

LEG. FINANCE - BILLS 1983 - 1984 1932  
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1 countries or other proper agencies for the permits, licenses, rights-  
2 of-way, or approvals necessary to construct, maintain, and operate  
3 transportation and related services, and obtain, hold, and reuse the  
4 licenses and permits in the same manner as other railroad operators;

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

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

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

15 (17) plan for and undertake expansion of the railroad and  
16 railroad activities, including extension of the rail system, and  
17 contract with other modes of transportation service connecting to the  
18 rail system;

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

21 (19) assume all rights and liabilities of the Alaska Rail-  
22 road in accordance with 45 U.S.C. 1201 - 1214 (Alaska Railroad Trans-  
23 fer Act of 1982);

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

28 (21) issue its bonds upon approval of the legislature and  
29 provide for and secure their payment, provide for the rights of their

- 1 holders and hold or dispose of them;
- 2 (22) purchase the corporation's bonds at a price not more  
3 than the principal amount of them plus interest;
- 4 (23) cancel bonds of the corporation purchased by the corpo-  
5 ration;
- 6 (24) secure the payment of its bonds by pledge, mortgage, or  
7 other lien on its contracts, revenues, income, or property;
- 8 (25) consent to the modification of the rate of interest,  
9 time of payment of an installment of principal or interest, or other  
10 term of a loan, contract, or agreement to which the corporation is a  
11 party;
- 12 (26) borrow money, including the amounts necessary to estab-  
13 lish reasonable reserves, and pay financing charges and interest on  
14 bonds for a reasonable period after which the corporation estimates  
15 other money will be available to pay the interest, consultant, advi-  
16 sory, and legal fees, and other expenses necessary or incident to  
17 borrowing;
- 18 (27) acquire, hold, and dispose of stocks, memberships,  
19 contracts, bonds, general or limited partnership interests or other  
20 interests in another corporation, association, partnership, joint  
21 venture, or other legal entity, and exercise the powers or rights in  
22 connection with these interests that are provided in contracts or  
23 agreements and that are allowed by law concerning the satisfaction of  
24 debts;
- 25 (28) undertake and provide for the acquisition, construc-  
26 tion, maintenance, equipping, and operation of connecting, switching,  
27 terminal, or other railroads and railroad facilities;
- 28 (29) enter into agreements with a state agency or other  
29 instrumentality of the state; and

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

5           Sec. 42.40.260. ANNUAL REPORT. (a) Within 90 days following  
6 the end of the fiscal year of the Alaska Railroad the board shall  
7 distribute to the governor and to the legislature a report describing  
8 the operations and financial condition of the corporation during the  
9 preceding fiscal year. The report may include suggestions for legis-  
10 lation relating to structure, powers or duties of the corporation or  
11 to the operation or facilities of the corporation. Subject to AS 42.-  
12 40.220, the report shall itemize the cost of providing each category  
13 of service offered by the railroad and the income generated by each  
14 category.

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

20           Sec. 42.40.270. AUDITS. (a) The board shall have the financial  
21 records of the corporation audited annually by an independent certi-  
22 fied public accountant experienced in railroad accounting. The board  
23 shall have an annual performance audit conducted by a recognized  
24 railroad management expert to assure that the railroad is being  
25 managed and operated effectively and efficiently in accordance with  
26 the requirements of this chapter. Auditors shall use the standards  
27 required under AS 42.40.100(9).

28           (b) The corporation shall make all of its financial records  
29 available to an auditor appointed by the governor and to the

1 legislative audit division for examination. Disclosure to the public  
2 by the auditor or legislative audit division of this information is  
3 subject to AS 42.40.220 and rules implementing that section.

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

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

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

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

16 (1) its financial impact on the corporation;

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

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

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

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

25 (1) exchange, donate, sell, or otherwise convey its entire  
26 interest in land;

27 (2) issue bonds;

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



1 within the scope of official duties or powers.

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

11 ARTICLE 5. CORPORATION PROPERTY.

12 Sec. 42.40.350. LAND. (a) The corporation shall receive from  
13 the United States and, in its own name, take title to all rail proper-  
14 ty transferred under 45 U.S.C. 1201 - 1214 (Alaska Transfer Act of  
15 1982). All land that is transferred or acquired by the corporation is  
16 designated as follows:

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

19 (b) Railroad utility corridors shall be of a width at least 100  
20 feet on both sides of the centerline of the extended main or branch  
21 line, unless the corporation does not own or control sufficient land  
22 to allow a corridor of that width. Railroad utility corridors may be  
23 surveyed by the metes and bounds method. The corporation may not  
24 convey its entire interest in land within a utility corridor except as  
25 provided in AS 42.40.285, 42.40.370(d) and 42.40.400. However, the  
26 corporation may lease, subject to AS 42.40.285 and (d) of this sec-  
27 tion, grant easements in or permits for, or otherwise authorize use of  
28 portions of a utility corridor for transportation, communication, and  
29 transmission purposes and support functions associated with those

1 purposes, and for commercial and other uses authorized under this  
2 chapter if the use does not restrict other parallel uses of the util-  
3 ity corridor.

4 (c) The corporation may lease, subject to AS 42.40.285 and (d)  
5 of this section, grant easements or permits, or otherwise authorize  
6 use of portions of rail land. However, the corporation may not convey  
7 its entire interest in rail land except as provided in AS 42.40.285,  
8 42.40.370(d) and 42.40.400.

9 (d) A lease or disposal of land approved by the legislature  
10 under AS 42.40.285 by the corporation to a party other than the state  
11 shall be made at fair market value as determined by an appraisal or by  
12 competitive bid.

13 Sec. 42.40.360. REQUEST FOR LAND. (a) The board may nominate  
14 federal land it determines may be useful for present or future rail-  
15 road purposes for selection under the Alaska Statehood Act (P.L. 85 -  
16 508, 72 Stat. 339), as amended, and request the commissioner of natu-  
17 ral resources to select the land for the state through the federal  
18 land selection process.

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

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

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

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

9           (3) approve the request in part and deny it in part and  
10 convey as appropriate.

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

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

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

25           Sec. 42.40.380. USE OF STATE LAND. When emergency conditions  
26 require that track or other right-of-way fixtures of the corporation  
27 be moved from the existing location and relocated on state land adja-  
28 cent to or in the vicinity of the existing right-of-way and the chief  
29 executive officer determines that relocation is necessary to maintain

1 safe and adequate rail operations, the corporation may effect the  
2 relocation and notify the the Department of Natural Resources. The  
3 relocation must affect only the amount of state land necessary to  
4 adequately restore or continue safe rail operations at a normal level.

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

12 Sec. 42.40.400. VACATION OF EASEMENTS. The corporation may  
13 vacate an easement acquired under this chapter by executing and filing  
14 a deed in the appropriate recording district. Upon filing the deed  
15 the state shall acquire the easement. If the easement was acquired by  
16 the corporation under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer  
17 Act of 1982), the state shall acquire the easement for use in confor-  
18 mity with those laws.

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

26 Sec. 42.40.420. MUNICIPAL USE OF RAILROAD LAND. Upon request  
27 the corporation may authorize use of railroad land for municipal  
28 purposes. Subject to AS 42.40.350(b), the corporation may authorize a  
29 municipality to establish a walkway or trail over a utility corridor.

1 Before authorizing a use under this section the board shall require  
2 the municipality to execute an agreement in a form approved by the  
3 board to

4 (1) hold the corporation harmless from and indemnify the  
5 corporation for any liability and claims arising from any use autho-  
6 rized under this section including

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

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

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

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

28 Sec. 42.40.435. EXCHANGE OF LAND. The corporation may exchange  
29 land subject to AS 42.40.285. The corporation is an instrumentality

1 and agency of the state for purposes of exchanging land with the  
2 United States, municipalities, corporations including corporations  
3 formed under 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement  
4 Act), and individuals.

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

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

17 ARTICLE 6. FINANCIAL PROVISIONS.

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

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

28 Sec. 42.40.520. INSURANCE. Except as provided in AS 42.40.300-  
29 (b), the corporation shall protect its assets, services, and employees

1 by purchasing insurance or providing for certain self-insurance re-  
2 tentions. The corporation shall also maintain casualty, property,  
3 business interruption, marine, boiler and machinery, pollution liabil-  
4 ity, and other insurance in amounts reasonably calculated to cover  
5 potential claims against the corporation or state for bodily injury,  
6 death or disability and property damage that may arise from or be  
7 related to corporation operations and activities.

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

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

#### 16 ARTICLE 7. BONDS.

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

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

22 (1) be dated;

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

25 (3) be in a specified denomination;

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

27 (5) carry conversion or registration provisions;

28 (6) have a specified rank or priority;

29 (7) be executed in the specified manner and form;

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

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

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

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

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

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

26 Sec. 42.40.630. PAYMENT OF BONDS. The principal and interest on  
27 bonds of the corporation is payable from corporation money or assets.  
28 Bonds may be additionally secured by a pledge of a grant or contribu-  
29 tion from the federal government or a corporation, association,

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

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

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

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

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

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

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

26 (E) the vesting in the trustee of rights and remedies  
27 exercisable by the trustee for the protection of the holders of  
28 bonds of the corporation and not otherwise in violation of law  
29 and the restriction of the rights of an individual holder of

1           bonds of the corporation;

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

5           (3) provide for any other matters of like or different  
6 character that in any way affect the security or protection of the  
7 bonds.

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

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

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

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

28           Sec. 42.40.675. PLEDGE OF THE STATE. The state pledges to and  
29 agrees with the holders of bonds issued under this chapter and with

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

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

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

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

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

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

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

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

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

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

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

15           ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

16           Sec. 42.40.710. CORPORATION EMPLOYEES. Employees of the Alaska  
17 Railroad are employees of the corporation and not of the state. The  
18 provisions of AS 39 do not apply to employees of the corporation.

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

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

1 governor.

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

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

7 Sec. 42.40.740. COLLECTIVE BARGAINING UNIT. The railroad labor  
8 relations agency shall decide in each case, in order to ensure employ-  
9 ees the fullest freedom in exercising the rights guaranteed by AS 42.-  
10 40.710 - 42.40.890 the unit appropriate for the purposes of collective  
11 bargaining, based on such factors as community of interest, wages,  
12 hours and other working conditions of the employees involved, the  
13 history of collective bargaining, and the desires of the employees.  
14 Bargaining units shall be as large as is reasonable, and unnecessary  
15 fragmenting shall be avoided.

16 Sec. 42.40.750. REPRESENTATIVES AND ELECTIONS. (a) The rail-  
17 road labor relations agency shall investigate a petition if it is  
18 submitted in a manner prescribed by the railroad labor relations  
19 agency by

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

23 (A) want to be represented for collective bargaining  
24 by a labor or employee organization as exclusive representative;  
25 or

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

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

4           (b) If the railroad labor relations agency has reasonable cause  
5 to believe that a question of representation exists, it shall provide  
6 for a hearing upon due notice. If the railroad labor relations agency  
7 finds that there is a question of representation, it shall direct an  
8 election by secret ballot to determine whether or by which organiza-  
9 tion the employees desire to be represented and shall certify the  
10 results of the election. Nothing in this subsection prohibits the  
11 waiving of hearings by stipulation for the purpose of a consent elec-  
12 tion in conformity with the regulations of the railroad labor rela-  
13 tions agency or an election in a bargaining unit agreed upon by the  
14 parties.

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

27           (d) Nothing in this chapter prohibits recognition of an orga-  
28 nization as the exclusive representative by the corporation by mutual  
29 consent.

1           (e) An election may not be directed by the railroad labor rela-  
2 tions agency in a bargaining unit in which there is in force a valid  
3 collective bargaining agreement, except during a 90-day period preced-  
4 ing the expiration date. However, a collective bargaining agreement  
5 may not bar an election upon petition of employees in the bargaining  
6 unit but not parties to the agreement if more than three years have  
7 elapsed since the execution of the agreement or the last timely re-  
8 newal, whichever was later.

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

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

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

15           (3) discriminate in regard to hire or tenure of employment  
16 or a term or condition of employment to encourage or discourage mem-  
17 bership in an organization;

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

21           (5) refuse to bargain collectively in good faith with an  
22 organization that is the exclusive representative of employees in an  
23 appropriate unit, including the discussing of grievances with the  
24 exclusive representative.

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

28           (1) membership in the organization that represents the unit  
29 on or after the 30th day following the beginning of employment or on

1 the effective date of the agreement, whichever is later; or  
2 (2) payment by the employee to the exclusive bargaining  
3 agent of a service fee to reimburse the exclusive bargaining agency  
4 for the expense of representing the members of the bargaining unit.

5 (c) An organization or its agents may not

6 (1) restrain or coerce

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

9 (B) the corporation in the selection of a representa-  
10 tive for the purposes of collective bargaining or the adjustment  
11 of grievances;

12 (2) refuse to bargain collectively in good faith with the  
13 corporation, if it has been designated in accordance with AS 42.40.-  
14 710 - 42.40.890 as the exclusive representative of employees in an  
15 appropriate unit.

16 Sec. 42.40.770. INVESTIGATION AND CONCILIATION OF COMPLAINTS.  
17 If a verified written complaint by or for a person claiming to be  
18 aggrieved by a practice prohibited by AS 42.40.760 or a written accu-  
19 sation that a person subject to AS 42.40.710 - 42.40.890 has engaged  
20 in a prohibited practice, is filed with the railroad labor relations  
21 agency, it shall investigate the complaint or accusation. If it  
22 determines after a preliminary investigation that probable cause  
23 exists in support of the complaint or accusation, it shall try to  
24 eliminate the prohibited practice by informal methods of conference,  
25 conciliation, and persuasion. Nothing said or done during this en-  
26 deavor may be used as evidence in a subsequent proceeding.

27 Sec. 42.40.780. COMPLAINT AND ACCUSATION. If the railroad labor  
28 relations agency fails to eliminate the prohibited practice by concil-  
29 iation and to obtain voluntary compliance with AS 42.40.710 .

1 42.40.890 or before it attempts conciliation, it may serve a copy of  
2 the complaint or accusation upon the respondent. The complaint or  
3 accusation and the subsequent procedures shall be handled in accor-  
4 dance with the administrative adjudication portion of the Administra-  
5 tive Procedure Act (AS 44.62).

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

17 Sec. 42.40.800. ENFORCEMENT BY INJUNCTION. The railroad labor  
18 relations agency may apply to the superior court in the judicial  
19 district in which the prohibited practice occurred for an order en-  
20 joining the prohibited acts specified in the order or decision of the  
21 railroad labor relations agency. Upon showing by the railroad labor  
22 relations agency that the person has engaged or is about to engage in  
23 the practice, an injunction, restraining order, or other order that is  
24 appropriate may be granted by the court and shall be without bond.

25 Sec. 42.40.810. POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a)  
26 For the purpose of the investigations, proceedings, or hearings that  
27 the railroad labor relations agency considers necessary to carry out  
28 AS 42.40.710 - 42.40.890, the railroad labor relations agency may  
29 issue subpoenas requiring the attendance and testimony of witnesses

1 and the production of relevant evidence.

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

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

7 (d) If a person refuses to obey a subpoena issued under AS 42.-  
8 40.710 - 42.40.890, the superior court in the district in which the  
9 person resides or is found may, upon application by the railroad labor  
10 relations agency, issue an order requiring the person to comply with  
11 the subpoena.

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

15 Sec. 42.40.830. PENALTY FOR VIOLATION OF ORDER OR DECISION. A  
16 person who violates a provision of an order or decision of the rail-  
17 road labor relations agency is guilty of a misdemeanor and is punish-  
18 able by a fine of not more than \$500.

19 Sec. 42.40.840. MEDIATION. (a) If, after a reasonable period  
20 of negotiation over the terms of a collective bargaining agreement, an  
21 impasse as determined by the railroad labor relations agency exists  
22 between the corporation and an organization, the railroad labor re-  
23 lations agency shall appoint a person mutually agreeable to the  
24 parties from a list of seven qualified mediators or arbitrators knowl-  
25 edgeable in railway labor agreements to act as mediator in the dis-  
26 pute.

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

29 (c) It shall be the function of the mediator to bring the

1 parties together to effectuate a settlement of the dispute, but nei-  
2 ther the mediator nor the railroad labor relations agency has any  
3 power of compulsion in mediation proceedings.

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

10 (b) The corporation may apply to the superior court in the  
11 judicial district in which the strike is occurring for an order en-  
12 joining the strike. A strike may not be enjoined unless it can be  
13 shown that it has begun to threaten, or is about to threaten, the  
14 health, safety, or welfare of the public. A court, in deciding wheth-  
15 er to enjoin the strike, shall consider the total equities in the  
16 particular case, including the impact of a strike on the public and  
17 the extent to which an employee organization and the corporation have  
18 met their statutory obligations.

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

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

27 Sec. 42.40.860. AGREEMENTS. (a) The Department of Administra-  
28 tion may participate in labor negotiations between the corporation and  
29 an organization. The corporation shall seek advice of the Department

1 of Administration before entering into a collective bargaining agree-  
2 ment concerning wages, hours, and other terms and conditions of em-  
3 ployment. However, the final decision regarding collective bargaining  
4 agreements shall be made by the board.

5 (b) Upon the completion of negotiations between an organization  
6 and the corporation, if a settlement is reached, the corporation shall  
7 reduce it to writing in the form of an agreement. The agreement shall  
8 include a grievance procedure that shall have binding arbitration as  
9 its final step. Either party to the agreement has a right of action  
10 to enforce the agreement by petition to the railroad labor relations  
11 agency.

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

14 Sec. 42.40.870. ORGANIZATION DUES AND EMPLOYEE BENEFITS, DEDUC-  
15 TION AND AUTHORIZATION. Upon written authorization of an employee  
16 within a bargaining unit, the corporation shall deduct from the pay-  
17 roll of the employee the monthly amount of dues, fees, and other  
18 employee benefits as certified by the secretary of the exclusive  
19 bargaining representative and shall deliver it to the chief fiscal  
20 officer of the exclusive bargaining representative.

21 Sec. 42.40.880. EXEMPTION. Notwithstanding the provisions of  
22 AS 42.40.870, a collective bargaining settlement reached, or agreement  
23 entered into, under AS 42.40.860 that incorporates union security  
24 provisions, including a union shop or agency shop provision or agree-  
25 ment, shall safeguard the rights of nonassociation of employees having  
26 bona fide religious convictions based on tenets or teachings of a  
27 church or religious body of which an employee is a member. Upon  
28 submission of proper proof of religious conviction to the railroad  
29 labor relations agency, the agency shall declare the employee exempt

1 from becoming a member of an organization. The employee shall pay an  
2 amount of money equivalent to regular organization dues, initiation  
3 fees, and assessments to the organization. Nonpayment of this money  
4 subjects the employee to the same penalty as if it were nonpayment of  
5 dues. The receiving organization shall contribute an equivalent  
6 amount of money to a charity of its choice not affiliated with a  
7 religious, labor, or employee organization. The organization shall  
8 submit to the railroad labor relations agency proof of contribution.

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

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

14 (2) require or coerce an employee to make any report con-  
15 cerning an activity or undertaking of the employee's activities or  
16 undertakings unless the activity or undertaking is related to the  
17 performance of official duties;

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

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

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

25 (C) sexual matters;

26 (D) the employee's political affiliation or philoso-  
27 phy;

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

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

5           (b) The provisions of (a) of this section do not diminish the  
6 authority of an authorized law enforcement agency to conduct criminal  
7 investigations of employees suspected of being involved in criminal  
8 activity or to investigate other activity directly related to official  
9 railroad business.

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

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

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

20           ARTICLE 9. GENERAL PROVISIONS.

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

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

1 privileges, and immunities as the state and state officers.

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

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

6 Sec. 42.40.905. NOTICE OF LEGAL ACTIONS. (a) The corporation  
7 shall notify the Department of Law within 30 days before initiating  
8 legal action unless special circumstances exist that require immediate  
9 legal action to protect the corporation assets or to continue existing  
10 service.

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

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

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

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

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

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

- 11           (1) AS 19;
- 12           (2) AS 30.15;
- 13           (3) AS 35;
- 14           (4) AS 37.05;
- 15           (5) AS 37.07;
- 16           (6) AS 37.10.010 - 37.10.060;
- 17           (7) AS 37.10.065;
- 18           (8) AS 37.20;
- 19           (9) AS 37.25;
- 20           (10) AS 38;
- 21           (11) AS 44.62.040 - 44.62.320.

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

27           Sec. 42.40.935. RAILROAD FACILITIES CODE COMPLIANCE. (a) Not  
28 later than two years after the date of transfer, the Department of  
29 Labor in consultation with the corporation shall develop and the

1 corporation, shall adopt a plan to achieve compliance with AS 18.60.  
2 The plan shall be implemented and compliance achieved within five  
3 years after it is adopted.

4 (b) No later than two years after the date of transfer, the  
5 corporation in consultation with the Department of Public Safety and  
6 appropriate municipal officials, shall develop and adopt a plan to  
7 achieve compliance with building and related safety codes applicable  
8 to facilities of the corporation. The plan shall be implemented and  
9 compliance achieved within five years after it is adopted. In the  
10 sole determination of the commissioner of public safety, any existing  
11 building owned or controlled by the corporation that does not present  
12 a serious safety hazard and for which compliance would be uneconomical  
13 in consideration of its remaining useful life shall be exempted from  
14 compliance with state or municipal safety codes.

15 Sec. 42.40.940. SALE OF THE RAILROAD. The governor may provide  
16 for the sale of the Alaska Railroad and dissolve the corporation if it  
17 can be assured that the railroad will continue to operate after the  
18 sale. A sale under this section is subject to approval by law.

19 Sec. 42.40.950. REVERSION OF ASSETS. Except as provided in  
20 AS 42.40.940, if the corporation ceases to exist its assets revert to  
21 the state.

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

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

26 (2) "bonds" means bonds, bond anticipation notes, notes,  
27 refunding bonds, or other obligations;

28 (3) "collective bargaining" means the performance of the  
29 mutual obligation of the corporation or its designated representatives

1 and the representatives of the employees to meet at reasonable times,  
2 including meetings in advance of the budget making process, and nego-  
3 tiating in good faith with respect to wages, hours, and other terms  
4 and conditions of employment, or the negotiation of an agreement, or  
5 negotiation of a question arising under an agreement and the execution  
6 of a written contract incorporating an agreement reached if requested  
7 by either party, but these obligations do not compel either party to  
8 agree to a proposal or require the making of a concession;

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

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

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

15 (7) "executive officer" means the corporation's chief  
16 executive officer, assistant chief executive officer, assistant to the  
17 chief executive officer, chief of administration, superintendent of  
18 transportation, manager of marketing and sales, chief engineer, chief  
19 mechanical officer, manager of industrial development and real estate,  
20 manager of budget and accounting, manager of planning, manager of  
21 personnel, manager of supply and procurement, chief of security,  
22 manager of operating rules, manager of data processing, manager of  
23 strategy, manager of operations planning, manager of supply, manager  
24 of procurement, manager of safety, manager of administrative proce-  
25 dure, chief counsel, or, if so designated by the board, any employee  
26 who fulfills these management functions under a different title or who  
27 exercises a similar or comparable level of responsibility or super-  
28 vision;

29 (8) "land" means any interest in real property, including

1 tide and submerged land, and any right appurtenant to the interest;

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

6 (10) "terms and conditions of employment" means the hours of  
7 employment, the compensation and fringe benefits, and the employer's  
8 personnel policies affecting the working conditions of the employees,  
9 but does not mean the general policies describing the function and  
10 purposes of an employer.

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

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

14 Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is  
15 established the Alaska Railroad Corporation. The corporation is a  
16 public corporation and is an instrumentality of the state [WITHIN THE  
17 DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT]. The corporation has  
18 a legal existence independent of and separate from the state. The  
19 exercise by the corporation of the powers provided in this chapter is  
20 considered an essential government function of the state.

21 \* Sec. 4. AS 42.40.030 is amended to read:

22 Sec. 42.40.030. TERM OF OFFICE; REMOVAL. (a) Except for the  
23 commissioner of commerce and economic development, the commissioner of  
24 transportation and public facilities and the chief executive officer  
25 of the corporation, members of the board serve for staggered terms of  
26 five years each [AT THE PLEASURE OF THE GOVERNOR].

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

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

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

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

5           (3) conviction of a felony.

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

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

12           (b) The board shall adopt rules to safeguard property owned,  
13 managed, or transported by the corporation and to protect employees  
14 and persons using the corporation's property or services.

15 \* Sec. 7. AS 42.40.205 is amended to read:

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

18           (1) relates only to the internal management of the corpo-  
19 ration;

20           (2) relates to specific rates, tariffs, divisions, and  
21 contract rate agreements;

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

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

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

28 \* Sec. 8. SPECIAL REPORT. The governor shall contract with a private  
29 consultant for the preparation of a report on the long-term operations of

1 the Alaska Railroad that are in the best interest of the state. The report  
2 shall be submitted to the governor and the legislature by January 1, 1988.  
3 It shall contain specific recommendations on operational alternatives and  
4 the transfer of all or part of the railroad operation to the private sec-  
5 tor.

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

- 10 (i) one shall serve a term of two years;
- 11 (2) one shall serve a term of three years;
- 12 (3) two shall serve a term of four years; and
- 13 (4) two shall serve a term of five years.

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

22 (b) The board of directors of the Alaska Railroad Corporation shall  
23 on or before the date of transfer of the Alaska Railroad to the state adopt  
24 personnel rules necessary to prevent an interruption of services of the  
25 railroad.

26 (c) Within 180 days after the first meeting of the board of directors  
27 of the Alaska Railroad Corporation, the board and representatives of em-  
28 ployee bargaining units shall establish procedures for the renegotiation of  
29 bargaining agreements adopted under (a) of this section. The board shall

1 renegotiate all agreements adopted under (a) of this section with two years  
2 after the date of transfer of the Alaska Railroad to the state unless the  
3 parties agree to the contrary.

4 \* Sec. 11. SPECIAL REPORT. The corporation shall study any problems  
5 created by vibrations due to operating the railroad from Ship Creek through  
6 Inlet View to the Turnagain Area and extending to Potter's Marsh. The  
7 study shall include consideration of any potential for problems that may be  
8 created by hauling coal and larger quantities of gravel along that portion  
9 of the rail line. By February 1, 1986, the corporation shall present a  
10 report to the legislature on the study containing recommendations for  
11 correcting any problems identified.

12 \* Sec. 12. AS 42.40.190 and 42.40.200 are repealed.

13 \* Sec. 13. Sections 3 - 7 and 12 of this Act take effect on the effec-  
14 tive date of an amendment to the Constitution of the State of Alaska relat-  
15 ing to the Alaska Railroad.

16 \* Sec. 14. Sections 1, 2, and 8 - 11 of this Act take effect imme-  
17 diately in accordance with AS 01.10.070(c).

Offered: 5/2/84  
Referred: Rules

Original sponsors: Hayes, Ringstad,  
Shultz, et al

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2

CS FOR HOUSE BILL NO. 512 (Finance)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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

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

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

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

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

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

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

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

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

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

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

29 (5) there is vast potential in Alaska's natural resource areas

1 and extension of the Alaska Railroad into natural resource areas is neces-  
2 sary for long-term economic growth.

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

4 (1) create a viable economic entity with the powers and duties  
5 necessary to operate and manage the Alaska Railroad pending eventual trans-  
6 fer of the railroad to the private sector for its ownership or operation or  
7 both consistent with 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of  
8 1982);

9 (2) provide for the level of railroad service that best satis-  
10 fies the needs of the people of the state consistent with the other find-  
11 ings and policies of this section;

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

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

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

21 (C) have the ability to raise capital for expansion by  
22 issuing bonds exempt from federal and state taxation;

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

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

29 (F) provide for the most efficient and prudent operation of

1 the railroad according to sound business management practices  
2 consistent with the technology in use;

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

6 (H) in all job classifications, provide for the employment  
7 of women and minorities if qualified;

8 (I) provide for the payment of equal pay for equal work;

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

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

12 CHAPTER 40. ALASKA RAILROAD CORPORATION.

13 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

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

21 Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the  
22 corporation are vested in the board of directors. The board consists  
23 of the commissioner of commerce and economic development, the commis-  
24 sioner of transportation and public facilities, and seven members  
25 appointed by the governor. The seven appointed members must be regis-  
26 tered voters in the state except as provided in (1) and (2) of this  
27 subsection. A member of the board may not be an employer of a  
28 transportation company, a company using the railroad's freight  
29 services, except infrequently, or a lessee of corporation land.

1 Except for the commissioners and the member appointed under (5) of  
2 this subsection, a member may not be a state officer or employee.  
3 Appointed members shall have the following qualifications:

4 (1) one member of the board shall be a person who has  
5 substantial experience in railroad management; a person who is not a  
6 resident of the state may be appointed under this paragraph;

7 (2) one member of the board shall be or have been an execu-  
8 tive official of a United States railroad and shall be selected in  
9 accordance with 49 U.S.C. (Interstate Commerce Act); a person who is  
10 not a resident of the state may be appointed under this paragraph;

11 (3) two members shall have substantial experience as owners  
12 or managers of a business in the state;

13 (4) at least two members shall be from each judicial  
14 district directly served by the Alaska Railroad;

15 (5) one member shall be an employee of the corporation who  
16 is a member of a collective bargaining unit.

17 (b) Except for the commissioners, the members of the board shall  
18 be confirmed by a majority of the members of each house of the legis-  
19 lature in joint session. A member appointed by the governor has the  
20 full powers and responsibilities of a confirmed board member until the  
21 member is rejected by the legislature or the legislature adjourns  
22 without confirming the member.

23 Sec. 42.40.030. TERM OF OFFICE; REMOVAL. (a) Except for the  
24 commissioner of commerce and economic development, and the commission-  
25 er of transportation and public facilities, the members of the board  
26 serve for staggered terms of five years each.

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

29 (1) incapacitation caused by injury or sickness that leaves

- 1 the member unable to perform duties under this chapter;  
2 (2) continued refusal or inability to attend meetings of  
3 the board;  
4 (3) conviction of a felony; or  
5 (4) malfeasance or misfeasance.

6 Sec. 42.40.040. VACANCIES. (a) Except for the commissioner of  
7 commerce and the commissioner of transportation and public facilities,  
8 a vacancy on the board is filled by appointment by the governor, and  
9 the appointment must be confirmed by the members of each house of the  
10 legislature in joint session. A member appointed to fill a vacancy  
11 holds office for the balance of the term for which the member's prede-  
12 cessor was appointed.

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

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

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

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

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

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

3 ARTICLE 2. MANAGEMENT.

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

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

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

13 (3) generally manage the corporation on a self-sustaining  
14 basis;

15 (4) provide for safe, efficient, and economical railroad  
16 transportation to meet the overall needs of the state;

17 (5) raise needed capital for expansion by issuing bonds of  
18 the corporation while ensuring that borrowing by the corporation does  
19 not directly or indirectly endanger the state's own borrowing  
20 capacity;

21 (6) review state and other land disposal proposals to aid  
22 in planning for future development or expansion of railroad transpor-  
23 tation services;

24 (7) ensure that standards of the United States Interstate  
25 Commerce Commission for class I railroads are used for accounting  
26 purposes by the corporation;

27 (8) ensure that the procurement procedures of the corpora-  
28 tion comply with the procurement standards and procedures established  
29 for state agencies to the extent practicable consistent with efficient

1 railroad operations;

2 (9) apply to the legislature for an appropriation to be  
3 used to provide a service that is not otherwise self-sustaining if a  
4 subsidy is required to maintain that service.

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

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

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

17 (b) The board shall by rule establish procedures for carrying  
18 out the following powers and duties of the corporation and may dele-  
19 gate the exercise of the following powers and duties in accordance  
20 with the procedures to the chief executive officer or other executive  
21 officers designated by the board:

22 (1) leasing, granting easements in, issuing permits for the  
23 use of, or conveying other interests in property, except the corpo-  
24 ration's entire interest in land;

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

27 (3) making routine changes in service levels;

28 (4) establishing procurement and accounting procedures for  
29 the corporation; and

1 (5) performing procurement activities.

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

5 (1) issuing bonds;

6 (2) mortgaging or pledging corporation assets;

7 (3) donating property or other assets belonging to the  
8 corporation;

9 (4) acting as a surety or guarantor;

10 (5) adopting a long-range program or capital improvement  
11 plan;

12 (6) adopting annual reports;

13 (7) effecting general, comprehensive increases and de-  
14 creases in rates;

15 (8) diversifying, expanding, or reducing services in a  
16 major way;

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

20 (10) selecting independent auditors and accountants;

21 (11) exercising the power of eminent domain;

22 (12) entering into collective bargaining agreements;

23 (13) adopting annual budgets; and

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

27 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

28 Sec. 42.40.150. MEETINGS OF THE BOARD. (a) The chairman of the  
29 board shall call meetings of the board at least once every three

1 months and may call other meetings of the board as necessary. The  
2 chairman shall preside at meetings.

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

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

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

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

13 Sec. 42.40.170. EXECUTIVE SESSIONS. (a) The question of hold-  
14 ing an executive session shall be determined in accordance with  
15 AS 42.40.160. A subject may not be considered at an executive session  
16 unless it is mentioned in the motion calling for the executive session  
17 or is auxiliary to a subject mentioned. An action may not be taken at  
18 an executive session.

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

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

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

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

28 (4) matters pertaining to personnel;

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

1 (6) land acquisition or disposal; and

2 (7) proprietary or other information of a type treated as  
3 confidential under the standards and practices of the United States  
4 Interstate Commerce Commission, including practices that protect  
5 information associated with specific shippers, divisions, and contract  
6 rate agreements.

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

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

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

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

3 Sec. 42.40.190. EMERGENCY RULES. (a) The board shall establish  
4 in the bylaws of the corporation a procedure for the adoption of a  
5 rule on an emergency basis. An emergency rule may be adopted only  
6 when necessary for the orderly operation of the corporation's facil-  
7 ities or programs. The requirements of AS 42.40.180 do not apply to  
8 actions taken under this section. However, within 10 days after the  
9 adoption of a rule on an emergency basis the board shall give notice  
10 of its action that substantially complies with the notice requirements  
11 of AS 42.40.180(a).

12 (b) An action taken under this section remains in effect for not  
13 more than 120 days. To prevent an emergency rule from lapsing the  
14 board may adopt the same rule under AS 42.40.190 before the end of the  
15 120-day period.

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

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

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

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

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

29 (1) relates only to the internal management of the

1 corporation;

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

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

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

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

10 Sec. 42.40.210. PREVIOUSLY ADOPTED RULES AND ORDERS. (a) The  
11 board may provide by resolution that rules and orders in effect on the  
12 date of transfer remain in effect until amended or repealed by the  
13 board. The board may adopt the substance of former federal rules or  
14 orders relating to the Alaska Railroad and this may not be considered  
15 a continuation of the federal rules or orders if adopted by the board  
16 in accordance with procedural requirements of this chapter or other  
17 law.

18 (b) AS 42.40.180 does not apply to actions taken under this  
19 section.

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

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

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

3 Sec. 42.40.230. CONFLICTS OF INTEREST. (a) Except as provided  
4 in this section, a board member or executive officer of the corpora-  
5 tion may not participate in a decision of the corporation in which  
6 that person or a member of that person's immediate family has a direct  
7 or indirect financial interest unless the financial interest is a  
8 remote financial interest and participation is approved under (b) of  
9 this section.

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

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

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

1 prohibition contained in this section.

2 (e) For purposes of this section

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

5 (2) "immediate family" means

6 (A) spouse;

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

9 Sec. 42.40.240. COMPLAINT PROCEDURE. The board shall provide by  
10 rule for a formal procedure for the receipt and consideration of  
11 complaints or suggestions regarding activities of the corporation.

12 ARTICLE 4. POWERS AND DUTIES.

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

15 (1) adopt a seal;

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

17 (3) sue and be sued;

18 (4) appoint trustees and agents of the corporation and  
19 prescribe their powers and duties;

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

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

23 (7) acquire by purchase, lease, bequest, devise, gift,  
24 exchange, condemnation, the satisfaction of debts, the foreclosure of  
25 mortgages, or otherwise, personal property, rights, rights-of-way,  
26 franchises, easements, and other interest in land, and acquire by  
27 appropriation water rights that are located in the state, taking title  
28 to the property in the name of the corporation;

29 (8) hold, maintain, use, operate, improve, lease, encumber

- 1 and otherwise grant security interests in land or personal property  
2 and exchange, donate, convey, alienate, or otherwise dispose of per-  
3 sonal property, subject to other provisions of this chapter;
- 4 (9) contract with and accept transfers, gifts, grants or  
5 loans of funds or property from the United States and the state or its  
6 political subdivisions, subject to other provisions of federal or  
7 state law or municipal ordinances;
- 8 (10) undertake and provide for the management, operation,  
9 maintenance, use, and control of all of the property of the corpo-  
10 ration, including tracks, equipment and other property transferred to  
11 the corporation by the federal government or any person;
- 12 (11) recommend to the legislature and the governor any tax,  
13 financing, or financial arrangement the corporation considers appro-  
14 priate to carry out the duties under this chapter;
- 15 (12) maintain offices and facilities at places it desig-  
16 nates;
- 17 (13) apply to the state, the United States, and foreign  
18 countries or other proper agencies for the permits, licenses, rights-  
19 of-way, or approvals necessary to construct, maintain, and operate  
20 transportation and related services, and obtain, hold, and reuse the  
21 licenses and permits in the same manner as other railroad operators;
- 22 (14) prescribe rates to be charged for services provided by  
23 the Alaska Railroad consistent with 45 U.S.C. 1201 - 1214 (Alaska  
24 Railroad Transfer Act of 1982);
- 25 (15) determine the routes, schedules, and types of service  
26 to be provided by the Alaska Railroad;
- 27 (16) enter into contracts, leases, and other agreements  
28 with connecting carriers, shippers, and other persons concerning the  
29 services, activities, operations, property, and facilities of the

1 corporation, including agreements that contain provisions to preserve  
2 and expand the railroad's traffic base;

3 (17) plan for and undertake expansion of the railroad and  
4 railroad activities, including extension of the rail system, and  
5 contract with other modes of transportation service connecting to the  
6 rail system;

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

9 (19) assume all rights, liabilities, and obligations of the  
10 Alaska Railroad consistent with 45 U.S.C. 1201 - 1214 (Alaska Railroad  
11 Transfer Act of 1982);

12 (20) maintain or provide for a security force to protect  
13 property owned, managed or transported by the corporation and persons  
14 using railroad transportation services provided by the corporation;

15 (21) issue its bonds and provide for and secure their pay-  
16 ment, provide for the rights of their holders and hold or dispose of  
17 them;

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

20 (23) cancel bonds of the corporation purchased by the corpo-  
21 ration;

22 (24) secure the payment of its bonds by pledge, mortgage, or  
23 other lien on its contracts, revenue, income, or property;

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

28 (26) borrow money, including the amounts necessary to estab-  
29 lish reasonable reserves, and pay financing charges and interest on

1 the obligations for a reasonable period after which the corporation  
2 estimates other money will be available to pay the interest, consul-  
3 tant, advisory, and legal fees, and other expenses necessary or inci-  
4 dent to borrowing;

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

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

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

19 Sec. 42.40.260. ANNUAL REPORT. Within 90 days following the end  
20 of the fiscal year of the Alaska Railroad the board shall distribute  
21 to the governor and to the legislature a report describing the opera-  
22 tions and financial condition of the corporation during the preceding  
23 fiscal year. The report may include suggestions for legislation re-  
24 lating to the structure, powers or duties of the corporation or to the  
25 operation or facilities of the corporation. Subject to AS 42.40.220,  
26 the report shall itemize the cost of providing each category of ser-  
27 vice offered by the railroad and the income generated by each cate-  
28 gory.

29 Sec. 42.40.270. AUDITS. (a) The board shall have the financial

1 records of the corporation audited annually by an independent cer-  
2 tified public accountant experienced in railroad accounting. The  
3 board shall have an annual performance audit conducted by a recognized  
4 railroad management expert to assure that the railroad is being man-  
5 aged and operated effectively and efficiently in accordance with the  
6 requirements of this chapter. Auditors shall use the standards of the  
7 United States Interstate Commerce Commission for Class I railroads.

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

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

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

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

24 (3) the issuance of securities, bonds or contracts in an  
25 amount exceeding \$5,000,000; or

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

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

- 1 (1) its financial impact on the corporation;  
2 (2) its impact on the level and nature of services provided  
3 by the corporation;  
4 (3) the reasons the action is necessary or desirable to  
5 achieve the purposes of this chapter; and  
6 (4) whether and when the undertaking is expected to be  
7 self-sustaining financially.

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

- 10 (1) exchange, donate, sell, or otherwise convey its entire  
11 interest in land;  
12 (2) issue securities, bonds, or contracts in an amount  
13 exceeding \$5,000,000;  
14 (3) extend main or branch lines by more than 25 miles or  
15 five percent of the railroad's total track mileage, whichever is  
16 greater.

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

28 (b) The board shall annually review and update the long range  
29 program and capital improvement plans. The board shall provide copies

1 of the updated plans to the governor and the legislature by December 1  
2 of each year.

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

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

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

29 ARTICLE 5. CORPORATION PROPERTY.

1           Sec. 42.40.350. LAND. (a) The corporation shall take title in  
2 its own name to all land transferred under 45 U.S.C. 1201 - 1214  
3 (Alaska Railroad Transfer Act of 1982). All land that is transferred  
4 or acquired by the corporation is designated as follows:

- 5                   (1) railroad rights-of-way are railroad utility corridors;  
6                   (2) land outside the railroad utility corridors is rail  
7 land.

8           (b) A railroad utility corridor shall be of a width at least 100  
9 feet on both sides of the centerline of the extended main or branch  
10 line, unless the corporation does not own or control sufficient land  
11 for a corridor of that width. A railroad utility corridor may be  
12 surveyed by the metes and bounds method. The corporation may not  
13 convey its entire interest in land within a railroad utility corridor  
14 except as provided in AS 42.40.285, 42.40.370(d), and 42.40.400. The  
15 corporation may lease, grant easements or permits, or otherwise autho-  
16 rize use of portions of a utility corridor for transportation, commu-  
17 nication, and transmission purposes, including pipelines and support  
18 functions associated with those purposes and for commercial and other  
19 uses if the use does not restrict other parallel uses of the utility  
20 corridor.

21           (c) The corporation may lease, grant easements or permits, or  
22 otherwise authorize use of portions of rail land. However, the corpo-  
23 ration may not convey its entire interest in rail land except as  
24 provided in AS 42.40.285, 42.40.370(d), and 42.40.400.

25           (d) A lease by the corporation to a party other than the state  
26 shall be made at fair market value as determined by appraisal by a  
27 qualified appraiser or by competitive bid.

28           Sec. 42.40.360. REQUEST FOR LAND. (a) The board may nominate  
29 federal land it determines may be useful for railroad purposes and

1 request the commissioner of natural resources to select the land for  
2 the state through the federal land selection process.

3 (b) The board may identify and request the commissioner of  
4 natural resources to convey land necessary or useful for present or  
5 future railroad purposes owned by or tentatively approved for transfer  
6 to the state, including land not contiguous to land already held by  
7 the corporation. The request must include a statement of and justi-  
8 fication for the present or future railroad use. Upon receipt of a  
9 request, the commissioner shall temporarily reserve the land iden-  
10 tified in the request for railroad purposes and defer disposal or  
11 lease of that land under other laws to a party other than the corpo-  
12 ration. The temporary reservation of land is subject to valid exist-  
13 ing rights and remains in effect for 180 days.

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

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

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

22 (3) approve in part and deny in part the request for desig-  
23 nation of the identified land and convey as appropriate.

24 (b) A conveyance of land under this section may be for less than  
25 fair market value as determined by the commissioner of natural re-  
26 sources.

27 (c) In the absence of a reservation to the contrary, a convey-  
28 ance of land under this section vests in the corporation ownership,  
29 control of the surface, material, and mineral estate, including the

1 right to extract or use timber and other construction materials, sand,  
2 gravel, rock, and the right to tunnel, ditch, recontour, excavate, or  
3 otherwise use the land for railroad, transportation, transmission, or  
4 communication services.

5 (d) The corporation may reconvey to the state land received  
6 under this section, under 45 U.S.C. 1201 - 1214 (Alaska Railroad  
7 Transfer Act of 1982), by eminent domain, or otherwise that the corpo-  
8 ration and the commissioner of natural resources jointly identify as  
9 unnecessary or unsuitable for the corporation's purposes.

10 Sec. 42.40.380. USE OF STATE LAND. When emergency conditions  
11 require that track or other right-of-way fixtures of the corporation  
12 be moved from the existing location and relocated on state land adja-  
13 cent to or in the vicinity of the existing right-of-way and the chief  
14 executive officer determines that relocation is necessary to maintain  
15 safe and adequate rail operations, the corporation may effect the  
16 relocation with the concurrence of the Department of Natural Re-  
17 sources. The relocation must affect only the amount of state land  
18 necessary to adequately restore or continue safe rail operations at a  
19 normal level.

20 Sec. 42.40.390. EMINENT DOMAIN. (a) The corporation may exer-  
21 cise the power of eminent domain under AS 09.55.240 - 09.55.460 to  
22 acquire land for railroad purposes consistent with this chapter.  
23 Notwithstanding AS 09.55.250, the corporation may acquire a fee simple  
24 title whenever, in the judgment of the board, ownership of a fee  
25 simple title is necessary to carry out the purposes of this chapter.

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

28 (c) The power of eminent domain conferred under this section  
29 includes the power to obtain clay, gravel, sand, timber, rock, or

1 other material for the operation of the railroad, the land necessary  
2 to obtain the material, and access to the land and material.

3 Sec. 42.40.400. VACATION OF EASEMENTS. The corporation may  
4 vacate an easement acquired under 45 U.S.C. 1201 - 1214 (Alaska Rail-  
5 road Transfer Act of 1982) by executing and filing a deed in the  
6 appropriate recording district. Upon filing the deed the state shall  
7 acquire the easement for use in conformity with 45 U.S.C. 1201 - 1214.

8 Sec. 42.40.410. FEDERAL LAND. The corporation may submit appli-  
9 cations on its own behalf as an instrumentality of the state for  
10 acquisition of federal land that will enhance the operations of the  
11 corporation if it is available under a federal law other than the  
12 Alaska Statehood Act of 1958 (P.L. 85-508, 72 Stat. 339). The corpo-  
13 ration may receive in its own name conveyances of all interests in  
14 federal land.

15 Sec. 42.40.420. MUNICIPAL USE OF LAND. Upon request of a munic-  
16 ipality the corporation may authorize use of the railroad utility  
17 corridor or rail land for a pedestrian walkway or trail. Before  
18 authorizing a use under this section the board shall require the  
19 municipality to execute an agreement in a form approved by the board  
20 to

21 (1) hold the corporation harmless from and indemnify the  
22 corporation for liability and claims arising from any use authorized  
23 under this section including

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

26 (B) indemnifying the corporation for the amount of a  
27 judgment, including prejudgment and postjudgment interest, ren-  
28 dered against the corporation or for the amount of a settlement  
29 entered into by the corporation, and for all costs and attorney's

1 fees incurred by the corporation in settling or defending the  
2 claim; and

3 (2) stop the use upon request of the corporation if the use  
4 interferes with expansion or replacement of railroad facilities,  
5 creates a safety hazard, or interferes with railroad operations.

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

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

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

26 Sec. 42.40.450. ADVERSE POSSESSION. No prescription or statute  
27 of limitations runs against the title or interest of the corporation  
28 to or in land owned by the corporation or under its jurisdiction.  
29 Title to or interest in land owned by the corporation or under its

1 jurisdiction may not be acquired by adverse possession or prescrip-  
2 tion, or in any other manner except by conveyance from or formal  
3 vacation by the corporation.

4 ARTICLE 6. FINANCIAL PROVISIONS.

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

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

15 Sec. 42.40.520. INSURANCE. Except as provided in AS 42.40.-  
16 310(b), the corporation shall protect its assets, services, and em-  
17 ployees by purchasing insurance or providing for certain self-insur-  
18 ance retentions. The corporation shall also maintain casualty, prop-  
19 erty, business interruption, marine, boiler and machinery, pollution  
20 liability, and other insurance in amounts reasonably calculated to  
21 cover potential claims against the corporation or state for bodily  
22 injury, death or disability, and property damage that may arise from  
23 or be related to corporation operations and activities.

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

28 Sec. 42.40.540. APPROPRIATIONS. The corporation may request a  
29 direct appropriation or grant from the legislature to assist in

1 carrying out the provisions of this chapter.

2 ARTICLE 7. BONDS.

3 Sec. 42.40.600. GENERAL PROVISIONS. (a) The corporation by  
4 resolution may issue bonds to provide money to carry out its purposes.

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

7 (1) be dated;

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

10 (3) be in a required denomination or denominations;

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

12 (5) carry conversion or registration provisions;

13 (6) have a required rank or priority;

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

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

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

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

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

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

29 Sec. 42.40.620. BONDS ELIGIBLE FOR INVESTMENT. Bonds issued

1 under this chapter are securities in which all public officers and  
2 public bodies of the state and its political subdivisions, all insur-  
3 ance companies, trust companies, banking associations, investment  
4 companies, executors, administrators, trustees and other fiduciaries  
5 may properly and legally invest funds, including capital in their  
6 control or belonging to them. These bonds may be deposited with a  
7 state or municipal officer of an agency or political subdivision of  
8 the state for any purpose for which the deposit of bonds of the state  
9 is authorized by law.

10 Sec. 42.40.630. PAYMENT OF BONDS. The principal and interest on  
11 bonds of the corporation is payable from corporation money or assets.  
12 Bonds may be additionally secured by a pledge of a grant or contribu-  
13 tion from the federal, state, or municipal government or a corpora-  
14 tion, association, institution or person, or a pledge of money, in-  
15 come, or revenue of the corporation from any source.

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

22 (1) make and enter into any and all the covenants and  
23 agreements with the trustees or the holders of the bonds that the  
24 corporation may determine to be necessary or desirable, including  
25 covenants, provisions, limitations and agreements as to

26 (A) the application, investment, deposit, use and  
27 disposition of the proceeds of bonds of the corporation or of  
28 money or other property of the corporation or in which it has an  
29 interest;

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

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

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

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

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

18 (3) provide for any other matters of like or different  
19 character that in any way affect the security or protection of the  
20 bonds.

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

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

29 Sec. 42.40.670. VALIDITY OF PLEDGE. (a) The pledge of assets

1 or revenue of the corporation to the payment of the principal or  
2 interest on bonds of the corporation is valid and binding from the  
3 time the pledge is made and the assets or revenue are immediately  
4 subject to the lien of the pledge without physical delivery or further  
5 act. The lien of a pledge is valid and binding against all parties  
6 having claims of any kind against the corporation, irrespective of  
7 whether those parties have notice of the lien of the pledge.

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

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

27 Sec. 42.40.680. REMEDIES. A holder of bonds issued under this  
28 chapter or of coupons attached to them, and a trustee under a trust  
29 agreement or resolution authorizing the issuance of the bonds, except

1 as restricted by a trust agreement or resolution, either at law or in  
2 equity, may

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

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

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

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

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

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

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

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

24 Sec. 42.40.700. LIMITATION ON PERSONAL LIABILITY. A board  
25 member or employee of the corporation is not subject to personal  
26 liability or accountability because of the execution or issuance of  
27 bonds.

28 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

29 Sec. 42.40.705. POLITICAL ACTIVITIES. (a) Money, assets, or

1 property of the corporation may not be used for political activity.  
2 However, board members and employees may communicate with and appear  
3 before committees of Congress, the state legislature, and municipal  
4 governing bodies in connection with matters directly affecting the  
5 corporation.

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

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

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

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

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

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

1           Sec. 42.40.740. COLLECTIVE BARGAINING UNIT. The railroad labor  
2 relations agency shall decide in each case, in order to ensure employ-  
3 ees the fullest freedom in exercising the rights guaranteed by AS 42.-  
4 40.710 - 42.40.890 the unit appropriate for the purposes of collective  
5 bargaining, based on such factors as community of interest, wages,  
6 hours and other working conditions of the employees involved, the  
7 history of collective bargaining, and the desires of the employees.  
8 Bargaining units shall be as large as is reasonable, and unnecessary  
9 fragmenting shall be avoided.

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

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

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

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

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

27           (b) If the railroad labor relations agency has reasonable cause  
28 to believe that a question of representation exists, it shall provide  
29 for a hearing upon due notice. If the railroad labor relations agency

1 finds that there is a question of representation, it shall direct an  
2 election by secret ballot to determine whether or by which organiza-  
3 tion the employees desire to be represented and shall certify the  
4 results of the election. Nothing in this subsection prohibits the  
5 waiving of hearings by stipulation for the purpose of a consent elec-  
6 tion in conformity with the regulations of the railroad labor rela-  
7 tions agency or an election in a bargaining unit agreed upon by the  
8 parties.

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

21 (d) Nothing in this chapter prohibits recognition of an organiza-  
22 tion as the exclusive representative by the corporation by mutual  
23 consent.

24 (e) An election may not be directed by the railroad labor rela-  
25 tions agency in a bargaining unit in which there is in force a valid  
26 collective bargaining agreement, except during a 90-day period preced-  
27 ing the expiration date. However, no collective bargaining agreement  
28 may bar an election upon petition of employees in the bargaining unit  
29 but not parties to the agreement if more than three years have elapsed

1 since the execution of the agreement or the last timely renewal,  
2 whichever was later.

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

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

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

9 (3) discriminate in regard to hire or tenure of employment  
10 or a term or condition of employment to encourage or discourage mem-  
11 bership in an organization;

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

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

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

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

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

28 (c) An organization or its agents may not

29 (1) restrain or coerce

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

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

6 (2) refuse to bargain collectively in good faith with the  
7 corporation, if it has been designated in accordance with AS 42.40.-  
8 710 - 42.40.890 as the exclusive representative of employees in an  
9 appropriate unit.

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

21 Sec. 42.40.780. COMPLAINT AND ACCUSATION. If the railroad labor  
22 relations agency fails to eliminate the prohibited practice by concil-  
23 iation and to obtain voluntary compliance with AS 42.40.710 - 42.40.-  
24 890 or before it attempts conciliation, it may serve a copy of the  
25 complaint or accusation upon the respondent. The complaint or accusa-  
26 tion and the subsequent procedures shall be handled in accordance with  
27 the administrative adjudication portion of the Administrative Proce-  
28 dure Act (AS 44.62).

29 Sec. 42.40.790. ORDERS AND DECISIONS. If the railroad labor

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

11 Sec. 42.40.900. ENFORCEMENT BY INJUNCTION. The railroad labor  
12 relations agency may apply to the superior court in the judicial  
13 district in which the prohibited practice occurred for an order en-  
14 joining the prohibited acts specified in the order or decision of the  
15 railroad labor relations agency. Upon showing by the railroad labor  
16 relations agency that the person has engaged or is about to engage in  
17 the practice, an injunction, restraining order, or other order that is  
18 appropriate may be granted by the court and shall be without bond.

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

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

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

1 (d) If a person refuses to obey a subpoena issued under AS 42.-  
2 40.710 - 42.40.890, the superior court in the district in which the  
3 person resides or is found may, upon application by the railroad labor  
4 relations agency, issue an order requiring the person to comply with  
5 the subpoena.

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

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

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

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

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

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

1 majority of the employees in that collective bargaining unit vote by  
2 secret ballot to do so. The limit of the strike is determined by the  
3 interest of the health, safety, or welfare of the public.

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

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

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

21 Sec. 42.40.860. AGREEMENTS. (a) The Department of Administra-  
22 tion may participate in labor negotiations between the corporation and  
23 an organization. The corporation shall seek advice of the Department  
24 of Administration before entering into a collective bargaining agree-  
25 ment concerning wages, hours, and other terms and conditions of em-  
26 ployment. However, the final decision regarding collective bargaining  
27 agreements, shall be made by the board.

28 (b) Upon the completion of negotiations between an organization  
29 and the corporation, if a settlement is reached, the corporation shall

1 reduce it to writing in the form of an agreement. The agreement shall  
2 include a grievance procedure that shall have binding arbitration as  
3 its final step. Either party to the agreement has a right of action  
4 to enforce the agreement by petition to the railroad labor relations  
5 agency.

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

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

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

1 religious, labor, or employee organization. The organization shall  
2 submit to the railroad labor relations agency proof of contribution.

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

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

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

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

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

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

19 (C) sexual matters,

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

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

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

28 (b) The provisions of (a) of this section do not diminish the  
29 authority of an authorized law enforcement agency to conduct criminal

1 investigations of employees suspected of being involved in criminal  
2 activity or to investigate other activity directly related to official  
3 railroad business.

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

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

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

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

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

29 ARTICLE 9. GENERAL PROVISIONS.

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

5           (b) For the purposes of actionable claims, undertakings, pay-  
6 ments of judgments, execution, interest, punitive damages, statutes of  
7 limitations, bonds, costs, and similar matters related to the pres-  
8 entation and prosecution of claims by and against the corporation, the  
9 corporation and its board members and employees enjoy the same rights,  
10 privileges, and immunities as the state and state officers under  
11 AS 09.10.120, AS 09.50.250 - 09.50.290, and AS 09.65.040.

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

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

16           Sec. 42.40.905. NOTICE OF LEGAL ACTIONS. (a, The corporation  
17 shall notify th Department of Law within 30 days before initiating  
18 legal action unless special circumstances exist that require immediate  
19 legal action to protect the corporation assets or to continue existing  
20 service.

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

25           Sec. 42.40.910. EXEMPTION FROM TAXATION. (a) The exercise of  
26 the powers granted by this chapter shall be in all respects for the  
27 benefit of the people of the state, for their well-being and prosper-  
28 ity, and for the improvement of their social and economic conditions.  
29 Subject to (b) of this section, the real and personal property of the

1 corporation and its assets, income, and receipts are exempt from all  
2 taxes and special assessments of the state or a political subdivision  
3 of the state.

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

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

16 Sec. 42.40.92(). APPLICATION OF EXISTING LAWS. (a) The corpo-  
17 ration is not subject to the jurisdiction of the Alaska Transportation  
18 Commission.

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

- 21 (1) AS 19;
- 22 (2) AS 30.15;
- 23 (3) AS 35;
- 24 (4) AS 37.05;
- 25 (5) AS 37.07;
- 26 (6) AS 37.10.010 - 37.10.060;
- 27 (7) AS 37.10.085;
- 28 (8) AS 37.20;
- 29 (9) AS 37.25;

1 (10) AS 38;

2 (11) AS 44.62.040 - 44.62.320.

3 (c) The corporation is subject to AS 45.50.562 - 45.50.596.

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

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

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

26 Sec. 42.40.940. NEGOTIATION FOR SALE OF THE RAILROAD. The  
27 governor may require the board to negotiate in good faith the sale of  
28 the Alaska Railroad.

29 Sec. 42.40.950. REVERSION OF ASSETS. If the corporation ceases

1 to exist, for reasons other than sale of the Alaska Railroad, its  
2 assets revert to the state.

3 Sec. 42.40.980. DEFINITIONS. In this chapter, unless the con-  
4 text otherwise requires,

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

7 (2) "bonds" means bonds, bond anticipation notes, notes,  
8 refunding bonds, or other obligations;

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

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

13 (5) "employees" means all persons employed by the corpo-  
14 ration including executive officers;

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

21 (7) "land" means any interest in real property, including  
22 tide and submerged land and any right appurtenant to the interest;

23 (8) "rule" means a standard of general application or the  
24 amendment, supplement, revision, or repeal of a standard adopted by  
25 the corporation to implement, interpret, or make specific the law  
26 enforced or administered by it to govern its procedure.

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

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

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

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

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

16   \* Sec. 5. COLLECTIVE BARGAINING AGREEMENTS.   (a) As soon as practi-  
17   cable after establishment of the Alaska Railroad Corporation and before  
18   transfer of the Alaska Railroad to the state, the Alaska Railroad Corpora-  
19   tion and its employees shall adopt collective bargaining agreements that  
20   continue the provisions of the agreements in effect between the Alaska  
21   Railroad and its employees on the date of transfer of the railroad.   The  
22   collective bargaining agreements adopted under this section between the  
23   corporation and its employees shall remain in effect to the extent required  
24   under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982).

25           (b) The board of directors of the Alaska Railroad Corporation shall  
26   on or before the date of transfer of the Alaska Railroad to the state adopt  
27   personnel rules necessary to prevent an interruption of services of the  
28   railroad.

29           (c) Subject to 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of

1 1982), within 180 days after the first meeting of the board of directors of  
2 the Alaska Railroad Corporation, the board and representatives of employee  
3 bargaining units shall establish procedures for the renegotiation of col-  
4 lective bargaining agreements adopted under (a) of this section. The board  
5 shall renegotiate all agreements adopted under (a) of this section within  
6 two years after the date of transfer of the Alaska Railroad to the state  
7 unless the parties agree to the contrary.

8 \* Sec. 6. SALE OF RAILROAD. (a) Not later than two years following  
9 the date of the transfer of the Alaska Railroad to the state, the Board of  
10 Directors of the Alaska Railroad Corporation, in consultation with the  
11 state, shall request proposals from the private sector for the acquisition  
12 or operation of the Alaska Railroad. The board may engage the services of  
13 an investment banking firm or other professional expertise to assist in the  
14 development of the request and evaluation of proposals received. The board  
15 shall consider every proposal from the private sector for the acquisition  
16 or operation of the Alaska Railroad, even if it is not made in response to  
17 a request for proposals under this subsection.

18 (b) In order to be considered responsive, a proposal must

19 (1) ensure continued or improved rail service;

20 (2) return to the state its investment in the Alaska Railroad to  
21 the extent possible;

22 (3) be consistent with the terms and conditions of 45 U.S.C.  
23 1201 - 1214 (Alaska Railroad Transfer Act of 1982), and not activate the  
24 reversion provisions of 45 U.S.C. 1209 (Alaska Railroad Transfer Act of  
25 1982);

26 (4) demonstrate with reasonable certainty that the railroad  
27 after acquisition by the private sector will be operated as a profitable  
28 carrier; as used in this paragraph, "profitable carrier" means a carrier  
29 that will be able to

1 (A) generate sufficient revenue to meet its expenses,  
2 including reasonable maintenance of necessary equipment and facil-  
3 ities; and

4 (B) finance its capital needs in the private market; and

5 (5) demonstrate how the railroad can continue operation of  
6 services, including current levels of passenger service.

7 (c) The board may negotiate the details of any proposal found to be  
8 responsive, including the execution of a letter of intent to conclude a  
9 transfer upon approval of the governor and the legislature.

10 (d) Within one year after requesting proposals under (a) of this  
11 section, the board shall submit a report on the results of the process to  
12 the governor, including its specific findings on the responsiveness of any  
13 proposal received and its recommendations for conclusion of a transfer of  
14 the railroad or its management to the private sector.

15 (e) Within 120 days after receipt of the board's report, if the board  
16 has recommended transfer of the Alaska Railroad or its management to the  
17 private sector, the governor shall

18 (1) disapprove the proposed transfer; or

19 (2) submit the report and recommendations to the legislature.

20 (f) Failure by the governor to act within 120 days after receipt of  
21 the board's report shall be considered approval.

22 (g) The legislature may disapprove a proposed transfer without modi-  
23 fication by law enacted within 45 days after the proposal is submitted. If  
24 a proposal is submitted while the legislature is not in session, the legis-  
25 lature may disapprove the proposal with 45 days after the beginning of the  
26 next regular session. Failure by the legislature to act within the period  
27 required under this subsection shall be considered approval of the pro-  
28 posal.

29 (h) Unless a proposal under (a) of this section is approved, the

1 process provided in this section shall be repeated every two years.

2 (i) The board shall, within two years after the date of transfer of  
3 the Alaska Railroad to the state, direct the executive officer of the  
4 Alaska Railroad Corporation to prepare a report for the governor and the  
5 legislature on the feasibility of other operational alternatives for trans-  
6 fer consistent with the criteria under (b) of this section of all or part  
7 of the railroad to the private sector, including allowing recipients of  
8 permanent fund dividends to direct their dividends to a railroad purchase  
9 fund.

10 \* Sec. 7. SPECIAL REPORT. The corporation shall study any problems  
11 created by vibrations due to operating the railroad from Ship Creek through  
12 Inlet View to the Turnagain Area and extending to Potter's Marsh. The  
13 study shall include consideration of any potential for problems that may be  
14 created by hauling coal and larger quantities of gravel along that portion  
15 of the rail line. By February 1, 1986, the corporation shall present a  
16 report to the legislature on the study containing recommendations for  
17 correcting any problems identified.

18 \* Sec. 8. Section 3 of this Act takes effect on the effective date of  
19 an amendment to the constitution of the State of Alaska relating to the  
20 Alaska Railroad.

21 \* Sec. 9. Sections 1, 2, and 4 - 7 of this Act take effect immediately  
22 in accordance with AS 01.10.070(c).

*ce*  
BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

POUCH Z  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3900

OFFICE OF THE COMMISSIONER  
Alaska Railroad Transfer Team

March 23, 1984

HB 512

The Honorable Bette Cato  
Chairman, House Transportation Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Representative Cato:

Enclosed per your request is a fiscal note on the committee substitute for HB 512, an Act establishing the Alaska Railroad Corporation. Also enclosed is a detailed analysis with supporting documentation to explain its contents.

The estimates in this fiscal note are based on the results of the Alaska Railroad Transfer Team's Alaska Railroad Acquisition Assessment, released in December 1983. Although our "worst case" scenario has been used for these calculations, current indicators regarding uncertainty over potential traffic increases suggest this analysis for FY 85 is a more realistic forecast for determining actual fiscal impact.

Based on a request from the Senate Transportation Committee, the Transfer Team is re-assessing these estimates to develop a "best case" alternative for legislative consideration. This analysis will factor in the full impact of increased revenues from the export coal movement, SeaWay Express' entry into Seward, and additional special trains to meet the summer cruise ships at Whittier. This information will be provided to your committee as soon as it becomes available.

All estimates are presented in constant 1985 dollars and have been inflated from our original 1983 constant dollar estimates using an annual 6% inflation factor. The "general fund" line under the "funding component" is the projected annual shortfall to the State resulting from acquisition of the railroad. In FY 85, an overall appropriation of \$15.8 million will be needed to cover the expected shortfall.

The figures in this note are basically the same as those presented to the Senate Transportation Committee for the CS for SB 352. Another \$50,000 per year has been added to this note in response to the higher compensation levels for board members in Sec. 42.40.050, and the additional notice requirements in Sec. 42.40.090.

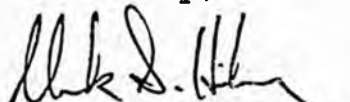
The FY 85 estimate is based on an assumption that actual transfer will occur somewhere between November and January of that fiscal year. Accordingly, most of the figures (e.g., revenues) are merely prorated for a seven month fiscal year ending in July 1985.

In addition, there are certain one-time, start-up expenditures directly attributable to the actual railroad transfer which causes the sizeable shortfall during FY 85. Included in this area are such items as \$4.9 million for replacement of the railroad's working capital fund, \$4.5 million for initiation of compliance with OSHA requirements and state and local building codes, and \$2 million for specific transition expenses to be incurred by the new corporation in taking over the railroad.

Another \$1.75 million of the 300 level contractual category is for the Alaska Railroad Transfer Team to perform its duties during FY 85. These funds are to support several one-time transition activities, most of which are already underway in this fiscal year. All other FY 85 fiscal impact to state agencies as a result of enacting this legislation has also been included in this submittal.

I trust this information helps to explain the highlights of the enclosed fiscal note. If you would like any additional assistance, please do not hesitate to contact me at 465-3900.

Sincerely,



Mark S. Hickey  
State Railroad Coordinator

Enclosure

cc: Ray Gillespie, Legislative Liaison,  
Office of the Governor  
Ben Harding, Special Staff Assistant,  
Office of the Governor  
R. J. Knapp, Commissioner,  
Department of Transportation &  
Public Facilities  
House Transportation Committee Members