

ALASKA LEGISLATURE COMMITTEES 2004 10/2

3118 HT AK RAILROAD/FISCAL NOTE/SB 352 - BILL DRAFTS (FILE 1)

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

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

19 ARTICLE 5. RAIL PROPERTIES.

20 Sec. 42.40.400. LAND. (a) All land among the rail properties
21 transferred under 45 U.S.C. 1201-1214 (Alaska Railroad Transfer
22 Act of 1982) or otherwise acquired by the corporation is under the
23 control of the corporation. All lands transferred or acquired shall
24 be designated as follows

25 (1) railroad rights-of-way or easements transferred under
26 the Federal Act of October 1980, and other railroad utility corridors;

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

3 (b) Railroad utility corridors shall be of a width at least
4 100 feet on both sides of the centerline of the extended main or
5 branch line, or may be of lesser width only if the adjoining land is
6 not rail property, and may be surveyed by the metes and bounds method;
7 and

8 (c) The corporation may not sell land within the railroad
9 corridor. However, the corporation may lease, grant easements or
10 permits, or otherwise authorize use of portions of the railroad uti-
11 lity corridor but only for transportation, communication, and trans-
12 mission purposes and for support functions associated with such
13 purposes.

14 (d) The corporation may lease, grant easements or permits,
15 or otherwise authorize use of portions of rail lands for other
16 services including but not limited to transportation, communication,
17 and transmission purposes and for support function associated with
18 such purposes.

19 Sec. 42.40.410. NOMINATION OF LAND. The board may by rule
20 identify and request federal land to be nominated for state selection
21 for Railroad purposes.

22 Sec. 42.40.420. IDENTIFICATION, CLASSIFICATION, ACQUISITION, AND
23 USE OF STATE LAND FOR RAILROAD PURPOSES. (a) The board by rule may
24 identify and request conveyance of land owned by or tentatively
25 approved for transfer to the state, including tide and submerged land
26 and land not adjacent to a railroad corridor, as necessary or useful
27 for present, or future railroad purposes. The request must include a
28 statement of and justification for the present, or future railroad
29 use. Upon submission of a request for classification and conveyance

1 to the commissioner of natural resources, the commissioner shall
2 temporarily designate and reserve the land identified in the request
3 for railroad purposes and shall temporarily vacate a classification
4 allowing disposal or lease of that land under laws or programs of the
5 state. A temporary designation and vacation is subject to valid
6 existing rights and remains in effect for 180 days.

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

10 (1) designate that land for railroad purposes and, subject
11 to valid existing rights, convey the state's interests to the corpo-
12 ration; or

13 (2) notify the corporation of reasons for refusal to desig-
14 nate the land for railroad purposes.

15 (3) approve in part and deny in part the request for desig-
16 nation under this section and convey as appropriate.

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

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

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

10 *Sec. 42.40.425. LAND USE REGULATION. The board may adopt
11 exclusive regulations governing land use by private parties having
12 interests in or permits for land owned or managed by the corporation.
13 The power conferred by this section is exercised for the common
14 health, safety, and welfare of the public and, to the extent
15 constitutionally permissible, may not be limited by the terms and
16 conditions of leases, contracts, or other transactions with private
17 parties.

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

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

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

27 (d) The power of eminent domain conferred under this section
28 includes the power to obtain material, including clay, gravel, sand,

1 timber, or rock for railroad use, the land necessary to obtain the
2 material, and access to the land and material.

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

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

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

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

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

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

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

6 (2) vacate the right-of-way upon request of the corporation
7 if the right-of-way interferes with expansion or replacement of rail-
8 road facilities.

9 ARTICLE 6. FINANCIAL PROVISIONS.

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

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

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

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

1 (c) The Corporation may contract with the Department of
2 Administration, Division of Risk Management for the provision of
3 all or part of the requirements in subsections (a) and (b).

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

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

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

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

24 (e) The corporation is not subject to the provisions of AS 44.-
25 80.010, regarding the state as a party to an action.

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

1 *Sec. 42.40.560. APPROPRIATIONS. The corporation may request,
2 with the concurrence of the governor, a direct appropriation or grant
3 from the legislature to assist in carrying out the provisions of
4 AS 42.40.300 and 42.40.310.

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

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

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

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

21 (1) be dated;

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

24 (3) be in a required denomination;

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

26 (5) carry conversion or registration provisions;

27 (6) have a required rank or priority;

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

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1 (8) be payable as required 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 (e) Bonds or bond anticipation notes may be sold in the manner,
8 on the terms, and at the price the board determines. Bond anticipa-
9 tion notes shall mature at the time or times determined by the board.
10 Bonds shall mature at the time, not exceeding 50 years from their
11 date, determined by the board.

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

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

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

21 (3) covenant as to establishment of reserves or sinking
22 funds and provide for, regulate, and dispose of the reserves or sink-
23 ing funds;

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

26 (5) covenant as to bonds and notes to be issued, their limi-
27 tations, terms and conditions, the custody, application and dispo-
28 sition of the proceeds of the bonds and notes;

29 (6) covenant as to the issuance of additional bonds or notes,

1 or limitations on the issuance of additional bonds or notes, and the
2 incurring of other debts;

3 (7) covenant as to the payment of the principal of or interest
4 on the bonds or notes, the sources and methods of payment, the rank or
5 priority of the bonds or notes with respect to a lien or security, or
6 the acceleration of the maturity of the bonds or notes;

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

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

11 (10) covenant as to the redemption of bonds or notes and privi-
12 leges of their exchange for other bonds or notes of the corporation;

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

18 (12) establish the procedure by which the terms of a contract
19 or covenant with or for the benefit of the holders of bonds or notes
20 may be amended or abrogated, the amount of bonds or notes the holders
21 of which must consent to amendment or abrogation, and the manner in
22 which the consent may be given;

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

26 (14) vest in a trustee or trustees inside or outside the state
27 property, rights, powers and duties in trust as the corporation may
28 determine that may include any or all of the rights, powers and duties
29 of a trustee appointed by the holders of bonds or notes of the corpo-

1 ration, and to limit or abrogate the rights of the holders of the
2 bonds or notes of the corporation to appoint a trustee under this
3 chapter or limit the rights, powers and duties of the trustee;

4 (15) pay the costs or expenses incident to the enforcement of
5 the bonds or notes, of the provisions of the resolution, or of a
6 covenant or agreement of the corporation with the holders of its bonds
7 or notes;

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

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

19 (18) limit the rights of the holders of bonds or notes of the
20 corporation to enforce a pledge or covenant securing the bonds or
21 notes; and

22 (19) make covenants other than and in addition to the covenants
23 expressly authorized in this section, of like or different character,
24 and make covenants to do or refrain from doing acts in order to better
25 secure bonds or notes or that, in the absolute discretion of the
26 board, will tend to make bonds or notes more marketable.

27 Sec. 42.40.580. INTERIM RECEIPTS, TEMPORARY BONDS, AND TEMPORARY
28 BOND ANTICIPATION NOTES. Before the preparation of definitive bonds
29 or bond anticipation notes, the corporation may issue interim receipts

1 or temporary bonds or bond anticipation notes, with or without cou-
2 pons, exchangeable for bonds or bond anticipation notes when these
3 definitive bonds or bond anticipation notes have been executed and are
4 available for delivery.

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

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

14 Sec. 42.40.610. VALIDITY OF PLEDGE. (a) The pledge of assets
15 or revenue of the corporation the payment of the principal or
16 interest on bonds or notes of the corporation is valid and binding
17 from the time the pledge is made and the assets or revenue are immedi-
18 ately subject to the lien of the pledge without physical delivery or
19 further act. The lien of a pledge is valid and binding against all
20 parties having claims of any kind against the corporation, irrespec-
21 tive of whether those parties have notice of the lien of the pledge.

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

26 Sec. 42.40.620. REMEDIES. A holder of bonds or notes issued
27 under this chapter or of coupons attached to them, and a trustee under
28 a trust agreement or resolution authorizing the issuance of the bonds
29

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

3 (1) enforce all rights granted under this chapter, the trust
4 agreement or resolution, or any other contract executed by the corpo-
5 ration 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. 42.40.630. NEGOTIABLE INSTRUMENTS. Bonds and notes issued
9 under this chapter and interest coupons attached to them are nego-
10 tiable instruments under the laws of this state, subject only to
11 applicable provisions for registration.

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

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

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

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

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

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

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

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

29 (2) neither the faith and credit nor the taxing power of the

1 state or of a political subdivision of the state is pledged to the
2 payment of it.

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

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

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

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

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

29 *Problem - future analysis

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

3 ARTICLE 7. PERSONNEL AND LABOR RELATIONS.

4 Sec. 42.40.700 PERSONNEL. Employees of the Alaska Railroad are
5 employees of the corporation and not of the state. The provisions of
6 AS 39 do not apply to employees of the corporation.

7 Sec. 42.40.710. COLLECTIVE BARGAINING RIGHTS. (a) The
8 provisions of the Public Employee Relations Act (AS 23.40) do not
9 apply to the corporation or to its employees. However, employees of
10 the corporation, except the chief executive official and other execu-
11 tive officials appointed by the chief executive official, may self
12 organize and form, join, or assist an organization to engage in col-
13 lective bargaining with respect to wages, hours and other terms and
14 conditions of employment.

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

18 Sec. 42.40.720. AGREEMENT. (a) The Department of Administra-
19 tion shall participate in the negotiations between the corporation and
20 an employee organization. The corporation may not enter into a col-
21 lective bargaining agreement concerning wages, hours, or other terms
22 and conditions of employment unless the proposed contract terms are
23 approved by the Department of Administration.

24 (b) An agreement executed between the corporation and an
25 employee organization shall define "grievances." The agreement
26 shall provide for a grievance procedure in which the final step
27 in the procedure is binding arbitration.

28 Sec. 42.40.730. RAILROAD EMPLOYEES LABOR RELATIONS AGENCY.

29 (a) There is established a railroad employees labor relations

1 agency which consists of three members appointed by the governor. One
2 member shall be a member of the labor relations agency (AS 23.40).
3 Members serve at the pleasure of the governor.

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

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

10 Sec. 42.40.740. STRIKES. (a) Employees of the corporation may
11 engage in a strike if a majority of the employees in a collective
12 bargaining unit vote by secret ballot to do so.

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

17 Sec. 42.40.750. POLITICAL ACTIVITIES. (a) Money, assets, or
18 property of the corporation may not be used for political activity.
19 However, board members and employees of the corporation may upon
20 request communicate with and appear before committees of Congress, the
21 state legislature, and municipal governing bodies in connection with
22 matters directly affecting the corporation.

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

28 ARTICLE 8. GENERAL PROVISIONS.

29 Sec. 42.40.900. APPLICATION OF EXISTING STANDARDS. The Alaska
*Problem - future analysis

1 Railroad Corporation is not subject to the jurisdiction of the Alaska
2 Transportation Commission. The following laws do not apply to the
3 operations of the Alaska Railroad Corporation:

4 (1) AS 19;

5 (2) AS 30.15;

6 (3) AS 35;

7 *(4) AS 37.05;

8 *(5) AS 37.07;

9 (6) AS 37.10.010 - 37.10.060;

10 (7) AS 37.10.085;

11 (8) AS 37.20;

12 (9) AS 37.25;

13 *(10) AS 44.62.040 - 44.62.320.

14 Sec. 42.40.910. CONFLICTING LAWS INAPPLICABLE. If provisions of
15 AS 42.40.010 - 42.40.990 conflict with the provisions of other law,
16 the provisions of AS 42.40.010 - 42.40.990 prevail. Provisions of
17 this Act shall be construed so that they do not conflict with 45
18 U.S.C. 1202 - 1214 (Alaska Railroad Transfer Act of 1982).

19 Sec. 42.40.950. DEFINITIONS. In this chapter,

20 (1) "board" means the board of directors of the Alaska Railroad
21 Corporation;

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

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

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

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

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

6 (7) "rail properties" means all real and personal property,
7 tangible and intangible, of the corporation as provided in 45 USC
8 1202(10).

9 Sec. 42.40.990. SHORT TITLE. This chapter may be referred to as
10 the Alaska Railroad Corporation Act of 1984.

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

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

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

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

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

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

24 (3) conviction of a felony.

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

26 (a) The board shall appoint the chief executive officer of
27 the corporation [SUBJECT TO THE APPROVAL BY THE GOVERNOR]. The
28 chief executive officer serves at the pleasure of the board. The

29 *Problem - future analysis

1 board shall fix compensation for the chief executive officer.

2 * Sec. 6. SPECIAL REPORT. The governor shall contract with a
3 private consultant for the preparation of a report on the long-term
4 operations of the railroad that are in the best interest of the state.
5 The report shall be submitted to the governor and the legislature by
6 January 1, 1988. It shall contain specific recommendations on
7 operational alternatives and the transfer of all or part of the rail-
8 road operation to the private sector.

9 * Sec. 7. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA
10 RAILROAD CORPORATION. Notwithstanding AS 42.40.030 enacted in Sec. 2
11 of this Act, the terms of the appointed members of the first board of
12 directors of the Alaska Railroad Corporation as follows:

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

17 * Sec. 8. PRE-EXISTING RULES, REGULATIONS AND ORDERS OF THE
18 ALASKA RAILROAD. The Board of Commissioners of the Alaska Railroad
19 Corporation, by resolution, may continue in force for a period of not
20 more than two years after date of transfer all or part of the rules,
21 regulations, and orders of the Alaska Railroad which were in effect
22 one day before the date of transfer and are not inconsistent with this
23 chapter or other state law. All authorities continued in force under
24 this section shall expire on the second anniversary of the date of
25 transfer. The Board of Directors may adopt in its rules, regula-
26 tions, and orders the substance of former federal authorities relating
27 to the Alaska Railroad. This adoption is not considered a continu-
28 ation of the federal authorities if made in compliance with the pro-
29 cedural requirements of this chapter and other applicable law.

1 * Sec. 9. COLLECTIVE BARGAINING AGREEMENT BETWEEN THE ALASKA RAIL-
2 ROAD CORPORATION AND EMPLOYEES. As soon as practicable after transfer
3 of the Alaska Railroad, the Alaska Railroad Corporation and its
4 employees shall adopt collective bargaining agreements that continue
5 the provisions of the agreements in effect between the Alaska Railroad
6 and its employees immediately before transfer of the Alaska Railroad.
7 The collective bargaining agreements between the corporation and its
8 employees shall remain in effect consistent with 45 U.S.C. 1202-1214
9 (Alaska Railroad Transfer Act of 1982).

10 * Sec. 10. Sections 3 - 5 of this Act take effect on the effective
11 date of an amendment to the Constitution of the State of Alaska rela-
12 ting to the Alaska Railroad.

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

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16 *Problem - future analysis
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AK.

RAILROAD

Bill Drafts

#1

3/22/84 Draft

1
2 IN THE HOUSE

3 HOUSE BILL NO. 512

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 THIRTEENTH LEGISLATURE - SECOND SESSION

6 A BILL

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

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

11 * Section 1. LEGISLATIVE FINDINGS AND PURPOSE.

12 (a) The Legislature finds that

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

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

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

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

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

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

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

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

government;

1
2 (5) there is vast potential in Alaska's natural resource areas
3 and extension of the Alaska Railroad into natural resource areas is
4 necessary for long-term economic growth.

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

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

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

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

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

23 (C) have the ability to raise capital by issuing
24 obligations exempt from federal and state taxation;

25 (D) Generally carry out its responsibilities on a
26 self-sustaining
27 basis;

28 (E) provide the best possible combination of types and
29 levels of safe, efficient, and economical transportation to meet the

1 overall needs of the state, supported when necessary by state
2 investment;

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

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

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

8 CHAPTER 40. ALASKA RAILROAD CORPORATION,

9 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

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

17 Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the
18 corporation are vested in the board of directors. The board consists
19 of the commissioner of the Department of Commerce and Economic
20 Development, the Chief Executive Officer and seven voting members
21 appointed by the governor. Of the seven voting members, at least five
22 must be residents of

23 and registered voters in the state except as provided in (b) and (c)
24 of this section. No more than two of these members may be from any
25 one of the four judicial districts in the state. The public [voting]
26 members must have substantial experience or professional training and
27 expertise in fields relevant to the purposes of this chapter, ..
28 including, but not limited to transportation, business, and finance.
29

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ARTICLE 2. MANAGEMENT.

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

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

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

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

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

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

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

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

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

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

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

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

greater; or

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

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

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

8 (1) its financial impact on the corporation;

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

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

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

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

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

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

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

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

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

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

12 (4) performing procurement activities.

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

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

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

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

21 (3) mortgaging or pledging corporation assets;

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

24 (5) acting as a surety or guarantor;

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

27 (7) certifying annual reports;

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

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

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

10 (11) selecting independent auditors and accountants.

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

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

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

17 (15) adopting annual budgets.

18 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 4. POWERS AND DUTIES.

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

- (1) adopt a seal;
- (2) adopt rules and bylaws governing the business of the corporation;
- (3) sue and be sued;
- (4) appoint trustees and agents of the corporation and prescribe their powers and duties;
- (5) hire legal counsel to represent the corporation;
- (6) make contracts and execute instruments necessary or convenient in the exercise of its powers and duties;
- (7) acquire by purchase, lease, bequest, devise, gift, exchange, the satisfaction of debts, the foreclosure of mortgages, or otherwise, real or personal property, rights, rights-of-way, franchises, easements, and other interest in land, including land lying under water and appropriation of water rights that are located in the state, taking title to the property in the name of the corporation;
- (8) acquire property by eminent domain in accordance with AS 42.40.430;
- (9) hold, maintain, use, operate, lease, exchange, donate, improve, convey, alienate, dispose of, mortgage, encumber, and otherwise grant security interests in or transfer any real or personal property including facilities and equipment;
- (10) contract with and accept transfers, gifts, grants or loans of funds or property from the United States and the state or its

1 political subdivisions, subject to the provisions of federal, state,
2 or local programs;

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

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

10 (13) maintain offices and facilities at places it desig-
11 nates;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 ARTICLE 5. RAIL PROPERTIES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ARTICLE 6. FINANCIAL PROVISIONS.

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

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

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

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

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

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

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

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

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

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

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

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

16 ARTICLE 7 BONDS AND NOTES

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

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

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

28 (1) be dated;

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

2 (3) be in a required denomination;

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

4 (5) carry conversion or registration provisions;

5 (6) have a required rank or priority;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (2) neither the faith and credit nor the taxing power of
27 the state or of a political subdivision of the state is pledged to the
28 payment of it.
29

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

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

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

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

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

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

29 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

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

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

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

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

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

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

1 and other working conditions of the employees involved, the history of
2 collective bargaining, and the desires of the employees. Bargaining units
3 shall be as large as is reasonable, and unnecessary fragmenting shall be
4 avoided.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (1) restrain or coerce

18 (A) an employee in the exercise of the rights guaranteed in AS
19 42.40.710 or

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

22 (2) refuse to bargain collectively in good faith with the corpo-
23 ration, if it has been designated in accordance with the provision of AS
24 42.40.700-42.40.990 as the exclusive representative of employees in an
25 appropriate unit.

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

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

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

15 Sec. 42.40.780 ORDERS AND DECISIONS. If the railroad labor relations
16 agency finds that a person named in the written complaint or accusation has
17 engaged in a prohibited practice, the railroad labor relations agency shall
18 issue and serve on the person an order or decision requiring him to cease
19 and desist from the prohibited practice and to take affirmative action
20 which will carry out the provisions of AS 42.40.00-42.40.990. If the
21 railroad labor relations agency finds that a person named in the complaint
22 or accusation has not engaged or is not engaging in a prohibited practice,
23 the railroad labor relations agency shall state its findings of fact and
24 issue an order dismissing the complaint or accusation.

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

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

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

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

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

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

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

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

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

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

3 (b) Prior to a determination of an impasse under this section, the
4 parties may also select a mediator by agreement or mutual consent.

5 (c) It shall be the function of the mediator to bring the parties
6 together voluntarily under such favorable auspices as will tend to
7 effectuate settlement of the dispute, but neither the mediator nor the
8 railroad labor relations agency has any power of compulsion in mediation
9 proceedings.

10 Sec. 42.40.840. STRIKES. (a) Following a decision by the mediator
11 to end the mediation proceedings, employees of a collective bargaining unit
12 may engage in a strike for a limited time if a majority of the employees in
13 that collective bargaining unit vote by the interest of the health, safety
14 or welfare of the public. The corporation may apply to the superior court
15 in the judicial district in which the strike is occurring for an order
16 enjoining the strike. A strike may not be enjoined unless it can be shown
17 that it has begun or is about to threaten the health, safety or welfare of
18 the public. A court, in deciding whether or not to enjoin the strike, shall
19 consider the total equities in the particular class. "Total equities"
20 includes not only the impact of a strike on the public but also the extent
21 to which an employee organization and the corporation have met their
22 statutory obligations. If an impasse or deadlock still exists after the
23 issuance of an injunction, the parties shall submit the dispute to binding
24 arbitration. The arbitrator shall be the same person selected under Sec.
25 42.40.830 and shall fashion the award as he/she deems equitable.

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

1 Sec. 42.40.85J. AGREEMENT. (a) Upon the completion of negotiations
2 between an organization and the corporation, if a settlement is reached,
3 the corporation shall reduce it to writing in the form of an agreement.
4 The agreement shall include a grievance procedure which shall have binding
5 arbitration as its final step. Either party to the agreement has a right
6 of action to enforce the agreement by petition to the labor relations
7 agency.

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

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

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

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

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

17 ARTICLE 9. GENERAL PROVISIONS.

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

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

1 (9) AS 37.25;

2 (10) AS 38;

3 (11) AS 44.62.040 - 44.62.320.

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

10 Sec. 42.40.950. DEFINITIONS. In this chapter,

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

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

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

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

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

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

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

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

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

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

6 (10) "election" means a proceeding conducted by the labor
7 relations agency in which the employees in a collective bargaining
8 unit cast a secret ballot for collective bargaining representatives,
9 or for any other purpose specified in AS 42.40.700-42.40.990

10 (11) "organization" means a labor or employee organization
11 of any kind in which employees participate and which exists for the
12 primary purpose of dealing with the corporation concerning grievances,
13 labor disputes, wages, rates of pay, hours of employment and
14 conditions of employment.

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

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

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

the Alaska Railroad Corporation Act.

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

Sec. 42.40.010 ESTABLISHMENT OF THE CORPORATION

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

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

Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the corporation are vested in the board of directors. The board consists of [the commissioner of the Department of Commerce and Economic Development, the Chief Executive Officer and eight [seven] voting members appointed by the governor. These eight members must be residents of and registered voters in the state except as provided in (b) and (c) of this section. No more than two of these members may be from any one of the four judicial districts in the state. The public [voting] members must have substantial experience or professional training and expertise in fields relevant to the purposes of this chapter, including, but not limited to transportation, business, and finance. Except for [the commissioner of commerce and economic development], the chief executive officer, and the member appointed under (d) of this section, a voting member may not be a state officer or employee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (3) conviction of a felony.

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

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

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

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

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

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

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

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

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

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

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

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

10 (c) The board shall renegotiate all collective bargaining agreements
11 during the two-years period following transfer in accordance with 45 U.S.C.
12 1202-1214, unless the parties agree to the contrary.

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

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

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

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

3/15/84 Draft

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1
2 IN THE HOUSE

3 HOUSE BILL NO. 512

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 THIRTEENTH LEGISLATURE - SECOND SESSION

6 A BILL

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

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

11 * Section 1. LEGISLATIVE FINDINGS AND PURPOSE.

12 (a) The Legislature finds that

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

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

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

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

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

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

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

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

government;

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

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

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

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

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

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

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

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

(E) provide the best possible combination of types and levels of safe, efficient, and economical transportation to meet the overall needs of the state, supported when necessary by state

1 investment;

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

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

6
7 * Sec. 2. AS 42 is amended by adding a new chapter to read:

8 CHAPTER 40. ALASKA RAILROAD CORPORATION.

9 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

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

19
20 Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the
21 corporation are vested in the board of directors. The board consists
22 of the commissioner of the Department of Commerce and Economic
23 Development, the Chief Executive Officer and seven voting members
24 appointed by the governor. These eight members must be residents of
25 and registered voters in the state except as provided in (b) and (c)
26 of this section. No more than two of these members may be from any
27 one of the four judicial districts in the state. The public [voting]
28 members must have substantial experience or professional training and
29 expertise in fields relevant to the purposes of this chapter,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ARTICLE 2. MANAGEMENT.

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

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

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

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

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

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

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

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

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

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

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

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

1 greater; or

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

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

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

9 (1) its financial impact on the corporation;

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

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

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

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

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

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

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

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

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

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

12 (4) performing procurement activities.

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

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

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

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

21 (3) mortgaging or pledging corporation assets;

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

24 (5) acting as a surety or guarantor;

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

27 (7) certifying annual reports;
28
29

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

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

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

10 (11) selecting independent auditors and accountants.

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

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

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

17 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

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

27 (b) A board member or employee may participate in a decision if
28 that person or a member of that persons immediate family has only a
29 remote interest and if the fact and extent of the interest is

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

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

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

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

21 (b) In addition to those subjects that may be discussed in
 22 executive session under AS 44.62.310, the board may consider in execu-
 23 tive session matters that pertain to personnel, the corporation's
 24 legal position, land acquisition or disposal, or proprietary informa-
 25 tion, as defined in a manner consistent with the standards and prac-
 26 tices of the United States Interstate Commerce Commission for protec-
 27 tion of information including but not limited to proprietary
 28 information associated with specific shippers, divisions, and contract
 29 rate agreements.

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

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

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

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

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

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

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

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

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

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

operated in accordance with the requirements of this Act.

ARTICLE 4. POWERS AND DUTIES.

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

- (1) adopt a seal;
- (2) adopt rules and bylaws governing the business of the corporation;
- (3) sue and be sued;
- (4) appoint trustees and agents of the corporation and prescribe their powers and duties;
- (5) hire legal counsel to represent the corporation;
- (6) make contracts and execute instruments necessary or convenient in the exercise of its powers and duties;
- (7) acquire by purchase, lease, bequest, devise, gift, exchange, the satisfaction of debts, the foreclosure of mortgages, or otherwise, real or personal property, rights, rights-of-way, franchises, easements, and other interest in land, including land lying under water and appropriation of water rights that are located in the state, taking title to the property in the name of the corporation;
- (8) acquire property by eminent domain in accordance with AS 42.40.430;
- (9) hold, maintain, use, operate, lease, exchange, donate, improve, convey, alienate, dispose of, mortgage, encumber, and otherwise grant security interests in or transfer any real or personal property including facilities and equipment;
- (10) contract with and accept transfers, gifts, grants or loans of funds or property from the United States and the state or its political subdivisions, subject to the provisions of federal, state, or local programs;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 ARTICLE 5. RAIL PROPERTIES.

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

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

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

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

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

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

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

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

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

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