

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 00 / 2

3122 HT AK RAILROAD / BILL DRAFTS (FILE 1) - (FILE 2)

1 bond anticipation note proceeds are not available, from other money or  
2 assets of the corporation.

3 Sec. 42.40.640. AGREEMENTS WITH HOLDERS. The corporation may by  
4 provisions in a resolution authorizing or relating to the issuance of  
5 bonds or bond anticipation notes enter into the following agreements  
6 with the holders of the instruments:

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

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

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

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

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

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

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

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

29 (9) covenant against extending the time for the payment of

1 bonds or notes, or interest on the bonds or notes;

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

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

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

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

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

25 (15) to pay the costs or expenses incident to the enforce-  
26 ment of the bonds or notes, of the provisions of the resolution, or of  
27 a covenant or agreement of the corporation with the holders of its  
28 bonds or notes;

29 (16) agree with a corporation trustee, that may be a trust

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

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

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

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

19 Sec. 42.40.650. INTERIM RECEIPTS, TEMPORARY BONDS, AND TEMPORARY  
20 BOND ANTICIPATION NOTES. Before the preparation of definitive bonds  
21 or bond anticipation notes, the corporation may issue interim receipts  
22 or temporary bonds or bond anticipation notes, with or without cou-  
23 pons, exchangeable for bonds or bond anticipation notes when those  
24 definitive bonds or bond anticipation notes have been executed and are  
25 available for delivery.

26 Sec. 42.40.660. REFUNDING BONDS. (a) The corporation may  
27 provide for the issuance of refunding bonds for the purpose of refund-  
28 ing bonds then outstanding that have been issued under this chapter,  
29 including the payment of a redemption premium on them and interest

1 that accrues to the date of redemption of the bonds. Refunding bonds  
2 shall be issued in accordance with provisions of this chapter that  
3 relate to the issuance of bonds to the extent those provisions are  
4 appropriate.

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

20 Sec. 42.40.670. INDEPENDENT FINANCIAL ADVISOR. In negotiating  
21 the private or public sale of bonds or bond anticipation notes to an  
22 underwriter the board shall retain a financial advisor who is  
23 independent from the underwriter.

24 Sec. 42.40.680. VALIDITY OF SIGNATURES. If an officer of the  
25 corporation whose signature or a facsimile of whose signature appears  
26 on bonds, notes, or coupons attached to them ceases to be an officer  
27 before the delivery of the bond, note, or coupon, the signature or  
28 facsimile is valid the same as if the person had remained in office  
29 until delivery.

1           Sec. 42.40.690. VALIDITY OF PLEDGE. (a) The pledge of assets  
2 or revenue of the corporation to the payment of the principal or  
3 interest on bonds or notes of the corporation is valid and binding  
4 from the time the pledge is made and the assets or revenue are immedi-  
5 ately subject to the lien of the pledge without physical delivery or  
6 further act. The lien of a pledge is valid and binding against all  
7 parties having claims of any kind against the corporation, irrespec-  
8 tive of whether those parties have notice of the lien of the pledge.

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

13           Sec. 42.40.700. REMEDIES. A holder of bonds or notes issued  
14 under this chapter or of coupons attached to them, and a trustee under  
15 a trust agreement or resolution authorizing the issuance of the bonds  
16 or notes, except as restricted by a trust agreement or resolution,  
17 either at law or in equity, may

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

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

23           Sec. 42.40.710. CREDIT OF STATE NOT PLEDGED. (a) The state and  
24 its political subdivisions are not liable for the debts of the corpo-  
25 ration. Bonds and notes issued under this chapter are payable solely  
26 from the revenue or assets of the corporation and do not constitute a

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

29           (2) pledge of the faith and credit of the state or of a

1 political subdivision of the state.

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

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

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

10 Sec. 42.40.720. LIMITATION ON PERSONAL LIABILITY. A board  
11 member or employee of the corporation is not subject to personal  
12 liability or accountability because of the execution or issuance of  
13 bonds or notes.

14 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

15 Sec. 42.40.750 CORPORATION EMPLOYEES. (a) Employees of the  
16 Alaska Railroad are employees of the corporation and not of the state.  
17 The provisions of AS 39 do not apply to employees of the corporation.

18 Sec. 42.40.760. COLLECTIVE BARGAINING RIGHTS. The provisions of  
19 AS 23.40 (Public Employee Relations Act) do not apply to the corpo-  
20 ration or to its employees. However, employees that are not executive  
21 officers may organize and form, join, or assist an organization to  
22 engage in collective bargaining with respect to wages, hours and other  
23 terms and conditions of employment.

24 Sec. 42.40.770. AGREEMENT. (a) At the request of the board or  
25 corporation employee organization, the Department of Administration  
26 shall participate in negotiations between the corporation and the  
27 employee organization.

28 (b) An agreement executed between the corporation and an em-  
29 ployee organization shall provide for a grievance procedure in which

1 the final step in the procedure is binding arbitration. The agreement  
2 shall define "grievance" for purposes of this section.

3 Sec. 42.40.780. RAILROAD EMPLOYEES LABOR RELATIONS AGENCY. (a)  
4 There is established a railroad employees labor relations agency that  
5 consists of three members appointed by the governor. One member shall  
6 be a member of the state personnel board. Members serve at the plea-  
7 sure of the governor.

8 (b) The railroad labor relations agency shall perform the func-  
9 tions described in AS 23.40.090 - 23.40.190 and carry out the provi-  
10 sions of AS 42.40.750 - 42.40.810.

11 (c) Members of the railroad employees labor relations agency  
12 receive no compensation for their services, but are entitled to per  
13 dien and travel expenses authorized for boards and commissions.

14 Sec. 42.40.790. STRIKES. (a) Employees may engage in a strike  
15 if a majority of the employees in a collective bargaining unit vote by  
16 secret ballot to do so.

17 (b) Notwithstanding the provisions of (a) of this section, the  
18 employees and the corporation may agree in writing to submit a dispute  
19 arising from interpretation or application of a collective bargaining  
20 agreement to arbitration.

21 Sec. 42.40.800. POLITICAL ACTIVITIES. (a) Money, assets, or  
22 property of the corporation may not be used for political activity.  
23 However, board members and employees may communicate with and appear  
24 before committees of Congress, the state legislature, and municipal  
25 governing bodies in connection with matters directly affecting the  
26 corporation.

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

1 action to enforce this section may be brought by any person.

2 Sec. 42.40.810. PROHIBITED ACTS. (a) The corporation or an  
3 employee may not directly or indirectly:

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

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

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

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

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

18 (C) sexual matters,

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

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

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

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

1 activity.

2 ARTICLE 9. GENERAL PROVISIONS.

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

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

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

15 (d) The corporation is not subject to the provisions of AS 44.-  
16 80.010, regarding the state as a party to an action.

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

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

1 the bonds and notes or interest on them, are exempt from taxation  
2 except for inheritance, transfer, and estate taxes.

3 (c) This section does not affect or limit an exemption from  
4 license fees, property taxes, or excise, income or other taxes, pro-  
5 vided 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 Sec. 42.40.920. APPLICATION OF EXISTING LAWS. (a) The corpo-  
9 ration is not subject to the jurisdiction of the Alaska Transportation  
10 Commission.

11 (b) The following laws do not apply to the operations of the  
12 corporation:

- 13 (1) AS 19;
- 14 (2) AS 30.15;
- 15 (3) AS 35;
- 16 (4) AS 37.05;
- 17 (5) AS 37.07;
- 18 (6) AS 37.10.010 - 37.10.060;
- 19 (7) AS 37.10.085;
- 20 (8) AS 37.20;
- 21 (9) AS 37.25;
- 22 (10) AS 38;
- 23 (11) AS 44.62.040 - 44.62.320.

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

29 Sec. 42.40.940. REVERSION OF ASSETS. If the corporation ceases

1 to exist, for whatever reason, its assets revert to the state.

2 Sec. 42.40.980. DEFINITIONS. In this chapter unless the context  
3 otherwise requires,

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

6 (2) "collective bargaining" means negotiating with an  
7 employees organization and representing employees on matters pertain-  
8 ing to conditions of employment;

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

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

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

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

28 (7) "land" means any interest in real property, including  
29 tide and submerged land.

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

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

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

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

12           (a) The powers of the corporation are vested in the board of  
13 directors. The board consists of [THE COMMISSIONER OF COMMERCE AND  
14 ECONOMIC DEVELOPMENT,] the chief executive officer of the corporation,  
15 and eight [SEVEN] members appointed by the governor. The eight  
16 [SEVEN] appointed members must be registered voters in the state  
17 except as provided in (b) and (c) of this section. No more than two  
18 appointed members may be from any one of the four judicial districts  
19 in the state. Two of the appointed members must have at least five  
20 years experience as owners or managers of a business in the state.  
21 Except for [THE COMMISSIONER,] the chief executive officer [,] and the  
22 member appointed under (d) of this section, a member may not be a  
23 state officer or employee.

24 \* Sec. 5. AS 42.40.020(e) is amended to read:

25           (e) Except for [THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVEL-  
26 OPMENT AND] the chief executive officer of the corporation, the mem-  
27 bers of the board shall be confirmed by a majority of the members of  
28 each house of the legislature in joint session. A member appointed by  
29 the governor has the full powers and responsibilities of a confirmed

1 board member until the member is rejected by the legislature.

2 \* Sec. 6. AS 42.40.030 is amended to read:

3 Sec. 42.40.030. TERM OF OFFICE; REMOVAL. (a) Except for [THE  
4 COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT AND] the chief  
5 executive officer of the corporation, members of the board serve for  
6 staggered terms of five years each [AT THE PLEASURE OF THE GOVERNOR].

7 \* Sec. 7. AS 42.40.030 is amended by adding a new subsection to read:

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

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

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

14 (3) conviction of a felony.

15 \* Sec. 8. AS 42.40.180 is repealed and reenacted to read:

16 Sec. 42.40.180. RULES. (a) The board shall establish a proce-  
17 dure for adopting, amending, and repealing rules to carry out its  
18 functions and the purposes of this chapter, including a procedure for  
19 the adoption or change of rules on an emergency basis when essential  
20 to continue or to reinstate the orderly operation of the corporation's  
21 facilities or programs.

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

25 \* Sec. 9. SPECIAL REPORT. The governor shall contract with a private  
26 consultant for the preparation of a report on the long-term operations of  
27 the Alaska Railroad that are in the best interest of the state. The report  
28 shall be submitted to the governor and the legislature by January 1, 1988.  
29 It shall contain specific recommendations on operational alternatives and

1 the transfer of all or part of the railroad operation to the private sec-  
2 tor.

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

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

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

20 (b) Within 180 days after the first meeting of the board of directors  
21 of the Alaska Railroad Corporation, the board and representatives of  
22 employee bargaining units shall establish procedures for the renegotiation  
23 of bargaining agreements adopted under (a) of this section.

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

25 \* Sec. 13. Sections 3 - 8 and 12 of this Act take effect on the effec-  
26 tive date of an amendment to the Constitution of the State of Alaska relat-  
27 ing to the Alaska Railroad.

28 \* Sec. 14. Sections 1, 2, and 9 - 11 of this Act take effect imme-  
29 diately in accordance with AS 01.10.070(c).

## ERRATA

Page 8, line 10, delete entire number (11) and renumber accordingly.

Page 9, line 4, should be AS 42.40.160 instead of AS 42.40.140.

Page 17, line 1 and line 8, add the following:

After "REPORT." insert "(a)" and on line 8 add a new (b) to read: "(b) Every five years the annual report shall include an analysis of potential sales arrangements with private enterprise. The analysis shall include documentation of at least three corporation initiated orders to sell the corporation to private enterprise."

Original sponsors: Kerttula, Faiks,  
Halford, et al

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 352 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Alaska Railroad Corporation  
7 to operate the Alaska Railroad with a board of nine  
8 directors responsible for management of the corpora-  
9 tion; requiring the board to appoint a chief execu-  
10 tive officer to manage the daily affairs and opera-  
11 tions of the corporation; authorizing the board to  
12 adopt rules to carry out its functions; authorizing  
13 the corporation to issue bonds and notes; authorizing  
14 the corporation to own and manage all property ac-  
15 quired by the corporation or transferred to the state  
16 under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer  
17 Act of 1982); authorizing the corporation to exercise  
18 eminent domain; exempting the corporation from AS 19,  
19 AS 23.40.070 - 23.40.260, AS 30.15, AS 35, AS 37.05,  
20 AS 37.07, AS 37.10.010 - 37.10.060, 37.10.085,  
21 AS 37.20, AS 37.25, AS 38, AS 39, and AS 44.62.040 -  
22 44.62.320; and providing for an effective date."

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

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

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

27 (A) provide safe, economical, and efficient transportation  
28 to residents, businesses, visitors, and military installations in the  
29 state;

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

3 (C) develop and implement plans for a transportation net-  
4 work;

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

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

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

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

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

15 (1) create a viable economic entity with the powers and duties  
16 necessary to operate and manage the Alaska Railroad pending eventual trans-  
17 fer of the railroad to the private sector for its ownership or operation or  
18 both consistent with 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of  
19 1982);

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

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

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

29 (B) operate the railroad as a common carrier subject to the

1 jurisdiction of the United States Interstate Commerce Commission  
2 consistent with 45 U.S.C. 1207;

3 (C) have the ability to raise capital by issuing obliga-  
4 tions exempt from federal and state taxation and applying for federal  
5 money to which the state may be entitled or that may be available;

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

8 (E) provide the best possible combination of types and  
9 levels of safe, efficient, and economical transportation to meet the  
10 overall needs of the state, supported when necessary by state invest-  
11 ment;

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

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

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

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

19 CHAPTER 40. ALASKA RAILROAD CORPORATION.

20 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

21 Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is  
22 established the Alaska Railroad Corporation. The corporation is a  
23 public corporation and is an instrumentality of the state within the  
24 Department of Commerce and Economic Development. The corporation has  
25 a legal existence independent of and separate from the state. The  
26 exercise by the corporation of the powers provided in this chapter is  
27 considered an essential government function of the state.

28 Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the  
29 corporation are vested in the board of directors. The board consists

1 of the commissioner of commerce and economic development, the chief  
2 executive officer of the corporation, and seven members appointed by  
3 the governor. The seven appointed members must be registered voters  
4 in the state except as provided in (b) and (c) of this section.  
5 Except for the member appointed under (d) of this section, no more  
6 than two appointed members may be from any one of the four judicial  
7 districts in the state. Two of the appointed members must have at  
8 least five years experience as owners or managers of a business in the  
9 state. Except for the commissioner, the chief executive officer, and  
10 the member appointed under (d) of this section, a member may not be a  
11 state officer or employee.

12 (b) One member of the board shall be a person who has at least  
13 10 years of experience in railroad management. A person who is not a  
14 resident of the state may be appointed under this subsection.

15 (c) One member of the board shall be or have been an executive  
16 official of a United States railroad and shall be selected in accor-  
17 dance with any requirements imposed under 49 U.S.C. (Interstate Com-  
18 merce Act). A person who is not a resident of the state may be ap-  
19 pointed under this subsection.

20 (d) One member shall be an employee who is a member of a bar-  
21 gaining unit representing employees of the corporation.

22 (e) Except for the commissioner of commerce and economic devel-  
23 opment and the chief executive officer of the corporation, the members  
24 of the board shall be confirmed by a majority of the members of each  
25 house of the legislature in joint session. A member appointed by the  
26 governor has the full powers and responsibilities of a confirmed board  
27 member until the member is rejected by the legislature.

28 Sec. 42.40.030. TERM OF OFFICE. Except for the commissioner of  
29 commerce and economic development and the chief executive officer of

1 the corporation, members of the board serve for staggered terms of  
2 five years each at the pleasure of the governor.

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

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

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

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

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

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

25 (b) The board shall appoint a secretary and prescribe the duties  
26 of the secretary.

27 ARTICLE 2. MANAGEMENT.

28 Sec. 42.40.100. MANAGEMENT BY THE BOARD. The board is responsi-  
29 ble for the management of the corporation but shall delegate certain

1 powers and duties to the chief executive officer in accordance with  
2 AS 42.40.120. In managing the corporation the board shall

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

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

8 (3) generally manage the corporation on a self-sustaining  
9 basis;

10 (4) apply to the legislature for an appropriation to be  
11 used to provide a particular service that is not otherwise self-  
12 sustaining if a subsidy is required to maintain that service;

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

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

18 (7) review all private and state land disposal proposals to  
19 aid in planning for future development or expansion of transportation  
20 services;

21 (8) ensure that the accounting and procurement procedures  
22 of the corporation meet accepted railroad industry standards;

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

26 Sec. 42.40.110. EXECUTIVE OFFICERS. (a) The board shall ap-  
27 point the chief executive officer of the corporation who serves at the  
28 pleasure of the board. The board shall fix compensation for the chief  
29 executive officer.

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

5 Sec. 42.40.120. DELEGATION. (a) The board shall by rule dele-  
 6 gate to the chief executive officer powers and duties necessary or  
 7 appropriate for the management of the daily affairs and operations of  
 8 the corporation. The board may by rule require the exercise of a  
 9 delegated power or duty to be subject to board approval.

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

13 (1) leasing, granting easements in, issuing permits for the  
 14 use of, or conveying other interests in property that do not consti-  
 15 tute a transfer of the corporation's entire interest in land;

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

18 (3) making routine changes in service levels;

19 (4) establishing procurement and accounting procedures for  
 20 the corporation; and

21 (5) performing procurement activities.

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

24 (1) issuing notes, debentures, and bonds;

25 (2) mortgaging or pledging corporation assets;

26 (3) donating property or other assets belonging to the  
 27 corporation;

28 (4) acting as a surety or guarantor;

29 (5) adopting a long-range capital improvement and program

1 plan;

2 (6) adopting annual reports;

3 (7) effecting general comprehensive increases and decreases  
4 in rates;

5 (8) expanding or reducing services in a major way;

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

9 (10) selecting independent auditors and accountants;

10 (11) exercising the power of eminent domain;

11 (12) entering into collective bargaining agreements; and

12 (13) adopting annual budgets;

13 (14) beginning a capital project with an estimated comple-  
14 tion cost of more than \$500,000 or an estimated completion time of  
15 more than one year.

16 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

17 Sec. 42.40.150. MEETINGS OF THE BOARD. (a) The chairman of the  
18 board shall call meetings of the board at least once every three  
19 months and may call other meetings of the board as necessary. The  
20 chairman shall preside at meetings.

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

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

25 Sec. 42.40.160. QUORUM AND VOTING. (a) Five voting members of  
26 the board constitutes a quorum for the transaction of business.

27 (b) Five affirmative votes are required for board action. The  
28 board shall provide by rule for the manner of voting, except that the  
29 board may not provide for voting by proxy. The rules may provide for

1 voting and conferring by telecommunication devices.

2       Sec. 42.40.170. EXECUTIVE SESSIONS. (a) The question of hold-  
3 ing an executive session shall be determined in accordance with  
4 AS 42.40.140. A subject may not be considered at an executive session  
5 unless it is mentioned in the motion calling for the executive session  
6 or is auxiliary to a subject mentioned. An action may not be taken at  
7 an executive session.

8       (b) Only the following subjects may be discussed in an executive  
9 session:

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

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

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

17           (4) matters pertaining to personnel;

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

19           (6) land acquisition or disposal; and

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

25       Sec. 42.40.180. RULES. (a) The board shall adopt rules to  
26 carry out its functions and the purposes of this chapter, including  
27 rules to safeguard property owned, managed, or transported by the  
28 corporation and to protect employees and persons using the corpora-  
29 tion's property or services. At least 15 days before the adoption,

1 amendment, or repeal of a rule, the board shall give public notice of  
2 the proposed action by publishing a notice in at least three news-  
3 papers of general circulation in the state and by mailing a copy of  
4 the notice to each person who has requested notice of proposed changes  
5 to rules. The notice must state the time, place, and nature of the  
6 proceedings and must contain a summary of the subject of the proposed  
7 change.

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

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

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

23 Sec. 42.40.190. EMERGENCY RULES. (a) The board shall establish  
24 in the bylaws of the corporation a procedure for the adoption, amend-  
25 ment, or repeal of a rule on an emergency basis. An emergency change  
26 may be made only when necessary for the orderly operation of the  
27 corporation's facilities or programs. The requirements of AS 42.-  
28 40.180 do not apply to actions taken under this section. However,  
29 within 10 days after the adoption, amendment, or repeal of a rule on

1 an emergency basis the board shall give notice of its action that  
2 substantially complies with the notice requirements of AS 42.40.-  
3 180(a).

4 (b) An action taken under this section remains in effect for not  
5 more than 120 days. To prevent an emergency change from lapsing the  
6 board may make the same change under AS 42.40.180 before the end of  
7 the 120-day period.

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

11 (b) An interested person may challenge a rule adopted, amended,  
12 or repealed by the board by bringing an action in the superior court.  
13 In addition to other grounds, a court may declare a change invalid

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

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

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

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

27 (b) The corporation may by rule designate and withhold public  
28 disclosure of matters of a privileged or proprietary nature. Those  
29 matters include personnel records, communications with and work

1 product of legal counsel, and, consistent with the standards      prac-  
 2 tices of the United States Interstate Commerce Commission for the  
 3 protection of these matters, other information including proprietary  
 4 information associated with specific shippers, divisions and contract  
 5 rate agreements.

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

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

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

28        (d) Within 120 days of the first meeting of the board, the board  
 29 shall adopt and may subsequently amend rules implementing this

1 section, providing additional conflict of interest and ethical rules  
2 it considers appropriate, and providing for the removal by the board  
3 of a board member or executive officer who intentionally violates a  
4 prohibition contained in this section.

5 (e) For purposes of this section

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

8 (2) "immediate family" means

9 (A) spouse;

10 (B) dependent parent, parent-in-law, child, son-in-  
11 law, daughter-in-law, sibling, uncle, aunt, niece, or nephew,  
12 residing in the household of the board member or executive  
13 officer.

14 ARTICLE 4. POWERS AND DUTIES.

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

17 (1) adopt a seal;

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

19 (3) sue and be sued;

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

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

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

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

1 property in the name of the corporation;

2 (8) hold, maintain, use, operate, improve, lease, exchange,  
3 or encumber land or personal property and exchange, donate, convey,  
4 alienate, or otherwise dispose of personal property, subject to other  
5 provisions of this chapter;

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

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

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

20 (12) maintain offices and facilities at places it desig-  
21 nates;

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

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

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

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

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

12 (18) hire and discharge railroad personnel and determine  
13 benefits and other terms and conditions of employment, in accordance  
14 with 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982);

15 (19) assume all rights and liabilities of the Alaska Rail-  
16 road in accordance with 45 U.S.C. 1201 - 1214 (Alaska Railroad Trans-  
17 fer Act of 1982) and the closing report of July 14, 1983, as amended,  
18 prepared and submitted to Congress and the Legislature under 45 U.S.C.  
19 1204(a);

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

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

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

29 (23) cancel bonds of the corporation purchased by the

1 corporation;

2 (24) secure the payment of its obligations by pledge, mort-  
3 gage, or other lien on its contracts, revenues, income, or property;

4 (25) 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 (26) borrow money, including the amounts necessary to estab-  
9 lish reasonable reserves, and pay financing charges interest on  
10 the obligations for a reasonable period after which the corporation  
11 estimates other money will be available to pay the interest, consul-  
12 tant, advisory, and legal fees, and other expenses necessary or inci-  
13 dent to borrowing;

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

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

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

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

1           Sec. 42.40.260. ANNUAL REPORT. Within 90 days following the end  
 2 of the fiscal year of the Alaska Railroad the board shall adopt and  
 3 distribute to the governor and to the legislature a report describing  
 4 the operations and financial condition of the corporation during the  
 5 preceding fiscal year. The report shall itemize the cost of providing  
 6 each category of service offered by the railroad and the income  
 7 generated by each category consistent with the protection of privi-  
 8 leged and proprietary information under AS 42.40.220.

9           Sec. 42.40.270. AUDITS. (a) The board shall have the financial  
 10 records of the corporation audited annually by an independent certi-  
 11 fied public accountant experienced in railroad accounting. The board  
 12 shall have an annual performance audit conducted by a recognized  
 13 railroad management expert to assure that the railroad is being  
 14 managed and operated effectively and efficiently in accordance with  
 15 the requirements of this chapter. Auditors shall use the standards of  
 16 the United States Interstate Commerce Commission for class I railroad  
 17 carriers.

18           (b) The corporation shall make all of its financial records  
 19 available to an auditor appointed by the governor and to the legisla-  
 20 tive audit division for examination. Disclosure to the public by the  
 21 auditor or legislative audit division of this information is subject  
 22 to AS 42.40.220 and rules implementing that section.

23           Sec. 42.40.280. STATE OVERSIGHT REPORTS. (a) The board shall  
 24 provide a state oversight report to the governor and the legislature  
 25 before undertaking

26           (1) expansion, reduction, or diversification of services  
 27 provided by the railroad upon the date of transfer or as provided  
 28 under this chapter that the board determines would represent a signif-  
 29 icant and permanent change in the level and nature of services pro-

1 vided;

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

5 (3) the issuance of securities, notes, bonds or contracts  
6 with a term in excess of one year and in an amount exceeding  
7 \$5,000,000;

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

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

12 (1) its financial impact on the corporation;

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

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

17 (4) whether and when the undertaking is expected to be  
18 self-sustaining financially.

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

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

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

29 Sec. 42.40.300. USE OF CORPORATION ASSETS. The corporation

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

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

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

26                   ARTICLE 5. CORPORATION PROPERTY.

27       Sec. 42.40.350. LAND. (a) The corporation shall receive from  
28 the United States and, in its own name, take title to all rail proper-  
29 ty transferred under 45 U.S.C. 1201 - 1214 (Alaska Transfer Act of

1 1982). All land that is transferred or acquired by the corporation is  
2 designated as follows:

3 (1) railroad rights-of-way are railroad utility corridors;

4 (2) land outside railroad utility corridors is rail land.

5 (b) Railroad utility corridors shall be of a width at least 100  
6 feet on both sides of the centerline of the extended main or branch  
7 line, unless the corporation does not own or control sufficient land  
8 to allow a corridor width of 100 feet on both sides of the centerline  
9 of the extended or main branch line track. Railroad utility corridors  
10 may be surveyed by the metes and bounds method. The corporation may  
11 not convey title to land within a utility corridor. However, the  
12 corporation may lease, grant easements in or permits for, or otherwise  
13 authorize use of portions of a utility corridor for transportation,  
14 communication, and transmission purposes and support functions associ-  
15 ated with those purposes, and for other commercial uses authorized  
16 under this chapter if the use does not restrict other parallel uses of  
17 the utility corridor.

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

22 (d) A lease by the corporation to a party other than the state  
23 shall be made at fair market value as determined by an appraisal or by  
24 competitive bid.

25 Sec. 42.40.360. REQUEST FOR LAND. (a) The board may nominate  
26 federal land it determines may be useful for present or future rail-  
27 road purposes for selection under the Alaska Statehood Act (P.L. 85  
28 508, 72 Stat. 339), as amended, and request the commissioner of  
29 natural resources to select the land for the state through the federal

1 land selection process.

2 (b) The board by rule may identify and request the commissioner  
3 of natural resources to convey land necessary or useful for present,  
4 future, or intended railroad purposes owned by or tentatively approved  
5 for transfer to the state, including land not contiguous with a rail-  
6 road utility corridor or rail land. The request must include a state-  
7 ment of and justification for the present, future or intended railroad  
8 use. Upon receipt of a request, the commissioner shall temporarily  
9 reserve the land identified in the request for railroad purposes and  
10 defer disposal or lease of that land under other laws to a party other  
11 than the corporation. The temporary reservation of land is subject to  
12 valid existing rights and remains in effect for 180 days.

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

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

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

21 (3) approve in part and deny in part the request.

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

25 (c) In the absence of a reservation to the contrary, a convey-  
26 ance of land under this section vests in the corporation ownership,  
27 control of the surface material and mineral estate, including the  
28 exclusive right to extract or use timber and other construction mate-  
29 rials, sand, gravel, rock, and the right to tunnel, ditch, recontour,

1 excavate, or otherwise use the land for railroad, transportation,  
2 transmission, communication, and related purposes.

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

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

16 Sec. 42.40.390. LAND USE RULES. The board may adopt exclusive  
17 rules governing land use by parties having interests in or permits for  
18 land owned or managed by the corporation. The power conferred by this  
19 section is exercised for the common health, safety, and welfare of the  
20 public and to the extent constitutionally permissible, may not be  
21 limited by the terms and conditions of leases, contracts, or other  
22 transactions.

23 Sec. 42.40.400. VACATION OF EASEMENTS. The corporation may  
24 vacate an easement acquired under this chapter by executing and filing  
25 a deed in the appropriate recording district. Upon filing the deed  
26 the state shall acquire the easement for use in conformity with 45  
27 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982).

28 Sec. 42.40.410. FEDERAL LAND. The corporation may submit appli-  
29 cations on its own behalf as an instrumentality of the state for

1 acquisition of federal land available under federal law that will  
2 enhance the operations of the corporation if it is available under a  
3 federal law other than the Alaska Statehood Act of 1958 (P.L. 85 -  
4 508, 72 Stat 339), as amended. The corporation may receive in its own  
5 name conveyances of all interests in federal land.

6 Sec. 42.40.420. MUNICIPAL USE OF RAILROAD LAND. Upon request  
7 the corporation may authorize use of railroad land for municipal  
8 purposes. Subject to AS 42.40.350(b), the corporation may authorize a  
9 municipality to establish a walkway or trail over a utility corridor.  
10 Before authorizing a use under this section the board shall require  
11 the municipality to execute an agreement in a form approved by the  
12 board to

13 (1) hold the corporation harmless from and indemnify the  
14 corporation for any liability and claims arising from any use autho-  
15 rized under this section including

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

18 (B) indemnifying the corporation for the amount of a  
19 judgment, including prejudgment and postjudgment interest, ren-  
20 dered against the corporation or for the amount of a settlement  
21 entered into by the corporation, and for all costs and attorney's  
22 fees incurred by the corporation in settling or defending the  
23 claim; and

24 (2) stop the use of railroad land upon request of the  
25 corporation if, as determined by the corporation, the use interferes  
26 with expansion, replacement of railroad facilities, creates a safety  
27 hazard, or interferes with railroad operations.

28 Sec. 42.40.430. ACQUISITION OF GOVERNMENT PROPERTY. (a) The  
29 corporation, as an instrumentality of the state, may acquire in its

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

8 (b) The corporation is an instrumentality and agency of the  
9 state for purposes of exchanging land with the United States, munic-  
10 ipalities, corporations including corporations formed under 43 U.S.C.  
11 1601 - 1628 (Alaska Native Claims Settlement Act), and individuals.

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

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

#### 24 ARTICLE 6. FINANCIAL PROVISIONS.

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

1           Sec. 42.40.510. FIDELITY BOND. The corporation shall obtain a  
2 fidelity bond in an amount determined by the board for board members  
3 and each executive officer responsible for accounts and finances. A  
4 bond must be in effect during the entire tenure in office of the  
5 bonded person.

6           Sec. 42.40.520. INSURANCE. Except as provided in AS 42.40.300-  
7 (b), the corporation shall protect its assets, services, and employees  
8 by purchasing insurance or providing for certain self-insurance re-  
9 tentions. The corporation shall also maintain casualty, property,  
10 business interruption, marine, boiler and machinery, pollution liabil-  
11 ity, and other insurance in amounts reasonably calculated to cover  
12 potential claims against the corporation or state for bodily injury,  
13 death or disability and property damage that may arise from or be  
14 related to corporation operations and activities.

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

19           Sec. 42.40.540. APPROPRIATIONS. The corporation may request,  
20 with the concurrence of the governor, a direct appropriation or grant  
21 from the legislature to assist in carrying out the provisions of this  
22 chapter.

23                           ARTICLE 7. BONDS AND NOTES.

24           Sec. 42.40.600. GENERAL PROVISIONS. (a) The corporation by  
25 resolution may issue bonds and notes to provide money to carry out its  
26 purposes.

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

29                   (1) be dated;

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

3 (3) be in a required denomination;

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

5 (5) carry conversion or registration provisions;

6 (6) have a required rank or priority;

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

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

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

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

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

18 Sec. 42.40.610. NEGOTIABLE INSTRUMENTS. Bonds and notes issued  
19 under this chapter and interest coupons attached to them are nego-  
20 tiable instruments under the laws of this state, subject only to  
21 applicable provisions for registration.

22 Sec. 42.40.620. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds  
23 and notes issued under this chapter are securities in which all public  
24 officers and public bodies of the state and its political subdivi-  
25 sions, all insurance companies, trust companies, banking associations,  
26 investment companies, executors, administrators, trustees and other  
27 fiduciaries may properly and legally invest funds, including capital  
28 in their control or belonging to them. These bonds and notes may be  
29 deposited with a state or municipal officer of an agency or political

1 subdivision of the state for any purpose for which the deposit of  
2 bonds or notes of the state is authorized by law.

3 Sec. 42.40.630. PAYMENT OF BONDS AND NOTES. The principal and  
4 interest on bonds or notes of the corporation is payable from corpora-  
5 tion money or assets. Bonds or notes may be additionally secured by a  
6 pledge of a grant or contribution from the federal government or a  
7 corporation, association, institution or person, or a pledge of money,  
8 income, or revenue of the corporation from any source.

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

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

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

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

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

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

3 (E) the vesting in the trustee of rights and remedies  
4 exercisable by the trustee for the protection of the holders of  
5 bonds of the corporation and not otherwise in violation of law  
6 and the restriction of the rights of an individual holder of  
7 bonds of the corporation;

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

11 (3) provide for any other matters of like or different  
12 character that in any way affect the security or protection of the  
13 bonds.

14 Sec. 42.40.650. INDEPENDENT FINANCIAL ADVISOR. In negotiating  
15 the private or public sale of bonds or notes to an underwriter, the  
16 board shall retain a financial advisor who is independent from the  
17 underwriter.

18 Sec. 42.40.660. VALIDITY OF SIGNATURES. If an officer of the  
19 corporation whose signature or a facsimile of whose signature appears  
20 on bonds, notes, or coupons attached to them ceases to be an officer  
21 before the delivery of the bond, note, or coupon, the signature or  
22 facsimile is valid the same as if the person had remained in office  
23 until delivery.

24 Sec. 42.40.670. VALIDITY OF PLEDGE. (a) The pledge of assets  
25 or revenue of the corporation to the payment of the principal or  
26 interest on bonds or notes of the corporation is valid and binding  
27 from the time the pledge is made and the assets or revenue are immedi-  
28 ately subject to the lien of the pledge without physical delivery or  
29 further act. The lien of a pledge is valid and binding against all

1 parties having claims of any kind against the corporation, irrespec-  
2 tive of whether those parties have notice of the lien of the pledge.

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

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

22 Sec. 42.40.680. REMEDIES. A holder of bonds or notes issued  
23 under this chapter or of coupons attached to them, and a trustee under  
24 a trust agreement or resolution authorizing the issuance of the bonds  
25 or notes, except as restricted by a trust agreement or resolution,  
26 either at law or in equity, may

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

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

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

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

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

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

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

16 (2) neither the faith and credit nor the taxing power of  
17 the state or of a political subdivision of the state is pledged to the  
18 payment of it.

19 Sec. 42.40.700. LIMITATION ON PERSONAL LIABILITY. A board  
20 member or employee of the corporation is not subject to personal  
21 liability or accountability because of the execution or issuance of  
22 bonds or notes.

23 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

24 Sec. 42.40.710. CORPORATION EMPLOYEES. Employees of the Alaska  
25 Railroad are employees of the corporation and not of the state. The  
26 provisions of AS 39 do not apply to employees of the corporation.

27 Sec. 42.40.720. COLLECTIVE BARGAINING RIGHTS. The provisions of  
28 AS 23.40.070 - 23.40.260 do not apply to the corporation or to its  
29 employees. However, employees who are not executive officers may

1 organize and form, join, or assist an organization to engage in col-  
2 lective bargaining through representatives of their own choosing and  
3 engage in concerted activities for the purpose of collective bargain-  
4 ing or other mutual aid or protection.

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

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

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

15 Sec. 42.40.740. COLLECTIVE BARGAINING UNIT. The railroad la-  
16 relations agency shall decide in each case, in order to ensure employ-  
17 ees the fullest freedom in exercising the rights guaranteed by AS 42.-  
18 40.710 - 42.40.890 the unit appropriate for the purposes of collective  
19 bargaining, based on such factors as community of interest, wages,  
20 hours and other working conditions of the employees involved, the  
21 history of collective bargaining, and the desires of the employees.  
22 Bargaining units shall be as large as is reasonable, and unnecessary  
23 fragmenting shall be avoided.

24 Sec. 42.40.750. REPRESENTATIVES AND ELECTIONS. (a) The rail-  
25 road labor relations agency shall investigate a petition if it is  
26 submitted in a manner prescribed by the railroad labor relations  
27 agency by

28 (1) an employee or group of employees or an organization  
29 acting on their behalf alleging that 30 percent of the employees of a

1 proposed bargaining unit

2 (A) want to be represented for collective bargaining  
3 by a labor or employee organization as exclusive representative;  
4 or

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

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

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

23 (c) The railroad labor relations agency shall determine who is  
24 eligible to vote in an election held under this section and shall  
25 establish rules governing the election. In an election in which none  
26 of the choices on the ballot receives a majority of the votes cast, a  
27 runoff election shall be conducted, the ballot providing for selection  
28 between the two choices receiving the largest number of valid votes  
29 cast in the election. If an organization receives the majority of the

1 votes case in the election it shall be certified by the railroad labor  
2 relations agency as exclusive representative of all the employees in  
3 the bargaining unit. An election may not be held in a bargaining unit  
4 or in a subdivision of a bargaining unit if a valid election has been  
5 held within the preceding 12 months.

6 (d) Nothing in this chapter prohibits recognition of an orga-  
7 nization as the exclusive representative by the corporation by mutual  
8 consent.

9 (e) An election may not be directed by the railroad labor rela-  
10 tions agency in a bargaining unit in which there is in force a valid  
11 collective bargaining agreement, except during a 90-day period preced-  
12 ing the expiration date. However, a collective bargaining agreement  
13 may not bar an election upon petition of employees in the bargaining  
14 unit but not parties to the agreement if more than three years have  
15 elapsed since the execution of the agreement or the last timely  
16 renewal, whichever was later.

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

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

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

23 (3) discriminate in regard to hire or tenure of employment  
24 or a term or condition of employment to encourage or discourage mem-  
25 bership in an organization;

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

29 (5) refuse to bargain collectively in good faith with an

1 organization that is the exclusive representative of employees in an  
2 appropriate unit, including the discussing of grievances with the  
3 exclusive representative.

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

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

10 (2) payment by the employee to the exclusive bargaining  
11 agent of a service fee to reimburse the exclusive bargaining agency  
12 for the expense of representing the members of the bargaining unit.

13 (c) An organization or its agents may not

14 (1) restrain or coerce

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

17 (B) the corporation in the selection of a representa-  
18 tive for the purposes of collective bargaining or the adjustment  
19 of grievances;

20 (2) refuse to bargain collectively in good faith with the  
21 corporation, if it has been designated in accordance with AS 42.40.-  
22 710 - 42.40.890 as the exclusive representative of employees in an  
23 appropriate unit.

24 Sec. 42.40.770. INVESTIGATION AND CONCILIATION OF COMPLAINTS.  
25 If a verified written complaint by or for a person claiming to be  
26 aggrieved by a practice prohibited by AS 42.40.760 or a written accu-  
27 sation that a person subject to AS 42.40.710 - 42.40.890 has engaged  
28 in a prohibited practice, is filed with the railroad labor relations  
29 agency, it shall investigate the complaint or accusation. If it

1 determines after a preliminary investigation that probable cause  
2 exists in support of the complaint or accusation, it shall try to  
3 eliminate the prohibited practice by informal methods of conference,  
4 conciliation, and persuasion. Nothing said or done during this en-  
5 deavor may be used as evidence in a subsequent proceeding.

6 Sec. 42.40.780. COMPLAINT AND ACCUSATION. If the railroad labor  
7 relations agency fails to eliminate the prohibited practice by concil-  
8 iation and to obtain voluntary compliance with AS 42.40.710 - 42.40.-  
9 890 or before it attempts conciliation, it may serve a copy of the  
10 complaint or accusation upon the respondent. The complaint or accusa-  
11 tion and the subsequent procedures shall be handled in accordance with  
12 the administrative adjudication portion of the Administrative Proce-  
13 dure Act (AS 44.62).

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

25 Sec. 42.40.800. ENFORCEMENT BY INJUNCTION. The railroad labor  
26 relations agency may apply to the superior court in the judicial  
27 district in which the prohibited practice occurred for an order en-  
28 joining the prohibited acts specified in the order or decision of the  
29 railroad labor relations agency. Upon showing by the railroad labor

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

4 Sec. 42.40.810. POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a)  
5 For the purpose of the investigations, proceedings, or hearings that  
6 the railroad labor relations agency considers necessary to carry out  
7 AS 42.40.710 - 42.40.890, the railroad labor relations agency may  
8 issue subpoenas requiring the attendance and testimony of witnesses  
9 and the production of relevant evidence.

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

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

15 (d) If a person refuses to obey a subpoena issued under AS 42.-  
16 40.710 - 42.40.890, the superior court in the district in which the  
17 person resides or is found may, upon application by the railroad labor  
18 relations agency, issue an order requiring the person to comply with  
19 the subpoena.

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

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

27 Sec. 42.40.840. MEDIATION. (a) If, after a reasonable period  
28 of negotiation over the terms of a collective bargaining agreement, an  
29 impasse as determined by the railroad labor relations agency exists

1 between the corporation and an organization, the railroad labor re-  
2 lations agency shall appoint a person mutually agreeable to the  
3 parties from a list of seven qualified mediators or arbitrators knowl-  
4 edgeable in railway labor agreements to act as mediator in the dis-  
5 pute.

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

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

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

18 (b) The corporation may apply to the superior court in the  
19 judicial district in which the strike is occurring for an order en-  
20 joining the strike. A strike may not be enjoined unless it can be  
21 shown that it has begun to threaten, or is about to threaten, the  
22 health, safety, or welfare of the public. A court, in deciding  
23 whether to enjoin the strike, shall consider the total equities in the  
24 particular case, including the impact of a strike on the public and  
25 the extent to which an employee organization and the corporation have  
26 met their statutory obligations.

27 (c) If an impasse or deadlock still exists after the issuance of  
28 an injunction, the parties shall submit the dispute to binding arbi-  
29 tration. The arbitrator shall be the same person selected under

1 AS 42.40.840 and shall fashion the award the arbitrator considers  
2 equitable.

3 Sec. 42.40.860. AGREEMENTS. (a) The Department of Administra-  
4 tion may participate in labor negotiations between the corporation and  
5 an organization. The corporation shall seek advice of the Department  
6 of Administration before entering into a collective bargaining agree-  
7 ment concerning wages, hours, and other terms and conditions of em-  
8 ployment. However, the final decision regarding collective bargaining  
9 agreements shall be made by the board.

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

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

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

22 Sec. 42.40.870. ORGANIZATION DUES AND EMPLOYEE BENEFITS, DEDUC-  
23 TION AND AUTHORIZATION. Upon written authorization of an employee  
24 within a bargaining unit, the corporation shall deduct from the pay-  
25 roll of the employee the monthly amount of dues, fees, and other  
26 employee benefits as certified by the secretary of the exclusive  
27 bargaining representative and shall deliver it to the chief fiscal  
28 officer of the exclusive bargaining representative.

29 Sec. 42.40.880. EXEMPTION. Notwithstanding the provisions of

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

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

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

22 (2) require or coerce an employee to make any report con-  
23 cerning an activity or undertaking of the employee's activities or  
24 undertakings unless the activity or undertaking is related to the  
25 performance of official duties;

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

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

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

4 (C) sexual matters;

5 (D) the employee's political affiliation or philoso-  
6 phy;

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

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

13 (b) The provisions of (a) of this section do not diminish the  
14 authority of an authorized law enforcement agency to conduct criminal  
15 investigations of employees suspected of being involved in criminal  
16 activity or to investigate other activity directly related to official  
17 railroad business.

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

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

29 (2) "election" means a proceeding conducted by the labor

1 relations agency in which the employees in a collective bargaining  
2 unit cast a secret ballot for collective bargaining representatives,  
3 or for any other purpose specified in AS 42.40.710 - 42.40.890;

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

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

14 ARTICLE 9. GENERAL PROVISIONS.

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

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

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

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

29 Sec. 42.40.905. NOTICE OF LEGAL ACTIONS. (a) The corporation

1 shall notify the Department of Law within 30 days before initiating  
2 legal action unless special circumstances exist that require immediate  
3 legal action to protect the corporation assets or to continue existing  
4 service.

5 (b) If notice of legal action is not given under (a) of this  
6 section, within 15 days of taking action the board shall notify the  
7 Department of Law of the action taken and of the special circumstances  
8 that exempted the action from the requirements of (a) of this section.

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

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

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

29 Sec. 42.40.920. APPLICATION OF EXISTING LAWS. (a) The

1 corporation is not subject to the jurisdiction of the Alaska Transpor-  
2 tation Commission.

3 (b) The following laws do not apply to the operations of the  
4 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 38;  
15 (11) AS 44.62.040 - 44.62.320.

16 Sec. 42.40.930. CONFLICTING LAWS INAPPLICABLE. If provisions of  
17 AS 42.40 conflict with the provisions of other state law, the pro-  
18 visions of AS 42.40 prevail. Provisions of AS 42.40 shall be con-  
19 sidered so that they do not conflict with 45 U.S.C. 1201 - 1214 (Alaska  
20 Railroad Transfer Act of 1982).

21 Sec. 42.40.940. REVERSION OF ASSETS. If the corporation ceases  
22 to exist, for whatever reason, its assets revert to the state.

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

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

27 (2) "collective bargaining" means negotiating with an  
28 employees organization and representing employees on matters pertain-  
29 ing to conditions of employment;

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

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

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

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

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

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

26 (A) relates only to the internal management of the  
27 corporation;

28 (B) relates to specific rates, tariffs, divisions, and  
29 contract rate agreements;

1 (C) relates to service schedules of the railroad;

2 (D) is directed to a specifically named person or to a  
3 group of persons and does not apply to the general public; or

4 (E) relates to the use of public works under the  
5 jurisdiction of the corporation if the effect of the order is  
6 indicated to the public by means of signs or signals.

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

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

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

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

18 (a) The powers of the corporation are vested in the board of  
19 directors. The board consists of [THE COMMISSIONER OF COMMERCE AND  
20 ECONOMIC DEVELOPMENT,] the chief executive officer of the corporation,  
21 and eight [SEVEN] members appointed by the governor. The eight  
22 [SEVEN] appointed members must be registered voters in the state  
23 except as provided in (b) and (c) of this section. Except for the  
24 member appointed under (d) of this section, no more than two appointed  
25 members may be from any one of the four judicial districts in the  
26 state. Two of the appointed members must have at least five year  
27 experience as owners or managers of a business in the state. Except  
28 for [THE COMMISSIONER,] the chief executive officer [,] and the member  
29 appointed under (d) of this section, a member may not be a stat

1 officer or employee.

2 \* Sec. 5. AS 42.40.020(e) is amended to read:

3 (e) Except for [THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVEL-  
4 OPMENT AND] the chief executive officer of the corporation, the mem-  
5 bers of the board shall be confirmed by a majority of the members of  
6 each house of the legislature in joint session. A member appointed by  
7 the governor has the full powers and responsibilities of a confirmed  
8 board member until the member is rejected by the legislature.

9 \* Sec. 6. AS 42.40.030 is amended to read:

10 Sec. 42.40.030. TERM OF OFFICE; REMOVAL. (a) Except for [THE  
11 COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT AND] the chief  
12 executive officer of the corporation, members of the board serve for  
13 staggered terms of five years each [AT THE PLEASURE OF THE GOVERNOR].

14 \* Sec. 7. AS 42.40.030 is amended by adding a new subsection to read:

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

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

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

21 (3) conviction of a felony.

22 \* Sec. 8. AS 42.40.180 is repealed and reenacted to read:

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

28 (b) The board shall adopt rules to safeguard property owned,  
29 managed, or transported by the corporation and to protect employees

1 and persons using the corporation's property or services.

2 \* Sec. 9. SPECIAL REPORT. The governor shall contract with a private  
3 consultant for the preparation of a report on the long-term operations of  
4 the Alaska Railroad that are in the best interest of the state. The report  
5 shall be submitted to the governor and the legislature by January 1, 1988.  
6 It shall contain specific recommendations on operational alternatives and  
7 the transfer of all or part of the railroad operation to the private sec-  
8 tor.

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

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

17 \* Sec. 11. COLLECTIVE BARGAINING AGREEMENTS. (a) As soon as practi-  
18 cable before transfer of the Alaska Railroad to the state, the Alaska  
19 Railroad Corporation and its employees shall adopt collective bargaining  
20 agreements that continue the provisions of the agreements in effect between  
21 the Alaska Railroad and its employees on the date of transfer of the rail-  
22 road. The collective bargaining agreements adopted under this section  
23 between the corporation and its employees shall remain in effect to the  
24 extent required under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act  
25 of 1982).

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

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\* Sec. 12. The state-owned railroad as defined under 45 U.S.C. 1202(4) may not apply for a right-of-way across the Western (Kobuk River) unit of the Gates of the Arctic National Preserve under 16 U.S.C. 410hh(4)(b) - (e).

\* Sec. 13. AS 42.40.190 and 42.40.200 are repealed.

\* Sec. 14. Sections 3 - 8 and 13 of this Act take effect on the effective date of an amendment to the Constitution of the State of Alaska relating to the Alaska Railroad.

\* Sec. 15. Sections 1, 2, and 9 - 12 of this Act take effect immediately in accordance with AS 01.10.070(c).

AK.  
RAILROAD

Bill Drafts

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IN THE SENATE

SENATE TRANSPORTATION  
COMMITTEE SUBSTITUTE

SENATE BILL NO. 352

IN THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

\* Section 1. LEGISLATIVE FINDINGS AND PURPOSE.

(a) The Legislature finds that

(1) It is the policy of the state to

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

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

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

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

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

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

1 existence;

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

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

11 (1) provide for the level of service that best satisfies the  
12 needs of the people of the state consistent with the other findings  
13 and policies of this section.

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

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

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 and to apply for  
25 any Federal monies to which the State would be entitled, or may be  
26 available;

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

29 (E) provide the best possible combination of types and

1 levels of safe, efficient, and economical transportation to meet  
2 the overall needs of the state, supported when necessary by state  
3 investment;

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

6 (G) preserve the integrity of the railroad utility  
7 corridor for transportation, communication, and transmission  
8 purposes.

9 (3) insure that borrowing by the corporation does not  
10 directly or indirectly endanger the state's own borrowing capa-  
11 city.

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

13 CHAPTER 40. ALASKA RAILROAD CORPORATION.

14 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

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

24 Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the  
25 corporation are vested in the board of directors. The board  
26 consists of the commissioner of Commerce and Economic Development  
27 and six voting members appointed by the Governor. These six  
28 members must be residents of and registered voters in the state  
29 except as provided in (b) and (c) of this section. No more than

1 two of these members may be from any one of the four judicial  
2 districts in the state. Two of the voting members must have at  
3 least five years experience as owners or managers of a business  
4 in the state. Except for the commissioner of Commerce and Eco-  
5 nomic Development, a voting member may not be a state officer or  
6 employee.

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

11 (c) One voting member shall be or have been an executive  
12 official of an American railroad consistent with the Interstate  
13 Commerce Act (49 U.S.C. et. seq.).

14 (d) In addition to the voting members, the following non-  
15 voting members shall serve on the board:

16 (1) an employee who is a member of a bargaining unit  
17 with the corporation shall be appointed by the governor to  
18 represent the employees.

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

20 (e) The voting members of the board shall be confirmed by a  
21 majority of the membership of the legislature in joint session.  
22 A member appointed by the governor has the full powers and res-  
23 ponsibilities of a confirmed board member unless and until the  
24 member has been rejected by the legislature.

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

27 (g) The board shall appoint a secretary and prescribe the  
28 specific duties of the secretary.

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

5 Sec. 42.40.030. TERM OF OFFICE; REMOVAL. Except for the  
6 commissioner of Commerce and Economic Development, the voting  
7 members of the board serve for staggered terms of five years  
8 each, and serve at the pleasure of the governor during their  
9 terms.

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

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

18 (c) A member whose term has expired shall serve until a  
19 successor has been appointed.

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

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

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

3           Sec. 42.40.070. VOTING. Four affirmative votes are re-  
4 quired for board action. The board shall provide by rule for the  
5 manner of voting, except that the board may not provide for  
6 voting by proxy. The rules may provide for voting and conferring  
7 by means of telecommunication devices.

8                           ARTICLE 2. MANAGEMENT.

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

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

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

19                   (3) Manage the corporation on a self-sustaining basis;

20                   (4) apply to the legislature for a subsidy if it is  
21 required to maintain a service which is not otherwise self-  
22 sustaining;

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

25                   (6) raise needed capital by issuing obligations of the  
26 corporations while insuring that borrowing by the corporation  
27 does not directly or indirectly endanger the state's own borrow-  
28 ing capacity.

29

1 (7) review all public and private land disposal pro-  
2 posals in planning for future development or expansion.

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

6 Sec. 42.40.100. EXECUTIVE OFFICERS. (a) The board shall  
7 appoint the chief executive officer of the corporation. The  
8 chief executive officer serves at the pleasure of the board. The  
9 board shall fix compensation for the chief executive officer.

10 (b) The chief executive officer of the corporation shall  
11 appoint and fix the compensation for other executive officers.  
12 The appointment of other executive officers and their compen-  
13 sation are subject to board approval.

14 Sec. 42.40.110. DELEGATION. (a) The board shall by  
15 rule delegate powers and duties necessary and appropriate for the  
16 management of the daily affairs and operations of the corporation  
17 to the chief executive officer, subject to a requirement of board  
18 approval imposed by the rules.

19 (b) Within 60 days after their first meeting, the board  
20 shall by rule delegate the following activities of the corpo-  
21 ration to the chief executive officer or other executive officers  
22 designated by the board:

23 (1) leasing, granting easements in, issuing permits  
24 for the use of, or conveying other interests that do not consti-  
25 tute a transfer of the corporation's entire interest in real  
26 property of the corporation;

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

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

3 (4) performing procurement activities.

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

6 (c) Specific board approval is required for the following:

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

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

10 (3) mortgaging or pledging corporation assets;

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

13 (5) acting as a surety or guarantor;

14 (6) adopting a long-range capital improvement and  
15 program plan;

16 (7) certifying annual reports;

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

20 (9) expanding or reducing services in a major way;

21 (10) expanding the main or branch lines, other than  
22 performing routine track alignment as necessary to maintain  
23 service levels in effect on the date of transfer;

24 (11) selecting independent auditors and accountants;

25 (12) the exercise of the power of eminent domain;

26 (13) collective bargaining agreements as provided by  
27 42.40.710.

28 (14) annual budget plans.

ARTICLE 3. ADMINISTRATIVE PROVISIONS.

1  
2           Sec. 42.40.200. PUBLIC BOARD MEETINGS. (a) The meetings  
3 of the board are public except executive sessions. The question  
4 of holding an executive session to discuss matters that come  
5 within the exceptions contained in (b) and (c) of this section  
6 shall be determined by a majority vote of the body. No subjects  
7 may be considered at the executive session except those mentioned  
8 in the motion calling for the executive session unless auxiliary  
9 to the main question. No action may be taken at the executive  
10 session.

11           (b) The following excepted subjects may be discussed in an  
12 executive session:

13           (1) matters, the immediate knowledge of which would  
14 clearly have an adverse effect upon the finances of the Alaska  
15 Railroad;

16           (2) subjects that tend to prejudice the the reputation  
17 and character of any person, provided the person may request a  
18 public discussion;

19           (3) matters which by law, municipal charter, or ordi-  
20 nance are required to be confidential.

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

29           (d) The board may by motion exclude non-voting members of

1 the board from an executive session for defined and specific  
2 reasons.

3 Sec 42.40.220. MINUTES AND NOTICE OF MEETINGS. The board  
4 shall keep minutes of each meeting. Reasonable notice of the  
5 meetings shall be provided to the public.

6 Sec. 42.40.230. RULES. (a) The board shall establish in  
7 its bylaws a procedure for adopting rules to carry out its func-  
8 tions and the purposes of this chapter.

9 (1) The corporation shall make available to members of  
10 the public copies of the rules adopted under this section.

11 (2) Within 45 days after adoption, the chairman of the  
12 board shall submit a rule adopted under this section to the  
13 chairman of the Administrative Regulation Review Committee under  
14 AS 24.20.400 - 24.20.460.

15 (b) Except as provided in (c) of this section, at least 15  
16 days before the adoption, amendment, or repeal of a rule, the  
17 board shall give public notice of the proposed action by publish-  
18 ing the notice in at least three newspapers of general circula-  
19 tion in the state and by mailing a copy of the notice to every  
20 person who has filed a request for notice of proposed rules with  
21 the board or the corporation. The public notice must include a  
22 statement of the time, place, and nature of the proceedings for  
23 adoption, amendment, or repeal of the rule and must include an  
24 informative summary of the proposed subject of the rule. On the  
25 date and at the time and place designated in the notice, the  
26 board shall give each interested person or his authorized rep-  
27 resentative, or both, the opportunity to present statements,  
28 arguments or contentions in writing, and shall give members of  
29 the public an opportunity to present oral statements, arguments,

1 or contentions for a total period of at least one hour. The  
2 board shall consider all relevant matter presented to it before  
3 adopting, amending, or repealing a rule which is adopted, or its  
4 amendment or repeal, may vary in content from the informative  
5 summary specified in this subsection if the subject matter of the  
6 rule, or its amendment or repeal, remains the same and the ori-  
7 ginal notice was written so as to assure that members of the  
8 public are reasonably notified of the proposed subject of the  
9 board's action in order for them to determine whether their  
10 interests could be affected by the board's action on that sub-  
11 ject.

12 (c) The board shall in its bylaws establish a procedure for  
13 adoption of emergency rules when the adoption of an emergency  
14 rule is essential to continue or to reinstate the orderly opera-  
15 tion of the corporation's facilities or programs. The require-  
16 ments of (b) of this section do not apply to the initial adoption  
17 in accordance with (b) of this section. No emergency regulation  
18 adopted under this subsection remains in effect more than 120  
19 days unless the board complies with (b) of this section during  
20 the 120-day period.

21 (d) A rule adopted under this section becomes effective  
22 immediately upon its adoption by the board, unless otherwise  
23 specifically provided by order of the adoption.

24 (e) The failure to mail notice to a person as provided in  
25 (b) of this section does not invalidate an action taken by the  
26 board.

27 (f) An interested person may get a judicial declaration on  
28 the validity of a rule by bringing an action for declaratory  
29 relief in the superior court. In addition to any other ground

1 the court may declare the regulation invalid (1) for substantial  
2 failure to comply with this section, or (2) in the case of an  
3 emergency regulation or order of repeal, upon the grounds that  
4 the facts recited in the statement do not constitute an emergency  
5 under (c) of this section.

6 (g) Provisions of this section do not apply to rules,  
7 regulations and orders in effect before the transfer of the  
8 Alaska Railroad to the State of Alaska under 45 U.S.C. 1201-1214  
9 (Alaska Railroad Transfer Act of 1982) and adopted in accordance  
10 to Section 8 of this law.

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

15 (b) The corporation may by rule designate and withhold  
16 public disclosure of matters of a nonpublic, privileged, or  
17 proprietary nature. Those matters include personnel records,  
18 communications with and work product of counsel consistent with  
19 the standards and practices of the United States Interstate  
20 Commerce Commission including but not limited to proprietary  
21 information, and information associated with specific shippers,  
22 divisions, and contract rate agreements.

23 Sec. 42.40.260. ANNUAL REPORT. Within 90 days follow-  
24 ing the end of the fiscal year of the railroad the board shall  
25 direct preparation of, certify and distribute to the governor and  
26 to the legislature a report describing the operations and finan-  
27 cial condition of the corporation during the preceding fiscal  
28 year. This report shall include a breakdown of a service's real  
29 costs and income in each category of railroad operations.

1 of-way, franchises, easements, and other interest in land, in-  
2 cluding land lying under water and appropriation of water rights  
3 that are located in the state, taking title to the property in  
4 the name of the corporation;

5 (9) acquire property by eminent domain in accordance  
6 with AS 42.40.430;

7 (10) hold, maintain, use, operate, lease, exchange,  
8 donate, improve, convey, alienate, dispose of, or transfer any  
9 real or personal property including facilities and equipment in  
10 accordance with the provisions of this Act.

11 (11) contract with and accept transfers, gifts, grants  
12 or loans of funds or property from the United States and the  
13 state or its political subdivisions, subject to the provisions of  
14 federal, state, or local programs;

15 (12) undertake and provide for the management, opera-  
16 tion, maintenance, use, and control of all of the properties of  
17 the corporation including, the tracks, equipment and other pro-  
18 perty transferred to it by the federal government or by any  
19 person;

20 (13) recommend to the legislature and the governor any  
21 tax, financing, or financial arrangement the corporation con-  
22 siders appropriate for expansion or extension and operation of  
23 the Alaska Railroad;

24 (14) maintain offices and facilities at places it  
25 designates;

26 (15) apply to the appropriate agencies of the state,  
27 the United States, and a foreign country or other proper agencies  
28 for the permits, licenses, or approvals necessary to construct,  
29 maintain, and operate railroad transportation services, and to

1 obtain, hold, and reuse the licenses and permits in the same  
2 manner as other operating units or persons;

3 (16) prescribe rates to be charged for services pro-  
4 vided by the Alaska Railroad consistent with 45 U.S.C. 1201-1214  
5 (Alaska Railroad Transfer Act of 1982);

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

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

14 (19) plan for and undertake expansion of the railroad  
15 and railroad activities, including extension of the Alaska Rail-  
16 road's rail system, and contract with other modes of transporta-  
17 tion service connecting to the railroad's rail services;

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

22 (21) hire and discharge railroad personnel and deter-  
23 mine benefits and other terms and conditions of employment esta-  
24 blished in accordance with obligations imposed by 45 U.S.C.  
25 1201-1214 (Alaska Railroad Transfer Act of 1982);

26 (22) assume and satisfy liabilities of the United  
27 States or its agencies as provided by the federal transfer legis-  
28 lation and the closing report or its substantive equivalent as  
29 accepted by the legislature;

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

4 (24) borrow money and issue its bonds or notes and  
5 provide for and secure their payment, provide for the rights of  
6 their holders and purchase, hold, or dispose of its bonds or  
7 notes;

8 (25) secure the payment of its obligations by pledge or  
9 mortgage or other lien on its contracts, revenues, income, or  
10 property;

11 (26) consent to the modification of the rate of inter-  
12 est, time of payment of an installment of principal or interest,  
13 or other term of a loan, contract, or agreement to which the  
14 corporation is a party;

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

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

23 (29) cancel bonds purchased under (28) of this section.

24 (30) do all things necessary, convenient or desirable  
25 to carry out the powers and duties expressly granted or neces-  
26 sarily implied in this chapter or under other laws of the state  
27 or the laws and regulations of the federal government.

28 Sec. 42.40.310. LONG-RANGE CAPITAL IMPROVEMENT AND PROGRAM  
29 PLAN. (a) The corporation shall prepare and the board shall

1 adopt a long-range capital improvement and program plan. The  
2 plan shall delineate the manner in which the corporation intends  
3 to accomplish the purposes of this chapter and explain the corpo-  
4 ration's anticipated capital improvements during each of the five  
5 years after the plan is adopted.

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

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

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

21 (b) Notwithstanding the provisions of this section, the  
22 corporation may

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

1 of official duties or powers; and

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

13 ARTICLE 5. RAIL PROPERTIES.

14 Sec. 42.40.400. LAND. (a) All land among the rail proper-  
15 ties transferred under 45 U.S.C. 1201-1214 (Alaska Railroad  
16 Transfer Act of 1982) or otherwise acquired by the corporation is  
17 under the control of the corporation. All lands transferred or  
18 acquired shall be designated as follows

19 (1) railroad rights-of-way or easements transferred  
20 under the federal act or otherwise acquired are railroad utility  
21 corridors;

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

24 (b) Railroad utility corridors shall be of a width at least  
25 100 feet on both sides of the centerline of the extended main or  
26 branch line, or may be of lesser width only if the adjoining land  
27 is not rail property, and may be surveyed by the metes and bounds  
28 method; and

29 (c) The corporation may not sell land within the railroad

*Exempt as provided in  
AS 42.40.460*

1 corridor. [However,] the corporation may lease, grant easements or  
2 permits, or otherwise authorize use of portions of the railroad  
3 utility corridor but only for transportation, communication, and  
4 transmission purposes and for support functions associated with  
5 such purposes so long as parallel uses of the Railroad corridor  
6 are not restricted.

7 (d) The corporation may lease, grant easements or  
8 permits, or otherwise authorize use of portions of rail lands for  
9 other services including but not limited to transportation,  
10 communication, and transmission purposes and for support function  
11 associated with such purposes.

12 *Adopted*  
13 Sec. 42.40.410. NOMINATION OF LAND. The board may ~~by rule~~  
*through the Dept of Natural Resources*  
14 identify and request <sup>^</sup> federal land to be nominated for state  
15 selection for Railroad purposes.

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

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

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

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

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

11 (c) In the absence of a reservation to the contrary, a  
12 conveyance under (b) of this section vests in the corporation  
13 ownership, control of the surface and subsurface, and the exclu-  
14 sive right to extract or use for its purposes, timber and other  
15 constructed material, sand, gravel, rock, and the right to tun-  
16 nel, ditch, recontour, excavate or otherwise use the surface or  
17 subsurface for railroad, transportation, transmission, and re-  
18 lated purposes without regard to the classification of the re-  
19 sources 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  
22 natural resources jointly identify as unnecessary or unsuitable  
23 for the corporation's purposes.

24 (e) When physical conditions require that track or other  
25 right-of-way fixtures of the corporation be moved from the exist-  
26 ing location and relocated on state-owned land adjacent to or in  
27 the vicinity of the existing right-of-way, and the chief execu-  
28 tive officer determines that relocation is necessary to maintain  
29 safe and adequate rail operations, the corporation may effect the

1 relocation with concurrence of the Department of Natural Re-  
2 sources. The relocation must be limited to land adequate to  
3 restore or continue safe rail operations at a normal level.

4 \*Sec. 42.40.425. LAND USE REGULATION. The board may adopt  
5 exclusive rules governing land use by parties having interests in  
6 or permits for land owned or managed by the corporation. The  
7 power conferred by this section is exercised for the common  
8 health, safety, and welfare of the public and, to the extent  
9 constitutionally permissible, may not be limited by the terms and  
10 conditions of leases, contracts, or other transactions.

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

16 (a) The corporation may acquire a fee simple title when-  
17 ever, in the judgment of the board, ownership of a fee simple is  
18 necessary to carry out the state's lawful purposes in condemning  
19 property.

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

22 (d) The power of eminent domain conferred under this sec-  
23 tion includes the power to obtain material, including clay,  
24 gravel, sand, timber, or rock for railroad use, the land neces-  
25 sary to obtain the material, and access to the land and mate-  
26 rial.

27 (e) The corporation may vacate land, or part of it, or  
28 rights in land acquired for railroad purposes by executing and

29 \*Problem - future analysis

1 filing a deed in the appropriate recording district. Upon filing  
2 of the deed, title reverts to the State of Alaska, if compen-  
3 sation has been paid.

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

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

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

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

29 (a) defending the corporation in any cause of action brought