

AK.
RAILROAD

Comparison:

SB 10, SB 352

HB 512

SIDE-BY-SIDE SUBJECT COMPARISON

OF SB-10 and

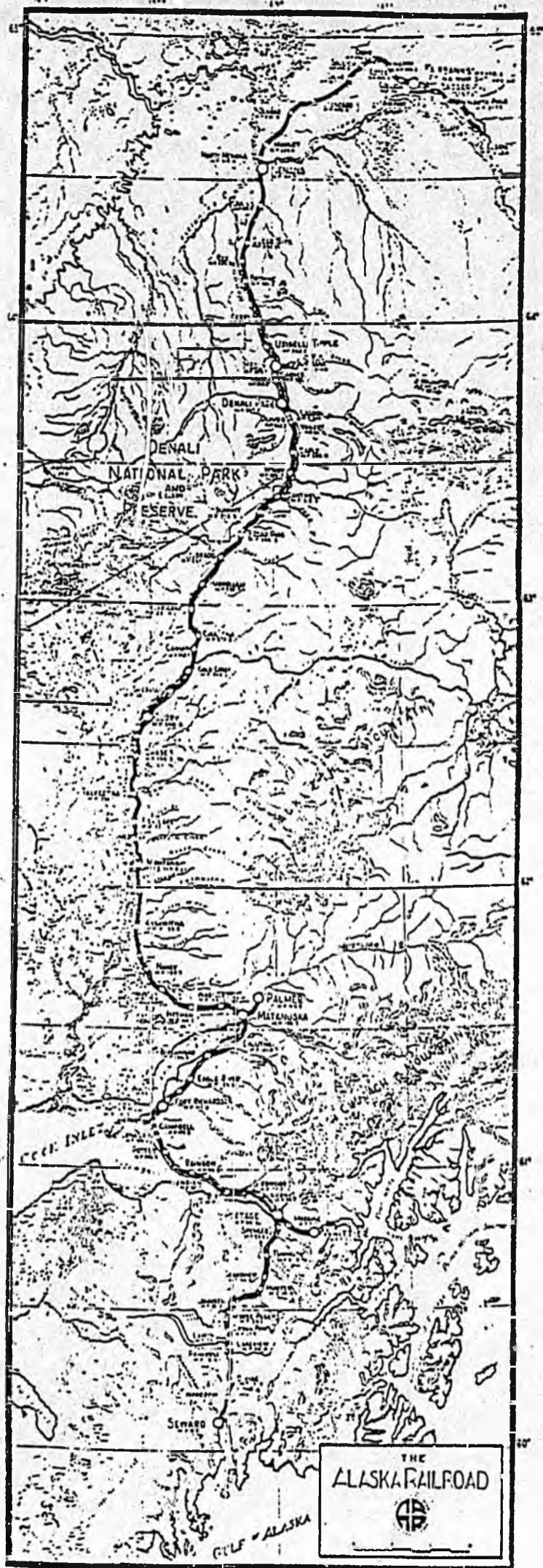
SB-352 (HB-512,

WITH

**COMPARATIVE ANALYSIS BY
LEGISLATIVE AFFAIRS AGENCY,
DIVISION OF LEGAL SERVICES**

**PREPARED BY:
Senate Transportation
Committee Staff**

January 23, 1984



THE
ALASKA RAILROAD



GULF OF ALASKA

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**Underlined provisions represent language not found
in compared section.**

Introduced: 1/18/83
Referred: Transportation
and Finance

Introduced: 1/23/84
Referred: Transportation
and Finance

1 IN THE SENATE

BY KERITULA

2 SENATE BILL NO. 10

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Railroad; and provid-
7 ing for an effective date."

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

9 * Section 1. LEGISLATIVE FINDINGS, POLICY, AND DECLARATIONS. (a) The
10 legislature finds that

11 (1) the United States government has expressed its determination
12 to discontinue federal operation of the Alaska Railroad at the earliest
13 possible date;

14 (2) for the time being, private acquisition and operation of the
15 railroad in a manner consistent with the federal transfer legislation and
16 this Act is not presently considered to be a reasonable possibility or in
17 the best interests of the citizens of the state;

18 (3) continued operation of the railroad is possible only if the
19 state acquires the railroad from the federal government and provides for
20 operation of the railroad;

21 (4) continued operation and development of the Alaska Railroad
22 is essential to the long-term economic growth and development of the state
23 and its natural resources and will serve an important public purpose; and

24 (5) continued operation of the Alaska Railroad will promote the
25 general welfare of the people of the state by providing important freight
26 and passenger service to residents of the state, businesses, visitors, and
27 military installations in the state.

28 (b) It is the policy of the state to

29 (1) foster and promote the development of the state's land and

1 IN THE SENATE

BY KERITULA, FAIKS
AND HULLFORD

2 SENATE BILL NO. 352

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

12 (1) The Alaska Railroad is an essential part of the state trans-
13 portation network that without state action will cease to be a transporta-
14 tion option available within Alaska. The federal government has offered to
15 the state the option of taking over the Alaska Railroad to ensure its
16 continued existence. It is in the state's best interest to accept the
17 railroad under the terms and conditions offered by the United States gov-
18 ernment.

19 (2) There is vast potential in Alaska's natural resource areas
20 and that extension of the Alaska Railroad into natural resource areas is
21 necessary for the achievement of the goals of lower freight cost and long-
22 term economic growth.

23 (b) It is the purpose of this Act to create an entity and to provide
24 that entity with the powers and duties necessary to operate and manage the
25 Alaska Railroad as a viable independent entity pending the eventual trans-
26 fer of the railroad to the private sector for its ownership or operation or
27 both consistent with 43 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of
28 1982).

29 (c) The legislature declares that

The statement of legislative purpose in SB 152 bears little resemblance to that statement in SB 10.

(cont.)

1 natural resources;

2 (2) foster and promote the long-term economic growth and devel-
3 opment of the state;

4 (3) provide necessary and desirable freight and passenger rail
5 transportation services to residents, businesses, visitors, and military
6 installations in the state;

7 (4) develop and implement plans for a transportation network
8 that effect the policies set out in this subsection; and

9 (5) provide safe, economical, and efficient transportation to
10 residents, businesses, visitors, and military installations in the state.

11 (c) The legislature declares that

12 (1) the exercise of the powers of the state in the interest of
13 the people of the state is necessary to accomplish the policy set out in
14 (b) of this section by authorizing the creation of a public authority with
15 the powers, duties, and functions as provided in this Act to operate the
16 Alaska Railroad and to manage its rail, industrial, port and other proper-
17 ties;

18 (2) it is in the best interests of the people of the state for
19 the public authority created by this Act to operate and manage in a prudent
20 manner the Alaska Railroad

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

23 (B) with the railroad authority, and not the state, consti-
24 tuting a common carrier subject to the jurisdiction of the United
25 States Interstate Commerce Commission;

26 (C) with the ability to raise capital by issuing obliga-
27 tions exempt from federal and state taxation;

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

(cont.)

1 (1) the exercise of the powers of the state in the interest of
2 the people of the state is necessary to accomplish the policy set out in
3 (a) of this section by authorizing the creation of a public corporation
4 with the powers, duties, and functions as provided in this Act to operate
5 the Alaska Railroad and to manage its rail, industrial, port and other
6 properties;

7 (2) it is in the best interests of the people of the state for
8 the public corporation that will operate and manage the Alaska Railroad to
9 be created in such a way that

10 (A) the corporation will be exclusively responsible for the
11 management of the financial and legal obligations of the Alaska Rail-
12 road;

13 (B) the corporation, and not the state, will constitute a
14 common carrier subject to the jurisdiction of the United States Inter-
15 state Commerce Commission;

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

18 (D) the corporation may carry out its responsibilities on a
19 self-sustaining basis;

20 (E) the best possible combination of types and levels of
21 safe, efficient and economical transportation can be provided that is
22 necessary to meet the overall needs of the state, supported when
23 necessary by state investment;

24 (F) the railroad may be operated prudently and according to
25 sound business management practices; and

26 (G) borrowing by the corporation does not directly or
27 indirectly endanger the state's own borrowing capacity.

(cont.)

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

5 (F) according to sound business management practices;

6 (G) to provide the level of service that best satisfies the
7 needs of the people of the state;

8 (H) in a fiscally sound manner; and

9 (I) to ensure that borrowing by the authority does not
10 directly or indirectly endanger the state's own borrowing capacity;

11 (J) the continued operation of the railroad will assure greater
12 use, development, reclamation, and settlement of the state's land for the
13 maximum benefit of the people; and

14 (K) the important public purposes to be served by the railroad
15 authority require the authority to have all of the powers and duties
16 granted to it by this Act; the legislature intends that the authority,
17 consistent with sound business management practices, exercise its powers
18 and duties as a public service on behalf of the state and recognizes that
19 the exercise of the powers and duties granted by this Act requires the
20 authority to engage in the wide range of conduct authorized by this Act.

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

CHAPTER 40. ALASKA RAILROAD AUTHORITY.

ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

Sec. 42.40.010. ESTABLISHMENT OF AUTHORITY. There is established the Alaska Railroad Authority. The authority is a public corporation and, for purposes of art. III, sec. 22, Constitution of the State of Alaska, is an instrumentality of the state within the Department of Transportation and Public Facilities, but the authority has a legal existence independent of and separate from the state. The exercise by the authority of the powers provided in this chapter is considered an essential governmental function of the state. The existence of the authority is perpetual.

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

CHAPTER 40. ALASKA RAILROAD CORPORATION.

SB 352

-7-

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 for the purposes of art. III, sec. 22, Constitution of the State of Alaska. The corporation shall be considered a principal department only for the purpose of art. III, sec. 26, Constitution of the State of Alaska. The corporation has a legal existence independent of and separate from the state. The exercise by the corporation of the powers provided in this chapter is considered an essential government function of the state.

The statement in SB 10 that the authority is an instrumentality of the state within DOT&PF is omitted from SB 352 and a statement that the corporation "shall be considered a principal department..." is inserted in an apparent effort to justify legislative confirmation of board members. Both SB 10 and SB 352 provide that certain members of the board shall be confirmed by the legislature. The Alaska Supreme Court has found that the power to appoint executive officers is solely an executive function. While Article III, sections 25 and 26 of the state constitution requires legislative confirmation of the appointments of heads of departments and members of quasi-judicial or regulatory agencies, the court has held that those sections represent the outer limits of the legislature's power to confirm.

(cont.)

Comparison continued

(Bradner v. Hammond, 553 P. 2d 1 (Alaska, 1976)) in an apparent effort to force the Alaska Railroad Corporation into a status that will allow for legislative confirmation of appointments to the board, Sec. 42.40.010 of SB 352 contains the following sentence:

"The corporation shall be considered a principal department only for the purposes of Article III, sec. 26, Constitution of the State of Alaska."

Despite this effort at characterizing the board as a ". . . board or commission . . . at the head of a principal department or a regulatory or quasi-judicial agency. . . ." (Article III, Section 26, Constitution of the State of Alaska), I am certain that the court would find that the board does not fit within the terms of Article III, section 26 and that legislative confirmation on that basis is inappropriate.

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

4 Sec. 42.40.020. LIMITATION OF LIABILITY. A liability incurred
5 by the authority must be satisfied exclusively from the assets and
6 credit of the authority and no creditor or other person has a right of
7 action against the state on account of a debt, obligation, or liabil-
8 ity of the authority.

11 ARTICLE 6. FINANCIAL PROVISIONS.
12 Sec. 42.40.500. LIMITATION OF LIABILITY. A liability incurred
13 by the corporation shall be satisfied exclusively from the assets or
14 revenue of the corporation and no creditor or other person has a right
15 of action against the state because of a debt, obligation, or
16 liability of the corporation.

9 Sec. 42.40.030. BOARD OF COMMISSIONERS. (a) The powers of the
 0 authority are vested in the Board of Commissioners. The board con-
 1 sists of the commissioner of transportation and public facilities, who
 2 serves as a voting member; the chief executive officer of the authori-
 3 ty, who serves as an ex officio nonvoting member; an authority em-
 4 ployee appointed by the governor, who serves as a nonvoting member and
 5 represents the labor organizations that are certified to represent
 6 authority employees; and six voting public members appointed by the
 7 governor. The public members must have substantial experience or
 8 professional training and expertise in fields relevant to the purposes
 9 of this chapter, including, but not limited to transportation, busi-
 0 ness, and finance, and must have the standing in their communities to
 1 command the respect of their fellow citizens. Unless prohibited by
 2 law, one public member shall be or have been an executive official of
 3 an American railroad that is not now or was never a connecting carrier
 4 of the Alaska railroad. At least four public members must be selected
 5 from areas served by the railroad. The public members may not be
 6 state officers or employees.

7 (b) The public members of the board shall be confirmed by a
 8 majority of the membership of the legislature in joint session. A
 9 public member appointed by the governor, unless and until the member

has been rejected by the legislature, has the full powers and respon-
 sibilities of a confirmed board member.

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

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

(e) The governor by written notice to the member may remove a
public member from the board for

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

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

(3) conviction of a misdemeanor involving moral turpitude
 or a felony; or

(4) any conduct that was intended to harm the authority
whether or not it constitutes a crime.

11 Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the
 12 corporation are vested in the board of directors. The board consists
 13 of five voting members appointed by the governor. These five members
 14 must be residents of and registered voters in the state except as
 15 provided in (b) of this section. No more than two of these members
 16 may be from any one of the four judicial districts in the state. Two
 17 of the voting members must have at least five years experience as
 18 owners or managers of a business in the state. A voting member may
 19 not be a state officer or employee.

20 (b) One person who is not a resident of or registered voter in
 21 the state may be appointed by the governor to be a voting member of
 22 the board, if, at the time of appointment, the person has at least 10
 23 years of experience in management of railroads.

24 (c) In addition to the voting members, the following nonvoting
 25 members shall serve on the board:

26 (1) an employee of the corporation appointed by the gover-
 27 nor to represent the employees;

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

29 (d) The voting members of the board shall be confirmed by a
 1 majority of the membership of the legislature in joint session. A
 2 member appointed by the governor has the full powers and responsibili-
 3 ties of a confirmed board member unless and until the member has been
 4 rejected by the legislature.

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

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

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

13 (h) The governor may, by written notice to the member, remove a
 14 member from the board for

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

17 (2) continued refusal or inability to attend meetings of
 18 the board;

19 (3) conviction of a felony; or

20 (4) conviction of a misdemeanor involving moral turpitude.

The board of directors
 is composed of five
 voting members and one
 non-voting member
 appointed by the
 governor in SB 352.
 The chief executive
 officer of the corpo-
 ration serves as
 another non-voting
 member as in SB 10.
 Otherwise, composition
 of the board of
 commissioners under
 Section 42.40.030 of
 SB 10 is substantially
 different. Material
 in (e) (4) of SB 10
 does not appear in SB
 352.

20 Sec. 42.40.040. TERM OF OFFICE; VACANCIES. (a) The public
21 members of the board serve for staggered terms of five years each.

22 (b) A vacancy on the board is filled by appointment by the
23 governor and the appointment must be confirmed by the legislature in
24 joint session. A member selected to fill a vacancy holds office for
25 the balance of the term for which the member's predecessor is appoint-
26 ed.

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

1 (d) A member whose term has expired shall serve until a succes-
2 sor has been appointed.

21 Sec. 42.40.030. TERM OF OFFICE. The appointed members of the
22 board serve for staggered terms of five years each.

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

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

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

3 Sec. 42.40.050. COMPENSATION AND EXPENSES. A public member of
 4 the board is entitled to compensation at the rate of \$300 for each day
 5 the member is engaged in actual performance of duties as a member of
 6 the board. The board shall provide by rule for compensation for
 7 partial days during which a member is engaged in the actual perfor-
 8 mance of duties. A member is entitled to per diem and travel expenses
 9 authorized by law for state boards and commissions under AS 39.20.180.

4 Sec. 42.40.050. COMPENSATION AND EXPENSES. (a) An appointed
 5 member of the board is entitled to compensation at a rate of \$200 for
 6 each day the member is engaged in the actual performance of duties as
 7 a member of the board.
 8 (b) In addition to compensation under (b) of this section, an
 9 appointed member of the board is entitled to per diem and travel
 10 expenses authorized by law for state boards and commissions.

Compensation for board members is \$200 per day in SB 352 and \$300 per day in SB 10. In addition, compensation is available to appointed members only under SB 352. There is no provision for payment for partial days in SB 10.

0 Sec. 42.40.060. QUORUM AND NOTICE OF MEETINGS. Four voting
1 members of the board constitute a quorum for the transaction of
2 business. In addition to the notice requirements of AS 14.62, notice
3 of a meeting of the board, including an agenda for the meeting, must
4 be given to

- 5 (1) each member of the board;
6 (2) the governor;
7 (3) the leadership of the legislature;
8 (4) at least two newspapers of statewide circulation; and
9 (5) members of the general public upon request.

11 Sec. 42.40.060. QUORUM AND NOTICE OF MEETINGS. Three voting
12 members of the board constitute a quorum for the transaction of busi-
13 ness.

Three voting members constitutes a quorum in SB 352 rather than four as in SB 10. The additional provisions on notice of meetings in SB 10 do not appear in SB 352.

0 Sec. 42.40.070. VOTING. The board shall provide by rule for t
1 manner of voting and any representation of persons absent from mee
2 inga. The rules may provide for voting and conferring by means
3 telecommunication devices or by mail or for voting as directed in
4 written proxy taking a position on a particular issue so long
5 voting is consistent with AS 44.62.310. However, no proxy is allowed
6 that delegates to the holder discretion to act for a principal on
7 undisclosed or general matters.

14 Sec. 42.40.070. VOTING. The board shall provide by rule for the
15 manner of voting and representation of persons absent from meetings.
16 The rules may provide for voting and conferring by means of telecommu-
17 nication devices or by mail or for voting as directed in a written
18 proxy taking a position on a particular issue.

SB 352 does not
contain the last line
in SB 10 limiting use
of proxy.

28 Sec. 42.40.080. MANAGEMENT OF AUTHORITY. (a) Unless the board
29 provides for management of the authority by a third-party contractor
1 under (b) of this section,

2 (1) the board shall appoint and fix compensation for the
3 chief executive officer and legal counsel of the authority; the ap-
4 pointment of legal counsel is subject to the approval, for competence,
5 of the governor;

6 (2) the chief executive officer shall appoint and fix
7 compensation for the other executive officials; the appointments and
8 compensation are subject to board approval;

9 (3) officials appointed under (1) and (2) of this subsec-
10 tion serve at the pleasure of the board;

11 (4) the chief executive officer may appoint and fix compen-
12 sation for any additional personnel necessary to carry out the pur-
13 poses of this chapter;

14 (5) except as may be required by federal law, no executive
15 official of the authority may be compensated at a rate in excess of
16 that established under AS 39.20.086 for the heads of principal execu-
17 tive departments of the state.

18 (b) The board may provide for, in a manner consistent with the
19 purposes of this chapter and subject to the approval of the state as
20 provided in AS 42.40.600(g), the management and operation of the rail-
21 road by a third-party contractor. Subject to the limitations in (a)
22 of this section, the board may provide for appointment and compensa-
23 tion of any executive official, including but not limited to those
24 provided for in (a) of this section, necessary to augment the manage-
25 ment and operation of the railroad by the third-party contractor.

19 ARTICLE 2. MANAGEMENT.

20 Sec. 42.40.100. EXECUTIVE OFFICERS. (a) The board shall ap-
21 point and fix compensation for the chief executive officer of the
22 corporation. The chief executive officer serves at the pleasure of
23 the board.

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

No provision is contained in SB 352 for management by a third-party contractor as in SB 10. SB 352 contains no limit on compensation as is found in (a) (5) of SB 10.

6 Sec. 42.40.090. DELEGATION. (a) The board shall by rule dele-
7 gate powers and duties necessary and appropriate for the management of
8 the daily affairs and operations of the authority to the chief execu-
9 tive officer, subject to any requirement of board concurrence or
authorization imposed by the rules.

(b) Within 180 days of its establishment, the board shall by
rule delegate the following activities of the authority to the chief
executive officer or other executive official designated by the board,
subject to any board review of the activities as may be specified in
the rules:

(1) leasing, granting easements in, issuing permits for the
use of, or conveying other interests that do not constitute a transfer
of the authority's entire interest in real property of the authority;

(2) establishment of specific rates, tariffs, divisions and
contract rate agreements;

(3) routine changes in service levels; and

(4) procurement.

(c) General or particular board authorization or concurrence is
required for the following:

(1) transfer of the authority's entire interest in real
property other than the execution of a release of a lien or satis-
faction of a mortgage after payment has been received;

(2) issuance of notes, debentures, or bonds;

(3) mortgaging or pledging of authority assets;

(4) donation of money, property, or other assets belonging
to the authority;

(5) an action by the authority as a surety or guarantor;

(6) capital projects with an estimated completion cost in
excess of \$250,000 or an estimated completion time of more than one
year;

(7) adoption of the long-range program and capital improve-
ment plans under AS 42.40.325;

(8) certification of annual reports under AS 42.40.310;

28 Sec. 47.40.110. DELEGATION. (a) The board shall by rule dele-
29 gate powers and duties necessary and appropriate for the management of
the daily affairs and operations of the corporation to the chief
executive officer, subject to a requirement of board concurrence or
authorization imposed by the rules.

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

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

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

(3) making routine changes in service levels; and

(4) performing procurement activities.

(c) General or particular board authorization or concurrence is
required for the following:

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

(2) issuing notes, debentures, and bonds;

(3) mortgaging or pledging authority assets;

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

(5) acting as a surety or guarantor;

(6) adopting a long-range expansion and 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;

In (b) 180 days in SB
10 is changed to 60
days in SB 352.
Material in (c) (6) of
SB 10 does not appear
in SB 352.

(cont.)

- 1 (9) generally applicable, comprehensive increases and de-
- 2 creases in rates other than those periodically approved by the United
- 3 States Interstate Commerce Commission for application to rail carriers
- 4 generally;
- 5 (10) diversification and major expansion or reduction of
- 6 services beyond those provided on the date of transfer or as provided
- 7 under this chapter;
- 8 (11) the exercise of the power of eminent domain;
- 9 (12) expansion of main or branch lines, other than routine
- 10 track realignment as necessary to maintain service levels in effect on
- 11 the date of transfer; and
- 12 (13) selection of independent auditors and accountants.

(cont.)

- 1 (9) expanding or reducing services in a major way as pro-
- 2 vided under this chapter;
- 3 (10) expanding the main or branch lines, other than perform-
- 4 ing routine track alignment as necessary to maintain service levels in
- 5 effect on the date of transfer; and
- 6 (11) selecting independent auditors and accountants.

13 ARTICLE 2. ADMINISTRATIVE PROVISIONS.

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

23 (b) A board member or employee may participate in a decision if
24 that person or a member of that person's immediate family has only a
25 remote interest and if the fact and extent of the interest is dis-
26 closed to the board in a public meeting and is noted in the minutes of
27 the board before any participation by the member or employee in the
28 decision, and thereafter in a public meeting the board authorizes or
29 approves the participation by a vote of its membership excluding the
1 interested member or employee. As used in this subsection, "remote
2 interest" means

3 (1) that of a non-salaried officer of a nonprofit corpora-
4 tion;

5 (2) that of an employee or agent of a contracting party
6 when the compensation of the employee or agent consists entirely of
7 fixed wages or salary and the contract is awarded by bid or by other
8 competitive process;

9 (3) that of a landlord or tenant of a contracting party,
10 except when the property subject to the lease or sublease is owned or
11 managed by the authority;

12 (4) that of a holder of less than one percent of the shares
13 of the corporation or cooperative that is the contracting party;

14 (5) that of an owner of a savings and loan account or bank
15 savings or share account or credit union deposit account if the inter-
16 est represented by the account is less than two percent of the total
17 deposits held by the institution; or

18 (6) other interests that in good faith are defined as
19 remote by rules or regulations adopted by the authority.

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

No comparable
provision

ont.)

(d) An action, including the award of a contract, in which a board member or employee participates in violation of this section or AS 39.50.090 is void if the board member's vote or employee's participation was necessary to the decision. If a board member votes or an employee participates in a decision in violation of this section or AS 39.50.090 and that vote or participation is not necessary to the decision, the board may ratify the action after disclosure of the violation in a public meeting of the board and without participation by the interested member or employee in the decision to ratify. A board member or employee who violates a prohibition contained in this section or in AS 39.50 forfeits office upon a determination by the board in a public meeting that the violation was intentional.

(e) The executive officials and board members of the authority are subject to AS 39.50.

(f) Within 120 days of the first meeting of the board, the board shall adopt and may subsequently amend rules and regulations implementing this section, providing additional conflict of interest and ethical rules and regulations as it considers appropriate, and providing for the removal by the board of a board member or employee who intentionally violates a prohibition contained in this section or in AS 39.50.

**No comparable
provision**

16 Sec. 42.40.210. PUBLIC BOARD MEETINGS. (a) The meetings of the
17 board are public, with the exception of executive sessions permitted
18 by AS 44.62.310 and (b) of this section.

19 (b) In addition to those subjects which may be discussed in
20 executive session under AS 44.62.310, the board may consider in execu-
21 tive session matters that pertain to personnel, the authority's legal
22 position, land acquisition or disposal, or proprietary information, as
23 defined in a manner consistent with the standards and practices of the
24 United States Interstate Commerce Commission for protection of the
25 information including but not limited to proprietary information
26 associated with specific shippers, divisions, and contract rate agree-
27 ments

7 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

8 Sec. 42.40.200. PUBLIC BOARD MEETINGS. (a) The meetings of the
9 board are public with the exception of an executive session conducted
10 under AS 44.62.310 and (b) of this section.

11 (b) In addition to those subjects that may be discussed in
12 executive session under AS 44.62.310, the board may consider in execu-
13 tive session matters that pertain to personnel, the corporation's
14 legal position, land acquisition or disposal, or proprietary informa-
15 tion, as defined in a manner consistent with the standards and prac-
16 tices of the United States Interstate Commerce Commission for protec-
17 tion of information associated with specific shippers, divisions, and
18 contract rate agreements.

28 Sec. 42.40.220. MINUTES OF MEETINGS. The board shall keep
29 minutes of each meeting and shall send a certified copy of the minutes
1 of the public portion of each meeting to the governor and the leader-
2 ship of the legislature.

19 Sec 42.40.220. MINUTES OF MEETINGS. The board shall keep
20 minutes of each meeting.

SB 352 contains no requirement that copies of minutes be sent to the governor and leadership of the legislature as in SB 10.

Sec. 42.40.230. ADMINISTRATIVE PROCEDURE. (a) Except for AS 44.62.310 regarding public meetings, as limited by AS 42.40.210(b), the Administrative Procedure Act (AS 44.62) does not apply to the authority, its rules, regulations, or actions taken under this chapter. The authority shall make available to members of the public copies of the rules and regulations adopted under this section. Within 45 days after adoption, the chairman of the board shall submit a regulation adopted under this section to the chairman of the Administrative Regulation Review Committee under AS 24.20.400 - 24.20.460. The legislature may annul or temporarily suspend a regulation adopted by the authority.

(b) The board shall adopt rules and regulations to govern its procedures and to carry out the purposes of this chapter. Within 30 days after its first meeting the board shall adopt rules establishing a procedure for giving advance public notice and an opportunity for the public to comment on proposed regulations of the authority that, in the determination of the board, will have a substantial impact on the public or be used in the authority's dealings with a significant segment of the public. The rules shall also provide for the adoption of emergency regulations without public notice and comment when the immediate adoption or repeal of a regulation is necessary to continue or reinstate the orderly operation of the authority's facilities or programs. However, emergency regulations may not remain in effect more than 120 days unless during that period the board complies with the public notice and comment procedure required for regulations that are not of an emergency nature.

(c) The rules adopted under (b) of this section establishing a regulation-making procedure and all rules or regulations relating to procurement of property by the authority, conflicts of interest, disclosure of information in the possession of the authority, or the regulation of persons outside the authority through the exercise of police power shall be submitted to the attorney general for review and approval before becoming effective. The attorney general shall respond to the authority within 60 days after receipt of the rules or regulations either approving them as consistent with or disapproving

21 Sec. 42.40.230. RULES. The board shall establish a procedure
22 for adopting rules to carry out its functions and the purposes of this
23 chapter. The rules shall include a procedure for the adoption of
24 emergency rules when the adoption of an emergency rule is essential to
25 continue or to reinstate the orderly operation of the corporation's
26 facilities or program.

Most of the material regarding rule making in SB 10 is omitted from SB 352. The board is simply authorized to adopt rules.

cont.)

9 them as in conflict with the Alaska Statutes and the Constitution of
 10 the State of Alaska. A disapproval of rules or regulations must be
 11 accompanied by a memorandum of law explaining the conflict with exist-
 12 ing law and a recommendation for revisions to cure the defect. Rules
 13 or regulations submitted to the attorney general are considered ap-
 14 proved if the attorney general fails to approve or disapprove the
 15 rules or regulations, as provided in this subsection, within 60 days
 16 after receipt.

17 (d) A regulation is not subject to the procedures in (b) of this
 18 section if it is one that

19 5 (1) relates to the use of public works, including terminal
 20 areas, industrial reserves, rights-of-way and streets, under the
 21 jurisdiction of the ^{Corporation} authority if the effect of the ^{order} regulation is
 22 indicated to the public by means of signs or signals;

23 4. (2) is directed to a specifically named person or to a group
 24 of persons and does not apply ^{to the general public} generally throughout the state; or

25 3. (3) ^{relates to} ~~concerns~~ service schedules of the railroad; or

26 2. (4) relates to specific ^{rates} tariffs, divisions, and contract
 27 rate agreements.

28 (e) The authority is an agency of the state for purposes of
 29 jurisdictional determinations and judicial review of the authority's

30 action. SR 10

① relates only to the internal management of the Corporation;
 2

Sec. 42.40.240. PUBLIC DISCLOSURE OF INFORMATION. (a) Except as provided by rule or regulation of the authority under this section, facts and information in the possession of the authority are public and communications, reports, files, books, accounts, and papers of every nature in its possession are open to public inspection at reasonable times.

(b) The authority may by rule or regulation designate and withhold disclosure of matters of a nonpublic, privileged, or proprietary nature. Those matters include but are not limited to personnel records, communications with and work product of counsel and, consistent with the standards and practices of the United States Interstate Commerce Commission for the protection of these matters, other information including but not limited to proprietary information associated with specific shippers, divisions, and contract rate agreements.

(c) A person may make written objections to the public disclosure of information contained in an application, report, or document filed with the authority, stating the grounds for the objection. When an objection is made, the board may order the information withheld from public disclosure if the information

(1) would adversely affect the interest of that person and is not required in the interest of the public; or

(2) may be protected from disclosure consistent with the standards and practices of the United States Interstate Commerce Commission including but not limited to proprietary information associated with specific shippers, divisions and contract rate agreements.

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

2 (b) Except as provided in AS 42.40.270, the corporation may by
3 rule designate and withhold disclosure of matters of a nonpublic,
4 privileged, or proprietary nature. Those matters include personnel
5 records, communications with and work product of counsel consistent
6 with the standards and practices of the United States Interstate
7 Commerce Commission, and information associated with specific ship-
8 pers, divisions, and contract rate agreements.

SB 352 contains no provision like (c) of SB 10 authorizing objection to public disclosure of information.

ARTICLE 3. POWERS AND DUTIES.

Sec. 42.40.300. GENERAL POWERS. The authority may

- (1) adopt a seal;
- (2) adopt rules and regulations;
- (3) sue and be sued;
- (4) appoint officers, employees, trustees, and agents, and prescribe their powers and duties;
- (5) hire legal counsel to represent the authority;
- (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 interests 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 authority;
- (8) acquire property by eminent domain or by declaration of taking;
- (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 without limitation facilities and equipment;
- (10) borrow money and issue its bonds or notes and provide for and secure their payment, provide for the rights of their holders and purchase, hold, or dispose of its bonds or notes;
- (11) secure the payment of its obligations by pledge or mortgage or other lien on its contracts, revenues, income, or property;
- (12) contract with and accept transfers, gifts, grants or loans of funds or property from the United States, the state, and its political subdivisions, subject to the provisions of federal, state, or local programs;

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 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, or transfer any real or personal property including facilities and equipment;
- (10) contract with and accept transfers, gifts, grants or loans of funds or property from the United States and the state or its political subdivisions, subject to the provisions of federal, state, or local programs;
- (11) undertake and provide for the management, operation, maintenance, use, and control of all of the properties of the corporation including, the tracks, equipment and other property transferred to it by the federal government or by any person;
- (12) recommend to the legislature and the governor any tax,

Not all of the general powers in SB 10 are contained in SB 352, however those powers omitted in this section appear to be essentially covered in other sections. In addition, SB 352 authorizes the adoption of corporate bylaws.



(cont.)

(13) 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 which are provided in contracts or agreements and that are allowed by law concerning the satisfaction of debts;

(14) undertake or provide for the management, operation, maintenance, use, and control of all of the properties of the Alaska Railroad including without limitation, the tracks, equipment and other property transferred to it by the federal government or by any person;

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

(18) recommend to the legislature and the governor any tax, financing, or security measure the authority considers appropriate for maximizing the public interest in the operation of the railroad;

(17) lend its funds, property, credit or services for authority purposes;

(18) 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 authority is a party;

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

(cont.)

1 financing, or financial arrangement the corporation considers appropriate for expansion or extension and operation of the Alaska Railroad;

2
3
4 (13) maintain offices and facilities at places it designates;

5
6 (14) apply to the appropriate agencies of the state, the United States, and a foreign country or other proper agencies for the permits, licenses, or approvals necessary to construct, maintain, and operate railroad transportation services, and to obtain, hold, and reuse licenses and permits in the same manner as other operating units or persons;

7
8
9
10
11
12 (15) prescribe rates to be charged for services provided by the Alaska Railroad on a competitive basis;

13
14 (16) determine the routes, schedules, and types of service to be provided by the Alaska Railroad;

15
16 (17) enter into contracts and leases with connecting carriers and shippers, that contain provisions to preserve and expand the railroad's traffic base;

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

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

23
24
25
26 (20) hire and discharge railroad personnel and determine benefits and other terms and conditions of employment established in accordance with obligations imposed by 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of 1982);

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(cont.)

- 1 (20) maintain offices and facilities at places it designates;
 2
 3 (21) purchase the authority's bonds at a price not more than
 4 the principal amount of them plus interest;
 5 (22) cancel bonds purchased under (21) of this section;
 6 (23) apply to the appropriate agencies of the state, the
 7 United States, and to a foreign country and other proper agencies for
 8 the permits, licenses, or approvals necessary to construct, maintain,
 9 and operate transportation services, and to obtain, hold, and reuse
 10 the licenses and permits in the same manner as other operating units
 11 or persons;
 12 (24) prescribe rates to be charged for services provided by
 13 the Alaska Railroad;
 14 (25) determine the routes, schedules, and types of service
 15 to be provided by the Alaska Railroad;
 16 (26) enter into contracts, leases, and other agreements with
 17 connecting carriers, shippers, and other persons concerning the ser-
 18 vices, activities, operations, properties and facilities of the rail-
 19 road, including contracts, leases and other agreements that contain
 20 provisions intended to preserve and expand the railroad's traffic
 21 base;
 22 (27) plan for and undertake expansion of the railroad and
 23 railroad activities, including extension of the Alaska Railroad's rail
 24 system and acquisition and operation of other modes of transportation
 25 service connecting to the railroad's rail service;
 26 (28) adopt regulations having the force of law that are de-
 27 signed to safeguard property owned, managed, or transported by the
 28 authority, to protect employees and persons using the authority's
 29 property or services, and to promote safe, healthy, secure, and

(cont.)

- 1 (21) assume and satisfy liabilities of the United States or
 2 its agencies as provided by the federal transfer legislation and the
 3 closing report or its substantive equivalent as accepted by the legis-
 4 lature;
 5 (22) maintain a security force to enforce state law and the
 6 corporations rules with respect to violations that occur on or to
 7 property owned, managed or transported by the corporation;
 8 (23) borrow money and issue its bonds or notes and provide
 9 for and secure their payment, provide for the rights of their holders
 10 and purchase, hold, or dispose of its bonds or notes;
 11 (24) secure the payment of its obligations by pledge or
 12 mortgage or other lien on its contracts, revenues, income, or proper-
 13 ty;
 14 (25) consent to the modification of the rate of interest,
 15 time of payment of an installment of principal or interest, or other
 16 term of a loan, contract, or agreement to which the corporation is a
 17 party;
 18 (26) include in any borrowing the amounts necessary to
 19 establish reasonable reserves and pay financing charges and interest
 20 on the obligations for a reasonable period after which the corporation
 21 estimates funds will be otherwise available to pay the interest,
 22 consultant, advisory, and legal fees, and other expenses necessary or
 23 incident to borrowing;
 24 (27) purchase the corporation's bonds at a price not more
 25 than the principal amount of them plus interest; and
 26 (28) cancel bonds purchased under (21) of this section. ?

(cont.)

1 effective railroad operations;

2 (29) maintain a security force to enforce state law and the
3 authority's regulations;

4 (30) adopt rules and regulations having the force of law
5 that require designated classes of proprietary and personal informa-
6 tion and communications to be confidential;

7 (31) hire and discharge railroad personnel and determine
8 benefits and other terms and conditions of employment established in
9 accordance with obligations that may be imposed by the federal trans-
10 fer legislation;

11 (32) assume and satisfy liabilities of the United States or
12 its agencies as provided by the federal transfer legislation and the
13 closing report, or its substantive equivalent, as accepted by the
14 legislature; and

15 (33) do all things necessary, convenient or desirable to
16 carry out the powers and duties expressly granted or necessarily
17 implied in this chapter or under other laws of the state or the laws
18 and regulations of the federal government.

1 Sec. 42.40.310. ANNUAL REPORT. The board shall direct prepara-
2 tion of, certify and distribute to the governor and to each member of
3 the legislature by February 1 of each year a report generally describ-
4 ing the operations and financial condition of the authority. The
5 board may include in the report suggestions for legislation relating
6 to the structure, powers, or duties of the authority or relating to
7 the operation of facilities of the authority.

15 Sec. 42.40.260. ANNUAL REPORT. Within 90 days following the end
16 of the fiscal year of the railroad the board shall direct preparation
17 of, certify and distribute to the governor and to the legislature a
18 report describing the operations and financial condition of the corpo-
19 ration during the preceding fiscal year.

The report is due 90 days after the end of the fiscal year in SB 352 rather than February 1. The last line in SB 10 regarding suggestions for legislation does not appear in SB 352

26 Sec. 42.40.320. ANNUAL AUDIT. The board shall have financial
27 records of the authority audited annually by an independent
28 certified public accountant experienced in railroad accounting. The
29 authority shall, at all times during normal business hours and as
1 often as the governor's auditor or the legislative audit division
2 considers necessary, make available to an auditor appointed by the
3 governor or to the legislative audit division for examination all of
4 its financial records, and shall permit the auditor appointed by the
5 governor or the legislative audit division to audit, examine and make
6 excerpts or transcripts from the records, and to make audits of all
7 contracts, invoices, materials, payrolls, records of personnel, con-
8 ditions of employment, provision of services and the rates at which
9 the services are provided and other relevant data; disclosure of this
10 information is subject to AS 42.40.240 and rules and regulations
11 implementing that section.

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

12 Sec. 42.40.325. LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT
13 PLANS. (a) The authority shall prepare and the board shall adopt a
14 long-range program plan and a capital improvement plan in accordance
15 with sec. 10 of this Act.

16 (b) The long-range program plan must delineate the manner in
17 which the authority intends to accomplish the purposes of and fulfill
18 its responsibilities under this chapter during each of the five years
19 after the plan is adopted. The long-range program plan shall provide
20 information substantially consistent with the requirements of
21 AS 37.07.050. The format of the long-range program plan must be
22 jointly determined by the authority, the legislative audit division,
23 and the division of budget and management, Office of the Governor.

24 (c) The long-range capital improvement plan must present and
25 explain the authority's anticipated capital improvements for each of
26 the five years after the plan is adopted. The long-range capital
27 improvement plan must include the information required by AS 42.40.-
28 600(b) together with any other information prescribed by the governor
29 or the legislative audit division.

1 (d) The authority shall annually revise and the board shall
2 adopt the plans required in this section.

3 (e) The authority shall provide copies of its plans to the
4 governor and the leadership of the legislature.

5 (f) The governor and the legislative audit division may conduct
6 an annual performance and efficiency audit in accordance with sec. 10
7 of this Act.

27 Sec. 42.40.310. LONG-RANGE EXPANSION AND CAPITAL IMPROVEMENT
28 PLANS. (a) The corporation shall prepare and the board shall adopt a
29 long-range expansion plan and a capital improvement plan. The long-
1 range expansion plan shall delineate the manner in which the corpora-
2 tion intends to accomplish the purposes of this chapter during each of
3 the five years after the plan is adopted. The capital improvement
4 plan shall present and explain the corporation's anticipated capital
5 improvements for each of the five years after the plan is adopted.

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

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

There are many minor differences between these sections. Material in (c) and (f) of SB 10 is deleted, while SB 352 adds the date that copies of the plan are to be delivered; December 1.

8 Sec. 42.40.330. USE OF AUTHORITY ASSETS. (a) The authority
9 shall apply all money, property, other assets, and credit of the
10 authority toward activities authorized by this chapter. The authority
11 may not issue shares of stock, pay dividends, make private distribu-
12 tion of assets, make loans to board members or employees, or engage in
13 business for private benefit. The use of authority money, property,
14 other assets, or credit for purposes not authorized by law by persons
15 having the possession or control of it is prohibited.

16 (b) Notwithstanding the provisions of this section, the authori-
17 ty may

18 (1) assist board members and employees or members of a
19 general class of persons to be assisted by an activity to the same
20 extent as other members of the class and as long as no special privi-
21 leges or treatment accrues to the member or employee by reason of
22 status or position held in the authority;

23 (2) return to board members and employees fees, dues, or
24 service charges originally contributed by them and surplus to the pur-
25 poses for which collected;

26 (3) defend and indemnify a current or former employee,
27 agent, or board member of the authority and their successors against
28 all costs, expenses, judgments, and liabilities, including attorney
29 fees, reasonably incurred by or imposed upon that person in connection
1 with a civil or criminal action in which the person is involved by
2 affiliation with the authority, if acting in good faith on behalf of
3 the authority and within the scope of official duties or powers; and

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

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

22 (b) Notwithstanding the provisions of this section, the corpo-
23 ration may

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

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

(b) (1) and (2) of SB
10 do not appear in SB
352.

ARTICLE 4. RAIL PROPERTIES.

14
 15 Sec. 42.40.400. RAIL PROPERTIES. (a) The authority shall
 16 receive from the United States and, in its own name, take title to all
 17 rail properties transferred under the federal transfer legislation.
 18 All land among the rail properties so transferred or otherwise
 19 acquired by the authority is subject to AS 38.95.010 and is not sub-
 20 ject to classification, control or disposal under AS 38 or other state
 21 law, except as otherwise specifically provided in this chapter.

22 (b) Within 120 days after transfer of the rail properties, the
 23 authority shall convey to the state the subsurface estate of and the
 24 mineral rights in the land among the rail properties. The conveyance
 25 shall be made by one or more quitclaim deeds executed by the chief
 26 executive officer and delivered to the commissioner of natural re-
 27 sources. The authority may reserve in each quitclaim deed the right
 28 to extract and use for the authority's purposes sand, gravel, other
 29 construction materials, and, in accordance with AS 42.40.410(g), coal
 1 on the subject land. The interest retained by the authority after
 2 conveyance to the state under this subsection entitles it to exclusive
 3 use and control of the surface, complete subjacent and lateral support
 4 of the surface, and the right to tunnel, ditch, recontour, excavate
 5 and otherwise use the subsurface for railroad, transportation, trans-
 6 mission, and related purposes.

7 (c) The authority may litigate, compromise, and otherwise settle
 8 claims related to the transfer of rail properties from the United
 9 States and to recover for breach of warranties made or other obliga-
 10 tions assumed by the United States or other party in relation to the
 11 transfer or status of the rail properties.

12 (d) The authority may submit applications on its own behalf as
 13 an instrumentality of the state for acquisition of interests in feder-
 14 al land available under federal law that will enhance the operations
 15 of the authority and may receive conveyances of all interests in its
 16 own name.

17 (e) The authority, as an agency of the state, may acquire in its
 18 own name from the United States under the Surplus Property Act
 19 (50 App. U.S.C. 1622 et seq.), the Federal Property and Administrative
 20 Services Act of 1949 as amended (40 U.S.C. 471 et seq.), or other law,
 21 property under the control of a federal department or agency that is
 22 useful for the authority's purposes and may acquire from the Depart-
 23 ment of Administration property of the state made available under
 24 AS 44.71.010 - 44.71.050.

ARTICLE 5. RAIL PROPERTIES.

13
 14 Sec. 42.40.400. LAND. All land among the rail properties trans-
 15 ferred under 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of
 16 1982) or otherwise acquired by the corporation is under the control of
 17 the corporation. As to all land that is transferred or acquired:

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

21 (2) future railroad utility corridors shall be of a width
 22 at least 100 feet on both sides of the centerline of the extended main
 23 or branch line, or may be of other width as designated by the corpo-
 24 ration, and may be surveyed by the metes and bounds method; and

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

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

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

3 (b) The corporation, as an agency of the state, may acquire in
 4 its own name from the United States under 50 App U.S.C. 1622 et seq
 5 (the Surplus Property Act of 1944), 50 U.S.C. 471 et seq as amended
 6 (the Federal Property and Administrative Services Act of 1949), or
 7 other law, property under the control of a federal department or
 8 agency that is useful for the corporation's purposes and may acquire
 9 from the Department of Administration property of the state made
 10 available under AS 44.71.010 - 44.71.050.

The two provisions differ considerably. However, some of the provisions of SB 10 are found in other sections of SB 352. Material in (b), (c), and (f) of SB 10 is not contained in SB 352.

(cont.)

25 (f) Before disposing of an interest in real property, other than
26 a leasehold, a utility or access easement, or a land use permit, to a
27 party other than the state, the authority shall give public notice of
28 the disposition in two newspapers of general circulation. The author-
29 ity shall make copies of the notice available to the public at its
1 administrative office, and mail copies of the notice to the commis-
2 sioner of natural resources, the governor, and the leadership of the
3 legislature.

4 Sec. 42.40.410. CLASSIFICATION, ACQUISITION, AND USE OF STATE
5 LAND FOR RAILROAD PURPOSES. (a) The board by resolution may identify
6 land owned by or subject to selection by the state, including tide and
7 submerged land, as necessary or useful for present or intended rail-
8 road purposes. The resolution must include a statement of and justifi-
9 cation for the present or intended railroad use and the date when
10 the use should begin. Upon submission of the resolution and a request
11 for classification and conveyance to the commissioner of natural
12 resources, the commissioner may temporarily classify and reserve the
13 land identified in the request for railroad purposes and may tempo-
14 rarily vacate a classification allowing disposal or lease of that land
15 under laws or programs of the state. A temporary classification and
16 vacation is subject to valid existing rights.

17 (b) Within 180 days after receiving the request, the commis-
18 sioner of natural resources by departmental order shall

19 (1) permanently classify the surface estate of that land
20 for railroad purposes and, subject to valid existing rights, convey
21 the state's interests in and to the surface estate of the land to the
22 authority;

23 (2) deny the classification and conveyance as not in the
24 best interest of the state; or

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

27 (c) In the absence of a reservation to the contrary, a convey-
28 ance under (b) of this section vests in the authority the exclusive
29 right to extract and use for its purposes sand, gravel, other
1 construction materials, and, in accordance with (g) of this section,
2 coal on the land conveyed without regard to the classification of the
3 resources as part of the surface or subsurface estate.

4 (d) The authority and the commissioner of natural resources may
5 agree to joint management of railroad land and to conditions for
6 classification of railroad land. The authority and the commissioner
7 of natural resources may agree to periodic joint review of state land
8 to determine suitability for railroad purposes and periodic joint
9 review of the status of railroad land to determine the necessity for
10 continued ownership by the authority. The authority may reconvey to
11 the state land that the authority and the commissioner of natural
12 resources jointly identify as unnecessary or unsuitable for the au-
13 thority's purposes.

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

12 (b) Within 90 days after receiving a request under (a) of this
13 section, the commissioner of natural resources by departmental order
14 shall:

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

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

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

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

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

5 (f) When physical conditions require that track or other right-
6 of-way fixtures of the corporation be moved from the existing location
7 and relocated on state-owned land adjacent to or in the vicinity of
8 the existing right-of-way, and the chief executive officer determines
9 that relocation is necessary to maintain safe and adequate rail op-
10 erations, the corporation may effect the relocation with concurrence
11 of the Department of Natural Resources. The relocation must be limi-
12 ted to land adequate to restore or continue safe rail operations at a
13 normal level.

In (b), 180 days in SB 10 is changed to 90 days in SB 352. In SB 352 there is no provision similar to (b) (3) in SB 10 allowing the commissioner to approve in part a request for classification. There is no provision similar to (g) in SB 10 concerning the extraction of coal.

ont.) (e) The authority's ownership of a surface interest in state land entitles it to exclusive use and control of the surface, complete subjacent and lateral support of the surface, and the right to tunnel, ditch, recontour, excavate or otherwise use the subsurface for railroad, transportation, transmission, and related purposes.

(f) When physical conditions require that track or other right-of-way fixtures of the authority be moved from the existing location and relocated on state-owned land adjacent to or in the vicinity of the existing right-of-way, and the chief executive officer determines that relocation is necessary to maintain safe and adequate rail operations, the authority may effect the relocation after notice to the Department of Natural Resources. The relocation must be limited to land adequate to restore or continue safe rail operations at a normal level. Within 45 days after a relocation under this subsection, the authority shall request classification and conveyance of the land for railroad purposes in accordance with (a) of this section.

(g) Before the authority extracts coal on lands in which it owns an interest, as authorized by AS 42.40.400(b) and (c) of this section, it shall submit a request for authorization to do so to the Department of Natural Resources. Within 45 days after receiving the request, the Department of Natural Resources shall approve the request if it determines that the coal to be extracted is located on lands in which the authority owns an interest and is not subject to existing rights of a third party. The state holds title to all coal on lands in which the authority owns an interest until the coal is extracted from the land by the authority under this subsection or otherwise disposed of in accordance with AS 38.05.150 and AS 42.40.415. The authority may use coal made available to it under this chapter for operational, non-income producing purposes only, including the generation of power to support operations and in-kind compensation to a person with whom the authority contracts to extract coal.

16 Sec. 42.40.415. DEVELOPMENT OF OIL, GAS, MINERALS, AND GEO-
17 THERMAL RESOURCES ON AUTHORITY LAND. (a) The Department of Natural
18 Resources, in accordance with AS 38.05, may lease or otherwise develop
19 oil, gas, minerals, and geothermal resources located on land in which
20 the authority owns an interest, including a surface interest, only
21 upon satisfaction of the following conditions:

22 (1) the Department of Natural Resources submits to the
23 authority a request for authorization identifying the interest to be
24 developed and describing with specificity the proposed plan for devel-
25 opment of the interest, potential negative effects the proposed devel-
26 opment may have on the authority's operations, and measures that will
27 be used to avert or mitigate the effects;

28 (2) the authority reviews the request for authorization
29 and, after considering potential negative effects and proposed
1 mitigation measures, determines that the plan of development presents
2 no appreciable risk of interference with the operations of the author-
3 ity;

4 (3) the Department of Natural Resources and the authority
5 agree upon a suitable requirement that the lessee or party other than
6 the state undertaking the development reimburse the authority from the
7 proceeds of the development for costs incurred by the authority and
8 materials lost by the authority as a result of the development; and

9 (4) the authority issues to the Department of Natural Resources a written authorization to proceed with the plan for lease or
10 development; the authority may not unreasonably withhold its consent
11 to a request for authorization submitted by the Department of Natural
12 Resources under this section.
13

14 (b) The Department of Natural Resources shall require a party
15 other than the state exercising rights under this section to post a
16 surety bond in an amount sufficient to secure the authority against
17 potential detrimental effects of the activity undertaken.

18 (c) The Department of Natural Resources shall maintain an accu-
19 rate record of all income received by the state from the land in which
20 the authority has an interest and of the value of all subsurface
21 estates conveyed by the authority to the state. The Department of
22 Natural Resources shall prepare a yearly summary of the income and
23 subsurface value and submit it to the legislature and the authority
24 before March 15 of each year.

25 (d) There is established in the state treasury the Alaska Rail-
26 road income fund. All income received by the state from lands in
27 which the authority has an interest shall be deposited into the fund.

**No comparable
provision**

27 Sec. 42.40.420. LAND USE REGULATION. The board may adopt
1 exclusive regulations governing land use by private parties having
2 interests in or permits for land owned or managed by the authority.
3 The power conferred by this section is exercised for the common
4 health, safety, and welfare of the public and, to the extent constitu-
5 tionally permissible, may not be limited by the terms and conditions
6 of leases, contracts, or other transactions with private parties.

**No comparable
provision**

7 Sec. 42.40.430. EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND
8 MATERIALS. (a) The authority may exercise the power of eminent
9 domain under AS 09.55.240 - 09.55.460 to acquire land or an interest
10 in land for lawful purposes consistent with this chapter.
11 (b) The authority may acquire a fee simple title whenever, in
12 the judgment of the authority, ownership of a fee simple is necessary
13 to carry out the authority's lawful purposes in condemning property.
14 When the authority acquires a fee simple, it shall as soon as practi-
15 cable reconvey the subsurface estate to the state by a quitclaim deed.
16 (c) The authority may file a declaration of taking, under
17 AS 09.55.420 - 09.55.460, in the same manner and with the same effect
18 as the state.
19 (d) The authority's power of eminent domain includes, without
20 limitation, the power to obtain material, including clay, gravel,
21 sand, or rock, the land necessary to obtain the material, and access
22 to the land and material.
23 (e) The authority may vacate land, or part of it, or rights in
24 land acquired for railroad purposes by executing and filing a deed in
25 the appropriate recording district. Upon filing of the deed, title
26 reverts to the State of Alaska, if compensation has been paid.

16 Sec. 42.40.430. EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND
17 MATERIALS. (a) The corporation may exercise the power of eminent
18 domain under AS 09.55.240 - 09.55.460 to acquire land or an interest
19 in land for lawful purposes consistent with this chapter.
20 (b) The corporation may acquire a fee simple title whenever, in
21 the judgment of the board, ownership of a fee simple is necessary to
22 carry out the state's lawful purposes in condemning property.
23 (c) The corporation may file a declaration of taking in the
24 manner provided for the state under AS 09.55.420.
25 (d) The power of eminent domain conferred under this section
26 includes the power to obtain material, including clay, gravel, sand,
timber, or rock for railroad use, the land necessary to obtain the
material, and access to the land and material.

The last sentence in
(b) of SB 10 is
deleted from SB 352
and the material in
(c) of SB 10 is
deleted.

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ARTICLE 5. FINANCIAL PROVISIONS.

Sec. 42.40.500. BONDS AND RULES. (a) The authority, by resolution of the board, may issue bonds and bond anticipation notes to provide money to carry out its purposes.

(b) The principal and interest on the bonds or notes of the authority are payable from money or assets of the authority. Bond anticipation notes may be payable from the proceeds of the sale of bonds or from the proceeds of sale of other bond anticipation notes or, if bond or bond anticipation note proceeds are not available, the notes may be paid from other money or assets of the authority. Bonds or notes may be additionally secured by a pledge of a grant or contribution or other property from the federal government, the state or any of its political subdivisions, or a corporation, association, institution, or person, or a pledge of money, income, or revenues of the authority from any source.

(c) Bonds or bond anticipation notes may be issued in one or more series and shall be dated, bear interest (fixed or variable) at the rate or rates per year or within the maximum rate, be in the denomination, be in the form, either coupon or registered, carry the conversion or registration provisions, have the rank of priority, be executed in the manner and form, be payable from the sources in the medium of payment and place or places inside or outside the state, be subject to authentication by a trustee or fiscal agent, and be subject to the terms of redemption with or without premium, as the resolution of the board may provide. Bond anticipation notes mature at the time or times determined by the board. Bonds mature at the time, not exceeding 30 years from their date, determined by the board. Before the preparation of definitive bonds or bond anticipation notes, the authority may issue interim receipts or temporary bonds or bond anticipation notes, with or without coupons, exchangeable for bonds or bond anticipation notes when these definitive bonds or bond anticipation notes have been executed and are available for delivery.

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Sec. 42.40.570. BONDS AND NOTES. (a) The corporation by

resolution may issue bonds and bond anticipation notes to provide money to carry out its purposes.

(b) The principal and interest on bonds or notes of the corporation is payable from corporation money or assets. Bonds or notes may be additionally secured by a pledge of a grant or contribution from the federal government or a corporation, association, institution or person, or a pledge of money, income, or revenue of the corporation from any source.

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

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

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

(e) Bonds or bond anticipation notes may be sold in the manner,

(cont.)

1 (d) Bonds or bond anticipation notes may be sold in the manner,
2 on the terms, and at the price the board determines.

3 (e) If an officer whose signature or a facsimile of whose signa-
4 ture appears on bonds or notes or coupons attached to them ceases to
5 be an officer before the delivery of the bond, note, or coupon, the
6 signature or facsimile is valid as if the officer had remained in
7 office until delivery.

8 (f) Bond or bond anticipation note proceeds may not be dedicated
9 to activities other than those the board reasonably determines to be
10 specifically related to the purposes for which the instruments are
11 issued.

12 (g) In a resolution of the board authorizing or relating to the
13 issuance of bonds or bond anticipation notes, the board has power by
14 provisions in the resolution that will constitute covenants of the
15 authority, and contracts with the holders of the bonds or bond an-
16 ticipation notes

17 (1) to pledge to a payment or purpose all or a part of its
18 revenues to which its right then exists or may later exist, and the
19 money derived from the revenues, and the proceeds of its bonds or
20 notes;

21 (2) to covenant against pledging all or part of its reve-
22 nues, or against permitting or suffering a lien on the revenues or its
23 property;

24 (3) to covenant as to establishment of reserves or sinking
25 funds and the provision for and the regulation and disposition of the
26 reserves or sinking funds;

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

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

(cont.)

1 on the terms, and at the price the board determines. Bond anticipa-
2 tion notes shall mature at the time or times determined by the board.
3 Bonds shall mature at the time, not exceeding 30 years from their
4 date, determined by the board.

5 (f) The corporation may by provisions in a resolution authoriz-
6 ing or relating to the issuance of bonds or bond anticipation notes
7 enter into the following agreements with the holders of the bonds or
8 bond anticipation notes:

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

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

14 (3) covenant as to establishment of reserves or sinking
15 funds and provide for, regulate, and dispose of the reserves or sink-
16 ing funds;

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

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

22 (6) covenant as to the issuance of additional bonds or
23 notes, or limitations on the issuance of additional bonds or notes,
24 and the incurring of other debts;

25 (7) covenant as to the payment of the principal of or
26 interest on the bonds or notes, the sources and methods of payment,
27 the rank or priority of the bonds or notes with respect to a lien or
28 security, or the acceleration of the maturity of the bonds or notes;

29 (8) provide for the replacement of lost, stolen, destroyed

cont.)

1 their limitations, terms and conditions, and as to the custody, appli-
2 cation and disposition of the proceeds of the bonds and notes;

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

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

11 (8) to provide for the replacement of lost, stolen, de-
12 stroyed, or mutilated bonds or notes;

13 (9) to covenant against extending the time for the payment
14 of bonds or notes or interest on bonds or notes;

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

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

23 (12) to establish the procedure, if any, by which the terms
24 of a 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 or
26 notes the holders of which must consent to amendment or abrogation,
27 and the manner in which the consent may be given;

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

(cont.)

1 or mutilated bonds or notes;

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

4 (10) covenant as to the redemption of bonds or notes and
5 privileges of their exchange for other bonds or notes of the corpo-
6 ration;

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

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

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

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

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

(cont.)

1 disposition of insurance money;

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

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

13 (16) to agree with an authority trustee that may be a trust
14 company or bank having the powers of a trust company inside or outside
15 the state as to the pledging or assigning of revenues or funds in
16 which the authority has any rights or interest; the agreement may
17 further provide for other rights and remedies exercisable by the
18 trustee as may be proper for the protection of the holders of bonds or
19 notes of the authority and not otherwise in violation of law and may
20 provide for the restriction of the rights of an individual holder of
21 bonds or notes of the authority;

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

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

28 (19) to make covenants other than and in addition to the
29 covenants expressly authorized in this section, of like or different
30 character, and to make the covenants to do or refrain from doing the
31 acts and things as may be necessary, or convenient and desirable, in
32 order to better secure bonds or notes or which, in the absolute dis-
33 cretion of the board, will tend to make bonds or notes more market-
34 able, notwithstanding that the covenants, acts, or things may not be
35 enumerated in this section.
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1 or notes;

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

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

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

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

7 Sec. 42.40.510. INDEPENDENT FINANCIAL ADVISOR. In negotiating
8 the private sale of bonds or bond anticipation notes to an under-
9 writer, the board shall retain a financial advisor who is independent
10 from the underwriter.

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

11 Sec. 42.40.515. VALIDITY OF PLEDGE. The pledge of assets or
12 revenues of the authority to the payment of the principal or interest
13 on bonds or notes of the authority is valid and binding from the time
14 the pledge is made, and the assets or revenues are immediately subject
15 to the lien of the pledge without physical delivery or further act.
16 The lien of a pledge is valid and binding against all parties having
17 claims of any kind in tort, contract, or otherwise against the author-
18 ity, irrespective of whether those parties have notice of the lien of
19 the pledge. Nothing in this section prohibits the authority from
20 selling assets subject to a pledge, except that a sale may be re-
21 stricted by the trust agreement or resolution providing for the issu-
22 ance of the bonds or notes.

9 Sec. 42.40.610. VALIDITY OF PLEDGE. (a) The pledge of assets
10 or revenue of the corporation to the payment of the principal or
11 interest on bonds or notes of the corporation is valid and binding
12 from the time the pledge is made and the assets or revenue are immedi-
13 ately subject to the lien of the pledge without physical delivery or
14 further act. The lien of a pledge is valid and binding against all
15 parties having claims of any kind against the corporation, irrespec-
16 tive of whether those parties have notice of the lien of the pledge.
17 (b) Nothing in this section prohibits the corporation from
18 selling assets subject to a pledge, except that a sale may be re-
19 stricted by the trust agreement or resolution providing for the issu-
20 ance of the bonds or notes.

23 Sec. 42.40.520. REMEDIES. A holder of bonds or notes or of
24 coupons attached to them issued under this chapter, and a trustee
25 under a trust agreement or resolution authorizing the issuance of the
26 bonds or notes, except as restricted by a trust agreement or resolu-
27 tion, either at law or in equity, may enforce all rights granted under
28 this chapter or under the trust agreement or resolution, or under any
29 other contract executed by the authority under this chapter, and may
1 enforce and compel the performance of all duties required by this
2 chapter or by the trust agreement or resolution to be performed by the
3 authority or by its board members or employees.

21 Sec. 42.40.620. REMEDIES. A holder of bonds or notes issued
22 under this chapter or of coupons attached to them, and a trustee under
23 a trust agreement or resolution authorizing the issuance of the bonds
24 or notes, except as restricted by a trust agreement or resolution,
25 either at law or in equity, may
26 (1) enforce all rights granted under this chapter, the
27 trust agreement or resolution, or any other contract executed by the
28 corporation under this chapter; and
29 (2) compel the performance of all duties of the corp
1 required by this chapter or by the trust agreement or resolution.

4 Sec. 42.40.525. NEGOTIABLE INSTRUMENTS. Bonds and notes and
5 interest coupons attached to them issued under this chapter are nego-
6 tiable instruments under the laws of this state, subject only to
7 applicable provisions for registration.

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

8 Sec. 42.40.53^c. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds
9 and notes issued under this chapter are securities in which all public
10 officers and public bodies of the state and its political subdivi-
11 sions, all insurance companies, trust companies, banking associations,
12 investment companies, executors, administrators, trustees, and other
13 fiduciaries may properly and legally invest money, including capital
14 in their control or belonging to them. These bonds and notes may be
15 deposited with a state or municipal officer of an agency or political
16 subdivision of the state for any purpose for which the deposit of
17 bonds or notes of the state is authorized by law.

6 Sec. 42.40.440. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds
7 and notes issued under this chapter are securities in which all public
8 officers and public bodies of the state and its political subdivi-
9 sions, all insurance companies, trust companies, banking associations,
10 investment companies, executors, administrators, trustees and other
11 fiduciaries may properly and legally invest funds, including capital
12 in their control or belonging to them. These bonds and notes may be
13 deposited with a state or municipal officer of an agency or political
14 subdivision of the state for any purpose for which the deposit of
15 bonds or notes of the state is authorized by law.

18 Sec. 42.40.535. REFUNDING BONDS. (a) The authority may provide
 19 for the issuance of refunding bonds for the purpose of refunding any
 20 bonds then outstanding that have been issued under this chapter, in-
 21 cluding the payment of any redemption premium on them and any interest
 22 accrued or to accrue to the date of redemption of the bonds. The
 23 issuance of the refunding bonds, the maturities and other details of
 24 them, the rights of the holders of them, and the rights, liabilities, and
 25 obligations of the Authority in respect to them are governed by the
 26 applicable provisions of this chapter that relate to the issuance of
 27 bonds.

28 (b) Refunding bonds may be sold or exchanged for outstanding
 29 bonds issued under this chapter and, if sold, the proceeds may be
 1 applied, in addition to other authorized purposes, to the purchase,
 2 redemption, or payment of the outstanding bonds. Pending the applica-
 3 tion of the proceeds of refunding bonds, with any other available
 4 money, to the payment of the principal, accrued interest, and any
 5 redemption premium on the bonds being refunded, and, if so provided or
 6 permitted in the resolution authorizing the issuance of the refunding
 7 bonds or in the trust agreement securing them, to the payment of any
 8 interest on the refunding bonds and any expenses in connection with
 9 the refunding, the proceeds may be invested in direct obligations of,
 10 or obligations the principal of and the interest on which are uncondi-
 11 tionally guaranteed by, the United States of America, the State of
 12 Alaska, or other entities with comparably rated credit that mature, or
 13 that will be subject to redemption, at the option of the holders of
 14 them, not later than the respective dates when the proceeds, together
 15 with the interest accruing on them, will be required for the purposes
 16 intended.

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

24 (b) Refunding bonds may be sold or exchanged for outstanding
 25 bonds issued under this chapter and the proceeds may be applied to the
 26 purchase, redemption or payment of the outstanding bonds in addition
 27 to other authorized purposes. Pending the application of the proceeds
 28 of refunding bonds to the payment of the principal, accrued interest
 29 and redemption premium on the bonds being refunded, and, if permitted
 1 in the resolution authorizing the issuance of the refunding bonds or
 2 in the trust agreement securing them, to the payment of interest on
 3 the refunding bonds and expenses in connection with the refunding, the
 4 proceeds may be invested in direct obligations of the United States or
 5 obligations the principal of and the interest on which are uncondi-
 6 tionally guaranteed by the United States that mature or may be re-
 7 deemed not later than the date the proceeds of the refunding bonds,
 8 together with the interest accruing on them, will be required for the
 9 purposes intended.

17 Sec. 42.40.540. CREDIT OF STATE NOT PLEDGED; REQUIRED DISCLAIM-
 18 ER. Bonds and notes issued under this chapter do not constitute a
 19 debt, liability, or obligation of the state or a pledge of the faith
 20 and credit of the state or of a political subdivision of the state
 21 other than the authority but are payable solely from the revenues or
 22 assets of the authority. Each bond and note issued under this chapter
 23 must contain on its face a statement that the authority is not obli-
 24 gated to pay it nor the interest on it except from the revenues or
 25 assets pledged for it and that neither the faith and credit nor the
 26 taxing power of the state or of a political subdivision of the state
 27 other than the authority is pledged to the payment of the principal of
 28 or the interest on the bond or note.

10 Sec. 42.40.660. CREDIT OF STATE NOT PLEDGED. (a) The state and
 11 its political subdivisions are not liable for the debts of the corpo-
 12 ration. Bonds and notes issued under this chapter are payable solely
 13 from the revenue or assets of the corporation and do not constitute a
 14 (1) debt, liability, or obligation of the state or of a
 15 political subdivision of the state; or
 16 (2) pledge of the faith and credit of the state or of a
 17 political subdivision of the state.
 18 (b) The corporation may not pledge the credit or the taxing
 19 power of the state or its political subdivisions. Each bond and note
 20 issued under this chapter shall contain on its face a statement that
 21 (1) the corporation is not obligated to pay it or the
 22 interest on it except from the revenue or assets pledged for it; and
 23 (2) neither the faith and credit nor the taxing power of
 24 the state or of a political subdivision of the state is pledged to the
 25 payment of it.

29 Sec. 42.40.565. NO PERSONAL LIABILITY. A board member or
1 employee of the authority is not subject to personal liability or ac-
2 countability for executing bonds or notes or because of their issu-
3 ance.

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

4 Sec. 42.40.550. REVENUE. Revenues generated by the authority
 5 do not become part of the general fund of the state but are kept and
 6 managed by the authority for purposes authorized by this chapter.

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

These sections raise a question concerning the application of Article IX, Section 7, of the constitution. As interpreted in State v. Alex 646 P. 2d 203 (Alaska, 1982), that prohibition against dedicated funds extends to all sources of public revenue, so it would apply to money generated by the Alaska Railroad. (See also 1982 Op. Att'y Gen., Nos. J66-785-81 and J66-649-80.) This legislation requires that revenue generated by the railroad corporation be retained for railroad purposes in contravention of the prohibition against dedicated funds. However, the federal law providing for the transfer of the railroad to the state requires that revenues generated by the railroad corporation be kept by the railroad and used for railroad purposes. (45 U.S.C. 1207 (a) (5))

(cont.)

Comparison continued

Faced with this requirement in federal law, it is likely that the Alaska Supreme Court will strain to fit this into the exception to the prohibition against dedicated funds as being ". . . required by the federal government for state participation in federal programs." (Article IX, Section 7, Constitution of the State of Alaska) In any case, there appears to be little the legislature can do to resolve the conflict between the federal railroad transfer law and our constitution.

7 Sec. 42.40.533. INSURANCE. The authority shall keep in force
8 public liability insurance in an amount reasonably calculated to cover
9 potential claims for bodily injury, death or disability, and property
10 damage that may arise from or be related to its operations and activi-
11 ties, naming the state as an additional insured.

21 Sec. 42.40.530. INSURANCE. The corporation shall keep in force
22 public liability insurance in an amount reasonably calculated to cover
23 potential claims for bodily injury, death or disability and property
24 damage that may arise from or be related to its operations and activi-
25 ties, naming the state as an additional insured.

12 Sec. 42.40.560. SAFEGUARDING OF MONEY. The authority shall
13 maximize revenues from and deposit all money in depositories accept-
14 able to the governor and otherwise safeguard the money under instruc-
15 tions as the governor may from time to time issue.

**No comparable
provision**

16 Sec. 42.40.563. FIDELITY BOND. The authority shall obtain a
17 fidelity bond in an amount determined by the board for its members and
18 any official responsible for accounts and finances. A bond must be in
19 effect for the tenure in office of the bonded person.

17 Sec. 42.49.520. FIDELITY BOND. The corporation shall obtain a
18 fidelity bond in an amount determined by the board for its members and
19 any officer responsible for accounts and finances. A bond must be in
20 effect during the entire tenure in office of the bonded person.

20

Sec. 42.40.370. REVERSION OF ASSETS. If the authority ceases to exist, for whatever reason, its assets revert to the state.

21

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22

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

23

ARTICLE 6. STATE OVERSIGHT.

22
23 Sec. 42.40.600. STATE REVIEW. (a) The board shall notify the
24 governor and the leadership of the legislature before undertaking

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

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

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

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

9 (1) its financial impact on the authority;

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

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 self-sustain-
15 ing financially.

16 (c) The notice required by (a) of this section shall be pub-
17 lished and given in the same manner as notice required under AS 42.-
18 40.060.

19 (d) Within 45 days after receipt of the notice required by (a)
20 of this section, the governor may

21 (1) disapprove the proposed undertaking;

22 (2) suspend the proposed undertaking and direct that it not
23 be implemented until the legislature has reauthorized it under (1) of this
24 section; or

25 (3) approve the proposed undertaking, in which case the
26 authority may proceed with the undertaking.

27 (e) A decision by the governor disapproving the proposed under-
28 taking under (d) of this section is binding on the authority, unless
29 the authority is directed by the legislature under AS 42.40.610 to

No comparable
provision

1 proceed with the proposed undertaking. If the governor suspends the
2 proposed undertaking under (d) of this section, the governor shall
3 promptly transmit a decision to the board and the leadership of the
4 legislature in the form of a recommendation that the legislature
5 acquiesce in the proposed undertaking or that the legislature reject
6 the proposed undertaking. The authority's proposed undertaking is
7 considered approved if the governor fails to act under (d) of this
8 section within the prescribed time.

9 (f) During a legislative session, within 60 days after receipt
10 of the governor's recommendation the legislature may, by law, reject
11 the proposed undertaking. The legislation is binding on the authori-
12 ty. The proposed undertaking is considered approved if the legisla-
13 ture fails to pass legislation rejecting it within the prescribed
14 time.

15 (g) Notwithstanding the provisions of (a) - (f) of this section,
16 a proposed extension of main or branch lines by more than 50 percent
17 of the railroad's total track mileage and requiring the issuance of
18 securities, notes, bonds, or contracts for other borrowings of an
19 amount in excess of \$50,000,000 or provision for the management and
20 operation of the railroad by a third-party contractor must be specif-
21 ically authorized by law.

22 (h) An undertaking described in (a) or (g) of this section is
23 considered approved or rejected for purposes of this section if

24 (1) the authority has been directed to act or refrain from
25 acting in accordance with AS 42.40.610; or

26 (2) the legislature by law has specifically approved the
27 undertaking by authorizing, appropriating financing for, or guarantee-
28 ing the authority's borrowing for the proposed undertaking.

**No comparable
provision**

29 Sec. 42.40.610. ACTION-FORCING MECHANISM. (a) The governor or
1 the legislature, by resolution, may request that the authority exer-
2 cise or refrain from exercising its powers and authorities. Notice of
3 a request shall be given to the legislature by the governor and to the
4 governor by the legislature.

5 (b) To the greatest extent practicable within 30 days after
6 receipt of a request the board shall respond to both the governor and
7 the leadership of the legislature in writing specifying

8 (1) the manner in which it proposes to take the requested
9 action or any modification to the requested action sought by the
10 authority; or

11 (2) the specific reasons, financial, legal or otherwise,
12 why the board declines to take the requested action.

13 (c) At the request of the governor or on its own initiative, the
14 legislature by law may then direct the authority to take the requested
15 action or the legislature may act to cure the problem precluding the
16 authority from taking the requested action. If the authority is
17 unable to take the requested action for financial reasons, it is
18 obligated to do so, even if directed, only upon provision by the
19 legislature of sufficient money to plan and implement the action.

**No comparable
provision**

20 Sec. 42.40.615. INTERVENTION. (a) When authorized by law, the
21 governor as provided in the legislation shall intervene and exercise
22 such control over the authority as is necessary and appropriate to
23 correct a deficiency or to assure that the purposes of this chapter
24 may be reasonably accomplished, including directing affirmative action
25 when

26 (1) the board has requested intervention by resolution;

27 (2) the authority has represented to the public or to
28 creditors that recourse may be had to the assets, property, or credit
29 of the state on account of acts or omissions of the authority, unless
1 the secondary or direct liability has been expressly assumed by the
2 state;

3 (3) the authority has failed to file an annual report as
4 required by AS 42.40.310 within 120 days after receipt of formal
5 notice of the omission or has filed an annual report that is false or
6 misleading on a material matter;

7 (4) a deadlock has occurred in the board, or the membership
8 of the board is insufficient to constitute a quorum for conduct of
9 affairs so that the authority is unable to conduct its operations or
10 perform its activities; or

11 (5) the assets of the authority have been or are committed
12 to be misapplied or wasted or illegally expended, or the authority has
13 committed or is about to commit a material violation of this chapter.

14 (b) The governor may take actions necessary to achieve the
15 object of the intervention stated in the legislation and make ancil-
16 lary corrections, and shall accomplish the purposes of the interven-
17 tion as expeditiously as reasonable. Board members and employees may
18 not be displaced nor the conduct of their duties impaired more than
19 necessary to accomplish the purposes of the intervention and the
20 intervention must cease as soon as the objective stated in the legis-
21 lation and ancillary corrections have been accomplished.

**No comparable
provision**

22 Sec. 42.40.620. TRUSTEESHIP. (a) When authorized by law, the
23 governor may petition the superior court of the State of Alaska for
24 the Third Judicial District at Anchorage to impose a trusteeship over
25 the authority and appoint the trustees if

26 (1) the board has requested imposition of the trusteeship
27 by resolution;

28 (2) the authority has become insolvent or otherwise unable
29 to carry out its contractual obligations to creditors and other
1 persons;

2 (3) the authority has filed an annual report that is false
3 or deceptively misleading on a material matter;

4 (4) the authority has become incompetent or ineligible to
5 carry out the public purposes for which it was established;

6 (5) the authority has misused, abused, or continuously ex-
7 ceeded the power or authority conferred by this chapter or committed
8 repeated violations of this chapter;

9 (6) the assets of the authority have been or are committed
10 to be misapplied or wasted, or illegally expanded, or a material
11 violation of this chapter has been committed or is about to be com-
12 mitted and the governor has determined that intervention as provided in
13 AS 42.40.615 would not be feasible under the circumstances; or

14 (7) the credit-worthiness of the state has been directly or
15 indirectly substantially impaired by actions of the authority.

16 (b) The trustees appointed by the superior court shall take rea-
17 sonable actions necessary during the trusteeship to achieve its ob-
18 ject. The trustees have the power and authority to reorganize the
19 authority and amend its rules and regulations; suspend or remove board
20 members and executive officials; manage the assets and affairs of the
21 authority; and exercise all powers necessary or appropriate to fulfill
22 outstanding agreements, to restore the capability of the authority to
23 perform the functions and activities for which it was established, to
24 reinstate its credit or credibility with its creditors or obligees or
25 the credit of the state or its credibility with its creditors or
26 obligees to the extent impaired by authority actions.

**No comparable
provision**

ARTICLE 7. MISCELLANEOUS PROVISIONS.

27
28 Sec. 42.40.700. PERSONNEL. (a) All personnel employed by the
29 Alaska Railroad are personnel of the authority, and not of the state.
1 The provisions of AS 39 do not apply to personnel employed by
2 authority.

3 (b) For the purposes of the Public Employment Relations
4 (AS 23.40.070 - 23.40.260) the authority is considered a "public em-
5 ployer" within the meaning of that Act, except that AS 23.40.070(1)
6 does not apply to the authority, and the authority's employees are
7 classified as employees under AS 23.40.200(a)(1).

8 (c) The authority may not enter into any collective bargaining
9 agreement concerning wages, hours, working conditions or other employ-
10 ment terms, conditions and benefits with any organization representing
11 the authority's executive officials.

ARTICLE 7. PERSONNEL AND LABOR RELATIONS.

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

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

3 (c) The corporation may not enter into a collective bargaining
4 agreement concerning wages, hours, working conditions or other
5 employment terms, conditions and benefits with an organization
6 representing the corporation's chief executive official or executive
7 officials appointed by the chief executive official.
8

In SB 352 material is added in (b) regarding collective bargaining agreements. Material in (b) of SB 10 is deleted.

12 Sec. 42.40.710. POLITICAL ACTIVITIES. (a) Money, assets, or
13 property of the authority may not be used for partisan political
14 activity or to further the election or defeat of a person seeking an
15 elective office. Money or a substantial part of the activities of the
16 authority may not be used for publicity or educational purposes de-
17 signed to support or defeat legislation pending before congress or the
18 legislature. However, board members and employees of the authority
19 may communicate with and appear before committees of congress or the
20 legislature as well as local legislative bodies in connection with
21 financing and other matters directly affecting the authority or its
22 ability to carry out the purposes for which it is established and
23 respond to requests by members of congress, the legislature, or local
24 legislative bodies for information, views, and testimony.

25 (b) A board member or employee who violates the provisions of
26 this section is personally subject to a civil penalty assessed by a
27 judge of the superior court in an amount not to exceed \$5,000. An
28 action to enforce this penalty may be brought by any person. A viola-
29 tion of this chapter does not constitute a crime and assessment of the
1 civil penalty by a judge does not create any disability or legal
2 disadvantage based on conviction of a criminal offense.

9 Sec. 42.40.710. POLITICAL ACTIVITIES. (a) Money, assets, or
10 property of the corporation may not be used for political activity.
11 However, board members and employees of the corporation may upon
12 request communicate with and appear before committees of Congress, the
13 state legislature, and municipal governing bodies in connection with
14 matters directly affecting the corporation.

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

3 Sec. 42.40.720. LICENSES AND PERMITS. Except as otherwise pro-
4 vided in this chapter, if the laws of a municipality, the state, or
5 the United States require a person to hold a license or permit to
6 undertake certain activities or perform an act, the authority, before
7 under taking the activity or performing the act, shall comply with the
8 law to the same extent the state is required to comply.

**No comparable
provision**

12 Sec. 42.40.740. CLAIMS AGAINST THE AUTHORITY. (c) All claims
13 and lawsuits involving activities of the railroad, including without
14 limitation suits in contract, quasi-contract, or tort, shall be
15 brought against the authority, and not against the state.

16 (b) For the purposes of actionable claims, undertakings, pay-
17 ments of judgments, execution, interest, punitive damages, statutes of
18 limitations, bonds, costs, and similar matters related to the presen-
19 tation and prosecution of claims by and against the authority, the
20 authority 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, AS 09.65.040, and other
23 similar or related statutes.

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

27 (d) The authority is not subject to the provisions of AS 44.80.-
28 010, regarding the state as a party to an action.

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

1 (b) In a claim or other legal action against the corporation
2 involving its activities, including the expansion, extension and
3 construction of the railroad, in which the corporation is the
4 prevailing party, the party or parties that maintained the action
5 shall be liable to the corporation for its full costs and legal fees
6 in defending the action and for the financial losses to the
7 corporation that are directly attributable to the maintenance of that
8 action.

9 (c) For the purposes of actionable claims, undertakings, pay-
10 ments of judgments, execution, interest, punitive damages, statutes of
11 limitations, bonds, costs, and similar matters related to the presen-
12 tation and prosecution of claims by and against the corporation, the
13 corporation and its board members and employees enjoy the same rights,
14 privileges, and immunities as the state and state officers as provided
15 in AS 09.10.120, AS 09.50.250 - 09.50.290, and AS 09.65.040.

16 (d) Claims against the corporation are not subject to the
17 provisions of AS 44.77.010 - 44.77.070 regarding claims against the
18 state.

19 (e) The corporation is not subject to the provisions of AS 44.-
20 80.010, regarding the state as a party to an action.

Section 42.40.540(b) has been added in SB 352 providing that if the railroad corporation prevails in a legal action, the other party is liable for full costs and legal fees incurred by the corporation in defending the action. This subsection is flawed in that it ignores to possibility that the corporation will be a prevailing plaintiff rather than a prevailing defendant in many cases.

Aside from that minor consideration, this subsection raises a sever constitutional question. Under the Civil Rules of Court there are situations where a prevailing party has only a limited right to attorney's fees and cost. (See Civil Rule 72 (k)) In any case, Civil Rule 82 provides for payment of attorney's fees to a prevailing party according to a schedule that, in general, provides less than the full cost incurred in fees.

LB (cont.)

Comparison continued

Singling out the railroad corporation for different treatment from any other prevailing party creates equal protection problems under both the federal and state constitutions that need to be considered. Furthermore, since Article IV, Section 15 of the state constitution grants the supreme court the power to promulgate rules governing practice and procedure in civil cases, it appears that this subsection will have to be approved by two-thirds of the members elected to each house of the legislature. Uniform Rule 39(e) requires that if a bill contains a section changing a court rule the bill must have a section citing the rule and noting what change is made. The fact that the bill changes a court rule must also be noted in the title of the bill. SB 352 does not comply with these technical requirements.

9 Sec. 42.40.730. UNAUTHORIZED REPRESENTATION. All persons who
10 assume to act for the authority without authority to do so are jointly
11 and severally liable for the debts and liabilities incurred.

**No comparable
provision**

65

29 Sec. 42.40.755. EXEMPTION FROM TAXATION. (a) The real and
 1 personal property of the authority and its assets, income, and re-
 2 ceipts are declared to be the property of a political subdivision of
 3 the state and devoted to an essential public and governmental function
 4 and purpose, and the property, assets, income, and receipts are exempt
 5 from all taxes and special assessments of the state or a political
 6 subdivision of the state, including, without limitation, a borough,
 7 city, municipality, school district, public utility district and other
 8 taxing unit. All bonds of the authority are declared to be issued by
 9 a political subdivision of the state and for an essential public and
 10 governmental purpose and to be a public instrumentality and the bonds,
 11 and the interest on them, the income from them and the transfer of the
 12 bonds, and all assets, income, and receipts pledged to pay or secure
 13 the payment of the bonds, or interest on them, are at all times exempt
 14 from taxation by or under the authority of the state, except for
 15 inheritance and estate taxes and taxes on transfers by or in contem-
 16 plation of death.

17 (b) Nothing in this section affects or limits an exemption from
 18 license fees, property taxes, or excise, income or other taxes, pro-
 19 vided under any other law, nor does it create a tax exemption with
 20 respect to the interest of any business enterprise or other person,
 21 other than the authority.

22 (c) For purposes of AS 14.17 relating to the computation of the
 23 required local effort by a district as defined in AS 14.17.250(3),
 24 property exempt from taxation by this chapter is considered taxable
 25 real and personal property.

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

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

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

26 Sec. 42.40.770. PAYMENTS IN PLACE OF LOCAL REAL PROPERTY TAXA-
27 TION AND IMPACT AID. (a) To the extent feasible, without impairing
28 the authority's financial viability and consistent with sound business
29 principles, including but not limited to the operation of the railroad
1 on a self-sustaining basis, the need for capital accumulation, and
2 consistency with regulation by the United States Interstate Commerce
3 Commission, the authority may

4 (1) make voluntary payments to political subdivisions
5 served by the railroad or in which the authority has substantial land
6 holdings in place of local taxation of authority real property; and

7 (2) provide financial assistance to political subdivisions
8 and other local districts in the development of public education and
9 other facilities required to be developed as a result of expanded
10 authority activities in the area.

11 (b) The board shall adopt regulations prescribing the conditions
12 under and the extent to which it will undertake to provide payments or
13 assistance, including, but not limited to

14 (1) the conditions cited in (a) of this section;

15 (2) the relative magnitude of the taxation effort deficit
16 or impact caused by authority activities in an area;

17 (3) the relative need among communities affected by author-
18 ity activities; and

19 (4) the present or anticipated benefits to the communities
20 attributable to authority activities.

**No comparable
provision**

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ARTICLE 8. GENERAL PROVISIONS.

Sec. 42.40.870. ENFORCEMENT OF LAW AND AUTHORITY REGULATIONS BY
AUTHORITY SECURITY FORCE. Members of the security force maintained by
the authority under AS 42.40.300 may enforce state laws and regula-
tions adopted by the authority with respect to violations of the laws
or regulations that occur on or to property owned, managed or trans-
ported by the authority. Members of the security force may exercise
the same enforcement powers granted by law to state law enforcement
officers.

**No comparable
provision**

1 Sec. 42.40.880. PENALTY FOR VIOLATION OF DESIGNATED REGULATION.
2 A person who violates a regulation of the authority that has been
3 designated by the authority as a regulation that is necessary to
4 protect life, health or property, is guilty of a class B misdemeanor.

**No comparable
provision**

5 Sec. 42.40.890. CONSTRUCTION. This chapter shall be liberally
6 construed to carry out its purposes.

**No comparable
provision**

7 Sec. 42.40.900. DEFINITIONS. In this chapter, unless the con-
8 text clearly indicates otherwise,

9 (1) "authority" means the Alaska Railroad Authority;

10 (2) "board" means the Board of Commissioners of the Alaska
11 Railroad Authority;

12 (3) "date of transfer" means the date on which the United
13 States Secretary of Transportation delivers the deed of conveyance for
14 the properties of the Alaska Railroad under the federal transfer
15 legislation;

16 (4) "employees" means all persons employed by the authori-
17 ty, including executive officials;

18 (5) "executive officials" means the authority's chief
19 executive officer, assistant chief executive officer, assistant to the
20 chief executive officer, chief of administration, superintendent of
21 transportation, manager of marketing and sales, chief engineer, chief
22 mechanical officer, manager of industrial development and real estate,
23 manager of budget and accounting, manager of planning, manager of
24 personnel, manager of supply and procurement, chief of security,
25 manager of operating rules, manager of data processing, or any employ-
26 ee of the authority who fulfills these management functions under a
27 different title or who exercises a similar or comparable level of
28 responsibility if so designated by the board;

29 (6) "federal transfer legislation" means that Act of
1 Congress authorizing transfer of the Alaska Railroad to the State of
2 Alaska or the authority;

3 (7) "immediate family" means

4 (A) spouse;

5 (B) dependent parent, parent-in-law, child, son-in-
6 law, or daughter-in-law; or

7 (C) a parent, parent-in-law, child, son-in-law, daugh-
8 ter-in-law, sibling, uncle, aunt, cousin, niece, or nephew resid-
9 ing in the household of an officer or employee of the authority;

10 (8) "land" means all interests in real property, including
11 tide and submerged land;

5 Sec. 42.40.950. DEFINITIONS. In this chapter,

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

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

9 (3) "date of transfer" means the date on which the United
10 States Secretary of Transportation delivers the deed of conveyance for
11 the properties of the Alaska Railroad under 45 U.S.C. 1201-1214
12 (Alaska Railroad Transfer Act of 1982);

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

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

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

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

cont.)

12 (9) "leadership of the legislature" means the president of
 13 the senate, the speaker of the house, the minority leaders of each
 14 house, the chairmen of the senate and house transportation and finance
 15 committees, the chairman of the legislative budget and audit committee
 16 or jurisdictional successors or persons or offices designated by those
 17 individuals;

18 (10) "rail properties" means all right, title, and interest
 19 of the United States to real and personal property, tangible and
 20 intangible, identified in the closing report prepared under the feder-
 21 al transfer legislation and transferred to the authority under the
 22 legislation;

23 (11) "regulation" has the same meaning as under AS 44.62.-
 24 640;

25 (12) "rules" means rules, standards, or written procedures
 26 relating to the governance and internal management and affairs of the
 27 authority or the board; rules may not be considered to be "regula-
 28 tions".

29 * Sec. 3. AS 09.55.110(a)(4) is amended to read:

1 (4) If the property sought to be condemned is for a rail-
2 road other than one operated by the Alaska Railroad Authority, the
3 cost of good and sufficient fences along the line of the railroad, and
4 the cost of cattle guards where fences may cross the line of the
5 railroad.

**No comparable
provision**

6 * Sec. 4. AS 09.55.350 is amended to read:
 7 Sec. 09.55.350. TIME FOR PAYING COMPENSATION OR DAMAGES OR BOND
 8 TO BUILD RAILROAD FENCE AND CATTLE GUARDS. The plaintiff shall,
 9 within 30 days after final judgment, pay the sum of money assessed.
 10 If the use is for railroad purposes other than the purposes of the
 11 Alaska Railroad Authority, the plaintiff may, at the time of or before
 12 the payment, elect to build the fences and cattle guards. If the
 13 plaintiff [HE] so elects, the plaintiff [HE] shall execute to the
 14 defendant a bond, with one or more sureties to be approved by the
 15 court, in double the assessed cost of the same to build such fences
 16 and cattle guards within eight months from the time the railroad is
 17 built on the land taken. If the bond is given, the plaintiff need not
 18 pay the cost of the fences and cattle guards. In an action on the
 19 bond, the plaintiff may recover reasonable attorney fees.

**No comparable
 provision**

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20 * Sec. 5. AS 39.50.200(b) is amended by adding a new paragraph to read:
21 (46) members of the Board of Commissioners of the Alaska
22 Railroad Authority

**No comparable
provision**

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23 * Sec. 6. COMMENCEMENT OF LEGAL EXISTENCE OF ALASKA RAILROAD AUTHORITY.
24 The legal existence and authority of the Alaska Railroad Authority com-
25 mences upon appointment by the governor under AS 42.40.030 enacted in sec.
26 2 of this Act of all members of the Board of Commissioners of the authori-
27 ty.

**No comparable
provision**

28 * Sec. 7. APPOINTMENT OF FIRST MEMBERS OF THE BOARD OF COMMISSIONERS.

29 (a) The governor shall designate the terms of the six public members of
1 the Board of Commissioners of the Alaska Railroad Authority first appointed
2 under AS 42.40.040. Of the six public members first appointed

- 3 (1) two shall serve a term of two years;
4 (2) one shall serve a term of three years;
5 (3) one shall serve a term of four years;
6 (4) two shall serve a term of five years.

7 (b) The governor may exercise the power of appointment under AS 42.-
8 40.010 only upon acceptance by the legislature by law of the closing report
9 or its substantive equivalent prepared and submitted under the federal
10 transfer legislation or upon approval by the legislature of operation of
11 the Federal Alaska Railroad by the authority.

29 * Sec. 4. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD

1 CORPORATION. Notwithstanding AS 42.40.020 enacted in sec. 1 of this Act,
2 the governor shall designate the terms of the appointed members of the
3 first board of directors of the Alaska Railroad Corporation as follows:

- 4 (1) one shall serve a term of two years;
5 (2) one shall serve a term of three years;
6 (3) one shall serve a term of four years; and
7 (4) two shall serve a term of five years.

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12 * Sec. 8. CLOSING REPORT SUBMITTED UNDER FEDERAL TRANSFER LEGISLATION.
13 The closing report submitted under the federal transfer legislation must
14 include a statement of the assets and liabilities of the Alaska Railroad
15 proposed to be transferred to and assumed by the Alaska Railroad Authority
16 or the state which statement is as specific and definitive as practicable
17 under the federal transfer legislation. The legislature may accept or
18 reject the report and may not condition acceptance on its modification in
19 any material respect.

**No comparable
provision**

20 * Sec. 9. ASSETS AND LIABILITIES TO BE NOTED IN AUDIT. To the extent
21 practicable, for the five years following the date of transfer of the
22 Alaska Railroad to the state or the Alaska Railroad Authority the status of
23 the assets and liabilities specifically identified in the closing report
24 submitted under the federal transfer legislation must be noted in the
25 annual audit.

**No comparable
provision**

26 * Sec. 10. INITIAL LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT PLANS.

27 (a) Within 18 months of the date of transfer of the Alaska Railroad to the
28 state or the Alaska Railroad Authority, the authority shall prepare and the
29 Board of Commissioners of the authority shall adopt a long-range program
1 plan and a capital improvement plan in accordance with AS 42.40.325.

2 (b) Beginning three years after the preparation of the long-range
3 program plan described in (a) of this section, the governor and the legis-
4 lative audit division may conduct an annual performance and efficiency
5 audit of the authority's compliance with the plan.

**No comparable
provision**

6 * Sec. 11. PRE-EXISTING RULES, REGULATIONS AND ORDERS OF THE ALASKA
7 RAILROAD. The Board of Commissioners of the Alaska Railroad Authority, by
8 resolution, may continue in force for a period of not more than two years
9 after date of transfer all or part of the rules, regulations, and orders of
10 the Alaska Railroad which were in effect one day before the date of trans-
11 fer and are not inconsistent with this chapter or other state law. All
12 authorities continued in force under this section shall expire on the
13 second anniversary of the date of transfer. The Board of Commissioners may
14 adopt in its rules, regulations, and orders the substance of former federal
15 authorities relating to the Alaska Railroad. This adoption is not con-
16 sidered a continuation of the federal authorities if made in compliance
17 with the procedural requirements of this chapter and other applicable law.

**No comparable
provision**

18 * Sec. 12. COLLECTIVE BARGAINING AGREEMENT BETWEEN THE ALASKA RAILROAD
19 AUTHORITY AND EMPLOYEES. As soon as practicable after transfer of the
20 Alaska Railroad, the Alaska Railroad Authority and its employees shall
21 adopt collective bargaining agreements that continue the provisions of the
22 agreements in effect between the Alaska Railroad and its employees immedi-
23 ately before transfer of the Alaska Railroad. The collective bargaining
24 agreements between the authority and its employees shall remain in effect
25 until they expire by their terms or, as required under the federal transfer
26 legislation, they are renegotiated, subject to the approval of the Board of
27 Commissioners of the Alaska Railroad Authority.

**No comparable
provision**

26 * Sec. 13. CONFLICTING LAWS INAPPLICABLE. If provisions of this Act
29 are in conflict with the provisions of other law, the provisions of this
1 Act prevail.

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

2 * Sec. 14. APPLICATION OF EXISTING STATUTES. (a) AS 19 does not apply
3 to the operations of the Alaska Railroad Authority.

4 (b) The Alaska Railroad Authority is considered a political subdivi-
5 sion of the state for the purposes of AS 23.10.033.

6 (c) AS 23.10.420 does not apply to the operations of the Alaska Rail-
7 road Authority.

8 (d) AS 30.15 does not apply to the operations of the Alaska Railroad
9 Authority.

10 (e) AS 39 does not apply to the operation of the Alaska Railroad
11 Authority.

12 (f) The following provisions of AS 37 do not apply to the operations
13 and budgeting procedures of the Alaska Railroad Authority: AS 37.05;
14 AS 37.07; AS 37.10.010 - 37.10.060, 37.10.085; AS 37.20; and AS 37.23.

15 (g) The Alaska Railroad Authority is not subject to the jurisdiction
16 of the Alaska Transportation Commission.

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ARTICLE 8. GENERAL PROVISIONS.

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 37.23;
- (10) AS 44.62.040 - 44.62.320.

There provisions are
moved from temporary
to permanent law.

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17 Sec. 15. SUBSEQUENTLY ENACTED STATUTES. No subsequently enacted
18 statute shall be interpreted or construed to apply to the Alaska Railroad
19 Authority, the Alaska Railroad, or any of the authority's activities unless
20 it specifically so provides by its terms.

**No comparable
provision**

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21 * Sec. 16. EFFECTIVE DATE. This Act takes effect upon acceptance by
 22 the Alaska State legislature of the closing report submitted under the
 23 federal transfer legislation enacted by Congress authorizing transfer of
 24 the Alaska Railroad to the State of Alaska or the Alaska Railroad Authority
 25 or upon approval by the legislature of operation of the Federal Alaska
 26 Railroad by the Alaska Railroad Authority.

8 * Sec. 5. EFFECTIVE DATE. This Act takes effect immediately in
 9 accordance with AS 01.10.070(c).

SB 352 contains an immediate effective date while SB 352 contains an elaborate effective date tied to the federal railroad transfer legislation.

**No comparable
provision**

9 Sec. 42.40.250. SPECIAL REPORT. The corporation shall investi-
10 gate and prepare a report for the governor and the legislature on the
11 long-term operations of the railroad that are in the best interest of
12 the state. The report shall be due January 1, 1988. It shall make
13 specific recommendations on operational alternatives and the transfer
14 of all or part of the railroads operations to the private sector.

**No comparable
provision**

25 Sec. 42.40.560 APPROPRIATIONS. The corporation may request,
26 with the concurrence of the governor, a direct appropriation or grant
27 from the legislature to assist in carrying out the provisions of
28 AS 42.40.300 and 42.40.310.

**No comparable
provision**

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

**No comparable
provision**

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

**No comparable
provision**

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

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