

ALASKA LEGISLATIVE COMMITTEES DO 1904 0072

3126 HT AK RAILROAD / COMPARISON: SB 10, SB 352, HB 512

(cont.)

1 effective railroad operations;

2 (29) maintain a security force to enforce state law and the  
3 authority's regulations;

4 (30) adopt rules and regulations having the force of law  
5 that require designated classes of proprietary and personal informa-  
6 tion and communications to be confidential;

7 (31) hire and discharge railroad personnel and determine  
8 benefits and other terms and conditions of employment established in  
9 accordance with obligations that may be imposed by the federal trans-  
10 fer legislation;

11 (32) assume and satisfy liabilities of the United States or  
12 its agencies as provided by the federal transfer legislation and the  
13 closing report, or its substantive equivalent, as accepted by the  
14 legislature; and

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

1           Sec. 42.40.310. ANNUAL REPORT. The board shall direct prepara-  
2 tion of, certify and distribute to the governor and to each member of  
3 the legislature by February 1 of each year a report generally describ-  
4 ing the operations and financial condition of the authority. The  
5 board may include in the report suggestions for legislation relating  
6 to the structure, powers, or duties of the authority or relating to  
7 the operation of facilities of the authority.

15           Sec. 42.40.260. ANNUAL REPORT. Within 90 days following the end  
16 of the fiscal year of the railroad the board shall direct preparation  
17 of, certify and distribute to the governor and to the legislature a  
18 report describing the operations and financial condition of the corpo-  
19 ration during the preceding fiscal year.

The report is due 90 days after the end of the fiscal year in SB 352 rather than February 1. The last line in SB 10 regarding suggestions for legislation does not appear in SB 352

26           Sec. 42.40.320. ANNUAL AUDIT. The board shall have financial  
27           records of the authority audited annually by an independent  
28           certified public accountant experienced in railroad accounting. The  
29           authority shall, at all times during normal business hours and as  
1           often as the governor's auditor or the legislative audit division  
2           considers necessary, make available to an auditor appointed by the  
3           governor or to the legislative audit division for examination all of  
4           its financial records, and shall permit the auditor appointed by the  
5           governor or the legislative audit division to audit, examine and make  
6           excerpts or transcripts from the records, and to make audits of all  
7           contracts, invoices, materials, payrolls, records of personnel, con-  
8           ditions of employment, provision of services and the rates at which  
9           the services are provided and other relevant data; disclosure of this  
10           information is subject to AS 42.40.240 and rules and regulations  
11           implementing that section.

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

12 Sec. 42.40.325. LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT  
13 PLANS. (a) The authority shall prepare and the board shall adopt a  
14 long-range program plan and a capital improvement plan in accordance  
15 with sec. 10 of this Act.

16 (b) The long-range program plan must delineate the manner in  
17 which the authority intends to accomplish the purposes of and fulfill  
18 its responsibilities under this chapter during each of the five years  
19 after the plan is adopted. The long-range program plan shall provide  
20 information substantially consistent with the requirements of  
21 AS 37.07.050. The format of the long-range program plan must be  
22 jointly determined by the authority, the legislative audit division,  
23 and the division of budget and management, Office of the Governor.

24 (c) The long-range capital improvement plan must present and  
25 explain the authority's anticipated capital improvements for each of  
26 the five years after the plan is adopted. The long-range capital  
27 improvement plan must include the information required by AS 42.40.-  
28 600(b) together with any other information prescribed by the governor  
29 or the legislative audit division.

1 (d) The authority shall annually revise and the board shall  
2 adopt the plans required in this section.

3 (e) The authority shall provide copies of its plans to the  
4 governor and the leadership of the legislature.

5 (f) The governor and the legislative audit division may conduct  
6 an annual performance and efficiency audit in accordance with sec. 10  
7 of this Act.

27 Sec. 42.40.310. LONG-RANGE EXPANSION AND CAPITAL IMPROVEMENT  
28 PLANS. (a) The corporation shall prepare and the board shall adopt a  
29 long-range expansion plan and a capital improvement plan. The long-  
1 range expansion plan shall delineate the manner in which the corpora-  
2 tion intends to accomplish the purposes of this chapter during each of  
3 the five years after the plan is adopted. The capital improvement  
4 plan shall present and explain the corporation's anticipated capital  
5 improvements for each of the five years after the plan is adopted.

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

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

There are many minor differences between these sections. Material in (c) and (f) of SB 10 is deleted, while SB 352 adds the date that copies of the plan are to be delivered; December 1.

8           Sec. 42.40.330. USE OF AUTHORITY ASSETS. (a) The authority  
9 shall apply all money, property, other assets, and credit of the  
10 authority toward activities authorized by this chapter. The authority  
11 may not issue shares of stock, pay dividends, make private distribu-  
12 tion of assets, make loans to board members or employees, or engage in  
13 business for private benefit. The use of authority money, property,  
14 other assets, or credit for purposes not authorized by law by persons  
15 having the possession or control of it is prohibited.

16           (b) Notwithstanding the provisions of this section, the authori-  
17 ty may

18           (1) assist board members and employees as members of a  
19 general class of persons to be assisted by an activity to the same  
20 extent as other members of the class and as long as no special privi-  
21 leges or treatment accrues to the member or employee by reason of  
22 status or position held in the authority;

23           (2) return to board members and employees fees, dues, or  
24 service charges originally contributed by them and surplus to the pur-  
25 poses for which collected;

26           (3) defend and indemnify a current or former employee,  
27 agent, or board member of the authority and their successors against  
28 all costs, expenses, judgments, and liabilities, including attorney  
29 fees, reasonably incurred by or imposed upon that person in connection  
1 with a civil or criminal action in which the person is involved by  
2 affiliation with the authority, if acting in good faith on behalf of  
3 the authority and within the scope of official duties or powers; and

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

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

22           (b) Notwithstanding the provisions of this section, the corpo-  
23 ration may

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

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

(b) (1) and (2) of SB  
10 do not appear in SB  
352.

ARTICLE 4. RAIL PROPERTIES.

14  
 15 Sec. 42.40.400. RAIL PROPERTIES. (a) The authority shall  
 16 receive from the United States and, in its own name, take title to all  
 17 rail properties transferred under the federal transfer legislation.  
 18 All land among the rail properties so transferred or otherwise  
 19 acquired by the authority is subject to AS 38.95.010 and is not sub-  
 20 ject to classification, control or disposal under AS 38 or other state  
 21 law, except as otherwise specifically provided in this chapter.

22 (b) Within 120 days after transfer of the rail properties, the  
 23 authority shall convey to the state the subsurface estate of and the  
 24 mineral rights in the land among the rail properties. The conveyance  
 25 shall be made by one or more quitclaim deeds executed by the chief  
 26 executive officer and delivered to the commissioner of natural re-  
 27 sources. The authority may reserve in each quitclaim deed the right  
 28 to extract and use for the authority's purposes sand, gravel, other  
 29 construction materials, and, in accordance with AS 42.40.410(g), coal  
 1 on the subject land. The interest retained by the authority after  
 2 conveyance to the state under this subsection entitles it to exclusive  
 3 use and control of the surface, complete subjacent and lateral support  
 4 of the surface, and the right to tunnel, ditch, recontour, excavate  
 5 and otherwise use the subsurface for railroad, transportation, trans-  
 6 mission, and related purposes.

7 (c) The authority may litigate, compromise, and otherwise settle  
 8 claims related to the transfer of rail properties from the United  
 9 States and to recover for breach of warranties made or other obliga-  
 10 tions assumed by the United States or other party in relation to the  
 11 transfer or status of the rail properties.

12 (d) The authority may submit applications on its own behalf as  
 13 an instrumentality of the state for acquisition of interests in feder-  
 14 al land available under federal law that will enhance the operations  
 15 of the authority and may receive conveyances of all interests in its  
 16 own name.

17 (e) The authority, as an agency of the state, may acquire in its  
 18 own name from the United States under the Surplus Property Act  
 19 (50 App. U.S.C. 1622 et seq.), the Federal Property and Administrative  
 20 Services Act of 1949 as amended (40 U.S.C. 471 et seq.), or other law,  
 21 property under the control of a federal department or agency that is  
 22 useful for the authority's purposes and may acquire from the Depart-  
 23 ment of Administration property of the state made available under  
 24 AS 44.71.010 - 44.71.050.

ARTICLE 5. RAIL PROPERTIES.

13  
 14 Sec. 42.40.400. LAND. All land among the rail properties trans-  
 15 ferred under 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of  
 16 1982) or otherwise acquired by the corporation is under the control of  
 17 the corporation. As to all land that is transferred or acquired:

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

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

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

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

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

3 (b) The corporation, as an agency of the state, may acquire in  
 4 its own name from the United States under 50 App U.S.C. 1622 et seq  
 5 (the Surplus Property Act of 1944), 50 U.S.C. 471 et seq as amended  
 6 (the Federal Property and Administrative Services Act of 1949), or  
 7 other law, property under the control of a federal department or  
 8 agency that is useful for the corporation's purposes and may acquire  
 9 from the Department of Administration property of the state made  
 10 available under AS 44.71.010 - 44.71.050.

The two provisions differ considerably. However, some of the provisions of SB 10 are found in other sections of SB 352. Material in (b), (c), and (f) of SB 10 is not contained in SB 352.



(cont.)

25 (f) Before disposing of an interest in real property, other than  
26 a leasehold, a utility or access easement, or a land use permit, to a  
27 party other than the state, the authority shall give public notice of  
28 the disposition in two newspapers of general circulation. The author-  
29 ity shall make copies of the notice available to the public at its  
1 administrative office, and mail copies of the notice to the commis-  
2 sioner of natural resources, the governor, and the leadership of the  
3 legislature.

4           Sec. 42.40.410. CLASSIFICATION, ACQUISITION, AND USE OF STATE  
5 LAND FOR RAILROAD PURPOSES. (a) The board by resolution may identify  
6 land owned by or subject to selection by the state, including tide and  
7 submerged land, as necessary or useful for present or intended rail-  
8 road purposes. The resolution must include a statement of and justifi-  
9 cation for the present or intended railroad use and the date when  
10 the use should begin. Upon submission of the resolution and a request  
11 for classification and conveyance to the commissioner of natural  
12 resources, the commissioner may temporarily classify and reserve the  
13 land identified in the request for railroad purposes and may tempo-  
14 rarily vacate a classification allowing disposal or lease of that land  
15 under laws or programs of the state. A temporary classification and  
16 vacation is subject to valid existing rights.

17           (b) Within 180 days after receiving the request, the commis-  
18 sioner of natural resources by departmental order shall

19           (1) permanently classify the surface estate of that land  
20 for railroad purposes and, subject to valid existing rights, convey  
21 the state's interests in and to the surface estate of the land to the  
22 authority;

23           (2) deny the classification and conveyance as not in the  
24 best interest of the state; or

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

27           (c) In the absence of a reservation to the contrary, a convey-  
28 ance under (b) of this section vests in the authority the exclusive  
29 right to extract and use for its purposes sand, gravel, other  
30 construction materials, and, in accordance with (g) of this section,  
31 coal on the land conveyed without regard to the classification of the  
32 resources as part of the surface or subsurface estate.

33           (d) The authority and the commissioner of natural resources may  
agree to joint management of railroad land and to conditions for  
classification of railroad land. The authority and the commissioner  
of natural resources may agree to periodic joint review of state land  
to determine suitability for railroad purposes and periodic joint  
review of the status of railroad land to determine the necessity for  
continued ownership by the authority. The authority may reconvey to  
the state land that the authority and the commissioner of natural  
resources jointly identify as unnecessary or unsuitable for the au-  
thority's purposes.

27           Sec. 42.40.420. CLASSIFICATION, ACQUISITION, AND USE OF STATE  
28 LAND FOR RAILROAD PURPOSES. (a) The board by rule may identify and  
29 request conveyance of land owned by or subject to selection by the  
30 state, including tide and submerged land and land not adjacent to a  
31 railroad corridor, as necessary or useful for present, future or  
32 intended railroad purposes. The request must include a statement of  
33 and justification for the present, future or intended railroad use.  
Upon submission of a request for classification and conveyance to the  
commissioner of natural resources, the commissioner shall temporarily  
classify and reserve the land identified in the request for railroad  
purposes and shall temporarily vacate a classification allowing dis-  
posal or lease of that land under laws or programs of the state. A  
temporary classification and vacation is subject to valid existing  
rights and remains in effect for 180 days.

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

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

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

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

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

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

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

In (b), 180 days in SB  
10 is changed to 90  
days in SB 352. In SB  
352 there is no  
provision similar to  
(b) (3) in SB 10  
allowing the commis-  
sioner to approve in  
part a request for  
classification. There  
is no provision  
similar to (g) in SB  
10 concerning the  
extraction of coal.

ont.) (e) The authority's ownership of a surface interest in state land entitles it to exclusive use and control of the surface, complete subjacent and lateral support of the surface, and the right to tunnel, ditch, recontour, excavate or otherwise use the subsurface for railroad, transportation, transmission, and related purposes.

(f) When physical conditions require that track or other right-of-way fixtures of the authority be moved from the existing location and relocated on state-owned land adjacent to or in the vicinity of the existing right-of-way, and the chief executive officer determines that relocation is necessary to maintain safe and adequate rail operations, the authority may effect the relocation after notice to the Department of Natural Resources. The relocation must be limited to land adequate to restore or continue safe rail operations at a normal level. Within 45 days after a relocation under this subsection, the authority shall request classification and conveyance of the land for railroad purposes in accordance with (a) of this section.

(g) Before the authority extracts coal on lands in which it owns an interest, as authorized by AS 42.40.400(b) and (c) of this section, it shall submit a request for authorization to do so to the Department of Natural Resources. Within 45 days after receiving the request, the Department of Natural Resources shall approve the request if it determines that the coal to be extracted is located on lands in which the authority owns an interest and is not subject to existing rights of a third party. The state holds title to all coal on lands in which the authority owns an interest until the coal is extracted from the land by the authority under this subsection or otherwise disposed of in accordance with AS 38.05.150 and AS 42.40.415. The authority may use coal made available to it under this chapter for operational, non-income producing purposes only, including the generation of power to support operations and in-kind compensation to a person with whom the authority contracts to extract coal.

16 Sec. 42.40.415. DEVELOPMENT OF OIL, GAS, MINERALS, AND GEOTHERMAL RESOURCES ON AUTHORITY LAND. (a) The Department of Natural  
17 Resources, in accordance with AS 38.05, may lease or otherwise develop  
18 oil, gas, minerals, and geothermal resources located on land in which  
19 the authority owns an interest, including a surface interest, only  
20 upon satisfaction of the following conditions:

21 (1) the Department of Natural Resources submits to the  
22 authority a request for authorization identifying the interest to be  
23 developed and describing with specificity the proposed plan for develop-  
24 ment of the interest, potential negative effects the proposed develop-  
25 ment may have on the authority's operations, and measures that will  
26 be used to avert or mitigate the effects;

27 (2) the authority reviews the request for authorization  
28 and, after considering potential negative effects and proposed  
29 mitigation measures, determines that the plan of development presents  
1 no appreciable risk of interference with the operations of the author-  
2 ity;

3 (3) the Department of Natural Resources and the authority  
4 agree upon a suitable requirement that the lessee or party other than  
5 the state undertaking the development reimburse the authority from the  
6 proceeds of the development for costs incurred by the authority and  
7 materials lost by the authority as a result of the development; and

8 (4) the authority issues to the Department of Natural Resources a written authorization to proceed with the plan for lease or  
9 development; the authority may not unreasonably withhold its consent  
10 to a request for authorization submitted by the Department of Natural  
11 Resources under this section.

12 (b) The Department of Natural Resources shall require a party  
13 other than the state exercising rights under this section to post a  
14 surety bond in an amount sufficient to secure the authority against  
15 potential detrimental effects of the activity undertaken.

16 (c) The Department of Natural Resources shall maintain an accurate record of all income received by the state from the land in which  
17 the authority has an interest and of the value of all subsurface  
18 estates conveyed by the authority to the state. The Department of  
19 Natural Resources shall prepare a yearly summary of the income and  
20 subsurface value and submit it to the legislature and the authority  
21 before March 15 of each year.

22 (d) There is established in the state treasury the Alaska Railroad income fund. All income received by the state from lands in  
23 which the authority has an interest shall be deposited into the fund.

**No comparable  
provision**

27        Sec. 42.40.420. LAND USE REGULATION.    The board may adopt  
1        exclusive regulations governing land use by private parties having  
2        interests in or permits for land owned or managed by the authority.  
3        The power conferred by this section is exercised for the common  
4        health, safety, and welfare of the public and, to the extent constitu-  
5        tionally permissible, may not be limited by the terms and conditions  
6        of leases, contracts, or other transactions with private parties.

**No comparable  
provision**

7           Sec. 42.40.430. EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND  
8 MATERIALS. (a) The authority may exercise the power of eminent  
9 domain under AS 09.55.240 - 09.55.460 to acquire land or an interest  
10 in land for lawful purposes consistent with this chapter.  
11           (b) The authority may acquire a fee simple title whenever, in  
12 the judgment of the authority, ownership of a fee simple is necessary  
13 to carry out the authority's lawful purposes in condemning property.  
14 When the authority acquires a fee simple, it shall as soon as practi-  
15 cable reconvey the subsurface estate to the state by a quitclaim deed.  
16           (c) The authority may file a declaration of taking, under  
17 AS 09.55.420 - 09.55.460, in the same manner and with the same effect  
18 as the state.  
19           (d) The authority's power of eminent domain includes, without  
20 limitation, the power to obtain material, including clay, gravel,  
21 sand, or rock, the land necessary to obtain the material, and access  
22 to the land and material.  
23           (e) The authority may vacate land, or part of it, or rights in  
24 land acquired for railroad purposes by executing and filing a deed in  
25 the appropriate recording district. Upon filing of the deed, title  
26 reverts to the State of Alaska, if compensation has been paid.

16           Sec. 42.40.430. EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND  
17 MATERIALS. (a) The corporation may exercise the power of eminent  
18 domain under AS 09.55.240 - 09.55.460 to acquire land or an interest  
19 in land for lawful purposes consistent with this chapter.  
20           (b) The corporation may acquire a fee simple title whenever, in  
21 the judgment of the board, ownership of a fee simple is necessary to  
22 carry out the state's lawful purposes in condemning property.  
23           (c) The corporation may file a declaration of taking in the  
24 manner provided for the state under AS 09.55.420.  
25           (d) The power of eminent domain conferred under this section  
26 includes the power to obtain material, including clay, gravel, sand,  
timber, or rock for railroad use, the land necessary to obtain the  
material, and access to the land and material.

The last sentence in  
(b) of SB 10 is  
deleted from SB 352  
and the material in  
(c) of SB 10 is  
deleted.

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ARTICLE 5. FINANCIAL PROVISIONS.

Sec. 42.40.500. BONDS AND RULES. (a) The authority, by resolution of the board, may issue bonds and bond anticipation notes to provide money to carry out its purposes.

(b) The principal and interest on the bonds or notes of the authority are payable from money or assets of the authority. Bond anticipation notes may be payable from the proceeds of the sale of bonds or from the proceeds of sale of other bond anticipation notes or, if bond or bond anticipation note proceeds are not available, the notes may be paid from other money or assets of the authority. Bonds or notes may be additionally secured by a pledge of a grant or contribution or other property from the federal government, the state or any of its political subdivisions, or a corporation, association, institution, or person, or a pledge of money, income, or revenues of the authority from any source.

(c) Bonds or bond anticipation notes may be issued in one or more series and shall be dated, bear interest (fixed or variable) at the rate or rates per year or within the maximum rate, be in the denomination, be in the form, either coupon or registered, carry the conversion or registration provisions, have the rank of priority, be executed in the manner and form, be payable from the sources in the medium of payment and place or places inside or outside the state, be subject to authentication by a trustee or fiscal agent, and be subject to the terms of redemption with or without premium, as the resolution of the board may provide. Bond anticipation notes mature at the time or times determined by the board. Bonds mature at the time, not exceeding 30 years from their date, determined by the board. Before the preparation of definitive bonds or bond anticipation notes, the authority may issue interim receipts or temporary bonds or bond anticipation notes, with or without coupons, exchangeable for bonds or bond anticipation notes when these definitive bonds or bond anticipation notes have been executed and are available for delivery.

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Sec. 42.40.570. BONDS AND NOTES. (a) The corporation by

resolution may issue bonds and bond anticipation notes to provide money to carry out its purposes.

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

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

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

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

(e) Bonds or bond anticipation notes may be sold in the manner,

(cont.)

1 (d) Bonds or bond anticipation notes may be sold in the manner,  
2 on the terms, and at the price the board determines.

3 (e) If an officer whose signature or a facsimile of whose signa-  
4 ture appears on bonds or notes or coupons attached to them ceases to  
5 be an officer before the delivery of the bond, note, or coupon, the  
6 signature or facsimile is valid as if the officer had remained in  
7 office until delivery.

8 (f) Bond or bond anticipation note proceeds may not be dedicated  
9 to activities other than those the board reasonably determines to be  
10 specifically related to the purposes for which the instruments are  
11 issued.

12 (g) In a resolution of the board authorizing or relating to the  
13 issuance of bonds or bond anticipation notes, the board has power by  
14 provisions in the resolution that will constitute covenants of the  
15 authority, and contracts with the holders of the bonds or bond an-  
16 ticipation notes

17 (1) to pledge to a payment or purpose all or a part of its  
18 revenues to which its right then exists or may later exist, and the  
19 money derived from the revenues, and the proceeds of its bonds or  
20 notes;

21 (2) to covenant against pledging all or part of its reve-  
22 nues, or against permitting or suffering a lien on the revenues or its  
23 property;

24 (3) to covenant as to establishment of reserves or sinking  
25 funds and the provision for and the regulation and disposition of the  
26 reserves or sinking funds;

27 (4) to covenant with respect to or against limitations on a  
28 right to sell or otherwise dispose of property of any kind;

29 (5) to covenant as to bonds and notes to be issued, and

(cont.)

1 on the terms, and at the price the board determines. Bond antici-  
2 pation notes shall mature at the time or times determined by the board.  
3 Bonds shall mature at the time, not exceeding 30 years from their  
4 date, determined by the board.

5 (f) The corporation may by provisions in a resolution authoriz-  
6 ing or relating to the issuance of bonds or bond anticipation notes  
7 enter into the following agreements with the holders of the bonds or  
8 bond anticipation notes:

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

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

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

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

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

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

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

29 (8) provide for the replacement of lost, stolen, destroyed

cont.)

1 their limitations, terms and conditions, and as to the custody, appli-  
2 cation and disposition of the proceeds of the bonds and notes;

3 (6) to covenant as to the issuance of additional bonds or  
4 notes, or as to limitations on the issuance of additional bonds or  
5 notes and the incurring of other debts;

6 (7) to covenant as to the payment of the principal of or  
7 interest on the bonds or notes, as to the sources and methods of pay-  
8 ment, as to the rank or priority of the bonds or notes with respect to  
9 a lien or security, or as to the acceleration of the maturity of the  
10 bonds or notes;

11 (8) to provide for the replacement of lost, stolen, de-  
12 stroyed, or mutilated bonds or notes;

13 (9) to covenant against extending the time for the payment  
14 of bonds or notes or interest on bonds or notes;

15 (10) to covenant as to the redemption of bonds or notes and  
16 privileges of their exchange for other bonds or notes of the authori-  
17 ties;

18 (11) to covenant to create or authorize the creation of  
19 special funds of money to be held in pledge or otherwise for operating  
20 expenses, payment or redemption of bonds or notes, reserves or other  
21 purposes, and as to the use and disposition of the money held in the  
22 funds;

23 (12) to establish the procedure, if any, by which the terms  
24 of a contract or covenant with or for the benefit of the holders of  
25 bonds or notes may be amended or abrogated, the amount of bonds or  
26 notes the holders of which must consent to amendment or abrogation,  
27 and the manner in which the consent may be given;

28 (13) to covenant as to the custody of its properties or  
29 investments, their safekeeping and insurance, and the use and

(cont.)

1 or mutilated bonds or notes;

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

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

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

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

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

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

27 (15) pay the costs or expenses incident to the enforcement  
28 of the bonds or notes, of the provisions of the resolution, or of a  
29 covenant or agreement of the corporation with the holders of its bonds

cont.)

1 disposition of insurance money;

2 (14) to vest in a trustee or trustees inside or outside the  
3 state property, rights, powers, and duties in trust as the authority  
4 may determine, that may include any or all of the rights, powers, and  
5 duties of a trustee appointed by the holders of bonds or notes of the  
6 authority, and to limit or abrogate the rights of the holders of the  
7 bonds or notes of the authority to appoint a trustee under this chap-  
8 ter or limit the rights, powers, and duties of the trustee;

9 (15) to pay the costs or expenses incident to the enforce-  
10 ment of the bonds or notes or of the provisions of the resolution or  
11 of a covenant or agreement of the authority with the holders of its  
12 bonds or notes;

13 (16) to agree with an authority trustee that may be a trust  
14 company or bank having the powers of a trust company inside or outside  
15 the state as to the pledging or assigning of revenues or funds in  
16 which the authority has any rights or interest; the agreement may  
17 further provide for other rights and remedies exercisable by the  
18 trustee as may be proper for the protection of the holders of bonds or  
19 notes of the authority and not otherwise in violation of law and may  
20 provide for the restriction of the rights of an individual holder of  
21 bonds or notes of the authority;

22 (17) to appoint and provide for the duties and obligations  
23 of a paying agent or other fiduciary as the resolution may provide  
24 inside or outside the state;

25 (18) to limit the rights of the holders of bonds or notes of  
26 the authority to enforce a pledge or covenant securing the bonds or  
27 notes; and

28 (19) to make covenants other than and in addition to the  
29 covenants expressly authorized in this section, of like or different  
30 character, and to make the covenants to do or refrain from doing the  
31 acts and things as may be necessary, or convenient and desirable, in  
32 order to better secure bonds or notes or which, in the absolute dis-  
33 cretion of the board, will tend to make bonds or notes more market-  
34 able, notwithstanding that the covenants, acts, or things may not be  
35 enumerated in this section.  
36

(cont.)

1 or notes;

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

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

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

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

7           Sec. 42.40.510. INDEPENDENT FINANCIAL ADVISOR. In negotiating  
8 the private sale of bonds or bond anticipation notes to an under-  
9 writer, the board shall retain a financial advisor who is independent  
10 from the underwriter.

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

11       Sec. 42.40.515. VALIDITY OF PLEDGE. The pledge of assets or  
12 revenues of the authority to the payment of the principal or interest  
13 on bonds or notes of the authority is valid and binding from the time  
14 the pledge is made, and the assets or revenues are immediately subject  
15 to the lien of the pledge without physical delivery or further act.  
16 The lien of a pledge is valid and binding against all parties having  
17 claims of any kind in tort, contract, or otherwise against the author-  
18 ity, irrespective of whether those parties have notice of the lien of  
19 the pledge. Nothing in this section prohibits the authority from  
20 selling assets subject to a pledge, except that a sale may be re-  
21 stricted by the trust agreement or resolution providing for the issu-  
22 ance of the bonds or notes.

9       Sec. 42.40.610. VALIDITY OF PLEDGE. (a) The pledge of assets  
10 or revenue of the corporation to the payment of the principal or  
11 interest on bonds or notes of the corporation is valid and binding  
12 from the time the pledge is made and the assets or revenue are immedi-  
13 ately subject to the lien of the pledge without physical delivery or  
14 further act. The lien of a pledge is valid and binding against all  
15 parties having claims of any kind against the corporation, irrespec-  
16 tive of whether those parties have notice of the lien of the pledge.  
17       (b) Nothing in this section prohibits the corporation from  
18 selling assets subject to a pledge, except that a sale may be re-  
19 stricted by the trust agreement or resolution providing for the issu-  
20 ance of the bonds or notes.

23       Sec. 42.40.520. REMEDIES. A holder of bonds or notes or of  
24 coupons attached to them issued under this chapter, and a trustee  
25 under a trust agreement or resolution authorizing the issuance of the  
26 bonds or notes, except as restricted by a trust agreement or resolu-  
27 tion, either at law or in equity, may enforce all rights granted under  
28 this chapter or under the trust agreement or resolution, or under any  
29 other contract executed by the authority under this chapter, and may  
1       enforce and compel the performance of all duties required by this  
2       chapter or by the trust agreement or resolution to be performed by the  
3       authority or by its board members or employees.

21       Sec. 42.40.620. REMEDIES. A holder of bonds or notes issued  
22 under this chapter or of coupons attached to them, and a trustee under  
23 a trust agreement or resolution authorizing the issuance of the bonds  
24 or notes, except as restricted by a trust agreement or resolution,  
25 either at law or in equity, may  
26       (1) enforce all rights granted under this chapter, the  
27 trust agreement or resolution, or any other contract executed by the  
28 corporation under this chapter; and  
29       (2) compel the performance of all duties of the corp  
1       required by this chapter or by the trust agreement or resolution.

4           Sec. 42.40.525. NEGOTIABLE INSTRUMENTS. Bonds and notes and  
5 interest coupons attached to them issued under this chapter are nego-  
6 tiable instruments under the laws of this state, subject only to  
7 applicable provisions for registration.

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

8           Sec. 42.40.53<sup>c</sup>. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds  
9 and notes issued under this chapter are securities in which all public  
10 officers and public bodies of the state and its political subdivi-  
11 sions, all insurance companies, trust companies, banking associations,  
12 investment companies, executors, administrators, trustees, and other  
13 fiduciaries may properly and legally invest money, including capital  
14 in their control or belonging to them. These bonds and notes may be  
15 deposited with a state or municipal officer of an agency or political  
16 subdivision of the state for any purpose for which the deposit of  
17 bonds or notes of the state is authorized by law.

6           Sec. 42.40.440. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds  
7 and notes issued under this chapter are securities in which all public  
8 officers and public bodies of the state and its political subdivi-  
9 sions, all insurance companies, trust companies, banking associations,  
10 investment companies, executors, administrators, trustees and other  
11 fiduciaries may properly and legally invest funds, including capital  
12 in their control or belonging to them. These bonds and notes may be  
13 deposited with a state or municipal officer of an agency or political  
14 subdivision of the state for any purpose for which the deposit of  
15 bonds or notes of the state is authorized by law.

18       Sec. 42.40.535. REFUNDING BONDS. (a) The authority may provide  
 19 for the issuance of refunding bonds for the purpose of refunding any  
 20 bonds then outstanding that have been issued under this chapter, in-  
 21 cluding the payment of any redemption premium on them and any interest  
 22 accrued or to accrue to the date of redemption of the bonds. The  
 23 issuance of the refunding bonds, the maturities and other details of  
 24 them, the rights of the holders of them, and the rights, liabilities, and  
 25 obligations of the Authority in respect to them are governed by the  
 26 applicable provisions of this chapter that relate to the issuance of  
 27 bonds.

28       (b) Refunding bonds may be sold or exchanged for outstanding  
 29 bonds issued under this chapter and, if sold, the proceeds may be  
 1 applied, in addition to other authorized purposes, to the purchase,  
 2 redemption, or payment of the outstanding bonds. Pending the applica-  
 3 tion of the proceeds of refunding bonds, with any other available  
 4 money, to the payment of the principal, accrued interest, and any  
 5 redemption premium on the bonds being refunded, and, if so provided or  
 6 permitted in the resolution authorizing the issuance of the refunding  
 7 bonds or in the trust agreement securing them, to the payment of any  
 8 interest on the refunding bonds and any expenses in connection with  
 9 the refunding, the proceeds may be invested in direct obligations of,  
 10 or obligations the principal of and the interest on which are uncondi-  
 11 tionally guaranteed by, the United States of America, the State of  
 12 Alaska, or other entities with comparably rated credit that mature, or  
 13 that will be subject to redemption, at the option of the holders of  
 14 them, not later than the respective dates when the proceeds, together  
 15 with the interest accruing on them, will be required for the purposes  
 16 intended.

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

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

17           Sec. 42.40.540. CREDIT OF STATE NOT PLEDGED; REQUIRED DISCLAIM-  
 18 ER. Bonds and notes issued under this chapter do not constitute a  
 19 debt, liability, or obligation of the state or a pledge of the faith  
 20 and credit of the state or of a political subdivision of the state  
 21 other than the authority but are payable solely from the revenues or  
 22 assets of the authority. Each bond and note issued under this chapter  
 23 must contain on its face a statement that the authority is not obli-  
 24 gated to pay it nor the interest on it except from the revenues or  
 25 assets pledged for it and that neither the faith and credit nor the  
 26 taxing power of the state or of a political subdivision of the state  
 27 other than the authority is pledged to the payment of the principal of  
 28 or the interest on the bond or note.

10           Sec. 42.40.660. CREDIT OF STATE NOT PLEDGED. (a) The state and  
 11 its political subdivisions are not liable for the debts of the corpo-  
 12 ration. Bonds and notes issued under this chapter are payable solely  
 13 from the revenue or assets of the corporation and do not constitute a  
 14           (1) debt, liability, or obligation of the state or of a  
 15 political subdivision of the state; or  
 16           (2) pledge of the faith and credit of the state or of a  
 17 political subdivision of the state.  
 18           (b) The corporation may not pledge the credit or the taxing  
 19 power of the state or its political subdivisions. Each bond and note  
 20 issued under this chapter shall contain on its face a statement that  
 21           (1) the corporation is not obligated to pay it or the  
 22 interest on it except from the revenue or assets pledged for it; and  
 23           (2) neither the faith and credit nor the taxing power of  
 24 the state or of a political subdivision of the state is pledged to the  
 25 payment of it.

29           Sec. 42.40.565. NO PERSONAL LIABILITY. A board member or  
1   employee of the authority is not subject to personal liability or ac-  
2   countability for executing bonds or notes or because of their issu-  
3   ance.

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

4            Sec. 42.40.550. REVENUE. Revenues generated by the authority  
 5            do not become part of the general fund of the state but are kept and  
 6            managed by the authority for purposes authorized by this chapter.

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

These sections raise a question concerning the application of Article IX, Section 7, of the constitution. As interpreted in State v. Alex 646 P. 2d 203 (Alaska, 1982), that prohibition against dedicated funds extends to all sources of public revenue, so it would apply to money generated by the Alaska Railroad. (See also 1982 Op. Att'y Gen., Nos. J66-785-81 and J66-649-80.) This legislation requires that revenue generated by the railroad corporation be retained for railroad purposes in contravention of the prohibition against dedicated funds. However, the federal law providing for the transfer of the railroad to the state requires that revenues generated by the railroad corporation be kept by the railroad and used for railroad purposes. (45 U.S.C. 1207 (a) (5))

(cont.)

## Comparison continued

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Faced with this requirement in federal law, it is likely that the Alaska Supreme Court will strain to fit this into the exception to the prohibition against dedicated funds as being ". . . required by the federal government for state participation in federal programs." (Article IX, Section 7, Constitution of the State of Alaska) In any case, there appears to be little the legislature can do to resolve the conflict between the federal railroad transfer law and our constitution.

7           Sec. 42.40.533. INSURANCE. The authority shall keep in force  
8 public liability insurance in an amount reasonably calculated to cover  
9 potential claims for bodily injury, death or disability, and property  
10 damage that may arise from or be related to its operations and activi-  
11 ties, naming the state as an additional insured.

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

12           Sec. 42.40.560. SAFEGUARDING OF MONEY. The authority shall  
13 maximize revenues from and deposit all money in depositories accept-  
14 able to the governor and otherwise safeguard the money under instruc-  
15 tions as the governor may from time to time issue.

**No comparable  
provision**

16       Sec. 42.40.563. FIDELITY BOND. The authority shall obtain a  
17       fidelity bond in an amount determined by the board for its members and  
18       any official responsible for accounts and finances. A bond must be in  
19       effect for the tenure in office of the bonded person.

17       Sec. 42.49.520. FIDELITY BOND. The corporation shall obtain a  
18       fidelity bond in an amount determined by the board for its members and  
19       any officer responsible for accounts and finances. A bond must be in  
20       effect during the entire tenure in office of the bonded person.

20

Sec. 42.40.570. REVERSION OF ASSETS. If the authority ceases to exist, for whatever reason, its assets revert to the state.

21

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22

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

23

## ARTICLE 6. STATE OVERSIGHT.

22  
23 Sec. 42.40.600. STATE REVIEW. (a) The board shall notify the  
24 governor and the leadership of the legislature before undertaking

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

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

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

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

9 (1) its financial impact on the authority;

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

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

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

16 (c) The notice required by (a) of this section shall be pub-  
17 lished and given in the same manner as notice required under AS 42.-  
18 40.060.

19 (d) Within 45 days after receipt of the notice required by (a)  
20 of this section, the governor may

21 (1) disapprove the proposed undertaking;

22 (2) suspend the proposed undertaking and direct that it not  
23 be implemented until the legislature has reauthorized it under (1) of this  
24 section; or

25 (3) approve the proposed undertaking, in which case the  
26 authority may proceed with the undertaking.

27 (e) A decision by the governor disapproving the proposed under-  
28 taking under (d) of this section is binding on the authority, unless  
29 the authority is directed by the legislature under AS 42.40.610 to

No comparable  
provision

1 proceed with the proposed undertaking. If the governor suspends the  
2 proposed undertaking under (d) of this section, the governor shall  
3 promptly transmit a decision to the board and the leadership of the  
4 legislature in the form of a recommendation that the legislature  
5 acquiesce in the proposed undertaking or that the legislature reject  
6 the proposed undertaking. The authority's proposed undertaking is  
7 considered approved if the governor fails to act under (d) of this  
8 section within the prescribed time.

9 (f) During a legislative session, within 60 days after receipt  
10 of the governor's recommendation the legislature may, by law, reject  
11 the proposed undertaking. The legislation is binding on the authori-  
12 ty. The proposed undertaking is considered approved if the legisla-  
13 ture fails to pass legislation rejecting it within the prescribed  
14 time.

15 (g) Notwithstanding the provisions of (a) - (f) of this section,  
16 a proposed extension of main or branch lines by more than 50 percent  
17 of the railroad's total track mileage and requiring the issuance of  
18 securities, notes, bonds, or contracts for other borrowings of an  
19 amount in excess of \$50,000,000 or provision for the management and  
20 operation of the railroad by a third-party contractor must be specif-  
21 ically authorized by law.

22 (h) An undertaking described in (a) or (g) of this section is  
23 considered approved or rejected for purposes of this section if

24 (1) the authority has been directed to act or refrain from  
25 acting in accordance with AS 42.40.610; or

26 (2) the legislature by law has specifically approved the  
27 undertaking by authorizing, appropriating financing for, or guarantee-  
28 ing the authority's borrowing for the proposed undertaking.

**No comparable  
provision**

29           Sec. 42.40.610. ACTION-FORCING MECHANISM. (a) The governor or  
1   the legislature, by resolution, may request that the authority exer-  
2   cise or refrain from exercising its powers and authorities. Notice of  
3   a request shall be given to the legislature by the governor and to the  
4   governor by the legislature.

5           (b) To the greatest extent practicable within 30 days after  
6   receipt of a request the board shall respond to both the governor and  
7   the leadership of the legislature in writing specifying

8           (1) the manner in which it proposes to take the requested  
9   action or any modification to the requested action sought by the  
10  authority; or

11           (2) the specific reasons, financial, legal or otherwise,  
12  why the board declines to take the requested action.

13           (c) At the request of the governor or on its own initiative, the  
14  legislature by law may then direct the authority to take the requested  
15  action or the legislature may act to cure the problem precluding the  
16  authority from taking the requested action. If the authority is  
17  unable to take the requested action for financial reasons, it is  
18  obligated to do so, even if directed, only upon provision by the  
19  legislature of sufficient money to plan and implement the action.

**No comparable  
provision**

20       Sec. 42.40.615. INTERVENTION. (a) When authorized by law, the  
21 governor as provided in the legislation shall intervene and exercise  
22 such control over the authority as is necessary and appropriate to  
23 correct a deficiency or to assure that the purposes of this chapter  
24 may be reasonably accomplished, including directing affirmative action  
25 when

26           (1) the board has requested intervention by resolution;

27           (2) the authority has represented to the public or to  
28 creditors that recourse may be had to the assets, property, or credit  
29 of the state on account of acts or omissions of the authority, unless  
1 the secondary or direct liability has been expressly assumed by the  
2 state;

3           (3) the authority has failed to file an annual report as  
4 required by AS 42.40.310 within 120 days after receipt of formal  
5 notice of the omission or has filed an annual report that is false or  
6 misleading on a material matter;

7           (4) a deadlock has occurred in the board, or the membership  
8 of the board is insufficient to constitute a quorum for conduct of  
9 affairs so that the authority is unable to conduct its operations or  
10 perform its activities; or

11           (5) the assets of the authority have been or are committed  
12 to be misapplied or wasted or illegally expended, or the authority has  
13 committed or is about to commit a material violation of this chapter.

14       (b) The governor may take actions necessary to achieve the  
15 object of the intervention stated in the legislation and make ancil-  
16 lary corrections, and shall accomplish the purposes of the interven-  
17 tion as expeditiously as reasonable. Board members and employees may  
18 not be displaced nor the conduct of their duties impaired more than  
19 necessary to accomplish the purposes of the intervention and the  
20 intervention must cease as soon as the objective stated in the legis-  
21 lation and ancillary corrections have been accomplished.

**No comparable  
provision**

22           Sec. 42.40.620. TRUSTEESHIP. (a) When authorized by law, the  
23           governor may petition the superior court of the State of Alaska for  
24           the Third Judicial District at Anchorage to impose a trusteeship over  
25           the authority and appoint the trustees if

26                   (1) the board has requested imposition of the trusteeship  
27           by resolution;

28                   (2) the authority has become insolvent or otherwise unable  
29           to carry out its contractual obligations to creditors and other  
30           persons;

31                   (3) the authority has filed an annual report that is false  
32           or deceptively misleading on a material matter;

33                   (4) the authority has become incompetent or ineligible to  
34           carry out the public purposes for which it was established;

35                   (5) the authority has misused, abused, or continuously ex-  
36           ceeded the power or authority conferred by this chapter or committed  
37           repeated violations of this chapter;

38                   (6) the assets of the authority have been or are committed  
39           to be misapplied or wasted, or illegally expanded, or a material  
40           violation of this chapter has been committed or is about to be com-  
41           mitted and the governor has determined that intervention as provided in  
42           AS 42.40.615 would not be feasible under the circumstances; or

43                   (7) the credit-worthiness of the state has been directly or  
44           indirectly substantially impaired by actions of the authority.

45                   (b) The trustees appointed by the superior court shall take rea-  
46           sonable actions necessary during the trusteeship to achieve its ob-  
47           ject. The trustees have the power and authority to reorganize the  
48           authority and amend its rules and regulations; suspend or remove board  
49           members and executive officials; manage the assets and affairs of the  
50           authority; and exercise all powers necessary or appropriate to fulfill  
51           outstanding agreements, to restore the capability of the authority to  
52           perform the functions and activities for which it was established, to  
53           reinstate its credit or credibility with its creditors or obligees or  
54           the credit of the state or its credibility with its creditors or  
55           obligees to the extent impaired by authority actions.

**No comparable  
provision**

## ARTICLE 7. MISCELLANEOUS PROVISIONS.

27  
28       Sec. 42.40.700. PERSONNEL. (a) All personnel employed by the  
29 Alaska Railroad are personnel of the authority, and not of the state.  
1 The provisions of AS 39 do not apply to personnel employed by  
2 authority.

3       (b) For the purposes of the Public Employment Relations  
4 (AS 23.40.070 - 23.40.260) the authority is considered a "public em-  
5 ployer" within the meaning of that Act, except that AS 23.40.070(1)  
6 does not apply to the authority, and the authority's employees are  
7 classified as employees under AS 23.40.200(a)(1).

8       (c) The authority may not enter into any collective bargaining  
9 agreement concerning wages, hours, working conditions or other employ-  
10 ment terms, conditions and benefits with any organization representing  
11 the authority's executive officials.

## ARTICLE 7. PERSONNEL AND LABOR RELATIONS.

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

27       (b) The collective bargaining agreements between the corporation  
28 and its employees shall remain in effect until they expire by their  
29 terms or, as required under 45 U.S.C. 1206 (Alaska Railroad Transfer  
1 Act of 1982), they are renegotiated, subject to the approval of the  
2 board.

3       (c) The corporation may not enter into a collective bargaining  
4 agreement concerning wages, hours, working conditions or other  
5 employment terms, conditions and benefits with an organization  
6 representing the corporation's chief executive official or executive  
7 officials appointed by the chief executive official.  
8

In SB 352 material is added in (b) regarding collective bargaining agreements. Material in (b) of SB 10 is deleted.

12        Sec. 42.40.710. POLITICAL ACTIVITIES. (a) Money, assets, or  
13 property of the authority may not be used for partisan political  
14 activity or to further the election or defeat of a person seeking an  
15 elective office. Money or a substantial part of the activities of the  
16 authority may not be used for publicity or educational purposes de-  
17 signed to support or defeat legislation pending before congress or the  
18 legislature. However, board members and employees of the authority  
19 may communicate with and appear before committees of congress or the  
20 legislature as well as local legislative bodies in connection with  
21 financing and other matters directly affecting the authority or its  
22 ability to carry out the purposes for which it is established and  
23 respond to requests by members of congress, the legislature, or local  
24 legislative bodies for information, views, and testimony.

25        (b) A board member or employee who violates the provisions of  
26 this section is personally subject to a civil penalty assessed by a  
27 judge of the superior court in an amount not to exceed \$5,000. An  
28 action to enforce this penalty may be brought by any person. A viola-  
29 tion of this chapter does not constitute a crime and assessment of the  
1 civil penalty by a judge does not create any disability or legal  
2 disadvantage based on conviction of a criminal offense.

9        Sec. 42.40.710. POLITICAL ACTIVITIES. (a) Money, assets, or  
10 property of the corporation may not be used for political activity.  
11 However, board members and employees of the corporation may upon  
12 request communicate with and appear before committees of Congress, the  
13 state legislature, and municipal governing bodies in connection with  
14 matters directly affecting the corporation.

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

3       Sec. 42.40.720. LICENSES AND PERMITS. Except as otherwise pro-  
4       vided in this chapter, if the laws of a municipality, the state, or  
5       the United States require a person to hold a license or permit to  
6       undertake certain activities or perform an act, the authority, before  
7       under taking the activity or performing the act, shall comply with the  
8       law to the same extent the state is required to comply.

**No comparable  
provision**

12 Sec. 42.40.740. CLAIMS AGAINST THE AUTHORITY. (c) All claims  
13 and lawsuits involving activities of the railroad, including without  
14 limitation suits in contract, quasi-contract, or tort, shall be  
15 brought against the authority, and not against the state.

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

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

27 (d) The authority is not subject to the provisions of AS 44.80.-  
28 010, regarding the state as a party to an action.

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

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

9 (c) For the purposes of actionable claims, undertakings, pay-  
10 ments of judgments, execution, interest, punitive damages, statutes of  
11 limitations, bonds, costs, and similar matters related to the presen-  
12 tation and prosecution of claims by and against the corporation, the  
13 corporation and its board members and employees enjoy the same rights,  
14 privileges, and immunities as the state and state officers as provided  
15 in AS 09.10.120, AS 09.50.250 - 09.50.290, and AS 09.65.040.

16 (d) Claims against the corporation are not subject to the  
17 provisions of AS 44.77.010 - 44.77.070 regarding claims against the  
18 state.

19 (e) The corporation is not subject to the provisions of AS 44.-  
20 80.010, regarding the state as a party to an action.

Section 42.40.540(b) has been added in SB 352 providing that if the railroad corporation prevails in a legal action, the other party is liable for full costs and legal fees incurred by the corporation in defending the action. This subsection is flawed in that it ignores to possibility that the corporation will be a prevailing plaintiff rather than a prevailing defendant in many cases.

Aside from that minor consideration, this subsection raises a sever constitutional question. Under the Civil Rules of Court there are situations where a prevailing party has only a limited right to attorney's fees and cost. (See Civil Rule 72 (k)) In any case, Civil Rule 82 provides for payment of attorney's fees to a prevailing party according to a schedule that, in general, provides less than the full cost incurred in fees.

LB (cont.)

## Comparison continued

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Singling out the railroad corporation for different treatment from any other prevailing party creates equal protection problems under both the federal and state constitutions that need to be considered. Furthermore, since Article IV, Section 15 of the state constitution grants the supreme court the power to promulgate rules governing practice and procedure in civil cases, it appears that this subsection will have to be approved by two-thirds of the members elected to each house of the legislature. Uniform Rule 39(e) requires that if a bill contains a section changing a court rule the bill must have a section citing the rule and noting what change is made. The fact that the bill changes a court rule must also be noted in the title of the bill. SB 352 does not comply with these technical requirements.

9           Sec. 42.40.730. UNAUTHORIZED REPRESENTATION. All persons who  
10 assume to act for the authority without authority to do so are jointly  
11 and severally liable for the debts and liabilities incurred.

**No comparable  
provision**

65

29           Sec. 42.40.755. EXEMPTION FROM TAXATION. (a) The real and  
 1   personal property of the authority and its assets, income, and re-  
 2   ceipts are declared to be the property of a political subdivision of  
 3   the state and devoted to an essential public and governmental function  
 4   and purpose, and the property, assets, income, and receipts are exempt  
 5   from all taxes and special assessments of the state or a political  
 6   subdivision of the state, including, without limitation, a borough,  
 7   city, municipality, school district, public utility district and other  
 8   taxing unit. All bonds of the authority are declared to be issued by  
 9   a political subdivision of the state and for an essential public and  
 10   governmental purpose and to be a public instrumentality and the bonds,  
 11   and the interest on them, the income from them and the transfer of the  
 12   bonds, and all assets, income, and receipts pledged to pay or secure  
 13   the payment of the bonds, or interest on them, are at all times exempt  
 14   from taxation by or under the authority of the state, except for  
 15   inheritance and estate taxes and taxes on transfers by or in contem-  
 16   plation of death.

17           (b) Nothing in this section affects or limits an exemption from  
 18   license fees, property taxes, or excise, income or other taxes, pro-  
 19   vided under any other law, nor does it create a tax exemption with  
 20   respect to the interest of any business enterprise or other person,  
 21   other than the authority.

22           (c) For purposes of AS 14.17 relating to the computation of the  
 23   required local effort by a district as defined in AS 14.17.250(3),  
 24   property exempt from taxation by this chapter is considered taxable  
 25   real and personal property.

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

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

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

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

26           Sec. 42.40.770. PAYMENTS IN PLACE OF LOCAL REAL PROPERTY TAXA-  
27 TION AND IMPACT AID. (a) To the extent feasible, without impairing  
28 the authority's financial viability and consistent with sound business  
29 principles, including but not limited to the operation of the railroad  
1 on a self-sustaining basis, the need for capital accumulation, and  
2 consistency with regulation by the United States Interstate Commerce  
3 Commission, the authority may

4           (1) make voluntary payments to political subdivisions  
5 served by the railroad or in which the authority has substantial land  
6 holdings in place of local taxation of authority real property; and

7           (2) provide financial assistance to political subdivisions  
8 and other local districts in the development of public education and  
9 other facilities required to be developed as a result of expanded  
10 authority activities in the area.

11           (b) The board shall adopt regulations prescribing the conditions  
12 under and the extent to which it will undertake to provide payments or  
13 assistance, including, but not limited to

14           (1) the conditions cited in (a) of this section;

15           (2) the relative magnitude of the taxation effort deficit  
16 or impact caused by authority activities in an area;

17           (3) the relative need among communities affected by author-  
18 ity activities; and

19           (4) the present or anticipated benefits to the communities  
20 attributable to authority activities.

**No comparable  
provision**

21  
22  
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29

ARTICLE 8. GENERAL PROVISIONS.

Sec. 42.40.870. ENFORCEMENT OF LAW AND AUTHORITY REGULATIONS BY  
AUTHORITY SECURITY FORCE. Members of the security force maintained by  
the authority under AS 42.40.300 may enforce state laws and regula-  
tions adopted by the authority with respect to violations of the laws  
or regulations that occur on or to property owned, managed or trans-  
ported by the authority. Members of the security force may exercise  
the same enforcement powers granted by law to state law enforcement  
officers.

**No comparable  
provision**

1           Sec. 42.40.880. PENALTY FOR VIOLATION OF DESIGNATED REGULATION.  
2           A person who violates a regulation of the authority that has been  
3           designated by the authority as a regulation that is necessary to  
4           protect life, health or property, is guilty of a class B misdemeanor.

**No comparable  
provision**

5        Sec. 42.40.890. CONSTRUCTION. This chapter shall be liberally  
6        construed to carry out its purposes.

**No comparable  
provision**

7           Sec. 42.40.900. DEFINITIONS. In this chapter, unless the con-  
8 text clearly indicates otherwise,

9           (1) "authority" means the Alaska Railroad Authority;

10           (2) "board" means the Board of Commissioners of the Alaska  
11 Railroad Authority;

12           (3) "date of transfer" means the date on which the United  
13 States Secretary of Transportation delivers the deed of conveyance for  
14 the properties of the Alaska Railroad under the federal transfer  
15 legislation;

16           (4) "employees" means all persons employed by the authori-  
17 ty, including executive officials;

18           (5) "executive officials" means the authority's chief  
19 executive officer, assistant chief executive officer, assistant to the  
20 chief executive officer, chief of administration, superintendent of  
21 transportation, manager of marketing and sales, chief engineer, chief  
22 mechanical officer, manager of industrial development and real estate,  
23 manager of budget and accounting, manager of planning, manager of  
24 personnel, manager of supply and procurement, chief of security,  
25 manager of operating rules, manager of data processing, or any employ-  
26 ee of the authority who fulfills these management functions under a  
27 different title or who exercises a similar or comparable level of  
28 responsibility if so designated by the board;

29           (6) "federal transfer legislation" means that Act of  
1 Congress authorizing transfer of the Alaska Railroad to the State of  
2 Alaska or the authority;

3           (7) "immediate family" means

4           (A) spouse;

5           (B) dependent parent, parent-in-law, child, son-in-  
6 law, or daughter-in-law; or

7           (C) a parent, parent-in-law, child, son-in-law, daugh-  
8 ter-in-law, sibling, uncle, aunt, cousin, niece, or nephew resid-  
9 ing in the household of an officer or employee of the authority;

10           (8) "land" means all interests in real property, including  
11 tide and submerged land;

5           Sec. 42.40.950. DEFINITIONS. In this chapter,

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

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

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

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

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

18           (6) "land" means all real property, including tide and  
19 submerged land;

20           (7) "rail properties" means all real and personal property,  
21 tangible and intangible, of the corporation.

cont.)

12 (9) "leadership of the legislature" means the president of  
 13 the senate, the speaker of the house, the minority leaders of each  
 14 house, the chairmen of the senate and house transportation and finance  
 15 committees, the chairman of the legislative budget and audit committee  
 16 or jurisdictional successors or persons or offices designated by those  
 17 individuals;

18 (10) "rail properties" means all right, title, and interest  
 19 of the United States to real and personal property, tangible and  
 20 intangible, identified in the closing report prepared under the feder-  
 21 al transfer legislation and transferred to the authority under the  
 22 legislation;

23 (11) "regulation" has the same meaning as under AS 44.62.-  
 24 640;

25 (12) "rules" means rules, standards, or written procedures  
 26 relating to the governance and internal management and affairs of the  
 27 authority or the board; rules may not be considered to be "regula-  
 28 tions".

29 \* Sec. 3. AS 09.55.110(a)(4) is amended to read:

1 (4) If the property sought to be condemned is for a rail-  
2 road other than one operated by the Alaska Railroad Authority, the  
3 cost of good and sufficient fences along the line of the railroad, and  
4 the cost of cattle guards where fences may cross the line of the  
5 railroad.

**No comparable  
provision**

6 \* Sec. 4. AS 09.55.350 is amended to read:  
 7 Sec. 09.55.350. TIME FOR PAYING COMPENSATION OR DAMAGES OR BOND  
 8 TO BUILD RAILROAD FENCE AND CATTLE GUARDS. The plaintiff shall,  
 9 within 30 days after final judgment, pay the sum of money assessed.  
 10 If the use is for railroad purposes other than the purposes of the  
 11 Alaska Railroad Authority, the plaintiff may, at the time of or before  
 12 the payment, elect to build the fences and cattle guards. If the  
 13 plaintiff [HE] so elects, the plaintiff [HE] shall execute to the  
 14 defendant a bond, with one or more sureties to be approved by the  
 15 court, in double the assessed cost of the same to build such fences  
 16 and cattle guards within eight months from the time the railroad is  
 17 built on the land taken. If the bond is given, the plaintiff need not  
 18 pay the cost of the fences and cattle guards. In an action on the  
 19 bond, the plaintiff may recover reasonable attorney fees.

**No comparable  
 provision**

12

20 \* Sec. 5. AS 39.50.200(b) is amended by adding a new paragraph to read:  
21 (46) members of the Board of Commissioners of the Alaska  
22 Railroad Authority

**No comparable  
provision**

15

23 \* Sec. 6. COMMENCEMENT OF LEGAL EXISTENCE OF ALASKA RAILROAD AUTHORITY.  
24 The legal existence and authority of the Alaska Railroad Authority com-  
25 mences upon appointment by the governor under AS 42.40.030 enacted in sec.  
26 2 of this Act of all members of the Board of Commissioners of the authori-  
27 ty.

**No comparable  
provision**

28     \* Sec. 7. APPOINTMENT OF FIRST MEMBERS OF THE BOARD OF COMMISSIONERS.

29 (a) The governor shall designate the terms of the six public members of  
1 the Board of Commissioners of the Alaska Railroad Authority first appointed  
2 under AS 42.40.040. Of the six public members first appointed

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

7           (b) The governor may exercise the power of appointment under AS 42.-  
8 40.010 only upon acceptance by the legislature by law of the closing report  
9 or its substantive equivalent prepared and submitted under the federal  
10 transfer legislation or upon approval by the legislature of operation of  
11 the Federal Alaska Railroad by the authority.

29     \* Sec. 4. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD

1 CORPORATION. Notwithstanding AS 42.40.020 enacted in sec. 1 of this Act,  
2 the governor shall designate the terms of the appointed members of the  
3 first board of directors of the Alaska Railroad Corporation as follows:

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

12    \* Sec. 8. CLOSING REPORT SUBMITTED UNDER FEDERAL TRANSFER LEGISLATION.  
13 The closing report submitted under the federal transfer legislation must  
14 include a statement of the assets and liabilities of the Alaska Railroad  
15 proposed to be transferred to and assumed by the Alaska Railroad Authority  
16 or the state which statement is as specific and definitive as practicable  
17 under the federal transfer legislation. The legislature may accept or  
18 reject the report and may not condition acceptance on its modification in  
19 any material respect.

**No comparable  
provision**

20 \* Sec. 9. ASSETS AND LIABILITIES TO BE NOTED IN AUDIT. To the extent  
21 practicable, for the five years following the date of transfer of the  
22 Alaska Railroad to the state or the Alaska Railroad Authority the status of  
23 the assets and liabilities specifically identified in the closing report  
24 submitted under the federal transfer legislation must be noted in the  
25 annual audit.

**No comparable  
provision**

26 \* Sec. 10. INITIAL LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT PLANS.

27 (a) Within 18 months of the date of transfer of the Alaska Railroad to the  
28 state or the Alaska Railroad Authority, the authority shall prepare and the  
29 Board of Commissioners of the authority shall adopt a long-range program  
1 plan and a capital improvement plan in accordance with AS 42.40.325.

2 (b) Beginning three years after the preparation of the long-range  
3 program plan described in (a) of this section, the governor and the legis-  
4 lative audit division may conduct an annual performance and efficiency  
5 audit of the authority's compliance with the plan.

**No comparable  
provision**

6 \* Sec. 11. PRE-EXISTING RULES, REGULATIONS AND ORDERS OF THE ALASKA  
7 RAILROAD. The Board of Commissioners of the Alaska Railroad Authority, by  
8 resolution, may continue in force for a period of not more than two years  
9 after date of transfer all or part of the rules, regulations, and orders of  
10 the Alaska Railroad which were in effect one day before the date of trans-  
11 fer and are not inconsistent with this chapter or other state law. All  
12 authorities continued in force under this section shall expire on the  
13 second anniversary of the date of transfer. The Board of Commissioners may  
14 adopt in its rules, regulations, and orders the substance of former federal  
15 authorities relating to the Alaska Railroad. This adoption is not con-  
16 sidered a continuation of the federal authorities if made in compliance  
17 with the procedural requirements of this chapter and other applicable law.

**No comparable  
provision**

18 \* Sec. 12. COLLECTIVE BARGAINING AGREEMENT BETWEEN THE ALASKA RAILROAD  
19 AUTHORITY AND EMPLOYEES. As soon as practicable after transfer of the  
20 Alaska Railroad, the Alaska Railroad Authority and its employees shall  
21 adopt collective bargaining agreements that continue the provisions of the  
22 agreements in effect between the Alaska Railroad and its employees immedi-  
23 ately before transfer of the Alaska Railroad. The collective bargaining  
24 agreements between the authority and its employees shall remain in effect  
25 until they expire by their terms or, as required under the federal transfer  
26 legislation, they are renegotiated, subject to the approval of the Board of  
27 Commissioners of the Alaska Railroad Authority.

**No comparable  
provision**

26 \* Sec. 13. CONFLICTING LAWS INAPPLICABLE. If provisions of this Act  
29 are in conflict with the provisions of other law, the provisions of this  
1 Act prevail.

24 \* Sec. 3. CONFLICTING LAWS INAPPLICABLE. If provisions of this Act are  
25 in conflict with the provisions of other law, the provisions of this Act  
26 prevail. Where possible, provisions of this Act shall be construed so that  
27 they do not conflict with 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act  
28 of 1982).

2 \* Sec. 14. APPLICATION OF EXISTING STATUTES. (a) AS 19 does not apply  
3 to the operations of the Alaska Railroad Authority.

4 (b) The Alaska Railroad Authority is considered a political subdivi-  
5 sion of the state for the purposes of AS 23.10.033.

6 (c) AS 23.10.420 does not apply to the operations of the Alaska Rail-  
7 road Authority.

8 (d) AS 30.15 does not apply to the operations of the Alaska Railroad  
9 Authority.

10 (e) AS 39 does not apply to the operation of the Alaska Railroad  
11 Authority.

12 (f) The following provisions of AS 37 do not apply to the operations  
13 and budgeting procedures of the Alaska Railroad Authority: AS 37.05;  
14 AS 37.07; AS 37.10.010 - 37.10.060, 37.10.085; AS 37.20; and AS 37.23.

15 (g) The Alaska Railroad Authority is not subject to the jurisdiction  
16 of the Alaska Transportation Commission.

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ARTICLE 8. GENERAL PROVISIONS.

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

- (1) AS 19;
- (2) AS 30.15;
- (3) AS 35;
- (4) AS 37.05;
- (5) AS 37.07;
- (6) AS 37.10.010 - 37.10.060;
- (7) AS 37.10.085;
- (8) AS 37.20;
- (9) AS 37.23;
- (10) AS 44.62.040 - 44.62.320.

There provisions are  
moved from temporary  
to permanent law.