

Introduced: 1/18/83  
Referred: Judiciary and  
Finance

BY THE RULES COMMITTEE BY  
REQUEST OF THE LEGISLATIVE  
COUNCIL (for the Blue  
Ribbon Commission on the  
State Personnel Act)

1 IN THE HOUSE

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HOUSE BILL NO. 52

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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For an Act entitled: "An Act relating to government interests in intellec-  
tual work products developed at the expense of the  
state."

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

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\* Section 1. AS 39 is amended by adding a new chapter to read:

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CHAPTER 52. INTELLECTUAL PROPERTY DEVELOPED AT THE EXPENSE OF THE STATE.

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Sec. 39.52.010. RIGHT TO INTELLECTUAL WORK PRODUCT. (a) Except

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as provided in AS 39.52.040 and AS 14.40.345, all right, title, and  
interest in and to an intellectual work product of any kind that is  
subject to the trademark, copyright, or patent laws of the United  
States or this state or any foreign country that is developed by a  
public officer or employee or a person under contract with the state  
is the property of the state if developed

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(1) during working hours;

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(2) with the contribution of the state beyond what is

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available to the public in general in the form of facilities, equip-  
ment, materials, money, or information, or of time or services of  
another public officer or employee in the course of state employment  
or another person under contract with the state; or

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(3) in connection with the official duties of the public

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officer or employee or the person under contract, including but not  
limited to circumstances in which the public officer or employee or  
the person is employed or assigned to

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(A) produce or improve an intellectual work product;

1 (B) conduct or perform research, development work, or  
2 both;

3 (C) supervise, direct, coordinate, or review state  
4 financed or conducted research, development work, or both; or

5 (D) act in a liaison capacity among governmental or  
6 nongovernmental agencies or individuals engaged in such work.

7 (b) If a public officer or employee or a person under contract  
8 with the state develops an intellectual work product that is the  
9 property of the state, the developer is obligated to

10 (1) fully and promptly disclose the intellectual work  
11 product to the Alaska Council on Science and Technology (AS 44.21.-  
12 241);

13 (2) assign to the state the entire right, title, and inter-  
14 est in and to the intellectual work product if not already waived by  
15 signing of a general waiver upon commencement of employment in accor-  
16 dance with AS 39.05.160 or as part of a contract for services; and

17 (3) upon request by the council, execute and reasonably  
18 assist in the prosecution of an application for a trademark, copy-  
19 right, or patent.

20 (c) If the state has a right to an intellectual work product  
21 under (a) of this section but the council decides that it is inadvis-  
22 able to prosecute an application for trademark, copyright, or patent,  
23 the council, on behalf of the state, may, after consultation with  
24 affected state agencies,

25 (1) waive all right, title, and interest in and to the  
26 intellectual work product; or

27 (2) waive all right, title, and interest in and to a trade-  
28 mark, copyright, or patent but reserve a nonexclusive, irrevocable,  
29 royalty-free license in the intellectual work product with power to

1 grant licenses for all governmental purposes.

2 Sec. 39.52.020. COUNCIL AUTHORIZED TO GRANT MONETARY RECOGNITION  
3 FOR CREATION OF INTELLECTUAL WORK PRODUCT. (a) The council is autho-  
4 rized to give monetary recognition to a public officer or employee who  
5 develops an intellectual work product that is the property of the  
6 state and who discharges the obligations set out in AS 39.52.010.

7 (b) The council shall determine the guidelines, terms, and  
8 conditions, as well as amount, source, distribution, and manner of  
9 payments under (a) of this section. The council shall consider the  
10 actual or potential value of the intellectual work product in terms of  
11 revenue or reduced operating costs to the state.

12 Sec. 39.52.030. ARBITRATION OF DISAGREEMENTS. (a) Disagree-  
13 ments between a public officer or employee or a person under contract  
14 with the state and the council pertaining to ownership of an intellec-  
15 tual work product or obligations of the respective parties shall be  
16 disposed of by

17 (1) voluntary arbitration of all relevant issues, if the  
18 disagreeing parties agree to be bound by the decision upon arbitra-  
19 tion;

20 (2) compulsory arbitration if that is provided for in any  
21 applicable contract between the disagreeing parties; or

22 (3) recourse to the court if arbitration cannot be resorted  
23 to.

24 (b) The council is authorized to make contracts for compulsory  
25 arbitration on behalf of the state.

26 (c) If arbitration is used to settle disagreements, the provi-  
27 sions of AS 09.43 (Uniform Arbitration Act) shall govern.

28 Sec. 39.52.040. EXCEPTIONS. The provisions of this chapter do  
29 not apply to a public officer or employee associated with or a person

1 under contract with the University of Alaska. Those persons shall be  
2 governed by the provisions of AS 14.40.345. The provisions of this  
3 chapter do not apply to a member of the legislature.

4 Sec. 39.52.050. ADOPTION OF RULES. The council may adopt rules  
5 implementing the provisions of this chapter in accordance with the  
6 Administrative Procedure Act (AS 44.62).

7 Sec. 39.52.099. DEFINITIONS. As used in this chapter, unless  
8 the context otherwise requires,

9 (1) "council" means the Alaska Council on Science and Tech-  
10 nology established in AS 44.21.241;

11 (2) "intellectual work product" means any product of the  
12 mind including but not limited to the following:

13 (A) discovery, invention, or idea;

14 (B) process, system, or method;

15 (C) machine, manufacture, or product;

16 (D) composition of matter;

17 (E) design or composition in letters, art, or graph-  
18 ics;

19 (F) literary, dramatic, musical, educational, or  
20 artistic work;

21 (G) certification mark, trademark, patent, or copy-  
22 right.

23 \* Sec. 2. AS 14.40 is amended by adding a new section to read:

24 Sec. 14.40.345. INTELLECTUAL PROPERTY DEVELOPED AT THE EXPENSE  
25 OF THE UNIVERSITY. All right, title, and interest in and to an intel-  
26 lectual work product developed by a public officer or employee associ-  
27 ated with or a person under contract with the University of Alaska is  
28 the property of the university in accordance with a general policy  
29 established by the university. The policy adopted by the University

1 of Alaska may provide for ownership, control, management, and disposal  
2 of intellectual work products by an independent foundation created for  
3 the purpose of obtaining intellectual work products, receiving gifts,  
4 administering or disposing of interests in intellectual work products,  
5 and promoting research.

6 \* Sec. 3. AS 39.05 is amended by adding a new section to read:

7 ARTICLE 5. WAIVER OF RIGHT TO INTELLECTUAL PROPERTY.

8 Sec. 39.05.160. WAIVER OF RIGHT TO INTELLECTUAL PROPERTY. (a)

9 A public officer or employee of the state, before engaging in the  
10 duties of the office or employment, shall sign a waiver of all right,  
11 title, and interest in and to an intellectual work product that may be  
12 developed by the officer or employee at the expense of the state as  
13 set out in AS 39.52.

14 (b) Notwithstanding the requirement in (a) of this section, the  
15 state, in accordance with AS 39.52.020, may share a portion of the  
16 resulting revenue with or grant a cash award for resulting reductions  
17 in operating costs to a public officer or employee who develops an  
18 intellectual work product at the expense of the state.

19 (c) A public officer or employee may be required to sign, before  
20 engaging in the duties of the office or employment, an acknowledgement  
21 that the public officer or employee will not receive a share of the  
22 revenue or reduction in operating costs attributable to an intellec-  
23 tual work product developed as a duty of the office or employment.

24 (d) The waiver under (a) of this section and the acknowledgement  
25 under (c) of this section are not considered terms and conditions of  
26 employment that are subject to negotiation for purposes of collective  
27 bargaining under the Public Employment Relations Act (AS 23.40).

28 \* Sec. 4. AS 44.21.242(b) is amended by adding new paragraphs to read:

29 (9) consistent with the provisions of AS 39.52, retain,

1 assign, license, transfer, sell, or otherwise dispose of, in whole or  
2 in part and upon terms that the council may direct, any and all rights  
3 to, interests in, or income from intellectual work products acquired  
4 by the council under AS 39.52;

5 (10) adopt rules implementing the provisions of AS 39.52.

6 \* Sec. 5. AS 37.12.070(9) and AS 46.12.110(10) are repealed.