exclusively responsible for the management of the
29 financial and legal obligations of the Alaska Railroad;

1 (B) operate the railroad as a common carrier subject to the
2 jurisdiction of the United States Interstate Commerce Commission
3 consistent with 45 U.S.C. 1207;

4 (C) have the ability to raise capital by issuing obliga-
5 tions exempt from federal and state taxation and applying for federal
6 money to which the state may be entitled or that may be available;

7 (D) carry out its responsibilities on a self-sustaining
8 basis;

9 (E) provide the best possible combination of types and
10 levels of safe, efficient, and economical transportation to meet the
11 overall needs of the state, supported when necessary by state invest-
12 ment;

13 (F) provide for the prudent operation of the railroad
14 according to sound business management practices; and

15 (G) preserve the integrity of the railroad utility corridor
16 for transportation, communication, and transmission purposes;

17 (4) ensure that borrowing by the corporation does not directly
18 or indirectly endanger the state's own borrowing capacity.

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.

29 Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the

1 corporation are vested in the board of directors. The board consists
2 of the commissioner of commerce and economic development, the chief
3 executive officer of the corporation, and seven members appointed by
4 the governor. The seven appointed members must be registered voters
5 in the state except as provided in (b) and (c) of this section. No
6 more than two appointed members may be from any one of the four judi-
7 cial districts in the state. Two of the appointed members must have
8 at least five years experience as owners or managers of a business in
9 the state. Except for the commissioner, the chief executive officer,
10 and the member appointed under (d) of this section, a member may not
11 be a state officer or employee.

12 (b) One member of the board shall be a person who has at least
13 10 years of experience in railroad management. A person who is not a
14 resident of the state may be appointed under this subsection.

15 (c) One member of the board shall be or have been an executive
16 official of a United States railroad and shall be selected in accor-
17 dance with any requirements imposed under 49 U.S.C. (Interstate Com-
18 merce Act). A person who is not a resident of the state may be ap-
19 pointed under this subsection.

20 (d) One member shall be an employee who is a member of a bar-
21 gaining unit representing employees of the corporation.

22 (e) Except for the commissioner of commerce and economic devel-
23 opment and the chief executive officer of the corporation, the members
24 of the board shall be confirmed by a majority of the members of each
25 house of the legislature in joint session. A member appointed by the
26 governor has the full powers and responsibilities of a confirmed board
27 member until the member is rejected by the legislature.

28 Sec. 42.40.030. TERM OF OFFICE. Except for the commissioner of
29

1 commerce and economic development and the chief executive officer of
2 the corporation, members of the board serve for staggered terms of
3 five years each at the pleasure of the governor.

4 Sec. 42.40.040. VACANCIES. (a) A vacancy on the board is
5 filled by appointment by the governor, and the appointment must be
6 confirmed by the members of each house of the legislature in joint
7 session. A member appointed to fill a vacancy holds office for the
8 balance of the term for which the member's predecessor was appointed.

9 (b) A vacancy on the board does not impair the authority of a
10 quorum of members to exercise the powers and perform the duties of the
11 board.

12 (c) A member of the board whose term has expired shall serve
13 until a successor has been appointed.

14 Sec. 42.40.050. COMPENSATION AND EXPENSES. (a) An appointed
15 member of the board is entitled to compensation at a rate of \$250 for
16 each day the member is engaged in the actual performance of duties as
17 a member of the board. The board may provide by rule for compensation
18 for partial days during which an appointed member is engaged in actual
19 performance of duties as a member of the board.

20 (b) In addition to compensation under (a) of this section, an
21 appointed member of the board is entitled to per diem and travel
22 expenses authorized by law for state boards and commissions.

23 Sec. 42.40.060. BOARD OFFICERS. (a) The board shall elect from
24 its membership a chairman and vice-chairman and prescribe their duties
25 by rule.

26 (b) The board shall appoint a secretary and prescribe the duties
27 of the secretary.

28 ARTICLE 2. MANAGEMENT.

29 Sec. 42.40.100. MANAGEMENT BY THE BOARD. The board is

1 responsible for the management of the corporation but shall delegate
2 certain powers and duties to the chief executive officer in accordance
3 with AS 42.40.120. In managing the corporation the board shall

4 (1) be responsible for the management of the financial and
5 legal obligations of the Alaska Railroad;

6 (2) operate the Alaska Railroad as a common carrier subject
7 to the jurisdiction of the United States Interstate Commerce Commis-
8 sion consistent with 45 U.S.C. 1207;

9 (3) generally manage the corporation on a self-sustaining
10 basis;

11 (4) apply to the legislature for an appropriation to be
12 used to provide a particular service that is not otherwise self-
13 sustaining if a subsidy is required to maintain that service;

14 (5) provide for safe, efficient, and economical transporta-
15 tion to meet the overall needs of the state;

16 (6) raise needed capital by issuing obligations of the
17 corporation while ensuring that borrowing by the corporation does not
18 directly or indirectly endanger the state's own borrowing capacity;

19 (7) review all private and state land disposal proposals to
20 aid in planning for future development or expansion of transportation
21 services;

22 (8) ensure that the accounting and procurement procedures
23 of the corporation meet accepted railroad industry standards.

24 Sec. 42.40.110. EXECUTIVE OFFICERS. (a) The board shall ap-
25 point the chief executive officer of the corporation who serves at the
26 pleasure of the board. The board shall fix compensation for the chief
27 executive officer.

28 (b) The chief executive officer of the corporation shall appoint
29 and fix the compensation for other executive officers. The

1 compensation for an executive officer appointed under this subsection
2 is subject to board approval.

3 Sec. 42.40.120. DELEGATION. (a) The board shall by rule dele-
4 gate to the chief executive officer powers and duties necessary or
5 appropriate for the management of the daily affairs and operations of
6 the corporation. The board may by rule require the exercise of a
7 delegated power or duty to be subject to board approval.

8 (b) Within 60 days after its first meeting, the board shall by
9 rule delegate the following activities of the corporation to the chief
10 executive officer or other executive officers designated by the board:

11 (1) leasing, granting easements in, issuing permits for the
12 use of, or conveying other interests in property;

13 (2) establishing specific rates, tariffs, divisions, and
14 contract rate agreements;

15 (3) making routine changes in service levels;

16 (4) establishing procurement and accounting procedures for
17 the corporation; and

18 (5) performing procurement activities.

19 (c) Notwithstanding (a) and (b) of this section, specific board
20 approval is required for the following:

21 (1) conveying the corporation's entire interest in land;

22 (2) issuing notes, debentures, and bonds;

23 (3) mortgaging or pledging corporation assets;

24 (4) donating property or other assets belonging to the
25 corporation;

26 (5) acting as a surety or guarantor;

27 (6) adopting a long-range capital improvement and program
28 plan;

29 (7) certifying annual reports;

1 (8) effecting generally applicable increases and decreases
2 in rates other than those periodically approved by the United States
3 Interstate Commerce Commission;

4 (9) expanding or reducing services in a major way;

5 (10) expanding the main or branch rail lines, other than
6 performing routine track alignment as necessary to maintain service
7 levels in effect on the date of transfer;

8 (11) selecting independent auditors and accountants;

9 (12) exercising the power of eminent domain;

10 (13) entering into collective bargaining agreements; and

11 (14) adopting annual budgets.

12 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

13 Sec. 42.40.150. MEETINGS OF THE BOARD. (a) The chairman of the
14 board shall call meetings of the board at least once every three
15 months and may call other meetings of the board as necessary. The
16 chairman shall preside at meetings.

17 (b) Except for executive sessions, the meetings of the board are
18 public. The board shall provide by rule for a method of providing
19 reasonable notice to the public of its meetings.

20 (c) The board shall keep minutes of each meeting.

21 Sec. 42.40.160. QUORUM AND VOTING. (a) Five voting members of
22 the board constitutes a quorum for the transaction of business.

23 (b) Five affirmative votes are required for board action. The
24 board shall provide by rule for the manner of voting, except that the
25 board may not provide for voting by proxy. The rules may provide for
26 voting and conferring by telecommunication devices.

27 Sec. 42.40.170. EXECUTIVE SESSIONS. (a) The question of hold-
28 ing an executive session shall be determined by a majority vote of the
29 board. A subject may not be considered at an executive session unless

1 it is mentioned in the motion calling for the executive session or is
2 auxiliary to a subject mentioned. An action may not be taken at an
3 executive session.

4 (b) Only the following subjects may be discussed in an executive
5 session:

6 (1) matters, the immediate knowledge of which would clearly
7 have an adverse effect upon the finances of the corporation:

8 (2) unless the person has requested to have the subjects
9 discussed in public, subjects that tend to prejudice the reputation
10 and character of a person:

11 (3) matters that, by law or municipal charter or ordinance,
12 are permitted to be kept confidential from public disclosure;

13 (4) matters pertaining to personnel;

14 (5) matters pertaining to the corporation's legal position;

15 (6) land acquisition or disposal; and

16 (7) proprietary or other information of a type treated as
17 confidential under the standards and practices of the United States
18 Interstate Commerce Commission, including practices that protect
19 information associated with specific shippers, divisions, and contract
20 rate agreements.

21 Sec. 42.40.180. RULES. (a) The board shall adopt rules to
22 carry out its functions and the purposes of this chapter, including
23 rules to safeguard property owned, managed, or transported by the
24 corporation and to protect employees and persons using the
25 corporation's property or services. At least 15 days before the
26 adoption, amendment, or repeal of a rule, the board shall give public
27 notice of the proposed action by publishing a notice in at least three
28 newspapers of general circulation in the state and by mailing a copy
29 of the notice to each person who has requested notice of proposed

1 changes to rules. The notice must state the time, place, and nature
2 of the proceedings and must contain a summary of the subject of the
3 proposed change.

4 (b) On the date and at the time and place designated in the
5 notice required under (a) of this section the board shall provide each
6 interested person an opportunity to present statements in writing
7 concerning the proposed change and shall give members of the public an
8 opportunity to present oral statements for a total period of at least
9 one hour.

10 (c) The board shall consider all relevant matters presented to
11 it before adopting, amending, or repealing a rule. The board may take
12 action on a rule that varies in content from the summary provided with
13 the notice of the proposed change if the subject of the rule was
14 reflected in the summary and it provided reasonable notice to the
15 public as to whether their interests could be affected by the board's
16 action on that subject.

17 (d) The board shall establish in the bylaws of the corporation
18 additional procedures for adopting rules if necessary.

19 Sec. 42.40.190. EMERGENCY RULES. (a) The board shall establish
20 in the bylaws of the corporation a procedure for the adoption, amend-
21 ment, or repeal of a rule on an emergency basis. An emergency change
22 may be made only when necessary for the orderly operation of the
23 corporation's facilities or programs. The requirements of AS 42.-
24 40.180 do not apply to actions taken under this section. However,
25 within 10 days after the adoption, amendment, or repeal of a rule on
26 an emergency basis the board shall give notice of its action that
27 substantially complies with the notice requirements of AS 42.40.-
28 180(a).

29 (b) An action taken under this section remains in effect for not

1 more than 120 days. To prevent an emergency change from lapsing the
2 board may make the same change under AS 42.40.180 before the end of
3 the 120-day period.

4 Sec. 42.40.200. VALIDITY OF RULES. (a) Failure to mail notice
5 to a person under AS 42.40.180(a) or 42.40.190(a) does not invalidate
6 an action taken by the board.

7 (b) An interested person may challenge a rule adopted, amended,
8 or repealed by the board by bringing an action in the superior court.
9 In addition to other grounds, a court may declare a change invalid

10 (1) for substantial failure by the board to comply with
11 AS 42.40.180 or 42.40.190; or

12 (2) if the rule was adopted under AS 42.40.190, upon the
13 grounds that the emergency change was not necessary for the orderly
14 operation of the corporation's facilities or programs.

15 Sec. 42.40.210. PREVIOUSLY ADOPTED RULES AND ORDERS. The board
16 may provide by resolution that rules and orders in effect on the date
17 of transfer remain in effect until amended or repealed by the board.
18 AS 42.40.180 does not apply to actions taken under this section.

19 Sec. 42.40.220. PUBLIC DISCLOSURE OF INFORMATION. (a) Except
20 as provided under (b) of this section, information in the possession
21 of the corporation is public and is open to public inspection at
22 reasonable times.

23 (b) The corporation may by rule designate and withhold public
24 disclosure of matters of a nonpublic, privileged, or proprietary
25 nature. Those matters include personnel records, communications with
26 and work product of legal counsel, and, consistent with the standards
27 and practices of the United States Interstate Commerce Commission for
28 the protection of these matters, other information including
29 proprietary information associated with specific shippers, divisions

1 and contract rate agreements.

2 ARTICLE 4. POWERS AND DUTIES.

3 Sec. 42.40.250. GENERAL POWERS. In addition to the exercise of
4 other powers authorized by law, the corporation may

- 5 (1) adopt a seal;
- 6 (2) adopt bylaws governing the business of the corporation;
- 7 (3) sue and be sued;
- 8 (4) appoint trustees and agents of the corporation and
9 prescribe their powers and duties;
- 10 (5) hire legal counsel to represent the corporation;
- 11 (6) make contracts and execute instruments necessary or
12 convenient in the exercise of its powers and duties;
- 13 (7) acquire by purchase, lease, bequest, devise, gift,
14 exchange, the satisfaction of debts, the foreclosure of mortgages, or
15 otherwise, personal property, rights, rights-of-way, franchises,
16 easements, and other interest in land, and acquire by appropriation
17 water rights that are located in the state, taking title to the prop-
18 erty in the name of the corporation;
- 19 (8) hold, maintain, use, operate, lease, exchange, donate,
20 improve, convey, alienate, dispose of, or transfer land or personal
21 property, subject to other provisions of this chapter;
- 22 (9) contract with and accept transfers, gifts, grants or
23 loans of funds or property from the United States and the state or its
24 political subdivisions, subject to other provisions of federal or
25 state law or municipal ordinances;
- 26 (10) undertake and provide for the management, operation,
27 maintenance, use, and control of all of the property of the corpo-
28 ration, including all land and personal property of the Alaska
29 Railroad transferred under 45 U.S.C. 1203(a) and described in the

1 report dated July 14, 1983, as amended, submitted to Congress and the
2 legislature under 45 U.S.C. 1204(a);

3 (11) recommend to the legislature and the governor any tax,
4 financing, or financial arrangement the corporation considers appro-
5 priate for expansion or extension and operation of the Alaska Rail-
6 road;

7 (12) maintain offices and facilities at places it desig-
8 nates;

9 (13) apply to the state, the United States, and foreign
10 countries or other proper agencies for the permits, licenses, or
11 approvals necessary to construct, maintain, and operate railroad
12 transportation services, and obtain, hold, and reuse the licenses and
13 permits in the same manner as other railroad operators;

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

28 (27) do all things necessary or desirable to carry out the
29 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.

3 Sec. 42.40.260. ANNUAL REPORT. Within 90 days following the end
4 of the fiscal year of the Alaska Railroad the board shall direct
5 preparation of, certify and distribute to the governor and to the
6 legislature a report describing the operations and financial condition
7 of the corporation during the preceding fiscal year. The report shall
8 itemize the cost of providing each category of service offered by the
9 railroad and the income generated by each category.

10 Sec. 42.40.270. AUDITS. (a) The board shall have the financial
11 records of the corporation audited annually by an independent
12 certified public accountant experienced in railroad accounting. The
13 board shall have an annual performance audit conducted by a recognized
14 railroad management expert to assure that the railroad is being
15 managed and operated effectively and efficiently in accordance with
16 the requirements of this chapter.

17 (b) The corporation shall make all of its financial records
18 available to an auditor appointed by the governor and to the
19 legislative audit division for examination. Disclosure to the public
20 by the auditor or legislative audit division of this information is
21 subject to AS 42.40.220 and rules implementing that section.

22 Sec. 42.40.280. LONG RANGE CAPITAL IMPROVEMENT AND PROGRAM PLAN.
23 (a) The corporation shall prepare and the board shall adopt a long
24 range capital improvement and program plan. The plan shall explain
25 the manner in which the corporation intends to accomplish the purposes
26 of this chapter and the corporation's anticipated capital improvements
27 during each of the five years after the plan is adopted.

28 (b) The board shall annually review and approve revisions to the
29 long range capital improvement and program plan. The board shall

1 provide copies of the updated plan to the governor and the legislature
2 by December 1 of each year.

3 Sec. 42.40.290. USE OF CORPORATION ASSETS. The corporation
4 shall apply all money, property, other assets, and credit of the
5 corporation toward activities authorized by this chapter. The corpo-
6 ration may not issue shares of stock, pay dividends, make private
7 distributions of assets, make loans to board members or employees, or
8 engage in business for private benefit. The use of money, property,
9 other assets, or credit of the corporation for a purpose not author-
10 ized by law by a person having the possession or control of it is
11 prohibited.

12 Sec. 42.40.300. INDEMNIFICATION. (a) The corporation may
13 defend and indemnify a current or former member of the board, em-
14 ployee, or agent of the corporation against all costs, expenses, judg-
15 ments, and liabilities, including attorney's fees, incurred by or
16 imposed upon that person in connection with a civil or criminal action
17 in which the person is involved by affiliation with the corporation,
18 if the person acted in good faith on behalf of the corporation and
19 within the scope of official duties or powers.

20 (b) The corporation may purchase insurance to protect and hold
21 personally harmless its employees, agents, and board members from an
22 action, claim, or proceeding arising out of the performance, purported
23 performance, or failure of performance, in good faith, of duties for,
24 or employment with, the corporation and to hold them harmless from
25 expenses connected with the defense, settlement, or monetary judgments
26 from that action, claim, or proceeding. The purchase of insurance is
27 discretionary with the board and insurance is not considered to be
28 compensation to the insured person.

29 ARTICLE 5. CORPORATION PROPERTY.

1 Sec. 42.40.350. LAND. (a) All land transferred under 45 U.S.C.
2 1201 - 1214 (Alaska Railroad Transfer Act of 1982) or otherwise ac-
3 quired by the corporation is under the control of the corporation.
4 All land that is transferred or acquired by the corporation is des-
5 ignated as follows:

6 (1) railroad rights-of-way or easements are railroad
7 utility corridors;

8 (2) land other than railroad rights-of-way or easements is
9 rail land.

10 (b) Railroad utility corridors shall be of a width at least 100
11 feet on both sides of the centerline of the extended main or branch
12 line, or may be of lesser width if the adjoining land is not rail
13 land, and may be surveyed by the metes and bounds method. The
14 corporation may not convey land within a utility corridor. However,
15 the corporation may lease, grant easements or permits, or otherwise
16 authorize use of portions of a utility corridor for transportation,
17 communication, and transmission purposes and support functions
18 associated with those purposes, and for other uses authorized under
19 this chapter if the use does not restrict other parallel uses of the
20 utility corridor.

21 (c) The corporation may convey, lease, grant easements or per-
22 mits, or otherwise authorize use of portions of rail land.

23 Sec. 42.40.360. REQUEST FOR LAND. (a) The board may nominate
24 federal land necessary or useful for present, future or intended
25 railroad purposes and request the commissioner of natural resources to
26 select the land for the state through the federal land selection
27 process.

28 (b) The board by rule may identify and request the commissioner
29 of natural resources to convey land necessary or useful for present,

1 future, or intended railroad purposes owned by or tentatively approved
2 for transfer to the state including land not adjacent to a railroad
3 utility corridor. The request must include a statement of and
4 justification for the present, future or intended railroad use. Upon
5 receipt of a request, the commissioner shall temporarily reserve the
6 land identified in the request for railroad purposes and delay dis-
7 posal or lease of that land under other laws to a party other than the
8 corporation. The temporary reservation of land is subject to valid
9 existing rights and remains in effect for 180 days.

10 Sec. 42 40.370. CONVEYANCE OF LAND. (a) Within 90 days after
11 receiving a request under AS 42.40.360(b) the commissioner of natural
12 resources shall by written decision

13 (1) designate the identified land for railroad purposes
14 and, subject to valid existing rights, convey the state's interests in
15 the land to the corporation;

16 (2) notify the corporation of reasons for refusal to design-
17 ate the identified land for railroad purposes; or

18 (3) approve in part and deny in part the request.

19 (b) A conveyance of land under this section may be for less than
20 its appraised value as determined by the commissioner of natural
21 resources.

22 (c) In the absence of a reservation to the contrary, a convey-
23 ance of land under this section vests in the corporation ownership,
24 control of the surface and subsurface, and the exclusive right to
25 extract or use timber and other construction materials, sand, gravel,
26 rock, and the right to tunnel, ditch, recontour, excavate, or other-
27 wise use the land for railroad, transportation, transmission, and
28 related purposes without regard to the classification of the resources
29 as part of the surface or subsurface estate.

1 'd) The corporation may reconvey to the state land received
2 under this section that the corporation and the commissioner of natu-
3 ral resources jointly identify as unnecessary or unsuitable for the
4 corporation's purposes.

5 Sec. 42.40.380. USE OF STATE LAND. When physical conditions
6 require that track or other right-of-way fixtures of the corporation
7 be moved from the existing location and relocated on state land adja-
8 cent to or in the vicinity of the existing right-of-way and the chief
9 executive officer determines that relocation is necessary to maintain
10 safe and adequate rail operations, the corporation may effect the
11 relocation and notify the the Department of Natural Resources. The
12 relocation must affect only the amount of state land necessary to
13 adequately restore or continue safe rail operations at a normal level.

14 Sec. 42.40.390. LAND USE RULES. The board may adopt exclusive
15 rules governing land use by parties having interests in or permits for
16 land owned or managed by the corporation. The power conferred by this
17 section is exercised for the common health, safety, and welfare of the
18 public and to the extent constitutionally permissible, may not be
19 limited by the terms and conditions of leases, contracts, or other
20 transactions.

21 Sec. 42.40.400. EMINENT DOMAIN. (a) The corporation may exer-
22 cise the power of eminent domain under AS 09.55.240 - 09.55.460 to
23 acquire land for lawful purposes consistent with this chapter. The
24 corporation may acquire a fee simple title whenever, in the judgment
25 of the board, ownership of a fee simple title is necessary to carry
26 out the lawful purposes in condemning the land.

27 (b) The corporation may file a declaration of taking in the
28 manner provided for the state under AS 09.55.420.

29 (c) The power of eminent domain conferred under this section

1 includes the power to obtain clay, gravel, sand, timber, rock, or
2 other material for railroad use, the land necessary to obtain the
3 material, and access to the land and material.

4 Sec. 42.40.410. VACATION OF LAND. The corporation may vacate
5 land acquired for railroad purposes by executing and filing a deed in
6 the appropriate recording district. Upon filing the deed the state
7 shall acquire title to the land.

8 Sec. 42.40.420. FEDERAL LAND. The corporation may submit appli-
9 cations on its own behalf as an instrumentality of the state for
10 acquisition of federal land available under federal law that will
11 enhance the operations of the corporation. The corporation may re-
12 ceive in its own name conveyances of all interests in federal land.

13 Sec. 42.40.430. MUNICIPAL USE OF RAILROAD LAND. Upon request
14 the corporation may authorize use of railroad land for municipal
15 purposes. Subject to AS 42.40.350(b), the corporation may authorize a
16 municipality to establish a walkway or trail over a utility corridor.
17 Before authorizing a use under this section the board shall require
18 the municipality to execute an agreement in a form approved by the
19 board to

20 (1) hold the corporation harmless and indemnify the corpo-
21 ration for any use made of the railroad land including

22 (A) defending the corporation in a cause of action
23 brought against the corporation as a result of the use; and

24 (B) indemnifying the corporation for the amount of a
25 judgment rendered against the corporation including prejudgment
26 interest, costs, and attorney's fees; and

27 (2) stop the use of railroad land upon request of the
28 corporation if, as determined by the corporation, the use interferes
29 with expansion or replacement of railroad facilities.

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.

10 ARTICLE 6. FINANCIAL PROVISIONS.

11 Sec. 42.40.500. LIMITATION OF LIABILITY. A liability incurred
12 by the corporation shall be satisfied exclusively from the assets or
13 revenue of the corporation and no creditor or other person has a right
14 of action against the state because of a debt, obligation, or liabil-
15 ity of the corporation.

16 Sec. 42.40.510. FIDELITY BOND. The corporation shall obtain a
17 fidelity bond in an amount determined by the board for board members
18 and each executive officer responsible for accounts and finances. A
19 bond must be in effect during the entire tenure in office of the
20 bonded person.

21 Sec. 42.40.520. INSURANCE. Except as provided in AS 42.40.300-
22 (b), the corporation shall protect its assets, services, and employees
23 by purchasing insurance or providing for certain self-insurance re-
24 tentions. The corporation shall also maintain casualty, property,
25 business interruption, marine, boiler and machinery, pollution liabil-
26 ity, and other insurance in amounts reasonably calculated to cover
27 potential claims against the corporation or state for bodily injury,
28 death or disability and property damage that may arise from or be
29 related to corporation operations and activities.

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 1982).

5 Sec. 42.40.540. APPROPRIATIONS. The corporation may request,
6 with the concurrence of the governor, a direct appropriation or grant
7 from the legislature to assist in carrying out the provisions of this
8 chapter.

9 ARTICLE 7. BONDS AND NOTES.

10 Sec. 42.40.600. GENERAL PROVISIONS. (a) The corporation by
11 resolution may issue bonds and bond anticipation notes to provide
12 money to carry out its purposes. However, the proceeds may not be
13 used for activities other than those specifically related to the
14 purposes for which the instruments are originally issued.

15 (b) Bonds or bond anticipation notes may be issued in one or
16 more series and shall, as provided by the resolution of the board,

17 (1) be dated;

18 (2) bear interest at a required rate or rates per year or
19 within a maximum rate;

20 (3) be in a required denomination;

21 (4) be in a coupon or registered form;

22 (5) carry conversion or registration provisions;

23 (6) have a required rank or priority;

24 (7) be executed in the required manner and form;

25 (8) be payable as required from the sources, in the medium
26 of payment, and place or places inside or outside the state;

27 (9) be subject to authentication by a trustee or fiscal
28 agent; and

29 (10) be subject to terms of redemption with or without

1 premium.

2 (c) Bonds or bond anticipation notes may be sold in the manner,
3 on the terms, and at the price the board determines. Bond anticipa-
4 tion notes shall mature at the time or times determined by the board.
5 Bonds shall mature at the time, not exceeding 50 years from their
6 date, determined by the board.

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.

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.

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.

3 Sec. 42.40.640. AGREEMENTS WITH HOLDERS. The corporation may by
4 provisions in a resolution authorizing or relating to the issuance of
5 bonds or bond anticipation notes enter into the following agreements
6 with the holders of the instruments:

7 (1) pledge all or part of its revenue to which its right
8 then exists or may thereafter exist, the money derived from the reve-
9 nue, and the proceeds of its bonds or notes;

10 (2) covenant against pledging all or part of its revenue,
11 or against permitting or suffering a lien on its revenue or property;

12 (3) covenant as to establishment of reserves or sinking
13 funds and provide for, regulate, and dispose of the reserves or sink-
14 ing funds;

15 (4) covenant regarding limitations on a right to sell or
16 otherwise dispose of property of any kind;

17 (5) covenant as to bonds and notes to be issued, their
18 limitations, terms and conditions, the custody, application and dispo-
19 sition of the proceeds of the bonds and notes;

20 (6) covenant as to the issuance of additional bonds or
21 notes, or limitations on the issuance of additional bonds or notes,
22 and the incurring of other debts;

23 (7) covenant as to the payment of the principal of or
24 interest on the bonds or notes, the sources and methods of payment,
25 the rank or priority of the bonds or notes with respect to a lien or
26 security, or the acceleration of the maturity of the bonds or notes;

27 (8) provide for the replacement of lost, stolen, destroyed
28 or mutilated bonds or notes;

29 (9) covenant against extending the time for the payment of

1 bonds or notes, or interest on the bonds or notes;

2 (10) covenant as to the redemption of bonds or notes and
3 privileges of their exchange for other bonds or notes of the corpo-
4 ration;

5 (11) covenant to create or authorize the creation of special
6 funds of money to be held in pledge or otherwise for operating ex-
7 penses, payment or redemption of bonds or notes, reserves or other
8 purposes, and as to the use and disposition of the money held in the
9 funds;

10 (12) establish the procedure by which the terms of a con-
11 tract or covenant with or for the benefit of the holders of bonds or
12 notes may be amended or abrogated, the amount of bonds or notes the
13 holders of which must consent to amendment or abrogation, and the
14 manner in which the consent may be given;

15 (13) covenant as to the custody of any of its properties or
16 investments, their safekeeping and insurance, and the use and disposi-
17 tion of insurance money;

18 (14) to vest in a trustee or trustees inside or outside the
19 state property, rights, powers and duties in trust as the corporation
20 may determine that may include any or all of the rights, powers and
21 duties of a trustee appointed by the holders of bonds or notes of the
22 corporation, and to limit or abrogate the rights of the holders of the
23 bonds or notes of the corporation to appoint a trustee under this
24 chapter or limit the rights, powers and duties of the trustee;

25 (15) to pay the costs or expenses incident to the enforce-
26 ment of the bonds or notes, of the provisions of the resolution, or of
27 a covenant or agreement of the corporation with the holders of its
28 bonds or notes;

29 (16) agree with a corporation trustee, that may be a trust

1 company or bank having the powers of a trust company inside or outside
2 the state, as to the pledging or assigning of revenue or funds that or
3 in which the corporation has a right or interest; the agreement may
4 provide for other rights and remedies exercisable by the trustee for
5 the protection of the holders of bonds or notes of the corporation and
6 not otherwise in violation of law, and may provide for the restriction
7 of the rights of an individual holder of bonds or notes of the corpo-
8 ration;

9 (17) to appoint and provide for the duties and obligations
10 of a paying agent or other fiduciary inside or outside the state;

11 (18) to limit the rights of the holders of bonds or notes of
12 the corporation to enforce a pledge or covenant securing the bonds or
13 notes; and

14 (19) covenants other than and in addition to the covenants
15 expressly authorized in this section, of like or different character,
16 and make covenants to do or refrain from doing acts in order to better
17 secure bonds or notes or that, in the absolute discretion of the
18 board, will tend to make bonds or notes more marketable.

19 Sec. 42.40.650. INTERIM RECEIPTS, TEMPORARY BONDS, AND TEMPORARY
20 BOND ANTICIPATION NOTES. Before the preparation of definitive bonds
21 or bond anticipation notes, the corporation may issue interim receipts
22 or temporary bonds or bond anticipation notes, with or without cou-
23 pons, exchangeable for bonds or bond anticipation notes when those
24 definitive bonds or bond anticipation notes have been executed and are
25 available for delivery.

26 Sec. 42.40.660. REFUNDING BONDS. (a) The corporation may
27 provide for the issuance of refunding bonds for the purpose of refund-
28 ing bonds then outstanding that have been issued under this chapter,
29 including the payment of a redemption premium on them and interest

1 that accrues to the date of redemption of the bonds. Refunding bonds
2 shall be issued in accordance with provisions of this chapter that
3 relate to the issuance of bonds to the extent those provisions are
4 appropriate.

5 (b) Refunding bonds may be sold or exchanged for outstanding
6 bonds issued under this chapter and the proceeds may be applied to the
7 purchase, redemption or payment of the outstanding bonds in addition
8 to other authorized purposes. Pending the application of the proceeds
9 of refunding bonds to the payment of the principal, accrued interest
10 and redemption premium on the bonds being refunded, and, if permitted
11 in the resolution authorizing the issuance of the refunding bonds or
12 in the trust agreement securing them, to the payment of interest on
13 the refunding bonds and expenses in connection with the refunding, the
14 proceeds may be invested in direct obligations of the United States or
15 obligations the principal of and the interest on which are uncondi-
16 tionally guaranteed by the United States that mature or may be re-
17 deemed not later than the date the proceeds of the refunding bonds,
18 together with the interest accruing on them, will be required for the
19 purposes intended.

20 Sec. 42.40.670. INDEPENDENT FINANCIAL ADVISOR. In negotiating
21 the private or public sale of bonds or bond anticipation notes to an
22 underwriter the board shall retain a financial advisor who is
23 independent from the underwriter.

24 Sec. 42.40.680. VALIDITY OF SIGNATURES. If an officer of the
25 corporation whose signature or a facsimile of whose signature appears
26 on bonds, notes, or coupons attached to them ceases to be an officer
27 before the delivery of the bond, note, or coupon, the signature or
28 facsimile is valid the same as if the person had remained in office
29 until delivery.

1 Sec. 42.40.690. 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.

13 Sec. 42.40.700. REMEDIES. A holder of bonds or notes issued
14 under this chapter or of coupons attached to them, and a trustee under
15 a trust agreement or resolution authorizing the issuance of the bonds
16 or notes, except as restricted by a trust agreement or resolution,
17 either at law or in equity, may

18 (1) enforce all rights granted under this chapter, the
19 trust agreement or resolution, or any other contract executed by the
20 corporation under this chapter; and

21 (2) compel the performance of all duties of the corporation
22 required by this chapter or by the trust agreement or resolution.

23 Sec. 42.40.710. CREDIT OF STATE NOT PLEDGED. (a) The state and
24 its political subdivisions are not liable for the debts of the corpo-
25 ration. Bonds and notes issued under this chapter are payable solely
26 from the revenue or assets of the corporation and do not constitute a

27 (1) debt, liability, or obligation of the state or of a
28 political subdivision of the state; or

29 (2) pledge of the faith and credit of the state or of a

1 political subdivision of the state.

2 (b) The corporation may not pledge the credit or the taxing
3 power of the state or its political subdivisions. Each bond and note
4 issued under this chapter shall contain on its face a statement that

5 (1) the corporation is not obligated to pay it or the
6 interest on it except from the revenue or assets pledged for it; and

7 (2) neither the faith and credit nor the taxing power of
8 the state or of a political subdivision of the state is pledged to the
9 payment of it.

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 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

15 Sec. 42.40.750 CORPORATION EMPLOYEES. (a) Employees of the
16 Alaska Railroad are employees of the corporation and not of the state.
17 The provisions of AS 39 do not apply to employees of the corporation.

18 Sec. 42.40.760. COLLECTIVE BARGAINING RIGHTS. The provisions of
19 AS 23.40 (Public Employee Relations Act) do not apply to the corpo-
20 ration or to its employees. However, employees that are not executive
21 officers may organize and form, join, or assist an organization to
22 engage in collective bargaining with respect to wages, hours and other
23 terms and conditions of employment.

24 Sec. 42.40.770. AGREEMENT. (a) At the request of the board or
25 corporation employee organization, the Department of Administration
26 shall participate in negotiations between the corporation and the
27 employee organization.

28 (b) An agreement executed between the corporation and an em-
29 ployee organization shall provide for a grievance procedure in which

1 the final step in the procedure is binding arbitration. The agreement
2 shall define "grievance" for purposes of this section.

3 Sec. 42.40.780. RAILROAD EMPLOYEES LABOR RELATIONS AGENCY. (a)
4 There is established a railroad employees labor relations agency that
5 consists of three members appointed by the governor. One member shall
6 be a member of the state personnel board. Members serve at the plea-
7 sure of the governor.

8 (b) The railroad labor relations agency shall perform the func-
9 tions described in AS 23.40.090 - 23.40.190 and carry out the provi-
10 sions of AS 42.40.750 - 42.40.810.

11 (c) Members of the railroad employees labor relations agency
12 receive no compensation for their services, but are entitled to per
13 diem and travel expenses authorized for boards and commissions.

14 Sec. 42.40.790. STRIKES. (a) Employees may engage in a strike
15 if a majority of the employees in a collective bargaining unit vote by
16 secret ballot to do so.

17 (b) Notwithstanding the provisions of (a) of this section, the
18 employees and the corporation may agree in writing to submit a dispute
19 arising from interpretation or application of a collective bargaining
20 agreement to arbitration.

21 Sec. 42.40.800. POLITICAL ACTIVITIES. (a) Money, assets, or
22 property of the corporation may not be used for political activity.
23 However, board members and employees may communicate with and appear
24 before committees of Congress, the state legislature, and municipal
25 governing bodies in connection with matters directly affecting the
26 corporation.

27 (b) A board member or employee who violates the provisions of
28 this section is personally subject to a civil penalty assessed by a
29 judge of the superior court in an amount not to exceed \$5,000. An

1 action to enforce this section may be brought by any person.

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

1 activity.

2 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.

17 Sec. 42.40.910. EXEMPTION FROM TAXATION. (a) The exercise of
18 the powers granted by this chapter shall be in all respects for the
19 benefit of the people of the state, for their well-being and prosper-
20 ity, and for the improvement of their social and economic conditions.
21 Subject to (b) of this section, the real and personal property of the
22 corporation and its assets, income, and receipts are exempt from all
23 taxes and special assessments of the state or a political subdivision
24 or the state.

25 (b) Bonds and notes issued under this chapter are issued by a
26 body corporate and public of the state and for an essential public and
27 governmental purpose. Therefore, the bonds and notes, the interest
28 and income from them, and all fees, charges, funds, revenue, income
29 and other money pledged or available to pay or secure the payment of

1 the bonds and notes or interest on them, are exempt from taxation
2 except for inheritance, transfer, and estate taxes.

3 (c) This section does not affect or limit an exemption from
4 license fees, property taxes, or excise, income or other taxes, pro-
5 vided under any other law, nor does it create a tax exemption with
6 respect to the interest of any business enterprise or other person,
7 other than the corporation.

8 Sec. 42.40.920. APPLICATION OF EXISTING LAWS. (a) The corpo-
9 ration is not subject to the jurisdiction of the Alaska Transportation
10 Commission.

11 (b) The following laws do not apply to the operations of the
12 corporation:

- 13 (1) AS 19;
14 (2) AS 30.15;
15 (3) AS 35;
16 (4) AS 37.05;
17 (5) AS 37.07;
18 (6) AS 37.10.010 - 37.10.060;
19 (7) AS 37.10.085;
20 (8) AS 37.20;
21 (9) AS 37.25;
22 (10) AS 38;
23 (11) AS 44.62.040 - 44.62.320.

24 Sec. 42.40.930. CONFLICTING LAWS INAPPLICABLE. If provisions of
25 AS 42.40 conflict with the provisions of other state law, the
26 provisions of AS 42.40 prevail. Provisions of AS 42.40 shall be
27 construed so that they do not conflict with 45 U.S.C. 1201 - 1214
28 (Alaska Railroad Transfer Act of 1982).

29 Sec. 42.40.940. REVERSION OF ASSETS. If the corporation ceases

1 to exist, for whatever reason, its assets revert to the state.

2 Sec. 42.40.980. DEFINITIONS. In this chapter unless the context
3 otherwise requires,

4 (1) "board" means the board of directors of the Alaska
5 Railroad Corporation;

6 (2) "collective bargaining" means negotiating with an
7 employees organization and representing employees on matters pertain-
8 ing to conditions of employment;

9 (3) "corporation" means the Alaska Railroad Corporation;

10 (4) "date of transfer" means the date on which the United
11 States Secretary of Transportation delivers the transfer documents
12 under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982);

13 (5) "employees" means all persons employed by the corpo-
14 ration including executive officers;

15 (6) "executive officer" means the corporation's chief
16 executive officer, assistant chief executive officer, assistant to the
17 chief executive officer, chief of administration, superintendent of
18 transportation, manager of marketing and sales, chief engineer, chief
19 mechanical officer, manager of industrial development and real estate,
20 manager of budget and accounting, manager of planning, manager of
21 personnel, manager of supply and procurement, chief of security,
22 manager of operating rules, manager of data processing, manager of
23 strategy, manager of operations planning, manager of supply, manager
24 of procurement, manager of safety, manager of administrative proce-
25 dure, chief counsel, or, if so designated by the board, any employee
26 who fulfills these management functions under a different title or who
27 exercises a similar or comparable level of responsibility;

28 (7) "land" means any interest in real property, including
29 tide and submerged land.

1 Sec. 42.40.990. SHORT TITLE. This chapter may be referred to as
2 the Alaska Railroad Corporation Act.

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.

11 * 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.

24 * Sec. 5. AS 42.40.020(e) is amended to read:

25 (e) Except for [THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVEL-
26 OPMENT AND] the chief executive officer of the corporation, the mem-
27 bers of the board shall be confirmed by a majority of the members of
28 each house of the legislature in joint session. A member appointed by
29 the governor has the full powers and responsibilities of a confirmed

1 board member until the member is rejected by the legislature.

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].

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.

15 * Sec. 8. AS 42.40.180 is repealed and reenacted to read:

16 Sec. 42.40.180. RULES. (a) The board shall establish a proce-
17 dure for adopting, amending, and repealing rules to carry out its
18 functions and the purposes of this chapter, including a procedure for
19 the adoption or change of rules on an emergency basis when essential
20 to continue or to reinstate the orderly operation of the corporation's
21 facilities or programs.

22 (b) The board shall adopt rules to safeguard property owned,
23 managed, or transported by the corporation and to protect employees
24 and persons using the corporation's property or services.

25 * Sec. 9. SPECIAL REPORT. The governor shall contract with a private
26 consultant for the preparation of a report on the long-term operations of
27 the Alaska Railroad that are in the best interest of the state. The report
28 shall be submitted to the governor and the legislature by January 1, 1988.
29 It shall contain specific recommendations on operational alternatives and

1 the transfer of all or part of the railroad operation to the private sec-
2 tor.

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. 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.

24 * Sec. 12. AS 42.40.190 and 42.40.200 are repealed.

25 * Sec. 13. Sections 3 - 8 and 12 of this Act take effect on the effec-
26 tive date of an amendment to the Constitution of the State of Alaska relat-
27 ing to the Alaska Railroad.

28 * Sec. 14. Sections 1, 2, and 9 - 11 of this Act take effect imme-
29 diately in accordance with AS 01.10.070(c).

ERRATA

Page 8, line 10, delete entire number (11) and renumber accordingly.

Page 9, line 4, should be AS 42.40.160 instead of AS 42.40.140.

Page 17, line 1 and line 8, add the following:

After "REPORT." insert "(a)" and on line 8 add a new (b) to read: "(b) Every five years the annual report shall include an analysis of potential sales arrangements with private enterprise. The analysis shall include documentation of at least three corporation initiated orders to sell the corporation to private enterprise."

Original sponsors: Kerttula, Faiks,
Halford, et al

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 352 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Alaska Railroad Corporation
7 to operate the Alaska Railroad with a board of nine
8 directors responsible for management of the corpora-
9 tion; requiring the board to appoint a chief execu-
10 tive officer to manage the daily affairs and opera-
11 tions of the corporation; authorizing the board to
12 adopt rules to carry out its functions; authorizing
13 the corporation to issue bonds and notes; authorizing
14 the corporation to own and manage all property ac-
15 quired by the corporation or transferred to the state
16 under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer
17 Act of 1982); authorizing the corporation to exercise
18 eminent domain; exempting the corporation from AS 19,
19 AS 23.40.070 - 23.40.260, AS 30.15, AS 35, AS 37.05,
20 AS 37.07, AS 37.10.010 - 37.10.060, 37.10.085,
21 AS 37.20, AS 37.25, AS 38, AS 39, and AS 44.62.040 -
22 44.62.320; and providing for an effective date."

23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

24 * Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature
25 finds that

26 (1) it is the policy of the state to

27 (A) provide safe, economical, and efficient transportation
28 to residents, businesses, visitors, and military installations in the
29 state;

1 (B) foster and promote the long-term economic growth and
2 development of the state;

3 (C) develop and implement plans for a transportation net-
4 work;

5 (D) foster and promote the development of the state's land
6 and natural resources;

7 (2) the Alaska Railroad is an essential part of the state trans-
8 portation network that may, unless preserved by state action, cease to be a
9 transportation option in Alaska;

10 (3) the federal government has offered to the state the option
11 of taking over the Alaska Railroad to ensure its continued existence; and

12 (4) it is in the state's best interest to accept the railroad
13 under the terms and conditions offered by the United States government.

14 (b) It is the purpose of this Act to

15 (1) create a viable economic entity with the powers and duties
16 necessary to operate and manage the Alaska Railroad pending eventual trans-
17 fer of the railroad to the private sector for its ownership or operation or
18 both consistent with 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of
19 1982);

20 (2) provide for the level of transportation service that best
21 satisfies the needs of the people of the state consistent with the other
22 findings and policies of this section;

23 (3) create a public corporation with the powers, duties, and
24 functions needed to operate the Alaska Railroad and manage its rail, indus-
25 trial, port and other properties in the best interest of the people of the
26 state by ensuring that the corporation will

27 (A) be exclusively responsible for the management of the
28 financial and legal obligations of the Alaska Railroad;

29 (B) operate the railroad as a common carrier subject to the

1 jurisdiction of the United States Interstate Commerce Commission
2 consistent with 45 U.S.C. 1207;

3 (C) have the ability to raise capital by issuing obliga-
4 tions exempt from federal and state taxation and applying for federal
5 money to which the state may be entitled or that may be available;

6 (D) carry out its responsibilities on a self-sustaining
7 basis;

8 (E) provide the best possible combination of types and
9 levels of safe, efficient, and economical transportation to meet the
10 overall needs of the state, supported when necessary by state invest-
11 ment;

12 (F) provide for the prudent operation of the railroad
13 according to sound business management practices; and

14 (G) preserve the integrity of the railroad utility corridor
15 for transportation, communication, and transmission purposes;

16 (4) ensure that borrowing by the corporation does not directly
17 or indirectly endanger the state's own borrowing capacity.

18 * Sec. 2. AS 42 is amended by adding a new chapter to read:

19 CHAPTER 40. ALASKA RAILROAD CORPORATION.

20 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

21 Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is
22 established the Alaska Railroad Corporation. The corporation is a
23 public corporation and is an instrumentality of the state within the
24 Department of Commerce and Economic Development. The corporation has
25 a legal existence independent of and separate from the state. The
26 exercise by the corporation of the powers provided in this chapter is
27 considered an essential government function of the state.

28 Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the
29 corporation are vested in the board of directors. The board consists

1 of the commissioner of commerce and economic development, the chief
2 executive officer of the corporation, and seven members appointed by
3 the governor. The seven appointed members must be registered voters
4 in the state except as provided in (b) and (c) of this section.
5 Except for the member appointed under (d) of this section, no more
6 than two appointed members may be from any one of the four judicial
7 districts in the state. Two of the appointed members must have at
8 least five years experience as owners or managers of a business in the
9 state. Except for the commissioner, the chief executive officer, and
10 the member appointed under (d) of this section, a member may not be a
11 state officer or employee.

12 (b) One member of the board shall be a person who has at least
13 10 years of experience in railroad management. A person who is not a
14 resident of the state may be appointed under this subsection.

15 (c) One member of the board shall be or have been an executive
16 official of a United States railroad and shall be selected in accor-
17 dance with any requirements imposed under 49 U.S.C. (Interstate Com-
18 merce Act). A person who is not a resident of the state may be ap-
19 pointed under this subsection.

20 (d) One member shall be an employee who is a member of a bar-
21 gaining unit representing employees of the corporation.

22 (e) Except for the commissioner of commerce and economic devel-
23 opment and the chief executive officer of the corporation, the members
24 of the board shall be confirmed by a majority of the members of each
25 house of the legislature in joint session. A member appointed by the
26 governor has the full powers and responsibilities of a confirmed board
27 member until the member is rejected by the legislature.

28 Sec. 42.40.030. TERM OF OFFICE. Except for the commissioner of
29 commerce and economic development and the chief executive officer of

1 the corporation, members of the board serve for staggered terms of
2 five years each at the pleasure of the governor.

3 Sec. 42.40.040. VACANCIES. (a) A vacancy on the board is
4 filled by appointment by the governor, and the appointment must be
5 confirmed by the members of each house of the legislature in joint
6 session. A member appointed to fill a vacancy holds office for the
7 balance of the term for which the member's predecessor was appointed.

8 (b) A vacancy on the board does not impair the authority of a
9 quorum of members to exercise the powers and perform the duties of the
10 board.

11 (c) A member of the board whose term has expired shall serve
12 until a successor has been appointed.

13 Sec. 42.40.050. COMPENSATION AND EXPENSES. (a) An appointed
14 member of the board is entitled to compensation at a rate of \$400 for
15 each day the member is engaged in the actual performance of duties as
16 a member of the board. The board may provide by rule for compensation
17 for partial days during which an appointed member is engaged in actual
18 performance of duties as a member of the board.

19 (b) In addition to compensation under (a) of this section, an
20 appointed member of the board is entitled to per diem and travel
21 expenses authorized by law for state boards and commissions.

22 Sec. 42.40.060. BOARD OFFICERS. (a) The board shall elect from
23 its membership a chairman and vice-chairman and prescribe their duties
24 by rule.

25 (b) The board shall appoint a secretary and prescribe the duties
26 of the secretary.

27 ARTICLE 2. MANAGEMENT.

28 Sec. 42.40.100. MANAGEMENT BY THE BOARD. The board is responsi-
29 ble for the management of the corporation but shall delegate certain

1 powers and duties to the chief executive officer in accordance with
2 AS 42.40.120. In managing the corporation the board shall

3 (1) be responsible for the management of the financial and
4 legal obligations of the Alaska Railroad;

5 (2) operate the Alaska Railroad as a common carrier subject
6 to the jurisdiction of the United States Interstate Commerce Commis-
7 sion consistent with 45 U.S.C. 1207;

8 (3) generally manage the corporation on a self-sustaining
9 basis;

10 (4) apply to the legislature for an appropriation to be
11 used to provide a particular service that is not otherwise self-
12 sustaining if a subsidy is required to maintain that service;

13 (5) provide for safe, efficient, and economical transporta-
14 tion to meet the overall needs of the state;

15 (6) raise needed capital by issuing obligations of the
16 corporation while ensuring that borrowing by the corporation does not
17 directly or indirectly endanger the state's own borrowing capacity;

18 (7) review all private and state land disposal proposals to
19 aid in planning for future development or expansion of transportation
20 services;

21 (8) ensure that the accounting and procurement procedures
22 of the corporation meet accepted railroad industry standards;

23 (9) ensure that standards of the United States Interstate
24 Commerce Commission for class I railroads are used for accounting
25 purposes by the corporation.

26 Sec. 42.40.110. EXECUTIVE OFFICERS. (a) The board shall ap-
27 point the chief executive officer of the corporation who serves at the
28 pleasure of the board. The board shall fix compensation for the chief
29 executive officer.

1 (b) The chief executive officer of the corporation shall appoint
2 and fix the compensation for other executive officers. The compen-
3 sation for an executive officer appointed under this subsection is
4 subject to board approval.

5 Sec. 42.40.120. DELEGATION. (a) The board shall by rule dele-
6 gate to the chief executive officer powers and duties necessary or
7 appropriate for the management of the daily affairs and operations of
8 the corporation. The board may by rule require the exercise of a
9 delegated power or duty to be subject to board approval.

10 (b) Within 60 days after its first meeting, the board shall
11 delegate the following activities of the corporation to the chief
12 executive officer or other executive officers designated by the board:

13 (1) leasing, granting easements in, issuing permits for the
14 use of, or conveying other interests in property that do not consti-
15 tute a transfer of the corporation's entire interest in land;

16 (2) establishing specific rates, tariffs, divisions, and
17 contract rate agreements;

18 (3) making routine changes in service levels;

19 (4) establishing procurement and accounting procedures for
20 the corporation; and

21 (5) performing procurement activities.

22 (c) Notwithstanding (a) and (b) of this section, specific board
23 approval is required for the following:

24 (1) issuing notes, debentures, and bonds;

25 (2) mortgaging or pledging corporation assets;

26 (3) donating property or other assets belonging to the
27 corporation;

28 (4) acting as a surety or guarantor;

29 (5) adopting a long-range capital improvement and program

1 plan;

2 (6) adopting annual reports;

3 (7) effecting general comprehensive increases and decreases
4 in rates;

5 (8) expanding or reducing services in a major way;

6 (9) expanding the main or branch rail lines, other than
7 performing routine track alignment as necessary to maintain service
8 levels in effect on the date of transfer;

9 (10) selecting independent auditors and accountants;

10 (11) exercising the power of eminent domain;

11 (12) entering into collective bargaining agreements; and

12 (13) adopting annual budgets;

13 (14) beginning a capital project with an estimated comple-
14 tion cost of more than \$500,000 or an estimated completion time of
15 more than one year.

16 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

17 Sec. 42.40.150. MEETINGS OF THE BOARD. (a) The chairman of the
18 board shall call meetings of the board at least once every three
19 months and may call other meetings of the board as necessary. The
20 chairman shall preside at meetings.

21 (b) Except for executive sessions, the meetings of the board are
22 public. The board shall provide by rule for a method of providing
23 reasonable notice to the public of its meetings.

24 (c) The board shall keep minutes of each meeting.

25 Sec. 42.40.160. QUORUM AND VOTING. (a) Five voting members of
26 the board constitutes a quorum for the transaction of business.

27 (b) Five affirmative votes are required for board action. The
28 board shall provide by rule for the manner of voting, except that the
29 board may not provide for voting by proxy. The rules may provide for

1 voting and conferring by telecommunication devices.

2 Sec. 42.40.170. EXECUTIVE SESSIONS. (a) The question of hold-
3 ing an executive session shall be determined in accordance with
4 AS 42.40.140. A subject may not be considered at an executive session
5 unless it is mentioned in the motion calling for the executive session
6 or is auxiliary to a subject mentioned. An action may not be taken at
7 an executive session.

8 (b) Only the following subjects may be discussed in an executive
9 session:

10 (1) matters, the immediate knowledge of which would clearly
11 have an adverse effect upon the finances of the corporation;

12 (2) unless the person has requested to have the subjects
13 discussed in public, subjects that tend to prejudice the reputation
14 and character of a person;

15 (3) matters that, by law or municipal charter or ordinance,
16 are permitted to be kept confidential from public disclosure;

17 (4) matters pertaining to personnel;

18 (5) matters pertaining to the corporation's legal position;

19 (6) land acquisition or disposal; and

20 (7) proprietary or other information of a type treated as
21 confidential under the standards and practices of the United States
22 Interstate Commerce Commission, including practices that protect
23 information associated with specific shippers, divisions, and contract
24 rate agreements.

25 Sec. 42.40.180. RULES. (a) The board shall adopt rules to
26 carry out its functions and the purposes of this chapter, including
27 rules to safeguard property owned, managed, or transported by the
28 corporation and to protect employees and persons using the corpora-
29 tion's property or services. At least 15 days before the adoption,

1 amendment, or repeal of a rule, the board shall give public notice of
2 the proposed action by publishing a notice in at least three news-
3 papers of general circulation in the state and by mailing a copy of
4 the notice to each person who has requested notice of proposed changes
5 to rules. The notice must state the time, place, and nature of the
6 proceedings and must contain a summary of the subject of the proposed
7 change.

8 (b) On the date and at the time and place designated in the
9 notice required under (a) of this section the board shall provide each
10 interested person an opportunity to present statements in writing
11 concerning the proposed change and shall give members of the public an
12 opportunity to present oral statements for a total period of at least
13 one hour.

14 (c) The board shall consider all relevant matters presented to
15 it before adopting, amending, or repealing a rule. The board may take
16 action on a rule that varies in content from the summary provided with
17 the notice of the proposed change if the subject of the rule was
18 reflected in the summary and it provided reasonable notice to the
19 public as to whether their interests could be affected by the board's
20 action on that subject.

21 (d) The board shall establish in the bylaws of the corporation
22 additional procedures for adopting rules if necessary.

23 Sec. 42.40.190. EMERGENCY RULES. (a) The board shall establish
24 in the bylaws of the corporation a procedure for the adoption, amend-
25 ment, or repeal of a rule on an emergency basis. An emergency change
26 may be made only when necessary for the orderly operation of the
27 corporation's facilities or programs. The requirements of AS 42.-
28 40.180 do not apply to actions taken under this section. However,
29 within 10 days after the adoption, amendment, or repeal of a rule on

1 an emergency basis the board shall give notice of its action that
2 substantially complies with the notice requirements of AS 42.40.-
3 180(a).

4 (b) An action taken under this section remains in effect for not
5 more than 120 days. To prevent an emergency change from lapsing the
6 board may make the same change under AS 42.40.180 before the end of
7 the 120-day period.

8 Sec. 42.40.200. VALIDITY OF RULES. (a) Failure to mail notice
9 to a person under AS 42.40.180(a) or 42.40.190(a) does not invalidate
10 an action taken by the board.

11 (b) An interested person may challenge a rule adopted, amended,
12 or repealed by the board by bringing an action in the superior court.
13 In addition to other grounds, a court may declare a change invalid

14 (1) for substantial failure by the board to comply with
15 AS 42.40.180 or 42.40.190; or

16 (2) if the rule was adopted under AS 42.40.190, upon the
17 grounds that the emergency change was not necessary for the orderly
18 operation of the corporation's facilities or programs.

19 Sec. 42.40.210. PREVIOUSLY ADOPTED RULES AND ORDERS. The board
20 may provide by resolution that rules and orders in effect on the date
21 of transfer remain in effect until amended or repealed by the board.
22 AS 42.40.180 does not apply to actions taken under this section.

23 Sec. 42.40.220. PUBLIC DISCLOSURE OF INFORMATION. (a) Except
24 as provided under (b) of this section, information in the possession
25 of the corporation is public and is open to public inspection at
26 reasonable times.

27 (b) The corporation may by rule designate and withhold public
28 disclosure of matters of a privileged or proprietary nature. Those
29 matters include personnel records, communications with and work

1 product of legal counsel, and, consistent with the standards prac-
2 tices of the United States Interstate Commerce Commission for the
3 protection of these matters, other information including proprietary
4 information associated with specific shippers, divisions and contract
5 rate agreements.

6 Sec. 42.40.230. CONFLICTS OF INTEREST. (a) Except as provided
7 in this section, a board member or executive officer of the corpora-
8 tion may not participate in a decision of the corporation in which
9 that person or a member of that person's immediate family has a direct
10 or indirect financial interest unless the financial interest is a
11 remote financial interest and participation is approved under (b) of
12 this section.

13 (b) A board member or executive officer may participate in a
14 decision if that person or a member of that person's immediate family
15 has only a remote interest, the fact and extent of the interest is
16 disclosed to the board in a public meeting and is noted in the minutes
17 of the board before any participation by the member or in the deci-
18 sion, and thereafter in a public meeting the board by vote authorizes
19 or approves the participation. If the person whose participation is
20 under consideration is a board member, that person may not vote under
21 this subsection. For purposes of this subsection, "remote interest"
22 means an interest that in good faith is defined as remote by rules
23 adopted by the corporation.

24 (c) A board member or executive officer is not considered to be
25 financially interested in a decision when the decision could not
26 affect that person in a manner different from its effect on the public
27 or community.

28 (d) Within 120 days of the first meeting of the board, the board
29 shall adopt and may subsequently amend rules implementing this

1 section, providing additional conflict of interest and ethical rules
2 it considers appropriate, and providing for the removal by the board
3 of a board member or executive officer who intentionally violates a
4 prohibition contained in this section.

5 (e) For purposes of this section

6 (1) "participate in a decision" includes all discussions,
7 deliberations, preliminary negotiations, and votes;

8 (2) "immediate family" means

9 (A) spouse;

10 (B) dependent parent, parent-in-law, child, son-in-
11 law, daughter-in-law, sibling, uncle, aunt, niece, or nephew,
12 residing in the household of the board member or executive
13 officer.

14 ARTICLE 4. POWERS AND DUTIES.

15 Sec. 42.40.250. GENERAL POWERS. In addition to the exercise of
16 other powers authorized by law, the corporation may

17 (1) adopt a seal;

18 (2) adopt bylaws governing the business of the corporation;

19 (3) sue and be sued;

20 (4) appoint trustees and agents of the corporation and
21 prescribe their powers and duties;

22 (5) hire legal counsel to represent the corporation;

23 (6) make contracts and execute instruments necessary or
24 convenient in the exercise of its powers and duties;

25 (7) acquire by purchase, lease, bequest, devise, gift,
26 exchange, the satisfaction of debts, the foreclosure of mortgages, or
27 otherwise, personal property, rights, rights-of-way, franchises,
28 easements, and other interest in land, and acquire by appropriation
29 water rights that are located in the state, taking title to the

1 property in the name of the corporation;

2 (8) hold, maintain, use, operate, improve, lease, exchange,
3 or encumber land or personal property and exchange, donate, convey,
4 alienate, or otherwise dispose of personal property, subject to other
5 provisions of this chapter;

6 (9) contract with and accept transfers, gifts, grants or
7 loans of funds or property from the United States and the state or its
8 political subdivisions, subject to other provisions of federal or
9 state law or municipal ordinances;

10 (10) undertake and provide for the management, operation,
11 maintenance, use, and control of all of the property of the corpo-
12 ration, including all land and personal property of the Alaska Rail-
13 road transferred under 45 U.S.C. 1203(a) and described in the report
14 dated July 14, 1983, as amended, submitted to Congress and the legis-
15 lature under 45 U.S.C. 1204(a);

16 (11) recommend to the legislature and the governor any tax,
17 financing, or financial arrangement the corporation considers appro-
18 priate for expansion or extension and operation of the Alaska Rail-
19 road;

20 (12) maintain offices and facilities at places it desig-
21 nates;

22 (13) apply to the state, the United States, and foreign
23 countries or other proper agencies for the permits, licenses, rights-
24 of-way, or approvals necessary to construct, maintain, and operate
25 railroad transportation services, and obtain, hold, and reuse the
26 licenses and permits in the same manner as other railroad operators;

27 (14) prescribe rates to be charged for services provided by
28 the Alaska Railroad consistent with 45 U.S.C. 1201 - 1214 (Alaska
29 Railroad Transfer Act of 1982);

1 (15) determine the routes, schedules, and types of service
2 to be provided by the Alaska Railroad;

3 (16) enter into contracts, leases, and other agreements
4 with connecting carriers, shippers, and other persons concerning the
5 services, activities, operations, property, and facilities of the
6 railroad, including agreements that contain provisions to preserve and
7 expand the railroad's traffic base;

8 (17) plan for and undertake expansion of the railroad and
9 railroad activities, including extension of the rail system, and
10 contract with other modes of transportation service connecting to the
11 rail system;

12 (18) hire and discharge railroad personnel and determine
13 benefits and other terms and conditions of employment, in accordance
14 with 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982);

15 (19) assume all rights and liabilities of the Alaska Rail-
16 road in accordance with 45 U.S.C. 1201 - 1214 (Alaska Railroad Trans-
17 fer Act of 1982) and the closing report of July 14, 1983, as amended,
18 prepared and submitted to Congress and the Legislature under 45 U.S.C.
19 1204(a);

20 (20) maintain a security force to enforce municipal ordi-
21 nances, state laws, and the corporation's rules with respect to viola-
22 tions that occur on or to property owned, managed or transported by
23 the corporation;

24 (21) issue its bonds or notes and provide for and secure
25 their payment, provide for the rights of their holders and hold or
26 dispose of them;

27 (22) purchase the corporation's bonds at a price not more
28 than the principal amount of them plus interest;

29 (23) cancel bonds of the corporation purchased by the

1 corporation;

2 (24) secure the payment of its obligations by pledge, mort-
3 gage, or other lien on its contracts, revenues, income, or property;

4 (25) consent to the modification of the rate of interest,
5 time of payment of an installment of principal or interest, or other
6 term of a loan, contract, or agreement to which the corporation is a
7 party;

8 (26) borrow money, including the amounts necessary to estab-
9 lish reasonable reserves, and pay financing charges interest on
10 the obligations for a reasonable period after which the corporation
11 estimates other money will be available to pay the interest, consul-
12 tant, advisory, and legal fees, and other expenses necessary or inci-
13 dent to borrowing;

14 (27) acquire, hold, and dispose of stocks, memberships,
15 contracts, bonds, general or limited partnership interests or other
16 interests in another corporation, association, partnership, joint
17 venture, or other legal entity, and exercise the powers or rights in
18 connection with these interests that are provided in contracts or
19 agreements and that are allowed by law concerning the satisfaction of
20 debts;

21 (28) undertake and provide for the acquisition, construc-
22 tion, maintenance, equipping, and operation of connecting, switching,
23 terminal, or other railroads and railroad facilities;

24 (29) enter into agreements with a state agency or other
25 instrumentality of the state; and

26 (30) do all things necessary or desirable to carry out the
27 powers and duties of the corporation granted or necessarily implied in
28 this chapter or other laws of the state or the laws or regulations of
29 the federal government.

1 Sec. 42.40.260. ANNUAL REPORT. Within 90 days following the end
2 of the fiscal year of the Alaska Railroad the board shall adopt and
3 distribute to the governor and to the legislature a report describing
4 the operations and financial condition of the corporation during the
5 preceding fiscal year. The report shall itemize the cost of providing
6 each category of service offered by the railroad and the income
7 generated by each category consistent with the protection of privi-
8 leged and proprietary information under AS 42.40.220.

9 Sec. 42.40.270. AUDITS. (a) The board shall have the financial
10 records of the corporation audited annually by an independent certi-
11 fied public accountant experienced in railroad accounting. The board
12 shall have an annual performance audit conducted by a recognized
13 railroad management expert to assure that the railroad is being
14 managed and operated effectively and efficiently in accordance with
15 the requirements of this chapter. Auditors shall use the standards of
16 the United States Interstate Commerce Commission for class I railroad
17 carriers.

18 (b) The corporation shall make all of its financial records
19 available to an auditor appointed by the governor and to the legisla-
20 tive audit division for examination. Disclosure to the public by the
21 auditor or legislative audit division of this information is subject
22 to AS 42.40.220 and rules implementing that section.

23 Sec. 42.40.280. STATE OVERSIGHT REPORTS. (a) The board shall
24 provide a state oversight report to the governor and the legislature
25 before undertaking

26 (1) expansion, reduction, or diversification of services
27 provided by the railroad upon the date of transfer or as provided
28 under this chapter that the board determines would represent a signif-
29 icant and permanent change in the level and nature of services pro-

1 vided;

2 (2) extension of the main or branch lines by more than 25
3 miles or five percent of the railroad's total track mileage, whichever
4 is greater; or

5 (3) the issuance of securities, notes, bonds or contracts
6 with a term in excess of one year and in an amount exceeding
7 \$5,000,000;

8 (4) an application for an appropriation to be used for
9 providing any service that is not self-sustaining.

10 (b) The report under (a) of this section shall be in writing.
11 describe the proposed undertaking in detail, and specify

12 (1) its financial impact on the corporation;

13 (2) its impact on the level and nature of services provided
14 by the corporation;

15 (3) the reasons the action is necessary or desirable to
16 achieve the purposes of this chapter; and

17 (4) whether and when the undertaking is expected to be
18 self-sustaining financially.

19 Sec. 42.40.290. LONG-RANGE CAPITAL IMPROVEMENT AND PROGRAM PLAN.

20 (a) The corporation shall prepare and the board shall adopt a long-
21 range capital improvement and program plan. The plan shall explain
22 the manner in which the corporation intends to accomplish the purposes
23 of this chapter and the corporation's anticipated capital improvements
24 during each of the five years after the plan is adopted.

25 (b) The board shall annually review and approve revisions to the
26 long-range capital improvement and program plan. The board shall
27 provide copies of the updated plan to the governor and the legislature
28 by December 1 of each year.

29 Sec. 42.40.300. USE OF CORPORATION ASSETS. The corporation

1 shall apply all money, property, other assets, and credit of the
2 corporation toward activities authorized by this chapter. The corpo-
3 ration may not issue shares of stock, pay dividends, make private
4 distributions of assets, make loans to board members or employees, or
5 engage in business for private benefit. The use of money, property,
6 other assets, or credit of the corporation for a purpose not author-
7 ized by law by a person having the possession or control of it is
8 prohibited.

9 Sec. 42.40.310. INDEMNIFICATION. (a) The corporation may
10 defend and indemnify a current or former member of the board, em-
11 ployee, or agent of the corporation against all costs, expenses, judg-
12 ments, and liabilities, including attorney's fees, incurred by or
13 imposed upon that person in connection with a civil or criminal action
14 in which the person is involved by affiliation with the corporation,
15 if the person acted in good faith on behalf of the corporation and
16 within the scope of official duties or powers.

17 (b) The corporation may purchase insurance to protect and hold
18 personally harmless its employees, agents, and board members from an
19 action, claim, or proceeding arising out of the performance, purported
20 performance, or failure of performance, in good faith, of duties for,
21 or employment with, the corporation and to hold them harmless from
22 expenses connected with the defense, settlement, or monetary judgments
23 from that action, claim, or proceeding. The purchase of insurance is
24 discretionary with the board and insurance is not considered to be
25 compensation to the insured person.

26 ARTICLE 5. CORPORATION PROPERTY.

27 Sec. 42.40.350. LAND. (a) The corporation shall receive from
28 the United States and, in its own name, take title to all rail proper-
29 ty transferred under 45 U.S.C. 1201 - 1214 (Alaska Transfer Act of

1 1982). All land that is transferred or acquired by the corporation is
2 designated as follows:

3 (1) railroad rights-of-way are railroad utility corridors;

4 (2) land outside railroad utility corridors is rail land.

5 (b) Railroad utility corridors shall be of a width at least 100
6 feet on both sides of the centerline of the extended main or branch
7 line, unless the corporation does not own or control sufficient land
8 to allow a corridor width of 100 feet on both sides of the centerline
9 of the extended or main branch line track. Railroad utility corridors
10 may be surveyed by the metes and bounds method. The corporation may
11 not convey title to land within a utility corridor. However, the
12 corporation may lease, grant easements in or permits for, or otherwise
13 authorize use of portions of a utility corridor for transportation,
14 communication, and transmission purposes and support functions associ-
15 ated with those purposes, and for other commercial uses authorized
16 under this chapter if the use does not restrict other parallel uses of
17 the utility corridor.

18 (c) The corporation may lease, grant easements or permits, or
19 otherwise authorize use of portions of rail land. However, the corpo-
20 ration may not convey its entire interest in rail land except as
21 provided in AS 42.40.370(d) and 42.40.400.

22 (d) A lease by the corporation to a party other than the state
23 shall be made at fair market value as determined by an appraisal or by
24 competitive bid.

25 Sec. 42.40.360. REQUEST FOR LAND. (a) The board may nominate
26 federal land it determines may be useful for present or future rail-
27 road purposes for selection under the Alaska Statehood Act (P.L. 85
28 508, 72 Stat. 339), as amended, and request the commissioner of
29 natural resources to select the land for the state through the federal

1 land selection process.

2 (b) The board by rule may identify and request the commissioner
3 of natural resources to convey land necessary or useful for present,
4 future, or intended railroad purposes owned by or tentatively approved
5 for transfer to the state, including land not contiguous with a rail-
6 road utility corridor or rail land. The request must include a state-
7 ment of and justification for the present, future or intended railroad
8 use. Upon receipt of a request, the commissioner shall temporarily
9 reserve the land identified in the request for railroad purposes and
10 defer disposal or lease of that land under other laws to a party other
11 than the corporation. The temporary reservation of land is subject to
12 valid existing rights and remains in effect for 180 days.

13 Sec. 42.40.370. CONVEYANCE OF LAND. (a) Within 90 days after
14 receiving a request under AS 42.40.360(b) the commissioner of natural
15 resources shall by written decision

16 (1) designate the identified land for railroad purposes
17 and, subject to valid existing rights, convey the state's interests in
18 the land to the corporation;

19 (2) notify the corporation of reasons for refusal to desig-
20 nate the identified land for railroad purposes; or

21 (3) approve in part and deny in part the request.

22 (b) A conveyance of land under this section may be for less than
23 its appraised value as determined by the commissioner of natural
24 resources.

25 (c) In the absence of a reservation to the contrary, a convey-
26 ance of land under this section vests in the corporation ownership,
27 control of the surface material and mineral estate, including the
28 exclusive right to extract or use timber and other construction mate-
29 rials, sand, gravel, rock, and the right to tunnel, ditch, recontour,

1 excavate, or otherwise use the land for railroad, transportation,
2 transmission, communication, and related purposes.

3 (d) The corporation may reconvey to the state land received
4 under this section that the corporation and the commissioner of natu-
5 ral resources jointly identify as unnecessary or unsuitable for the
6 corporation's purposes.

7 Sec. 42.40.380. USE OF STATE LAND. When emergency conditions
8 require that track or other right-of-way fixtures of the corporation
9 be moved from the existing location and relocated on state land adja-
10 cent to or in the vicinity of the existing right-of-way and the chief
11 executive officer determines that relocation is necessary to maintain
12 safe and adequate rail operations, the corporation may effect the
13 relocation and notify the the Department of Natural Resources. The
14 relocation must affect only the amount of state land necessary to
15 adequately restore or continue safe rail operations at a normal level.

16 Sec. 42.40.390. LAND USE RULES. The board may adopt exclusive
17 rules governing land use by parties having interests in or permits for
18 land owned or managed by the corporation. The power conferred by this
19 section is exercised for the common health, safety, and welfare of the
20 public and to the extent constitutionally permissible, may not be
21 limited by the terms and conditions of leases, contracts, or other
22 transactions.

23 Sec. 42.40.400. VACATION OF EASEMENTS. The corporation may
24 vacate an easement acquired under this chapter by executing and filing
25 a deed in the appropriate recording district. Upon filing the deed
26 the state shall acquire the easement for use in conformity with 45
27 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982).

28 Sec. 42.40.410. FEDERAL LAND. The corporation may submit appli-
29 cations on its own behalf as an instrumentality of the state for

1 acquisition of federal land available under federal law that will
2 enhance the operations of the corporation if it is available under a
3 federal law other than the Alaska Statehood Act of 1958 (P.L. 85 -
4 508, 72 Stat 339), as amended. The corporation may receive in its own
5 name conveyances of all interests in federal land.

6 Sec. 42.40.420. MUNICIPAL USE OF RAILROAD LAND. Upon request
7 the corporation may authorize use of railroad land for municipal
8 purposes. Subject to AS 42.40.350(b), the corporation may authorize a
9 municipality to establish a walkway or trail over a utility corridor.
10 Before authorizing a use under this section the board shall require
11 the municipality to execute an agreement in a form approved by the
12 board to

13 (1) hold the corporation harmless from and indemnify the
14 corporation for any liability and claims arising from any use autho-
15 rized under this section including

16 (A) defending the corporation in a cause of action
17 brought against the corporation as a result of the use; and

18 (B) indemnifying the corporation for the amount of a
19 judgment, including prejudgment and postjudgment interest, ren-
20 dered against the corporation or for the amount of a settlement
21 entered into by the corporation, and for all costs and attorney's
22 fees incurred by the corporation in settling or defending the
23 claim; and

24 (2) stop the use of railroad land upon request of the
25 corporation if, as determined by the corporation, the use interferes
26 with expansion, replacement of railroad facilities, creates a safety
27 hazard, or interferes with railroad operations.

28 Sec. 42.40.430. ACQUISITION OF GOVERNMENT PROPERTY. (a) The
29 corporation, as an instrumentality of the state, may acquire in its

1 own name from the United States under 50 App U.S.C. 1622 - 1622c
2 (Surplus Property Act of 1944), 40 U.S.C. 471 et seq. (Federal
3 Property and Administrative Services Act of 1949), or other law,
4 property under the control of a federal department or agency that is
5 useful for the corporation's purposes. The corporation may acquire
6 from the Department of Administration property of the state made
7 available under AS 44.71.010 - 44.71.040.

8 (b) The corporation is an instrumentality and agency of the
9 state for purposes of exchanging land with the United States, munic-
10 ipalities, corporations including corporations formed under 43 U.S.C.
11 1601 - 1628 (Alaska Native Claims Settlement Act), and individuals.

12 Sec. 42.40.440. USE OF PESTICIDES AND HERBICIDES. Vegetation
13 control involving the use of pesticides or herbicides on land owned or
14 managed by the corporation may be conducted only in compliance with
15 state requirements applicable to other state pesticide or herbicide
16 use.

17 Sec. 42.40.450. ADVERSE POSSESSION. No prescription or statute
18 of limitations runs against the title or interest of the corporation
19 to or in land owned by the corporation or under its jurisdiction.
20 Title to or interest in land owned by the corporation or under its
21 jurisdiction may not be acquired by adverse possession or prescrip-
22 tion, or in any other manner except by conveyance from or formal
23 vacation by the corporation.

24 ARTICLE 6. FINANCIAL PROVISIONS.

25 Sec. 42.40.500. LIMITATION OF LIABILITY. A liability incurred
26 by the corporation shall be satisfied exclusively from the assets or
27 revenue of the corporation and no creditor or other person has a right
28 of action against the state because of a debt, obligation, or liabil-
29 ity of the corporation.

1 Sec. 42.40.510. FIDELITY BOND. The corporation shall obtain a
2 fidelity bond in an amount determined by the board for board members
3 and each executive officer responsible for accounts and finances. A
4 bond must be in effect during the entire tenure in office of the
5 bonded person.

6 Sec. 42.40.520. INSURANCE. Except as provided in AS 42.40.300-
7 (b), the corporation shall protect its assets, services, and employees
8 by purchasing insurance or providing for certain self-insurance re-
9 tentions. The corporation shall also maintain casualty, property,
10 business interruption, marine, boiler and machinery, pollution liabil-
11 ity, and other insurance in amounts reasonably calculated to cover
12 potential claims against the corporation or state for bodily injury,
13 death or disability and property damage that may arise from or be
14 related to corporation operations and activities.

15 Sec. 42.40.530. REVENUE. Revenue generated by or appropriated
16 to the corporation shall be retained and managed by the corporation
17 for railroad and related purposes in accordance with 45 U.S.C. 1207-
18 (a)(5) (Alaska Railroad Transfer Act of 1982).

19 Sec. 42.40.540. APPROPRIATIONS. The corporation may request,
20 with the concurrence of the governor, a direct appropriation or grant
21 from the legislature to assist in carrying out the provisions of this
22 chapter.

23 ARTICLE 7. BONDS AND NOTES.

24 Sec. 42.40.600. GENERAL PROVISIONS. (a) The corporation by
25 resolution may issue bonds and notes to provide money to carry out its
26 purposes.

27 (b) Bonds or notes may be issued in one or more series and
28 shall, as provided by the resolution of the board,

29 (1) be dated;

1 (2) bear interest at a required rate or rates per year or
2 within a maximum rate;

3 (3) be in a required denomination;

4 (4) be in a coupon or registered form;

5 (5) carry conversion or registration provisions;

6 (6) have a required rank or priority;

7 (7) be executed in the required manner and form;

8 (8) be payable as required from the sources, in the medium
9 of payment, and place or places inside or outside the state;

10 (9) be subject to authentication by a trustee or fiscal
11 agent; and

12 (10) be subject to terms of redemption with or without
13 premium.

14 (c) Bonds and notes may be sold in the manner, on the terms, and
15 at the price the board determines. Note shall mature at the time or
16 times determined by the board. Bonds shall mature at the time, not
17 exceeding 50 years from their date, determined by the board.

18 Sec. 42.40.610. NEGOTIABLE INSTRUMENTS. Bonds and notes issued
19 under this chapter and interest coupons attached to them are nego-
20 tiable instruments under the laws of this state, subject only to
21 applicable provisions for registration.

22 Sec. 42.40.620. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds
23 and notes issued under this chapter are securities in which all public
24 officers and public bodies of the state and its political subdivi-
25 sions, all insurance companies, trust companies, banking associations,
26 investment companies, executors, administrators, trustees and other
27 fiduciaries may properly and legally invest funds, including capital
28 in their control or belonging to them. These bonds and notes may be
29 deposited with a state or municipal officer of an agency or political

1 subdivision of the state for any purpose for which the deposit of
2 bonds or notes of the state is authorized by law.

3 Sec. 42.40.630. PAYMENT OF BONDS AND NOTES. The principal and
4 interest on bonds or notes of the corporation is payable from corpora-
5 tion money or assets. Bonds or notes may be additionally secured by a
6 pledge of a grant or contribution from the federal government or a
7 corporation, association, institution or person, or a pledge of money,
8 income, or revenue of the corporation from any source.

9 Sec. 42.40.640. SECURITY FOR BONDS. In the discretion of the
10 board, an issue of bonds may be secured by a trust indenture, which
11 may be a trust company, bank or national banking association, with
12 corporate trust powers, located inside or outside the state, or by a
13 secured loan agreement or other instrument or under resolution giving
14 powers to a corporate trustee by means of which the corporation may

15 (1) make and enter into any and all the covenants and
16 agreements with the trustees or the holders of the bonds that the
17 corporation may determine to be necessary or desirable, including
18 covenants, provisions, limitations and agreements as to

19 (A) the application, investment, deposit, use and
20 disposition of the proceeds of bonds of the corporation or of
21 money or other property of the corporation or in which it has an
22 interest;

23 (B) the fixing and collection of rentals, charges,
24 fees or other consideration for, and the other terms to be incor-
25 porated in, contracts with respect to the use of any of the
26 corporation's property;

27 (C) the fixing and collection of tariffs, fees,
28 charges or other consideration for the use or service of the
29 Alaska Railroad by passengers, and other users and freight;

1 (D) the terms and conditions upon which additional
2 bonds of the corporation may be issued;

3 (E) the vesting in the trustee of rights and remedies
4 exercisable by the trustee for the protection of the holders of
5 bonds of the corporation and not otherwise in violation of law
6 and the restriction of the rights of an individual holder of
7 bonds of the corporation;

8 (2) pledge, mortgage, or assign money, leases, agreements,
9 assets, or property of the corporation either presently in hand or to
10 be received in the future, or both; and

11 (3) provide for any other matters of like or different
12 character that in any way affect the security or protection of the
13 bonds.

14 Sec. 42.40.650. INDEPENDENT FINANCIAL ADVISOR. In negotiating
15 the private or public sale of bonds or notes to an underwriter, the
16 board shall retain a financial advisor who is independent from the
17 underwriter.

18 Sec. 42.40.660. VALIDITY OF SIGNATURES. If an officer of the
19 corporation whose signature or a facsimile of whose signature appears
20 on bonds, notes, or coupons attached to them ceases to be an officer
21 before the delivery of the bond, note, or coupon, the signature or
22 facsimile is valid the same as if the person had remained in office
23 until delivery.

24 Sec. 42.40.670. VALIDITY OF PLEDGE. (a) The pledge of assets
25 or revenue of the corporation to the payment of the principal or
26 interest on bonds or notes of the corporation is valid and binding
27 from the time the pledge is made and the assets or revenue are immedi-
28 ately subject to the lien of the pledge without physical delivery or
29 further act. The lien of a pledge is valid and binding against all

1 parties having claims of any kind against the corporation, irrespec-
2 tive of whether those parties have notice of the lien of the pledge.

3 (b) Nothing in this section prohibits the corporation from
4 selling assets subject to a pledge, except that a sale may be re-
5 stricted by the trust agreement or resolution providing for the issu-
6 ance of the bonds or notes.

7 Sec. 42.40.675. PLEDGE OF THE STATE. The state pledges to and
8 agrees with the holders of bonds issued under this chapter and with
9 the federal agency that loans or contributes funds in respect to a
10 project, that the state will not limit or alter the rights and powers
11 vested in the corporation by this chapter to fulfill the terms of a
12 contract made by the corporation with the holders or federal agency,
13 or in any way impair the rights and remedies of the holders until the
14 bonds together with the interest on them with interest on unpaid
15 installments of interest, and all costs and expenses in connection
16 with an action or proceeding by or on behalf of the holders, are fully
17 met and discharged. The corporation is authorized to include this
18 pledge and agreement of the state, insofar as it refers to holders of
19 bonds of the corporation, in a contract with the holders and insofar
20 as it relates to a federal agency, in a contract with the federal
21 agency.

22 Sec. 42.40.680. REMEDIES. A holder of bonds or notes issued
23 under this chapter or of coupons attached to them, and a trustee under
24 a trust agreement or resolution authorizing the issuance of the bonds
25 or notes, except as restricted by a trust agreement or resolution,
26 either at law or in equity, may

27 (1) enforce all rights granted under this chapter, the
28 trust agreement or resolution, or any other contract executed by the
29 corporation under this chapter; and

1 (2) compel the performance of all duties of the corporation
2 required by this chapter or by the trust agreement or resolution.

3 Sec. 42.40.690. CREDIT OF STATE NOT PLEDGED. (a) The state and
4 its political subdivisions are not liable for the debts of the corpo-
5 ration. Bonds and notes issued under this chapter are payable solely
6 from the revenue or assets of the corporation and do not constitute a

7 (1) debt, liability, or obligation of the state or of a
8 political subdivision of the state; or

9 (2) pledge of the faith and credit of the state or of a
10 political subdivision of the state.

11 (b) The corporation may not pledge the credit or the taxing
12 power of the state or its political subdivisions. Each bond and note
13 issued under this chapter shall contain on its face a statement that

14 (1) the corporation is not obligated to pay it or the
15 interest on it except from the revenue or assets pledged for it; and

16 (2) neither the faith and credit nor the taxing power of
17 the state or of a political subdivision of the state is pledged to the
18 payment of it.

19 Sec. 42.40.700. LIMITATION ON PERSONAL LIABILITY. A board
20 member or employee of the corporation is not subject to personal
21 liability or accountability because of the execution or issuance of
22 bonds or notes.

23 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

24 Sec. 42.40.710. CORPORATION EMPLOYEES. Employees of the Alaska
25 Railroad are employees of the corporation and not of the state. The
26 provisions of AS 39 do not apply to employees of the corporation.

27 Sec. 42.40.720. COLLECTIVE BARGAINING RIGHTS. The provisions of
28 AS 23.40.070 - 23.40.260 do not apply to the corporation or to its
29 employees. However, employees who are not executive officers may

1 organize and form, join, or assist an organization to engage in col-
2 lective bargaining through representatives of their own choosing and
3 engage in concerted activities for the purpose of collective bargain-
4 ing or other mutual aid or protection.

5 Sec. 42.40.730. RAILROAD LABOR RELATIONS AGENCY. (a) There is
6 established a railroad labor relations agency that consists of three
7 members appointed by the governor. One member shall be a member of
8 the state personnel board. Members serve at the pleasure of the
9 governor.

10 (b) The railroad labor relations agency shall carry out the
11 provisions of AS 42.40.710 - 42.40.890.

12 (c) Members of the railroad labor relations agency receive no
13 compensation for their services, but are entitled to per diem and
14 travel expenses authorized for boards and commissions.

15 Sec. 42.40.740. COLLECTIVE BARGAINING UNIT. The railroad la-
16 relations agency shall decide in each case, in order to ensure employ-
17 ees the fullest freedom in exercising the rights guaranteed by AS 42.-
18 40.710 - 42.40.890 the unit appropriate for the purposes of collective
19 bargaining, based on such factors as community of interest, wages,
20 hours and other working conditions of the employees involved, the
21 history of collective bargaining, and the desires of the employees.
22 Bargaining units shall be as large as is reasonable, and unnecessary
23 fragmenting shall be avoided.

24 Sec. 42.40.750. REPRESENTATIVES AND ELECTIONS. (a) The rail-
25 road labor relations agency shall investigate a petition if it is
26 submitted in a manner prescribed by the railroad labor relations
27 agency by

28 (1) an employee or group of employees or an organization
29 acting on their behalf alleging that 30 percent of the employees of a

1 proposed bargaining unit

2 (A) want to be represented for collective bargaining
3 by a labor or employee organization as exclusive representative;
4 or

5 (B) assert that the organization that has been certi-
6 fied or is currently being recognized by the corporation as
7 bargaining representative is no longer the representative of the
8 majority of employees in an appropriate unit; or

9 (2) the corporation alleging that one or more organizations
10 have presented to it a claim to be recognized as a representative of a
11 majority of employees in an appropriate unit.

12 (b) If the railroad labor relations agency has reasonable cause
13 to believe that a question of representation exists, it shall provide
14 for a hearing upon due notice. If the railroad labor relations agency
15 finds that there is a question of representation, it shall direct an
16 election by secret ballot to determine whether or by which organiza-
17 tion the employees desire to be represented and shall certify the
18 results of the election. Nothing in this subsection prohibits the
19 waiving of hearings by stipulation for the purpose of a consent elec-
20 tion in conformity with the regulations of the railroad labor rela-
21 tions agency or an election in a bargaining unit agreed upon by the
22 parties.

23 (c) The railroad labor relations agency shall determine who is
24 eligible to vote in an election held under this section and shall
25 establish rules governing the election. In an election in which none
26 of the choices on the ballot receives a majority of the votes cast, a
27 runoff election shall be conducted, the ballot providing for selection
28 between the two choices receiving the largest number of valid votes
29 cast in the election. If an organization receives the majority of the

1 votes case in the election it shall be certified by the railroad labor
2 relations agency as exclusive representative of all the employees in
3 the bargaining unit. An election may not be held in a bargaining unit
4 or in a subdivision of a bargaining unit if a valid election has been
5 held within the preceding 12 months.

6 (d) Nothing in this chapter prohibits recognition of an orga-
7 nization as the exclusive representative by the corporation by mutual
8 consent.

9 (e) An election may not be directed by the railroad labor rela-
10 tions agency in a bargaining unit in which there is in force a valid
11 collective bargaining agreement, except during a 90-day period preced-
12 ing the expiration date. However, a collective bargaining agreement
13 may not bar an election upon petition of employees in the bargaining
14 unit but not parties to the agreement if more than three years have
15 elapsed since the execution of the agreement or the last timely
16 renewal, whichever was later.

17 Sec. 42.40.760. UNFAIR LABOR PRACTICES. (a) The corporation or
18 its agent may not

19 (1) interfere, restrain, or coerce an employee in the
20 exercise of the rights guaranteed in AS 42.40.720;

21 (2) dominate or interfere with the formation, existence, or
22 administration of an organization;

23 (3) discriminate in regard to hire or tenure of employment
24 or a term or condition of employment to encourage or discourage mem-
25 bership in an organization;

26 (4) discharge or discriminate against an employee because
27 the employee has signed or filed an affidavit, petition or complaint
28 or given testimony under AS 42.40.710 - 42.40.890;

29 (5) refuse to bargain collectively in good faith with an

1 organization that is the exclusive representative of employees in an
2 appropriate unit, including the discussing of grievances with the
3 exclusive representative.

4 (b) Nothing in AS 42.40.710 - 42.40.890 prohibits the corpo-
5 ration from making an agreement with an organization to require as a
6 condition of employment

7 (1) membership in the organization that represents the unit
8 on or after the 30th day following the beginning of employment or on
9 the effective date of the agreement, whichever is later; or

10 (2) payment by the employee to the exclusive bargaining
11 agent of a service fee to reimburse the exclusive bargaining agency
12 for the expense of representing the members of the bargaining unit.

13 (c) An organization or its agents may not

14 (1) restrain or coerce

15 (A) an employee in the exercise of the rights guaran-
16 teed in AS 42.40.720; or

17 (B) the corporation in the selection of a representa-
18 tive for the purposes of collective bargaining or the adjustment
19 of grievances;

20 (2) refuse to bargain collectively in good faith with the
21 corporation, if it has been designated in accordance with AS 42.40.-
22 710 - 42.40.890 as the exclusive representative of employees in an
23 appropriate unit.

24 Sec. 42.40.770. INVESTIGATION AND CONCILIATION OF COMPLAINTS.
25 If a verified written complaint by or for a person claiming to be
26 aggrieved by a practice prohibited by AS 42.40.760 or a written accu-
27 sation that a person subject to AS 42.40.710 - 42.40.890 has engaged
28 in a prohibited practice, is filed with the railroad labor relations
29 agency, it shall investigate the complaint or accusation. If it

1 determines after a preliminary investigation that probable cause
2 exists in support of the complaint or accusation, it shall try to
3 eliminate the prohibited practice by informal methods of conference,
4 conciliation, and persuasion. Nothing said or done during this en-
5 deavor may be used as evidence in a subsequent proceeding.

6 Sec. 42.40.780. COMPLAINT AND ACCUSATION. If the railroad labor
7 relations agency fails to eliminate the prohibited practice by concil-
8 iation and to obtain voluntary compliance with AS 42.40.710 - 42.40.-
9 890 or before it attempts conciliation, it may serve a copy of the
10 complaint or accusation upon the respondent. The complaint or accusa-
11 tion and the subsequent procedures shall be handled in accordance with
12 the administrative adjudication portion of the Administrative Proce-
13 dure Act (AS 44.62).

14 Sec. 42.40.790. ORDERS AND DECISIONS. If the railroad labor
15 relations agency finds that a person named in the written complaint or
16 accusation has engaged in a prohibited practice, the railroad labor
17 relations agency shall issue and serve on the person an order or
18 decision requiring the person to cease and desist from the prohibited
19 practice and to take affirmative action that will carry out the pro-
20 visions of AS 42.40.710 - 42.40.890. If the railroad labor relations
21 agency finds that a person named in the complaint or accusation has
22 not engaged or is not engaging in a prohibited practice, the railroad
23 labor relations agency shall state its findings of fact and issue an
24 order dismissing the complaint or accusation.

25 Sec. 42.40.800. ENFORCEMENT BY INJUNCTION. The railroad labor
26 relations agency may apply to the superior court in the judicial
27 district in which the prohibited practice occurred for an order en-
28 joining the prohibited acts specified in the order or decision of the
29 railroad labor relations agency. Upon showing by the railroad labor

1 relations agency that the person has engaged or is about to engage in
2 the practice, an injunction, restraining order, or other order that is
3 appropriate may be granted by the court and shall be without bond.

4 Sec. 42.40.810. POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a)
5 For the purpose of the investigations, proceedings, or hearings that
6 the railroad labor relations agency considers necessary to carry out
7 AS 42.40.710 - 42.40.890, the railroad labor relations agency may
8 issue subpoenas requiring the attendance and testimony of witnesses
9 and the production of relevant evidence.

10 (b) The railroad labor relations agency may administer oaths,
11 examine witnesses, and receive evidence.

12 (c) The attendance of witnesses and the production of evidence
13 may be required from any place in the state at any designated place of
14 hearing.

15 (d) If a person refuses to obey a subpoena issued under AS 42.-
16 40.710 - 42.40.890, the superior court in the district in which the
17 person resides or is found may, upon application by the railroad labor
18 relations agency, issue an order requiring the person to comply with
19 the subpoena.

20 Sec. 42.40.820. REGULATIONS. The railroad labor relations
21 agency shall adopt regulations under the Administrative Procedure Act
22 (AS 44.62) to carry out AS 42.40.710 - 42.40.890.

23 Sec. 42.40.830. PENALTY FOR VIOLATION OF ORDER OR DECISION. A
24 person who violates a provision of an order or decision of the rail-
25 road labor relations agency is guilty of a misdemeanor and is punish-
26 able by a fine of not more than \$500.

27 Sec. 42.40.840. MEDIATION. (a) If, after a reasonable period
28 of negotiation over the terms of a collective bargaining agreement, an
29 impasse as determined by the railroad labor relations agency exists

1 between the corporation and an organization, the railroad labor re-
2 lations agency shall appoint a person mutually agreeable to the
3 parties from a list of seven qualified mediators or arbitrators knowl-
4 edgeable in railway labor agreements to act as mediator in the dis-
5 pute.

6 (b) Before the determination of an impasse under this section,
7 the parties may also select a mediator by mutual consent.

8 (c) It shall be the function of the mediator to bring the
9 parties together to effectuate a settlement of the dispute, but nei-
10 ther the mediator nor the railroad labor relations agency has any
11 power of compulsion in mediation proceedings.

12 Sec. 42.40.850. STRIKES. (a) Following a decision by the
13 mediator to end the mediation proceedings, employees of a collective
14 bargaining unit may engage in a strike for a limited time if a major-
15 ity of the employees in that collective bargaining unit vote by secret
16 ballot to do so. The limit of the strike is determined by the interest
17 of the health, safety, or welfare of the public.

18 (b) The corporation may apply to the superior court in the
19 judicial district in which the strike is occurring for an order en-
20 joining the strike. A strike may not be enjoined unless it can be
21 shown that it has begun to threaten, or is about to threaten, the
22 health, safety, or welfare of the public. A court, in deciding
23 whether to enjoin the strike, shall consider the total equities in the
24 particular case, including the impact of a strike on the public and
25 the extent to which an employee organization and the corporation have
26 met their statutory obligations.

27 (c) If an impasse or deadlock still exists after the issuance of
28 an injunction, the parties shall submit the dispute to binding arbi-
29 tration. The arbitrator shall be the same person selected under

1 AS 42.40.840 and shall fashion the award the arbitrator considers
2 equitable.

3 Sec. 42.40.860. AGREEMENTS. (a) The Department of Administra-
4 tion may participate in labor negotiations between the corporation and
5 an organization. The corporation shall seek advice of the Department
6 of Administration before entering into a collective bargaining agree-
7 ment concerning wages, hours, and other terms and conditions of em-
8 ployment. However, the final decision regarding collective bargaining
9 agreements shall be made by the board.

10 (b) Upon the completion of negotiations between an organization
11 and the corporation, if a settlement is reached, the corporation shall
12 reduce it to writing in the form of an agreement. The agreement shall
13 include a grievance procedure that shall have binding arbitration as
14 its final step. Either party to the agreement has a right of action
15 to enforce the agreement by petition to the railroad labor relations
16 agency.

17 (c) The parties to an agreement under this section may agree to
18 terms that specify an expiration date for the agreement.

19 (d) Notwithstanding (a) - (c) of this section, an organization
20 and the corporation may mutually agree to submit a dispute to binding
21 arbitration at any time.

22 Sec. 42.40.870. ORGANIZATION DUES AND EMPLOYEE BENEFITS, DEDUC-
23 TION AND AUTHORIZATION. Upon written authorization of an employee
24 within a bargaining unit, the corporation shall deduct from the pay-
25 roll of the employee the monthly amount of dues, fees, and other
26 employee benefits as certified by the secretary of the exclusive
27 bargaining representative and shall deliver it to the chief fiscal
28 officer of the exclusive bargaining representative.

29 Sec. 42.40.880. EXEMPTION. Notwithstanding the provisions of

1 AS 42.40.870, a collective bargaining settlement reached, or agreement
2 entered into, under AS 42.40.860 that incorporates union security
3 provisions, including a union shop or agency shop provision or agree-
4 ment, shall safeguard the rights of nonassociation of employees having
5 bona fide religious convictions based on tenets or teachings of a
6 church or religious body of which an employee is a member. Upon
7 submission of proper proof of religious conviction to the railroad
8 labor relations agency, the agency shall declare the employee exempt
9 from becoming a member of an organization. The employee shall pay an
10 amount of money equivalent to regular organization dues, initiation
11 fees, and assessments to the organization. Nonpayment of this money
12 subjects the employee to the same penalty as if it were nonpayment of
13 dues. The receiving organization shall contribute an equivalent
14 amount of money to a charity of its choice not affiliated with a
15 religious, labor, or employee organization. The organization shall
16 submit to the railroad labor relations agency proof of contribution.

17 Sec. 42.40.885. PROHIBITED ACTS. (a) The corporation or an
18 employee may not directly or indirectly

19 (1) require or coerce an employee to participate in any way
20 in any activity or undertaking unless the activity or undertaking is
21 related to the performance of official duties;

22 (2) require or coerce an employee to make any report con-
23 cerning an activity or undertaking of the employee's activities or
24 undertakings unless the activity or undertaking is related to the
25 performance of official duties;

26 (3) except as directly related to the performance of offi-
27 cial duties, require or coerce an employee to submit to an interro-
28 gation, examination, or psychological test that is designed to elicit
29 information concerning

1 (A) a personal relationship with a person connected
2 with the employee by blood or marriage;

3 (B) the employee's religious beliefs or practices;

4 (C) sexual matters;

5 (D) the employee's political affiliation or philoso-
6 phy;

7 (4) coerce an employee to invest or contribute earnings in
8 any manner or for any purpose;

9 (5) restrict or attempt to restrict after-working-hour
10 statements, pronouncements or other activities, not otherwise prohib-
11 ited by law or personnel rule, of an employee, if the employee does
12 not purport to speak or act in an official capacity.

13 (b) The provisions of (a) of this section do not diminish the
14 authority of an authorized law enforcement agency to conduct criminal
15 investigations of employees suspected of being involved in criminal
16 activity or to investigate other activity directly related to official
17 railroad business.

18 Sec. 42.40.890. DEFINITIONS. In AS 42.40.710 - 42.40.890

19 (1) "collective bargaining" means the performance of the
20 mutual obligation of the corporation or its designated representatives
21 and the representatives of the employees to meet at reasonable times,
22 including meetings in advance of the budget making process, and nego-
23 tiating in good faith with respect to wages, hours, and other terms
24 and conditions of employment, or the negotiation of an agreement, or
25 negotiation of a question arising under an agreement and the execution
26 of a written contract incorporating an agreement reached if requested
27 by either party, but these obligations do not compel either party to
28 agree to a proposal or require the making of a concession;

29 (2) "election" means a proceeding conducted by the labor

1 relations agency in which the employees in a collective bargaining
2 unit cast a secret ballot for collective bargaining representatives,
3 or for any other purpose specified in AS 42.40.710 - 42.40.890;

4 (3) "organization" means a labor or employee organization
5 of any kind in which employees participate and that exists for the
6 primary purpose of dealing with the corporation concerning grievances,
7 labor disputes, wages, rates of pay, hours of employment and condi-
8 tions of employment;

9 (4) "terms and conditions of employment" means the hours of
10 employment, the compensation and fringe benefits, and the employer's
11 personnel policies affecting the working condition of the employees,
12 but does not mean the general policies describing the function and
13 purposes of an employer.

14 ARTICLE 9. GENERAL PROVISIONS.

15 Sec. 42.40.900. CLAIMS. (a) All claims and lawsuits involving
16 activities of the railroad, including suits in contract, quasi-con-
17 tract, or tort, shall be brought against the corporation and not
18 against the state.

19 (b) For the purposes of actionable claims, undertakings, pay-
20 ments of judgments, execution, interest, punitive damages, statutes of
21 limitations, bonds, costs, and similar matters related to the pres-
22 entation and prosecution of claims by and against the corporation, the
23 corporation and its board members and employees enjoy the same rights,
24 privileges, and immunities as the state and state officers:

25 (c) Claims against the corporation are not subject to the pro-
26 visions of AS 44.77 regarding claims against the state.

27 (d) The corporation is not subject to the provisions of AS 44.-
28 80.010, regarding the state as a party to an action.

29 Sec. 42.40.905. NOTICE OF LEGAL ACTIONS. (a) The corporation

1 shall notify the Department of Law within 30 days before initiating
2 legal action unless special circumstances exist that require immediate
3 legal action to protect the corporation assets or to continue existing
4 service.

5 (b) If notice of legal action is not given under (a) of this
6 section, within 15 days of taking action the board shall notify the
7 Department of Law of the action taken and of the special circumstances
8 that exempted the action from the requirements of (a) of this section.

9 Sec. 42.40.910. EXEMPTION FROM TAXATION. (a) The exercise of
10 the powers granted by this chapter shall be in all respects for the
11 benefit of the people of the state, for their well-being and prosper-
12 ity, and for the improvement of their social and economic conditions.
13 Subject to (b) of this section, the real and personal property of the
14 corporation and its assets, income, and receipts are exempt from all
15 taxes and special assessments of the state or a political subdivision
16 of the state.

17 (b) Bonds and notes issued under this chapter are issued by a
18 body corporate and public of the state and for an essential public and
19 governmental purpose. Therefore, the bonds and notes, the interest
20 and income from them, and all fees, charges, funds, revenue, income
21 and other money pledged or available to pay or secure the payment of
22 the bonds and notes or interest on them, are exempt from taxation
23 except for inheritance, transfer, and estate taxes.

24 (c) This section does not affect or limit an exemption from
25 license fees, property taxes, or excise, income or other taxes, pro-
26 vided under any other law, nor does it create a tax exemption with
27 respect to the interest of any business enterprise or other person,
28 other than the corporation.

29 Sec. 42.40.920. APPLICATION OF EXISTING LAWS. (a) The

1 corporation is not subject to the jurisdiction of the Alaska Transpor-
2 tation Commission.

3 (b) The following laws do not apply to the operations of the
4 corporation:

- 5 (1) AS 19;
- 6 (2) AS 30.15;
- 7 (3) AS 35;
- 8 (4) AS 37.05;
- 9 (5) AS 37.07;
- 10 (6) AS 37.10.010 - 37.10.060;
- 11 (7) AS 37.10.085;
- 12 (8) AS 37.20;
- 13 (9) AS 37.25;
- 14 (10) AS 38;
- 15 (11) AS 44.62.040 - 44.62.320.

16 Sec. 42.40.930. CONFLICTING LAWS INAPPLICABLE. If provisions of
17 AS 42.40 conflict with the provisions of other state law, the pro-
18 visions of AS 42.40 prevail. Provisions of AS 42.40 shall be con-
19 sidered so that they do not conflict with 45 U.S.C. 1201 - 1214 (Alaska
20 Railroad Transfer Act of 1982).

21 Sec. 42.40.940. REVERSION OF ASSETS. If the corporation ceases
22 to exist, for whatever reason, its assets revert to the state.

23 Sec. 42.40.980. DEFINITIONS. In this chapter unless the context
24 otherwise requires,

25 (1) "board" means the board of directors of the Alaska
26 Railroad Corporation;

27 (2) "collective bargaining" means negotiating with an
28 employees organization and representing employees on matters pertain-
29 ing to conditions of employment;

1 (3) "corporation" means the Alaska Railroad Corporation;

2 (4) "date of transfer" means the date on which the United
3 States Secretary of Transportation delivers the transfer documents
4 under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982);

5 (5) "employees" means all persons employed by the corpo-
6 ration including executive officers;

7 (6) "executive officer" means the corporation's chief
8 executive officer, assistant chief executive officer, assistant to the
9 chief executive officer, chief of administration, superintendent of
10 transportation, manager of marketing and sales, chief engineer, chief
11 mechanical officer, manager of industrial development and real estate,
12 manager of budget and accounting, manager of planning, manager of
13 personnel, manager of supply and procurement, chief of security,
14 manager of operating rules, manager of data processing, manager of
15 strategy, manager of operations planning, manager of supply, manager
16 of procurement, manager of safety, manager of administrative proce-
17 dure, chief counsel, or, if so designated by the board, any employee
18 who fulfills these management functions under a different title or who
19 exercises a similar or comparable level of responsibility;

20 (7) "land" means any interest in real property, including
21 tide and submerged land, and any right appurtenant to the interest;

22 (8) "rule" means a standard of general application or the
23 amendment, supplement, revision, or repeal of a standard adopted by
24 the corporation to implement, interpret, or make specific the law
25 enforced or administered by it to govern its procedure except one that

26 (A) relates only to the internal management of the
27 corporation;

28 (B) relates to specific rates, tariffs, divisions, and
29 contract rate agreements;

(C) relates to service schedules of the railroad;

(D) is directed to a specifically named person or to a group of persons and does not apply to the general public; or

(E) relates to the use of public works under the jurisdiction of the corporation if the effect of the order is indicated to the public by means of signs or signals.

Sec. 42.40.990. SHORT TITLE. This chapter may be referred to as the Alaska Railroad Corporation Act.

* Sec. 3. AS 42.40.010 is amended to read:

Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is established the Alaska Railroad Corporation. The corporation is a public corporation and is an instrumentality of the state [WITHIN THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT]. The corporation has a legal existence independent of and separate from the state. The exercise by the corporation of the powers provided in this chapter is considered an essential government function of the state.

* Sec. 4. AS 42.40.020(a) is amended to read:

(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 eight [SEVEN] members appointed by the governor. The eight [SEVEN] appointed members must be registered voters in the state except as provided in (b) and (c) of this section. Except for the member appointed under (d) 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 year 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 stat

1 officer or employee.

2 * Sec. 5. AS 42.40.020(e) is amended to read:

3 (e) Except for [THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVEL-
4 OPMENT AND] the chief executive officer of the corporation, the mem-
5 bers of the board shall be confirmed by a majority of the members of
6 each house of the legislature in joint session. A member appointed by
7 the governor has the full powers and responsibilities of a confirmed
8 board member until the member is rejected by the legislature.

9 * Sec. 6. AS 42.40.030 is amended to read:

10 Sec. 42.40.030. TERM OF OFFICE; REMOVAL. (a) Except for [THE
11 COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT AND] the chief
12 executive officer of the corporation, members of the board serve for
13 staggered terms of five years each [AT THE PLEASURE OF THE GOVERNOR].

14 * Sec. 7. AS 42.40.030 is amended by adding a new subsection to read:

15 (b) The governor may, by written notice to the member, remove a
16 member from the board for

17 (1) incapacitation caused by injury or sickness that leaves
18 the member unable to perform duties under this chapter;

19 (2) continued refusal or inability to attend meetings of
20 the board; or

21 (3) conviction of a felony.

22 * Sec. 8. AS 42.40.180 is repealed and reenacted to read:

23 Sec. 42.40.180. RULES. (a) The board shall establish a proce-
24 dure for adopting rules to carry out its functions and the purposes of
25 this chapter, including a procedure for the adoption of rules on an
26 emergency basis when essential to continue or to reinstate the orderly
27 operation of the corporation's facilities or programs.

28 (b) The board shall adopt rules to safeguard property owned,
29 managed, or transported by the corporation and to protect employees

and persons using the corporation's property or services.

* Sec. 9. SPECIAL REPORT. The governor shall contract with a private consultant for the preparation of a report on the long-term operations of the Alaska Railroad that are in the best interest of the state. The report shall be submitted to the governor and the legislature by January 1, 1988. It shall contain specific recommendations on operational alternatives and the transfer of all or part of the railroad operation to the private sector.

* Sec. 10. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD CORPORATION. Notwithstanding AS 42.40.020 enacted in sec. 1 of this Act, the terms of the appointed members of the first board of directors of the Alaska Railroad Corporation are as follows:

- (1) one shall serve a term of two years;
- (2) two shall serve a term of three years;
- (3) two shall serve a term of four years; and
- (4) two shall serve a term of five years.

* Sec. 11. COLLECTIVE BARGAINING AGREEMENTS. (a) As soon as practicable before transfer of the Alaska Railroad to the state, the Alaska Railroad Corporation and its employees shall adopt collective bargaining agreements that continue the provisions of the agreements in effect between the Alaska Railroad and its employees on the date of transfer of the railroad. The collective bargaining agreements adopted under this section between the corporation and its employees shall remain in effect to the extent required under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982).

(b) Within 180 days after the first meeting of the board of directors of the Alaska Railroad Corporation, the board and representatives of employee bargaining units shall establish procedures for the renegotiation of bargaining agreements adopted under (a) of this section.

1 * Sec. 12. The state-owned railroad as defined under 45 U.S.C. 1202(4)
2 may not apply for a right-of-way across the Western (Kobuk River) unit of
3 the Gates of the Arctic National Preserve under 16 U.S.C. 410hh(4)(b) -
4 (e).

5 * Sec. 13. AS 42.40.190 and 42.40.200 are repealed.

6 * Sec. 14. Sections 3 - 8 and 13 of this Act take effect on the effec-
7 tive date of an amendment to the Constitution of the State of Alaska relat-
8 ing to the Alaska Railroad.

9 * Sec. 15. Sections 1, 2, and 9 - 12 of this Act take effect imme-
10 diately in accordance with AS 01.10.070(c).
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29