



**ALASKA RAILROAD
CORPORATION ACT
("ARCA")
Annotated
AS 42.40**

[June 2008]

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AN ACT

Establishing the Alaska Railroad Corporation to manage and operate the Alaska Railroad; and providing for an effective date.

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

(1) it is the policy of the state to

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

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

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

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

(E) ensure that the Alaska Railroad does not use direct appropriations to fund a particular freight operation if it can be demonstrated that the appropriation has placed privately owned and operated carriers in an unfair competitive position. Nothing herein shall affect the provisions of AS 42.40.220(b);

(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 bonds upon approval of the legislature 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.

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

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Chapter 40. Alaska Railroad Corporation

Article

1. Establishment and Organization (§§ 42.40.010 - 42.40.060)
2. Management (§§ 42.40.100 - 42.40.120)
3. Administrative Provisions (§§ 42.40.150 - 42.40.230)
4. Powers and Duties (§§ 42.40.250 - 42.40.310)
5. Corporation Property (§§ 42.40.350 - 42.40.465)
6. Financial Provisions (§§ 42.40.500 - 42.40.540)
7. Specific Projects (§ 42.40.550, 42.40.570)
8. Bonds (§§ 42.40.600 - 42.40.700)
9. Personnel and Labor Relations (§§ 42.40.705 - 42.40.890)
10. General Provisions (§§ 42.40.900 - 42.40.990)

CROSS REFERENCES. For legislative findings and purpose in enacting this chapter, see §1, ch. 153, SLA 1984 in the Temporary and Special Acts; for liability of a railroad for injury to livestock, see AS 42.30.150 - 42.30.190.

LEGISLATIVE HISTORY REPORTS. For

legislative letter of intent relating to ch. 153, SLA 1984 (SCS CSHB 512 (Fin) am S), see 1984 Senate Journal, p. 3221.

Article 1. Establishment and Organization

Section

10. Establishment of the corporation
20. Board of directors
30. Term of office

Section

40. Vacancies
50. Compensation and expenses
60. Board officers

Sec. 42.40.010. Establishment of the corporation. There is established the Alaska Railroad Corporation. The corporation is a public corporation and is an instrumentality of the state within the Department of Commerce, Community, and Economic Development. The corporation has a legal existence independent of and separate from the state. The continued operation of the Alaska Railroad by the corporation as provided in this chapter is considered an essential government function of the state. (§2 ch 153 SLA 1984)

REVISOR'S NOTES. In 1999, "Department of Commerce and Economic Development" was changed to "Department of Community and Economic Development" in this section in accordance with §88, ch. 58, SLA 1999. In 2004, in this section, "Department of Community and Economic Development" was changed to "Department of Commerce, Community, and Economic Development," in accordance with §3, ch. 47, SLA 2004. **NOTES TO DECISIONS.**

Federal Immunity. Alaska Railroad Corporation, an Alaska corporation providing rail service in Alaska, is an alter ego of the State of Alaska and is thus immune from suit in federal court. *Alaska Cargo Transp., Inc. v. Alaska R.R. Corp.*, 834 F. Supp. 1216 (D. Alaska 1991), *aff'd*, 5 F.3d 378 (9th Cir. 1993). **Railroad not immune from local zoning laws.** In a village's action to stop a state railroad from blasting in an adjacent quarry, the trial court improperly found

that under the Alaska Railroad Corporation Act, AS 42.40.010 et seq., the state railroad was exempt from a municipality's zoning laws. *Native Village of Eklutna v. Alaska R.R. Corp.*, 87 P.3d 41 (Alaska 2004). **Since employee's hearing involved application of a governmental authority's policy** (i.e. employer railroad's policy regarding the use of drugs on the job) to a particular person in his private capacity, employee's claim should have been considered an appeal from an administrative agency, subject to Appellate Rule 602(a)(2). *Manning v. Alaska R.R. Corp.*, 853 P.2d 1120

(Alaska 1993). **OPINIONS OF ATTORNEY GENERAL.** Because the legislature set up the railroad as a "public corporation" in 1984 and, the next year, statutorily commanded public corporations and all other organizational units of the executive branch (without exception) to comply with the mandates of the Equal Employment Opportunity Act (former AS 44.19.441 - 44.19.449), the railroad is subject to the provisions of that act. November 6, 1986, Op. Att'y Gen. **Cited** in *Laverty v. Alaska R.R. Corp.*, 13 P.3d 725 (Alaska 2000).

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, community, and economic development, the commissioner of transportation and public facilities, and five members appointed by the governor. The five appointed members must be registered voters in the state except as provided in (1) and (2) of this subsection. Except for the commissioners and the member appointed under (5) of this subsection, a member may not be a state officer or employee. Appointed members shall have the following qualifications:

(1) 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 paragraph;

(2) 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 paragraph;

(3) at least one member shall be from each judicial district directly served by the Alaska Railroad;

(4) one member shall have at least five years experience as an owner or manager of a business in the state;

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

(b) Except for the commissioners, the members of the board shall be confirmed by a majority of the members 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 or the legislature adjourns without confirming the member. (§2 ch 153 SLA 1984)

REVISOR'S NOTES. In 1999, "commissioner of commerce and economic development" was changed to "commissioner of community and economic development" in this section in accordance with §88, ch. 58, SLA 1999. In 2004, in (a) of this section, "commissioner of community and economic development" was

changed to "commissioner of commerce, community, and economic development," in accordance with §3, ch. 47, SLA 2004. **NOTES TO DECISIONS.** **Quoted** in *Laverty v. Alaska R.R. Corp.*, 13 P.3d 725 (Alaska 2000). **Stated** in *Native Village of Eklutna v. Alaska R.R. Corp.*, 87 P.3d 41 (Alaska 2004).

Sec. 42.40.030. Term of office. Except for the commissioner of commerce, community, and economic development and the commissioner of transportation and public facilities, members of the board serve for staggered terms of five years each at the pleasure of the governor. (§2 ch 153 SLA 1984)

REVISOR'S NOTES. In 1999, "commissioner of commerce and economic development" was changed to "commissioner of commerce and economic development" in this section in accordance with §88, ch. 58, SLA 1999. In 2004, in this section, "commissioner of

community and economic development" was changed to "commissioner of commerce, community, and economic development," in accordance with §3, ch. 47, SLA 2004. **NOTES TO DECISIONS.** Stated in *Laverty v. Alaska R.R. Corp.*, 13 P.3d 725 (Alaska 2000).

Sec. 42.40.040. Vacancies. (a) Except for the commissioner of commerce, community, and economic development and the commissioner of transportation and public facilities, a vacancy on the board is filled by appointment by the governor, and the appointment must be confirmed by the members of the legislature in joint session. Except as provided in AS 39.05.080(4), 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. (§2 ch 153 SLA 1984; am §18 ch 80 SLA 1996)

REVISOR'S NOTES. In 1999, in (a) of this section, "commissioner of commerce and economic development" was changed to "commissioner of community and economic development" in this section in accordance with §88, ch. 58, SLA 1999. In 2004, in (a) of this section, "commissioner of community and economic development" was changed to

"commissioner of commerce, community, and economic development," in accordance with §3, ch. 47, SLA 2004. **EFFECT OF AMENDMENTS.** The 1996 amendment, effective January 1, 1997, in subsection (a), in the last sentence, added "Except as provided in AS 39.05.080(4)," at the beginning and made a related stylistic change.

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. (§2 ch 153 SLA 1984)

CROSS REFERENCES. For travel and per diem for boards and commissions, see AS 39.20.180.

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. (§2 ch 153 SLA 1984)

Article 2. Management

Section

- 100. Management by the board
- 110. Executive officers
- 120. Delegation

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 with the concurrence of the governor 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 bonds of the corporation upon approval by the legislature while ensuring that borrowing by the corporation does not directly or indirectly endanger the state's own borrowing capacity;
- (7) review all state and other land disposal proposals to aid in planning for future development or expansion of transportation services;
- (8) ensure that the procurement procedures of the corporation meet accepted railroad industry standards;
- (9) ensure that the accounting procedures of the corporation meet generally accepted accounting principles consistent with industry standards for comparable railroads. (§2 ch 153 SLA 1984)

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. (§2 ch 153 SLA 1984)

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 delegate the following activities of the corporation to the chief executive officer or other executive officers designated by the board:

- (1) leasing subject to AS 42.40.285 and 42.40.350(b) and (d), granting easements in, issuing permits for the use of, or conveying other interests in property that do not constitute a transfer of the corporation's entire interest in land;
 - (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) issuing bonds upon approval by the legislature;
 - (2) mortgaging or pledging corporation assets;
 - (3) donating property or other assets belonging to the corporation;
 - (4) acting as a surety or guarantor;
 - (5) adopting a long-range capital improvement and program plan;
 - (6) adopting annual reports;
 - (7) effecting general, comprehensive increases and decreases in rates;
 - (8) expanding or reducing services in a major way;
 - (9) expanding the main or branch rail lines including spur, industrial, team, switching, or side tracks, other than performing routine track alignment as necessary to maintain existing service levels;
 - (10) selecting independent auditors and accountants;
 - (11) entering into collective bargaining agreements;
 - (12) adopting annual budgets;
 - (13) beginning a capital project with an estimated completion cost of more than \$500,000 or an estimated completion time of more than one year;
 - (14) exchanging, donating, selling, or otherwise conveying its entire interest in land subject to approval by the legislature;
 - (15) exercising the power of eminent domain. (§2 ch 153 SLA 1984)

Article 3. Administrative Provisions

Section

- 150. Meetings of the board
- 160. Quorum and voting
- 170. Executive sessions
- 180. Rules
- 190. Emergency rules

Section

- 200. Validity of rules
- 205. Application of AS 42.40.180 and 42.40.190
- 210. Previously adopted rules and orders
- 220. Public disclosure of information
- 230. Conflicts of interests. ***[Repealed]***

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. The chairman or a majority of the members of the board 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. (§2 ch 153 SLA 1984)

Sec. 42.40.160. Quorum and voting. (a) Four voting members of the board constitute a quorum for the transaction of business.

(b) Four 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. (§2 ch 153 SLA 1984)

Sec. 42.40.170. Executive sessions. (a) The question of holding an executive session shall be determined in accordance with AS 42.40.160. 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. (§2 ch 153 SLA 1984)

Sec. 42.40.180. Rules. (a) The board shall adopt rules to carry out its functions and the purposes of this chapter, including rules to safeguard property owned, managed, or transported by the corporation and to protect employees and persons using the corporation's property or services. At least 15 days before the adoption of a rule, the board shall give public notice of the proposed action by publishing a notice in at least three newspapers of general circulation in the state and by mailing a copy of the notice to each person who has requested notice of proposed changes to rules. The notice must state the time, place, and nature of the proceedings and must contain a summary of the subject of the proposed rule.

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

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

(d) The board shall establish in the bylaws of the corporation additional procedures for adopting rules if necessary. (§2 ch 153 SLA 1984)

Sec. 42.40.190. Emergency rules. (a) The board shall establish in the bylaws of the corporation a procedure for the adoption of a rule on an emergency basis. An emergency rule may be adopted only when necessary for the orderly operation of the corporation's facilities or programs. The requirements of AS 42.40.180 do not apply to actions taken under this section. However, within 10 days after the adoption of a rule on an emergency basis the board shall give notice of its action that substantially complies with the notice requirements of AS 42.40.180(a).

(b) An action taken under this section remains in effect for not more than 120 days. To prevent an emergency rule from lapsing the board may adopt the same rule under AS 42.40.180 before the end of the 120-day period. (§2 ch 153 SLA 1984)

NOTES TO DECISION. Cited in *Alaska R.R. v. Native Village of Eklutna*, 142 P.3d 1192 (Alaska 2006).

Sec. 42.40.200. Validity of rules. (a) Failure to mail notice to a person under AS 42.40.180(a) or 42.40.190(a) does not invalidate an action taken by the board.

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

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

(2) if the rule was adopted under AS 42.40.190, upon the grounds that the emergency rule was not necessary for the orderly operation of the corporation's facilities or programs. (§2 ch 153 SLA 1984)

Sec. 42.40.205. Application of AS 42.40.180 and 42.40.190. Adoption of a rule is not subject to AS 42.40.180 or 42.40.190 if it

(1) relates only to the internal management of the corporation;
(2) relates to specific rates, tariffs, divisions, and contract rate agreements;
(3) relates to service schedules of the railroad;
(4) is directed to a specifically named person or to a group of persons and does not apply to the general public; or

(5) relates to the use of public works under the jurisdiction of the corporation if the effect of the order is indicated to the public by means of signs or signals. (§2 ch 153 SLA 1984)

Sec. 42.40.210. Previously adopted rules and orders. The board may provide by resolution that rules and orders in effect on the date of transfer remain in effect until amended or repealed by the board. AS 42.40.180 does not apply to actions taken under this section. (§2 ch 153 SLA 1984)

Sec. 42.40.220. Public disclosure of information. (a) Except as provided under (b) of this section, information in the possession of the corporation is public and is open to public inspection at reasonable times.

(b) The corporation may by rule designate and withhold public disclosure of matters of a privileged or proprietary nature. Those matters include personnel records, communications with and work product of legal counsel, and, consistent with the standards and practices of the United States Interstate Commerce Commission for the protection of these matters, other information including proprietary information associated with specific shippers, divisions, and contract rate agreements. (§2 ch 153 SLA 1984)

Sec. 42.40.230. Conflicts of interest. [Repealed, §§ 103, 198 ch 74 SLA 1998.]

Article 4. Powers and Duties

Section

250. General powers
260. Annual report
270. Audits
280. State oversight reports
285. Legislative approval required

Section

290. Long-range capital improvement
and program plan
300. Use of corporation assets
310. Indemnification

Sec. 42.40.250. General powers. In addition to the exercise of other powers authorized by law, the corporation may

- (1) adopt a seal;
- (2) adopt bylaws governing the business of the corporation;
- (3) sue and be sued;
- (4) appoint trustees and agents of the corporation and prescribe their powers and duties;
- (5) hire legal counsel to represent the corporation;
- (6) make contracts and execute instruments necessary or convenient in the exercise of its powers and duties;
- (7) acquire by purchase, lease, bequest, devise, gift, exchange, the satisfaction of debts, the foreclosure of mortgages, or otherwise, personal property, rights, rights-of-way, franchises, easements, and other interests in land, and acquire by appropriation water rights that are located in the state, taking title to the property in the name of the corporation;
- (8) hold, maintain, use, operate, improve, lease, exchange, donate, convey, alienate, encumber, or otherwise grant a security interest in, or authorize use or dispose of, land or personal property, subject to other provisions of this chapter;
- (9) contract with and accept transfers, gifts, grants, or loans of funds or property from the United States and the state or its political subdivisions, subject to other provisions of federal or state law or municipal ordinances;
- (10) undertake and provide for the management, operation, maintenance, use, and control of all of the property of the corporation, including all land and personal property of the Alaska Railroad transferred under 45 U.S.C. 1203(a) and described in the report dated July 14, 1983, as amended, submitted to Congress and the legislature under 45 U.S.C. 1204(a);

(11) recommend to the legislature and the governor any tax, financing, or financial arrangement the corporation considers appropriate for expansion or extension and operation of the Alaska Railroad;

(12) maintain offices and facilities at places it designates;

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

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

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

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

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

(18) hire and discharge railroad personnel and determine benefits and other terms and conditions of employment;

(19) assume all rights, liabilities, and obligations of the Alaska Railroad in accordance with 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of 1982);

(20) maintain a security force to enforce municipal ordinances, state laws, and the corporation's rules with respect to violations that occur on or to property owned, managed or transported by the corporation;

(21) issue its bonds upon approval of the legislature and provide for and secure their payment, provide for the rights of their holders and hold or dispose of them;

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

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

(24) secure the payment of its bonds by pledge, mortgage, or other lien on its contracts, revenues, income, or property;

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

(26) borrow money, including the amounts necessary to establish reasonable reserves, and pay financing charges and interest on bonds for a reasonable period after which the corporation estimates other money will be available to pay the interest, consultant, advisory, and legal fees, and other expenses necessary or incident to borrowing;

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

(28) undertake and provide for the acquisition, construction, maintenance, equipping, and operation of connecting, switching, terminal, or other railroads and railroad facilities;

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

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

(31) [**Renumbered** as AS 42.40.560.] (§2 ch 153 SLA 1984; am §2 ch 71 SLA 2003)

EFFECT OF AMENDMENTS. The 2003 amendment, effective June 12, 2003, added paragraph (31) [now AS 42.40.560]. **NOTES TO DECISIONS. Legislative intent not indicative of immunity from local zoning laws.**

Paragraph (13) of this section does not indicate a legislative intent that state railroad not be subject to local land use laws; the words "or

other proper agencies" in the statute clearly includes municipalities, regardless of whether they were explicitly mentioned in other sections of the statute. *Native Village of Eklutna v. Alaska R.R. Corp.*, 87 P.3d 41 (Alaska 2004). **Applied** in *Native Village of Eklutna v. Alaska R.R. Corp.*, 87 P.3d 41 (Alaska 2004).

Sec. 42.40.260. Annual report. (a) Within 90 days following the end of the fiscal year of the Alaska Railroad, the board shall present to the governor a report describing the operations and financial condition of the corporation during the preceding fiscal year. The report may include suggestions for legislation relating to the structure, powers, or duties of the corporation or to the operation or facilities of the corporation. Subject to AS 42.40.220, the report shall itemize the cost of providing each category of service offered by the railroad and the income generated by each category. The board shall notify the legislature that the report is available.

(b) The annual report must include an analysis of potential sale arrangements whereby the corporation may be transferred into private ownership.

(c) As part of complying with its annual reporting requirements under this section, the board shall file a travel and compensation report with the Department of Administration by January 21 of each year as required by AS 37.05.210. (§2 ch 153 SLA 1984; am §1 ch 131 SLA 1988; am §82 ch 21 SLA 1995; am §5 ch 83 SLA 1999)

EFFECT OF AMENDMENTS. The 1995 amendment, effective August 8, 1995, in subsection (a), substituted "present" for "distribute," deleted "and to the legislature"

following "governor," and made a minor stylistic change in the first sentence and added the last sentence. The 1999 amendment, effective September 27, 1999, added subsection (c).

Sec. 42.40.270. Audits. (a) The board shall have the financial records of the corporation audited annually by an independent certified public accountant experienced in railroad accounting. The board shall have an annual performance audit conducted by a recognized railroad management expert to assure that the railroad is being managed and operated effectively and efficiently in accordance with the requirements of this chapter and that each appropriation is used to directly support those services for which the appropriation was requested. Auditors shall use the standards required under AS 42.40.100(9) and determine whether appropriations received for a service that is not

self-sustaining were calculated in accordance with United States Interstate Commerce Commission standards for determining rail service subsidies.

(b) The corporation shall make all of its financial records available to an auditor appointed by the governor and to the legislative audit division for examination. Disclosure to the public by the auditor or legislative audit division of this information is subject to AS 42.40.220 and rules implementing that section. (§2 ch 153 SLA 1984)

Sec. 42.40.280. State oversight reports. (a) The board shall provide a state oversight report to the governor and the legislature before undertaking

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

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

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

(1) its financial impact on the corporation;

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

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

(4) whether and when the undertaking or service is expected to be self-sustaining financially; and

(5) if the undertaking requires an appropriation to be used for providing a service that is not self-sustaining, that the amount of the appropriation has been strictly calculated in accordance with United States Interstate Commerce Commission standards for determining rail service subsidies. (§2 ch 153 SLA 1984)

Sec. 42.40.285. Legislative approval required. Unless the legislature approves the action by law, the corporation may not

(1) exchange, donate, sell, or otherwise convey its entire interest in land;

(2) issue bonds;

(3) extend railroad lines; this paragraph does not apply to a spur, industrial, team, switching, or side track;

(4) lease land for a period in excess of 55 years unless the corporation reserves the right to terminate the lease if the land is needed for railroad purposes;

(5) apply for or accept a grant of federal land within a municipality; before approving an action under this paragraph, the legislature must determine that the federal land is required for essential railroad purposes; this paragraph does not apply to the application for or acceptance of a grant of federal land associated with

(A) the Anchorage-Wasilla line change project on Elmendorf Air Force Base and Fort Richardson;

(B) the Fairbanks intermodal rail yard expansion project;

(C) a conveyance of rail properties of the Alaska Railroad under the original Alaska Railroad Transfer Act of 1982 as set out in Title VI, P.L. 97-468; in this subparagraph, "rail properties of the Alaska Railroad" has the meaning given in 45

U.S.C. 1202(10). (§2 ch 153 SLA 1984; am §4 ch 59 SLA 1999; am §1 ch 30 SLA 2002)

CROSS REFERENCES. For legislative approval of a lease of certain Alaska Railroad Corporation land at Healy for a period in excess of 35 years without reservation of the right of early termination, see sec. 3, ch. 91, SLA 2000 in the 2000 Temporary & Special Acts; for legislative approval related to the Delong Dock at Whittier, see ch. 100, SLA 2000 in the 2000 Temporary & Special Acts; for legislative approvals of the exchange of certain Alaska Railroad Corporation land with Eklutna, Inc., see sec. 1, ch. 116, SLA 2000 in the 2000 Temporary & Special Acts; for the exchange of certain Alaska Railroad Corporation land with the United States Department of the Army and the Department of the Air Force, see sec. 2, ch. 116, SLA 2000 in the 2000 Temporary & Special Acts; for the exchange of certain Alaska Railroad Corporation land with Chugach Alaska Corporation, see sec. 3, ch. 116, SLA 2000 in the 2000 Temporary & Special Acts; for the exchange of certain Alaska Railroad Corporation land with the Municipality of Anchorage and with certain named individuals having adjacent parcels of land, see sec. 4, ch. 116, SLA 2000 in the 2000 Temporary & Special Acts; for legislative intent and authorization giving the Alaska Railroad Corporation permission to engage in land transfers or conveyances affecting Chugach State Park, see secs. 5-8, ch. 116, SLA 2000 in the 2000 Temporary & Special Acts. For legislative authorization for the issuance of bonds in an amount not to exceed \$17,000,000,000 for construction of a natural gas pipeline and related facilities for the transportation of North Slope natural gas, and providing the approval required by this section,

see §5, ch. 71, SLA 2003, in the 2003 Temporary and Special Acts. For legislative authorization and approval of bonds that may be issued by the Alaska Railroad Corporation to finance rail transportation projects that qualify for federal financial participation and associated costs, conditions applicable to those bonds, and a declaration that the provision constitutes the legislative approval required under this section, see §1, ch. 28, SLA 2006, in the 2006 Temporary and Special Acts. For legislative approval of land transfers between the Alaska Railroad Corporation and the Department of Transportation and Public Facilities to relocate a portion of the Parks Highway in Wasilla and to allow construction of a heavy aircraft apron and other improvements at the Fairbanks International Airport, see §§ 1 and 2, ch. 11, SLA 2007 in the 2007 Temporary and Special Acts. For legislative authorization and approval of bonds that may be issued by the Alaska Railroad Corporation to finance facilities and equipment relating to a Kenai gasification project involving the transportation by rail and barge of coal, including conditions and limitations applicable to the bonds, termination dates for authorizations of those bonds, and a declaration that the provision constitutes the legislative approval required under this section, see §§ 5 and 6, ch. 65, SLA 2007, in the 2007 Temporary and Special Acts. **EFFECT OF AMENDMENTS.** The 1999 amendment, effective September 8, 1999, added paragraph (5) and made a related stylistic change. The 2002 amendment, effective May 30, 2002, substituted "55 years" for "35 years" in paragraph (4).

Sec. 42.40.290. Long-range capital improvement and program plan. (a) The corporation shall prepare and the board shall adopt a long-range capital improvement and program plan. The plan must explain the manner in which the corporation intends to accomplish the purposes of this chapter and the corporation's anticipated capital improvements during each of the five years after the plan is adopted.

(b) The board shall annually review and approve revisions to the long-range capital improvement and program plan. The board shall provide copies of the updated plan to the governor and the legislature by December 1 of each year. (§2 ch 153 SLA 1984)

Sec. 42.40.300. Use of corporation assets. The corporation shall apply all money, property, other assets, and credit of the corporation toward activities authorized

by this chapter. The corporation may not issue shares of stock, pay dividends, make private distributions of assets, make loans to board members or employees, or engage in business for private benefit. The use of money, property, another asset, or credit of the corporation for a purpose not authorized by law by a person having the possession or control of it is prohibited. (§2 ch 153 SLA 1984)

Sec. 42.40.310. Indemnification. (a) The corporation may defend and indemnify a current or former member of the board, employee, or agent of the corporation against all costs, expenses, judgments, and liabilities, including attorney's fees, incurred by or imposed upon that person in connection with a civil or criminal action in which the person is involved by affiliation with the corporation, if the person acted in good faith on behalf of the corporation and within the scope of official duties or powers.

(b) The corporation may purchase insurance to protect and hold personally harmless its employees, agents, and board members from an action, claim, or proceeding arising out of the performance, purported performance, or failure of performance, in good faith, of duties for, or employment with, the corporation and to hold them harmless from expenses connected with the defense, settlement, or monetary judgments from that action, claim, or proceeding. The purchase of insurance is discretionary with the board and insurance is not considered to be compensation to the insured person. (§2 ch 153 SLA 1984)

Article 5. Corporation Property

Section

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Section

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465. Extension of the Alaska Railroad to connect with the North American railroad system

Sec. 42.40.350. Land. (a) The corporation shall receive from the United States and, in its own name, take title to all rail property transferred under 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of 1982). All land that is transferred or acquired by the corporation is designated as follows:

- (1) railroad rights-of-way are railroad utility corridors;
- (2) land outside railroad utility corridors is rail land.

(b) Railroad utility corridors shall be of a width at least 100 feet on both sides of the centerline of the extended main or branch line, unless the corporation does not own or control sufficient land to allow a corridor of that width. Railroad utility corridors may be surveyed by the metes and bounds method. The corporation may not convey its entire interest in land within a utility corridor except as provided in AS 42.40.285, 42.40.370(d) and 42.40.400. However, the corporation may lease, subject to AS 42.40.285 and (d) of this section, grant easements in or permits for, or otherwise

authorize use of portions of a utility corridor for transportation, communication, and transmission purposes and support functions associated with those purposes, and for commercial and other uses authorized under this chapter if the use does not restrict other parallel uses of the utility corridor.

(c) The corporation may lease, subject to AS 42.40.285 and (d) of this section, grant easements in or permits for, or otherwise authorize use of portions of rail land. However, the corporation may not convey its entire interest in rail land except as provided in AS 42.40.285, 42.40.370(d) and 42.40.400.

(d) A lease or disposal of land approved by the legislature under AS 42.40.285 by the corporation to a party other than the state shall be made at fair market value as determined by a qualified appraiser or by competitive bid. (§2 ch 153 SLA 1984)

OPINIONS OF ATTORNEY GENERAL.

Alaska Const., art. VIII, §10, requiring public notice of the leasing of state lands, requires that the Alaska Railroad give prior public notice whenever it proposes to lease railroad lands. The word "state" throughout article VIII encompasses all lands held in common by the political community of Alaskan citizens rather than only those lands nominally held by one of the principle departments of the executive branch. March 8, 1985, Op. Att'y Gen.

Lands belonging to the Alaska Railroad Corporation are not within "legislative designations" as that term is used in AS 38.05.800, regarding reconstitution and administration of mental health land trust, and accordingly may not be designated by the commissioner of natural resources as replacement mental health trust lands. November 17, 1987, Op. Att'y Gen.

Sec. 42.40.355. Prohibition. Notwithstanding any other provision in this chapter, the state-owned railroad as defined under 45 U.S.C. 1202(14) may not apply for a right-of-way across, or exercise eminent domain in, the western (Kobuk River) unit of the Gates of the Arctic National Preserve under 16 U.S.C. 410hh(4)(b)-(e). (§2 ch 153 SLA 1984)

Sec. 42.40.360. Request for land. (a) The board may nominate federal land it determines may be useful for present or future railroad purposes for selection under the Alaska Statehood Act (P.L. 85-508, 72 Stat. 339), as amended, and request the commissioner of natural resources to select the land for the state through the federal land selection process.

(b) The board may identify and request the commissioner of natural resources to convey land necessary or useful for present or future railroad purposes owned by or tentatively approved for transfer to the state, including land not contiguous with a railroad utility corridor or rail land. The request must include a statement of and justification for the present or future railroad use. Upon receipt of a request, the commissioner shall temporarily reserve the land identified in the request for railroad purposes and defer disposal or lease of that land under other laws to a party other than the corporation. The temporary reservation of land is subject to valid existing rights and remains in effect for 180 days. (§2 ch 153 SLA 1984)

Sec. 42.40.370. Conveyance of land. (a) Within 90 days after receiving a request under AS 42.40.360(b) the commissioner of natural resources shall by written decision

- (1) designate the identified land for railroad purposes and, subject to valid existing rights, convey the state's interests in the land to the corporation;
 - (2) notify the corporation of reasons for refusal to designate the identified land for railroad purposes; or
 - (3) approve the request in part and deny it in part and convey as appropriate.
- (b) A conveyance of land under this section may be for less than its appraised value as determined by the commissioner of natural resources.
- (c) In the absence of a reservation to the contrary, a conveyance of land under this section vests in the corporation ownership, control of the surface, material and mineral estate, including the right to extract or use timber and other construction materials, sand, gravel, rock, and the right to tunnel, ditch, recontour, excavate, or otherwise use the land for railroad, transportation, transmission, communication, and related purposes.
- (d) The corporation may reconvey to the state land received under this section that the corporation and the commissioner of natural resources jointly identify as unnecessary or unsuitable for the corporation's purposes. (§2 ch 153 SLA 1984)

Sec. 42.40.380. Use of state land. When emergency conditions require that track or other right-of-way fixtures of the corporation be moved from the existing location and relocated on state land adjacent to or in the vicinity of the existing right-of-way and the chief executive officer determines that relocation is necessary to maintain safe and adequate rail operations, the corporation may effect the relocation and notify the Department of Natural Resources. The relocation must affect only the amount of state land necessary to adequately restore or continue safe rail operations at a normal level. (§2 ch 153 SLA 1984)

NOTES TO DECISIONS. Cited in *Laverty v. Alaska R.R. Corp.*, 13 P.3d 725 (Alaska 2000).

Sec. 42.40.385. Eminent domain. (a) The corporation may exercise the power of eminent domain under AS 09.55.240 - 09.55.460 to acquire land for railroad transportation purposes consistent with this chapter. Notwithstanding AS 09.55.250, the corporation may acquire a fee simple title whenever, in the judgment of the board, ownership of a fee simple title is necessary to carry out the purposes of this chapter.

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

(c) The power of eminent domain conferred under this section includes the power to obtain clay, gravel, sand, timber, rock, or other material for the operation of the railroad, the land necessary to obtain the material, and access to the land and material.

(d) The exercise of the power of eminent domain requires the prior approval of the governor. (§2 ch 153 SLA 1984)

Sec. 42.40.390. Land use rules. The board may adopt exclusive rules governing land use by parties having interests in or permits for land owned or managed by the corporation. The power conferred by this section is exercised for the common health, safety, and welfare of the public and to the extent constitutionally permissible,

may not be limited by the terms and conditions of leases, contracts, or other transactions. (§2 ch 153 SLA 1984)

NOTES TO DECISIONS. Legislative history not indicative of immunity from local zoning laws. Examination of the legislative history of this section shows that it should not be read as a clear declaration that the legislature intended to shield the state railroad from local land use regulation. *Native Village of Eklutna v. Alaska*

R.R. Corp., 87 P.3d 41 (Alaska 2004). **Balancing of interests.** A railroad was required to attempt to comply with a local native village's zoning laws as a central element of a balancing of interests test outlined by the Alaska Supreme Court. *Alaska R.R. Corp. v. Native Village of Eklutna*, 142 P.3d 1192 (Alaska 2006).

Sec. 42.40.400. Vacation of easements. The corporation may vacate an easement acquired under this chapter by executing and filing a deed in the appropriate recording district. If the easement was acquired by the corporation under 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of 1982), the state shall acquire the easement for use in conformity with those laws. (§2 ch 153 SLA 1984)

Sec. 42.40.410. Federal land. Except as provided in AS 42.40.285(5), the corporation may submit applications on its own behalf as an instrumentality of the state for acquisition of federal land available under federal law that will enhance the operations of the corporation if it is available under a federal law other than the Alaska Statehood Act of 1958 (P.L. 85-508, 72 Stat. 339), as amended. The corporation may receive in its own name conveyances of all interests in federal land. (§2 ch 153 SLA 1984; am §5 ch 59 SLA 1999)

EFFECT OF AMENDMENTS. The 1999 amendment, effective September 8, 1999,

added the exception at the beginning and made a related stylistic change.

Sec. 42.40.420. Public use of railroad land. Upon request of a municipality or the state, the corporation may authorize use of railroad land for public purposes. Subject to AS 42.40.350(b), the corporation shall authorize a walkway or a trail if the board first finds in writing that the proposed walkway or trail will not create a safety hazard and will not unreasonably interfere with continued or expanded operations in the utility corridor. Before authorizing a use under this section, the board shall require the municipality or state to execute an agreement in a form approved by the board to

- (1) agree to restrictions, limitations, and conditions on the proposed use required by the corporation and reasonably calculated to reduce the risk of a safety hazard or interference with authorized uses in the utility corridor;
- (2) hold the corporation harmless from and indemnify the corporation for liability and claims arising from any use authorized under this section including
 - (A) defending the corporation in a cause of action brought against the corporation as a result of the use; and
 - (B) indemnifying the corporation for the amount of a judgment, including prejudgment and postjudgment interest, rendered against the corporation, and for all costs and attorney's fees incurred by the corporation in settling or defending the claim; and

(3) stop the use upon request of the corporation if the use interferes with expansion or replacement of railroad facilities, creates a safety hazard, or interferes with railroad operations. (§2 ch 153 SLA 1984)

NOTES TO DECISIONS. Cited in Lavery v. Alaska R.R. Corp., 13 P.3d 725 (Alaska 2000).

Sec. 42.40.430. Acquisition of government property. The corporation, as an instrumentality of the state, may acquire in its own name from the United States under 40 U.S.C. 471 et seq. (Federal Property and Administrative Services Act of 1949) or other law, property under the control of a federal department or agency that is useful for the corporation's purposes. The corporation may acquire from the Department of Administration property of the state made available under AS 44.68.110 - 44.68.140. (§2 ch 153 SLA 1984; am §91 ch 21 SLA 2000)

REVISOR'S NOTES. 50 U.S.C. App. 1622-1622c (Surplus Property Act of 1944) was repealed by sec. 7(b), P.L. 103-272.

EFFECT OF AMENDMENTS. The 2000 amendment, effective April 28, 2000, deleted a federal reference in the first sentence.

Sec. 42.40.435. Exchange of land. The corporation may exchange land subject to AS 42.40.285. The corporation is an instrumentality and agency of the state for purposes of exchanging land with the United States, municipalities, corporations including corporations formed under 43 U.S.C. 1601-1628 (Alaska Native Claims Settlement Act), and individuals. (§2 ch 153 SLA 1984)

Sec. 42.40.440. Use of pesticides and herbicides. Vegetation control involving the use of pesticides or herbicides on land owned or managed by the corporation may be conducted only in compliance with state requirements applicable to other state pesticide or herbicide use. (§2 ch 153 SLA 1984)

Sec. 42.40.450. Adverse possession. No prescription or statute of limitations runs against the title or interest of the corporation to or in land owned by the corporation or under its jurisdiction. Title to or interest in land owned by the corporation or under its jurisdiction may not be acquired by adverse possession or prescription, or in any other manner except by conveyance from or formal vacation by the corporation. (§2 ch 153 SLA 1984)

Sec. 42.40.460. Extension of the Alaska Railroad. (a) The corporation may delineate a proposed transportation corridor between the existing railroad utility corridor of the Alaska Railroad and the border of Alaska and Canada. The transportation corridor shall be 500 feet wide except where, in the corporation's discretion, physical obstacles or private land ownership patterns make a narrower transportation corridor appropriate. The transportation corridor may be designated for a use identified under AS 38.35.020(a) or AS 42.40.350(b), and, subject to this section, other transportation and utility uses. The corporation may also identify land for use as rail land that can be developed for terminal, station, and maintenance facilities, switching yards, and other purposes associated with the transportation corridor. The corporation shall prepare a

complete legal description of the proposed transportation corridor and the rail land identified under this subsection.

(b) In performing the work authorized by (a) of this section, the corporation, in consultation with interested parties, shall consider the following factors:

- (1) safety;
- (2) grade and alignment standards that are commensurate with rail and utility construction standards and that minimize the prospect of at-grade railroad and highway crossings;
- (3) availability of construction materials;
- (4) effects on and service to adjacent communities and potential intermodal transportation connections;
- (5) environmental concerns;
- (6) use of public land to the maximum degree possible;
- (7) minimization of probable construction costs;
- (8) the location of and the opportunity to obtain access to identified natural resources that could contribute significantly to the economic development of the state and Canada;
- (9) avoidance of possibly unstable ground due to thawing of frozen soils; and
- (10) prior and established traditional uses.

(c) If the corporation identifies all or a portion of the proposed transportation corridor or associated rail land and if the Department of Natural Resources, after consultation with the corporation and potentially affected parties, finds that the location of the proposed transportation corridor and associated rail land minimizes adverse effects on existing and potential rights-of-way and land uses associated with the location, construction, and operation of a gas pipeline in a manner that is in the best interest of the state,

(1) the Department of Natural Resources shall reserve the transportation corridor and associated rail land across state land identified by the corporation, subject to valid existing rights and provisions of this section;

(2) the department shall continue to manage the land reserved under (1) of this subsection; the department shall consult with the corporation before disposing of an interest in land within the transportation corridor and associated rail land; the department shall condition authorizations for activities on the reserved land to protect the right of the corporation to construct the railroad or other uses identified for the land;

(3) the department and the corporation shall cooperate to identify, on a continuing basis and to the extent practicable, the potential crossings for economic development and public access along the land reserved for the transportation corridor and associated rail land; and

(4) while the land is reserved for the transportation corridor and associated rail land under this subsection, the department may retain money received from disposal or third-party use of the land.

(d) If the corporation notifies the Department of Natural Resources that the corporation will begin construction of a railroad improvement on a segment of the transportation corridor or associated rail land and the corporation has identified a source of funding for the construction, then, as of the beginning of construction of that segment, the department shall delegate authority to manage land within that segment of the

transportation corridor and associated rail land to the corporation, including the authority to authorize or permit use of the land by third parties under the provisions of this chapter, subject to

(1) valid existing rights; and

(2) the authority of the department

(A) to identify and reserve rights-of-way for potential future crossings under (g) of this section; and

(B) after consultation with the corporation, to identify, reserve, authorize, and manage land within the transportation corridor and associated rail land for future right-of-way leases and uses under AS 38.35.

(e) Upon completion of construction of the railroad improvement on all or a portion of the reserved transportation corridor or associated rail land,

(1) the corporation shall, without cost to the Department of Natural Resources, provide the department with a survey of the state land within a 200-foot corridor, 100 feet on each side of the as-built centerline of track, and the associated rail land;

(2) the Department of Natural Resources shall convey the state's entire interest in the land within the boundaries of the survey to the corporation, subject to valid existing rights, and reserving to the state (A) the interests required by AS 38.05.125; (B) the right of the department to identify and reserve rights-of-way for potential future crossings under (g) of this section; and (C) the authority of the department to identify, reserve, authorize, and manage land within the transportation corridor and associated rail land for future right-of-way leases and uses under AS 38.35; the conveyance of land under this paragraph shall be without cost to the corporation except for the direct administrative costs of the department;

(3) the Department of Natural Resources shall assign any existing contracts within that segment of the transportation corridor and associated rail land to the corporation; the corporation may thereafter retain the revenue from the conveyed land; the department shall prorate revenue from contracts affecting both conveyed and unconveyed land;

(4) the remaining state land in a segment of the transportation corridor in which the corporation has received a conveyance under this section shall be managed by the Department of Natural Resources as a transportation corridor unless the department determines the land is no longer needed for that purpose; and

(5) the remaining segments of the transportation corridor in which the corporation has not completed construction and any associated state land designated as rail land shall continue to be managed by the Department of Natural Resources as a transportation corridor and associated rail land under (c) and (d) of this section.

(f) Notwithstanding other provisions of this section, before the Department of Natural Resources grants a gas pipeline right-of-way lease under AS 38.35.020(a) across a transportation corridor or associated rail land delineated, identified, reserved, or conveyed under this section, the department shall consult with the corporation; if a railroad improvement has not been constructed on a segment of the transportation corridor or associated rail land that is crossed by the proposed gas pipeline right-of-way, the department may adjust the location of the transportation corridor or associated rail land if the department finds that relocation of the transportation corridor or associated

rail land to accommodate the proposed gas pipeline right-of-way is in the best interest of the state.

(g) In delegating management authority over or conveying all or a portion of state land to the corporation, the Department of Natural Resources shall reserve the right to authorize, by lease, permit, or other method, a person to cross or construct access across the transportation corridor and associated rail land; however, before authorizing a crossing or construction of access, the department shall obtain concurrence from the corporation that the proposed crossing or construction is consistent with applicable safety standards and, to the extent practical, minimizes effects on railroad operating efficiency. Neither the corporation nor the state is liable for claims arising from public use of the transportation corridor and associated rail land, except to the extent the claims arise from the gross negligence of the state, the corporation, their employees, or their contractors, respectively. The department shall indemnify the corporation consistent with AS 42.40.420(1) - (3) for claims or related litigation arising from an authorization issued by the department under this section, except to the extent the claims arise from the gross negligence of the corporation, its employees, or its contractors.

(h) The corporation shall,

(1) as the corporation considers appropriate, exercise its authority under this chapter to acquire rights-of-way across land within the transportation corridor and associated rail land that is subject to the corporation's power of eminent domain;

(2) upon delineation of the transportation corridor and identification of associated rail land, expeditiously work with federal officials to secure reclassification and withdrawal of federal land for reservations and rights-of-way across the federal land for use as transportation corridor and rail land; and

(3) before undertaking acquisition of federal land, prepare a report evaluating the effects of construction of an extension of the Alaska Railroad across federal land; the statement must satisfy the requirements for an environmental impact statement under 42 U.S.C. 4332.

(i) The requirements of AS 38.04.065 and 38.05.300, relating to classification and reclassification of land, are inapplicable to actions taken by the Department of Natural Resources under this section.

(j) The Department of Natural Resources shall retain the classifications and reservations of land identified for use as a proposed utility corridor and railroad right-of-way under former AS 19.05.122 until the corporation informs the department in writing that the land is not needed by the corporation for a utility corridor. If, under (a) of this section, the corporation includes land identified under former AS 19.05.122 as part of the proposed transportation corridor, the department shall manage that land under provisions of this section.

(k) To complete the work authorized by this section, the corporation may enter into agreements relating to the work with the federal government, an agency or instrumentality of the state, a municipality, or a private organization. (§1 ch 45 SLA 2004)

Sec. 42.40.465. Extension of the Alaska Railroad to connect with the North American railroad system. (a) The corporation may investigate extension of the

Alaska Railroad from the border of Alaska and Canada to connect with the North American railroad system. The corporation may acquire land or interests in land in Canada as the corporation considers appropriate for the development, construction, and operation of an extension of the Alaska Railroad to connect with the North American railroad system.

(b) In performing the work authorized by (a) of this section, the corporation shall consider the following factors:

- (1) safety;
- (2) grade and alignment standards that are commensurate with rail and utility construction standards and that minimize the prospect of at-grade railroad and highway crossings;
- (3) availability of construction materials;
- (4) effects on and service to adjacent communities and potential intermodal transportation connections;
- (5) environmental concerns;
- (6) use of public land to the maximum degree possible;
- (7) minimization of probable construction costs;
- (8) the location of and the opportunity to obtain access to identified natural resources that could contribute significantly to the economic development of the state and Canada;
- (9) avoidance of possibly unstable ground due to thawing of frozen soils; and
- (10) prior and established traditional uses. (§1 ch 45 SLA 2004)

Article 6. Financial Provisions

Section

500. Limitation of liability
510. Fidelity bond
520. Insurance

Section

530. Revenue
540. Appropriations

Sec. 42.40.500. Limitation of liability. A liability incurred by the corporation shall be satisfied exclusively from the assets or revenue of the corporation and no creditor or other person has a right of action against the state because of a debt, obligation, or liability of the corporation. (§2 ch 153 SLA 1984)

Sec. 42.40.510. Fidelity bond. The corporation shall obtain a fidelity bond in an amount determined by the board for board members and each executive officer responsible for accounts and finances. A bond must be in effect during the entire tenure in office of the bonded person. (§2 ch 153 SLA 1984)

Sec. 42.40.520. Insurance. Except as provided in AS 42.40.310(b), the corporation shall protect its assets, services, and employees by purchasing insurance or providing for certain self-insurance retentions. The corporation shall also maintain casualty, property, business interruption, marine, boiler and machinery, pollution liability, and other insurance in amounts reasonably calculated to cover potential claims against the corporation or state for bodily injury, death or disability and property damage that

may arise from or be related to corporation operations and activities. (§2 ch 153 SLA 1984)

Sec. 42.40.530. Revenue. Revenue generated by or appropriated to the corporation shall be retained and managed by the corporation for railroad and related purposes in accordance with 45 U.S.C. 1207(a)(5) (Alaska Railroad Transfer Act of 1982). (§2 ch 153 SLA 1984)

Sec. 42.40.540. Appropriations. The corporation may request, with the concurrence of the governor, a direct appropriation or grant from the legislature to assist in carrying out the provisions of this chapter. (§2 ch 153 SLA 1984)

Article 7. Specific Projects

Section

550. Extension of railroad to Fort Greely

560. North Slope natural gas pipeline

570. Kenai gasification project

Sec. 42.40.550. Extension of railroad to Fort Greely. The corporation may acquire a transportation corridor between the existing railroad corridor and Fort Greely, Alaska, and construct a rail line within the corridor to provide rail service to the Fort Greely area and points between. The transportation corridor may be designated for a use identified under AS 42.40.350(b) and other transportation and utility uses. The corporation may also acquire land along the corridor for use as rail land that can be developed for terminal, station, and maintenance facilities, switching yards, and any other purposes associated with the railroad utility corridor. The corporation may provide financing for the acquisition, construction, improvement, maintenance, equipping, and operation of the rail line and related facilities between the existing railroad corridor and Fort Greely, Alaska. (§1 ch 46 SLA 2004)

CROSS REFERENCES. For legislative authorization and approval of bonds that may be issued by the Alaska Railroad Corporation for the purpose set out in this section, conditions applicable to those bonds, and a declaration that

the provision constitutes the legislative approval required under AS 42.40.285, see §3, ch. 46, SLA 2004, in the 2004 Temporary and Special Acts.

Sec. 42.40.560. North Slope natural gas pipeline. The corporation may provide financing for the acquisition, construction, improvement, maintenance, equipping, and operation of a natural gas pipeline and related facilities for the transportation of natural gas recovered from the North Slope of this state without regard to whether the facilities are or will be owned in whole or in part by the corporation or located on land owned by the corporation. (§2 ch 71 SLA 2003)

REVISOR'S NOTES. Formerly AS 42.40.250(31); renumbered in 2004.

Sec. 42.40.570. Kenai gasification project. (a) The corporation may participate in a project consisting of the acquisition, construction, improvement, maintenance, equipping, and operation of real and personal property, including facilities and equipment for the transportation of coal from Healy to the northern Kenai Peninsula, and facilities and equipment for coal gasification and electrical power generation adjacent to the Agrium fertilizer plants in the northern Kenai Peninsula.

(b) The corporation may participate in a project consisting of the acquisition, construction, improvement, maintenance, equipping, and operation of real and personal property, including facilities and equipment, for the transportation of coal by rail from Healy to Port MacKenzie and thereafter by barge to the northern Kenai Peninsula.

(c) The corporation may finance all or a portion of the projects described in (a) and (b) of this section through the issuance of its bonds. (§ 2 ch 65 SLA 2007)

CROSS REFERENCES. For legislative findings, intent, and statement of purpose applicable to ch. 65, SLA 2007, the Act that added this section, see § 1, ch. 65, SLA 2007, in the 2007 Temporary and Special Acts. For legislative authorization and approval of bonds that may be issued by the Alaska Railroad Corporation for the purposes set out in (a) and (b) of this section, including conditions and limitations applicable to the bonds for each of

the purposes set out in (a) and (b) of this section, termination dates for authorizations of those bonds, and a declaration that the provision constitutes the legislative approval required under AS 42.40.285, see §§ 5 and 6, ch. 65, SLA 2007, in the 2007 Temporary and Special Acts. **EFFECTIVE DATES.** Section 7, ch. 65, SLA 2007, makes this section effective August 26, 2007, under AS 01.10.070(c).

Article 8. Bonds

Section

600. General provisions
610. Negotiable instruments
620. Bonds eligible for investment
630. Payment of bonds
640. Security for bonds
650. Independent financial advisor

Section

660. Validity of signatures
670. Validity of pledge
675. Pledge of the state
680. Remedies
690. Credit of state not pledged
695. Public purpose of bonds
700. Limitation on personal liability

Sec. 42.40.600. General provisions. (a) Upon receiving legislative approval under AS 42.40.285 the corporation may issue bonds by resolution to provide money to carry out its purposes.

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

- (1) be dated;
- (2) bear fixed or variable interest at a specified rate or rates per year or within a maximum rate;
- (3) be in a specified denomination;
- (4) be in a coupon or registered form;
- (5) carry conversion or registration provisions;
- (6) have a specified rank or priority;

- (7) be executed in the specified manner and form;
- (8) be payable as specified from the sources, in the medium of payment, and place or places inside or outside the state;
- (9) be subject to authentication by a trustee or fiscal agent; and
- (10) be subject to terms of redemption with or without premium.

(c) Bonds may be sold in the manner, on the terms, and at the price the board determines. Notes shall mature at the time or times determined by the board. Except for bond anticipation notes, notes, or other obligations, bonds shall mature at the time, not exceeding 50 years from their date, determined by the board. (§2 ch 153 SLA 1984)

Sec. 42.40.610. Negotiable instruments. Bonds issued under this chapter and interest coupons attached to them are negotiable instruments under the laws of this state, subject only to applicable provisions for registration. (§2 ch 153 SLA 1984)

Sec. 42.40.620. Bonds eligible for investment. Bonds issued under this chapter are securities in which all public officers and public bodies of the state and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. These bonds may be deposited with a state or municipal officer of an agency or political subdivision of the state for any purpose for which the deposit of bonds of the state is authorized by law. (§2 ch 153 SLA 1984)

Sec. 42.40.630. Payment of bonds. (a) The principal and interest on bonds of the corporation is payable from corporation money or assets. Bonds may be additionally secured by a pledge of a grant or contribution from the federal or state government, a municipality, a corporation, an association, an institution, or a person, or a pledge of money, income, or revenue of the corporation from any source.

(b) Before issuing bonds to provide the financing described in AS 42.40.560 for a facility to be owned in whole or in part by an entity other than the corporation, the corporation shall enter into a contract, lease, or other form of agreement that will, in the judgment of the corporation, provide sufficient consideration to

- (1) pay the principal of and interest on the bonds as they become due;
- (2) create and maintain the reserves for the bond payments that the corporation considers necessary or desirable; and
- (3) pay all costs necessary to service or additionally secure the bonds, including trustee's fees and bond insurance premiums, unless these costs are to be paid by a party other than the corporation.

(c) Before issuing bonds to provide the financing described in AS 42.40.570 for real or personal property to be owned in whole or in part by an entity other than the corporation, the corporation shall enter into one or more contracts, leases, or other forms of agreement that will, in the judgment of the corporation, provide sufficient consideration to

- (1) pay the principal of and interest on the bonds as they become due;
- (2) create and maintain any reserves for the bond payments that the corporation considers necessary or desirable; and

(3) pay all costs necessary to issue, service, or additionally secure the bonds, including trustee's fees and bond insurance premiums, unless these costs are to be paid from bond proceeds or by a party other than the corporation. (§ 2 ch 153 SLA 1984; § 3 ch 71 SLA 2003; am § 3 ch 65 SLA 2007)

REVISOR'S NOTES. In 2004, "AS 42.40.560" was substituted for "AS 42.40.250(31)" to reflect the 2004 renumbering of AS 42.40.250(31).

CROSS REFERENCES. For legislative authorization and approval of the issuance of bonds in an amount not to exceed \$17,000,000,000 for construction of a natural gas pipeline and related facilities for the transportation of North Slope natural gas, see §5, ch. 71, SLA 2003, in the 2003 Temporary

and Special Acts. For legislative findings, intent, and statement of purpose applicable to ch. 65, SLA 2007, the Act that added subsection (c) of this section, see § 1, ch. 65, SLA 2007, in the 2007 Temporary and Special Acts. **EFFECT OF AMENDMENTS.** The 2003 amendment, effective June 12, 2003, added subsection (b). The 2007 amendment, effective August 26, 2007, added subsection (c).

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

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

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

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

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

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

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

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

(3) provide for any other matters of like or different character that in any way affect the security or protection of the bonds. (§2 ch 153 SLA 1984)

Sec. 42.40.650. Independent financial advisor. In negotiating the private or public sale of bonds to an underwriter, the board shall retain a financial advisor who is independent from the underwriter. (§2 ch 153 SLA 1984)

Sec. 42.40.660. Validity of signatures. If an officer of the corporation whose signature or a facsimile of whose signature appears on bonds or coupons attached to

them ceases to be an officer before the delivery of the bond or coupon, the signature or facsimile is valid the same as if the person had remained in office until delivery. (§2 ch 153 SLA 1984)

Sec. 42.40.670. Validity of pledge. (a) The pledge of assets or revenue of the corporation to the payment of the principal or interest on bonds of the corporation is valid and binding from the time the pledge is made and the assets or revenue are immediately subject to the lien of the pledge without physical delivery or further act. The lien of a pledge is valid and binding against all parties having claims of any kind against the corporation, irrespective of whether those parties have notice of the lien of the pledge.

(b) Nothing in this section prohibits the corporation from selling assets subject to a pledge, except that a sale may be restricted by the trust agreement or resolution providing for the issuance of the bonds. (§2 ch 153 SLA 1984)

Sec. 42.40.675. Pledge of the state. The state pledges to and agrees with the holders of bonds issued under this chapter and with the federal agency that loans or contributes funds in respect to a project, that the state will not limit or alter the rights and powers vested in the corporation by this chapter to fulfill the terms of a contract made by the corporation with the holders or federal agency, or in any way impair the rights and remedies of the holders until the bonds together with the interest on them with interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of the holders, are fully met and discharged. The corporation is authorized to include this pledge and agreement of the state, insofar as it refers to holders of bonds of the corporation, in a contract with the holders and insofar as it relates to a federal agency, in a contract with the federal agency. (§2 ch 153 SLA 1984)

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

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

(2) compel the performance of all duties of the corporation required by this chapter or by the trust agreement or resolution. (§2 ch 153 SLA 1984)

Sec. 42.40.690. Credit of state not pledged. (a) The state and its political subdivisions are not liable for the debts of the corporation. Bonds issued under this chapter are payable solely from the revenue or assets of the corporation and do not constitute a

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

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

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

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

(2) neither the faith and credit nor the taxing power of the state or of a political subdivision of the state is pledged to the payment of it. (§2 ch 153 SLA 1984)

NOTES TO DECISIONS. Cited in Lavery v. Alaska R.R. Corp., 13 P.3d 725 (Alaska 2000).

Sec. 42.40.695. Public purpose of bonds. Bonds of the corporation issued to finance facilities described in AS 42.40.550 and 42.50.560 and bonds of the corporation issued to finance the acquisition, construction, improvement, maintenance, equipping, and operation of real and personal property, including facilities and equipment, described in AS 42.40.570 are issued by a public corporation and an instrumentality of the state for an essential public and governmental purpose. (§4 ch 71 SLA 2003; am §2 ch 46 SLA 2004; am §4 ch 65 SLA 2007)

REVISOR'S NOTES. In 2004, "AS 42.40.560" was substituted for "AS 42.40.250(31)" to reflect the 2004 renumbering of AS 42.40.250(31).

CROSS REFERENCES. For legislative findings, intent, and statement of purpose applicable to the 2007 Act that amended this section, see § 1, ch. 65, SLA 2007, in the 2007 Temporary and Special Acts. **EFFECT OF AMENDMENTS.** The 2004 amendment, effective June 5, 2004, inserted "and bonds of the corporation issued to finance facilities

described in AS 42.40.550." The 2007 amendment, effective August 26, 2007, substituted "AS 42.40.550 and 42.40.560 and bonds of the corporation issued to finance the acquisition, construction, improvement, maintenance, equipping, and operation of real and personal property, including facilities and equipment, described in AS 42.40.570" for "AS 42.40.560 and bonds of the corporation issued to finance facilities described in AS 42.40.550."

Sec. 42.40.700. Limitation on personal liability. A board member or employee of the corporation is not subject to personal liability or accountability because of the execution or issuance of bonds. (§2 ch 153 SLA 1984)

Article 9. Personnel and Labor Relations

Section

705. Political activities
710. Corporation employees
720. Collective bargaining rights
730. Railroad labor relations agency
740. Collective bargaining unit
750. Representatives and elections
760. Unfair labor practices
770. Investigation and conciliation of complaints

Section

810. Power to investigate and compel testimony
820. Regulations
830. Penalty for violation of order or decision
840. Mediation
850. Strikes
860. Agreements
870. Organization dues and employee benefits; deduction and authorization
880. Exemption

780. Complaint and accusation
790. Orders and decisions
800. Enforcement by injunction

885. Prohibited acts
890. Definitions for AS 42.40.710 - AS 42.40.890

CROSS REFERENCES. For Alaska railroad labor relations agency, see 3 AAC 93.

Sec. 42.40.705. Political activities. (a) Money, assets, or property of the corporation may not be used for political activities. However, board members and employees 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. (§2 ch 153 SLA 1984)

Sec. 42.40.710. Corporation employees. (a) Employees of the Alaska Railroad are employees of the corporation and not of the state. However, employees of the corporation shall be treated as employees of the state for the purposes of AS 39.52. The provisions of AS 39, other than AS 39.52, do not apply to employees of the corporation.

(b) Except as provided in this subsection, employees of the corporation are covered by AS 23.10.050 - 23.10.150 (Alaska Wage and Hour Act). If the terms of a collective bargaining agreement that was mutually agreed upon by an organization representing train or engine service employees and the corporation so provide, AS 23.10.050 - 23.10.150 do not apply to train or engine service employees to the extent set out in the collective bargaining agreement. (§2 ch 153 SLA 1984; am §4 ch 87 SLA 1986; am §102 ch 74 SLA 1998; am §1 ch 89 SLA 2001)

EFFECT OF AMENDMENTS. The 1998 amendment, effective January 1, 1999, rewrote this section. The 2001 amendment, effective July 4, 2001, added subsection (b). **EDITOR'S NOTES.** Under §2(a), ch. 89, SLA 2001, subsection (b) "applies to work performed on or

after July 4, 2001." Under §2(b), ch. 89, SLA 2001, subsection (b) "does not terminate or modify the terms of a collective bargaining agreement in effect on July 4, 2001." **NOTES TO DECISIONS.** Cited in *Laverty v. Alaska R.R. Corp.*, 13 P.3d 725 (Alaska 2000).

Sec. 42.40.720. Collective bargaining rights. The provisions of AS 23.40.070 - 23.40.260 do not apply to the corporation or to its employees. However, employees who are not executive officers may organize and form, join, or assist an organization to engage in collective bargaining through representatives of their own choosing and engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. (§2 ch 153 SLA 1984)

Sec. 42.40.730. Railroad labor relations agency. (a) The Alaska labor relations agency, established in AS 23.05.360, is the sole railroad labor relations agency.

(b) The Alaska labor relations agency shall carry out the provisions of AS 42.40.730 - 42.40.890. (§2 ch 153 SLA 1984; am E.O. No. 77 §4 (1990))

Sec. 42.40.740. Collective bargaining unit. The railroad labor relations agency shall decide in each case, in order to ensure employees the fullest freedom in exercising the rights guaranteed by AS 42.40.710 - 42.40.890 the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, hours, and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. Bargaining units shall be as large as is reasonable, and unnecessary fragmenting shall be avoided. (§2 ch 153 SLA 1984)

Sec. 42.40.750. Representatives and elections. (a) The railroad labor relations agency shall investigate a petition if it is submitted in a manner prescribed by the railroad labor relations agency by

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

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

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

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

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

(c) The railroad labor relations agency shall determine who is eligible to vote in an election held under this section and shall adopt regulations governing the election. In an election in which none of the choices on the ballot receives a majority of the votes cast, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest number of valid votes cast in the election. If an organization receives the majority of the votes cast in the election, it shall be certified by the railroad labor relations agency as exclusive representative of all the employees in the bargaining unit. An election may not be held in a bargaining unit or in a subdivision of a bargaining unit if a valid election has been held within the preceding 12 months.

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

(e) An election may not be directed by the railroad labor relations agency in a bargaining unit in which there is in force a valid collective bargaining agreement, except during a 90-day period preceding the expiration date. However, a collective bargaining agreement may not bar an election upon petition of employees in the bargaining unit if

(1) the petitioners are not parties to the agreements; and

(2) more than three years have elapsed since the execution of the agreement or its last timely renewal, whichever was later. (§2 ch 153 SLA 1984; am §24 ch 23 SLA 1995)

EFFECT OF AMENDMENTS. The 1995 amendment, effective May 11, 1995, substituted "shall adopt regulations" for "shall establish

rules" in the first sentence in subsection (c) and made a minor stylistic change.

Sec. 42.40.760. Unfair labor practices. (a) The corporation or its agent may not

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

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

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

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

(5) refuse to bargain collectively in good faith with an organization that is the exclusive representative of employees in an appropriate unit, including the discussing of grievances with the exclusive representative.

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

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

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

(c) An organization or its agents may not

(1) restrain or coerce

(A) an employee in the exercise of the rights guaranteed in AS 42.40.720; or

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

(2) refuse to bargain collectively in good faith with the corporation, if it has been designated in accordance with AS 42.40.710 - 42.40.890 as the exclusive representative of employees in an appropriate unit. (§2 ch 153 SLA 1984)

Sec. 42.40.770. Investigation and conciliation of complaints. If a verified written complaint by or for a person claiming to be aggrieved by a practice prohibited by AS 42.40.760 or a written accusation that a person subject to AS 42.40.710 - 42.40.890 has engaged in a prohibited practice, is filed with the railroad labor relations agency, it shall investigate the complaint or accusation. If it determines after a preliminary investigation that probable cause exists in support of the complaint or accusation, it shall try to eliminate the prohibited practice by informal methods of conference,

conciliation, and persuasion. Nothing said or done during this endeavor may be used as evidence in a subsequent proceeding. (§2 ch 153 SLA 1984)

Sec. 42.40.780. Complaint and accusation. If the railroad labor relations agency fails to eliminate the prohibited practice by conciliation and to obtain voluntary compliance with AS 42.40.710 - 42.40.890 or before it attempts conciliation, it may serve a copy of the complaint or accusation upon the respondent. The complaint or accusation and the subsequent procedures shall be handled in accordance with the administrative adjudication portion of AS 44.62 (Administrative Procedure Act). (§2 ch 153 SLA 1984)

Sec. 42.40.790. Orders and decisions. If the railroad labor relations agency finds that a person named in the written complaint or accusation has engaged in a prohibited practice, the railroad labor relations agency shall issue and serve on the person an order or decision requiring the person to cease and desist from the prohibited practice and to take affirmative action that will carry out the provisions of AS 42.40.710 - 42.40.890. If the railroad labor relations agency finds that a person named in the complaint or accusation has not engaged or is not engaging in a prohibited practice, the railroad labor relations agency shall state its findings of fact and issue an order dismissing the complaint or accusation. (§2 ch 153 SLA 1984)

Sec. 42.40.800. Enforcement by injunction. The railroad labor relations agency may apply to the superior court in the judicial district in which the prohibited practice occurred for an order enjoining the prohibited acts specified in the order or decision of the railroad labor relations agency. Upon showing by the railroad labor relations agency that the person has engaged or is about to engage in the practice, an injunction, restraining order, or other order that is appropriate may be granted by the court and shall be without bond. (§2 ch 153 SLA 1984)

Sec. 42.40.810. Power to investigate and compel testimony. (a) For the purpose of the investigations, proceedings, or hearings that the railroad labor relations agency considers necessary to carry out AS 42.40.710 - 42.40.890, the railroad labor relations agency may issue subpoenas requiring the attendance and testimony of witnesses and the production of relevant evidence.

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

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

(d) If a person refuses to obey a subpoena issued under AS 42.40.710 - 42.40.890, the superior court in the district in which the person resides or is found may, upon application by the railroad labor relations agency, issue an order requiring the person to comply with the subpoena. (§2 ch 153 SLA 1984)

Sec. 42.40.820. Regulations. The railroad labor relations agency shall adopt regulations under AS 44.62 (Administrative Procedure Act) to carry out AS 42.40.710 - 42.40.890. (§2 ch 153 SLA 1984)

Sec. 42.40.830. Penalty for violation of order or decision. A person who violates a provision of an order or decision of the railroad labor relations agency is guilty of a misdemeanor and is punishable by a fine of not more than \$500. (§2 ch 153 SLA 1984)

Sec. 42.40.840. Mediation. (a) If, after a reasonable period of negotiation over the terms of a collective bargaining agreement, an impasse as determined by the railroad labor relations agency exists between the corporation and an organization, the railroad labor relations agency shall appoint a person mutually agreeable to the parties from a list of seven qualified mediators or arbitrators knowledgeable in railway labor agreements to act as mediator in the dispute.

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

(c) It shall be the function of the mediator to bring the parties together to effectuate a settlement of the dispute, but neither the mediator nor the railroad labor relations agency has any power of compulsion in mediation proceedings. (§2 ch 153 SLA 1984)

Sec. 42.40.850. Strikes. (a) Following a decision by the mediator to end the mediation proceedings, employees of a collective bargaining unit may engage in a strike for a limited time if a majority of the employees in that collective bargaining unit vote by secret ballot to do so. The limit of the strike is determined by the interest of the health, safety, or welfare of the public.

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

(c) If an impasse or deadlock still exists after the issuance of an injunction, the parties shall submit the dispute to binding arbitration. The railroad labor relations agency shall appoint an arbitrator selected by the parties by mutual consent. If the parties are unable to agree on an arbitrator, the railroad labor relations agency shall appoint an arbitrator from a list of arbitrators knowledgeable in railroad labor agreements. The arbitrator shall fashion the award the arbitrator considers equitable.

(d) Notwithstanding (a)-(c) of this section, an organization and the corporation may mutually agree to submit a dispute to binding arbitration at any time. (§2 ch 153 SLA 1984; am §12 ch 43 SLA 1994)

EFFECT OF AMENDMENTS. The 1994 amendment, effective May 16, 1994, in subsection (c), added the present second and third sentences and deleted "be the same

person selected under AS 42.40.840 and shall" following "The arbitrator shall" in the last sentence.

Sec. 42.40.860. Agreements. (a) The Department of Administration may participate in labor negotiations between the corporation and an organization. The corporation may seek advice of the Department of Administration before 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.

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

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

(d) Notwithstanding any provision of AS 42.40.710 - 42.40.890 to the contrary, an agreement between the corporation and an employee bargaining organization that does not contain benefit provisions at least as beneficial to the employee as those provided by AS 39.20.500 - 39.20.550 shall be considered to contain the benefit provisions of those statutes. (§2 ch 153 SLA 1984; am §10 ch 96 SLA 1992)

REVISOR'S NOTES. In 2002, in subsection (d), "AS 39.20.500 - 39.20.550" was substituted for "AS 23.10.500 - 23.10.550" to reflect the 2002 renumbering of AS 23.10.500 - 23.10.550.

provisions related to the effect of (d) of this section on bargaining agreements in effect on September 16, 1992, see §11, ch. 96, SLA 1992 in the Temporary and Special Acts.

CROSS REFERENCES. For transitional

Sec. 42.40.870. Organization dues and employee benefits; deduction and authorization. Upon written authorization of an employee within a bargaining unit, the corporation shall deduct from the payroll of the employee the monthly amount of dues, fees, and other employee benefits as certified by the secretary of the exclusive bargaining representative and shall deliver it to the chief fiscal officer of the exclusive bargaining representative. (§2 ch 153 SLA 1984)

Sec. 42.40.880. Exemption. Notwithstanding the provisions of AS 42.40.870, a collective bargaining settlement reached, or agreement entered into, under AS 42.40.860 that incorporates union security provisions, including a union shop or agency shop provision or agreement, shall safeguard the rights of nonassociation of employees having bona fide religious convictions based on tenets or teachings of a church or religious body of which an employee is a member. Upon submission of proper proof of religious conviction to the railroad labor relations agency, the agency shall declare the employee exempt from becoming a member of an organization. The employee shall pay an amount of money equivalent to regular organization dues, initiation fees, and assessments to the organization. Nonpayment of this money subjects the employee to the same penalty as if it were nonpayment of dues. The receiving organization shall contribute an equivalent amount of money to a charity of its choice not affiliated with a religious, labor, or employee organization. The organization shall submit to the railroad labor relations agency proof of contribution. (§2 ch 153 SLA 1984)

Sec. 42.40.885. Prohibited acts. (a) The corporation or an employee may not directly or indirectly

(1) require or coerce an employee 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 an employee to make any report concerning an activity or undertaking of the employee unless the activity or undertaking is related to the performance of official duties;

(3) except as directly related to the performance of official duties, require or coerce an employee to submit to an interrogation, examination, or psychological test that is designed to elicit information concerning

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

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

(C) sexual matters;

(D) the employee's political affiliation or philosophy;

(4) coerce an employee to invest or contribute 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 an employee, if the employee does not purport to speak or act in an official capacity.

(b) The provisions of (a) of this section do not diminish the authority of an authorized law enforcement agency to conduct criminal investigations of employees suspected of being involved in criminal activity or to investigate other activity directly related to official railroad business. (§2 ch 153 SLA 1984)

Sec. 42.40.890. Definitions for AS 42.40.710 - 42.40.890. In AS 42.40.710 - 42.40.890,

(1) "election" means a proceeding conducted by the labor relations agency in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives, or for any other purpose specified in AS 42.40.710 - 42.40.890;

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

(3) "railroad labor relations agency" means the Alaska labor relations agency established in AS 23.05.360. (§2 ch 153 SLA 1984; am E.O. No. 77 §5 (1990)).

Article 10. General Provisions

Section

900. Claims

905. Notice of legal actions

910. Exemption from taxation

915. Transportation of members of the
Alaska organized militia

920. Application of existing laws

Section

930. Conflicting laws inapplicable

935. Railroad facilities code compliance

940. Sale or lease of the railroad

950. Reversion of assets

980. Definitions

990. Short title

Sec. 42.40.900. Claims. (a) All claims and lawsuits involving activities of the railroad, including suits in contract, quasi-contract, or tort, shall be brought against the corporation and not against the state.

(b) For the purposes of actionable claims, undertakings, payments of judgments, execution, interest, punitive damages, statutes of limitations, bonds, costs, and similar matters related to the presentation and prosecution of claims by and against the corporation, the corporation and its board members and employees enjoy the same rights, privileges, and immunities as the state and state officers.

(c) Claims against the corporation are not subject to the provisions of AS 44.77 regarding claims against the state.

(d) The corporation is not subject to the provisions of AS 44.80.010, regarding the state as a party to an action. (§2 ch 153 SLA 1984)

Sec. 42.40.905. Notice of legal actions. (a) The corporation shall notify the Department of Law within 30 days before initiating legal action unless special circumstances exist that require immediate legal action to protect the corporation assets or to continue existing service.

(b) If notice of legal action is not given under (a) of this section, within seven days of taking action the board shall notify the Department of Law of the action taken and of the special circumstances that exempted the action from the requirements of (a) of this section. (§2 ch 153 SLA 1984)

Sec. 42.40.910. Exemption from taxation. (a) The exercise of the powers granted by this chapter shall be in all respects for the benefit of the people of the state, for their well-being and prosperity, and for the improvement of their social and economic conditions. Subject to (b) of this section, the real and personal property of the corporation and its assets, income, and receipts are exempt from all taxes and special assessments of the state or a political subdivision of the state.

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

(c) This section does not affect or limit an exemption from license fees, property taxes, or excise, income, or other taxes, provided under any other law, nor does it create a tax exemption with respect to the interest of any business enterprise or other person, other than the corporation. (§2 ch 153 SLA 1984)

Sec. 42.40.915. Transportation of members of the Alaska organized militia. To the extent that space is available, the corporation shall provide free transportation on the Alaska Railroad for a member of the Alaska National Guard, the Alaska Naval Militia, or the Alaska State Defense Force who is en route to or from drill, training, or other official militia activities. (§5 ch 25 SLA 2000)

Sec. 42.40.920. Application of existing laws. (a) [*Repealed, §38 ch 168 SLA 1990.*]

(b) Unless specifically provided otherwise in this chapter, the following laws do not apply to the operations of the corporation:

- (1) AS 19;
- (2) AS 30.15;
- (3) AS 35;
- (4) AS 36.30, except as specifically provided in that chapter;
- (5) AS 37.05, except as specifically provided in AS 37.05.210;
- (6) AS 37.07;
- (7) AS 37.10.010 - 37.10.060;
- (8) AS 37.10.085;
- (9) AS 37.20;
- (10) AS 37.25;
- (11) AS 38;

(12) AS 44.62.010 - 44.62.320. (§2 ch 153 SLA 1984; am §41 ch 106 SLA 1986; am §38 ch 168 SLA 1990; am §6 ch 83 SLA 1999)

EFFECT OF AMENDMENTS. The 1999 amendment, effective September 27, 1999, added ", except as specifically provided in AS 37.05.210" in paragraph (b)(5). **OPINIONS OF ATTORNEY GENERAL.** The Alaska Railroad is not required to award leases of railroad lands by competitive bidding, since, under subsection (b)(10) (now see (b)(11)), the Alaska Railroad is specifically exempted from the requirements of AS 38. March 8, 1985, Op. Att'y Gen. **NOTES TO DECISIONS. Legislative intent not indicative of immunity from local zoning laws.** Subsection (b) of this section exempts the state railroad from AS 35, but the exemption statute shows only the legislature's desire that the railroad not be treated as a subdivision of the Alaska Department of Transportation and Public Facilities and that the DOTPF not control construction of railroad projects; hence, in an action filed by a village to stop the railroad's

blasting in an adjacent quarry, AS 42.40.920(b) did not exempt railroad from a municipality's zoning laws. *Native Village of Eklutna v. Alaska R.R. Corp.*, 87 P.3d 41 (Alaska 2004).

No right to tidelands against Alaska Railroad Corporation. AS 38.05.820(a), which allows "preference rights for the acquisition of tide and submerged land" from the state, did not provide the plaintiff, whose title was later declared null and void because of federal ownership, with any right to these tidelands. Paragraph (b)(1) of this section specifically provides that AS 38.05.820 does not apply to the operations of the Alaska Railroad Corporation, to which these tidelands had been conveyed. *North Star Term. & Stevedore Co. v. State*, 857 P.2d 335 (Alaska 1993). **Cited** in *Laverty v. Alaska R.R. Corp.*, 13 P.3d 725 (Alaska 2000). **Applied** in *Alaska R.R. Corp. v. Native Village of Eklutna*, 142 P.3d 1192 (Alaska 2006).

Sec. 42.40.930. Conflicting laws inapplicable. If provisions of this chapter conflict with the provisions of other state law, the provisions of this chapter prevail. Provisions of this chapter shall be construed so that they do not conflict with 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of 1982). (§2 ch 153 SLA 1984)

NOTES TO DECISIONS. Legislative intent not indicative of immunity from local zoning laws. This section merely describes how to sort out conflicts among state laws; hence, in an action filed by a village to stop the railroad's

blasting in an adjacent quarry, this section did not exempt railroad from a municipality's zoning laws. *Native Village of Eklutna v. Alaska R.R. Corp.*, 87 P.3d 41 (Alaska 2004).

Sec. 42.40.935. Railroad facilities code compliance. (a) Not later than two years after the date of transfer the corporation in consultation with the Department of Labor and Workforce Development shall develop and adopt a plan to achieve

compliance with AS 18.60. The plan shall be implemented and compliance achieved within five years after it is adopted.

(b) No later than two years after the date of transfer, the corporation in consultation with the Department of Public Safety and appropriate municipal officials, shall develop and adopt a plan to achieve compliance with building and related safety codes applicable to facilities of the corporation. The plan shall be implemented and compliance achieved within five years after it is adopted. In the sole determination of the commissioner of public safety, any existing building owned or controlled by the corporation that does not present a serious safety hazard and for which compliance would be uneconomical in consideration of its remaining useful life shall be exempted from compliance with state or municipal safety codes. (§2 ch 153 SLA 1984)

REVISOR'S NOTES. In 1999, in (a) of this section, "Department of Labor" was changed to read "Department of Labor and Workforce Development" in accordance with §90, ch. 58, SLA 1999. **NOTES TO DECISIONS.** **Legislative intent not indicative of immunity from local zoning laws.** This section lays out a procedure for the state railroad's compliance with codes whose authority pre-exists the provision, but does not to subject the railroad to

that authority nor shed any light on whether the legislature intended to immunize the railroad from local zoning laws; hence, in an action filed by a village to stop the railroad's blasting in an adjacent quarry, this section did not indicate a legislative intent for the Alaska Railroad Corporation Act to exempt the railroad from a municipality's zoning laws. *Native Village of Eklutna v. Alaska R.R. Corp.*, 87 P.3d 41 (Alaska 2004).

Sec. 42.40.940. Sale or lease of the railroad. (a) The governor may provide for the sale or lease of the Alaska Railroad and dissolve the corporation if

(1) it can be assured that the railroad will continue to operate after the sale or lease; and

(2) under the terms of the sale or lease, the state will receive the amount of money it has spent in connection with the Alaska Railroad.

(b) A sale under this section is subject to approval by law. (§2 ch 153 SLA 1984)

NOTES TO DECISIONS. **Stated** in *Laverty v. Alaska R.R. Corp.*, 13 P.3d 725 (Alaska 2000).

Sec. 42.40.950. Reversion of assets. Except as provided in AS 42.40.940, if the corporation ceases to exist its assets revert to the state. (§2 ch 153 SLA 1984)

NOTES TO DECISIONS. **Stated** in *Laverty v. Alaska R.R. Corp.*, 13 P.3d 725 (Alaska 2000).

Sec. 42.40.980. Definitions. In this chapter unless the context otherwise requires,

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

(2) "bonds" means bonds, bond anticipation notes, notes, refunding bonds, or other obligations;

(3) "collective bargaining" means the performance of the mutual obligation of the corporation or its designated representatives and the representatives of the employees to meet at reasonable times, including meetings in advance of the budget making

process, and negotiating in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or negotiation of a question arising under an agreement and the execution of a written contract incorporating an agreement reached if requested by either party, but these obligations do not compel either party to agree to a proposal or require the making of a concession;

(4) "corporation" means the Alaska Railroad Corporation;

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

(6) "employees" means all persons employed by the corporation including executive officers;

(7) "executive officer" means the corporation's chief executive officer, assistant chief executive officer, assistant to the chief executive officer, chief of administration, superintendent of transportation, manager of marketing and sales, chief engineer, chief mechanical officer, manager of industrial development and real estate, manager of budget and accounting, manager of planning, manager of personnel, manager of supply and procurement, chief of security, manager of operating rules, manager of data processing, manager of strategy, manager of operations planning, manager of supply, manager of procurement, manager of safety, manager of administrative procedure, chief counsel, or, if so designated by the board, any employee who fulfills these management functions under a different title or who exercises a similar or comparable level of responsibility or supervision;

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

(9) "rule" means a standard of general application or the amendment, supplement, revision, or repeal of a standard adopted by the corporation to implement, interpret, or make specific the law enforced or administered by it or to govern its procedure;

(10) "terms and conditions of employment" means the hours of employment, the compensation and fringe benefits, and the employer's personnel policies affecting the working conditions of the employees, but does not mean the general policies describing the function and purposes of an employer. (§2 ch 153 SLA 1984)

REVISOR'S NOTES. The actual date of transfer under paragraph (5) of this section is January 5, 1985.

Sec. 42.40.990. Short title. This chapter may be referred to as the Alaska Railroad Corporation Act. (§2 ch 153 SLA 1984)