

AK.
RAILROAD

Bill Drafts

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IN THE SENATE

SENATE TRANSPORTATION
COMMITTEE SUBSTITUTE

SENATE BILL NO. 352

IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

* Section 1. LEGISLATIVE FINDINGS AND PURPOSE.

(a) The Legislature finds that

(1) It is the policy of the state to

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

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

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

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

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

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

1 existence;

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

5 (b) It is the purpose of this Act to create a viable
6 economic entity with the powers and duties necessary to operate and
7 manage the Alaska Railroad pending eventual transfer to the private
8 sector for ownership or operation or both consistent with 45 U.S.C.
9 1201-1214 (Alaska Railroad Transfer Act of 1982). It is the purpose
10 of the legislature to

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

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

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

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

23 (C) have the ability to raise capital by issuing
24 obligations exempt from federal and state taxation and to apply for
25 any Federal monies to which the State would be entitled, or may be
26 available;

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

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

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

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

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

9 (3) insure that borrowing by the corporation does not
10 directly or indirectly endanger the state's own borrowing capa-
11 city.

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

13 CHAPTER 40. ALASKA RAILROAD CORPORATION.

14 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

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

24 Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the
25 corporation are vested in the board of directors. The board
26 consists of the commissioner of Commerce and Economic Development
27 and six voting members appointed by the Governor. These six
28 members must be residents of and registered voters in the state
29 except as provided in (b) and (c) of this section. No more than

1 two of these members may be from any one of the four judicial
2 districts in the state. Two of the voting members must have at
3 least five years experience as owners or managers of a business
4 in the state. Except for the commissioner of Commerce and Eco-
5 nomic Development, a voting member may not be a state officer or
6 employee.

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

11 (c) One voting member shall be or have been an executive
12 official of an American railroad consistent with the Interstate
13 Commerce Act (49 U.S.C. et. seq.).

14 (d) In addition to the voting members, the following non-
15 voting members shall serve on the board:

16 (1) an employee who is a member of a bargaining unit
17 with the corporation shall be appointed by the governor to
18 represent the employees.

19 (2) the chief executive officer of the corporation.

20 (e) The voting members of the board shall be confirmed by a
21 majority of the membership of the legislature in joint session.
22 A member appointed by the governor has the full powers and res-
23 ponsibilities of a confirmed board member unless and until the
24 member has been rejected by the legislature.

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

27 (g) The board shall appoint a secretary and prescribe the
28 specific duties of the secretary.

29

1 (h) The chairperson shall call meetings of the board at
2 least once every three months. The chairperson may call other
3 meetings of the board as the chairperson considers necessary.
4 The chairperson shall preside at meetings of the board.

5 Sec. 42.40.030. TERM OF OFFICE; REMOVAL. Except for the
6 commissioner of Commerce and Economic Development, the voting
7 members of the board serve for staggered terms of five years
8 each, and serve at the pleasure of the governor during their
9 terms.

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

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

18 (c) A member whose term has expired shall serve until a
19 successor has been appointed.

20 Sec. 42.40.050. COMPENSATION AND EXPENSES. (a) An ap-
21 pointed member of the board is entitled to compensation at a rate
22 of \$250 for each day the member is engaged in the actual perform-
23 ance of duties as a member of the board. The board may provide
24 by rule for compensation for partial days during which a member
25 is engaged in the actual performance of duties.

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

1 Sec. 42.40.060. QUORUM. Four voting members of the board
2 constitute a quorum for the transaction of business.

3 Sec. 42.40.070. VOTING. Four affirmative votes are re-
4 quired for board action. The board shall provide by rule for the
5 manner of voting, except that the board may not provide for
6 voting by proxy. The rules may provide for voting and conferring
7 by means of telecommunication devices.

8 ARTICLE 2. MANAGEMENT.

9 Sec. 42.40.090. MANAGEMENT BY THE BOARD. The board is respon-
10 sible for the management of the corporation but shall delegate
11 certain powers and duties to the chief executive officer in
12 accordance with AS 42.40.110. In carrying out its responsibili-
13 ties under this section the board shall, subject to AS 42.40.110,

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

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

19 (3) Manage the corporation on a self-sustaining basis;

20 (4) apply to the legislature for a subsidy if it is
21 required to maintain a service which is not otherwise self-
22 sustaining;

23 (5) provide for safe, efficient, and economical
24 transportation to meet the overall needs of the state;

25 (6) raise needed capital by issuing obligations of the
26 corporations while insuring that borrowing by the corporation
27 does not directly or indirectly endanger the state's own borrow-
28 ing capacity.

1 (7) review all public and private land disposal pro-
2 posals in planning for future development or expansion.

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

6 Sec. 42.40.100. EXECUTIVE OFFICERS. (a) The board shall
7 appoint the chief executive officer of the corporation. The
8 chief executive officer serves at the pleasure of the board. The
9 board shall fix compensation for the chief executive officer.

10 (b) The chief executive officer of the corporation shall
11 appoint and fix the compensation for other executive officers.
12 The appointment of other executive officers and their compen-
13 sation are subject to board approval.

14 Sec. 42.40.110. DELEGATION. (a) The board shall by
15 rule delegate powers and duties necessary and appropriate for the
16 management of the daily affairs and operations of the corporation
17 to the chief executive officer, subject to a requirement of board
18 approval imposed by the rules.

19 (b) Within 60 days after their first meeting, the board
20 shall by rule delegate the following activities of the corpo-
21 ration to the chief executive officer or other executive officers
22 designated by the board:

23 (1) leasing, granting easements in, issuing permits
24 for the use of, or conveying other interests that do not consti-
25 tute a transfer of the corporation's entire interest in real
26 property of the corporation;

27 (2) establishing specific rates, tariffs, divisions,
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1 and contract rate agreements;

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

3 (4) performing procurement activities.

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

6 (c) Specific board approval is required for the following:

7 (1) transferring the corporation's entire interest in
8 real property;

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

10 (3) mortgaging or pledging corporation assets;

11 (4) donating property, or other assets belonging to
12 the corporation;

13 (5) acting as a surety or guarantor;

14 (6) adopting a long-range capital improvement and
15 program plan;

16 (7) certifying annual reports;

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

20 (9) expanding or reducing services in a major way;

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

24 (11) selecting independent auditors and accountants;

25 (12) the exercise of the power of eminent domain;

26 (13) collective bargaining agreements as provided by
27 42.40.710.

28 (14) annual budget plans.

29

ARTICLE 3. ADMINISTRATIVE PROVISIONS.

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2 Sec. 42.40.200. PUBLIC BOARD MEETINGS. (a) The meetings
3 of the board are public except executive sessions. The question
4 of holding an executive session to discuss matters that come
5 within the exceptions contained in (b) and (c) of this section
6 shall be determined by a majority vote of the body. No subjects
7 may be considered at the executive session except those mentioned
8 in the motion calling for the executive session unless auxiliary
9 to the main question. No action may be taken at the executive
10 session.

11 (b) The following excepted subjects may be discussed in an
12 executive session:

13 (1) matters, the immediate knowledge of which would
14 clearly have an adverse effect upon the finances of the Alaska
15 Railroad;

16 (2) subjects that tend to prejudice the the reputation
17 and character of any person, provided the person may request a
18 public discussion;

19 (3) matters which by law, municipal charter, or ordi-
20 nance are required to be confidential.

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

29 (d) The board may by motion exclude non-voting members of

1 the board from an executive session for defined and specific
2 reasons.

3 Sec 42.40.220. MINUTES AND NOTICE OF MEETINGS. The board
4 shall keep minutes of each meeting. Reasonable notice of the
5 meetings shall be provided to the public.

6 Sec. 42.40.230. RULES. (a) The board shall establish in
7 its bylaws a procedure for adopting rules to carry out its func-
8 tions and the purposes of this chapter.

9 (1) The corporation shall make available to members of
10 the public copies of the rules adopted under this section.

11 (2) Within 45 days after adoption, the chairman of the
12 board shall submit a rule adopted under this section to the
13 chairman of the Administrative Regulation Review Committee under
14 AS 24.20.400 - 24.20.460.

15 (b) Except as provided in (c) of this section, at least 15
16 days before the adoption, amendment, or repeal of a rule, the
17 board shall give public notice of the proposed action by publish-
18 ing the notice in at least three newspapers of general circula-
19 tion in the state and by mailing a copy of the notice to every
20 person who has filed a request for notice of proposed rules with
21 the board or the corporation. The public notice must include a
22 statement of the time, place, and nature of the proceedings for
23 adoption, amendment, or repeal of the rule and must include an
24 informative summary of the proposed subject of the rule. On the
25 date and at the time and place designated in the notice, the
26 board shall give each interested person or his authorized rep-
27 resentative, or both, the opportunity to present statements,
28 arguments or contentions in writing, and shall give members of
29 the public an opportunity to present oral statements, arguments,

1 or contentions for a total period of at least one hour. The
2 board shall consider all relevant matter presented to it before
3 adopting, amending, or repealing a rule which is adopted, or its
4 amendment or repeal, may vary in content from the informative
5 summary specified in this subsection if the subject matter of the
6 rule, or its amendment or repeal, remains the same and the ori-
7 ginal notice was written so as to assure that members of the
8 public are reasonably notified of the proposed subject of the
9 board's action in order for them to determine whether their
10 interests could be affected by the board's action on that sub-
11 ject.

12 (c) The board shall in its bylaws establish a procedure for
13 adoption of emergency rules when the adoption of an emergency
14 rule is essential to continue or to reinstate the orderly opera-
15 tion of the corporation's facilities or programs. The require-
16 ments of (b) of this section do not apply to the initial adoption
17 in accordance with (b) of this section. No emergency regulation
18 adopted under this subsection remains in effect more than 120
19 days unless the board complies with (b) of this section during
20 the 120-day period.

21 (d) A rule adopted under this section becomes effective
22 immediately upon its adoption by the board, unless otherwise
23 specifically provided by order of the adoption.

24 (e) The failure to mail notice to a person as provided in
25 (b) of this section does not invalidate an action taken by the
26 board.

27 (f) An interested person may get a judicial declaration on
28 the validity of a rule by bringing an action for declaratory
29 relief in the superior court. In addition to any other ground

1 the court may declare the regulation invalid (1) for substantial
2 failure to comply with this section, or (2) in the case of an
3 emergency regulation or order of repeal, upon the grounds that
4 the facts recited in the statement do not constitute an emergency
5 under (c) of this section.

6 (g) Provisions of this section do not apply to rules,
7 regulations and orders in effect before the transfer of the
8 Alaska Railroad to the State of Alaska under 45 U.S.C. 1201-1214
9 (Alaska Railroad Transfer Act of 1982) and adopted in accordance
10 to Section 8 of this law.

11 Sec. 42.40.240. PUBLIC DISCLOSURE OF INFORMATION. (a)
12 Except as provided by rule of the corporation under (b) of this
13 section, information in the possession of the corporation is
14 public and is open to public inspection at reasonable times.

15 (b) The corporation may by rule designate and withhold
16 public disclosure of matters of a nonpublic, privileged, or
17 proprietary nature. Those matters include personnel records,
18 communications with and work product of counsel consistent with
19 the standards and practices of the United States Interstate
20 Commerce Commission including but not limited to proprietary
21 information, and information associated with specific shippers,
22 divisions, and contract rate agreements.

23 Sec. 42.40.260. ANNUAL REPORT. Within 90 days follow-
24 ing the end of the fiscal year of the railroad the board shall
25 direct preparation of, certify and distribute to the governor and
26 to the legislature a report describing the operations and finan-
27 cial condition of the corporation during the preceding fiscal
28 year. This report shall include a breakdown of a service's real
29 costs and income in each category of railroad operations.

1 of-way, franchises, easements, and other interest in land, in-
2 cluding land lying under water and appropriation of water rights
3 that are located in the state, taking title to the property in
4 the name of the corporation;

5 (9) acquire property by eminent domain in accordance
6 with AS 42.40.430;

7 (10) hold, maintain, use, operate, lease, exchange,
8 donate, improve, convey, alienate, dispose of, or transfer any
9 real or personal property including facilities and equipment in
10 accordance with the provisions of this Act.

11 (11) contract with and accept transfers, gifts, grants
12 or loans of funds or property from the United States and the
13 state or its political subdivisions, subject to the provisions of
14 federal, state, or local programs;

15 (12) undertake and provide for the management, opera-
16 tion, maintenance, use, and control of all of the properties of
17 the corporation including, the tracks, equipment and other pro-
18 perty transferred to it by the federal government or by any
19 person;

20 (13) recommend to the legislature and the governor any
21 tax, financing, or financial arrangement the corporation con-
22 siders appropriate for expansion or extension and operation of
23 the Alaska Railroad;

24 (14) maintain offices and facilities at places it
25 designates;

26 (15) apply to the appropriate agencies of the state,
27 the United States, and a foreign country or other proper agencies
28 for the permits, licenses, or approvals necessary to construct,
29 maintain, and operate railroad transportation services, and to

1 obtain, hold, and reuse the licenses and permits in the same
2 manner as other operating units or persons;

3 (16) prescribe rates to be charged for services pro-
4 vided by the Alaska Railroad consistent with 45 U.S.C. 1201-1214
5 (Alaska Railroad Transfer Act of 1982);

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

8 (18) enter into contracts, leases, and other agreements
9 with connecting carriers, shippers, and other persons concerning
10 the services, activities, operations, properties and facilities
11 of the railroad, including contracts, leases and other agreements
12 that contain provisions intended to preserve and expand the
13 railroad's traffic base;

14 (19) plan for and undertake expansion of the railroad
15 and railroad activities, including extension of the Alaska Rail-
16 road's rail system, and contract with other modes of transporta-
17 tion service connecting to the railroad's rail services;

18 (20) adopt rules that are designed to safeguard pro-
19 perty owned, managed, or transported by the corporation and to
20 protect employees and persons using the corporation's property or
21 services;

22 (21) hire and discharge railroad personnel and deter-
23 mine benefits and other terms and conditions of employment esta-
24 blished in accordance with obligations imposed by 45 U.S.C.
25 1201-1214 (Alaska Railroad Transfer Act of 1982);

26 (22) assume and satisfy liabilities of the United
27 States or its agencies as provided by the federal transfer legis-
28 lation and the closing report or its substantive equivalent as
29 accepted by the legislature;

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

4 (24) borrow money and issue its bonds or notes and
5 provide for and secure their payment, provide for the rights of
6 their holders and purchase, hold, or dispose of its bonds or
7 notes;

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

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

15 (27) include in any borrowing the amounts necessary to
16 establish reasonable reserves and pay financing charges and
17 interest on the obligations for a reasonable period after which
18 the corporation estimates funds will be otherwise available to
19 pay the interest, consultant, advisory, and legal fees, and other
20 expenses necessary or incident to borrowing;

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

23 (29) cancel bonds purchased under (28) of this section.

24 (30) do all things necessary, convenient or desirable
25 to carry out the powers and duties expressly granted or neces-
26 sarily implied in this chapter or under other laws of the state
27 or the laws and regulations of the federal government.

28 Sec. 42.40.310. LONG-RANGE CAPITAL IMPROVEMENT AND PROGRAM
29 PLAN. (a) The corporation shall prepare and the board shall

1 adopt a long-range capital improvement and program plan. The
2 plan shall delineate the manner in which the corporation intends
3 to accomplish the purposes of this chapter and explain the corpo-
4 ration's anticipated capital improvements during each of the five
5 years after the plan is adopted.

6 (b) The board shall annually review and update the plan re-
7 quired under (a) of this section. The board may not contract for
8 the preparation or revision of the plan, but shall require their
9 preparation and revision by employees of the corporation.

10 (c) The board shall provide copies of its updated plan to
11 the governor and the legislature by December 1 of each year.

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

21 (b) Notwithstanding the provisions of this section, the
22 corporation may

23 (1) defend and indemnify a current or former employee,
24 agent, or board member of the corporation and their successors
25 against all costs, expenses, judgments, and liabilities, inclu-
26 ding attorney fees, incurred by or imposed upon that person in
27 connection with a civil or criminal action in which the person is
28 involved by affiliation with the corporation, if the person acted
29 in good faith on behalf of the corporation and within the scope

1 of official duties or powers; and

2 (2) purchase insurance to protect and hold personally
3 harmless its employees, agents, and board members from an action,
4 claim, or proceeding instituted against these individuals arising
5 out of the performance, purported performance, or failure of
6 performance, in good faith, of duties for, or employment with,
7 the corporation and to hold these individuals harmless from
8 expenses connected with the defense, settlement, or monetary
9 judgments from that action, claim, or proceeding; the purchase of
10 insurance and its policy limits are discretionary with the board
11 and insurance is not considered to be compensation to the insured
12 individual.

13 ARTICLE 5. RAIL PROPERTIES.

14 Sec. 42.40.400. LAND. (a) All land among the rail proper-
15 ties transferred under 45 U.S.C. 1201-1214 (Alaska Railroad
16 Transfer Act of 1982) or otherwise acquired by the corporation is
17 under the control of the corporation. All lands transferred or
18 acquired shall be designated as follows

19 (1) railroad rights-of-way or easements transferred
20 under the federal act or otherwise acquired are railroad utility
21 corridors;

22 (2) All other real property transferred under the
23 Transfer Act, or otherwise acquired, are rail lands.

24 (b) Railroad utility corridors shall be of a width at least
25 100 feet on both sides of the centerline of the extended main or
26 branch line, or may be of lesser width only if the adjoining land
27 is not rail property, and may be surveyed by the metes and bounds
28 method; and

29 (c) The corporation may not sell land within the railroad

*Exempt as provided in
AS 42.40.460*

1 corridor. [However,] the corporation may lease, grant easements or
2 permits, or otherwise authorize use of portions of the railroad
3 utility corridor but only for transportation, communication, and
4 transmission purposes and for support functions associated with
5 such purposes so long as parallel uses of the Railroad corridor
6 are not restricted.

7 (d) The corporation may lease, grant easements or
8 permits, or otherwise authorize use of portions of rail lands for
9 other services including but not limited to transportation,
10 communication, and transmission purposes and for support function
11 associated with such purposes.

12 *Adopted*
13 Sec. 42.40.410. NOMINATION OF LAND. The board may ~~by rule~~
through the Dept of Natural Resources
14 identify and request [^] federal land to be nominated for state
selection for Railroad purposes.

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

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

4 (1) designate that land for railroad purposes and,
5 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 the land for railroad purposes.

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

11 (c) In the absence of a reservation to the contrary, a
12 conveyance under (b) of this section vests in the corporation
13 ownership, control of the surface and subsurface, and the exclu-
14 sive right to extract or use for its purposes, timber and other
15 constructed material, sand, gravel, rock, and the right to tun-
16 nel, ditch, recontour, excavate or otherwise use the surface or
17 subsurface for railroad, transportation, transmission, and re-
18 lated purposes without regard to the classification of the re-
19 sources 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
22 natural resources jointly identify as unnecessary or unsuitable
23 for the corporation's purposes.

24 (e) When physical conditions require that track or other
25 right-of-way fixtures of the corporation be moved from the exist-
26 ing location and relocated on state-owned land adjacent to or in
27 the vicinity of the existing right-of-way, and the chief execu-
28 tive officer determines that relocation is necessary to maintain
29 safe and adequate rail operations, the corporation may effect the

1 relocation with concurrence of the Department of Natural Re-
2 sources. The relocation must be limited to land adequate to
3 restore or continue safe rail operations at a normal level.

4 *Sec. 42.40.425. LAND USE REGULATION. The board may adopt
5 exclusive rules governing land use by parties having interests in
6 or permits for land owned or managed by the corporation. The
7 power conferred by this section is exercised for the common
8 health, safety, and welfare of the public and, to the extent
9 constitutionally permissible, may not be limited by the terms and
10 conditions of leases, contracts, or other transactions.

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

16 (a) The corporation may acquire a fee simple title when-
17 ever, in the judgment of the board, ownership of a fee simple is
18 necessary to carry out the state's lawful purposes in condemning
19 property.

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

22 (d) The power of eminent domain conferred under this sec-
23 tion includes the power to obtain material, including clay,
24 gravel, sand, timber, or rock for railroad use, the land neces-
25 sary to obtain the material, and access to the land and mate-
26 rial.

27 (e) The corporation may vacate land, or part of it, or
28 rights in land acquired for railroad purposes by executing and

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1 filing a deed in the appropriate recording district. Upon filing
2 of the deed, title reverts to the State of Alaska, if compen-
3 sation has been paid.

4 Sec. 42.40.450. OTHER ASSETS. (a) The corporation may
5 submit applications on its own behalf as an instrumentality of
6 the state for acquisition of interests in federal land available
7 under federal law that will enhance the operations of the corpo-
8 ration and may receive conveyances of all interests in its own
9 name.

10 (b) The corporation, as an agency of the state, may acquire
11 in its own name from the United States under 50 App U.S.C. 1622
12 et seq (the Surplus Property Act of 1944), 40 U.S.C. 471 et seq
13 as amended (the Federal Property and Administrative Services Act
14 of 1949), or other law, property under the control of a federal
15 department or agency that is useful for the corporation's pur-
16 poses and may acquire from the Department of Administration
17 property of the state made available under AS 44.71.010 -
18 44.71.040.

19 ~~Sec. 42.40.460. MUNICIPAL RIGHTS-OF-WAY.~~ Upon request of a
20 municipality the corporation may grant to the municipality a
21 right-of-way in a railroad utility corridor or in land owned by
22 the corporation to be used for a pedestrian walkway or trail.
23 Before granting a right-of-way under this section the board shall
24 require the municipality to execute an agreement in a form ap-
25 proved by the board to

26 (1) hold the corporation harmless and indemnify the
27 corporation for any use made of the right-of-way including but
28 not limited to

29 (a) defending the corporation in any cause of action brought

1 against the railroad as a result of such use,

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

5 (2) vacate the right-of-way upon request of the corpo-
6 ration if the right-of-way interferes with expansion or replace-
7 ment of railroad facilities.

8 ARTICLE 6. FINANCIAL PROVISIONS.

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

14 Sec. 42.40.520. FIDELITY BOND. The corporation shall
15 obtain a fidelity bond in an amount determined by the board for
16 its members and any officer responsible for accounts and finan-
17 ces. A bond must be in effect during the entire tenure in office
18 of the bonded person.

19 Sec. 42.40.530. INSURANCE. (a) The corporation shall
20 protect its assets, services, and personnel by insurance, inclu-
21 ding certain self-insured retentions.

22 (b) The corporation shall also maintain Casualty, Pro-
23 perty, Business Interruption, Marine, Boiler and Machinery,
24 Pollution Liability, and Miscellaneous Insurances in amounts
25 reasonably calculated to cover potential claims for bodily in-
26 jury, death or disability, consequential and property damage that
27 may arise or be related to its operations and activities, in-
28 cluding the liabilities of the State.

29 (c) The Corporation may contract with the Department of

1 Administration, Division of Risk Management for the provision of
2 all or part of the requirements in subsections (a) and (b).

3 Sec. 42.40.540. CLAIMS. (a) All claims and suits
4 involving activities of the railroad, including suits in con-
5 tract, quasi-contract, or tort, shall be brought against the
6 corporation, and not against the state.

7 (b) In any claim or other legal action against the corpo-
8 ration, including actions involving the expansion, extension and
9 construction of the railroad, in which the corporation is the
10 prevailing party, whether or not the action is considered to be a
11 public interest case, it is not an abuse of discretion for a
12 court to award full costs and attorney fees and for the losses to
13 the corporation that are directly attributable to the maintenance
14 of that action.

15 (c) For the purposes of actionable claims, undertakings,
16 payments of judgments, execution, interest, punitive damages,
17 statutes of limitations, bonds, costs, and similar matters re-
18 lated to the presentation and prosecution of claims by and
19 against the corporation, the corporation and its board members
20 and employees enjoy the same rights, privileges, and immunities
21 as the state and state officers.

22 (d) Claims against the corporation are not subject to the
23 provisions of AS 44.77.010 - 44.77.070 regarding claims against
24 the state.

25 (e) The corporation is not subject to the provisions of
26 AS 44.80.010, regarding the state as a party to an action.

27 Sec. 42.40.550. REVENUE. Revenue generated by or appro-
28 priated to the corporation shall be retained and managed by the
29 corporation for railroad and related purposes as required by 45

1 U.S.C. 1207(a)(5) (Alaska Railroad Transfer Act of 1982).

2 *Sec. 42.40.560. APPROPRIATIONS. The corporation may re-
3 quest, with the concurrence of the governor, a direct appropri-
4 ation or grant from the legislature to assist in carrying out the
5 provisions of AS 42.40.300 and 42.40.310.

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

9 (b) The principal and interest on bonds or notes of the
10 corporation is payable from corporation money or assets. Bonds
11 or notes may be additionally secured by a pledge of a grant or
12 contribution from the federal government or a corporation, asso-
13 ciation, institution or person, or a pledge of money, income, or
14 revenue of the corporation from any source.

15 (c) Bond anticipation notes may be payable from the pro-
16 ceeds of the sale of bonds or other bond anticipation notes, or,
17 if bond or bond anticipation note proceeds are not available,
18 from other money or assets of the corporation.

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

- 22 (1) be dated;
- 23 (2) bear interest at a required rate or rates per
24 year or within a maximum rate;
- 25 (3) be in a required denomination;
- 26 (4) be in a coupon or registered form;
- 27 (5) carry conversion or registration provisions;
- 28 (6) have a required rank or priority;

29 *Problem - future analysis

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

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

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

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

9 (e) Bonds or bond anticipation notes may be sold in the
10 manner, on the terms, and at the price the board determines.
11 Bond anticipation notes shall mature at the time or times deter-
12 mined by the board. Bonds shall mature at the time, not exceed-
13 ing 50 years from their date, determined by the board.

14 (f) Bond or bond anticipation note proceeds may not be
15 dedicated to activities other than those the board reasonably
16 determines to be specifically related to the purposes for which
17 the instruments are issued.

18 (1) pledge all or part of its revenue to which
19 its right then exists or may thereafter exist, the money derived
20 from the revenue, and the proceeds of its bonds or notes;

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

24 (3) covenant as to establishment of reserves or
25 sinking funds and provide for, regulate, and dispose of the
26 reserves or sinking funds;

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

29 (5) covenant as to bonds and notes to be issued, their

1 limitations, terms and conditions, the custody, application and
2 disposition of the proceeds of the bonds and notes;

3 (6) covenant as to the issuance of additional bonds or
4 notes, or limitations on the issuance of additional bonds or
5 notes, and the incurring of other debts;

6 (7) covenant as to the payment of the principal of or
7 interest on the bonds or notes, the sources and methods of pay-
8 ment, the rank or priority of the bonds or notes with respect to
9 a lien or security, or the acceleration of the maturity of the
10 bonds or notes;

11 (8) provide for the replacement of lost, stolen,
12 destroyed or mutilated bonds or notes;

13 (9) covenant against extending the time for the pay-
14 ment of bonds or notes, or interest on the bonds or notes;

15 (10) covenant as to the redemption of bonds or notes
16 and privileges of their exchange for other bonds or notes of the
17 corporation;

18 (11) covenant to create or authorize the creation of
19 special funds of money to be held in ledge or otherwise for
20 operating expenses, payment or redemption of bonds or notes,
21 reserves or other purposes, and as to the use and disposition of
22 the money held in the funds;

23 (12) establish the procedure by which the terms of a
24 contract or covenant with or for the benefit of the holders of
25 bonds or notes may be amended or abrogated, the amount of bonds
26 or notes the holders of which must consent to amendment or abro-
27 gation, and the manner in which the consent may be given;

28 (13) covenant as to the custody of any of its proper-
29 ties or investments, their safekeeping and insurance, and the use

1 and disposition of insurance money;

2 (14) vest in a trustee or trustees inside or outside
3 the state property, rights, powers and duties in trust as the
4 corporation may determine that may include any or all of the
5 rights, powers and duties of a trustee appointed by the holders
6 of bonds or notes of the corporation, and to limit or abrogate
7 the rights of the holders of the bonds or notes of the corpo-
8 ration to appoint a trustee under this chapter or limit the
9 rights, powers and duties of the trustee;

10 (15) pay the costs or expenses incident to the enforce-
11 ment of the bonds or notes, of the provisions of the resolution,
12 or of a covenant or agreement of the corporation with the holders
13 of its bonds or notes;

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

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

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

28 (19) make covenants other than and in addition to the
29 covenants expressly authorized in this section, of like or dif-

1 ferent character, and make covenants to do or refrain from doing
2 acts in order to better secure bonds or notes or that, in the
3 absolute discretion of the board, will tend to make bonds or
4 notes more marketable.

5 Sec. 42.40.580. INTERIM RECEIPTS, TEMPORARY BONDS, AND
6 TEMPORARY BOND ANTICIPATION NOTES. Before the preparation of
7 definitive bonds or bond anticipation notes, the corporation may
8 issue interim receipts or temporary bonds or bond anticipation
9 notes, with or without coupons, exchangeable for bonds or bond
10 anticipation notes when these definitive bonds or bond antici-
11 pation notes have been executed and are available for delivery.

12 Sec. 42.40.590. VALIDITY OF SIGNATURES. If an officer
13 whose signature or a facsimile of whose signature appears on
14 bonds, notes, or coupons attached to them ceases to be an officer
15 before the delivery of the bond, note, or coupon, the signature
16 or facsimile is valid the same as if the person had remained in
17 office until delivery.

18 Sec. 42.40.600. INDEPENDENT FINANCIAL ADVISOR. In negotia-
19 ting the private sale of bonds or bond anticipation notes to an
20 underwriter, the board shall retain a financial advisor who is
21 independent from the underwriter.

22 Sec. 42.40.610. VALIDITY OF PLEDGE. (a) The pledge of
23 assets or revenue of the corporation to the payment of the prin-
24 cipal or interest on bonds or notes of the corporation is valid
25 and binding from the time the pledge is made and the assets or
26 revenue are immediately subject to the lien of the pledge without
27 physical delivery or further act. The lien of a pledge is valid
28 and binding against all parties having claims of any kind against
29 the corporation, irrespective of whether those parties have

1 notice of the lien of the pledge.

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

6 Sec. 42.40.62. REMEDIES. A holder of bonds or notes
7 issued under this chapter or of coupons attached to them, and a
8 trustee under a trust agreement or resolution authorizing the
9 issuance of the bonds or notes, except as restricted by a trust
10 agreement or resolution, either at law or in equity, may

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

14 (2) compel the performance of all duties of the corpo-
15 ration required by this chapter or by the trust agreement or
16 resolution.

17 Sec. 42.40.630. NEGOTIABLE INSTRUMENTS. Bonds and notes
18 issued under this chapter and interest coupons attached to them
19 are negotiable instruments under the laws of this state, subject
20 only to applicable provisions for registration.

21 Sec. 42.40.640. BONDS AND NOTES ELIGIBLE FOR INVESTMENT.
22 Bonds and notes issued under this chapter are securities in which
23 all public officers and public bodies of the state and its poli-
24 tical subdivisions, all insurance companies, trust companies,
25 banking associations, investment companies, executors, admini-
26 strators, trustees and other fiduciaries may properly and legally
27 invest funds, including capital in their control or belonging to
28 them. These bonds and notes may be deposited with a state or
29 municipal officer of an agency or political subdivision of the

1 state for any purpose for which the deposit of bonds or notes of
2 the state is authorized by law.

3 Sec. 42.40.650. REFUNDING BONDS. (a) The corporation may
4 provide for the issuance of refunding bonds for the purpose of
5 refunding bonds then outstanding that have been issued under this
6 chapter, including the payment of a redemption premium on them
7 and interest that accrues to the date of redemption of the bonds.
8 Refunding bonds shall be issued in accordance with provisions of
9 this chapter that relate to the issuance of bonds to the extent
10 those provisions are appropriate.

11 (b) Refunding bonds may be sold or exchanged for out-
12 standing bonds issued under this chapter and the proceeds may be
13 applied to the purchase, redemption or payment of the outstanding
14 bonds in addition to other authorized purposes. Pending the
15 application of the proceeds of refunding bonds to the payment of
16 the principal, accrued interest and redemption premium on the
17 bonds being refunded, and, if permitted in the resolution autho-
18 rizing the issuance of the refunding bonds or in the trust agree-
19 ment securing them, to the payment of interest on the refunding
20 bonds and expenses in connection with the refunding, the proceeds
21 may be invested in direct obligations of the United States or
22 obligations the principal of and the interest on which are uncon-
23 ditionally guaranteed by the United States that mature or may be
24 redeemed not later than the date the proceeds of the refunding
25 bonds, together with the interest accruing on them, will be
26 required for the purposes intended.

27 Sec. 42.40.660. CREDIT OF STATE NOT PLEDGED. (a) The
28 state and its political subdivisions are not liable for the debts
29 of the corporation. Bonds and notes issued under this chapter

1 are payable solely from the revenue or assets of the corporation
2 and do not constitute a

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

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

7 (b) The corporation may not pledge the credit or the taxing
8 power of the state or its political subdivisions. Each bond and
9 note issued under this chapter shall contain on its face a state-
10 ment 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;
13 and

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

17 Sec. 42.40.670. OFFICERS NOT LIABLE. An officer or em-
18 ployee of the corporation is not subject to personal liability or
19 accountability because of the execution or issuance of bonds or
20 notes.

21 Sec. 42.40.680. EXEMPTION FROM TAXATION. *(a) The real and
22 personal property of the corporation and its assets, income, and
23 receipts are exempt from all taxes and special assessments of the
24 state or a political subdivision of the state.

25 (b) This section does not affect or limit an exemption
26 from license fees, property taxes, or excise, income or other
27 taxes, provided under any other law, nor does it create a tax
28 exemption with respect to the interest of any business enterprise

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1 or other person, other than the corporation.

2 (c) The exercise of the powers granted by this chapter
3 shall be in all respects for the benefit of the people of the
4 state, for their well-being and prosperity, and for the improve-
5 ment of their social and economic conditions. Therefore, the
6 corporation is not required to pay a tax or assessment on pro-
7 perty owned by the corporation under the provisions of this
8 chapter or on the income from the property.

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

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

20 ARTICLE 7. PERSONNEL AND LABOR RELATIONS.

21 *Don't Mark
- Help -* Sec. 42.40.700 PERSONNEL. Employees of the Alaska Railroad
22 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. 42.40.710. COLLECTIVE BARGAINING RIGHTS. (a) The
25 provisions of the Public Employee Relations Act (AS 23.40) do not
26 apply to the corporation or to its employees. However, employees
27 of the corporation, except the chief executive official and other
28 executive officials appointed by the chief executive official,
29 may self organize and form, join, or assist an organization to

1 engage in collective bargaining with respect to wages, hours and
2 other terms and conditions of employment.

3 (b) The collective bargaining agreements between the
4 corporation and its employees shall remain in effect consistent
5 with 45 U.S.C. 1206 (Alaska Railroad Transfer Act of 1982).

6 Sec. 2.40.720. AGREEMENT. (a) ~~At the request of either~~
7 ~~the board of directors of the corporation or an employee organ-~~
8 ~~ization,~~ ^{the} Department of Administration ^{may} shall participate in
9 labor negotiations.

10 (b) An agreement executed between the corporation and an
11 employee organization shall define "grievances." The agreement
12 shall provide for a grievance procedure in which the final step
13 in the procedure is binding arbitration.

14 Sec. 42.40.730. RAILROAD EMPLOYEES LABOR RELATIONS
15 AGENCY.

16 (a) There is established a railroad employees labor
17 relations agency which consists of three members appointed by the
18 governor. One member shall be a member of the labor relations
19 agency (AS 23.40). Members serve at the pleasure of the gover-
20 nor.

21 (b) The railroad labor relations agency shall perform
22 the functions described in AS 23.40.090 -- 23.40.190 to carry
23 out the provisions of the article.

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

28 Sec. 42.40.740. STRIKES. (a) Employees of the corporation
29 may engage in a strike if a majority of the employees in a

1 collective bargaining unit vote by secret ballot to do so.

2 (b) Notwithstanding the provisions of subsection (a), the
3 employees and the corporation may agree in writing to submit a
4 dispute arising from interpretation or application of a col-
5 lective bargaining agreement to arbitration.

6 Sec. 42.40.750. POLITICAL ACTIVITIES. (a) Money, assets,
7 or property of the corporation may not be used for political
8 activity. However, board members and employees of the corpo-
9 ration may communicate with and appear before committees of
10 Congress, the state legislature, and municipal governing bodies
11 in connection with matters directly affecting the corporation. *Accept*

12 *(b) A board member or employee who violates the provisions
13 of this section is personally subject to a civil penalty assessed
14 by a judge of the superior court in an amount not to exceed
15 \$5,000. An action to enforce this section may be brought by any
16 person.

17 Sec. 42.40.760. PROHIBITED ACTS. (a) The railroad
18 *Ch. R. Executive*
~~corporation~~ officer, or any person employed by the corporation
19 may not directly or indirectly:

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

24 (2) require or coerce any employee of the corporation
25 to make any report concerning any of his *her* activities or under-
26 takings unless the activity or undertaking is related to the
27 performance of his official duties.

28 (3) except as directly related to the performance of
29 his *her* official duties, require or coerce any employee of the corpo-

1 ration to submit to any interrogation or examination or psycho-
2 logical test which is designed to elicit from him information
3 concerning

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

6 (B) his religious beliefs or practices,

7 (C) sexual matters,

8 (D) his political affiliation or philosophy;

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

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

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

20
21 **ARTICLE 8. GENERAL PROVISIONS.**

22 **Sec. 42.40.900. APPLICATION OF EXISTING STANDARDS.** The
23 Alaska Railroad Corporation is not subject to the jurisdiction of
24 the Alaska Transportation Commission. The following laws do not
25 apply to the operations of the Alaska Railroad Corporation:

26 (1) AS 19;

27 (2) AS 30.15;

28 (3) AS 35;

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

8 Sec. 42.40.910. CONFLICTING LAWS INAPPLICABLE. IF
9 provisions of AS 42.40.010 - 42.40.990 conflict with the pro-
10 visions of other law, the provisions of AS 42.40.010 - 42.40.990
11 prevail. Provisions of this Act shall be construed so that they
12 do not conflict with 45 U.S.C. 1202 - 1214 (Alaska Railroad
13 Transfer Act of 1982).

14 Sec. 42.40.950. DEFINITIONS. In this chapter,

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

17 (2) "corporation" means the Alaska Railroad Corpo-
18 ration;

19 (3) "date of transfer" means the date on which the
20 United States Secretary of Transportation delivers the deed of
21 conveyance for the properties of the Alaska Railroad under 45
22 U.S.C. 1202-1214 (Alaska Railroad Transfer Act of 1982);

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

25 *(5) "railroad utility corridor" means a right-of-way
26 for railroad and related purposes as defined in 45 U.S.C.
27 1202(11) (Alaska Railroad Transfer Act of 1982).

28 (6) "land" means all interests in real property,

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1 including tide and submerged land;

2 (7) "rail properties" means all real and personal
3 property, tangible and intangible, of the corporation as provided
4 in 45 USC 1202(10).

5 (8) "executive officials" means the authority's chief
6 executive officer, assistant chief executive officer, assistant
7 to the chief executive officer, chief of administration, super-
8 intendent of transportation, manager of marketing and sales,
9 chief engineer, chief mechanical officer, manager of industrial
10 development and real estate, manager of budget and accounting,
11 manager of planning, manager of personnel, manager of supply and
12 procurement, chief of security, manager of operating rules,
13 manager of data processing, or any employee of the authority who
14 fulfills the management functions under a different title or who
15 exercises a similar or comparable level of responsibility if so
16 designated by the board;

17 (9) "Collective bargaining" is defined as negotiating
18 with an employees organization, representing ~~the~~ employees of The
19 Alaska Railroad Corporation on matters pertaining to conditions
20 of employment.

21 Sec. 42.40.990. SHORT TITLE. This chapter may be re-
22 ferred to as the Alaska Railroad Corporation Act of 1984.

23 * Sec. 3. AS 42.40.030 is amended to read:

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

28 * Sec. 4. AS 42.40.030 is amended by adding a new subsec-
29 tion to read:

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

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

5 (2) continued refusal or inability to attend meetings
6 of the board; or

7 (3) conviction of a felony.

8 *Agreed* (4) *any conviction of a felony whether or not it constitutes a crime*
* Sec. 5. AS 42.40.100(a) is amended to read:

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

13 ~~Step~~ * Sec. 6. SPECIAL REPORT. The governor shall contract with
14 a private consultant for the preparation of a report on the long-
15 term operations of the railroad that are in the best interest of
16 the state. The report shall be submitted to the governor and the
17 legislature by January 1, 1988. It shall contain specific recom-
18 mendations on operational alternatives and the transfer of all or
19 part of the railroad operation to the private sector.

20 * Sec. 7. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA
21 RAILROAD CORPORATION. Notwithstanding AS 42.40.030 enacted in
22 Sec. 2 of this Act, the terms of the appointed members of the
23 first board of directors of the Alaska Railroad Corporation as
24 follows:

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

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1 * Sec. 8. PRE-EXISTING RULES, REGULATIONS AND ORDERS OF THE
2 ALASKA RAILROAD. The Board of ^{Directors} ~~Commissioners~~ of the Alaska Rail-
3 road Corporation, by resolution, may continue in force after date
4 of transfer all or part of the rules, regulations, and orders of
5 the Alaska Railroad which were in effect one day before the date
6 of transfer and are not inconsistent with this chapter or other
7 state law. The Board of Directors may adopt in its rules, regu-
8 lations, and orders the substance of former federal authorities
9 relating to the Alaska Railroad. This adoption is not considered
10 a continuation of the federal authorities if made in compliance
11 with the procedural requirements of this chapter and other appli-
12 cable law.

13 * Sec. 9. COLLECTIVE BARGAINING AGREEMENT BETWEEN THE
14 ALASKA RAILROAD CORPORATION AND EMPLOYEES. As soon as practi-
15 cable after ^{abolishment of Corp. status} transfer of the Alaska Railroad, the Alaska Railroad
16 Corporation and its employees shall adopt collective bargaining
17 agreements that continue the provisions of the agreements in
18 effect between the Alaska Railroad and its employees immediately
19 before transfer of the Alaska Railroad. The collective bargain-
20 ing agreements between the corporation and its employees shall
21 remain in effect consistent with 45 U.S.C. 1202-1214 (Alaska
22 Railroad Transfer Act of 1982).

23 * Sec. 10. Sections 3 - 5 of this Act take effect on the
24 effective date of an amendment to the Constitution of the State
25 of Alaska relating to the Alaska Railroad.

26 * Sec. 11. Sections 1, 2, 6, 7, 8 and 9 of this Act take
27 effect immediately in accordance with AS 01.10.070.(c).

28
29 *Problem - future analysis

3/10/84 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;

1
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

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 and eight 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

1 transportation, business, and finance. Except for the commissioner of
2 commerce and economic development, a voting member may not be a
3 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 empolyee
11 barqaining 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. 42.40.090. MANAGEMENT BY THE BOARD. The board is responsible
29 for the management of the corporation but shall delegate certain

1 powers and duties to the chief executive officer in accordance with AS
2 42.40.110. In carrying out its responsibilities under this section
3 the board shall, subject to AS 42.40.110,

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;
7 subject to the jurisdiction of the United States Interstate Commerce
8 Commission consistent with 45 U.S.C. 1207;

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

11 *Use brought*
(4) notify the legislature of any possible application for
12 state appropriation for any service which is not self-sustaining.

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

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

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

20 Sec. 42.40.100. EXECUTIVE OFFICERS. (a) The board shall appoint the
21 chief executive officer of the corporation. [subject to the approval
22 by the Governor.] The chief executive officer serves at the pleasure
23 of the board. The board shall fix compensation for the chief
24 executive officer.

25 (b) The chief executive officer of the corporation shall appoint
26 and fix the compensation for other executive officers. The appoint-
27 ment of other executive officers and their compensation are subject to
28 board approval.

29 Sec. 42.40.110. DELEGATION. (a) The board shall by rule delegate

1 powers and duties necessary and appropriate for the management of the
2 daily affairs and operations of the corporation to the chief executive
3 officer, subject to a requirement of board concurrence or
4 authorization imposed by the rules.

5 (b) Within 180 days of the first meeting of the board, the board
6 shall by rule delegate the following activities of the corporation to
7 the chief executive officer or other executive officers designated by
8 the board:

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

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

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

16 (4) performing procurement activities.

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

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

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 program and capital improvement
28 plan subject to Sec. 42.40.310;
29

1 (7) certifying annual reports;

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

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

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

11 (11) selecting independent auditors and accountants.

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

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

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

18 ~~ARTICLE 3. ADMINISTRATIVE PROVISIONS.~~

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

28 (b) A board member or employee may participate in a decision if
29 that person or a member of that persons 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 under AS 44.62.310, the board may consider in execu-
24 tive session matters that pertain to personnel, the corporation's
25 legal position, land acquisition or disposal, or proprietary informa-
26 tion, as defined in a manner consistent with the standards and prac-
27 tices of the United States Interstate Commerce Commission for protec-
28 tion of information including but not limited to proprietary
29

1 information associated with specific shippers, divisions, and contract
2 rate agreements.

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

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

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

20 Sec. 42.40.240. PUBLIC DISCLOSURE OF INFORMATION. (a) Except
21 as provided by rule of the corporation under (b) of this section,
22 information in the possession of the corporation is public and is open
23 to public inspection at reasonable times.

24 (b) The corporation may by rule designate and withhold public
25 disclosure of matters of a nonpublic, privileged, or proprietary
26 nature. Those matters include personnel records, communications with
27 and work product of counsel consistent with the standards and
28 practices of the United States Interstate Commerce Commission for the
29

1 protection of these matters, and information including but not limited
2 to specific shippers, divisions, and contract rate agreements.

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

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

20 *52-42.40.280* → *Added*
ARTICLE 4. POWERS AND DUTIES.

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

- 23 (1) adopt a seal;
- 24 (2) adopt rules and bylaws governing the business of the
25 corporation;
- 26 (3) sue and be sued;
- 27 (4) appoint trustees and agents of the corporation and
28 prescribe their powers and duties;
- 29 (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:

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 disperse 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 in accordance with 45 U.S.C. 1201-1214 (Alaska
16 Railroad Transfer Act of 1982);

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

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

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

29

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

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

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

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

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

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

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

25 (28) include in any borrowing the amounts necessary to
26 establish reasonable reserves and pay financing charges and interest
27 on the obligations for a reasonable period after which the corporation
28 estimates funds will be otherwise available to pay the interest,
29

1 consultant, advisory, and legal fees, and other expenses necessary or
2 incident to borrowing;

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

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

6 (31) adopt rules having the force of law that require
7 designated classes of proprietary information and communications to be
8 held confidential;

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

13 Sec. 42.40.310. LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT
14 PLANS. (a) The corporation shall prepare and the board shall adopt a
15 long-range program plan and a capital improvement plan. The board
16 shall consult [interface] with affected [other related] state agencies
17 in preparation of the plans. The long-range program plan shall
18 delineate the manner in which the corporation intends to accomplish
19 the purposes of this chapter during each of the five years after the
20 plan is adopted. The capital improvement plan shall present and
21 explain the corporation's anticipated capital improvements for each of
22 the five years after the plan is adopted. *Newlang*

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

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

1 Sec. 42.40.320. USE OF CORPORATION ASSETS. (a) The corporation
2 shall apply all money, property, other assets, and credit of the
3 corporation toward activities authorized by this chapter. The corpo-
4 ration may not issue shares of stock, pay dividends, make private
5 distributions of assets, make loans to board members or employees, or
6 engage in business for private benefit. The use of money, property,
7 other assets, or credit of the corporation for purposes not authorized
8 by law by persons having the possession or control of it is prohibi-
9 ted.

10 (b) Notwithstanding the provisions of this section, the corpo-
11 ration may purchase insurance to protect and hold personally harmless its
12 employees, agents, and board members from an action, claim, or proceeding
13 instituted against these individuals arising out of the performance,
14 purported performance, or failure of performance, in good faith, of duties
15 for, or employment with, the corporation and to hold these individuals
16 harmless from expenses connected with the defense, settlement, or monetary
17 judgments from that action, claim, or proceeding; the purchase of insurance
18 and its policy limits are discretionary with the board and insurance is not
19 considered to be compensation to the insured individual.

20 ARTICLE 5. RAIL PROPERTIES.

21 Sec. 42.40.400. LAND. All land among the rail properties trans-
22 ferred under 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of
23 1982) or otherwise acquired by the corporation is under the control of
24 the corporation. As to all land that is transferred or acquired

25 (1) railroad rights-of-way or easements transferred under
26 the federal act or otherwise acquired shall be classified as railroad
27 utility corridors;

28 (2) future railroad utility corridors shall be of a width
29 at least 100 feet on both sides of the centerline of the extended main

1 or branch line, or may be of other width as designated by the corpo-
2 ration, and may be surveyed by the metes and bounds method; and

3 (3) the corporation may lease or rent portions of the
4 utility corridor for other transportation services.

5 Sec. 42.40.420. CLASSIFICATION, ACQUISITION, AND USE OF STATE
6 LAND FOR RAILROAD PURPOSES. (a) The board by rule may identify and
7 request conveyance of land owned by or subject to selection by the
8 state, including tide and submerged land and land not adjacent to a
9 railroad corridor, as necessary or useful for present, future or
10 intended railroad purposes. The request must include a statement of
11 and justification for the present, future or intended railroad use.
12 Upon submission of a request for classification and conveyance to the
13 commissioner of natural resources, the commissioner shall temporarily
14 classify and reserve the land identified in the request for railroad
15 purposes and shall temporarily vacate a classification allowing dis-
16 posal or lease of that land under laws or programs of the state. A
17 temporary classification and vacation is subject to valid existing
18 rights and remains in effect for 180 days.

19 (b) Within 90 days after receiving a request under (a) of this
20 section, the commissioner of natural resources by ^{written Decision} [departmental order]
21 shall;

22 (1) classify that land for railroad purposes and, subject
23 to valid existing rights, convey the state's interests to the corpo-
24 ration; or

25 (2) notify the corporation of reasons for refusal to clas-
26 sify the land for railroad purposes.

27 (3) approve in part and deny in part the request for
28 classification under this section.

1 (c) A conveyance under (b)(1) or (3) of this section vests in
2 the corporation the exclusive right to extract and use for its
3 purposes sand, gravel, rock, timber and other construction materials
4 the land conveyed without regard to the classification of the
5 resources as part of the surface or subsurface estate.

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

10 (e) The corporation's ownership of state land entitles it to
11 exclusive use and control of the surface, subsurface, complete sub-
12 jacent and lateral support of the surface, subsurface, and the right
13 to tunnel, ditch, recontour, excavate or otherwise use the subsurface
14 for railroad, transportation, transmission, and related purposes.

15 (f) When physical conditions require that track or other right-
16 of-way fixtures of the corporation be moved from the existing location
17 and relocated on state-owned land adjacent to or in the vicinity of
18 the existing right-of-way, and the chief executive officer determines
19 that relocation is necessary to maintain safe and adequate rail op-
20 erations, the corporation may effect the relocation with concurrence
21 of the Department of Natural Resources. The relocation must be limi-
22 ted to land adequate to restore or continue safe rail operations at a
23 normal level.

24 → (g) *U.S. Dept. of Interior*
25 Sec. 42.40.430. EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND
26 MATERIALS. (a) The corporation may exercise the power of eminent
27 domain under AS 09.55.240 - 09.55.460 to acquire land or an interest
28 in land for lawful purposes consistent with this chapter.
29

1 (b) The corporation may acquire a fee simple title whenever, in
2 the judgment of the board, ownership of a fee simple is necessary to
3 carry out the state's lawful purposes in condemning property.

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

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

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

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

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
28 liability of the corporation.
29

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

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

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

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

22 (c) For the purposes of actionable claims, undertakings, pay-
23 ments of judgments, execution, interest, punitive damages, statutes of
24 limitations, bonds, costs, and similar matters related to the pres-
25 entation and prosecution of claims by and against the corporation, the
26 corporation and its board members and employees enjoy the same rights,
27 privileges, and immunities as the state and state officers as provided
28 in AS 09.10.120, AS 09.50.250 - 09.50.290, and AS 09.65.040.
29

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

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

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

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

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

22 Sec. 42.40.570. BONDS AND NOTES. (a) The corporation by reso-
23 lution may issue bonds and bond anticipation notes to provide money to
24 carry out its purposes.

25 (b) The principal and interest on bonds or notes of the corpo-
26 ration is payable from corporation money or assets. Bonds or notes
27 may be additionally secured by a pledge of a grant or contribution
28 from the federal government or a corporation, association, institution
29

1 or person, or a pledge of money, income, or revenue of the corporation
2 from any source.

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

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

9 (1) be dated;

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

12 (3) be in a required denomination;

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

14 (5) carry conversion or registration provisions;

15 (6) have a required rank or priority;

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

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

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

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

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

28 (f) The corporation may by provisions in a resolution authoriz-
29 ing or relating to the issuance of bonds or bond anticipation notes

1 enter into the following agreements with the holders of the bonds or
2 bond anticipation notes:

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

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

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

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

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

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

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

23 (8) provide for the replacement of lost, stolen, destroyed
24 or mutilated bonds or notes;

25 (9) covenant against extending the time for the payment of
26 bonds or notes, or interest on the bonds or notes;

27 (10) covenant as to the redemption of bonds or notes and
28 privileges of their exchange for other bonds or notes of the corpo-
29 ration;

1 (11) covenant to create or authorize the creation of special
2 funds of money to be held in pledge or otherwise for operating ex-
3 penses, payment or redemption of bonds or notes, reserves or other
4 purposes, and as to the use and disposition of the money held in the
5 funds;

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

11 (13) covenant as to the custody of any of its properties or
12 investments, their safekeeping and insurance, and the use and disposi-
13 tion of insurance money;

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

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

25 (16) agree with a corporation trustee, that may be a trust
26 company or bank having the powers of a trust company inside or outside
27 the state, as to the pledging or assigning of revenue or funds that or
28 in which the corporation has a right or interest; the agreement may
29 provide for other rights and remedies exercisable by the trustee for

1 the protection of the holders of bonds or notes of the corporation and
2 not otherwise in violation of law, and may provide for the restriction
3 of the rights of an individual holder of bonds or notes of the
4 corporation;

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

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

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

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

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

28 Sec. 42.40.600. INDEPENDENT FINANCIAL ADVISOR. In negotiating
29 the private sale of bonds or bond anticipation notes to an

1 underwriter, the board shall retain a financial advisor who is
2 independent from the underwriter.

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

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

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

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

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

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

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

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

19 (b) Refunding bonds may be sold or exchanged for outstanding
20 bonds issued under this chapter and the proceeds may be applied to the
21 purchase, redemption or payment of the outstanding bonds in addition
22 to other authorized purposes. Pending the application of the proceeds
23 of refunding bonds to the payment of the principal, accrued interest
24 and redemption premium on the bonds being refunded, and, if permitted
25 in the resolution authorizing the issuance of the refunding bonds or
26 in the trust agreement securing them, to the payment of interest on
27 the refunding bonds and expenses in connection with the refunding, the
28 proceeds may be invested in direct obligations of the United States or
29 obligations the principal of and the interest on which are

1 unconditionally guaranteed by the United States that mature or may be
2 redeemed not later than the date the proceeds of the refunding bonds,
3 together with the interest accruing on them, will be required for the
4 purposes intended.

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

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

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

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

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

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

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

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

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

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

17 Sec. 42.40. . . REVERSION OF ASSETS. If the corporation ceases
18 to exist, for whatever reason, its assets revert to the state.

19 ARTICLE 7. PERSONNEL AND LABOR RELATIONS.

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

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

28 (c) The corporation may not enter into a collective bargaining
29 agreement concerning wages, hours, working conditions or other

1 employment terms, conditions and benefits with an organization
2 representing the corporation's chief executive official or executive
3 officials appointed by the chief executive official.

4 Sec. 42.40.710. POLITICAL ACTIVITIES. (a) Money, assets, or
5 property of the corporation may not be used for political activity.
6 However, board members and employees of the corporation may
7 communicate with and appear before committees of Congress, the state
8 legislature, and municipal governing bodies in connection with matters
9 directly affecting the corporation.

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

14 ARTICLE 8. STATE OVERSIGHT AND REVIEW

15 Sec. 42.40.800. STATE OVERSIGHT (a). The board shall notify
16 the governor and the leadership of the legislature before undertaking

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

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

25 (3) the issuance of securities, notes, bonds or contracts
26 with a term in excess of one year and in an amount exceeding
27 \$5,000,000.
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ARTICLE 8. GENERAL PROVISIONS.

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

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

Sec. 42.40.XXX. 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 for the properties of the Alaska Railroad under 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of 1982);

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

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

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

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

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

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

16 * Sec. 3. CONFLICTING LAWS INAPPLICABLE. If provisions of this Act are
17 in conflict with the provisions of other law, the provisions of this Act
18 prevail. Where possible, provisions of this Act shall be construed so that
19 they do not conflict with 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act
20 of 1982).

21 * Sec. 4. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD
22 CORPORATION. Notwithstanding AS 42.40.020 enacted in sec. 1 of this Act,
23 the governor shall designate the terms of the appointed members of the
24 first board of directors of the Alaska Railroad Corporation as follows:
25

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

1 * Sec. 5. EFFECTIVE DATE. This Act takes effect immediately in
2 accordance with AS 01.10.070 (c).
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1 IN THE HOUSE

BY THE TRANSPORTATION COMMITTEE

2 HOUSE JOINT RESOLUTION NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 Proposing an amendment to the Constitu-
6 tion of the State of Alaska relating to
7 the Alaska Railroad.

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. Article III, sec. 22, Constitution of the State of Alaska,
10 is amended to read:

11 SECTION 22. EXECUTIVE BRANCH. Except as provided in Section 28
12 of this article, all [ALL] executive and administrative offices,
13 departments, and agencies of the state government and their respective
14 functions, powers, and duties shall be allocated by law among and
15 within not more than twenty principal departments, so as to group them
16 as far as practicable according to major purposes. Regulatory,
17 quasi-judicial, and temporary agencies may be established by law and
18 need not be allocated within a principal department.

19 * Sec. 2. Article III, Constitution of the State of Alaska, is amended
20 by adding a new section to read:

21 SECTION 28. ALASKA RAILROAD. Upon the transfer of the Alaska
22 Railroad to the state under 45 U.S.C. 1201 - 1214 (Alaska Railroad
23 Transfer Act), a board, commission, authority, or corporation to
24 manage the railroad and its property may be established by law within
25 or outside of a principal department. Members of the board, commis-
26 sion, authority, or board of directors of the corporation shall be
27 appointed by the governor, subject to confirmation by a majority of
28 the members of each house of the legislature in joint session, and may
29 be removed as provided by law. The board, commission, authority, or

1 board of directors may appoint a principal executive officer if au-
2 thorized by law.

3 * Sec. 3. The amendments proposed by this resolution shall be placed
4 before the voters of the state at the next general election in conformity
5 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
6 tion laws of the state.
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28 the members of each house of the legislature in joint session, and may
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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

1 specific recommendations on operational alternatives and the transfer
2 of all or part of the railroads operations to the private sector.

3 Sec. 42.40.260. ANNUAL REPORT. Within 90 days following the end
4 of the fiscal year of the railroad the board shall direct preparation
5 of, certify and distribute to the governor and to the legislature a
6 report describing the operations and financial condition of the corpo-
7 ration during the preceding fiscal year. The plans may include
8 suggestions for legislation relating to the structure, powers, or
9 duties of the authority or relating to operation of facilities of the
10 authority.

11 Sec. 42.40.270. ANNUAL AUDIT. The board shall have the finan-
12 cial records of the corporation audited annually by an independent
13 certified public accountant experienced in railroad accounting. The
14 corporation shall make all of its financial records available to an
15 auditor appointed by the governor or to the legislative audit division
16 for examination. Disclosure to the public by the auditor or legisla-
17 tive audit division of this information is subject to AS 42.40.240 and
18 rules implementing that section.

19 ARTICLE 4. POWERS AND DUTIES.

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

- 22 (1) adopt a seal;
- 23 (2) adopt rules and bylaws governing the business of the
24 corporation;
- 25 (3) sue and be sued;
- 26 (4) appoint trustees and agents of the corporation and
27 prescribe their powers and duties;
- 28 (5) hire legal counsel to represent the corporation;
- 29

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 disperse 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 40 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 (1) be dated;
- 2 (2) bear interest at a required rate or rates per year or
3 within a maximum rate;
- 4 (3) be in a required denomination;
- 5 (4) be in a coupon or registered form;
- 6 (5) carry conversion or registration provisions;
- 7 (6) have a required rank or priority;
- 8 (7) be executed in the required manner and form;
- 9 (8) be payable as required from the sources, in the medium
10 of payment, and place or places inside or outside the state;
- 11 (9) be subject to authentication by a trustee or fiscal
12 agent; and
- 13 (10) be subject to terms of redemption with or without
14 premium.

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

20 (f) The corporation may by provisions in a resolution authoriz-
21 ing or relating to the issuance of bonds or bond anticipation notes
22 enter into the following agreements with the holders of the bonds or
23 bond anticipation notes:

- 24 (1) pledge all or part of its revenue to which its right
25 then exists or may thereafter exist, the money derived from the reve-
26 nue, and the proceeds of its bonds or notes;
- 27 (2) covenant against pledging all or part of its revenue,
28 or against permitting or suffering a lien on its revenue or property;
- 29

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. 42.40.800. 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 ARTICLE 8. GENERAL PROVISIONS.

24 Sec. 42.40.900. APPLICATION OF EXISTING STANDARDS. The Alaska
25 Railroad Corporation is not subject to the jurisdiction of the Alaska
26
27
28
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).

12
3/12/84 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 and eight 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

1 transportation, business, and finance. Except for the commissioner of
2 commerce and economic development, a voting member may not be a
3 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

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

14 (6) 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 (7) review all public and private land disposals in
 18 planning for future development or expansion.

19 (8) 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

1 greater; or

2 (3) the issuance of securities, notes, bonds or contracts
3 with a term in excess of one year and in an amount exceeding
4 \$5,000,000.

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

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

9 (1) its financial impact on the corporation;

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

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

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

16 Sec. 42.40.100. EXECUTIVE OFFICERS. (a) The board shall appoint the
17 chief executive officer of the corporation. [subject to the approval
18 by the Governor.] The chief executive officer serves at the pleasure
19 of the board. The board shall fix compensation for the chief
20 executive officer.

21 (b) The chief executive officer of the corporation shall appoint
22 and fix the compensation for other executive officers. The appoint-
23 ment of other executive officers and their compensation are subject to
24 board approval.

25 Sec. 42.40.110. DELEGATION. (a) The board shall by rule delegate
26 powers and duties necessary and appropriate for the management of the
27 daily affairs and operations of the corporation to the chief executive
28 officer, subject to a requirement of board concurrence or
29 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;

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

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

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

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

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

21 (b) In addition to those subjects that may be discussed in
22 executive session under AS 44.62.310, the board may consider in execu-
23 tive session matters that pertain to personnel, the corporation's
24 legal position, land acquisition or disposal, or proprietary informa-
25 tion, as defined in a manner consistent with the standards and prac-
26 tices of the United States Interstate Commerce Commission for protec-
27 tion of information including but not limited to proprietary
28 information associated with specific shippers, divisions, and contract
29 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. On a yearly basis the board
28 shall have a performance audit conducted by a recognized railroad
29 management team expert on all aspects of the Alaska Railroad

operations.

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 its
25 employees, agents, and board members from an action, claim, or proceeding
26 instituted against these individuals arising out of the performance,
27 purported performance, or failure of performance, in good faith, of duties
28 for, or employment with, the corporation and to hold these individuals
29 harmless from expenses connected with the defense, settlement, or monetary

1 judgments from that action, claim, or proceeding; the purchase of insurance
2 and its policy limits are discretionary with the board and insurance is not
3 considered to be compensation to the insured individual.

4 ARTICLE 5. RAIL PROPERTIES.

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

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

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

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

19 (c) The corporation may not sell land within the railroad
20 corridor. [However], Except as provided in AS 42.40.460, the
21 corporation may lease, grant easements or permits or otherwise
22 authorize use of portions of the utility corridor but only for
23 transportation, transmission, or communication purposes and for
24 support functions associated with such purposes. Final sale or
25 disposal of land must be approved by the legislature.

26 (d) The corporation may lease, grant easements or permits or
27 otherwise authorize use of portions of rail lands for other services
28 including but not limited to transportation, transmission, and
29 communication purposes and for support functions associated with such

1 purposes, so long as parallel uses of the railroad corridor are not
2 restricted.

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

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

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

1 (b) Within 90 days after receiving a request under (a) of this
2 section, the commissioner of natural resources by departmental order
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 that the corporation and the commissioner of natu-
23 ral resources jointly identify as unnecessary or unsuitable for the
24 corporation's purposes.

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

1 operations, the corporation may effect the relocation with concurrence
2 of the Department of Natural Resources. The relocation must be limi-
3 ted to land adequate to restore or continue safe rail operations at a
4 normal level.

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

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

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

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

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

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

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

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

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

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

25 ARTICLE 6. FINANCIAL PROVISIONS.

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

1 of action against the state because of a debt, obligation, or
2 liability of the corporation.

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

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

12 Sec. 42.40.540. 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) In a claim or other legal action against the corporation
17 involving its activities, including the expansion, extension and
18 construction of the railroad, in which the corporation is the
19 prevailing party, the party or parties that maintained the action
20 shall be liable to the corporation for its full costs and legal fees
21 in defending the action and for the financial losses to the
22 corporation that are directly attributable to the maintenance of that
23 action.

24 (c) 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

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

27 (b) The principal and interest on bonds or notes of the corpo-
28 ration is payable from corporation money or assets. Bonds or notes
29 may be additionally secured by a pledge of a grant or contribution

1 from the federal government or a corporation, association, institution
2 or person, or a pledge of money, income, or revenue of the corporation
3 from any source.

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

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

10 (1) be dated;

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

13 (3) be in a required denomination;

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

15 (5) carry conversion or registration provisions;

16 (6) have a required rank or priority;

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

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

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

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

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

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;

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 7. 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

1 effect until they expire by their terms or, as required under 45
2 U.S.C. 1206 (Alaska Railroad Transfer Act of 1982), they are
3 renegotiated, subject to the approval of the board.

4 (c) Subject to the provisions of 45 USC 1206 (Alaska Railroad
5 Transfer Act of 1982) Within 180 days of the first meeting of the
6 Board, the Board and representatives of employee bargaining units
7 shall implement ground rules for the re-negotiation of collective
8 bargaining agreements.

9 (d) The corporation may not enter into a collective bargaining
10 agreement concerning wages, hours, working conditions or other
11 employment terms, conditions and benefits with an organization representing
12 the corporation's chief executive official or executive officials appointed
13 by the chief executive official.

14 Sec. 42.40.710. POLITICAL ACTIVITIES. (a) Money, assets, or
15 property of the corporation may not be used for political activity.
16 However, board members and employees of the corporation may
17 communicate with and appear before committees of Congress, the state
18 legislature, and municipal governing bodies in connection with matters
19 directly affecting the corporation.

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

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

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

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

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

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

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

12 (C) sexual matters

13 (D) his/her political affiliation or philosophy

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

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

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

24 ARTICLE 8. GENERAL PROVISIONS.

25 Sec. 42.40.900. APPLICATION OF EXISTING STANDARDS. The Alaska
26 Railroad Corporation is not subject to the jurisdiction of the Alaska
27 Transportation Commission. The following laws do not apply to the
28 operations of the Alaska Railroad Corporation:
29

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

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

17 Sec. 42.40.950. DEFINITIONS. In this chapter,

- 18 (1) "board" means the board of directors of the Alaska
19 Railroad Corporation;
- 20 (2) "corporation" means the Alaska Railroad Corporation;
- 21 (3) "date of transfer" means the date on which the United
22 States Secretary of Transportation delivers the [deed of conveyance]
23 transfer documents for the properties of the Alaska Railroad under 45
24 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of 1982);
- 25 (4) "employees" means all persons employed by the
26 corporation including executive officials;
- 27 (5) "railroad utility corridor" means a right-of-way for
28 railroad and related purposes as defined in 45 U.S.C. 1202(11) (Alaska
29 Railroad Transfer Act of 1982).

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

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

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

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

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

16 * Sec. 3. AS 42.40.030 is amended to read:

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

21 * Sec. 4. AS.42.40.030 is amended by adding a new subsection to read:

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

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

26 (2) continued refusal or inability to attend meetings of the
27 board; or

28 (3) conviction of a felony.

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

3 * Sec. 5. AS 42.40.100(a) is amended to read:

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

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

13 * Sec. 7. 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) two shall serve a term of three years;
- 19 (3) two shall serve a term of four years; and
- 20 (4) two shall serve a term of five years.

21 * Sec. 8. COLLECTIVE BARGAINING AGREEMENT BETWEEN THE ALASKA RAILROAD
22 CORPORATION AND EMPLOYEES. As soon as practicable after establishment of
23 the corporation and prior to transfer of the Alaska Railroad, the Alaska
24 Railroad Corporation and its employees shall adopt collective bargaining
25 agreements that continue the provisions of the agreements in effect between
26 the Alaska Railroad and its employees immediately before transfer of the
27 Alaska Railroad. The collective bargaining agreements between the
28 corporation and its employees shall remain in effect consistent with 45
29 U.S.C. 1202-1214 (Alaska Railroad Transfer Act of 1982).

1 * Sec 9. Sections 3 - 5 of this Act take effect on the effective date
2 of an amendment to the Constitution of the State of Alaska relating to the
3 Alaska Railroad.

4 * Sec. 10. Sections 1,2,6,7,8 of this Act take effect immediately in
5 accordance with AS 01.10.070.(c).

6 * Sec. 9. EFFECTIVE DATE. This Act takes effect immediately in
7 accordance with AS 01.10.070(c).

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Offered: 3/23/84
Referred: Finance

Original sponsors: Hayes, Ringstad,
Shultz, et al

1 IN THE HOUSE

BY THE TRANSPORTATION COMMITTEE

2 CS FOR HOUSE BILL NO. 512 (Transportation)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Alaska Railroad Corporation
7 to manage and operate the Alaska Railroad; and 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 service that best satisfies the
10 needs of the people of the state;

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

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

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 obliga-
22 tions 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 transportation to meet the
27 overall needs of the state, supported when necessary by state invest-
28 ment;

29 (F) provide for the prudent operation of the railroad

1 according to sound business management practices;

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

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

5 CHAPTER 40. ALASKA RAILROAD CORPORATION.

6 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

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

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

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

29 (c) One member of the board may be or have been an executive
30

1 official of a United States railroad that is not now and never was a
2 connecting carrier of the Alaska Railroad.

3 (d) One member shall be an employee who is a member of a bar-
4 gaining unit representing employees of the corporation.

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

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

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

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

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

27 Sec. 42.40.050. COMPENSATION AND EXPENSES. (a) An appointed
28 member of the board is entitled to compensation at a rate of \$400 for
29 each day the member is engaged in the actual performance of duties as

1 a member of the board. The board may provide by rule for compensation
2 for partial days during which an appointed member is engaged in actual
3 performance of duties as a member of the board.

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

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

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

12 ARTICLE 2. MANAGEMENT.

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

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

19 (2) operate the Alaska Railroad as a common carrier subject
20 to the jurisdiction of the United States Interstate Commerce Commis-
21 sion consistent with 45 U.S.C. 1207;

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

24 (4) provide for safe, efficient, and economical transporta-
25 tion to meet the overall needs of the state;

26 (5) raise needed capital by issuing obligations of the
27 corporation while ensuring that borrowing by the corporation does not
28 directly or indirectly endanger the state's own borrowing capacity;

29 (6) review state and other land disposal proposals to aid

1 in planning for future development or expansion of transportation ser-
2 vices;

3 (7) ensure that the accounting and procurement procedures
4 of the corporation meet accepted railroad industry standards.

5 Sec. 42.40.110. EXECUTIVE OFFICERS. (a) The board shall ap-
6 point the chief executive officer of the corporation who serves at the
7 pleasure of the board. The board shall fix compensation for the chief
8 executive officer.

9 (b) The chief executive officer of the corporation shall appoint
10 and fix the compensation for other executive officers. The appoint-
11 ment of other executive officers and their compensation are subject to
12 board approval.

13 Sec. 42.40.120. DELEGATION. (a) The board shall by rule dele-
14 gate to the chief executive officer powers and duties necessary or
15 appropriate for the management of the daily affairs and operations of
16 the corporation.

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

21 (1) leasing, granting easements in, issuing permits for the
22 use of, or conveying other interests in property;

23 (2) establishing specific rates, tariffs, divisions, and
24 contract rate agreements;

25 (3) making routine changes in service levels;

26 (4) establishing procurement and accounting procedures for
27 the corporation; and

28 (5) performing procurement activities.

29 (c) The board may by rule require the exercise of a power or

duty delegated under (a) or (b) of this section to be subject to board approval. Specific board approval is required for the following:

(1) except for executing a release of a mortgage or other lien after payment is received, conveying the corporation's entire interest in land;

(2) issuing notes, debentures, and bonds;

(3) mortgaging or pledging corporation assets;

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

(5) acting as a surety or guarantor;

(6) adopting a long-range program or capital improvement plan;

(7) certifying annual reports;

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

(9) diversifying, expanding, or reducing services provided on the date of transfer;

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

(11) selecting independent auditors and accountants;

(12) exercising the power of eminent domain;

(13) entering into collective bargaining agreements;

(14) adopting annual budgets; and

(15) beginning capital projects with an estimated completion cost of more than \$500,000 or an estimated completion time of more than one year.

ARTICLE 3. ADMINISTRATIVE PROVISIONS.

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

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

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

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. The board may consider in
18 an executive session matters that pertain to personnel, the corpora-
19 tion's legal position, land acquisition or disposal, or proprietary or
20 other information of a type treated as confidential under the stan-
21 dards and practices of the United States Interstate Commerce Commis-
22 sion, including practices that protect information associated with
23 specific shippers, divisions, and contract rate agreements.

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

29 (b) Within 90 days after its first meeting, the board shall

1 establish a procedure for adopting, amending, and repealing rules to
2 carry out the functions and the purposes of this chapter. The proce-
3 dures shall provide for advance public notice and opportunity for
4 public comment on proposed rules or changes to rules that, in the
5 determination of the board, will have a substantial impact on the
6 public or be used in the corporation's dealings with a significant
7 segment of the public.

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

11 Sec. 42.40.190. PREVIOUSLY ADOPTED RULES AND ORDERS. The board
12 may provide by resolution that rules and orders in effect on the date
13 of transfer that are not inconsistent with this chapter or other state
14 law remain in effect until amended or repealed by the board. The
15 board may adopt the substance of former federal rules or orders relat-
16 ing to the Alaska Railroad and this may not be considered a continua-
17 tion of the federal rules or orders if adopted by the board in accor-
18 dance with procedural requirements of this chapter or other law.

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

23 (b) The corporation may by rule designate as confidential and
24 withhold public disclosure of matters of a nonpublic, privileged, or
25 proprietary nature. Those matters include personnel records, communi-
26 cations with and work product of legal counsel, and, consistent with
27 the standards and practices of the United States Interstate Commerce
28 Commission for the protection of these matters, other information
29 including proprietary information associated with specific shippers,

1 divisions and contract rate agreements.

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

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

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

24 (d) Within 120 days of the first meeting of the board, the board
25 shall adopt and may subsequently amend rules implementing this sec-
26 tion, providing additional conflict of interest and ethical rules it
27 considers appropriate, and providing for the removal by the board of a
28 board member or executive officer who intentionally violates a prohibi-
29 tion contained in this section.

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

5 ARTICLE 4. POWERS AND DUTIES.

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

- 8 (1) adopt a seal;
- 9 (2) adopt bylaws governing the business of the corporation;
- 10 (3) sue and be sued;
- 11 (4) appoint trustees and agents of the corporation and
12 prescribe their powers and duties;
- 13 (5) hire legal counsel to represent the corporation;
- 14 (6) make contracts and execute instruments necessary or
15 convenient in the exercise of its powers and duties;
- 16 (7) acquire by purchase, lease, bequest, devise, gift,
17 exchange, the satisfaction of debts, the foreclosure of mortgages, or
18 otherwise, personal property, rights, rights-of-way, franchises,
19 easements, and other interest in land, and acquire by appropriation
20 water rights that are located in the state, taking title to the prop-
21 erty in the name of the corporation;
- 22 (8) hold, maintain, use, operate, lease, exchange, donate,
23 improve, convey, alienate, dispose of, mortgage, encumber, and other-
24 wise grant security interests in or transfer land or personal prop-
25 erty, subject to other provisions of this chapter;
- 26 (9) contract with and accept transfers, gifts, grants or
27 loans of funds or property from the United States and the state or its
28 political subdivisions, subject to other provisions of federal or
29 state law or municipal ordinances;

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

5 (11) 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 (12) maintain offices and facilities at places it desig-
9 nates;

10 (13) apply to the state, the United States, and foreign
11 countries or other proper agencies for the permits, licenses, or
12 approvals necessary to construct, maintain, and operate railroad
13 transportation services, and obtain, hold, and reuse the licenses and
14 permits in the same manner as other railroad operators;

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

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

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

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

29 (18) hire and discharge railroad personnel and determine

benefits and other terms of employment, in accordance with 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982);

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

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

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

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

(23) cancel bonds of the corporation purchased by the corporation;

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

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

(26) borrow money, including the amounts necessary to establish reasonable reserves, and pay financing charges and interest on the obligations for a reasonable period after which the corporation estimates other money will be available to pay the interest, consultant, advisory, and legal fees, and other expenses necessary or incident to borrowing;

(27) include in any borrowing the amounts necessary to

1 establish reasonable reserves and pay financing charges and interest
2 on the obligations for a reasonable period after which the corporation
3 estimates funds will be otherwise available to pay the interest,
4 consultant, advisory, and legal fees, and other expenses necessary or
5 incident to borrowing;

6 (28) acquire, hold, and dispose of stocks, memberships,
7 contracts, bonds, general or limited partnership interests or other
8 interests in another corporation, association, partnership, joint
9 venture, or other legal entity, and exercise the powers or rights in
10 connection with these interests that are provided in contracts or
11 agreements and that are allowed by law concerning the satisfaction of
12 debts;

13 (29) undertake and provide for the acquisition, construc-
14 tion, maintenance, equipping, and operation of connecting, switching,
15 terminal, or other railroads and railroad facilities in the state;

16 (30) do all things necessary or desirable to carry out the
17 powers and duties of the corporation granted or necessarily implied in
18 this chapter or other laws of the state or the laws or regulations of
19 the federal government.

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

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

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

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

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

21 (2) extension of the main or branch lines by more than 25
22 miles or five percent of the railroad's total track mileage, whichever
23 is greater; or

24 (3) the issuance of securities, notes, bonds or contracts
25 with a term in excess of one year and in an amount exceeding
26 \$5,000,000;

27 (4) an application for an appropriation to be used for
28 providing any service that is not self-sustaining.

29 (b) The report under (a) of this section shall be in writing,

1 describe the proposed undertaking in detail, and specify

2 (1) its financial impact on the corporation;

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

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

7 (4) whether and when the undertaking is expected to be
8 self-sustaining financially.

9 Sec. 42.40.290. 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 consult with affected state agencies in preparing the plans.
13 The long range program plan shall explain the manner in which the
14 corporation intends to accomplish the purposes of this chapter during
15 each of the five years after the plan is adopted. The capital im-
16 provement plan shall present and explain the corporation's anticipated
17 capital improvements for each of the five years after the plan is
18 adopted and shall reflect efforts to upgrade the railroad and develop
19 safer, more cost-effective rail operations.

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

24 Sec. 42.40.300. USE OF CORPORATION ASSETS. The corporation
25 shall apply all money, property, other assets, and credit of the
26 corporation toward activities authorized by this chapter. The corpo-
27 ration may not issue shares of stock, pay dividends, make private
28 distributions of assets, make loans to board members or employees, or
29 engage in business for private benefit. The use of money, property,

1 other assets, or credit of the corporation for a purpose not author-
2 ized by law by a person having the possession or control of it is
3 prohibited.

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

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

21 ARTICLE 5. CORPORATION PROPERTY.

22 Sec. 42.40.350. LAND. (a) All land transferred under 45 U.S.C.
23 1201 - 1214 (Alaska Railroad Transfer Act of 1982) or otherwise ac-
24 quired by the corporation is under the control of the corporation.
25 All land that is transferred or acquired by the corporation is des-
26 ignated as follows:

27 (1) railroad rights-of-way or easements are railroad util-
28 ity corridors;

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

1 rail land.

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

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

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

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

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

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

7 (2) notify the corporation of reasons for refusal to design-
8 ate the identified land for railroad purposes; or

9 (3) approve in part and deny in part the request for design-
10 nation of the identified land and convey as appropriate.

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

19 (c) The corporation may reconvey to the state land received
20 under this section or under 45 U.S.C. 1201 - 1214 (Alaska Railroad
21 Transfer Act of 1982) that the corporation and the commissioner of
22 natural resources jointly identify as unnecessary or unsuitable for
23 the 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 with the concurrence of the Department of Natural Re-
2 sources. The relocation must affect only the amount of state land
3 necessary to adequately restore or continue safe rail operations at a
4 normal level.

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

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

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

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

21 Sec. 42.40.410. FEDERAL LAND. The corporation may submit appli-
22 cations on its own behalf as an instrumentality of the state for
23 acquisition of federal land available under federal law that will
24 enhance the operations of the corporation. The corporation may re-
25 ceive in its own name conveyances of all interests in federal land.

26 Sec. 42.40.420. MUNICIPAL RIGHTS-OF-WAY. Upon request of a
27 municipality the corporation may grant to the municipality a right-
28 of-way in a railroad utility corridor or in rail land to be used for a
29 pedestrian walkway or trail. Before granting a right-of-way under

1 this section the board shall require the municipality to execute an
2 agreement in a form approved by the board to

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

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

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

10 (2) vacate the right-of-way upon request of the corporation
11 if the right-of-way interferes with expansion or replacement of rail-
12 road facilities.

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

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

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 liability
3 of the corporation.

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

9 Sec. 42.40.520. INSURANCE. The corporation shall keep in force
10 public liability insurance in an amount reasonably calculated to cover
11 potential claims against the corporation or state for bodily injury,
12 death or disability and property damage that may arise from or be
13 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,
19 with the concurrence of the governor, a direct appropriation or grant
20 from the legislature to assist in carrying out the provisions of this
21 chapter.

22 ARTICLE 7. BONDS AND NOTES.

23 Sec. 42.40.600. GENERAL PROVISIONS. (a) The corporation by
24 resolution may issue bonds and notes to provide money to carry out its
25 purposes.

26 (b) 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 (2) bear interest at a required rate or rates per year or

1 within a maximum rate;

2 (3) be in a required denomination;

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

4 (5) carry conversion or registration provisions;

5 (6) have a required rank or priority;

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

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

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

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

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

17 Sec. 42.40.610. NEGOTIABLE INSTRUMENTS. Bonds and notes issued
18 under this chapter and interest coupons attached to them are nego-
19 tiable instruments under the laws of this state, subject only to
20 applicable provisions for registration.

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

1 bonds or notes of the state is authorized by law.

2 Sec. 42.40.630. PAYMENT OF BONDS AND NOTES. The principal and
3 interest on bonds or notes of the corporation is payable from corpo-
4 ration money or assets. Bonds or notes may be additionally secured by
5 a pledge of a grant or contribution from the federal, state, or munic-
6 ipal government or a corporation, association, institution or person,
7 or a pledge of money, income, or revenue of the corporation from any
8 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 property, or other assets of the corporation either presently in hand
10 or to 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. 42.40.680. REMEDIES. A holder of bonds or notes issued
8 under this chapter or of coupons attached to them, and a trustee under
9 a trust agreement or resolution authorizing the issuance of the bonds
10 or notes, except as restricted by a trust agreement or resolution,
11 either at law or in equity, may

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

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

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

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

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

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

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

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

4 Sec. 42.40.700. LIMITATION ON PERSONAL LIABILITY. A board
5 member or employee of the corporation is not subject to personal
6 liability or accountability because of the execution or issuance of
7 bonds or notes.

8 ARTICLE 3. PERSONNEL AND LABOR RELATIONS.

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

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

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

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

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

29 Sec. 42.40.740. COLLECTIVE BARGAINING UNIT. The railroad labor

1 relations agency shall decide in each case, in order to ensure employ-
2 ees the fullest freedom in exercising the rights guaranteed by AS 42.-
3 40.710 - 42.40.890 the unit appropriate for the purposes of collective
4 bargaining, based on such factors as community of interest, wages,
5 hours and other working conditions of the employees involved, the
6 history of collective bargaining, and the desires of the employees.
7 Bargaining units shall be as large as is reasonable, and unnecessary
8 fragmenting shall be avoided.

9 Sec. 42.40.750. REPRESENTATIVES AND ELECTIONS. (a) The rail-
10 road labor relations agency shall investigate a petition if it is
11 submitted in a manner prescribed by the labor relations agency by

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

15 (A) want to be represented for collective bargaining
16 by a labor or employee organization as exclusive representative;
17 or

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

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

25 (b) If the railroad labor relations agency has reasonable cause
26 to believe that a question of representation exists, it shall provide
27 for a hearing upon due notice. If the railroad labor relations agency
28 finds that there is a question of representation, it shall direct an
29 election by secret ballot to determine whether or by which

1 organization the employees desire to be represented and shall certify
2 the results of the election. Nothing in this subsection prohibits the
3 waiving of hearings by stipulation for the purpose of a consent elec-
4 tion in conformity with the regulations of the railroad labor rela-
5 tions agency or an election in a bargaining unit agreed upon by the
6 parties.

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

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

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

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

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

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

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

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

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

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

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

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

26 (c) An organization or its agents may not

27 (1) restrain or coerce

28 (A) an employee in the exercise of the rights
29 guaranteed in AS 42.40.720; or

1 (B) the corporation in the selection of a representa-
2 tive for the purposes of collective bargaining or the adjustment
3 of grievances;

4 (2) refuse to bargain collectively in good faith with the
5 corporation, if it has been designated in accordance with AS 42.40.-
6 710 - 42.40.890 as the exclusive representative of employees in an
7 appropriate unit.

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

19 Sec. 42.40.780. COMPLAINT AND ACCUSATION. If the railroad labor
20 relations agency fails to eliminate the prohibited practice by
21 conciliation and to obtain voluntary compliance with AS 42.40.710 -
22 42.40.890 or before it attempts conciliation, it may serve a copy of
23 the complaint or accusation upon the respondent. The complaint or
24 accusation and the subsequent procedures shall be handled in accor-
25 dance with the administrative adjudication portion of the
26 Administrative Procedure Act (AS 44.62).

27 Sec. 42.40.790. ORDERS AND DECISIONS. If the railroad labor
28 relations agency finds that a person named in the written complaint or
29 accusation has engaged in a prohibited practice, the railroad labor

1 relations agency shall issue and serve on the person an order or
2 decision requiring the person to cease and desist from the prohibited
3 practice and to take affirmative action that will carry out the
4 provisions of AS 42.40.710 - 42.40.890. If the railroad labor rela-
5 tions agency finds that a person named in the complaint or accusation
6 has not engaged or is not engaging in a prohibited practice, the
7 railroad labor relations agency shall state its findings of fact and
8 issue an order dismissing the complaint or accusation.

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

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

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

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

29 (d) If a person refuses to obey a subpoena issued under

1 AS 42.40.710 - 42.40.890, the superior court in the district in which
2 the person resides or is found may, upon application by the railroad
3 labor relations agency, issue an order requiring the person to comply
4 with the subpoena.

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

8 Sec. 42.40.830. PENALTY FOR VIOLATION OF ORDER OR DECISION. A
9 person who violates a provision of an order or decision of the
10 railroad labor relations agency is guilty of a misdemeanor and is
11 punishable by a fine of not more than \$500.

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

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

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

26 Sec. 42.40.850. STRIKES. (a) Following a decision by the
27 mediator to end the mediation proceedings, employees of a collective
28 bargaining unit may engage in a strike for a limited time if a
29 majority of the employees in that collective bargaining unit vote by

1 secret ballot to do so. The limit of the strike is determined by the
2 interest of the health, safety, or welfare of the public.

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

12 (c) If an impasse or deadlock still exists after the issuance of
13 an injunction, the parties shall submit the dispute to binding arbi-
14 tration. The arbitrator shall be the same person selected under
15 AS 42.40.340 and shall fashion the award considered equitable.

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

19 Sec. 42.40.360. AGREEMENTS. (a) The Department of Administra-
20 tion may participate in labor negotiations between the corporation and
21 an organization. The corporation shall seek advice of the Department
22 of Administration before entering into a collective bargaining
23 agreement concerning wages, hours, and other terms and conditions of
24 employment. However, the final decision regarding collective
25 bargaining agreements, shall be made by the board.

26 (b) Upon the completion of negotiations between an organization
27 and the corporation, if a settlement is reached, the corporation shall
28 reduce it to writing in the form of an agreement. The agreement shall
29 include a grievance procedure that shall have binding arbitration as

1 its final step. Either party to the agreement has a right of action
2 to enforce the agreement by petition to the railroad labor relations
3 agency.

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

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

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

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

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

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

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

21 ARTICLE 9. GENERAL PROVISIONS.

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

26 (b) For the purposes of actionable claims, undertakings, pay-
27 ments of judgments, execution, interest, punitive damages, statutes of
28 limitations, bonds, costs, and similar matters related to the pres-
29 entation and prosecution of claims by and against the corporation, the

1 corporation and its board members and employees enjoy the same rights,
2 privileges, and immunities as the state and state officers under
3 AS 09.10.120, AS 09.50.250 - 09.50.290, and AS 09.65.040.

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

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

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

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

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

28 Sec. 42.40.920. APPLICATION OF EXISTING LAWS. (a) The corpo-
29 ration is not subject to the jurisdiction of the Alaska Transportation

1 Commission.

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

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

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

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

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

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

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

1 (4) "employees" means all persons employed by the corpo-
2 ration including executive officers;

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

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

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

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

14 Sec. 42.40.910. ESTABLISHMENT OF THE CORPORATION. There is
15 established the Alaska Railroad Corporation. The corporation is a
16 public corporation and is an instrumentality of the state [WITHIN THE
17 DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT]. The corporation has
18 a legal existence independent of and separate from the state. The
19 exercise by the corporation of the powers provided in this chapter is
20 considered an essential government function of the state.

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

22 (a) The powers of the corporation are vested in the board of
23 directors. The board consists of [THE COMMISSIONER OF COMMERCE AND
24 ECONOMIC DEVELOPMENT,] the chief executive officer of the corporation,
25 and eight [SEVEN] members appointed by the governor. At least six
26 [FIVE] of the eight [SEVEN] appointed members must be registered
27 voters in the state. No more than two appointed members may be from
28 any one of the four judicial districts in the state. The appointed
29 members must have substantial experience or professional training and

1 expertise in fields relevant to the purposes of this chapter, in-
2 cluding transportation, business, and finance. Except for [THE COM-
3 MISSIONER,] the chief executive officer [,] and the member appointed
4 under (d) of this section, a member may not be a state officer or
5 employee.

6 * Sec. 5. AS 42.40.020(c) is amended to read:

7 (e) Except for [THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVEL-
8 OPMENT AND] the chief executive officer of the corporation, the mem-
9 bers of the board shall be confirmed by a majority of the members of
10 each house 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 until the member is rejected by the legislature.

13 * Sec. 6. AS 42.40.030 is amended to read:

14 Sec. 42.40.030. TERM OF OFFICE; REMOVAL. (a) Except for [THE
15 COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT AND] the chief
16 executive officer of the corporation, members of the board serve for
17 staggered terms of five years each [AT THE PLEASURE OF THE GOVERNOR].

18 * Sec. 7. AS 42.40.030 is amended by adding a new subsection to read:

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

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

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

25 (3) conviction of a felony; or

26 (4) any conduct that was intended to harm the corporation,
27 even if it does not constitute a crime.

28 * Sec. 8. AS 42.40.040(a) is amended to read:

29 (a) Except for the [COMMISSIONER OF COMMERCE AND ECONOMIC

1 DEVELOPMENT AND TELE] chief executive officer, a vacancy on the board
2 is 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 * Sec. 9. SPECIAL REPORT. The corporation shall prepare a report for
7 the governor and the legislature on the long-term operations of the Alaska
8 Railroad that are in the best interest of the state. The report shall be
9 submitted by January 1, 1988. It shall contain specific recommendations on
10 operational alternatives and the transfer of all or part of the railroad's
11 operation's to the private sector.

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

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

20 * Sec. 11. COLLECTIVE BARGAINING AGREEMENTS. (a) As soon as practi-
21 cable after establishment of the Alaska Railroad Corporation and before
22 transfer of the Alaska Railroad to the state, the Alaska Railroad Corpora-
23 tion and its employees shall adopt collective bargaining agreements that
24 continue the provisions of the agreements in effect between the Alaska
25 Railroad and its employees on the date of transfer of the railroad. The
26 collective bargaining agreements adopted under this section between the
27 corporation and its employees shall remain in effect to the extent required
28 under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982).

29 (b) The board of directors of the Alaska Railroad Corporation shall

1 on or before the date of transfer of the Alaska Railroad to the state adopt
2 personnel rules necessary to prevent an interruption of services of the
3 railroad.

4 (c) Subject to 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of
5 1982), within 180 days after the first meeting of the board of directors of
6 the Alaska Railroad Corporation, the board and representatives of employee
7 bargaining units shall establish procedures for the renegotiation of
8 collective bargaining agreements adopted under (a) of this section. The
9 board shall renegotiate all agreements adopted under (a) of this section
10 within two years after the date of transfer of the Alaska Railroad to the
11 state unless the parties agree to the contrary.

12 * Sec. 12. Sections 3 - 8 of this Act take effect on the effective date
13 of an amendment to the Constitution of the State of Alaska relating to the
14 Alaska Railroad.

15 * Sec. 13. Sections 1, 2, and 9 - 11 of this Act take effect imme-
16 diately in accordance with AS 01.10.070(c).

Original sponsors: Hayes, Ringstad,
Shultz, et al

1 IN THE HOUSE

BY THE TRANSPORTATION COMMITTEE

2 CS FOR HOUSE BILL NO. 512 (Transportation)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Alaska Railroad Corporation
7 to manage and operate the Alaska Railroad; and 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 service that best satisfies the
0 needs of the people of the state;

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

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

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

11 (C) have the ability to raise capital by issuing obliga-
12 tions exempt from federal and state taxation;

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

15 (E) provide the best possible combination of types and
16 levels of safe, efficient, and economical transportation to meet the
17 overall needs of the state, supported when necessary by state invest-
18 ment;

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

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

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

5 CHAPTER 40. ALASKA RAILROAD CORPORATION.

6 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

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

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

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

29 (c) One member of the board may be or have been an executive

1 official of a United States railroad that is not now and never was a
2 connecting carrier of the Alaska Railroad.

3 (d) One member shall be an employee who is a member of a bar-
4 gaining unit representing employees of the corporation.

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

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

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

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

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

27 Sec. 42.40.050. COMPENSATION AND EXPENSES. (a) An appointed
28 member of the board is entitled to compensation at a rate of \$400 for
29 each day the member is engaged in the actual performance of duties as

1 a member of the board. The board may provide by rule for compensation
 2 for partial days during which an appointed member is engaged in actual
 3 performance of duties as a member of the board.

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

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

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

12 ARTICLE 2. MANAGEMENT.

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

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

19 (2) operate the Alaska Railroad as a common carrier subject
 20 to the jurisdiction of the United States Interstate Commerce Commis-
 21 sion consistent with 45 U.S.C. 1207;

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

24 (4) provide for safe, efficient, and economical transporta-
 25 tion to meet the overall needs of the state;

26 (5) raise needed capital by issuing obligations of the
 27 corporation while ensuring that borrowing by the corporation does not
 28 directly or indirectly endanger the state's own borrowing capacity;

29 (6) review state and other land disposal proposals to aid

1 in planning for future development or expansion of transportation ser-
2 vices;

3 (7) ensure that the accounting and procurement procedures
4 of the corporation meet accepted railroad industry standards.

5 Sec. 42.40.110. EXECUTIVE OFFICERS. (a) The board shall ap-
6 point the chief executive officer of the corporation who serves at the
7 pleasure of the board. The board shall fix compensation for the chief
8 executive officer.

9 (b) The chief executive officer of the corporation shall appoint
0 and fix the compensation for other executive officers. The appoint-
1 ment of other executive officers and their compensation are subject to
2 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.

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

1 (1) leasing, granting easements in, issuing permits for the
2 use of, or conveying other interests in property;

3 (2) establishing specific rates, tariffs, divisions, and
4 contract rate agreements;

5 (3) making routine changes in service levels;

6 (4) establishing procurement and accounting procedures for
7 the corporation; and

8 (5) performing procurement activities.

9 (c) The board may by rule require the exercise of a power or

1 duty delegated under (a) or (b) of this section to be subject to board
2 approval. Specific board approval is required for the following:

3 (1) except for executing a release of a mortgage or other
4 lien after payment is received, conveying the corporation's entire
5 interest in land;

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

7 (3) mortgaging or pledging corporation assets;

8 (4) donating property or other assets belonging to the
9 corporation;

10 (5) acting as a surety or guarantor;

11 (6) adopting a long-range program or capital improvement
12 plan;

13 (7) certifying annual reports;

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

17 (9) diversifying, expanding, or reducing services provided
18 on the date of transfer, except as authorized in a major way under
19 this chapter;

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

23 (11) selecting independent auditors and accountants;

24 (12) exercising the power of eminent domain;

25 (13) entering into collective bargaining agreements;

26 (14) adopting annual budgets; and

27 (15) beginning capital projects with an estimated completion
28 cost of more than \$500,000 or an estimated completion time of more
29 than one year.

ARTICLE 3. ADMINISTRATIVE PROVISIONS.

1
2 Sec. 42.40.150. MEETINGS OF THE BOARD. (a) The chairman of the
3 board shall call meetings of the board at least once every three
4 months and may call other meetings of the board as necessary. The
5 chairman shall preside at meetings.

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

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

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

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

18 Sec. 42.40.170. EXECUTIVE SESSIONS. The board may consider in
19 an executive session matters that pertain to personnel, the corpora-
20 tion's legal position, land acquisition or disposal, or proprietary or
21 other information of a type treated as confidential under the stan-
22 dards and practices of the United States Interstate Commerce Commis-
23 sion, including practices that protect information associated with
24 specific shippers, divisions, and contract rate agreements.

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

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

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

12 Sec. 42.40.190. PREVIOUSLY ADOPTED RULES AND ORDERS. The board
13 may provide by resolution that rules and orders in effect on the date
14 of transfer that are not inconsistent with this chapter or other state
15 law remain in effect until amended or repealed by the board. The
16 board may adopt the substance of former federal rules or orders relat-
17 ing to the Alaska Railroad and this may not be considered a continua-
18 tion of the federal rules or orders if adopted by the board in accor-
19 dance with procedural requirements of this chapter or other law.

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

24 (b) The corporation may by rule designate as confidential and
25 withhold public disclosure of matters of a nonpublic, privileged, or
26 proprietary nature. Those matters include personnel records, communi-
27 cations with and work product of legal counsel, and, consistent with
28 the standards and practices of the United States Interstate Commerce
29 Commission for the protection of these matters, other information

1 including proprietary information associated with specific shippers,
2 divisions and contract rate agreements.

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

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

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

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

1 prohibition contained in this section.

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

6 ARTICLE 4. POWERS AND DUTIES.

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

- 9 (1) adopt a seal;
- 10 (2) adopt bylaws governing the business of the corporation;
- 11 (3) sue and be sued;
- 12 (4) appoint trustees and agents of the corporation and
13 prescribe their powers and duties;
- 14 (5) hire legal counsel to represent the corporation;
- 15 (6) make contracts and execute instruments necessary or
16 convenient in the exercise of its powers and duties;
- 17 (7) acquire by purchase, lease, bequest, devise, gift,
18 exchange, the satisfaction of debts, the foreclosure of mortgages, or
19 otherwise, personal property, rights, rights-of-way, franchises,
20 easements, and other interest in land, and acquire by appropriation
21 water rights that are located in the state, taking title to the prop-
22 erty in the name of the corporation;
- 23 (8) hold, maintain, use, operate, lease, exchange, donate,
24 improve, convey, alienate, dispose of, mortgage, encumber, and other-
25 wise grant security interests in or transfer land or personal prop-
26 erty, subject to other provisions of this chapter;
- 27 (9) contract with and accept transfers, gifts, grants or
28 loans of funds or property from the United States and the state or its
29 political subdivisions, subject to other provisions of federal or

1 state law or municipal ordinances;

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

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

9 (12) maintain offices and facilities at places it desig-
10 nates;

11 (13) apply to the state, the United States, and foreign
12 countries or other proper agencies for the permits, licenses, or
13 approvals necessary to construct, maintain, and operate railroad
14 transportation services, and obtain, hold, and reuse the licenses and
15 permits in the same manner as other railroad operators;

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

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

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

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



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

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

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

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

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

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

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

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

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

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(27) acquire, hold, and dispose 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 that are provided in contracts or agreements and that are allowed by law concerning the satisfaction of debts;

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

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

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

Sec. 42.40.270. AUDITS. (a) The board shall have the financial records of the corporation audited annually by an independent certified public accountant experienced in railroad accounting. The board shall have an annual performance audit conducted by a qualified professional performance auditing firm to assure that the railroad is

1 being managed and operated effectively and efficiently in accordance
2 with the requirements of this chapter.

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

8 Sec. 42.40.280. STATE OVERSIGHT REPORTS. (a) The board shall
9 provide a state oversight report to the governor and the legislature
10 before undertaking

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

16 (2) extension of the main or branch lines by more than 25
17 miles or five percent of the railroad's total track mileage, whichever
18 is greater; or

19 (3) the issuance of securities, notes, bonds or con-
20 tracts with a term in excess of one year and in an amount exceeding
21 \$5,000,000;

22 (4) an application for an appropriation to be used for
23 providing any service that is not self-sustaining.

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

26 (1) its financial impact on the corporation;

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

29 (3) the reasons the action is necessary or desirable to

1 achieve the purposes of this chapter; and

2 (4) whether and when the undertaking is expected to be
3 self-sustaining financially.

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

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

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

28 Sec. 42.40.310. INDEMNIFICATION. (a) The corporation may
29 defend and indemnify a current or former member of the board,

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

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

16 ARTICLE 5. CORPORATION PROPERTY.

17 Sec. 42.40.350. LAND. (a) All land transferred under 45 U.S.C.
18 1201 - 1214 (Alaska Railroad Transfer Act of 1982) or otherwise ac-
19 quired by the corporation is under the control of the corporation.
20 All land that is transferred or acquired by the corporation is des-
21 ignated as follows:

22 (1) railroad rights-of-way or easements are railroad util-
23 ity corridors;

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

26 (b) Railroad utility corridors shall be of a width at least 100
27 feet on both sides of the centerline of the extended main or branch
28 line, or may be of lesser width if the adjoining land is not rail
29 land, and may be surveyed by the metes and bounds method. The

1 corporation may not convey land within a utility corridor. Except as
 2 provided in AS 42.40.420, the corporation may lease, grant easements
 3 or permits, or otherwise authorize use of portions of a utility corri-
 4 dor for transportation, communication, and transmission purposes and
 5 support functions associated with those purposes if the use does not
 6 restrict other parallel uses of the utility corridor.

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

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

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

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

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

1 the land to the corporation;

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

4 (3) approve in part and deny in part the request for desig-
5 nation of the identified land and convey as appropriate.

6 (b) In the absence of a reservation to the contrary, a convey-
7 ance of land under this section vests in the corporation ownership,
8 control of the surface and subsurface, and the exclusive right to
9 extract or use timber and other construction materials, sand, gravel,
10 rock, and the right to tunnel, ditch, recontour, excavate, or other-
11 wise use the land for railroad, transportation, transmission, or
12 communication services without regard to the classification of the
13 resources as part of the surface or subsurface estate.

14 (c) The corporation may reconvey to the state land received
15 under this section or under 45 U.S.C. 1201 - 1214 (Alaska Railroad
16 Transfer Act of 1982) that the corporation and the commissioner of
17 natural resources jointly identify as unnecessary or unsuitable for
18 the corporation's purposes.

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

29 Sec. 42.40.390. EMINENT DOMAIN. (a) The corporation may

1 exercise the power of eminent domain under AS 09.55.240 - 09.55.460 to
2 acquire land for railroad purposes consistent with this chapter. The
3 corporation may acquire a fee simple title whenever, in the judgment
4 of the board, ownership of a fee simple title is necessary to carry
5 out the purposes of this chapter.

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

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

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

16 Sec. 42.40.410. FEDERAL LAND. The corporation may submit appli-
17 cations on its own behalf as an instrumentality of the state for
18 acquisition of federal land available under federal law that will
19 enhance the operations of the corporation. The corporation may re-
20 ceive in its own name conveyances of all interests in federal land.

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

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

29 (A) defending the corporation in a cause of action

1 brought against the corporation as a result of the use; and

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

5 (2) vacate the right-of-way upon request of the corporation
6 if the right-of-way interferes with expansion or replacement of rail-
7 road facilities.

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

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

22 ARTICLE 6. FINANCIAL PROVISIONS.

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

28 Sec. 42.40.510. FIDELITY BOND. The corporation shall obtain a
29 fidelity bond in an amount determined by the board for board members

1 and each officer of the corporation responsible for accounts and
2 finances. A bond must be in effect during the entire tenure in office
3 of the bonded person.

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

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

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

17 ARTICLE 7. BONDS AND NOTES.

18 Sec. 42.40.600. GENERAL PROVISIONS. (a) The corporation by
19 resolution may issue bonds and notes to provide money to carry out its
20 purposes.

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

23 (1) be dated;

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

26 (3) be in a required denomination;

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

28 (5) carry conversion or registration provisions;

29 (6) have a required rank or priority;

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

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

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

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

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

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

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

26 Sec. 42.40.630. PAYMENT OF BONDS AND NOTES. The principal and
27 interest on bonds or notes of the corporation is payable from corpo-
28 ration money or assets. Bonds or notes may be additionally secured by
29 a pledge of a grant or contribution from the federal, state, or

1 municipal government or a corporation, association, institution or
2 person, or a pledge of money, income, or revenue of the corporation
3 from any source.

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

10 (1) make and enter into any and all the covenants and
11 agreements with the trustees or the holders of the bonds that the
12 corporation may determine to be necessary or desirable, including
13 covenants, provisions, limitations and agreements as to

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

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

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

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

27 (E) the vesting in the trustee of rights and remedies
28 exercisable by the trustee for the protection of the holders of
29 bonds of the corporation and not otherwise in violation of law

1 and the restriction of the rights of an individual holder of
2 bonds of the corporation;

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

6 (3) provide for any other matters of like or different
7 character that in any way affect the security or protection of the
8 bonds.

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

13 Sec. 42.40.660. 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. 42.40.670. 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 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. 42.40.680. 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. 42.40.690. CREDIT OF STATE NOT PLEDGED. (a) The state and
13 its political subdivisions are not liable for the debts of the corpo-
14 ration. Bonds and notes issued under this chapter are payable solely
15 from the revenue or assets of the corporation and do not constitute a

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

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

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

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

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

28 Sec. 42.40.700. LIMITATION ON PERSONAL LIABILITY. A board
29 member or employee of the corporation is not subject to personal

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1 liability or accountability because of the execution or issuance of
2 bonds or notes.

3 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

4 Sec. 42.40.710 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. 42.40.720. COLLECTIVE BARGAINING RIGHTS. The provisions of
8 AS 23.40.070 - 23.40.260 do not apply to the corporation or to its
9 employees. However, employees who are not executive officers may
10 organize and form, join, or assist an organization to engage in
11 collective bargaining through representatives of their own choosing
12 and engage in concerted activities for the purpose of collective
13 bargaining or other mutual aid or protection.

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

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

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

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

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

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

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

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

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

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

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

1 parties.

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

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

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

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

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

29 (2) dominate or interfere with the formation, existence, or

1 administration of an organization;

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

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

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

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

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

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

21 (c) An organization or its agents may not

22 (1) restrain or coerce

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

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

28 (2) refuse to bargain collectively in good faith with the
29 corporation, if it has been designated in accordance with

1 AS 42.40.710 - 42.40.890 as the exclusive representative of employees
2 in an appropriate unit.

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

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

22 Sec. 42.40.790. ORDERS AND DECISIONS. If the railroad labor
23 relations agency finds that a person named in the written complaint or
24 accusation has engaged in a prohibited practice, the railroad labor
25 relations agency shall issue and serve on the person an order or
26 decision requiring the person to cease and desist from the prohibited
27 practice and to take affirmative action that will carry out the
28 provisions of AS 42.40.710 - 42.40.890. If the railroad labor rela-
29 tions agency finds that a person named in the complaint or accusation

1 has not engaged or is not engaging in a prohibited practice, the
2 railroad labor relations agency shall state its findings of fact and
3 issue an order dismissing the complaint or accusation.

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

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

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

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

24 (d) If a person refuses to obey a subpoena issued under
25 AS 42.40.710 - 42.40.890, the superior court in the district in which
26 the person resides or is found may, upon application by the railroad
27 labor relations agency, issue an order requiring the person to comply
28 with the subpoena.

29 Sec. 42.40.820. REGULATIONS. The railroad labor relations

1 agency shall adopt regulations under the Administrative Procedure Act
2 (AS 44.62) to carry out AS 42.40.710 - 42.40.890.

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

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

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

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

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

27 (b) The corporation may apply to the superior court in the
28 judicial district in which the strike is occurring for an order
29 enjoining the strike. A strike may not be enjoined unless it can be

1 shown that it has begun to threaten, or is about to threaten, the
2 health, safety, or welfare of the public. A court, in deciding
3 whether to enjoin the strike, shall consider the total equities in the
4 particular case, including the impact of a strike on the public and
5 the extent to which an employee organization and the corporation have
6 met their statutory obligations.

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

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

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

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

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

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

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

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

26 (1) "collective bargaining" means the performance of the
27 mutual obligation of the corporation or its designated representatives
28 and the representatives of the employees to meet at reasonable times,
29 including meetings in advance of the budget making process, and

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1 negotiating in good faith with respect to wages, hours, and other
2 terms and conditions of employment, or the negotiation of an agree-
3 ment, or negotiation of a question arising under an agreement and the
4 execution of a written contract incorporating an agreement reached if
5 requested by either party, but these obligations do not compel either
6 party to agree to a proposal or require the making of a concession;

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

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

16 (4) "terms and conditions of employment" means the hours of
17 employment, the compensation and fringe benefits affecting the working
18 conditions of the employees; it does not mean the general policies
19 describing the function and purposes of the corporation.

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) 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 under
2 AS 09.10.120, AS 09.50.250 - 09.50.290, and AS 09.65.040.

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

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

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
25 exemption with respect to the interest of any business enterprise or
26 other 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 Sec. 42.40.930. CONFLICTING LAWS INAPPLICABLE. If provisions of
15 this chapter conflict with the provisions of other state law, the pro-
16 visions of this chapter prevail. Provisions of this chapter shall be
17 construed so that they do not conflict with 45 U.S.C. 1201 - 1214
18 (Alaska Railroad Transfer Act of 1982).

19 Sec. 42.40.940. REVERSION OF ASSETS. If the corporation ceases
20 to exist, for whatever reason, its assets revert to the state.

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

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

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

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

29 (4) "employees" means all persons employed by the

1 corporation including executive officers;

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

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

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

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

13 Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is
14 established the Alaska Railroad Corporation. The corporation is a
15 public corporation and is an instrumentality of the state [WITHIN THE
16 DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT]. The corporation has
17 a legal existence independent of and separate from the state. The
18 exercise by the corporation of the powers provided in this chapter is
19 considered an essential government function of the state.

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

21 (a) The powers of the corporation are vested in the board of
22 directors. The board consists of [THE COMMISSIONER OF COMMERCE AND
23 ECONOMIC DEVELOPMENT,] the chief executive officer of the corporation,
24 and eight [SEVEN] members appointed by the governor. At least six
25 [FIVE] of the eight [SEVEN] appointed members must be registered
26 voters in the state. No more than two appointed members may be from
27 any one of the four judicial districts in the state. The appointed
28 members must have substantial experience or professional training and
29 expertise in fields relevant to the purposes of this chapter,

1 including transportation, business, and finance. Except for [THE COM-
2 MISSIONER,] the chief executive officer [,] and the member appointed
3 under (d) of this section, a member may not be a state officer or
4 employee.

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

6 (e) Except for [THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVEL-
7 OPMENT AND] the chief executive officer of the corporation, the mem-
8 bers of the board shall be confirmed by a majority of the members of
9 each house of the legislature in joint session. A member appointed by
0 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;

14 (3) conviction of a felony; or

15 (4) any conduct that was intended to harm the corporation,
16 even if it does not constitute a crime.

17 * Sec. 8. AS 42.40.040(a) is amended to read:

18 (a) Except for the [COMMISSIONER OF COMMERCE AND ECONOMIC
19 DEVELOPMENT AND THE] chief executive officer, a vacancy on the board

1 is filled by appointment by the governor, and the appointment must be
2 confirmed by the members of each house of the legislature in joint
3 session. A member appointed to fill a vacancy holds office for the
4 balance of the term for which the member's predecessor was appointed.

5 * Sec. 9. SPECIAL REPORT. The corporation shall prepare a report for
6 the governor and the legislature on the long-term operations of the Alaska
7 Railroad that are in the best interest of the state. The report shall be
8 submitted by January 1, 1988. It shall contain specific recommendations on
9 operational alternatives and the transfer of all or part of the railroad's
10 operation's is to the private sector.

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

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

19 * Sec. 11. COLLECTIVE BARGAINING AGREEMENTS. (a) As soon as practi-
20 cable after establishment of the Alaska Railroad Corporation and before
21 transfer of the Alaska Railroad to the state, the Alaska Railroad Corpora-
22 tion and its employees shall adopt collective bargaining agreements that
23 continue the provisions of the agreements in effect between the Alaska
24 Railroad and its employees on the date of transfer of the railroad. The
25 collective bargaining agreements adopted under this section between the
26 corporation and its employees shall remain in effect to the extent required
27 under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982).

28 (b) The board of directors of the Alaska Railroad Corporation shall
29 on or before the date of transfer of the Alaska Railroad to the state ad

1 personnel rules necessary to prevent an interruption of services of the
2 railroad.

3 (c) Subject to 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of
4 1982), within 180 days after the first meeting of the board of directors of
5 the Alaska Railroad Corporation, the board and representatives of employee
6 bargaining units shall establish procedures for the renegotiation of
7 collective bargaining agreements adopted under (a) of this section. The
8 board shall renegotiate all agreements adopted under (a) of this section
9 within two years after the date of transfer of the Alaska Railroad to the
10 state unless the parties agree to the contrary.

11 * Sec. 12. Sections 3 - 8 of this Act take effect on the effective date
12 of an amendment to the Constitution of the State of Alaska relating to the
13 Alaska Railroad.

14 * Sec. 13. Sections 1, 2, and 9 - 10 of this Act take effect imme-
15 diately in accordance with AS 01.10.070(c).
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