

LEG. FINANCE - BILLS 1983 - 1984 1931
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- 1 (11) entering into collective bargaining agreements; and
2 (12) adopting annual budgets;
3 (13) beginning a capital project with an estimated comple-
4 tion cost of more than \$500,000 or an estimated completion time of
5 more than one year;
6 (14) exchanging, donating, selling, or otherwise conveying
7 its entire interest in land after approval by the legislature.

8 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

9 Sec. 42.40.150. MEETINGS OF THE BOARD. (a) The chairman of the
10 board shall call meetings of the board at least once every three
11 months. The chairman or a majority of the members of the board may
12 call other meetings of the board as necessary. The chairman shall
13 preside at meetings.

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

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

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

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

24 Sec. 42.40.170. EXECUTIVE SESSIONS. (a) The question of hold-
25 ing an executive session shall be determined in accordance with
26 AS 42.40.160. A subject may not be considered at an executive session
27 unless it is mentioned in the motion calling for the executive session
28 or is auxiliary to a subject mentioned. An action may not be taken at
29 an executive session.

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

3 (1) matters, the immediate knowledge of which would clearly
4 have an adverse effect upon the finances of the corporation;

5 (2) unless the person has requested to have the subjects
6 discussed in public, subjects that tend to prejudice the reputation
7 and character of a person;

8 (3) matters that, by law or municipal charter or ordinance,
9 are permitted to be kept confidential from public disclosure;

10 (4) matters pertaining to personnel;

11 (5) matters pertaining to the corporation's legal position;

12 (6) land acquisition or disposal; and

13 (7) proprietary or other information of a type treated as
14 confidential under the standards and practices of the United States
15 Interstate Commerce Commission, including practices that protect
16 information associated with specific shippers, divisions, and contract
17 rate agreements.

18 Sec. 42.40.180. RULES. (a) The board shall adopt rules to
19 carry out its functions and the purposes of this chapter, including
20 rules to safeguard property owned, managed, or transported by the
21 corporation and to protect employees and persons using the corpora-
22 tion's property or services. At least 15 days before the adoption of
23 a rule, the board shall give public notice of the proposed action by
24 publishing a notice in at least three newspapers of general circula-
25 tion in the state and by mailing a copy of the notice to each person
26 who has requested notice of proposed changes to rules. The notice
27 must state the time, place, and nature of the proceedings and must
28 contain a summary of the subject of the proposed rule.

29 (b) On the date and at the time and place designated in the

1 notice required under (a) of this section the board shall provide each
2 interested person an opportunity to present statements in writing
3 concerning the proposed rule and shall give members of the public an
4 opportunity to present oral statements for a total period of at least
5 one hour.

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

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

14 Sec. 42.40.190. EMERGENCY RULES. (a) The board shall establish
15 in the bylaws of the corporation a procedure for the adoption of a
16 rule on an emergency basis. An emergency rule may be adopted only
17 when necessary for the orderly operation of the corporation's facili-
18 ties or programs. The requirements of AS 42.40.180 do not apply to
19 actions taken under this section. However, within 10 day after the
20 adoption of a rule on an emergency basis the board shall give notice
21 of its action that substantially complies with the notice requirements
22 of AS 42.40.180(a).

23 (b) An action taken under this section remains in effect for not
24 more than 120 days. To prevent an emergency rule from lapsing the
25 board may adopt the same rule under AS 42.40.180 before the end of the
26 120-day period.

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

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

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

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

9 Sec. 42.40.205. APPLICATION. Adoption of a rule is not subject
10 to AS 42.40.180 or 42.40.190 if it

11 (1) relates only to the internal management of the corpo-
12 ration;

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

15 (3) relates to service schedules of the railroad;

16 (4) is directed to a specifically named person or to a
17 group of persons and does not apply to the general public; or

18 (5) relates to the use of public works under the jurisdic-
19 tion of the corporation if the effect of the order is indicated to the
20 public by means of signs or signals.

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

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

29 (b) The corporation may by rule designate and withhold public

1 disclosure of matters of a privileged or proprietary nature. Those
2 matters include personnel records, communications with and work pro-
3 duct of legal counsel, and, consistent with the standards and prac-
4 tices of the United States Interstate Commerce Commission for the
5 protection of these matters, other information including proprietary
6 information associated with specific shippers, divisions and contract
7 rate agreements.

8 Sec. 42.4¹ 230. CONFLICTS OF INTEREST. (a) Except as provided
9 in this section, a board member or executive officer of the corpora-
10 tion may not participate in a decision of the corporation in which
11 that person or a member of that person's immediate family has a direct
12 or indirect financial interest unless the financial interest is a
13 remote financial interest and participation is approved under (b) of
14 this section.

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

26 (c) A board member or executive officer is not considered to be
27 financially interested in a decision when the decision could not
28 affect that person in a manner different from its effect on the pub-
29 lic.

1 (d) Within 120 days of the first meeting of the board, the board
2 shall adopt and may subsequently amend rules implementing this sec-
3 tion, providing additional conflict of interest and ethical rules it
4 considers appropriate.

5 (e) The board may recommend to the governor the removal of a
6 board member or executive officer who intentionally violates this
7 section or a rule adopted under this section.

8 (f) For purposes of this section

9 (1) "participate in a decision" includes all discussions,
10 deliberations, preliminary negotiations, and votes;

11 (2) "immediate family" means

12 (A) spouse;

13 (B) dependent, parent, parent-in-law, child, son-in-
14 law, daughter-in-law, sibling, uncle, aunt, niece, or nephew.

15 ARTICLE 4. POWERS AND DUTIES.

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

18 (1) adopt a seal;

19 (2) adopt bylaws governing the business of the corporation;

20 (3) sue and be sued;

21 (4) appoint trustees and agents of the corporation and
22 prescribe their powers and duties;

23 (5) hire legal counsel to represent the corporation;

24 (6) make contracts and execute instruments necessary or
25 convenient in the exercise of its powers and duties;

26 (7) acquire by purchase, lease, bequest, devise, gift,
27 exchange, the satisfaction of debts, the foreclosure of mortgages, or
28 otherwise, personal property, rights, rights-of-way, franchises,
29 easements, and other interests in land, and acquire by appropriation

1 water rights that are located in the state, taking title to the prop-
2 erty in the name of the corporation;

3 (8) hold, maintain, use, operate, improve, lease, exchange,
4 or encumber, or otherwise grant a security interest in land or person-
5 al property and exchange, donate, convey, alienate, or otherwise
6 dispose of personal property, subject to other provisions of this
7 chapter;

8 (9) contract with and accept transfers, gifts, grants or
9 loans of funds or property from the United States and the state or its
10 political subdivisions, subject to other provisions of federal or
11 state law or municipal ordinances;

12 (10) undertake and provide for the management, operation,
13 maintenance, use, and control of all of the property of the corpo-
14 ration, including all land and personal property of the Alaska Rail-
15 road transferred under 45 U.S.C. 1203(a) and described in the report
16 dated July 14, 1983, as amended, submitted to Congress and the legis-
17 lature under 45 U.S.C. 1204(a);

18 (11) recommend to the legislature and the governor any tax,
19 financing, or financial arrangement the corporation considers appro-
20 priate for expansion or extension and operation of the Alaska Rail-
21 road;

22 (12) maintain offices and facilities at places it desig-
23 nates;

24 (13) apply to the state, the United States, and foreign
25 countries or other proper agencies for the permits, licenses, rights-
26 of-way, or approvals necessary to construct, maintain, and operate
27 transportation and related services, and obtain, hold, and reuse the
28 licenses and permits in the same manner as other railroad operators;

29 (14) prescribe rates to be charged for services provided by

1 the Alaska Railroad consistent with 45 U.S.C. 1201 - 1214 (Alaska
2 Railroad Transfer Act of 1982);

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

5 (16) enter into contracts, leases, and other agreements
6 with connecting carriers, shippers, and other persons concerning the
7 services, activities, operations, property, and facilities of the
8 corporation, including agreements that contain provisions to preserve
9 and expand the railroad's traffic base;

10 (17) plan for and undertake expansion of the railroad and
11 railroad activities, including extension of the rail system, and
12 contract with other modes of transportation service connecting to the
13 rail system;

14 (18) hire and discharge railroad personnel and determine
15 benefits and other terms and conditions of employment;

16 (19) assume all rights, liabilities, and obligations of the
17 Alaska Railroad in accordance with 45 U.S.C. 1201 - 1214 (Alaska
18 Railroad Transfer Act of 1982);

19 (20) maintain a security force to enforce municipal ordi-
20 nances, state laws, and the corporation's rules with respect to viola-
21 tions that occur on or to property owned, managed or transported by
22 the corporation;

23 (21) issue its bonds upon approval of the legislature and
24 provide for and secure their payment, provide for the rights of their
25 holders and hold or dispose of them;

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

28 (23) cancel bonds of the corporation purchased by the corpo-
29 ration;

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

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

7 (26) borrow money, including the amounts necessary to estab-
8 lish reasonable reserves, and pay financing charges and interest on
9 bonds for a reasonable period after which the corporation estimates
10 other money will be available to pay the interest, consultant, advi-
11 sory, and legal fees, and other expenses necessary or incident to
12 borrowing;

13 (27) acquire, hold, and dispose of stocks, memberships,
14 contracts, bonds, general or limited partnership interests or other
15 interests in another corporation, association, partnership, joint
16 venture, or other legal entity, and exercise the powers or rights in
17 connection with these interests that are provided in contracts or
18 agreements and that are allowed by law concerning the satisfaction of
19 debts;

20 (28) undertake and provide for the acquisition, construc-
21 tion, maintenance, equipping, and operation of connecting, switching,
22 terminal, or other railroads and railroad facilities;

23 (29) enter into agreements with a state agency or other
24 instrumentality of the state; and

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

29 Sec. 42.40.260. ANNUAL REPORT. (a) Within 90 days following

1 the end of the fiscal year of the Alaska Railroad the board shall
2 distribute to the governor and to the legislature a report describing
3 the operations and financial condition of the corporation during the
4 preceding fiscal year. The report may include suggestions for legis-
5 lation relating to the structure, powers or duties of the corporation
6 or to the operation or facilities of the corporation. Subject to
7 AS 42.40.220, the report shall itemize the cost of providing each
8 category of service offered by the railroad and the income generated
9 by each category.

10 (b) Every five years the annual report shall include an analysis
11 of potential sale arrangements whereby the corporation may be trans-
12 ferred into private ownership. The analysis shall include documenta-
13 tion of at least three offers to sell the corporation initiated by the
14 corporation during the last five years.

15 Sec. 42.40.270. AUDITS. (a) The board shall have the financial
16 records of the corporation audited annually by an independent certi-
17 fied public accountant experienced in railroad accounting. The board
18 shall have an annual performance audit conducted by a recognized
19 railroad management expert to assure that the railroad is being
20 managed and operated effectively and efficiently in accordance with
21 the requirements of this chapter and that each appropriation is used
22 to directly support those services for which the appropriation was
23 requested. Auditors shall use the standards required under AS 42.-
24 40.100(9) and determine whether each appropriation is used in accor-
25 dance with United States Interstate Commerce Commission standards for
26 determining rail services continuation subsidies if appropriate.

27 (b) The corporation shall make all of its financial records
28 available to an auditor appointed by the governor and to the legisla-
29 tive audit division for examination. Disclosure to the public by the

1 auditor or legislative audit division of this information is subject
2 to AS 42.40.220 and rules implementing that section.

3 Sec. 42.40.280. STATE OVERSIGHT REPORTS. (a) The board shall
4 provide a state oversight report to the governor and the legislature
5 before undertaking

6 (1) expansion, reduction, or diversification of services
7 provided by the railroad upon the date of transfer or as provided
8 under this chapter that the board determines would represent a signif-
9 icant and permanent change in the level and nature of services pro-
10 vided; or

11 (2) an application for an appropriation to be used for
12 providing any service that is not self-sustaining.

13 (b) The report under (a) of this section shall be in writing,
14 describe the proposed undertaking in detail, and specify

15 (1) its financial impact on the corporation;

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

18 (3) the reasons the action is necessary or desirable to
19 achieve the purposes of this chapter;

20 (4) whether and when the undertaking or service is expected
21 to be self-sustaining financially; and

22 (5) if the undertaking requires an appropriation to be used
23 for providing a service that is not self-sustaining, that the amount
24 of the appropriation has been strictly calculated in accordance with
25 United States Interstate Commerce Commission standards for determining
26 rail services continuation subsidies.

27 Sec. 42.40.285. LEGISLATIVE APPROVAL REQUIRED. Unless the
28 legislature approves the action by law, the corporation may not

29 (1) exchange, donate, sell, or otherwise convey its entire

1 interest in land;

2 (2) issue bonds;

3 (3) extend railroad lines; this paragraph does not apply to
4 a spur, industrial, team, switching or side track;

5 (4) lease land for a period in excess of 35 years unless
6 the corporation reserves the right to terminate the lease if the land
7 is needed for railroad purposes.

8 Sec. 42.40.290. LONG-RANGE CAPITAL IMPROVEMENT AND PROGRAM PLAN.

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

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

18 Sec. 42.40.300. USE OF CORPORATION ASSETS. The corporation
19 shall apply all money, property, other assets, and credit of the
20 corporation toward activities authorized by this chapter. The corpo-
21 ration may not issue shares of stock, pay dividends, make private
22 distributions of assets, make loans to board members or employees, or
23 engage in business for private benefit. The use of money, property,
24 another asset, or credit of the corporation for a purpose not author-
25 ized by law by a person having the possession or control of it is
26 prohibited.

27 Sec. 42.40.310. INDEMNIFICATION. (a) The corporation may
28 defend and indemnify a current or former member of the board, em-
29 ployee, or agent of the corporation against all costs, expenses,

1 judgments, and liabilities, including attorney's fees, incurred by or
2 imposed upon that person in connection with a civil or criminal action
3 in which the person is involved by affiliation with the corporation,
4 if the person acted in good faith on behalf of the corporation and
5 within the scope of official duties or powers.

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

15 ARTICLE 5. CORPORATION PROPERTY.

16 Sec. 42.40.350. LAND. (a) The corporation shall receive from
17 the United States and, in its own name, take title to all rail proper-
18 ty transferred under 45 U.S.C. 1201 - 1214 (Alaska Transfer Act of
19 1982). All land that is transferred or acquired by the corporation is
20 designated as follows:

- 21 (1) railroad rights-of-way are railroad utility corridors;
22 (2) land outside railroad utility corridors is rail land.

23 (b) Railroad utility corridors shall be of a width at least 100
24 feet on both sides of the centerline of the extended main or branch
25 line, unless the corporation does not own or control sufficient land
26 to allow a corridor of that width. Railroad utility corridors may be
27 surveyed by the metes and bounds method. The corporation may not
28 convey its entire interest in land within a utility corridor except as
29 provided in AS 42.40.285, 42.40.370(d) and 42.40.400. However, the

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14

SENATE AMENDMENT

By FERGUSON

To: _____ SENATE BILL No. _____

To: amend _____ SCS for HOUSE BILL No. 512(Fin)

PAGE: 21 LINE: 17

Insert a new subsection to read:

(e) Notwithstanding any other provision of this chapter, the state-owned railroad as defined under 45U.S.C.1002(14) may not apply for a right-of-way or exercise eminent domain across the Western(Kobuk River) unit of the Gates of the Arctic National Preserve under 16U.S.C410hh(4)(b)-(4)(b)-(e).

1 corporation may lease, subject to AS 42.40.285 and (d) of this sec-
2 tion, grant easements in or permits for, or otherwise authorize use of
3 portions of a utility corridor for transportation, communication, and
4 transmission purposes and support functions associated with those
5 purposes, and for commercial and other uses authorized under this
6 chapter if the use does not restrict other parallel uses of the utili-
7 ty corridor.

8 (c) The corporation may lease, subject to AS 42.40.285 and (d)
9 of this section, grant easements or permits for, or otherwise author-
10 ize use of portions of rail land. However, the corporation may not
11 convey its entire interest in rail land except as provided in AS 42.-
12 40.285, 42.40.370(d) and 42.40.400.

13 (d) A lease or disposal of land approved by the legislature
14 under AS 42.40.225 by the corporation to a party other than the state
15 shall be made at fair market value as determined by a qualified ap-
16 praiser or by competitive bid.

17 *Ferguson* (e) *Insert*
Adopted Sec. 42.40.360. REQUEST FOR LAND. (a) The board may nominate
18 federal land it determines may be useful for present or future rail-
19 road purposes for selection under the Alaska Statehood Act (P.L. 85 -
20 508, 72 Stat. 339), as amended, and request the commissioner of natu-
21 ral resources to select the land for the state through the federal
22 land selection process.

23 (b) The board may identify and request the commissioner of
24 natural resources to convey land necessary or useful for present or
25 future railroad purposes owned by or tentatively approved for transfer
26 to the state, including land not contiguous with a railroad utility
27 corridor or rail land. The request must include a statement of and
28 justification for the present or future railroad use. Upon receipt of
29 a request, the commissioner shall temporarily reserve the land

1 identified in the request for railroad purposes and defer disposal or
2 lease of that land under other laws to a party other than the corpo-
3 ration. The temporary reservation of land is subject to valid exist-
4 ing rights and remains in effect for 180 days.

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

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

11 (2) notify the corporation of reasons for refusal to desig-
12 nate the identified land for railroad purposes; or

13 (3) approve the request in part and deny it in part and
14 convey as appropriate.

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

18 (c) In the absence of a reservation to the contrary, a convey-
19 ance of land under this section vests in the corporation ownership,
20 control of the surface, material and mineral estate, including the
21 right to extract or use timber and other construction materials, sand,
22 gravel, rock, and the right to tunnel, ditch, recontour, excavate, or
23 otherwise use the land for railroad, transportation, transmission,
24 communication, and related purposes.

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 Sec. 42.40.380. USE OF STATE LAND. When emergency conditions

1 require that track or other right-of-way fixtures of the corporation
2 be moved from the existing location and relocated on state land adja-
3 cent to or in the vicinity of the existing right-of-way and the chief
4 executive officer determines that relocation is necessary to maintain
5 safe and adequate rail operations, the corporation may effect the
6 relocation and notify the the Department of Natural Resources. The
7 relocation must affect only the amount of state land necessary to
8 adequately restore or continue safe rail operations at a normal level.

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

16 Sec. 42.40.400. VACATION OF EASEMENTS. The corporation may
17 vacate an easement acquired under this chapter by executing and filing
18 a deed in the appropriate recording district. If the easement was
19 acquired by the corporation under 45 U.S.C. 1201 - 1214 (Alaska Rail-
20 road Transfer Act of 1982), the state shall acquire the easement for
21 use in conformity with those laws.

22 Sec. 42.40.410. FEDERAL LAND. The corporation may submit appli-
23 cations on its own behalf as an instrumentality of the state for
24 acquisition of federal land available under federal law that will
25 enhance the operations of the corporation if it is available under a
26 federal law other than the Alaska Statehood Act of 1958 (P.L. 85 -
27 508, 72 Stat 339), as amended. The corporation may receive in its own
28 name conveyances of all interests in federal land.

29 Sec. 42.40.420. MUNICIPAL USE OF RAILROAD LAND. Upon request by

1 a municipality the corporation may authorize use of railroad land for
2 municipal purposes. Subject to AS 42.40.350(b), the corporation may
3 authorize a municipality to establish a walkway or trail over a util-
4 ity corridor. Before authorizing a use under this section the board
5 shall require the municipality to execute an agreement in a form
6 approved by the board to

7 (1) hold the corporation harmless from and indemnify the
8 corporation for any liability and claims arising from any use autho-
9 rized under this section including

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

12 (B) indemnifying the corporation for the amount of a
13 judgment, including prejudgment and postjudgment interest, ren-
14 dered against the corporation or for the amount of a settlement
15 entered into by the corporation, and for all costs and attorney's
16 fees incurred by the corporation in settling or defending the
17 claim; and

18 (2) stop the use of railroad land upon request of the
19 corporation if, as determined by the corporation, the use interferes
20 with expansion or replacement of railroad facilities, creates a safety
21 hazard, or interferes with railroad operations.

22 Sec. 42.40.430. ACQUISITION OF GOVERNMENT PROPERTY. The corpor-
23 ation, as an instrumentality of the state, may acquire in its own name
24 from the United States under 50 App U.S.C. 1622 - 1622c (Surplus
25 Property Act of 1944), 40 U.S.C. 471 et seq. (Federal Property and
26 Administrative Services Act of 1949), or other law, property under the
27 control of a federal department or agency that is useful for the
28 corporation's purposes. The corporation may acquire from the Depart-
29 ment of Administration property of the state made available under

1 AS 44.71.010 - 44.71.040.

2 Sec. 42.40.435. EXCHANGE OF LAND. The corporation may exchange
3 land subject to AS 42.40.285. The corporation is an instrumentality
4 and agency of the state for purposes of exchanging land with the
5 United States, municipalities, corporations including corporations
6 formed under 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement
7 Act), and individuals.

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

13 Sec. 42.40.450. ADVERSE POSSESSION. No prescription or statute
14 of limitations runs against the title or interest of the corporation
15 to or in land owned by the corporation or under its jurisdiction.
16 Title to or interest in land owned by the corporation or under its
17 jurisdiction may not be acquired by adverse possession or prescrip-
18 tion, or in any other manner except by conveyance from or formal
19 vacation by the corporation.

20 ARTICLE 6. FINANCIAL PROVISIONS.

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

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

1 bonded person.

2 Sec. 42.40.520. INSURANCE. Except as provided in AS 42.40.310-
3 (b), the corporation shall protect its assets, services, and employees
4 by purchasing insurance or providing for certain self-insurance re-
5 tentions. The corporation shall also maintain casualty, property,
6 business interruption, marine, boiler and machinery, pollution liabil-
7 ity, and other insurance in amounts reasonably calculated to cover
8 potential claims against the corporation or state for bodily injury,
9 death or disability and property damage that may arise from or be
10 related to corporation operations and activities.

11 Sec. 42.40.530. REVENUE. Revenue generated by or appropriated
12 to the corporation shall be retained and managed by the corporation
13 for railroad and related purposes in accordance with 45 U.S.C. 1207-
14 (a)(5) (Alaska Railroad Transfer Act of 1982).

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

19 ARTICLE 7. BONDS.

20 Sec. 42.40.600. GENERAL PROVISIONS. (a) Upon receiving legis-
21 lative approval under AS 42.40.285 the corporation may issue bonds by
22 resolution to provide money to carry out its purposes.

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

25 (1) be dated;

26 (2) bear fixed or variable interest at a specified rate or
27 rates per year or within a maximum rate;

28 (3) be in a specified denomination;

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

- 1 (5) carry conversion or registration provisions;
2 (6) have a specified rank or priority;
3 (7) be executed in the specified manner and form;
4 (8) be payable as specified from the sources, in the medium
5 of payment, and place or places inside or outside the state;
6 (9) be subject to authentication by a trustee or fiscal
7 agent; and
8 (10) be subject to terms of redemption with or without
9 premium.

10 (c) Bonds may be sold in the manner, on the terms, and at the
11 price the board determines. Notes shall mature at the time or times
12 determined by the board. Except for bond anticipation notes, notes,
13 or other obligations, bonds shall mature at the time, not exceeding 50
14 years from their date, determined by the board.

15 Sec. 42.40.610. NEGOTIABLE INSTRUMENTS. Bonds issued under this
16 chapter and interest coupons attached to them are negotiable instru-
17 ments under the laws of this state, subject only to applicable pro-
18 visions for registration.

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

29 Sec. 42.40.630. PAYMENT OF BONDS. The principal and interest on

1 bonds of the corporation is payable from corporation money or assets.
2 Bonds may be additionally secured by a pledge of a grant or contribu-
3 tion from the federal or state government, a municipality, a corpo-
4 ration, an association, an institution or a person, or a pledge of
5 money, income, or revenue of the corporation from any source.

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

12 (1) make and enter into any and all the covenants and
13 agreements with the trustees or the holders of the bonds that the
14 corporation may determine to be necessary or desirable, including
15 covenants, provisions, limitations and agreements as to

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

20 (B) the fixing and collection of rentals, charges,
21 fees or other consideration for, and the other terms to be incor-
22 porated in, contracts with respect to the use of any of the
23 corporation's property;

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

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

29 (E) the vesting in the trustee of rights and remedies

1 exercisable by the trustee for the protection of the holders of
2 bonds of the corporation and not otherwise in violation of law
3 and the restriction of the rights of an individual holder of
4 bonds of the corporation;

5 (2) pledge, mortgage, or assign money, leases, agreements,
6 assets, or property of the corporation either presently in hand or to
7 be received in the future, or both; and

8 (3) provide for any other matters of like or different
9 character that in any way affect the security or protection of the
10 bonds.

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

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

19 Sec. 42.40.670. VALIDITY OF PLEDGE. (a) The pledge of assets
20 or revenue of the corporation to the payment of the principal or
21 interest on bonds of the corporation is valid and binding from the
22 time the pledge is made and the assets or revenue are immediately
23 subject to the lien of the pledge without physical delivery or further
24 act. The lien of a pledge is valid and binding against all parties
25 having claims of any kind against the corporation, irrespective of
26 whether those parties have notice of the lien of the pledge.

27 (b) Nothing in this section prohibits the corporation from
28 selling assets subject to a pledge, except that a sale may be re-
29 stricted by the trust agreement or resolution providing for the

1 issuance of the bonds.

2 Sec. 42.40.675. PLEDGE OF THE STATE. The state pledges to and
3 agrees with the holders of bonds issued under this chapter and with
4 the federal agency that loans or contributes funds in respect to a
5 project, that the state will not limit or alter the rights and powers
6 vested in the corporation by this chapter to fulfill the terms of a
7 contract made by the corporation with the holders or federal agency,
8 or in any way impair the rights and remedies of the holders until the
9 bonds together with the interest on them with interest on unpaid
10 installments of interest, and all costs and expenses in connection
11 with an action or proceeding by or on behalf of the holders, are fully
12 met and discharged. The corporation is authorized to include this
13 pledge and agreement of the state, insofar as it refers to holders of
14 bonds of the corporation, in a contract with the holders and insofar
15 as it relates to a federal agency, in a contract with the federal
16 agency.

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

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

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

27 Sec. 42.40.690. CREDIT OF STATE NOT PLEDGED. (a) The state and
28 its political subdivisions are not liable for the debts of the corpo-
29 ration. Bonds issued under this chapter are payable solely from the

1 revenue or assets of the corporation and do not constitute a

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

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

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

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

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

14 Sec. 42.40.700. LIMITATION ON PERSONAL LIABILITY. A board
15 member or employee of the corporation is not subject to personal
16 liability or accountability because of the execution or issuance of
17 bonds.

18 ARTICLE 3. PERSONNEL AND LABOR RELATIONS.

19 Sec. 42.40.705. POLITICAL ACTIVITIES. (a) Money, assets, or
20 property of the corporation may not be used for political activities.
21 However, board members and employees may communicate with and appear
22 before committees of Congress, the state legislature, and municipal
23 governing bodies in connection with matters directly affecting the
24 corporation.

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

29 Sec. 42.40.710. CORPORATION EMPLOYEES. Employees of the Alaska

1 Railroad are employees of the corporation and not of the state. The
2 provisions of AS 39 do not apply to employees of the corporation.

3 Sec. 42.40.720. COLLECTIVE BARGAINING RIGHTS. The provisions of
4 AS 23.40.070 - 23.40.260 do not apply to the corporation or to its
5 employees. However, employees who are not executive officers may
6 organize and form, join, or assist an organization to engage in col-
7 lective bargaining through representatives of their own choosing and
8 engage in concerted activities for the purpose of collective bargain-
9 ing or other mutual aid or protection.

10 Sec. 42.40.730. RAILROAD LABOR RELATIONS AGENCY. (a) There is
11 established a railroad labor relations agency that consists of three
12 members appointed by the governor. One member shall be a member of
13 the state personnel board. Members serve at the pleasure of the
14 governor.

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

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

20 Sec. 42.40.740. COLLECTIVE BARGAINING UNIT. The railroad labor
21 relations agency shall decide in each case, in order to ensure employ-
22 ees the fullest freedom in exercising the rights guaranteed by AS 42.-
23 40.710 - 42.40.890 the unit appropriate for the purposes of collective
24 bargaining, based on such factors as community of interest, wages,
25 hours and other working conditions of the employees involved, the
26 history of collective bargaining, and the desires of the employees.
27 Bargaining units shall be as large as is reasonable, and unnecessary
28 fragmenting shall be avoided.

29 Sec. 42.40.750. REPRESENTATIVES AND ELECTIONS. (a) The

1 railroad labor relations agency shall investigate a petition if it is
2 submitted in a manner prescribed by the railroad labor relations
3 agency by

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

7 (A) want to be represented for collective bargaining
8 by a labor or employee organization as exclusive representative;
9 or

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

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

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

28 (c) The railroad labor relations agency shall determine who is
29 eligible to vote in an election held under this section and shall

1 establish rules governing the election. In an election in which none
2 of the choices on the ballot receives a majority of the votes cast, a
3 runoff election shall be conducted, the ballot providing for selection
4 between the two choices receiving the largest number of valid votes
5 cast in the election. If an organization receives the majority of the
6 votes cast in the election it shall be certified by the railroad labor
7 relations agency as exclusive representative of all the employees in
8 the bargaining unit. An election may not be held in a bargaining unit
9 or in a subdivision of a bargaining unit if a valid election has been
10 held within the preceding 12 months.

11 (d) Nothing in this chapter prohibits recognition of an orga-
12 nization as the exclusive representative by the corporation by mutual
13 consent.

14 (e) An election may not be directed by the railroad labor rela-
15 tions agency in a bargaining unit in which there is in force a valid
16 collective bargaining agreement, except during a 90-day period preced-
17 ing the expiration date. However, a collective bargaining agreement
18 may not bar an election upon petition of employees in the bargaining
19 unit if

20 (1) the petitioners are not parties to the agreement; and
21 (2) more than three years have elapsed since the execution
22 of the agreement or its last timely renewal, whichever was later.

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

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

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

29 (3) discriminate in regard to hire or tenure of employment

1 or a term or condition of employment to encourage or discourage mem-
2 bership in an organization;

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

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

10 (b) Nothing in AS 42.40.710 - 42.40.890 prohibits the corpo-
11 ration from making an agreement with an organization to require as a
12 condition of employment

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

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

19 (c) An organization or its agents may not

20 (1) restrain or coerce

21 (A) an employee in the exercise of the rights guaran-
22 teed in AS 42.40.720; or

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

26 (2) refuse to bargain collectively in good faith with the
27 corporation, if it has been designated in accordance with AS 42.40.-
28 710 - 42.40.890 as the exclusive representative of employees in an
29 appropriate unit.

1 Sec. 42.40.770. INVESTIGATION AND CONCILIATION OF COMPLAINTS.

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

12 Sec. 42.40.780. COMPLAINT AND ACCUSATION. If the railroad labor
13 relations agency fails to eliminate the prohibited practice by concil-
14 iation and to obtain voluntary compliance with AS 42.40.710 - 42.40.-
15 890 or before it attempts conciliation, it may serve a copy of the
16 complaint or accusation upon the respondent. The complaint or accusa-
17 tion and the subsequent procedures shall be handled in accordance with
18 the administrative adjudication portion of the Administrative Proce-
19 dure Act (AS 44.62).

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

1 order dismissing the complaint or accusation.

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

10 Sec. 42.40.810. POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a)
11 For the purpose of the investigations, proceedings, or hearings that
12 the railroad labor relations agency considers necessary to carry out
13 AS 42.40.710 - 42.40.890, the railroad labor relations agency may
14 issue subpoenas requiring the attendance and testimony of witnesses
15 and the production of relevant evidence.

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

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

21 (d) If a person refuses to obey a subpoena issued under AS 42.-
22 40.710 - 42.40.890, the superior court in the district in which the
23 person resides or is found may, upon application by the railroad labor
24 relations agency, issue an order requiring the person to comply with
25 the subpoena.

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

29 Sec. 42.40.830. PENALTY FOR VIOLATION OF ORDER OR DECISION. A

1 person who violates a provision of an order or decision of the rail-
2 road labor relations agency is guilty of a misdemeanor and is punish-
3 able by a fine of not more than \$500.

4 Sec. 42.40.840. MEDIATION. (a) If, after a reasonable period
5 of negotiation over the terms of a collective bargaining agreement, an
6 impasse as determined by the railroad labor relations agency exists
7 between the corporation and an organization, the railroad labor re-
8 lations agency shall appoint a person mutually agreeable to the
9 parties from a list of seven qualified mediators or arbitrators knowl-
10 edgeable in railway labor agreements to act as mediator in the dis-
11 pute.

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

14 (c) It shall be the function of the mediator to bring the
15 parties together to effectuate a settlement of the dispute, but nei-
16 ther the mediator nor the railroad labor relations agency has any
17 power of compulsion in mediation proceedings.

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

24 (b) The corporation may apply to the superior court in the
25 judicial district in which the strike is occurring for an order en-
26 joining the strike. A strike may not be enjoined unless it can be
27 shown that it has begun to threaten, or is about to threaten, the
28 health, safety, or welfare of the public. A court, in deciding wheth-
29 er to enjoin the strike, shall consider the total equities in the

1 particular case, including the impact of a strike on the public and
2 the extent to which an employee organization and the corporation have
3 met their statutory obligations.

4 (c) If an impasse or deadlock still exists after the issuance of
5 an injunction, the parties shall submit the dispute to binding arbi-
6 tration. The arbitrator shall be the same person selected under
7 AS 42.40.840 and shall fashion the award the arbitrator considers
8 equitable.

9 (d) Notwithstanding (a) - (c) of this section, an organization
10 and the corporation may mutually agree to submit a dispute to binding
11 arbitration at any time.

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

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

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

28 Sec. 42.40.870. ORGANIZATION DUES AND EMPLOYEE BENEFITS, DEDUC-
29 TION AND AUTHORIZATION. Upon written authorization of an employee

1 within a bargaining unit, the corporation shall deduct from the pay-
2 roll of the employee the monthly amount of dues, fees, and other
3 employee benefits as certified by the secretary of the exclusive
4 bargaining representative and shall deliver it to the chief fiscal
5 officer of the exclusive bargaining representative.

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

23 Sec. 42.40.885. PROHIBITED ACTS. (a) The corporation or an
24 employee may not directly or indirectly

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

28 (2) require or coerce an employee to make any report con-
29 cerning an activity or undertaking of the employee unless the activity

1 or undertaking is related to the performance of official duties;

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

6 (A) a personal relationship with a person connected
7 with the employee by blood or marriage;

8 (B) the employee's religious beliefs or practices;

9 (C) sexual matters;

10 (D) the employee's political affiliation or philoso-
11 phy;

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

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

18 (b) The provisions of (a) of this section do not diminish the
19 authority of an authorized law enforcement agency to conduct criminal
20 investigations of employees suspected of being involved in criminal
21 activity or to investigate other activity directly related to official
22 railroad business.

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

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

28 (2) "organization" means a labor or employee organization
29 of any kind in which employees participate and that exists for the

1 primary purpose of dealing with the corporation concerning grievances,
2 labor disputes, wages, rates of pay, hours of employment and condi-
3 tions of employment.

4 ARTICLE 9. GENERAL PROVISIONS.

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

9 (b) 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 pres-
12 entation 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.

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

17 (d) The corporation is not subject to the provisions of AS 44.-
18 80.010, regarding the state as a party to an action.

19 Sec. 42.40.905. NOTICE OF LEGAL ACTIONS. (a) The corporation
20 shall notify the Department of Law within 30 days before initiating
21 legal action unless special circumstances exist that require immediate
22 legal action to protect the corporation asset or to continue existing
23 service.

24 (b) If notice of legal action is not given under (a) of this
25 section, within seven days of taking action the board shall notify the
26 Department of Law of the action taken and of the special circumstances
27 that exempted the action from the requirements of (a) of this section.

28 Sec. 42.40.910. EXEMPTION FROM TAXATION. (a) The exercise of
29 the powers granted by this chapter shall be in all respects for the

1 benefit of the people of the state, for their well-being and prosper-
2 ity, and for the improvement of their social and economic conditions.
3 Subject to (b) of this section, the real and personal property of the
4 corporation and its assets, income, and receipts are exempt from all
5 taxes and special assessments of the state or a political subdivision
6 of the state.

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

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

19 Sec. 42.40.920. APPLICATION OF EXISTING LAWS. (a) The corpo-
20 ration is not subject to the jurisdiction of the Alaska Transportation
21 Commission.

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

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

Technical Amendment

Page 44, line 12, after "corporation" insert:

"in consultation with the Department of Labor"

1 (7) AS 37.10.085;

2 (8) AS 37.20;

3 (9) AS 37.25;

4 (10) AS 38;

5 (11) AS 44.62.040 - 44.62.320.

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

11 Sec. 42.40.935. RAILROAD FACILITIES CODE COMPLIANCE. (a) Not
12 later than two years after the date of transfer the corporation ^{in consultation w/ Dept. Labor} shall
13 develop and adopt a plan to achieve compliance with AS 18.60. The
14 plan shall be implemented and compliance achieved within five years
15 after it is adopted.

16 (b) No later than two years after the date of transfer, the
17 corporation in consultation with the Department of Public Safety and
18 appropriate municipal officials, shall develop and adopt a plan to
19 achieve compliance with building and related safety codes applicable
20 to facilities of the corporation. The plan shall be implemented and
21 compliance achieved within five years after it is adopted. In the
22 sole determination of the commissioner of public safety, any existing
23 building owned or controlled by the corporation that does not present
24 a serious safety hazard and for which compliance would be uneconomical
25 in consideration of its remaining useful life shall be exempted from
26 compliance with state or municipal safety codes.

27 Sec. 42.40.940. SALE OR LEASE OF THE RAILROAD. (a) The gover-
28 nor may provide for the sale or lease of the Alaska Railroad and
29 dissolve the corporation if

1 (1) it can be assured that the railroad will continue to
2 operate after the sale or lease; and

3 (2) under the terms of the sale or lease, the state will
4 receive the amount of money it has spent in connection with the Alaska
5 Railroad.

6 (b) A sale under this section is subject to approval by law.

7 Sec. 42.40.950. REVERSION OF ASSETS. Except as provided in
8 AS 42.40.940, if the corporation ceases to exist its assets revert to
9 the state.

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

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

14 (2) "bonds" means bonds, bond anticipation notes, notes,
15 refunding bonds, or other obligations;

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

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

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

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

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

17 (8) "land" means any interest in real property, including
18 tide and submerged land, and any right appurtenant to the interest;

19 (9) "rule" means a standard of general application or the
20 amendment, supplement, revision, or repeal of a standard adopted by
21 the corporation to implement, interpret, or make specific the law
22 enforced or administered by it to govern its procedure;

23 (10) "terms and conditions of employment" means the hours of
24 employment, the compensation and fringe benefits, and the employer's
25 personnel policies affecting the working conditions of the employees,
26 but does not mean the general policies describing the function and
27 purposes of an employer.

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

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

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

9 * Sec. 4. AS 42.40.030 is amended to read:

10 Sec. 42.40.030. TERM OF OFFICE; REMOVAL. Except for the commis-
11 sioner of commerce and economic development and the commissioner of
12 transportation and public facilities, members of the board serve for
13 staggered terms of five years each [AT THE PLEASURE OF THE GOVERNOR].

14 * Sec. 5. AS 42.40.030 is amended by adding a new subsection to read:

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

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

19 (2) continued refusal or inability to attend meetings of
20 the board or to perform duties under this chapter;

21 (3) conviction of a felony; or

22 (4) malfeasance or misfeasance.

23 * Sec. 6. AS 42.40.180 is repealed and reenacted to read:

24 Sec. 42.40.180. RULES. (a) The board shall establish a proce-
25 dure for adopting rules to carry out its functions and the purposes of
26 this chapter, including a procedure for the adoption of rules on an
27 emergency basis when essential to continue or to reinstate the orderly
28 operation of the corporation's facilities or programs.

29 (b) The board shall adopt rules to safeguard property owned,

1 managed, or transported by the corporation and to protect employees
2 and persons using the corporation's property or services.

3 * Sec. 7. AS 42.40.205 is amended to read:

4 Sec. 42.40.205. APPLICATION. Adoption of a rule is not subject
5 to AS 42.40.180 [OR 42.40.190] if it

6 (1) relates only to the internal management of the corpo-
7 ration;

8 (2) relates to specific rates, tariffs, divisions, and
9 contract rate agreements;

10 (3) relates to service schedules of the railroad;

11 (4) is directed to a specifically named person or to a
12 group of persons and does not apply to the general public; or

13 (5) relates to the use of public works under the jurisdic-
14 tion of the corporation if the effect of the order is indicated to the
15 public by means of signs or signals.

16 * Sec. 8. SPECIAL REPORTS. (a) The governor shall contract with a
17 private consultant for the preparation of a report on the long-term op-
18 erations of the Alaska Railroad that are in the best interest of the state.
19 The report shall be submitted to the governor and the legislature by
20 February 1, 1987. It shall contain specific recommendations on operational
21 alternatives and the transfer of all or part of the railroad operation to
22 the private sector.

23 (b) The corporation shall study any problems created by vibrations
24 due to operating the railroad from Ship Creek through Inlet View to the
25 Turnagain Area and extending to Potter's Marsh. The study shall include
26 consideration of any potential for problems that may be created by hauling
27 coal and larger quantities of gravel along that portion of the rail line.
28 By February 1, 1986, the corporation shall present a report to the
29 legislature on the study containing recommendations for correcting any

1 problems identified.

2 * Sec. 9. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD
3 CORPORATION. Notwithstanding AS 42.40.020 enacted in sec. 1 of this Act,
4 the terms of the appointed members of the first board of directors of the
5 Alaska Railroad Corporation are as follows:

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

10 * Sec. 10. COLLECTIVE BARGAINING AGREEMENTS. (a) As soon as practi-
11 cable before transfer of the Alaska Railroad to the state, the Alaska Rail-
12 road Corporation and its employees shall adopt collective bargaining agree-
13 ments that continue the provisions of the agreements in effect between the
14 Alaska Railroad and its employees on the date of transfer of the railroad.
15 The collective bargaining agreements adopted under this section between the
16 corporation and its employees shall remain in effect to the extent required
17 under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982).

18 (b) The board of directors of the Alaska Railroad Corporation shall
19 on or before the date of transfer of the Alaska Railroad to the state adopt
20 personnel rules necessary to prevent an interruption of services of the
21 railroad.

22 (c) Subject to 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of
23 1982), within 180 days after the first meeting of the board of directors of
24 the Alaska Railroad Corporation, the board and representatives of employee
25 bargaining units shall establish procedures for the renegotiation of bar-
26 gaining agreements adopted under (a) of this section. The board shall
27 renegotiate all agreements adopted under (a) of this section with two years
28 after the date of transfer of the Alaska Railroad to the state unless the
29 parties agree to the contrary.

1 * Sec. 11. AS 42.40.190 and 42.40.200 are repealed.

2 * Sec. 12. Sections 3 - 7 and 11 of this Act take effect on the effec-
3 tive date of an amendment to the Constitution of the State of Alaska relat-
4 ing to the Alaska Railroad.

5 * Sec. 13. Sections 1, 2, and 8 - 10 of this Act take effect imme-
6 diately in accordance with AS 01.10.070(c).

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

*Original
accompanied
Committee
Budget
5/28/84*

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 512
Title: Alaska Railroad Corp.
Sponsor: Hayes, et al.
Requestor: Conference Cmtee.
Date of Request: 5/28/84

FISCAL DETAIL

Agency Affected: Commerce
Program Category Affected: Alaska Railroad Corporation
BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		2372.2				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS		37350.0				
TOTAL OPERATING		39722.2				
CAPITAL						
REVENUE		37350.0				

FUNDING: (Thousands of Dollars)

GENERAL FUND		2372.2				
FEDERAL FUNDS						
OTHER		37350.0				
TOTAL		39722.2				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Alaska Railroad Corporation revenues are the funding source for everything but the contractual line item, which is funded with general funds.

ANALYSIS: Attach a separate page for analysis

Prepared By: John Sackett, Chair Phone: 465-3753
Division: Senate Finance Committee Date: _____

Approved by Commissioner: _____ Date: _____
Agency: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 5/22/84

<u>REQUEST</u>	SCS CSHB	<u>FISCAL DETAIL</u>	Alaska Railroad
Bill/Resolution No.:	512 (Finance)	Agency Affected:	Corporation
Title:	Alaska Railroad Corporation	Program Category Affected:	
Sponsor:	Hayes, Ringstad, Shultz	BRU, Program or Subprogram(s) Affected:	
Requestor:		Alaska Railroad Corporation	
Date of Request:			

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL		14,250.0				
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		14,250.0				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Capital Projects to be funded from this appropriation are detailed in Attachment A.

ANALYSIS: Attach a separate page for analysis

Prepared By: *John C. Shultz* Phone: _____
Division: Senate Finance Committee Date: 5/22/84

Approved by Commissioner: _____ Date: _____
Agency: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Alaska Railroad
FY 85 Capital Budget Request

<u>Track and Roadbed</u>	6185.0
Ties - Install 50,000 @ \$42 each	2100.0
Rail - Install 6 miles @\$350,000 each	2100.0
Ballast - Install 85,000 yd ³ @14 yd ³	1190.0
Other - Turnouts, sledding, culverts, ditching	795.0
 <u>Bridges</u>	 883.0
Replace stringers, bents and spans	
Reset bearings, piles and abutments	
 <u>Tunnels</u>	 1060.2
Line with multi-plate	
Excavate rock fall areas	
 <u>Docks</u>	 706.8
Preliminary work to rebuild barge slip #1 at Whittier	
 <u>Communications</u>	 570.0
Complete microwave system	
Remove pole lines	
Acquire equipment	
 <u>Motive Power and Equipment</u>	 4845.0
Locomotives	2250.0
Upgrade facilities	1845.0
Equipment	750.0
	<hr/>
	14,250.0

The above is based on the December, 1983 ARR Acquisition Assessment.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 5/22/84

REQUEST SCS CSHB
Bill/Resolution No.: 512 (Finance)
Title: Alaska Railroad Corporation

FISCAL DETAIL Alaska Railroad
Agency Affected: Corporation
Program Category Affected:

Sponsor: Hayes, Ringstad, Shultz
Requestor:
Date of Request:

BRU, Program or Subprogram(s) Affected:
Alaska Railroad Corporation

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL		14,250.0				
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		14,250.0				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Capital Projects to be funded from this appropriation are detailed in Attachment A.

ANALYSIS: Attach a separate page for analysis

Prepared By: *Mark C. Schutt*
Division: Senate Finance Committee

Phone: _____
Date: 5/22/84

Approved by Commissioner: _____
Agency: _____

Date: _____

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

ATTACHMENT A

Alaska Railroad
FY 85 Capital Budget Request

<u>Track and Roadbed</u>	6185.0
Ties - Install 50,000 @ \$42 each	2100.0
Rail - Install 6 miles @\$350,000 each	2100.0
Ballast - Install 85,000 yd ³ @14 yd ³	1190.0
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Preliminary work to rebuild barge slip #1 at Whittier	
 <u>Communications</u>	 570.0
Complete microwave system Remove pole lines Acquire equipment	
 <u>Motive Power and Equipment</u>	 4845.0
Locomotives	2250.0
Upgrade facilities	1845.0
Equipment	750.0
	 14,250.0

The above is based on the December, 1983 ARR Acquisition Assessment.

37C-84
by Fischer 5/23/84

Failed

SCS CSHB 512 (Fin)

Amend board of directors to include union official.

page 3, line 22

After "commissioners" add "and the member appointed under (5) of this section"

page 4, line 8

Add a section (5): "one member shall be an employee who is a member of a bargaining unit representing employees of the corporation."

3FC-84

5/23/84

Jim Josephson

Suggested Letter of Intent Language

#1



It is the policy of the State that the Alaska Railroad should be operated in a business like manner so as to foster the development of a strong and financially sound system of Interstate Commerce. Accordingly, although the Railroad may use public resources or the benefits of its public status to extend its lines or to provide passenger service, it ~~may not use these resources or benefits~~ ^{should} to compete unfairly with privately owned carriers.

The Alaska Public Utility Commission will not have jurisdiction to regulate the Railroad's rates, because that would be inconsistent with federal law. For example, the Railroad will not file tariffs with the Public Utility Commission, nor may the Public Utility Commission investigate or suspend the Railroad's rates. However, subsection (c)(1) directs the managers of the state-owned Railroad, as a matter of the State's public policy for managing the State's Railroad, to price the Railroad's services in accordance with the principle that rates should be just, reasonable, and nondiscriminatory under the standards used by the Public Utility Commission. Thus subsection (c)(1) is a self-imposed limitation by the State on the management discretion of the state-owned Railroad to propose and file rates. It incorporates the Public Utility Commission's principles of fairness by reference and applies them by analogy, but it does not interfere with the jurisdiction of the Interstate Commerce Commission to review rates filed by the Railroad.

Subsection (c)(2) prevents the Railroad from utilizing the public benefits of direct or indirect subsidy (such as ability to issue tax-exempt bonds and freedom from taxation and license and permit fees) to undercut rates established in the competitive marketplace. This section only prohibits the Railroad from using its subsidy to undercut the rates of the private carriers for comparable service. If the Railroad can price below the privately owned carriers and still earn a profit, it is certainly permitted to do this.

Proposed Amendments to SCS CSHB 512 (Trsp)

Add a new Subsection (c) to Section 1, as follows:

(c) It is the policy of the State of Alaska that the Alaska Railroad:

- (1) shall establish just, reasonable, and nondiscriminatory rates and practices consistent with the principles and standards administered by the Alaska Public Utilities Commission pursuant to AS 42.05.381 and 42.05.391; and

(2) shall not use direct or indirect subsidy to compete unfairly with privately owned and operated carriers.

Failed
3/8/70
Jos. Mul. Ferry

Nothing herein shall affect the provisions of Sec. 12.40.220(b)

ALASKA RAILROAD
Operating Expenses*
FY 85 (in \$000)

ATTACHMENT

Supporting Data for State of Alaska
1984 Legislative Session Fiscal Note (CS for SB 352)

	Alaska Railroad								Other Expenditures				
	Dec.	Jan.	Feb.	March	April	May	June	Total	Board of Dir.	ARR Trans. Team	Est. Corp.	Other	Total
<u>Personal Services</u>													
Wages	2,400	2,640	2,640	2,800	2,910	3,035	3,160	19,585					
Fringe	540	590	590	625	650	675	700	4,370					
Sub Total								<u>23,955</u>	<u>70</u>		<u>275</u>		<u>24,300</u>
<u>Travel</u>													
	12	12	12	16	16	16	16	<u>100</u>	<u>40</u>				<u>140</u>
<u>Contracts</u>													
	370	370	360	350	350	350	350	<u>2,500</u>		<u>1,650</u>	<u>1,200</u>	<u>550</u>	<u>5,900</u>
<u>Supplies</u>													
	340	350	330	480	555	700	720	<u>3,475</u>			<u>525</u>		<u>4,000</u>
<u>Equipment</u>													
	100	148	140	180	200	212	220	<u>1,200</u>					<u>1,200</u>
<u>Grants & Claims</u>													
	200	200	200	200	200	250	250	<u>1,500</u>					<u>1,500</u>
 Total													
	<u>3,962</u>	<u>4,310</u>	<u>4,272</u>	<u>4,651</u>	<u>4,881</u>	<u>5,238</u>	<u>5,416</u>	<u>32,730</u>	<u>110</u>	<u>1,650</u>	<u>2,000</u>	<u>550</u>	<u>37,040</u>

*Minor Discrepancies due to rounding

(1)

04/10/84

Attachment A

ALASKA RAILROAD
Operating Expenses*
Analysis by Department
FY 85

Supporting Data for State of Alaska
1984 Legislative Session Fiscal Note (CS for SB 352)

	December	January	February	March	April	May	June	Total
<u>General Manager & Staff</u>								
<u>Personal Services</u>								
Wages	72	92	92	98	101	106	110	671
Fringe	16	21	21	22	22	23	24	149
Travel	2	2	2	3	3	3	3	18
Contracts	2	2	2	2	2	1	1	12
Supplies	9	9	8	11	12	15	16	80
Equipment	0	0	0	0	0	0	0	0
Grants & Claims	0	0	0	0	0	0	0	0
Total	101	126	125	136	140	148	154	930
<u>Transportation</u>								
<u>Personal Services</u>								
Wages	985	1,080	1,080	1,148	1,190	1,241	1,290	8,014
Fringe	222	243	243	257	267	277	286	1,795
Travel	2	2	2	2	2	2	2	14
Contracts	166	165	166	166	164	165	165	1,157
Supplies	140	143	133	202	236	300	310	1,464
Equipment	5	13	10	15	20	20	20	103
Grants & Claims	0	0	0	0	0	0	0	0
Total	1,520	1,646	1,634	1,790	1,879	2,005	2,073	12,547
<u>Motive Power & Equipment</u>								
<u>Personal Services</u>								
Wages	505	557	557	588	609	634	661	4,111
Fringe	114	124	124	131	137	141	146	917
Travel	1	1	1	2	2	2	2	11
Contracts	49	48	47	47	47	47	47	332
Supplies	76	77	73	107	124	157	162	776
Equipment	60	80	75	100	105	110	110	640
Grants & Claims	0	0	0	0	0	0	0	0
Total	805	887	877	975	1,024	1,091	1,128	6,787

*Minor Discrepancies due to rounding

(Continued)

	December	January	February	March	April	May	June	Total
<u>Engineering</u>								
Personal Services								
Wages	480	539	539	558	580	604	629	3,929
Fringe	108	118	118	125	130	134	140	873
Travel	1	1	1	2	2	2	2	11
Contracts	18	19	15	12	12	12	12	100
Supplies	70	74	69	100	115	143	147	718
Equipment	30	50	50	60	65	67	75	397
Grants & Claims	0	0	0	0	0	0	0	0
Total	707	801	792	857	904	962	1,005	6,028
<u>Administration</u>								
Personal Services								
Wages	289	304	304	332	347	362	377	2,315
Fringe	65	67	67	74	78	80	84	515
Travel	2	2	2	3	3	3	3	18
Contracts	111	113	107	101	104	104	104	744
Supplies	9	9	8	10	11	14	15	76
Equipment	0	0	0	0	0	0	0	0
Grants & Claims	0	0	0	0	0	0	0	0
Total	476	495	488	520	543	563	583	3,668
<u>Marketing & Sales</u>								
Personal Services								
Wages	48	48	48	53	58	58	62	375
Fringe	11	11	11	12	13	13	14	85
Travel	4	4	4	4	4	4	4	28
Contracts	6	5	5	4	4	4	4	32
Supplies	3	3	3	4	4	5	6	28
Equipment	0	0	0	0	0	0	0	0
Grants & Claims	0	0	0	0	0	0	0	0
Total	72	71	71	77	83	84	90	548
<u>Overheads</u>								
Personal Services								
Wages	21	21	21	24	25	30	32	174
Fringe	5	5	5	5	5	7	7	39
Travel	0	0	0	0	0	0	0	0
Contracts	18	18	18	18	17	17	17	123
Supplies	35	37	35	46	51	65	67	336
Equipment	5	5	5	5	10	15	15	60
Grants & Claims	200	200	200	200	200	250	250	1,500
Total	284	286	284	298	308	384	388	2,232

ALASKA RAILROAD
Operating Expenses*
FY 85 (in \$000)

ATTACH

Supporting Data for State of Alaska
1984 Legislative Session Fiscal Note (CS for SB 352)

	Alaska Railroad								Other Expenditures				
	Dec.	Jan.	Feb.	March	April	May	June	Total	Board of Dir.	ARR Trans. Team	Est. Corp.	Other	Total
<u>Personal Services</u>													
Wages	2,400	2,640	2,640	2,800	2,910	3,035	3,160	19,585					
Fringe	540	590	590	625	650	675	700	4,370					
Sub Total								<u>23,955</u>	70		275		<u>24,300</u>
<u>Travel</u>													
	12	12	12	16	16	16	16	100	40				140
<u>Contracts</u>													
	370	370	360	350	350	350	350	2,500		1,650	1,200	550	5,900
<u>Supplies</u>													
	340	350	330	480	555	700	720	3,475			525		4,000
<u>Equipment</u>													
	100	148	140	180	200	212	220	1,200					1,200
<u>Grants & Claims</u>													
	200	200	200	200	200	250	250	1,500					1,500
Total	<u>3,962</u>	<u>4,310</u>	<u>4,272</u>	<u>4,651</u>	<u>4,881</u>	<u>5,238</u>	<u>5,416</u>	<u>32,730</u>	110	1,650	2,000	550	<u>37,040</u>

*Minor Discrepancies due to rounding

(1)

04/10/84

Attachment A

ALASKA RAILROAD
Operating Expenses*
Analysis by Department
FY 85

Supporting Data for State of Alaska
1984 Legislative Session Fiscal Note (CS for SB 352)

	December	January	February	March	April	May	June	Total
<u>General Manager & Staff</u>								
Personal Services								
Wages	72	92	92	98	101	106	110	671
Fringe	16	21	21	22	22	23	24	149
Travel	2	2	2	3	3	3	3	18
Contracts	2	2	2	2	2	1	1	12
Supplies	9	9	8	11	12	15	16	80
Equipment	0	0	0	0	0	0	0	0
Grants & Claims	0	0	0	0	0	0	0	0
Total	101	126	125	136	140	148	154	930
<u>Transportation</u>								
Personal Services								
Wages	985	1,080	1,080	1,148	1,190	1,241	1,290	8,014
Fringe	222	243	243	257	267	277	286	1,795
Travel	2	2	2	2	2	2	2	14
Contracts	166	165	166	166	164	165	165	1,157
Supplies	140	143	133	202	236	300	310	1,464
Equipment	5	13	10	15	20	20	20	103
Grants & Claims	0	0	0	0	0	0	0	0
Total	1,520	1,646	1,634	1,790	1,879	2,005	2,073	12,547
<u>Motive Power & Equipment</u>								
Personal Services								
Wages	505	557	557	588	609	634	661	4,111
Fringe	114	124	124	131	137	141	146	917
Travel	1	1	1	2	2	2	2	11
Contracts	49	48	47	47	47	47	47	332
Supplies	76	77	73	107	124	157	162	776
Equipment	60	80	75	100	105	110	110	640
Grants & Claims	0	0	0	0	0	0	0	0
Total	805	887	877	975	1,024	1,091	1,128	6,787

*Minor Discrepancies due to rounding

(Continued)

	December	January	February	March	April	May	June	Total
Engineering								
Personal Services								
Wages	480	539	539	558	580	604	629	3,929
Fringe	108	118	118	125	130	134	140	873
Travel	1	1	1	2	2	2	2	11
Contracts	18	19	15	12	12	12	12	100
Supplies	70	74	69	100	115	143	147	718
Equipment	30	50	50	60	65	67	75	397
Grants & Claims	0	0	0	0	0	0	0	0
Total	707	801	792	857	904	962	1,005	6,028
Administration								
Personal Services								
Wages	289	304	304	332	347	362	377	2,315
Fringe	65	67	67	74	78	80	84	515
Travel	2	2	2	3	3	3	3	18
Contracts	111	113	107	101	104	104	104	744
Supplies	9	9	8	10	11	14	15	76
Equipment	0	0	0	0	0	0	0	0
Grants & Claims	0	0	0	0	0	0	0	0
Total	476	495	488	520	543	563	583	3,668
Marketing & Sales								
Personal Services								
Wages	48	48	48	53	58	58	62	375
Fringe	11	11	11	12	13	13	14	85
Travel	4	4	4	4	4	4	4	28
Contracts	6	5	5	4	4	4	4	32
Supplies	3	3	3	4	4	5	6	28
Equipment	0	0	0	0	0	0	0	0
Grants & Claims	0	0	0	0	0	0	0	0
Total	72	71	71	77	83	84	90	548
Overheads								
Personal Services								
Wages	21	21	21	24	25	30	32	174
Fringe	5	5	5	5	5	7	7	39
Travel	0	0	0	0	0	0	0	0
Contracts	18	18	18	18	17	17	17	123
Supplies	35	37	35	46	51	65	67	336
Equipment	5	5	5	5	10	15	15	60
Grants & Claims	200	200	200	200	200	250	250	1,500
Total	284	286	284	298	308	384	388	2,232

Alaska State Legislature

H. PAPPY MOSS, CHAIRMAN
BETTYE FAHRENKAMP, VICE CHAIRMAN
JAN FAJKS
DON GILMAN
JALMAR KERTTULA



STATE CAPITOL
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Senate Committee on Transportation

SENATE TRANSPORTATION COMMITTEE
Staff Analysis
Senate CS for CS for House Bill No. 512 (Finance)

May 23, 1984

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

*Section 2
Section 42.40.010

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

Section 42.40.020

The corporation is run by a board with seven members including the commissioners of the Departments of Transportation and Commerce. In addition, there are five public members who may not be state employees. One of the public members must have 10 years experience and one shall have been an executive official of a U.S. railroad. Except for the two public members just mentioned, all public members must be registered

Alaskan voters. With the exception of the commissioners, the board shall be confirmed by the majority of the members of each house of the legislature in joint session.

Section 42.40.030 All members required to be confirmed by the Legislature serve for staggered five year terms. Section 9 sets up how the first board of directors will serve which results in staggered terms for members that follow. All board members serve at the pleasure of the governor.

However, see Section 4 and Section 5 which amend 42.40.030 if the Constitutional Amendment passes. Under these amendments a board member could be removed only for cause.

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

Section 42.40.050 An appointed member of the board received \$400 for each day he is engaged in the performance of duties as a board members and partial day provisions may be established by the board. In addition, he is entitled to per diem and travel expenses.

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

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

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

Section 42.40.120 By rule the board delegates duties necessary for the management of daily affairs of the corporation to the Chief Executive Officer. Within 60 days after it is established, the board must delegate certain specified activities of the corporation. Some activities are delegated but require specific board approval for final action. Specific board approval is required for projects with an estimated completion cost of \$500,000 or more or an estimated completion time of more than one year.

Section 42.40.150 Meetings of the board are public with the exception of executive sessions. The board provides by rule how notice of the

meetings shall be given. The board is required to keep minutes of the meetings.

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

Section 42.40.170 Executive sessions are limited to matters listed. No action may be taken at an executive session and discussion must be limited to the topic of the motion or an auxiliary subject.

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

But see Section 6 which repeals the rule making procedure if the Constitutional Amendment passes. In its place, the new section would give all powers to adopt a rule making procedure to the board.

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

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

Section 42.40.205 Daily operation, and other management functions, are not subject to the rule making process.

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

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

Sec 42.40.230 A board member or executive officer may not participate in a decision of the corporation if he, or an immediate family member, has an interest unless their interest is remote. Interest and remote are defined and a procedure is set out for situations where the application of the section is not clear. In addition, the board shall adopt rules to further define conflict of interest and ethical rules 120 days after its first meeting.

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

section. The corporation does not have the power of eminent domain nor may it sell land.

Section 42.40.260 A report describing the operation and financial condition of the corporation during the preceding fiscal year of the railroad shall be distributed to the governor and the legislature within 90 days after the fiscal year ends. An analysis of at least three corporation initiated attempts to sell the railroad to private enterprise must be included every five years.

Section 42.40.270 The board must have the records of the corporation audited annually. Corporation records will be made available to an auditor appointed by the governor or to the legislative audit division. In addition, the board is required to have an annual performance audit conducted by a recognized railroad management expert.

Section 42.40.280. Requires a written report to the governor and the legislature before a major change in service. In addition, a written report is also required for an appropriation if it is required for a service which is not self-sustaining.

Section 42.40.285 The corporation may not convey an entire interest in land, issue bonds, extend railroad lines or lease land over 35 years without approval by law.

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

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

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

Section 42.40.350 Land acquired by the corporation is under the control of the corporation. Railroad rights-of-way or easements are railroad utility corridors. Land other than right-of-way or easements is rail land. Future railroad utility corridors must be at least 100 feet wide on both sides of the center line of the extended main or branch line, or may be less if adjoining land does not belong to the corporation. Portions of the utility corridor may be leased or rented for other transportation services if the use does not restrict other parallel uses of the utility corridor. The corporation may lease rail land for fair market value.

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

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

Section 42.40.370 When the railroad requests state land under the preceding section the Commissioner has 90 days to reply in writing whether or no the request has been denied, denied in part or if the request has been granted. A conveyance under this section may be for less than fair market value and, absence a reservation to the contrary, vest full ownership of surface and subsurface rights. The land may be reconveyed back to the state if it is no longer necessary for the corporation's purposes.

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

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

Section 42.40.400 The corporation may vacate land acquired for railroad purposes by filing in the appropriate recording district.

Section 42.40.410 The corporation may acquire interests in federal land on its own behalf.

Section 42.40.420 The corporation may authorized municipal use of rail land. It may also authorize a walkway or trail on the utility corridor so long as parallel uses are not restricted. Before authorizing the use of either rail land or the utility corridor, the municipality must sign a hold harmless agreement and indemnify the corporation for any judgment against it for use related to the municipal use. When the corporation determines the use is inconsistent with expansion or replacement of railroad facilities the municipal use must be stopped.

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

Section 42.40.435 The corporation may exchange land.

Section 42.40.440 The corporation must comply with state law regarding the application of pesticides or herbicides.

Section 42.40.450 No land of the railroad may be claimed under adverse possession.

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

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

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

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

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

Section 42.49.600 - 42.49.700 Contains standard bonding provisions.

Section 42.40.705 Assets of the corporation may not be used for political purposes except matters directly concerning the operation of the corporation.

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

Section 42.40.720 The provisions of the Public Employee Relations Act do not apply. However, non-executive officials may organize and engage in collective bargaining.

Section 42.40.730 There is created a railroad labor relations agency made up of three members appointed by the governor. The agency shall perform the functions described in AS 23.40.090 - 23.40.190 which are the functions currently carried out by the state personnel board for all state employees and are listed in this bill as 42.40.740 - 42.40.840.

Section 42.40.850 Employees are permitted to strike for a limited time and may be enjoined by a court of law at the request of the corporation. After being enjoined the dispute is automatically sent to binding arbitration. The arbitrator is the same person as was the original mediator chosen under 42.40.840.

Section 42.40.860 The corporation may seek the advice of the Department of Administration on labor contract terms and may invite the Department of Administration to sit in on labor negotiations.

Section 42.40.870 With written permission the corporation may withhold employee union dues.

Section 42.40.885 The corporation may not coerce employees to refrain from or perform activities beyond those required or prohibited as part of their employment.

Section 42.40.890 Definitions for Article 8.

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

Section 42.40.905 The corporation is required to give advance notice of any legal action.

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

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

The statutes are:

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

AS 23.40 - Chapter 40 deals with the relationship between state entities and labor organizations. But see Article 3 of this legislation for Personnel and Labor Relations provisions.

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

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

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

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

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

AS 37.10.085 prohibits financial aid to corporations by state or

political subdivisions.

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

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

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

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

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

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

Section 42.40.935 The corporation has two years to develop a plan for conforming with the state's safety statute and appropriate building codes.

Section 42.40.940 The governor, with legislative approval, may force sale of the railroad.

Section 42.40.950 The assets of the corporation revert to the state if it ceases to exist.

Section 42.40.980 Definitions of the chapter are provided.

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

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

*Section 4 Amends 42.40.030 if the Constitutional Amendment passes by removing the ability of the governor to remove board members at his pleasure.

*Section 5 Amends 42.40.030 if the Constitutional Amendment passes by adding a new section which would state specific reasons for which a governor may remove board members.

*Section 6 Repeals 42.40.180 if the Constitutional Amendment passes by adding a new section. The new section gives the board discretion in adopting a rule making process.

*Section 7 Technical amendment required by constitutional amendment.

*Section 8 The corporation must prepare a report on the long-term operations of the railroad that is due January 1, 1988. The report shall include recommendations on the transfer of railroad operations to the private sector and a report on the vibration problem in Anchorage.

*Section 9 Members of the first board of directors serve terms that differ in length and will result in staggered terms for members that follow.

*Section 10 Existing collective bargaining agreements are to be adopted by the corporation and remain in effect for two years. Within 180 days of the first meeting the board and the unions shall establish a procedure for renegotiating the existing collective bargaining agreements.

*Section 11 Repeals 42.40.190 and 42.40.200 if the Constitutional Amendment passes.

*Section 12 The effective date of Section 3-7 and 11 is the effective date of the Constitutional Amendment should it pass.

*Section 13 Sections 1,2, and 8-10 take effect immediately.

Offered: 5/11/84
Referred: Finance

Original sponsors: Hayes, Ringstad,
Shultz, et al

1 IN THE HOUSE BY THE TRANSPORTATION COMMITTEE
2 SENATE CS FOR CS FOR HOUSE BILL NO. 512 (Transportation)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 CHAPTER 40. ALASKA RAILROAD CORPORATION.

7 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

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

16 Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the
17 corporation are vested in the board of directors. The board consists
18 of the commissioner of commerce and economic development, the commis-
19 sioner of transportation and public facilities, the chief executive
20 officer of the corporation, and six members appointed by the governor.
21 The six appointed members must be registered voters in the state
22 except as provided in (1) and (2) of this subsection. Except for the
23 commissioners, the chief executive officer, and the member appointed
24 under (3) of this subsection, a member may not be a state officer or
25 employee. Appointed members shall have the following qualifications:

26 (1) one member of the board shall be a person who has at
27 least 10 years of experience in railroad management; a person who is
28 not a resident of the state may be appointed under this paragraph;

29 (2) one member of the board shall be or have been an

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

Offered: 5/11/84
Referred: Finance

Original sponsors: Hayes, Ringstad,
Shultz, et al

1 IN THE HOUSE BY THE TRANSPORTATION COMMITTEE
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13 (A) provide safe, economical, and efficient transportation
14 to residents, businesses, visitors, and military installations in the
15 state;
16 (B) foster and promote the long-term economic growth and
17 development of the state;
18 (C) develop and implement plans for a transportation net-
19 work;
20 (D) foster and promote the development of the state's land
21 and natural resources;
22 (2) the Alaska Railroad is an essential part of the state trans-
23 portation network that may, unless preserved by state action, cease to be a
24 transportation option in Alaska;
25 (3) the federal government has offered to the state the option
26 of taking over the Alaska Railroad to ensure its continued existence; and
27 (4) it is in the state's best interest to accept the railroad
28 under the terms and conditions offered by the United States government.
29 (b) It is the purpose of this Act to

1 (1) create a viable economic entity with the powers and duties
2 necessary to operate and manage the Alaska Railroad pending eventual trans-
3 fer of the railroad to the private sector for its ownership or operation or
4 both consistent with 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of
5 1982);

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

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

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

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

18 (C) have the ability to raise capital by issuing bonds upon
19 approval of the legislature exempt from federal and state taxation and
20 applying for federal money to which the state may be entitled or that
21 may be available;

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

24 (E) provide the best possible combination of types and
25 levels of safe, efficient, and economical transportation to meet the
26 overall needs of the state, supported when necessary by state invest-
27 ment;

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

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

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

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19 sioner of transportation and public facilities, the chief executive
20 officer of the corporation, and six members appointed by the governor.
21 The six appointed members must be registered voters in the state
22 except as provided in (1) and (2) of this subsection. Except for the
23 commissioners, the chief executive officer, and the member appointed
24 under (3) of this subsection, a member may not be a state officer or
25 employee. Appointed members shall have the following qualifications:

26 (1) one member of the board shall be a person who has at
27 least 10 years of experience in railroad management; a person who is
28 not a resident of the state may be appointed under this paragraph;

29 (2) one member of the board shall be or have been an

1 executive official of a United States railroad and shall be selected
2 in accordance with any requirements imposed under 49 U.S.C. (Inter-
3 state Commerce Act); a person who is not a resident of the state may
4 be appointed under this paragraph;

5 (3) one member shall be an employee who is a member of a
6 bargaining unit representing employees of the corporation;

7 (4) at least two members, other than the member appointed
8 under (3) of this subsection, shall be from each judicial district
9 directly served by the Alaska Railroad;

10 (5) two members shall have at least five years experience
11 as owners or managers of a business in the state.

12 (b) Except for the commissioners and the chief executive officer
13 of the corporation, the members of the board shall be confirmed by a
14 majority of the members of the legislature in joint session. A member
15 appointed by the governor has the full powers and responsibilities of
16 a confirmed board member until the member is rejected by the legisla-
17 ture or the legislature adjourns without confirming the member.

18 Sec. 42.40.030. TERM OF OFFICE. Except for the commissioners of
19 commerce and economic development, the commissioner of transportation
20 and public facilities, and the chief executive officer of the corpora-
21 tion, members of the board serve for staggered terms of five years
22 each at the pleasure of the governor.

23 Sec. 42.40.040. VACANCIES. (a) Except for the commissioner of
24 commerce, the commissioner of transportation and public facilities and
25 the chief executive officer of the corporation, a vacancy on the board
26 is filled by appointment by the governor, and the appointment must be
27 confirmed by the members of the legislature in joint session. A
28 member appointed to fill a vacancy holds office for the balance of the
29 term for which the member's predecessor was appointed.

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

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

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

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

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

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

20 ARTICLE 2. MANAGEMENT.

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

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

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

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

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

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

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

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

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

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

21 Sec. 42.40.110. EXECUTIVE OFFICERS. (a) The board shall ap-
22 point the chief executive officer of the corporation who serves at the
23 pleasure of the board. The board shall fix compensation for the chief
24 executive officer.

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

29 Sec. 42.40.120. DELEGATION. (a) The board shall by rule

1 delegate to the chief executive officer powers and duties necessary or
2 appropriate for the management of the daily affairs and operations of
3 the corporation. The board may by rule require the exercise of a
4 delegated power or duty to be subject to board approval.

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

8 (1) leasing subject to AS 42.40.285 and 42.40.350(d),
9 granting easements in, issuing permits for the use of, or conveying
10 other interests in property that do not constitute a transfer of the
11 corporation's entire interest in land;

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

14 (3) making routine changes in service levels;

15 (4) establishing procurement and accounting procedures for
16 the corporation; and

17 (5) performing procurement activities.

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

20 (1) issuing bonds upon approval by the legislature;

21 (2) mortgaging or pledging corporation assets;

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

24 (4) acting as a surety or guarantor;

25 (5) adopting a long-range capital improvement and program
26 plan;

27 (6) adopting annual reports;

28 (7) effecting general comprehensive increases and decreases
29 in rates;

- 1 (8) expanding or reducing services in a major way;
- 2 (9) expanding the main or branch rail lines, other than
- 3 performing routine track alignment as necessary to maintain service
- 4 levels in effect on the date of transfer;
- 5 (10) selecting independent auditors and accountants;
- 6 (11) entering into collective bargaining agreements; and
- 7 (12) adopting annual budgets;
- 8 (13) beginning a capital project with an estimated comple-
- 9 tion cost of more than \$500,000 or an estimated completion time of
- 10 more than one year;
- 11 (14) exchanging, donating, selling, or otherwise conveying
- 12 its entire interest in land upon approval by the legislature.

13 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

14 Sec. 42.40.150. MEETINGS OF THE BOARD. (a) The chairman of the

15 board shall call meetings of the board at least once every three

16 months. The chairman or a majority of the members of the board may

17 call other meetings of the board as necessary. The chairman shall

18 preside at meetings.

19 (b) Except for executive sessions, the meetings of the board are

20 public. The board shall provide by rule for a method of providing

21 reasonable notice to the public of its meetings.

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

23 Sec. 42.40.160. QUORUM AND VOTING. (a) Five voting members of

24 the board constitutes a quorum for the transaction of business.

25 (b) Five affirmative votes are required for board action. The

26 board shall provide by rule for the manner of voting, except that the

27 board may not provide for voting by proxy. The rules may provide for

28 voting and conferring by telecommunication devices.

29 Sec. 42.40.170. EXECUTIVE SESSIONS. (a) The question of

1 holding an executive session shall be determined in accordance with
2 AS 42.40.160. A subject may not be considered at an executive session
3 unless it is mentioned in the motion calling for the executive session
4 or is auxiliary to a subject mentioned. An action may not be taken at
5 an executive session.

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

8 (1) matters, the immediate knowledge of which would clearly
9 have an adverse effect upon the finances of the corporation;

10 (2) unless the person has requested to have the subjects
11 discussed in public, subjects that tend to prejudice the reputation
12 and character of a person;

13 (3) matters that, by law or municipal charter or ordinance,
14 are permitted to be kept confidential from public disclosure;

15 (4) matters pertaining to personnel;

16 (5) matters pertaining to the corporation's legal position;

17 (6) land acquisition or disposal; and

18 (7) proprietary or other information of a type treated as
19 confidential under the standards and practices of the United States
20 Interstate Commerce Commission, including practices that protect
21 information associated with specific shippers, divisions, and contract
22 rate agreements.

23 Sec. 42.40.180. RULES. (a) The board shall adopt rules to
24 carry out its functions and the purposes of this chapter, including
25 rules to safeguard property owned, managed, or transported by the
26 corporation and to protect employees and persons using the corpora-
27 tion's property or services. At least 15 days before the adoption of
28 a rule, the board shall give public notice of the proposed action by
29 publishing a notice in at least three newspapers of general

1 circulation in the state and by mailing a copy of the notice to each
2 person who has requested notice of proposed changes to rules. The
3 notice must state the time, place, and nature of the proceedings and
4 must contain a summary of the subject of the proposed rule.

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

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

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

19 Sec. 42.40.190. EMERGENCY RULES. (a) The board shall establish
20 in the bylaws of the corporation a procedure for the adoption of a
21 rule on an emergency basis. An emergency rule may be adopted only
22 when necessary for the orderly operation of the corporation's facili-
23 ties or programs. The requirements of AS 42.40.180 do not apply to
24 actions taken under this section. However, within 10 days after the
25 adoption of a rule on an emergency basis the board shall give notice
26 of its action that substantially complies with the notice requirements
27 of AS 42.40.180(a).

28 (b) An action taken under this section remains in effect for not
29 more than 120 days. To prevent an emergency rule from lapsing the

1 board may adopt the same rule under AS 42.40.180 before the end of the
2 120-day period.

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

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

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

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

14 Sec. 42.40.205. APPLICATION. Adoption of a rule is not subject
15 to AS 42.40.180 or 42.40.190 if it

16 (1) relates only to the internal management of the corpo-
17 ration;

18 (2) relates to specific rates, tariffs, divisions, and
19 contract rate agreements;

20 (3) relates to service schedules of the railroad;

21 (4) is directed to a specifically named person or to a
22 group of persons and does not apply to the general public; or

23 (5) relates to the use of public works under the jurisdic-
24 tion of the corporation if the effect of the order is indicated to the
25 public by means of signs or signals.

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

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

5 (b) The corporation may by rule designate and withhold public
6 disclosure of matters of a privileged or proprietary nature. Those
7 matters include personnel records, communications with and work pro-
8 duct of legal counsel, and, consistent with the standards and prac-
9 tices of the United States Interstate Commerce Commission for the
10 protection of these matters, other information including proprietary
11 information associated with specific shippers, divisions and contract
12 rate agreements.

13 Sec. 42.40.230. CONFLICTS OF INTEREST. (a) Except as provided
14 in this section, a board member or executive officer of the corpora-
15 tion may not participate in a decision of the corporation in which
16 that person or a member of that person's immediate family has a direct
17 or indirect financial interest unless the financial interest is a
18 remote financial interest and participation is approved under (b) of
19 this section.

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

1 adopted by the corporation.

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

6 (d) Within 120 days of the first meeting of the board, the board
7 shall adopt and may subsequently amend rules implementing this sec-
8 tion, providing additional conflict of interest and ethical rules it
9 considers appropriate, and providing for the removal by the board of a
10 board member or executive officer who intentionally violates a prohi-
11 bition contained in this section.

12 (e) For purposes of this section

13 (1) "participate in a decision" includes all discussions,
14 deliberations, preliminary negotiations, and votes;

15 (2) "immediate family" means

16 (A) spouse;

17 (B) dependent, parent, parent-in-law, child, son-in-
18 law, daughter-in-law, sibling, uncle, aunt, niece, or nephew of
19 the board member or executive officer.

20 ARTICLE 4. POWERS AND DUTIES.

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

23 (1) adopt a seal;

24 (2) adopt bylaws governing the business of the corporation;

25 (3) sue and be sued;

26 (4) appoint trustees and agents of the corporation and
27 prescribe their powers and duties;

28 (5) hire legal counsel to represent the corporation;

29 (6) make contracts and execute instruments necessary or

1 convenient in the exercise of its powers and duties;

2 (7) acquire by purchase, lease, bequest, devise, gift,
3 exchange, the satisfaction of debts, the foreclosure of mortgages, or
4 otherwise, personal property, rights, rights-of-way, franchises,
5 easements, and other interest in land, and acquire by appropriation
6 water rights that are located in the state, taking title to the prop-
7 erty in the name of the corporation;

8 (8) hold, maintain, use, operate, improve, lease, exchange,
9 or encumber, or otherwise grant a security interest in land or person-
10 al property and exchange, donate, convey, alienate, or otherwise
11 dispose of personal property, subject to other provisions of this
12 chapter;

13 (9) contract with and accept transfers, gifts, grants or
14 loans of funds or property from the United States and the state or its
15 political subdivisions, subject to other provisions of federal or
16 state law or municipal ordinances;

17 (10) undertake and provide for the management, operation,
18 maintenance, use, and control of all of the property of the corpo-
19 ration, including all land and personal property of the Alaska Rail-
20 road transferred under 45 U.S.C. 1203(a) and described in the report
21 dated July 14, 1983, as amended, submitted to Congress and the legis-
22 lature under 45 U.S.C 1204(a);

23 (11) recommend to the legislature and the governor any tax,
24 financing, or financial arrangement the corporation considers appro-
25 priate for expansion or extension and operation of the Alaska Rail-
26 road;

27 (12) maintain offices and facilities at places it desig-
28 nates;

29 (13) apply to the state, the United States, and foreign