

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86/2

3127 HT AK RR/COMP: SB 10, SB 352. HB 512 - ANAL: CS HB 352/HB 512

17 Sec. 15. SUBSEQUENTLY ENACTED STATUTES. No subsequently enacted
18 statute shall be interpreted or construed to apply to the Alaska Railroad
19 Authority, the Alaska Railroad, or any of the authority's activities unless
20 it specifically so provides by its terms.

**No comparable
provision**

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21 * Sec. 16. EFFECTIVE DATE. This Act takes effect upon acceptance by
 22 the Alaska State legislature of the closing report submitted under the
 23 federal transfer legislation enacted by Congress authorizing transfer of
 24 the Alaska Railroad to the State of Alaska or the Alaska Railroad Authority
 25 or upon approval by the legislature of operation of the Federal Alaska
 26 Railroad by the Alaska Railroad Authority.

8 * Sec. 5. EFFECTIVE DATE. This Act takes effect immediately in
 9 accordance with AS 01.10.070(c).

SB 352 contains an immediate effective date while SB 352 contains an elaborate effective date tied to the federal railroad transfer legislation.

**No comparable
provision**

9 Sec. 42.40.250. SPECIAL REPORT. The corporation shall investi-
10 gate and prepare a report for the governor and the legislature on the
11 long-term operations of the railroad that are in the best interest of
12 the state. The report shall be due January 1, 1988. It shall make
13 specific recommendations on operational alternatives and the transfer
14 of all or part of the railroads operations to the private sector.

**No comparable
provision**

25 Sec. 42.40.560 APPROPRIATIONS. The corporation may request,
26 with the concurrence of the governor, a direct appropriation or grant
27 from the legislature to assist in carrying out the provisions of
28 AS 42.40.300 and 42.40.310.

**No comparable
provision**

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

**No comparable
provision**

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

**No comparable
provision**

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

91

AK. RAILROAD

ANALYSIS:

CSHB 352

+ HB 512

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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M E M O R A N D U M

January 18, 1984

SUBJECT: Alaska Railroad (HB 512)
TO: Representative Bette Cato
FROM: Tamara Brandt Cook
Legislative Counsel

TBC

Here is the section by section analysis of HB 512 that you requested.

* Section 1 This is a statement of legislative findings and purpose. In (a) the legislature finds that the Alaska Railroad is an essential part of the state transportation network that will cease to be an option without state action and that extending the railroad into natural resource areas is necessary for long-term economic growth. In (b) the purpose of the Act is stated to be the creation of an entity to operate and manage the railroad pending the transfer of the railroad to the private sector. In (c) the legislature finds that it is necessary to create a public corporation to operate the railroad and that the corporation should be created so that it will be responsible for the management of the financial and legal obligations of the railroad, will constitute a common carrier under the Interstate Commerce Commission, will have the ability to issue tax exempt obligations, may carry out its responsibilities on a self-sustaining basis, and so that the best transportation can be provided supported by state investment when necessary, the railroad may be operated prudently, and borrowing by the corporation does not endanger the state's own borrowing capacity.

* Section 2

Section 42.40.010 The Alaska Railroad Corporation is established as a public corporation outside the executive branch of government but considered a principal department for the purposes of art. III, sec. 26 of the state constitution.

Representative Bette Cato
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January 18, 1984

This last provision is an apparent effort to justify legislative confirmation of members of the board of directors.

The Alaska Supreme Court has found that the power to appoint executive officers is solely an executive function. While Article III, sections 25 and 26 of the state constitution requires legislative confirmation of the appointments of heads of departments and members of quasi-judicial or regulatory agencies, the court has held that those sections represent the outer limits of the legislature's power to confirm. (Bradner v. Hammond, 553 P.2d 1 (Alaska, 1976)) Despite the effort at characterizing the board as a ". . . board or commission . . . at the head of a principal department or a regulatory or quasi-judicial agency. . . ." (Article III, Section 26, Constitution of the State of Alaska), I am certain that the court would find that the board does not fit within the terms of Article III, Section 26 and that legislative confirmation on that basis is inappropriate.

There is a basis for arguing in support of the confirmation requirement. It could be argued that Bradner applies only to appointments of officers of the executive branch and does not apply to appointments of officers of public corporations that have an independent legal status from the executive branch of government. Confirmation of appointments to independent public corporations does not directly invade the governor's power of appointment, because the governor has no duty to administer the corporation that is similar to his duty to administer the executive branch. Nevertheless, it must be stressed that the provision regarding confirmation of board members is subject to constitutional attack.

Section 42.40.020 Five voting members who are voters in the state. are appointed to the board of directors by the governor. No more than two members may be from one judicial district and two members must have at least five years experience as owners or managers of a business in the state. A member may not be a state officer or employee. However, the governor may appoint one person who is not a voter if he has at least 10 years of experience in management of railroads. In addition to voting members, the governor shall appoint a nonvoting member who is an employee of the corporation and the chief executive officer of the corporation shall serve as another nonvoting member. The voting members are to be confirmed by the legislature.

The board is to elect a chairperson and appoint a secretary. The chairperson must call a meeting at least every three months and may call other meetings. The governor is authorized to remove a member from the board for incapacitation, failure to attend meetings, conviction of a felony, or conviction of a misdemeanor involving moral turpitude.

Section 42.40.030 The appointed members of the board serve for staggered five year terms.

Section 42.40.040 A vacancy on the board is filled by the governor and the appointment must be confirmed by the legislature. Despite a vacancy the board may exercise its powers if it has a quorum of members.

Section 42.40.050 An appointed member of the board receives \$200 for each day he is engaged in the performance of duties as a board member. In addition, he is entitled to per diem and travel expenses.

Section 42.40.070 The board must provide by rule for the method of voting and representation of persons absent from a meeting.

Section 42.40.100 The board appoints the chief executive officer of the corporation and fixes his compensation. The chief executive officer of the corporation appoints other executive officers and fixes their compensation subject to board approval.

Section 42.40.110 By rule the board delegates duties necessary for the management of daily affairs of the corporation to the chief executive officer. Within 60 days after it is established, the board must delegate certain specified activities of the corporation.

Section 42.40.200 Meetings of the board are public with the exception of executive sessions. These may be called as authorized under the Administrative Procedure Act or to consider matters pertaining to personnel, the corporation's legal position, land acquisition or disposal, or proprietary information as defined in a manner consistent with the practices of the Interstate Commerce Commission.

Section 42.40.220 The board must keep minutes of each meeting.

Section 42.40.230 The board must establish a procedure for adopting rules, including a procedure for adopting emergency rules.

Section 42.40.240 Information of the corporation is open to public inspection except the corporation may withhold certain matters from disclosure if they are of a nonpublic, privileged, or proprietary nature.

Section 42.40.250 The corporation must prepare a report on the long-term operations of the railroad that is due January 1, 1988. The report shall include recommendations on the transfer of railroad operations to the private sector.

Section 42.40.260 A report describing the operations and financial condition of the corporation during the preceding fiscal year of the railroad shall be distributed to the governor and the legislature within 90 days after the fiscal year ends.

Section 42.40.270 The board must have the records of the corporation audited annually. Corporation records will be made available to an auditor appointed by the governor or to the legislative audit division.

Section 42.40.300 In addition to other powers authorized by law, the corporation may exercise certain specified general powers listed in this section.

Section 42.40.310 The board must adopt a long-range expansion plan and capital improvement plan. The plans cover five year periods and must be updated annually. These plans are to be prepared by employees of the corporation. Copies of the updated plans are to be provided to the governor and the legislature by December 1 each year.

Section 42.40.320 The corporation may not issue stock, pay dividends, make private distributions of assets, make loans to board members or employees or engage in business for private benefit. The corporation may defend and indemnify a current or former employee, agent, or board member against costs incurred in connection with a civil or criminal action if the person acted in good faith on behalf of the corporation and within the scope of his official duties or powers. The corporation may purchase insurance to protect its employees, agents, and board members for actions arising out

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of the performance or failure of performances of duties for or employment with the corporation.

Section 42.40.400 Land acquired by the corporation is under the control of the corporation. Railroad rights-of-way or easements shall be classified as railroad utility corridors. Future railroad utility corridors must be at least 100 feet wide on both sides of the center line of the extended main or branch line, or may be of other width as designated by the corporation. Portions of the utility corridor may be leased or rented for other transportation services.

Section 42.40.420 The board may request conveyance of land owned by or subject to selection by the state. Upon receipt of a request the commissioner of natural resources shall temporarily classify the land for railroad purposes and vacate a classification allowing disposal or lease of that land under other laws. The temporary classification remains in effect for 180 days. Within 90 days after receiving a request, the commission must convey the state's interests in the land to the corporation or notify the corporation of reasons for refusal to classify the land for railroad purposes. A conveyance under this section vests in the corporation the right to extract and use construction materials on the land without regard to whether the resources are part of the surface or subsurface estate.

The corporation may reconvey to the state land that the corporation and the commissioner identify as unnecessary for the corporation's purposes. When physical conditions require that track or fixtures be moved to state-owned land to maintain safe rail operations, the relocation may be made with concurrence of the Department of Natural Resources.

Section 42.40.430 The corporation is authorized to exercise the power of eminent domain and declaration of taking.

Section 42.40.450 The corporation may acquire interests in federal land and property that is available under federal law and may acquire property that is available from the state.

Section 42.40.500 A liability incurred by the corporation may be satisfied only from the assets of the corporation and no creditor has a right of action against the state.

Section 42.40.520 The corporation must obtain a fidelity bond for its board members and officers responsible for finances.

Section 42.40.530 The corporation must keep in force public liability insurance naming the state as an additional insured.

Section 42.40.540 Claims involving activities of the railroad shall be brought against the corporation and not against the state. (b) provides 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 the 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 severe 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. 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. HB 512 does not comply with these technical requirements.

Under (c) the corporation enjoys certain legal rights which the state has. Provisions dealing with the administrative handling of claims against the state do not apply to the corporation.

Section 42.40.550 Revenue generated by or appropriated to the corporation shall be retained and used for railroad purposes by the corporation. This raises 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 state-owned railroad be kept by the railroad and used for railroad purposes. (45 U.S.C. 1207 (a)(5)) 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 the state constitution.

Section 42.40.560 With the concurrence of the governor, the corporation may request an appropriation from the legislature to assist it in carrying out its general powers and preparing long-range expansion and capital improvement plans.

Section 42.40.570 The corporation may issue bonds and bond anticipation notes. The principal and interest are payable from corporation assets. The board shall by resolution establish the form and manner of execution of bonds or bond anticipation notes. They may be sold as determined by the board and shall mature at the time, not exceeding 50 years from their date, determined by the board. The board is authorized to enter into certain agreements with the holders of the bonds or bond anticipation notes listed in (f).

Section 42.40.580 The corporation may issue interim receipts or temporary bonds or bond anticipation notes exchangeable for bonds or bond anticipation notes once they have been executed.

Section 42.40.590 If an officer whose signature appears on bonds, notes, or coupons attached to them ceases to be an officer before delivery of the bonds, notes, or coupons, the signature is valid.

Section 42.40.600 The pledge of assets of the corporation to the payment of bonds or notes is valid and the assets are subject to the lien of the pledge without physical delivery or other act. The corporation is not prohibited from selling assets subject to a pledge.

Section 42.40.620 A holder of bonds or notes or a trustee may enforce all rights under this chapter, the trust agreement or resolution, or any other contract executed by the corporation relating to the bonds or notes and may compel the performance of duties of the corporation required by law or the trust agreement or resolution.

Section 42.40.630 Bonds and notes issued by the corporation are negotiable instruments.

Section 42.40.640 Bonds and notes issued by the corporation are securities in which all public bodies of the state and other financial entities may invest funds.

Section 42.40.650 The corporation may issue refunding bonds. They may be sold or exchanged for outstanding bonds and the proceeds applied to the purchase, redemption or payment of outstanding bonds.

Section 42.40.660 The state is not liable for the debts of the corporation. Bonds and notes are payable solely from the revenue or assets of the corporation and are not a liability of the state or a pledge of the faith and credit of the state. Each bond and note issued by the corporation must contain a statement that the corporation is not obligated to pay it except from the revenue or assets pledged for it and neither the faith and credit nor the taxing power of the state is pledged to the payment of it.

Section 42.40.670 An officer or employee of the corporation is not subject to personal liability because of the execution or issuance of bonds or notes.

Section 42.40.680 The property of the corporation and its assets are exempt from taxes and special assessments of the state or a political subdivision of the state. Bonds and

notes issued by the corporation are exempt from taxation except for inheritance, transfer, and estate taxes.

Section 42.40.690 The assets of the corporation revert to the state if it ceases to exist.

Section 42.40.700 Employees of the railroad are employees of the corporation and not of the state. Laws relating to public employees do not apply. The collective bargaining agreements between the corporation and its employees remain in effect until they expire or are renegotiated. The corporation may not enter into a collective bargaining agreement with an organization representing the corporation's chief executive official or other executive officials appointed by him.

Section 42.40.710 Assets of the corporation may not be used for political activity. Board members and employees may on request appear before Congress, the state legislature, and municipal governing bodies in connection with matters directly affecting the corporation. A board member or employee who violates this section is subject to a civil penalty not to exceed \$5,000.

Section 42.40.900 Certain state laws listed in this section do not apply to the corporation. The railroad is not subject to the jurisdiction of the Alaska Transportation Commission.

Section 42.40.950 Definitions for the chapter are provided.

Section 42.40.990 The short title of this chapter is the Alaska Railroad Corporation Act.

* Section 3 If provisions of this Act conflict with the provisions of other law, the provisions of this Act prevail. Where possible, provisions of this Act shall be construed so that they do not conflict with the Alaska Railroad Transfer Act of 1982.

* Section 4 Members of the first board of directors serve terms that differ in length and will result in staggered terms for members that follow.

* Section 5 The Act takes effect immediately.

TBC:ojb
J2/044

Alaska State Legislature

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Senate Committee on Transportation

SENATE TRANSPORTATION COMMITTEE Staff Analysis CS for Senate Bill No. 352 (Transportation)

*with italicized reference to major differences found in
CS for House Bill No. 512 (Transportation)*

March 29, 1984

Title

Includes a brief description of the main elements of the bill. The list of statutes the corporation is exempt from is also included in the title.

The statutes are:

AS 19 - Title 19 is the statute which sets out the duties of state agencies in regard to highways and ferries and related activities.

AS 23.40 - Chapter 40 deals with the relationship between state entities and labor organizations. But see Article 8 of this legislation for Personnel and Labor Relations provisions.

AS 30.15 - Chapter 15 is concerned with state participation in port facilities and development.

AS 35 - Title 35 sets out the duties and powers of the Department of Transportation and Public Facilities with regard to public facilities.

AS 37.05 - Chapter 05 is the Fiscal Procedures Act. For provisions in this legislation which replace similar provisions in the Fiscal Procedures Act see Section 1, 3(A) and (F); 42.40.100(1) and (8); 42.40.120(b)(4), (C)(11); 42.40.260; 42.40.270.

AS 37.07 - Chapter 07 contains the Executive Budget Act. For similar provisions in this legislation see 42.40.260; and 42.40.270

and 42.40.280.

AS 37.10.010 - 37.10.060 - Give the Department of Administration duties related to Public Funds.

AS 37.10.085 prohibits financial aid to corporations by state or political subdivisions.

AS 37.20 sets out a method for the state to receive federal property. Sec. 42.40.360; 42.40.420 and 42.40.440 for comparable provisions.

AS 37.25 is the miscellaneous provisions of the public finance title.

AS 38 - Title 38 is the Public Lands statute. For similar provisions see 42.40.350; 42.40.360; 42.40.370; 42.40.380; 42.40.390; 42.40.400; 42.40.410; 42.40.420 and 42.40.430.

AS 39 - Title 39 is the public officer and employees statute. See sections 112.40.020; 42.40.030; 42.40.040; (see also Sections 3,4,5, and 6); 42.40.050; 42.40.060 and Article 8 of this Act.

AS 44.62.040 - 44.62.32J - is the Administrative Procedures Act. But see 42.40.150; 42.40.160; 42.40.170; 42.40.180; (see also Section 8); 42.40.200; 42.40.210; 42.40.220 for similar provisions contained in this Act.

*Section 1 This is a statement of legislative findings and purpose. In (a) the legislature finds that the Alaska Railroad is an essential part of the state transportation network that may cease to be an option without state action. It also states that the railroad is necessary for long-term economic growth of the state and an essential part of the state transportation network. In (b) the purpose of the Act is stated to be the creation of an entity to operate and manage the railroad pending the transfer of the railroad to the private sector. That it will be responsible for the management of the financial and legal obligations of the railroad, will constitute a common carrier under the Interstate Commerce Commission, will have the ability to issue tax exempt obligations, carry out its responsibilities on a self-sustaining basis, and so that the best transportation can be provided supported by state investment when necessary, the railroad may be operated prudently, and borrowing by the corporation does not endanger the state's own borrowing capacity. It is also charged with protecting the railroad utility corridor.

*Section 2
Section 42.40.010

The Alaska Railroad is established as a public corporation within the Department of Commerce and Economic Development. However, Section 3 would remove the corporation from the Department of Commerce and Economic Development if the Constitutional Amendment passes.

Section 42.40.020

The corporation is run by a board with nine members including the Commissioner of Commerce and Economic Development, the Chief Executive Officer of the Corporation and one appointed member who is a representative of the corporation's organized labor. In addition, there are six public members who may not be state employees. One of the public members must have 10 years experience and one shall have been an executive official of a U.S. railroad. Except for the two public members just mentioned, all public members must be registered Alaskan voters. With the exception of the Commissioner of Commerce and Economic Development and the chief executive officer, the board shall be confirmed by the majority of the members of each house of the legislature in joint session.

However, see Section 4 where 42.40.020 is amended if the Constitutional Amendment passes. Under this amendment the Commissioner of Commerce and Economic Development is removed from the board and the board is increased to eight appointed members.

The House version, [CSHB 512(Trsp)], is slightly different in that it gives the governor more discretion in naming public members to the board. In the Senate Bill the two railroad experts are mandatory members but in the House version they are optional. In addition, the Senate Bill requires all members of the board, except for the railroad experts, to be registered voters but in the House Bill the two non-registered voters may be any two of the seven public members. The House Bill also differs slightly in its description of the work experience requirements of board members. It allows work experience if it relates to fields relevant to this Act while the Senate Bill just requires five years of business experience. The Senate requirement is limited to business experience in Alaska while the House does not have a similar limitation.

Section 42.40.030 All members required to be confirmed by the Legislature serve for staggered five year terms and serve at the pleasure of the Governor. Section 10 sets up how the first board of directors will serve which results in staggered terms for members that follow.

However, see Section 6 and Section 7 which amend 42.40.030 if the Constitutional Amendment passes. Under these amendments a board member could be removed only for cause.

Section 42.40.040 A vacancy on the board is filled by the governor and the appointment must be confirmed by the legislature. Despite a vacancy the board may exercise its power if it has a quorum of members.

Section 42.40.050 An appointed member of the board received \$250 for each day he is engaged in the performance of duties as a board members and partial day provisions may be established by the board. In addition, he is entitled to per diem and travel expenses.

The House Bill, [CSHB 512(Trsp)], provides for a \$400 per day compensation rate.

Sec. 42.40.060 The board is to elect a chairman and vice-chairman from its membership and appoint a secretary.

Section 42.40.100 - The board is to manage the corporation according to the guidelines provided in this section. This corporation is to be generally self-sustaining, subject to the ICC consistent with the Transfer Act and provide safe, efficient and economical transportation. The board must apply to the legislature for appropriations if a service is provided which is not self-sustaining. In addition, the board is responsible for reviewing all land disposals so that future expansions of the railroad are not restricted.

The House Bill, [CSHB 512(Trsp)], does not include the provision requiring the corporation to apply for an appropriation if it provides a service which is not self sustaining.

Section 42.40.110 The board appoints the Chief Executive Officer of the corporation and fixes his compensation. The Chief Executive Officer of the corporation appoints other executive officers. The salaries of the executive officers appointed by the Chief Executive Officer are subject to board approval.

The House Bill, [CSHB 512(Trsp)], requires that the board approve all executive officers appointed by the Chief Executive Officer.

Section 42.40.120 By rule the board delegates duties necessary for the management of daily affairs of the corporation to the Chief Executive Officer. Within 60 days after it is established, the board must delegate certain specified activities of the corporation. Some activities are delegated but require specific board approval for final action.

In addition to the delegated activities which require board approval found in the Senate version, the House Bill, [CSHB 512(Trsp)], requires specific board approval to begin capital projects with an estimated completion cost of \$500,000 or on estimated completion time of more than one year.

Section 42.40.150 Meetings of the board are public with the exception of executive sessions. The board provides by rule how notice of the meetings shall be given. The board is required to keep minutes of the meetings.

In addition to the requirement that minutes be kept of the meetings the House Bill, [CSHB 512(Trsp)], requires that a certified copy of the public portion of the minutes of each meeting be sent to the governor and the legislature.

Section 42.40.160 A quorum is established as five and an affirmative action by the board also requires five votes. The board may confer and vote by teleconferencing but may not vote by proxy.

Section 42.40.170 Executive sessions are limited to matters listed and must be called by a majority vote. No action may be taken at an

executive session and discussion must be limited to the topic of the motion or an auxiliary subject.

In the House Bill, [CSHB 512 (Trsp)], the list of subjects to be covered in an executive session is more general in nature than the list in the Senate Bill. In addition, the list is permissive rather than an exclusive list. There is no majority vote requirement to call an executive session nor is there a prohibition against taking action in an executive session. There is no restriction to discuss only the topic contained in the motion.

Section 42.40.180 The board is to adopt rules to carry out the purposes of this chapter. It is required to give public notice 15 days before it adopts, amends or repeals a rule. Public notice consists of publishing in at least three newspapers of statewide circulation and to persons requesting notice. Every interested party must be given one hour to testify and all relevant matter must be considered.

But see Section 8 which repeals the rule making procedure if the Constitutional Amendment passes. In its place, the new section would give all powers to adopt a rule making procedure to the board.

The House Bill [CSHB 512 (Trsp)], leaves the development of a procedure for providing notice and an opportunity to testify up to the board. It shall establish this procedure within 90 days after its first meeting. The board is also given the responsibility of developing an emergency rule making procedure but the 90 day rule does not apply to the development of this procedure.

Section 42.40.190 The board is required to set up a process for adopting emergency rules. Emergency rules are to be limited to situations where they are necessary for the orderly operation of the corporation's facilities or programs. The requirements of 42.40.180 need not be followed but within 10 days public notice is to be given of the action. Rules adopted under this section remain in effect for no more than 120 days unless the procedures of 42.40.180 are followed.

The House Bill, [CSHB 512(Trsp)], has no similar restrictions or requirements for emergency rules. In the preceding section, the board is given full authority to set up a procedure for adopting emergency rules but the question of what topics may be covered by the emergency rules is not addressed.

Section 42.40.200 Sets up a procedure for challenging a rule adopted under 42.40.180(a) and 42.40.190(a) but restricts the ability to declare a rule invalid for procedural deficiency.

The House Bill, [CSHB 512(Trsp)], has no similar provision.

Section 42.40.210 The board may, by resolution, adopt the existing rules without following the rule making procedure of 42.40.180.

The rules adopted by resolution may not be inconsistent with this chapter or other state law. The House Bill also contains a

provision whereby the substance of previous federal rules may be adopted however the operative effect of this provision is unclear.

Section 42.40.220 Records of the corporation are open to public inspection except the corporation may withhold certain matters from disclosure by rule if they are of a nonpublic, privileged, or proprietary nature.

The House Bill, [CSHB 512 (Trsp)], requires that the board must by rule identify the records as confidential before they are withheld from the public.

Special Note: *The House Bill, [CSHB 512 (Trsp)], contains a provision on conflict of interest. No similar provision is contained in the Senate Bill. The conflict of interest section in the House Bill, 42.40.210, says a board member or executive officer may not participate in a decision of the corporation if he, or an immediate family member, has an interest unless their interest is remote. Interest and remote are defined and a procedure is set out for situations where the application of the section is not clear. In addition, the board shall adopt rules to further define conflict of interest and ethical rules 120 days after its first meeting.*

Section 42.40.250 In addition to other powers authorized by law, the corporation may exercise certain specified general powers listed in this section.

In addition to slight drafting changes found in numbers (10), (11), (19) and (20) the House Bill, [CSHB 512 (Trsp)], contains two additional powers. Number (27) of the House Bill provides the power to own subsidiary companies or enter into agreements where part ownership or a similar interest in another corporation is part of the agreement. Number (28), of the House Bill seems to allow additional railroad activity which could technically be beyond the powers to extend the current railroad facility.

Special Note: *The House Bill, [CSHB 512 (Trsp)], contains a section requiring an oversight report to the governor and the legislature before certain action is taken (Sec. 42.40.280). The Senate Bill contains no similar provision.*

Section 42.40.260 A report describing the operation and financial condition of the corporation during the preceding fiscal year of the railroad shall be distributed to the governor and the legislature within 90 days after the fiscal year ends.

The House Bill, [CSHB 512 (Trsp)], also includes a provision that the report may include suggestions for legislation relating to the structure, powers or duties of the corporation or to operate facilities of the corporation.

Section 42.40.270 The board must have the records of the corporation audited annually. Corporation records will be made available to an auditor appointed by the governor or to the legislative audit division.

In addition, the board is required to have an annual performance audit conducted by a recognized railroad management expert.

In the House Bill, [CSHB 512 (Trsp)], the performance audit is to be conducted by a qualified professional performance auditing firm rather than a railroad management expert as provided in the Senate Bill.

Section 42.40.280 The board must develop a long-range program and capital improvement plan. The plan covers a five year period and must be updated annually. Copies of the adopted plan are to be provided to the governor and the legislature by December 1 of each year.

The House Bill, [CSHB 512 (Trsp)], requires separate reports for each subject area. In addition, the board is required to consult with other state agencies when they develop the plans if another state agency is affected by their plans.

Section 42.40.320 The corporation may not issue stock, pay dividends, make private distributions of assets, make loans to board members or employees or engage in business for private benefit. The corporation may defend and indemnify a current or former employee, agent, or board member against costs incurred in connection with a civil or criminal action if the person acted in good faith on behalf of the corporation and within the scope of his official duties or powers. The corporation may purchase insurance to protect its employees, agents, and board members for actions arising out of the performance or failure of performances of duties for or employment with the corporation.

Section 42.40.350 Land acquired by the corporation is under the control of the corporation. Railroad rights-of-way or easements are railroad utility corridors. Land other than right-of-way or easements is rail land. Future railroad utility corridors must be at least 100 feet wide on both sides of the center line of the extended main or branch line, or may be less if adjoining land does not belong to the corporation. Portions of the utility corridor may be leased or rented for other transportation services if the use does not restrict other parallel uses of the utility corridor. The corporation may sell or lease rail land however, none of the railroad utility corridor may be sold.

The House Bill, [CSHB 512(Trsp)], requires legislative approval for sale of rail land.

Section 42.40.360 The board may nominate federal land for state selection for a railroad purpose. The Commissioner of Natural Resources would acquire the land through the federal land selection process.

In addition, the board may request any state land from the Department of Natural Resources. Upon receipt of the written request the Commissioner of the Department of Natural Resources must reserve the land in the railroad's name for 180 days.

Section 42.40.370 When the railroad requests state land under the preceding section the Commissioner has 90 days to reply in writing

whether or no the request has been denied, denied in part or if the request has been granted. A conveyance under this section may be for less than fair market value and, absence a reservation to the contrary, vest full ownership of surface and subsurface rights. The land may be reconveyed back to the state if it is no longer necessary for the corporation's purposes.

The House Bill, [CSHB 51 (Trsp)], does not contain a provision allowing transfer to the corporation for less than fair market value.

Section 42.40.380 The corporation is authorized to relocate rail facilities to state land when an emergency exists. The Chief Executive Officer makes the determination that it is necessary to relocate for safe and adequate rail operations. After the relocation the corporation is required to notify the Department of Natural Resources.

The House Bill, [CSHB 512 (Trsp)], does not require an emergency condition, rather it says simply that a physical condition must require relocation. However, the House Bill requires concurrence of Department of Natural Resources before the move.

Section 42.40.390 The board may develop rules governing land used by a third party. The rules are to protect the common health, safety, and welfare of the public and may not be limited by leases, contracts or other transaction.

No comparable provisions in the House Bill.

Section 42.40.400 The corporation is authorized to exercise the power of eminent domain and declaration of taking.

Section 42.40.410 The corporation may vacate land acquired for railroad purposes by filing in the appropriate recording district.

Section 42.40.420 The corporation may acquire interests in federal land on its own behalf.

Section 42.40.430 The corporation may authorized municipal use of rail land. It may also authorize a walkway or trail on the utility corridor so long as parallel uses are not restricted. Before authorizing the use of either rail land or the utility corridor, the municipality must sign a hold harmless agreement and indemnify the corporation for any judgment against it for use related to the municipal use. When the corporation determines the use is inconsistent with expansion or replacement of railroad facilities the municipal use must be stopped.

The House Bill, [CSHB 512(Trsp)], allows the granting of a right-of-way on any rail property for use of a pedestrian walkway or trail. It does not contain a provision protecting parallel uses of the railroad corridor nor does it state who shall determine when the municipality shall vacate the right-of-way if it interferes with rail use.

Section 42.40.440 The corporation may acquire surplus property from either the federal government or the state.

Special Note: The House Bill contains a provision requiring compliance with state law if pesticides or herbicides are used by the corporation.

Section 42.40.500 A liability incurred by the corporation may be satisfied only from the assets of the corporation and no creditor has a right of action against the state.

Section 42.40.510 The corporation must obtain a fidelity bond for its board members and officers responsible for finances.

Section 42.40.520 The corporation is required to keep in force all manners of insurance to protect its assets, services, and employees from any potential liability. It may, however, provide for certain self-insurance retentions.

The corporation must provide public liability insurance under the House Bill. It is not authorized to self-insure.

Section 42.40.530 Revenue generated by or appropriated to the corporation shall be retained and used for railroad purposes by the corporation.

Section 42.40.540 With the concurrence of the governor, the corporation may request an appropriation from the legislature to assist it in carrying out its general powers and preparing long-range expansion and capital improvement plans.

Section 42.49.600 The corporation may issue bonds and bond anticipation notes. The principal and interest are payable from corporation assets. The board shall by resolution establish the form and manner of execution of bonds or bond anticipation notes. They may be sold as determined by the board and shall mature at the time, not exceeding 50 years from their date, determined by the board. The proceeds from the bonds may not be used for any other purpose than that for which the instruments were originally issued. There is also a list of mandatory requirements that the instruments must comply with.

Special Note: The House Bill, (CSHB 512(Trsp)), sections on bonds and notes is substantially different from the Senate version. However, the powers, duties and obligations, of the corporations in relation to its ability to raise money through bonding ostensibly remains the same.

Section 42.40.610 Bonds and notes issued by the corporation are negotiable instruments.

Section 42.40.620 Bonds and notes issued by the corporation are securities in which all public bodies of the state and other financial entities may invest funds.

Section 42.40.630 Payment of the principal or interest on lands may be made from assets or revenue of the corporation regardless of the source.

Section 42.40.640 This section authorizes the board to enter into certain agreements with holders of the bonds or bond anticipation notes and provides for a general authority to enter into additional agreements in the absolute discretion of the board if an agreement will make bonds or notes more marketable.

Section 42.40.650 The corporation may issue interim receipts or temporary bonds or bond anticipation notes exchangeable for bonds or bond anticipation notes once they have been executed.

Section 42.40.660 The corporation may issue refunding bonds. They may be sold or exchanged for outstanding bonds and the proceeds applied to the purchase, redemption or payment of outstanding bonds.

Section 42.40.670 The board is required to retain a financial advisor independent of an underwriter who is negotiating with them for a bond sale.

Section 42.40.680 The signatures of corporation officers on bonds or notes are valid regardless of the officers' current relationship to the corporation.

Section 42.40.690 The pledge of assets of the corporation to the payment of bonds or notes is valid and the assets are subject to the lien of the pledge without physical delivery or other act. The corporation is not prohibited from selling assets subject to a pledge.

Section 42.40.700 A holder of bonds or notes or a trustee may enforce all rights under this chapter, the trust agreement or resolution, or any other contract executed by the corporation relating to the bonds or notes and may compel the performance of duties of the corporation required by law or the trust agreement or resolution.

Section 42.40.710 The state is not liable for the debts of the corporation. Bonds and notes are payable solely from the revenue or assets of the corporation and are not a liability of the state or a pledge of the faith and credit of the state. Each bond and note issued by the corporation must contain a statement that the corporation is not obligated to pay it except from the revenue or assets pledged for it and neither the faith and credit nor the taxing power of the state is pledged to the payment of it.

Section 42.40.720 An officer, board member, or employee of the corporation is not subject to personal liability because of the execution or issuance of bonds or notes.

Section 42.40.750 Employees of the railroad are employees of the corporation and not of the state. Laws relating to public employees do not apply.

Section 42.40.760 The provisions of the Public Employee Relations Act do not apply. However, non-executive officials may organize and engage in collective bargaining.

Section 42.40.770 The board or the employees organization may request the Department of Administration to participate in their contract negotiations. Any agreement accepted by the two parties must have a grievance procedure which has binding arbitration as its last step.

The House Bill, [CSHB 512(Trsp)], provides that the Department of Administration may participate in labor negotiations without stating at whose invitation or if in fact they need to be invited to participate. In addition, the corporation is required to confer with the Department of Administration before entering into labor negotiations.

Section 42.40.780 There is created a railroad labor relations agency made up of three members appointed by the governor. The agency shall perform the functions described in AS 23.40.090 - 23.40.190 which are the functions currently carried out by the state personnel board for all state employees.

It should be noted that the House Bill, [CSHB 512(Trsp)], has spelled out the provision of AS 23.40.090 - 23.40.190 rather than cite them as the Senate Bills. Those provisions can be found in the House Bill at; 42.40.090 which is cited as AS 23.40.090 in the Senate Bill; 42.40.750 which is cited as AS 23.40.100 in the Senate Bill; 42.40.760 which is cited as AS 23.40.110 in the Senate Bill; 42.40.770 which is cited as AS 23.40.120 in the Senate Bill; 42.40.780 which is cited as AS 23.40.130 in the Senate Bill; 42.40.790 which is cited as AS 23.40.140 in the Senate Bill; 42.40.800 which is cited as AS 23.40.150 in the Senate Bill; 42.40.810 which is cited as AS 23.40.160 in the Senate Bill; 42.40.820 which is cited as AS 23.40.170 in the Senate Bill; 42.40.830 which is cited as AS 23.40.180 in the Senate Bill; and 42.40.840 which is a slightly modified version of AS 23.40.190 cited in the Senate Bill. The difference between the Senate cite and 42.40.840 is that the railroad labor relations agency acts on its own to initially name the mediator while the Senate cite allows one of the parties to request a mediator. In addition, the House version requires that the mediator be mutually agreeable to both parties and shall be chosen from a list of seven qualified mediators/arbitrators knowledgeable in railway labor agreements. The Senate cite has no similar provision.

Section 42.40.790 Railroad employers have a full right to strike if a collective bargaining unit votes to do so by secret ballot. However, the parties may agree in writing to submit interpretation or application disputes to an arbitrator. Under this provision the railroad employees clearly fall under 23.40.200(a)(3) which are commonly referred to as "class 3" employees.

The House Bill has a substantial rewrite of this section. Basically the House has the employees somewhere between class 2

employees and class 1 employees (see AS 23.40.200). In the House version the employees are permitted to strike for a limited time and may be enjoined by a court of law at the request of the corporation. After being enjoined the dispute is automatically sent to binding arbitration. The arbitrator is the same person as was the original mediator chosen under 42.40.840.

Section 42.40.800 Prohibits use of corporation money, assets or property for political activity except lobbying on matters which directly affect the corporation. It provides for a \$5000 penalty for violation of this section.

The House Bill, [CSHB 512(Trsp)], has no similar provision.

Section 42.40.810 Prohibits requiring or coercing employees to undertake activities, or restrain from activities, except as directly related to the performance of their official duties.

The House Bill, [CSHB 512(Trsp)] has no similar provision.

Special Note: In addition to the provision found in the Senate Bill, the House Bill contains two additional provisions; 42.40.870 and 42.40.880. 42.40.870 allows the deduction of union dues from an employee's wages, it should be noted that the power to make such an agreement exists under 42.40.760(b)(2) which is cited as AS 23.40.110 under the Senate Bill. 42.40.880 provides for a religious exception from the payment of union dues.

Section 42.40.900 Claims involving activities of the railroad shall be brought against the corporation and not against the state. The corporation board members and employees have the same immunities from liability for claims against the corporation as do other state officers. Claims against the corporation must first go through an administrative appeal process to the Department of Administration before going to court action.

Section 42.40.910 The property of the corporation and its assets are exempt from taxes and special assessments of the state or a political subdivision of the state. Bonds and notes issued by the corporation are exempt from taxation except for inheritance, transfer, and estate taxes.

Section 42.40.920 The corporation is exempt from the jurisdiction of the Alaska Transportation Commission. In addition, it is exempt from the following statutes:

The statutes are:

AS 19 - Title 19 is the statute which sets out the duties of state agencies in regard to highways and ferries and related activities.

AS 23.40 - Chapter 40 deals with the relationship between state entities and labor organizations. But see Article 8 of this legislation for Personnel and Labor Relations provisions.

AS 30.15 - Chapter 15 is concerned with state participation in port facilities and development.

AS 35 - Title 35 sets out the duties and powers of DOT&PF with regard to public facilities.

AS 37.05 - Chapter 05 is the Fiscal Procedures Act. For provisions in this legislation which replace similar provisions in the Fiscal Procedures Act see Section 1, 3(A) and (F); 42.40.100(1) and (8); 42.40.120(b)(4), (C)(11); 42.40.260; 42.40.270.

AS 37.07 - Chapter 07 contains the Executive Budget Act. For similar provisions in this legislation see 42.40.260; and 42.40.270 and 42.40.280.

AS 37.10.010 - 37.10.060 - Give the Department of Administration duties related to Public Funds.

AS 37.10.085 prohibits financial aid to corporations by state or political subdivisions.

AS 37.20 sets out a method for the state to receive federal property. Sec. 42.40.360; 42.40.420 and 42.40.440 for comparable provisions.

AS 37.25 is the miscellaneous provisions of the public finance title.

AS 38 - Title 38 is the Public Lands statute. For similar provisions see 42.40.350; 42.40.360; 42.40.370; 42.40.380; 42.40.390; 42.40.400; 42.40.410; 42.40.420 and 42.40.430.

AS 39 - Title 39 is the public officer and employees statute. See sections 42.40.020; 42.40.030; 42.40.040; (see also Sections 3, 4, 5, and 6); 42.40.050; 42.40.060 and Article 8 of this Act.

AS 44.62.040 - 44.62.320 - is the Administrative Procedures Act. But see 42.40.150; 42.40.160; 42.40.170; 42.40.180; (see also Section 8); 42.40.200; 42.40.210; 42.40.220 for similar provisions contained in this Act.

Section 42.40.930 If provisions of this Act conflict with the provisions of other law, the provisions of this Act prevail. Where possible, provisions of the Act shall be construed so that they do not conflict with the Alaska Railroad Transfer Act of 1981.

Section 42.40.940 The assets of the corporation revert to the state if it ceases to exist.

Section 42.40.980 Definitions of the chapter are provided.

The House Bill, [CCHB 512(Trans)], has a substantially different list of positions under executive officer.

Section 42.40.990 The short title of this chapter is the Alaska Railroad Corporation Act.

Section 3 Amends 42.40.010 by removing the corporation from the Department of Commerce and Economic Development if the Constitutional Amendment passes.

Section 4 Amends 42.40.020(a) if the Constitutional Amendment passes by removing the Commissioner of Commerce and Economic Development from the board and increases the appointed members of the board from seven to eight.

Section 5 Amends 42.40.020(e) by removing reference to the Commissioner of Commerce and Economic Development if the Constitutional Amendment passes.

Section 6 Amends 42.40.030 if the Constitutional Amendment passes by removing reference to the Commissioner of Commerce and Economic Development and by removing the ability of the governor to remove board members at his pleasure.

Section 7 Amends 42.40.030 if the Constitutional Amendment passes by adding a new section which would state specific reasons for which a governor may remove board members.

Section 8 Repeals 42.40.180 if the Constitutional Amendment passes and replaces it with a new section. The new section gives the board discretion in adopting a rule making process.

Section 9 The corporation must prepare a report on the long-term operations of the railroad that is due January 1, 1988. The report shall include recommendations on the transfer of railroad operations to the private sector.

Section 10 Members of the first board of directors serve terms that differ in length and will result in staggered terms for members that follow.

Section 11 Existing collective bargaining agreements are to be adopted by the corporation and remain in effect for two years. Within 180 days of the first meeting the board and the unions shall establish a procedure for renegotiating the existing collective bargaining agreements.

Section 12 Repeals 42.40.190 and 42.40.200 if the Constitutional Amendment passes.

Section 13 The effective date of Section 3-8 and 12 is the effective date of the Constitutional Amendment should it pass. Section 12 sections 1,2 and 9-11 take effect immediately.

This analysis contains key concepts embodied in CSHE 512 (transportation) and also lists the differences between CSAB 512 (transportation) and CSSB 352 (transportation) relating to the establishment of a public corporation to operate and manage the Alaska Railroad. This has been prepared by the House Transportation Committee staff.

Key Concepts

Purpose section contains provisions that support future transfer to the private sector for ownership, operation, or both consistent with the federal transfer legislation.

The board of directors is exclusively responsible for the operations of the railroad. Day to day operations are delegated to the chief executive officer, who is appointed by and serves at the pleasure of the board.

There is a detailed powers and duties section to give the board general direction in management of the corporation.

The general policy of the legislation is to separate the railroad corporation from government as much as possible. This is difficult under the State Constitution and considering the use of public funds.

The board establishes rules to govern their operation and there is a procedure for public comment and participation in the formulation of rules. Exceptions are listed in the case of proprietary, rate and other information.

The board is to prepare long-range program and capital improvement plans. The corporation is required to be audited annually and submit an annual report.

In the "Lands" section, the corporation holds title to and has exclusive control of all lands transferred by the federal government, surface and subsurface. There is also a "fast track" procedure for acquiring state lands for railroad purposes and the powers of eminent domain. (NOTE the Federal Interest Land Policy Management Act provided for a mechanism for acquiring federal lands for transportation corridors.) Municipalities may get access to rail lands and rights-of-way for municipal trails.

The corporation may sell revenue bonds and must insure that it's borrowing does not endanger the states borrowing abilities. Revenues generated by or appropriated to the corporation are under the control of the corporation and the operations are tax-exempt consistent with the federal transfer legislation.

Employees of the railroad corporation are employees of the corporation and not of the state. Consistent with the federal transfer legislation, collective bargaining agreements shall be continued for a two year period during which time the contracts are renegotiated.

An amendment to the constitution is proposed to remove the corporation from one of the principal departments as is currently required and to give the legislature confirmation of board members. The amendment is contained in HJR 72 and SJR 43.

Differences in the House and Senate Versions.

Two members of the board may have experience in railroad operations.

Rate of compensation for board members is \$400 in the House version and \$250 per day in the Senate version.

The House Bill contains a conflict of interest section for board members.

The House Bill requires State Oversight Reports for the Governor and the ~~leadership of the~~ legislature in addition to the formal action that may be taken in oversight by the federal Interstate Commerce Commission.

Legislative approval is required for final sale of land.

The House Bill has a section on the use of pesticides and herbicides on railroad land.

The House version of the bonding section has been reviewed by the state bond counsel and appropriate recommendations have been incorporated in the House bill.

The House Bill contains a detailed labor relations section as opposed to the Senate specifying sections of existing law. Conflicts were found in the latter process and the House bill details the sections as appropriate.

A mediations/arbitration process has been structured for the resolution of disputes in the collective bargaining process. Strikes for a limited time are permitted similar to the state's "class A-2" employees.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 30, 1984

MAR 30 1984

SUBJECT: Alaska Railroad (CSHB 512 (Trsp))
TO: Representative Joe Hayes
FROM: Tamara Brandt Cook
Deputy Director TB
Division of Legal Services

Here is the section by section analysis of HB 512 that you requested.

* Section 1 This is a statement of legislative findings and purpose. In (a) the legislature finds, among other things, that the Alaska Railroad is an essential part of the state transportation network that will cease to be an option without state action and that extending the railroad into natural resource areas is necessary for long-term economic growth. In (b) the purpose of the Act is stated to be, among other things, the creation of an entity to operate and manage the railroad pending the transfer of the railroad to private sector. It is the purpose of the legislature to create a public corporation to operate the railroad and that corporation should be created so that it will be responsible for the management of the financial and legal obligations of the railroad, will constitute a common carrier under the Interstate Commerce Commission, will have the ability to issue tax exempt obligations, and so that the best transportation can be provided supported by state investment when necessary, the railroad may be operated prudently, and borrowing by the corporation does not endanger the state's own borrowing capacity.

* Section 2

Section 42.40.010 The Alaska Railroad Corporation is established as a public corporation within the Department of Commerce and Economic Development.

Section 42.40.020 Seven members, at least five of whom are voters in the state, are appointed to the board of directors by the governor. No more than two appointed members may be from one judicial district and all members must have at least five years experience or training in fields relevant to the purposes of AS 42.40. The governor shall appoint one member who is an employee of the corporation and a member of a bargaining unit. The commissioner of commerce and economic development and the chief executive officer of the corporation shall serve as additional members. The appointed members are to be confirmed by the legislature.

This last provision can only function as a request to the governor to submit the members for confirmation. It is not, however, constitutionally enforceable under Article III, sections 25 and 26 of the State Constitution as construed in Bradner v. Hammond, 553 P.2d (Alaska, 1976).

Section 42.40.030 The appointed members of the board serve for staggered five year terms.

Section 42.40.040 A vacancy on the board is filled by the governor and the appointment must be confirmed by the legislature. Despite a vacancy the board may exercise its powers if it has a quorum of members. A member whose term expires serves until a successor has been appointed.

Section 42.40.050 An appointed member of the board receives \$400 for each day he is engaged in the performance of duties as a board member. In addition, he is entitled to per diem and travel expenses.

Section 42.40.060 The board elects from its membership a chairman and vice-chairman. The board appoints a secretary.

Section 42.40.100 The board is responsible for the management of the corporation. As part of this duty, the board is obligated to carry out certain itemized functions.

Section 42.40.110 The board appoints the chief executive officer of the corporation and fixes his compensation. The chief executive officer of the corporation appoints other executive officers and fixes their compensation subject to board approval.

Section 42.40.120 By rule the board delegates duties necessary for the management of daily affairs of the corporation to the chief executive officer. Within 60 days after it is

established, the board must delegate certain specified activities of the corporation. The board may require exercise of a delegated duty to be subject to board approval. Specific board approval is required for certain itemized actions.

Section 42.40.150 Meetings of the board are public with the exception of executive sessions. The chairman must call a meeting every three months and may call other meetings as necessary. The board keeps minutes of meetings.

Section 42.40.160 Five members of the board constitute a quorum. Five affirmative votes are required for board action. The board provides for the manner of voting, but may not allow voting by proxy.

Section 42.40.170 The board may consider in an executive session matters that pertain to personnel, the corporation's legal position, land acquisition or disposal, or information of a type treated as confidential by the Interstate Commerce Commission.

Section 42.40.180 The board must establish a procedure for adopting rules, including a procedure for adopting emergency rules.

Section 42.40.190 The board may provide that rules and orders in effect on the date of transfer of the railroad to the state that are not inconsistent with AS 42.40 or other state law remain in effect.

Section 42.40.200 Information of the corporation is open to public inspection except the corporation may withhold certain matters from disclosure if they are of a nonpublic, privileged, or proprietary nature.

Section 42.40.210 A board member or executive officer of the corporation may not participate in a decision of the corporation in which that person or a member of his immediate family has a direct or indirect financial interest unless the interest is remote and participation is approved by the board. Within 120 days after the first meeting, the board shall adopt rules implementing this section, providing additional conflict of interest rules, and providing for the removal of a board member or executive officer who intentionally violates a prohibition contained in this section.

Section 42.40.250 In addition to other powers authorized by law, the corporation may exercise certain specified general powers listed in this section.

Section 42.40.260 A report describing the operations and financial condition of the corporation during the preceding fiscal year of the railroad shall be distributed to the governor and the legislature within 90 days after the fiscal year of the railroad ends.

Section 42.40.270 The board must have the records of the corporation audited annually. Corporation records will be made available to an auditor appointed by the governor or to the legislative audit division.

Section 42.40.280 The board shall provide a state oversight report to the governor and the legislature before undertaking certain major actions. Requirements of the report are specified.

Section 42.40.290 The board must adopt a long-range expansion plan and capital improvement plan. The plans cover five year periods and must be updated annually. Copies of the updated plans are to be provided to the governor and the legislature by December 1 each year.

Section 42.40.300 The corporation may not issue stock, pay dividends, make private distributions of assets, make loans to board members or employees or engage in business for private benefit.

Section 42.40.310 The corporation may defend and indemnify a current or former employee, agent, or board member against costs incurred in connection with a civil or criminal action if the person acted in good faith on behalf of the corporation and within the scope of his official duties or powers. The corporation may purchase insurance to protect its employees, agents, and board members for actions arising out of the performance or failure of performances of duties for or employment with the corporation.

Section 42.40.350 Land acquired by the corporation is under the control of the corporation. Railroad rights-of-way or easements shall be classified as railroad utility corridors. Future railroad utility corridors must be at least 100 feet wide on both sides of the center line of the extended main

or branch line, or may be of lesser width if adjoining land is not rail land. Portions of the utility corridor may be leased or rented for transportation, communication, and transmission purposes. The corporation may authorize other uses of rail land, but sale is subject to approval of the legislature.

I note that, for some reason, other methods of disposing of land, such as trading it for other property, is not subject to legislative approval. This seems inconsistent from a policy point of view. It may also conflict with the "separation of powers" doctrine which is recognized in Alaska. Bradner v. Hammond, supra. While the precise question was not considered, a scheme that included legislative approval of a Cook Inlet land exchange survived consideration by the court. State v. Lewis, 559 P.2d 630 (Alaska 1977) However, that case involved approval of the exchange of large parcels of land only. The court emphasized the extreme nature of the state interest in settling the land issues arising out of the Alaska Native Claim Settlement Act and the unique nature of that situation. Neither of these considerations apply here. In this draft, legislative approval must be obtained before the sale of any parcel may take place, even very small parcels of little value. Requiring approval in every instance could interfere with the executive function of carrying out the purpose of the Act. Since only land of the Alaska Railroad Corporation is involved and not the land of any other state agency or entity, the provision could amount to local and special legislation.

Section 42.40.360 The board may request conveyance of land owned by or tentatively approved for transfer to the state. Upon receipt of a request the commissioner of natural resources shall temporarily reserve the land for railroad purposes and delay disposal or lease of that land under other laws. The temporary reservation remains in effect for 180 days.

Section 42.40.370 Within 90 days after receiving a request, the commission must convey the state's interests in the land to the corporation, notify the corporation of reasons for refusal to classify the land for railroad purposes, or approve in part and deny in part the request. A conveyance under this section vests in the corporation the right to extract and use construction materials on the land without regard to whether the resources are part of the surface or

subsurface estate. The corporation may reconvey to the state land that the corporation and the commissioner identify as unnecessary for the corporation's purposes.

Section 42.40.380 When physical conditions require that track or fixtures be moved to state-owned land to maintain safe rail operations, the relocation may be made with concurrence of the Department of Natural Resources.

Section 42.40.390 The corporation is authorized to exercise the power of eminent domain and declaration of taking.

Section 42.40.400 The corporation may vacate land and title goes to the state.

Section 42.40.410 The corporation may acquire interests in federal land that is available under federal law.

Section 42.40.420 Upon request the corporation may grant to a municipality a right-of-way for a pedestrian walkway or trail. Before granting the right-of-way the board must require the municipality to agree to hold the corporation harmless and indemnify the corporation for any use made of the right-of-way and to vacate the right-of-way on request of the corporation if it interferes with expansion or replacement of railroad facilities.

Section 42.40.430 The corporation may acquire property available from the federal or state government.

Section 42.40.440 Vegetation control involving the use of pesticides or herbicides on land owned or managed by the corporation must be conducted in compliance with state requirements applicable to other state pesticide or herbicide use.

Section 42.40.500 A liability incurred by the corporation may be satisfied only from the assets of the corporation and no creditor has a right of action against the state.

Section 42.40.510 The corporation must obtain a fidelity bond for its board members and officers responsible for finances.

Section 42.40.520 The corporation must keep in force public liability insurance covering potential claims against the corporation or the state related to corporation activities.

March 30, 1984

Section 42.40.530 Revenue generated by or appropriated to the corporation shall be retained and used for railroad purposes by the corporation.

This raises 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 state-owned railroad be kept by the railroad and used for railroad purposes. (45 U.S.C. 1207 (a)(5)) 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 the state constitution.

Section 42.40.540 With the concurrence of the governor, the corporation may request an appropriation from the legislature to assist it in carrying out AS 42.40.

Section 42.40.600 The corporation may issue bonds and bond anticipation notes. The board shall by resolution establish the form and manner of execution of bonds or bond notes. They may be sold as determined by the board and bonds shall mature at the time, not exceeding 50 years from their date, determined by the board.

Section 42.40.610 Bonds and notes issued by the corporation are negotiable instruments.

Section 42.40.620 Bonds and notes issued by the corporation are securities in which all public bodies of the state and other financial entities may invest funds.

Section 42.40.630 Bonds or notes are payable from corporation assets. Bonds or notes may be additionally secured from any source.

Section 42.40.640 An issue of bonds may be secured by a trust indenture or by a secured loan agreement giving powers to a corporate trustee by means of which the corporation may enter into any agreements with the trustees or holders of the bonds, pledge assets, and provide of any matter that affects the security of the bonds.

Section 42.40.650 In negotiating the sale of bonds or notes to an underwriter, the board must retain a financial advisor who is independent from the underwriter.

Section 42.40.660 If an officer whose signature appears on bonds, notes, or coupons attached to them ceases to be an officer before delivery of the bonds, notes, or coupons, the signature is valid.

Section 42.40.670 The pledge of assets of the corporation to the payment of bonds or notes is valid and the assets are subject to the lien of the pledge without physical delivery or other act. The corporation is not prohibited from selling assets subject to a pledge.

Section 42.40.680 A holder of bonds or notes or a trustee may enforce all rights under this chapter, the trust agreement or resolution, or any other contract executed by the corporation relating to the bonds or notes and may compel the performance of duties of the corporation required by law or the trust agreement or resolution.

Section 42.40.690 The state is not liable for the debts of the corporation. Bonds and notes are payable solely from the revenue or assets of the corporation and are not a liability of the state or a pledge of the faith and credit of the state. Each bond and note issued by the corporation must contain a statement that the corporation is not obligated to pay it except from the revenue or assets pledged for it, and neither the faith and credit nor the taxing power of the state is pledged to the payment of it.

Section 42.40.700 A board member or employee of the corporation is not subject to personal liability because of the execution or issuance of bonds or notes.

Section 42.40.710 Employees of the railroad are employees of the corporation and not of the state. Laws relating to public employees do not apply.

Section 42.40.720 Provisions relating to collective bargaining rights of public employees do not apply to the corporation's employees, but employees who are not executive officers may organize and engage in collective bargaining.

Section 42.40.730 A railroad labor relations agency is established to carry out the provisions of this article. Members receive no compensation but are entitled to per diem and travel expenses.

Section 42.40.740 The railroad labor relations agency shall decide the unit appropriate for the purposes of collective bargaining.

Section 42.40.750 The railroad labor relations agency must investigate a petition submitted by employees or a group of employees or organization alleging that 30 percent of the employees of a proposed bargaining unit want to be represented by an organization or that the organization reorganized by the corporation no longer represents the majority of employees in the unit. The railroad labor relations agency must also investigate a petition submitted by the corporation alleging that an organization has presented a claim to be recognized as representative of a majority of employees in a unit. The railroad labor relations agency must provide for a hearing on a question of representation and an election on the question if it finds that there is a question of representation. An election may not be held in a bargaining unit in which there is in force a valid collective bargaining agreement, except during a 90-day period preceding the expiration of the agreement.

Section 42.40.760 Action that constitutes an unfair labor practice is set out.

Section 42.40.770 If a complaint that an unfair labor practice has occurred is filed with the railroad labor relations agency, it shall investigate the complaint and shall try to eliminate any prohibited practice found to exist by informal methods of conference.

Section 42.40.780 If the railroad labor relations agency fails to eliminate a prohibited practice by conference it may serve a copy of the complaint on the respondent and the complaint shall be handled under the administrative adjudication portion of the Administrative Procedure Act.

Section 42.40.790 If the railroad labor relations agency finds that a person has engaged in a prohibited practice, the agency shall issue an order requiring the person to desist and carry out the provisions of this Article. If the agency finds that a person named in a complaint has not engaged in a prohibited practice, the agency shall dismiss the complaint.

Section 42.40.800 The railroad labor relations agency may apply for an order from the court enjoining prohibited acts.

Section 42.40.810 The railroad labor relations agency may issue subpoenas, administer oaths, examine witnesses, and receive evidence.

Section 42.40.820 The railroad labor relations agency is required to adopt regulations to carry out this article.

Section 42.40.840 When negotiation of a collective bargaining agreement reaches an impasse, the railroad labor relations agency appoints a person to act as mediator. The mediator must attempt to bring the parties together to effectuate a settlement, but may not compel a settlement.

Section 42.40.850 After a decision by a mediator, the employees may strike for a limited time. The strike may be enjoined if it has begun to threaten the health, safety, or welfare of the public. After an injunction is issued, if an impasse still exists the dispute shall be submitted to binding arbitration.

Section 42.40.860 The corporation shall seek advice from the Department of Administration before entering into a collective bargaining agreement, but the final decision regarding the agreement shall be made by the board. An agreement shall be in writing and shall include a grievance procedure. Either party may enforce an agreement by petition to the railroad labor relations agency.

Section 42.40.870 On written authorization the corporation shall deduct from the payroll of an employee the amount of dues and employee benefits as certified by the secretary of the exclusive bargaining representative and shall deliver the money deducted to that bargaining representative.

Section 42.40.880 A collective bargaining agreement that incorporates union security provisions shall safeguard the

rights of nonassociation of employees with bona fide religious convictions and shall declare an employee exempt from becoming a member upon submission of proof of religious conviction. The employee must pay an amount equal to regular dues to the organization and the organization shall contribute it to a charity.

Section 42.40.890 Definitions of "collective bargaining", "election", and "organization" for purposes of this Article are provided.

Section 42.40.900 Claims involving activities of the railroad shall be brought against the corporation and not against the state. Certain laws applicable to claims against the state do not apply to the corporation.

Section 42.40.910 The property of the corporation and its assets are exempt from taxes and special assessments of the state or a political subdivision of the state. Bonds and notes issued by the corporation are exempt from taxation except for inheritance, transfer, and estate taxes.

Section 42.40.920 Certain state laws listed in this section do not apply to the corporation. The railroad is not subject to the jurisdiction of the Alaska Transportation Commission.

Section 42.40.930 If provisions of this Act conflict with the provisions of other state law, the provisions of this Act prevail. Where possible, provisions of this Act shall be construed so that they do not conflict with the Alaska Railroad Transfer Act of 1982.

Section 42.40.940 The assets of the corporation revert to the state if it ceases to exist.

Section 42.40.980 Definitions for the chapter are provided.

Section 42.40.990 The short title of this chapter is the Alaska Railroad Corporation Act.

The following provisions take effect when a constitutional amendment is adopted:

* Section 3 The provision that the corporation is in the Department of Commerce and Economic Development is deleted.

* Section 4 The commissioner of commerce and economic development is eliminated from the board and another appointed member is added.

* Section 5 Reference to the commissioner of commerce and economic development is deleted.

* Section 6 Reference to the commissioner is deleted and the board members no longer serve at the pleasure of the governor.

* Section 7 The governor may remove a board member only for certain itemized causes.

* Section 8 The reference to the commissioner is deleted.

The following temporary law sections take effect immediately:

* Section 9 The corporation must prepare a report for the governor and the legislature on the long-term operations of the railroad. The report is due on January 1, 1988 and must contain specific recommendations on operational alternatives and the transfer of the railroad's operations to the private sector.

* Section 10 Members of the first board of directors serve terms that differ in length and will result in staggered terms for members that follow.

* Section 11 Before transfer of the railroad to the state, the corporation and its employees shall adopt collective bargaining agreements that continue the provisions in effect between the Alaska Railroad and its employees on the date of transfer. The agreements adopted under this section remain in effect to the extent required under the Alaska Railroad Transfer Act. On or before the date of transfer the board shall adopt personnel rules necessary to prevent an interruption of services, within 180 days after the first meeting of the board, the board and representatives of employee bargaining units shall establish procedures for the renegotiation of collective bargaining agreements. The board shall renegotiate all agreements adopted under this section within two years after the date of transfer.

The following sections contain effective dates:

Representative Joe Hayes
Page 13
March 30, 1984

* Section 12 Section 3 - 8 take effect on the effective date of a constitutional amendment relating to the Alaska Railroad.

* Section 13 The rest of the Act takes effect immediately.

TBC:ojb
J5/026

**HB 512
ARTICLE 7**

**COMPARISON OF 3/15/84 WORK DRAFT
WITH PROPOSED DRAFT**

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

Our draft is identical, except that we have made the "conflict of interest" provisions of AS 39 apply to the board and all appointed executive officers.

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

This language is not included in our draft because similar language is already included in the "temporary law" section of the bill.

(c) Subject to the provisions of 45 U.S.C. 1206 (Alaska Railroad Transfer Act) within 180 days of the first meeting of the board, the board and representatives of employee bargaining units shall implement ground rules for the re-negotiation of collective bargaining agreements.

This language is not included in our draft, but could be included in the "temporary law" section of the bill.

Sec. 42.40.710 COLLECTIVE BARGAINING (a) The provisions of AS 23.40.01C - 23.40.080, AS 23.40.110, AS 23.40.200 - 23.40.260 (Public Employee Relations Act) do not apply to the corporation or to its employees. However, employees that are not executive officers may

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

This language provides that selected sections of the Public Employees ~~Relationship~~ Act (PERA) apply to the railroad corporation, and exempts them from other sections. The language in our draft exempts them from all of the provisions of PERA, and incorporates language from appropriate provisions of PERA as part of the railroad bill.

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

This language is not consistent with the position of the Administration. But, to be consistent with the Committee's draft we have included the same language in Sec. 42.40.850 (b) of our draft (except that we have changed may participate to shall participate).

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

Our draft includes comparable language in Sec. 42.40.850 (a).

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

of the governor.

Our draft includes similiar langauge in Sec. 42.40.720

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

Our draft contains similiar language. But, some of the sections of AS 23.40 referenced in this language are incorporated into the language of our draft.

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

Our draft contains the same language.

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

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

Our draft substitutes Sec. 42.40.830 (MEDIATION) for this section.

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

We include a strike section in Sec. 42.40.840 but have added a provision for a 90 day "cooling off" period, and have revised the language to assure equal representation for each employee.

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

We have deleted this section because it is redundant. Sec. 23.40.710 (c) of the House draft and Sec. 42.40.850 (a) of our draft already provide for this.

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

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

This section is not in our draft, but there is no objection to including it.

Sec. 42.40.760 PROHIBITED ACTS (a) The railroad chief executive officer, or any person employed by the corporation may not directly or indirectly:

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

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

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

(A) his personal relationship with any person connected with him

by blood or marriage,

(B) his/her religious beliefs or practices,

(C) sexual matters

(D) his/her political affiliation or philosophy

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

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

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

This section is not included in our draft because we assume that these provisions would be included in the personnel rules of the corporation. There is no objection to including the language in the law.

SIDE-BY-SIDE COMPARISON
OF CSHB 512 (TRANSPORTATION)
AND
CSSB 352 (TRANSPORTATION)

Prepared By:
House Transportation Committee Staff
March 27, 1984

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CSHB 512(T)

Original sponsors: Kerttula, Falks,
Halford, et al

1 IN THE SENATE BY THE TRANSPORTATION COMMITTEE
2 CS FOR SENATE BILL NO. 352 (Transportation)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Alaska Railroad Corpora-
7 tion to operate the Alaska Railroad with a board of
8 nine directors responsible for management of the
9 corporation; requiring the board to appoint a chief
10 executive officer to manage the daily affairs and
11 operations of the corporation; authorizing the
12 board to adopt rules to carry out its functions;
13 authorizing the corporation to issue bonds and notes;
14 authorizing the corporation to own and manage all
15 property acquired by the corporation or transferred
16 to the state under 45 U.S.C. 1201 - 1214 (Alaska
17 Railroad Transfer Act of 1982); authorizing the
18 corporation to exercise eminent domain; exempting
19 the corporation from AS 19, AS 23.40, AS 30.15,
20 AS 35, AS 37.05, AS 37.07, AS 37.10.010 - 37.10.060,
21 37.10.085, AS 37.20, AS 37.25, AS 38, AS 39, and
22 AS 44.62.040 - 44.62.320; and providing for an
23 effective date."

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

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

- 27 (1) it is the policy of the state to
- 28 (A) provide safe, economical, and efficient transportation
29 to residents, businesses, visitors, and military installations in the
30 state;
- 31 (B) foster and promote the long-term economic growth and
32 development of the state;
- 33 (C) develop and implement plans for a transportation net-
34 work;
- 35 (D) foster and promote the development of the state's land
36 and natural resources;

Original sponsors: Hayes, Ringstad,
Shultz, et al

1 IN THE HOUSE BY THE TRANSPORTATION COMMITTEE
2 CS FOR HOUSE BILL NO. 312 (Transportation)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

- 12 (1) it is the policy of the state to
- 13 (A) provide safe, economical, and efficient transportation
14 to residents, businesses, visitors, and military installations in the
15 state;
- 16 (B) foster and promote the long-term economic growth and
17 development of the state;
- 18 (C) develop and implement plans for a transportation net-
19 work;
- 20 (D) foster and promote the development of the state's land
21 and natural resources;
- 22 (2) the Alaska Railroad is an essential part of the state trans-
23 portation network that may, unless preserved by state action, cease to be a
24 transportation option in Alaska;
- 25 (3) the federal government has offered to the state the option
26 of taking over the Alaska Railroad to ensure its continued existence;
- 27 (4) it is in the state's best interest to accept the railroad
28 under the terms and conditions offered by the United States government; and
29 (5) there is vast potential in Alaska's natural resource areas
30 and extension of the Alaska Railroad into natural resource areas is neces-
31 sary for long-term economic growth.

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

- 33 (1) create a viable economic entity with the powers and duties
34 necessary to operate and manage the Alaska Railroad pending eventual trans-
35 fer of the railroad to the private sector for its ownership or operation or
36 both consistent with 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of
37 1982);

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

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

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

(b) It is the purpose of this Act to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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19 * Sec. 2. AS 42 is amended by adding a new chapter to read:
 20 CHAPTER 40. ALASKA RAILROAD CORPORATION.
 21 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.
 22 Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is
 23 established the Alaska Railroad Corporation. The corporation is a
 24 public corporation and is an instrumentality of the state within the
 25 Department of Commerce and Economic Development. The corporation has
 26 a legal existence independent of and separate from the state. The
 27 exercise by the corporation of the powers provided in this chapter is
 28 considered an essential government function of the state.

4 * Sec. 2. AS 42 is amended by adding a new chapter to read:
 5 CHAPTER 40. ALASKA RAILROAD CORPORATION.
 6 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.
 7 Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is
 8 established the Alaska Railroad Corporation. The corporation is a
 9 public corporation and is an instrumentality of the state within the
 10 Department of Commerce and Economic Development. The corporation has
 11 a legal existence independent of and separate from the state. The
 12 exercise by the corporation of the powers provided in this chapter is
 13 considered an essential government function of the state.

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Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the corporation are vested in the board of directors. The board consists of the commissioner of commerce and economic development, the chief executive officer of the corporation, and seven members appointed by the governor. The seven appointed members must be registered voters in the state except as provided in (b) and (c) of this section. No more than two appointed members may be from any one of the four judicial districts in the state. Two of the appointed members must have at least five years experience as owners or managers of a business in the state. Except for the commissioner, the chief executive officer, and the member appointed under (d) of this section, a member may not be a state officer or employee.

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

(c) One member of the board shall be or have been an executive official of a United States railroad and shall be selected in accordance with any requirements imposed under 49 U.S.C. (Interstate Commerce Act). A person who is not a resident of the state may be appointed under this subsection.

(d) One member shall be an employee who is a member of a bargaining unit representing employees of the corporation.

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

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Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the corporation are vested in the board of directors. The board consists of the commissioner of commerce and economic development, the chief executive officer of the corporation, and seven members appointed by the governor. At least five of the seven appointed members must be registered voters in the state. No more than two appointed members may be from any one of the four judicial districts in the state. The appointed members must have substantial experience or professional training and expertise in fields relevant to the purposes of this chapter, including transportation, business, and finance. Except for the commissioner, the chief executive officer, and the member appointed under (d) of this section, a member may not be a state officer or employee.

(b) One member of the board may be a person who has at least 10 years of experience in railroad management.

(c) One member of the board may be or have been an executive official of a United States railroad that is not now and never was a connecting carrier of the Alaska Railroad.

(d) One member shall be an employee who is a member of a bargaining unit representing employees of the corporation.

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

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1 Sec. 42.40.030. TERM OF OFFICE. Except for the commissioner of
2 commerce and economic development and the chief executive officer of
3 the corporation, members of the board serve for staggered terms of
four years each at the pleasure of the governor.

1 Sec. 42.40.030. TERM OF OFFICE. Except for the commissioner of
2 commerce and economic development and the chief executive officer of
3 the corporation, members of the board serve for staggered terms of
4 four years each at the pleasure of the governor.

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

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

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

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Sec. 42.40.040. VACANCIES. (a) Except for the commissioner of commerce and economic development and the chief executive officer, a vacancy on the board is filled by appointment by the governor, and the appointment must be confirmed by the members of each house of the legislature in joint session. A member appointed to fill a vacancy holds office for the balance of the term for which the member's predecessor was appointed.

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

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

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

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

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

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

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

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

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ARTICLE 2. MANAGEMENT.

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Sec. 42.40.100. MANAGEMENT BY THE BOARD. The board is responsible for the management of the corporation but shall delegate certain powers and duties to the chief executive officer in accordance with AS 42.40.120. In managing the corporation the board shall

- (1) be responsible for the management of the financial and legal obligations of the Alaska Railroad;
- (2) operate the Alaska Railroad as a common carrier subject to the jurisdiction of the United States Interstate Commerce Commission consistent with 45 U.S.C. 1207;
- (3) generally manage the corporation on a self-sustaining basis;
- (4) apply to the legislature for an appropriation to be used to provide a particular service that is not otherwise self-sustaining if a subsidy is required to maintain that service;
- (5) provide for safe, efficient, and economical transportation to meet the overall needs of the state;
- (6) raise needed capital by issuing obligations of the corporation while ensuring that borrowing by the corporation does not directly or indirectly endanger the state's own borrowing capacity;
- (7) review all private and state land disposal proposals to aid in planning for future development or expansion of transportation services;
- (8) ensure that the accounting and procurement procedures of the corporation meet accepted railroad industry standards.

ARTICLE 2. MANAGEMENT.

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- (4) provide for safe, efficient, and economical transportation to meet the overall needs of the state;
- (5) raise needed capital by issuing obligations of the corporation while ensuring that borrowing by the corporation does not directly or indirectly endanger the state's own borrowing capacity;
- (6) review state and other land disposal proposals to aid in planning for future development or expansion of transportation services;
- (7) ensure that the accounting and procurement procedures of the corporation meet accepted railroad industry standards.

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Sec. 42.40.110. EXECUTIVE OFFICERS. (a) The board shall appoint the chief executive officer of the corporation who serves at the pleasure of the board. The board shall fix compensation for the chief executive officer.

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

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

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

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

- (1) leasing, granting easements in, issuing permits for the use of, or conveying other interests in property;
- (2) establishing specific rates, tariffs, divisions, and contract rate agreements;
- (3) making routine changes in service levels;
- (4) establishing procurement and accounting procedures for the corporation; and
- (5) performing procurement activities.

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

- (1) conveying the corporation's entire interest in land;
- (2) issuing notes, debentures, and bonds;
- (3) mortgaging or pledging corporation assets;
- (4) donating property or other assets belonging to the corporation;
- (5) acting as a surety or guarantor;
- (6) adopting a long-range capital improvement and program plan;
- (7) certifying annual reports;
- (8) effecting generally applicable increases and decreases in rates other than those periodically approved by the United States Interstate Commerce Commission;
- (9) expanding or reducing services in a major unit;
- (10) expanding the main or branch rail lines, other than performing routine track alignment as necessary to maintain service levels in effect on the date of transfer;
- (11) selecting independent auditors and accountants;
- (12) exercising the power of eminent domain;
- (13) entering into collective bargaining agreements; and
- (14) adopting annual budgets.

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(b) Within 60 days after its first meeting, the board shall by rule delegate the following powers and duties of the corporation to the chief executive officer or other executive officers designated by the board:

- (1) leasing, granting easements in, issuing permits for the use of, or conveying other interests in property;
- (2) establishing specific rates, tariffs, divisions, and contract rate agreements;
- (3) making routine changes in service levels;
- (4) establishing procurement and accounting procedures for the corporation; and
- (5) performing procurement activities.

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

- (1) except for executing a release of a mortgage or other lien after payment is received, conveying the corporation's entire interest in land;
- (2) issuing notes, debentures, and bonds;
- (3) mortgaging or pledging corporation assets;
- (4) donating property or other assets belonging to the corporation;
- (5) acting as a surety or guarantor;
- (6) adopting a long-range program or capital improvement plan;
- (7) certifying annual reports;
- (8) effecting generally applicable increases and decreases in rates other than those periodically approved by the United States Interstate Commerce Commission;
- (9) diversifying, expanding, or reducing services provided on the date of transfer;
- (10) expanding the main or branch rail lines, other than performing routine track alignment as necessary to maintain service levels in effect on the date of transfer;

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- 23 (11) selecting independent auditors and accountants;
- 24 (12) exercising the power of eminent domain;
- 25 (13) entering into collective bargaining agreements;
- 26 (14) adopting annual budgets; and
- 27 (15) beginning capital projects with an estimated completion
- 28 cost of more than \$500,000 or an estimated completion time of more
- 29 than one year.

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ARTICLE 3. ADMINISTRATIVE PROVISIONS.

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

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

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

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

(c) The board shall keep minutes of each meeting and shall send a certified copy of the public portion of each meeting to the governor and the legislature.

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

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

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Sec. 42.40.170. EXECUTIVE SESSIONS. (a) The question of holding an executive session shall be determined by a majority vote of the board. A subject may not be considered at an executive session unless

it is mentioned in the motion calling for the executive session or is auxiliary to a subject mentioned. An action may not be taken at an executive session.

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

- (1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the corporation;
- (2) unless the person has requested to have the subjects discussed in public, subjects that tend to prejudice the reputation and character of a person;
- (3) matters that, by law or municipal charter or ordinance, are permitted to be kept confidential from public disclosure;
- (4) matters pertaining to personnel;
- (5) matters pertaining to the corporation's legal position;
- (6) land acquisition or disposal; and
- (7) proprietary or other information of a type treated as confidential under the standards and practices of the United States Interstate Commerce Commission, including practices that protect information associated with specific shippers, divisions, and contract rate agreements.

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Sec. 42.40.170. EXECUTIVE SESSIONS. The board may consider in an executive session matters that pertain to personnel, the corporation's legal position, land acquisition or disposal, or proprietary or other information of a type treated as confidential under the standards and practices of the United States Interstate Commerce Commission, including practices that protect information associated with specific shippers, divisions, and contract rate agreements.