

ALASKA LEGISLATURE COMMITTEE FILES 1903-1904 00/2

3119 HT AK RAILROAD/BILL DRAFTS (FILE 1) 319

1 natural resources under this section is subject to valid existing
2 rights and remains in effect for 180 days.

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

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

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

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

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

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

28 (e) When physical conditions require that track or other right-
29 of-way fixtures of the corporation be moved from the existing location

1 and relocated on state-owned land adjacent to or in the vicinity of
2 the existing right-of-way, and the chief executive officer determines
3 that relocation is necessary to maintain safe and adequate rail op-
4 erations, the corporation may effect the relocation with concurrence
5 of the Department of Natural Resources. The relocation must be limi-
6 ted to land adequate to restore or continue safe rail operations at a
7 normal level.

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

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

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

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

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

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

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

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

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

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

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

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

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

29 ARTICLE 6. FINANCIAL PROVISIONS.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

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

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

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

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

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

(c) For the purposes of actionable claims, undertakings, payments of judgments, execution, interest, punitive damages, statutes of limitations, bonds, costs, and similar matters related to the

1 presentation and prosecution of claims by and against the corporation,
2 the corporation and its board members and employees enjoy the same
3 rights, privileges, and immunities as the state and state officers as
4 provided in AS 09.10.120, AS 09.50.250 - 09.50.290, and AS 09.65.040.

5 (d) Claims against the corporation are not subject to the
6 provisions of AS 44.77.010 - 44.77.070 regarding claims against the
7 state.

8 (e) The corporation is not subject to the provisions of AS 44.-
9 80.010, regarding the state as a party to an action..

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

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

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

26 ARTICLE 7 BONDS AND NOTES

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

1 (b) The principal and interest on bonds or notes of the corpo-
2 ration is payable from corporation money or assets. Bonds or notes
3 may be additionally secured by a pledge of a grant or contribution
4 from the federal, state, or local government or a corporation,
5 association, institution or person, or a pledge of money, income, or
6 revenue of the corporation from any source.

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

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

13 (1) be dated;

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

16 (3) be in a required denomination;

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

18 (5) carry conversion or registration provisions;

19 (6) have a required rank or priority;

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

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

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

25 (10) be subject to terms of redemption with or without
26 premium.

27 (e) Bonds or [bond anticipation] notes may be sold in the
28 manner, on the terms, and at the price the board determines. [Bond
29 anticipation] notes shall mature at the time or times determined by

1 the board. Bonds shall mature at the time, not exceeding 50 years
2 from their date, determined by the board.

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

9 (1) make and enter into any and all the covenants and
10 agreements with the trustees or the holders of the bonds which the
11 corporation may determine to be necessary or desirable, including,
12 without limitation, covenants, provisions, limitations and agreements
13 as to

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

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

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

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

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

corporation;

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

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

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

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

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

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

1 Sec. 42.40.620. REMEDIES. A holder of bonds or notes issued
2 under this chapter or of coupons attached to them, and a trustee under
3 a trust agreement or resolution authorizing the issuance of the bonds
4 or notes, except as restricted by a trust agreement or resolution,
5 either at law or in equity, may

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

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

11 Sec. 42.40.630: NEGOTIABLE INSTRUMENTS. Bonds and notes issued
12 under this chapter and interest coupons attached to them are nego-
13 tiable instruments under the laws of this state, subject only to
14 applicable provisions for registration.

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

25 Sec. 42.40.660. CREDIT OF STATE NOT PLEDGED. (a) The state and
26 its political subdivisions are not liable for the debts of the corpo-
27 ration. Bonds and notes issued under this chapter are payable solely
28 from the revenue or assets of the corporation and do not constitute a
29

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

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

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

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

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

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

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

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

25 *** (c) The exercise of the powers granted by this chapter shall
26 be in all respects for the benefit of the people of the state, for
27 their well-being and prosperity, and for the improvement of their
28 social and economic conditions. Therefore, the corporation is not
29 required to pay a tax or assessment on property owned by the

1 corporation under the provisions of this chapter or on the income from
2 the property.

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

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

12 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

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

16 (b) The collective bargaining agreements in effect on the date
17 of transfer between the corporation and its employees shall remain in
18 effect until they expire by their terms or, as required under 45
19 U.S.C. 1206 (Alaska Railroad Transfer Act of 1982), they are
20 renegotiated, subject to the approval of the board.

21 (c) Subject to the provisions of 45 USC 1206 (Alaska Railroad
22 Transfer Act of 1982) Within 180 days of the first meeting of the
23 Board, the Board and representatives of employee bargaining units
24 shall implement ground rules for the re-negotiation of collective
25 bargaining agreements.

26 NOTE: Sec. 42.40.710 COLLECTIVE BARGAINING (a) The provisions of
27 AS. 23.40.010- 23.40.080, AS. 23.40.110, AS. 23.40.200-23.40.260.

28 (Public Employee Relations Act) do not apply to the corporation or to
29 it's employees. However, employees that are not executive officers

1 may organize, and form, join, or assist an organization to engage in
2 collective bargaining with respect to wages, hours and other terms and
3 conditions of employment.

4 (b) The Department of Administration may participate in labor
5 negotiations between the corporation and an employee organization.
6 The corporation shall seek advice of the Department of Administration
7 prior to entering into a collective bargaining agreement concerning
8 wages, hours, and other terms and conditions of employment. However,
9 the final decision regarding collective bargaining agreements, shall
10 be made by the board.

11 (c) An agreement executed between the corporation and an
12 employee organization shall provide for a grievance procedure in which
13 the final step in the procedure is binding arbitration. The agreement
14 shall define "grievance" for purposes of this section.

15 Sec. 42.40.720 RAILROAD EMPLOYEES LABOR RELATIONS AGENCY. (a)
16 There is established a railroad employees labor relations agency that
17 consists of three members appointed by the governor. One member shall
18 be a member of the state personnel board. Members serve at the
19 pleasure of the governor.

20 (b) The railroad labor relations agency shall perform the
21 functions described in AS. 23.40.090 - 23.40.100, and AS.
22 23.40.120-23.40.190 .

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

26 Sec. 42.40.730 ADVISORY ARBITRATION (a) If efforts at mediation
27 under AS 23.40.190 fail to resolve a dispute, the dispute shall be
28 submitted to advisory arbitration. The corporation shall choose one
29 of the arbitrators, the railroad labor relations agency shall choose

1 one of the arbitrators, and the Railroad Employees Labor Relations
2 board shall choose one of the arbitrators.

3 (b) Arbitration of the dispute shall be conducted under AS.
4 09.43.100 to the extent that the sections do not conflict with this
5 section. A decision reached by the arbitrators shall not be binding
6 upon the parties.

7 Sec. 42.40.740 STRIKES (a) After submitting a dispute to advisory
8 arbitration, employees may engage in a strike if a
9 majority of all employees in collective bargaining units vote by
10 secret ballot to do so.

11 (b) Notwithstanding the provisions of (a) of this section, the
12 employees with the concurrence of the corporation may agree in writing
13 to submit a dispute arising from interpretation or application of a
14 collective bargaining agreement to binding arbitration.

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

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

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

28 (1) require or coerce any employee of the corporation to
29 participate in any way in any activity or undertaking unless the

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

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

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

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

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

15 (C) sexual matters

16 (D) his/her political affiliation or philosophy

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

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

24 (b) The provisions of (a) of this section do not diminish the
25 authority of an authorized law enforcement agency to conduct criminal
26 investigations of corporation employees suspected of being involved in
27 criminal activity.

28 ARTICLE 9. GENERAL PROVISIONS.

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

5 (1) AS 19;

6 (2) AS 30.15;

7 (3) AS 35;

8 (4) AS 37.05;

9 (5) AS 37.07;

10 (6) AS 37.10.010 - 37.10.060;

11 (7) AS 37.10.085;

12 (8) AS 37.20;

13 (9) AS 37.25;

14 (10) AS 44.62.040 - 44.62.320.

15 Sec. 42.40.10. SPECIAL REPORT. The corporation shall investi-
16 gate and prepare a report for the governor and the legislature on the
17 long-term operations of the railroad that are in the best interest of
18 the state. The report shall be due January 1, 1988. It shall make
19 specific recommendations on operational alternatives and the transfer
20 of all or part of the railroads operations to the private sector.

21 Sec. 42.40.950. DEFINITIONS. In this chapter,

22 (1) "board" means the board of directors of the Alaska
23 Railroad Corporation;

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

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

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

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

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

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

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

15 (9) "collective bargaining" is defined as negotiating with
16 an employees organization, representing employees of The Alaska
17 Railroad Corporation on matters pertaining to conditions of
18 employment.

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

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

22 Sec. 42.40.010 ESTABLISHMENT OF THE CORPORATION

23 Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is
24 established the Alaska Railroad Corporation. The corporation is a
25 public corporation and for the purposes of art. III, sec. 22,
26 Constitution of the State of Alaska, is an instrumentality of the
27 state [within the Department of Commerce and Economic Development],
28 but the corporation has a legal existence independent of and separate
29 from the state. The exercise by the corporation of the powers

1 provided in this chapter is considered an essential governmental
2 function of the state.

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

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

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

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

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

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

28 (b) Except for [the commissioner of commerce and economic
29 development and] the chief executive officer of the corporation, the

1 voting members of the board shall be confirmed by a majority of the
2 membership of the legislature in joint session. A member appointed by
3 the governor has the full powers and responsibilities of a confirmed
4 board member unless and until the member has been rejected by the
5 legislature.

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

8 (d) The board shall appoint a secretary and prescribe the specific
9 duties of the secretary.

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

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

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

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

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

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

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

26 (3) conviction of a felony.

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

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

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

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

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

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

18 * Sec. 10. COLLECTIVE BARGAINING AGREEMENT BETWEEN THE ALASKA
19 RAILROAD CORPORATION AND EMPLOYEES. As soon as practicable after
20 establishment of the corporation and prior to transfer of the Alaska
21 Railroad, the Alaska Railroad Corporation and its employees shall adopt
22 collective bargaining agreements that continue the provisions of the
23 agreements in effect between the Alaska Railroad and its employees
24 immediately before transfer of the Alaska Railroad. The collective
25 bargaining agreements between the corporation and its employees shall
26 remain in effect consistent with 45 U.S.C. 1202-1214 (Alaska Railroad
27 Transfer Act of 1982).

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

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

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

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

3/14/84 Draft

1
2 IN THE HOUSE

3 HOUSE BILL NO. 512

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 THIRTEENTH LEGISLATURE - SECOND SESSION

6 A BILL

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

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

11 * Section 1. LEGISLATIVE FINDINGS AND PURPOSE.

12 (a) The Legislature finds that

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

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

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

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

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

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

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

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

government;

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

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

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

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

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

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

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

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

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

investment;

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

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

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

7 CHAPTER 40. ALASKA RAILROAD CORPORATION.

8 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

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

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 employee
11 bargaining unit appointed by the governor to represent the employees;

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ARTICLE 2. MANAGEMENT.

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

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

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

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

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

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

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

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

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

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

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

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

greater; or

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

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

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

(1) its financial impact on the corporation;

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

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

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

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

(b) The chief executive officer of the corporation shall appoint and fix the compensation for other executive officers. The appointment of other executive officers and their compensation are subject to board approval.

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

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

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

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

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

12 (4) performing procurement activities.

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

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

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

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

21 (3) mortgaging or pledging corporation assets;

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

24 (5) acting as a surety or guarantor;

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

27 (7) certifying annual reports;

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

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

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

10 (11) selecting independent auditors and accountants.

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

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

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

17 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

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

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

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

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

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

18 Sec. 42.40.210. PUBLIC BOARD MEETINGS. (a) The meetings of the
19 board are public with the exception of an executive session conducted
20 under AS 44.62.310 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 preformance
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 rights in connection with
14 these interests which are provided in contracts or agreements and that are
15 allowed by law concerning the satisfaction of debts;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (b) Notwithstanding the provisions of this section, the corpo-
24 ration may purchase insurance to protect and hold personally harmless
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 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 suc' 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

1 natural resources under this section is subject to valid existing
rights and remains in effect for 180 days.

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

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

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

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

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

22 (d) The corporation may reconvey to the state land received
23 under this section that the corporation and the commissioner of natu-
24 ral resources jointly identify as unnecessary or unsuitable for the
25 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

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

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

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

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

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

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

25 Sec. 42.40.450. OTHER ASSETS. (a) The corporation may submit
26 applications on its own behalf as an instrumentality of the state for
27 acquisition of interests in federal land available under federal law
28 that will enhance the operations of the corporation and may receive
29 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) In a claim or other legal action against the corporation
18 involving its activities, including the expansion, extension and
19 construction of the railroad, in which the corporation is the
20 prevailing party, the party or parties that maintained the action
21 shall be liable to the corporation for its full costs and legal fees
22 in defending the action and for the financial losses to the
23 corporation that are directly attributable to the maintenance of that
24 action.

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

1 privileges, and immunities as the state and state officers as provided
2 in AS 09.10.120, AS 09.50.250 - 09.50.290, and AS 09.65.040.

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

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

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

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

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

24 ARTICLE 7 BONDS AND NOTES

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

28 (b) The principal and interest on bonds or notes of the corpo-
29 ration is payable from corporation money or assets. Bonds or notes

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

may be additionally secured by a pledge of a grant or contribution from the federal government or a corporation, association, institution or person, or a pledge of money, income, or revenue of the corporation from any source.

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

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

(1) be dated;

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

(3) be in a required denomination;

(4) be in a coupon or registered form;

(5) carry conversion or registration provisions;

(6) have a required rank or priority;

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

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

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

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

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

1 (f) The corporation may by provisions in a resolution authoriz-
2 ing or relating to the issuance of bonds or bond anticipation notes
3 enter into the following agreements with the holders of the bonds or
4 bond anticipation notes:

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

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

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

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

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

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

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

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

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

1 *** (10) covenant as to the redemption of bonds or notes and
2 privileges of their exchange for other bonds or notes of the corpo-
3 ration;

4 *** (11) covenant to create or authorize the creation of
5 special funds of money to be held in pledge or otherwise for operating
6 expenses, payment or redemption of bonds or notes, reserves or other
7 purposes, and as to the use and disposition of the money held in the
8 funds;

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

14 *** (13) covenant as to the custody of any of its properties
15 or investments, their safekeeping and insurance, and the use and
16 disposition of insurance money;

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

24 *** (15) pay the costs or expenses incident to the
25 enforcement of the bonds or notes, of the provisions of the
26 resolution or of a covenant or agreement of the corporation with the
27 holders of its bonds or notes;

28 (16) agree with a corporation trustee, that may be a trust
29 company or bank having the powers of a trust company inside or outside

1 the state, as to the pledging or assigning of revenue or funds that or
2 in which the corporation has a right or interest; the agreement may
3 provide for other rights and remedies exercisable by the trustee for
4 the protection of the holders of bonds or notes of the corporation and
5 not otherwise in violation of law, and may provide for the restriction
6 of the rights of an individual holder of bonds or notes of the
7 corporation;

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

10 *** (18) limit the rights of the holders of bonds or notes of
11 the corporation to enforce a pledge or covenant securing the bonds or
12 notes; and

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

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

26 Sec. 42.40.590. VALIDITY OF SIGNATURES. If an officer whose
27 signature or a facsimile of whose signature appears on bonds, notes,
28 or coupons attached to them ceases to be an officer before the
29

1 delivery of the bond, note, or coupon, the signature or facsimile is
2 valid the same as if the person had remained in office until delivery.

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

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

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

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

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

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

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

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

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

23 (b) Refunding bonds may be sold or exchanged for outstanding
24 bonds issued under this chapter and the proceeds may be applied to the
25 purchase, redemption or payment of the outstanding bonds in addition
26 to other authorized purposes. Pending the application of the proceeds
27 of refunding bonds to the payment of the principal, accrued interest
28 and redemption premium on the bonds being refunded, and, if permitted
29 in the resolution authorizing the issuance of the refunding bonds or

1 in the trust agreement securing them, to the payment of interest on
2 the refunding bonds and expenses in connection with the refunding, the
3 proceeds may be invested in direct obligations of the United States or
4 obligations the principal of and the interest on which are uncondi-
5 tionally guaranteed by the United States that mature or may be re-
6 deemed not later than the date the proceeds of the refunding bonds,
7 together with the interest accruing on them, will be required for the
8 purposes intended.

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

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

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

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

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

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

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

28 Sec. 42.40.680. EXEMPTION FROM TAXATION. (a) The real and
29 personal property of the corporation and its assets, income, and

1 receipts are exempt from all taxes and special assessments of the
2 state or a political subdivision of the state.

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

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

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

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

24 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

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

28 (b) The collective bargaining agreements in effect on the date
29 of transfer between the corporation and its employees shall remain in

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

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

9 Sec. 42.40.710 COLLECTIVE BARGAINING (a) Unless specifically
10 provided in this Act, the provisions of AS. 23.40
11 (Public Employee Relations Act) do not apply to the corporation or to
12 it's employees. However, employees that are not executive officers
13 may organize, and form, join, or assist an organization to engage in
14 collective bargaining with respect to wages, hours and other terms and
15 conditions of employment.

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

23 (c) An agreement executed between the corporation and an
24 employee organization shall provide for a grievance procedure in which
25 the final step in the procedure is binding arbitration. The agreement
26 shall define "grievance" for purposes of this section.

27 Sec. 42.40.720 RAILROAD EMPLOYEES LABOR RELATIONS AGENCY. (a)
28 There is established a railroad employees labor relations agency that
29 consists of three members appointed by the governor. One member shall

1 be a member of the state personnel board. Members serve at the
2 pleasure of the governor.

3 (b) The railroad labor relations agency shall perform the
4 functions described in AS. 23.40.090 - 23.40.190 and carry out the
5 provisions of AS 42.40.750-810.

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

9 Sec. 42.40.730 STRIKES (a) Employees may engage in a strike if a
10 majority of the employees in all collective bargaining units vote by
11 secret ballot to do so.

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

16 Sec. 42.40.730. POLITICAL ACTIVITIES. (a) Money, assets, or
17 property of the corporation may not be used for political activity.
18 However, board members and employees of the corporation may
19 communicate with and appear before committees of Congress, the state
20 legislature, and municipal governing bodies in connection with matters
21 directly affecting the corporation.

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

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

29 (1) require or coerce any employee of the corporation to

1 participate in any way in any activity or undertaking unless the
2 activity or undertaking is related to the performance of official
3 duties;

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

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

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

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

16 (C) sexual matters;

17 (D) his/her political affiliation or philosophy

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

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

25 (b) The provisions of (a) of this section do not diminish the
26 authority of an authorized law enforcement agency to conduct criminal
27 investigations of corporation employees suspected of being involved in
28 criminal activity.

29 ARTICLE 9. GENERAL PROVISIONS.

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

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

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

21 Sec. 42.40.950. DEFINITIONS. In this chapter,

- 22 (1) "board" means the board of directors of the Alaska
23 Railroad Corporation;
24 (2) "corporation" means the Alaska Railroad Corporation;
25 (3) "date of transfer" means the date on which the United
26 States Secretary of Transportation delivers the [deed of conveyance]
27 transfer documents for the properties of the Alaska Railroad under 45
28 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of 1982);
29

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

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

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

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

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

14 (9) "collective bargaining" is defined as negotiating with
15 an employees organization, representing employees of The Alaska
16 Railroad Corporation on matters pertaining to conditions of
17 employment.

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

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

21 Sec. 42.40.010 ESTABLISHMENT OF THE CORPORATION

22 Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is
23 established the Alaska Railroad Corporation. The corporation is a
24 public corporation and for the purposes of art. III, sec. 22,
25 Constitution of the State of Alaska, is an instrumentality of the
26 state [within the Department of Commerce and Economic Development],
27 but the corporation has a legal existence independent of and separate
28 from the state. The exercise by the corporation of the powers
29

1 provided in this chapter is considered an essential governmental
2 function of the state.

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

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

19 (b) Except for [the commissioner of commerce and economic
20 development and] the chief executive officer of the corporation, the
21 voting members of the board shall be confirmed by a majority of the
22 membership of the legislature in joint session. A member appointed by
23 the governor has the full powers and responsibilities of a confirmed
24 board member unless and until the member has been rejected by the
25 legislature.

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

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

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

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

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

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

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

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

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

17 (3) conviction of a felony.

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

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

21 (a) The board shall appoint the chief executive officer of the
22 corporation [SUBJECT TO THE APPROVAL BY THE GOVERNOR]. The chief executive
23 officer serves at the pleasure of the board. The board shall fix
24 compensation for the chief executive officer.

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

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

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

9 * Sec. 10. COLLECTIVE BARGAINING AGREEMENT BETWEEN THE ALASKA
10 RAILROAD CORPORATION AND EMPLOYEES. As soon as practicable after
11 establishment of the corporation and prior to transfer of the Alaska
12 Railroad, the Alaska Railroad Corporation and its employees shall adopt
13 collective bargaining agreements that continue the provisions of the
14 agreements in effect between the Alaska Railroad and its employees
15 immediately before transfer of the Alaska Railroad. The collective
16 bargaining agreements between the corporation and its employees shall
17 remain in effect consistent with 45 U.S.C. 1202-1214 (Alaska Railroad
18 Transfer Act of 1982).

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

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

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

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

1 government;

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

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

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

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

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

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

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

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

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

1 investment;

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

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

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

8 CHAPTER 40. ALASKA RAILROAD CORPORATION.

9 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

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

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

1 chapter, including, but not limited to transportation, business, and
2 finance. A voting member may not be a state officer or employee.

3 (b) Unless prohibited by law, one voting member shall be or have
4 been an executive official of an American railroad that is not now or
5 was never a connecting carrier of the Alaska railroad.

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

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

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

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

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

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

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

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

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

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

1 the member unable to perform duties under this chapter;

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

4 (3) Conviction of a felony

5 *****

6 Sec. 42.40.030. TERM OF OFFICE AND REMOVAL. The appointed
7 members of the board serve for staggered terms of five years each, and
8 serve at the pleasure of the governor during their terms..

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

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

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

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

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

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

1 Sec. 42.40.070. VOTING. Four affirmative votes are required for
2 board action. The board shall provide by rule for the manner of
3 voting, except that the board may not provide for voting by proxy.
4 The rules may provide for voting and conferring by means of telecommu-
5 nication devices. The rules may provide for excluding non-voting
6 members during executive sessions.

7 ARTICLE 2. MANAGEMENT.

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

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

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

18 (3) provide for safe, efficient, and economical
19 transportation to meet the overall needs of the state;

20 (4) raise needed capital by issuing obligations of the
21 corporation while insuring that borrowing by the corporation does not
22 directly or indirectly endanger the state's own borrowing capacity.

23 Sec. 42.40.100. EXECUTIVE OFFICERS. (a) The board shall appoint the
24 chief executive officer of the corporation subject to the approval by
25 the Governor. The chief executive officer serves at the pleasure of
26 the board. The board shall fix compensation for the chief executive
27 officer.

28 (b) The chief executive officer of the corporation shall appoint
29 and fix the compensation for other executive officers. The

1 appointment of other executive officers and their compensation are
2 subject to board approval.

3 Sec. 42.40.110. DELEGATION. (a) The board shall by rule delegate
4 powers and duties necessary and appropriate for the management of the
5 daily affairs and operations of the corporation to the chief executive
6 officer, subject to a requirement of board concurrence or
7 authorization imposed by the rules.

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

12 (1) leasing, granting easements in, issuing permits for the
13 use of, or conveying other interests that do not constitute a transfer
14 of the corporation's entire interest in real property of the corpora-
15 tion other than the execution of a release of a lien or satisfaction
16 of a mortgage after payment has been received;

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

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

20 (4) performing procurement activities.

21 (c) Board authorization or concurrence is required for the
22 following:

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

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

26 (3) mortgaging or pledging corporation assets;

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

29 (5) acting as a surety or guarantor;

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

3 (7) certifying annual reports;

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

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

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

13 (11) selecting independent auditors and accountants.

14 (12) certifying collective bargaining agreements with
15 railroad employees.

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

19 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

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

29 (b) A board member or employee may participate in a decision if:

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

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

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

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

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

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

3 Sec 42.40.220: MINUTES OF MEETINGS. The board shall keep
4 minutes of each meeting and shall send a certified copy of the minutes
5 of the public portion of each meeting to the governor and the
6 leadership of the legislature.

7 ***** Sec. 42.40.230. RULES. The board shall establish a
8 procedure for adopting rules to carry out its functions and the
9 purposes of this chapter. The rules shall include a procedure for the
10 adoption of emergency rules when the adoption of an emergency rule is
11 essential to continue or to reinstate the orderly operation of the
12 corporation's facilities or program.

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

17 (b) Except as provided in AS 42.40.270, the corporation may by
18 rule designate and withhold disclosure of matters of a nonpublic,
19 privileged, or proprietary nature. Those matters include personnel
20 records, communications with and work product of counsel consistent
21 with the standards and practices of the United States Interstate
22 Commerce Commission for the protection of these matters, and
23 information including but not limited to specific shippers, divisions,
24 and contract rate agreements.

25 Sec. 42.40.250. SPECIAL REPORT. The corporation shall investi-
26 gate and prepare a report for the governor and the legislature on the
27 long-term operations of the railroad that are in the best interest of
28 the state. The report shall be due January 1, 1988. It shall make
29

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

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

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

19 ARTICLE 4. POWERS AND DUTIES.

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

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

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

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

9 (8) acquire property by eminent domain in accordance with
10 AS 42.40.430 or by declaration of taking;

11 (9) hold, maintain, use, operate, lease, exchange, donate,
12 improve, convey, alienate, dispose of, mortgage, encumber, and
13 otherwise grant security interests in or transfer any real or personal
14 property including facilities and equipment;

15 (10) contract with and accept transfers, gifts, grants or
16 loans of funds or property from the United States and the state or its
17 political subdivisions, subject to the provisions of federal, state,
18 or local programs;

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

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

26 (13) maintain offices and facilities at places it desig-
27 nates;

28 (14) acquire, hold, and dispose of Stocks, memberships,
29 contracts, bonds, general or limited partnership interests or other

1 interests in another corporation, association, partnership, joint venture,
2 or other legal entity, and exercise the powers or rights in connection with
3 these interests which are provided in contracts or agreements and that are
4 allowed by law concerning the satisfaction of debts;

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

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

14 (17) prescribe rates to be charged for services provided by
15 the Alaska Railroad;

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

18 (19) enter into contracts and leases with connecting carri-
19 ers and shippers, and other persons concerning the services,
20 activities, operations, properties, and facilities of the railroad.
21 Including contracts leases and other agreements that contain
22 provisions to preserve and expand the railroad's traffic base;

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

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

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

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

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

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

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

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

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

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

1 (30) cancel bonds purchased under (21) of this section;

2 (31) adopt rules having the force of law that require
3 designated classes of proprietary information and communications to be
4 held confidential;

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

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

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

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

26 Sec. 42.40.320. USE OF CORPORATION ASSETS. (a) The corporation
27 shall apply all money, property, other assets, and credit of the
28 corporation toward activities authorized by this chapter. The corpo-
29 ration may not issue shares of stock, pay dividends, make private

1 distributions of assets, make loans to board members or employees, or
2 engage in business for private benefit. The use of money, property,
3 other assets, or credit of the corporation for purposes not authorized
4 by law by persons having the possession or control of it is prohibi-
5 ted.

6 ARTICLE 5. RAIL PROPERTIES.

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

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

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

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

20 Sec. 42.40.420. CLASSIFICATION, ACQUISITION, AND USE OF STATE
21 LAND FOR RAILROAD PURPOSES. (a) The board by rule may identify and
22 request conveyance of land owned by or subject to selection by the
23 state, including tide and submerged land and land not adjacent to a
24 railroad corridor, as necessary or useful for present, future or
25 intended railroad purposes. The request must include a statement of
26 and justification for the present, future or intended railroad use.
27 Upon submission of a request for classification and conveyance to the
28 commissioner of natural resources, the commissioner shall temporarily
29 classify and reserve the land identified in the request for railroad

1 purposes and shall temporarily vacate a classification allowing dis-
2 posal or lease of that land under laws or programs of the state. A
3 temporary classification and vacation is subject to valid existing
4 rights and remains in effect for 180 days.

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (b) The corporation, as an agency of the state, may acquire in
29 its own name from the United States under 50 App U.S.C. 1622 et seq

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

7 ARTICLE 6. FINANCIAL PROVISIONS.

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

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

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

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

1 proceeding; the purchase of insurance and its policy limits are dis-
2 cretionary with the board and insurance is not considered to be com-
3 pensation to the insured individual.

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

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

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

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

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

28 (f) The corporation may defend and indemnify a current or former
29 employee, agent, or board member of the corporation and their

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

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

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

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

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

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

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

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

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

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

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

27 (2) covenant against pledging all or part of its revenue,
28 or aga'nst permitting or suffering a lien on its revenue or property;
29

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

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

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

9 (6) covenant as to the issuance of additional bonds or
10 notes, or limitations on the issuance of additional bonds or notes,
11 and the incurring of other debts;

12 (7) covenant as to the payment of the principal of or
13 interest on the bonds or notes, the sources and methods of payment,
14 the rank or priority of the bonds or notes with respect to a lien or
15 security, or the acceleration of the maturity of the bonds or notes;

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

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

20 (10) covenant as to the redemption of bonds or notes and
21 privileges of their exchange for other bonds or notes of the corpo-
22 ration;

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

28 (12) establish the procedure by which the terms of a con-
29 tract or covenant with or for the benefit of the holders of bonds or

1 notes may be amended or abrogated, the amount of bonds or notes the
2 holders of which must consent to amendment or abrogation, and the
3 manner in which the consent may be given;

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

7 (14) vest in a trustee or trustees inside or outside the
8 state property, rights, powers and duties in trust as the corporation
9 may determine that may include any or all of the rights, powers and
10 duties of a trustee appointed by the holders of bonds or notes of the
11 corporation, and to limit or abrogate the rights of the holders of the
12 bonds or notes of the corporation to appoint a trustee under this
13 chapter or limit the rights, powers and duties of the trustee;

14 (15) pay the costs or expenses incident to the enforcement
15 of the bonds or notes, of the provisions of the resolution, or of a
16 covenant or agreement of the corporation with the holders of its bonds
17 or notes;

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

27 (17) appoint and provide for the duties and obligations of a
28 paying agent or other fiduciary inside or outside the state;
29

1 (18) limit the rights of the holders of bonds or notes of
2 the corporation to enforce a pledge or covenant securing the bonds or
3 notes; and

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

10 Sec. 42.40.580. INTERIM RECEIPTS, TEMPORARY BONDS, AND TEMPORARY
11 BOND ANTICIPATION NOTES. Before the preparation of definitive bonds
12 or bond anticipation notes, the corporation may issue interim receipts
13 or temporary bonds or bond anticipation notes, with or without cou-
14 pons, exchangeable for bonds or bond anticipation notes when these
15 definitive bonds or bond anticipation notes have been executed and are
16 available for delivery.

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

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

26 Sec. 42.40.610. VALIDITY OF PLEDGE. (a) The pledge of assets
27 or revenue of the corporation to the payment of the principal or
28 interest on bonds or notes of the corporation is valid and binding
29 from the time the pledge is made and the assets or revenue are