ALASKA LEGISLATURE COMMITTEE FILES 1983-1984

3003 SSA SB 57 - SB 59 8672

Introduced: 1/18/83
Referred: State Affairs

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

IN THE SENATE

SENATE BILL NO. 57 (SB 195)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act limiting the adjustment of retirement benefits; and providing for an effective date."

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

* Section 1. AS 14.25.173 is amended by adding a new subsection to read:

(b) An adjustment that requires repayment of benefits may not be made under this section if

(1) the incorrect benefit was first paid two years or more before the member or teacher or beneficiary was notified of the change or error; and

(2) the change or error was not caused by the member or teacher or beneficiary.

* Sec. 2. AS 39.35.520 is amended by adding a new subsection to read:

(b) An adjustment that requires repayment of benefits may not be made under this section if

(1) the incorrect benefit was first paid two years or more before the employee or beneficiary was notified of the change or error;

(2) the change or error was not caused by the employee or beneficiary; and

(3) the change or error relates to the employee's credited service with the state and does not relate to credited service with another participating employer.

* Sec. 3. This Act is retroactive to July 1, 1979.

never taken up in finance

* Sec. 4. This Act takes effect immediately in accordance with AS 01.-10.070(c).

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS COMMITTEE
SENATOR VIC FISCHER, CHAIRMAN
POUCH V, JUNEAU 99811
(907) 465-4954

Sectional Analysis CSSB57 State Affairs

April 18, 1983
Prepared by: Suzanne Tryck,
Senate State Affairs Committee

Section 1: Adds a two year statute of limitations for the state to collect overpayment of retirement benefits to TRS.

Section 2: makes the same provisions for PERS. Paragraph (3) states that other participating employers are not responsible for the payments due to the recipient because of errors made by the state.

Section 3: provides an immediate effective date.

CSSB 57 State Affairs does not contain the retroactive clause included in the original bill as there are no longer any outstanding cases where the state is trying to collect overpayment from recipients under TRS and PERS.

The other changes are minor, technical alterations.

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION
DIVISION OF RETIREMENT & BENEFITS
POUCH CR
JUNEAU, ALASKA 99811

Public Employees' Retirement System
Teachers' Retirement System
Judicial Retirement System
Elected Public Officers Retirement System
National Guard Retiremant System
Territorial Retirement System
Retirees' Voluntary Dental-Vision-Audio Plan
Supplemental Benefits System
Group Health/Life Insurance Benefits
Deferred Compensation Plan
Public Employers Social Security Contributions

Bill Sheffield, Governor
(907) 465-4460

February 16, 1983

The Honorable Vic Fischer
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Fischer:

At the February 8 meeting of the Senate State Affairs Committee on SB 57, I was asked to provide information on appeals for a waiver of adjustment in the Public Employees' Retirement System (PERS) and the Teachers' Retirement System (TRS) over the last few years. The enclosed chart gives basic information on the seven appeals for waiver of overpayment that have come before the boards since July 1, 1979.

As you can see, more than two years had elapsed in every case before the error was discovered and in every case except one the board waived the adjustment of the overpayment. None of these errors occurred after 1976.

I have also been asked to prepare a draft committee substitute which would address the division's main concerns and still preserve the primary intent of SB 57. I have enclosed such a draft but suggest that the committee might wish to delay action briefly to provide members of the two retirement boards an opportunity to comment.

Please let me know if you have an further questions or would like more information.

Sincerely,

J.K. Humphreys

J.K. Humphreys
Director

JKH/jb
Enclosures

cc: Eleanor Andrews
Deputy Commissioner for
Personnel Management

Members of Senate State Affairs Committee

PERS and TRS board members

NOTE: Please Include Your Social Security Number In All Correspondence & Requests

TRS and PERS Board Appeals for a Waiver of Adjustment
of an Overpayment Since July 1, 1979

APPELLANT	SYSTEM	MEETING	ERROR MADE	ERROR DISCOVERED	AMOUNT OF OVERPAYMENT	BOARD ACTION
Katharina Riech	TRS	Fall, 1979	1971	1978	$14,233	Request Denied
Ella Vaughn	TRS	Fall, 1979	1970	1979	$ 3,535	Adj. of Overpayment Waived
Julie Isaac	PERS	Spring, 1980	1976	1979	$ 5,055	Adj. of Overpayment and Service Credit Waived
Woodrow, Brown	PERS	Spring, 1981	1971	1980	$ 6,242	Adj. of Overpayment Waived
Dean Bronson	PERS	Fall, 1981	1974	1981	$ 2,517	Adj. of Overpayment Waived
Leo Likit	PERS	Fall, 1981	1974	1981	$ 6,903	Adj. of Overpayment Waived
Evelyn Nowell	PERS	Fall, 1982	1976	1981	$ 2,889	Adj. of Overpayment Waived

File
SB57

Burden shouldn't be on people
APA supported bill
included in 827
Board Authority
1) TERS PERS.
   A) can make waiver
   B) any error over two years shall be waived.
   C) shouldn't be forced to waive it statutorily.
   ~~D) can~~
~~Scratched Pa~~

for 2 errors annually
   a) set up as appeal procedure.
   b) error must be corrected
   c) virtually few old problems surface.

Designed to protect retired individual.

Board has authority to make ~~who~~ whatever kind of repayment.

Case sited in BRC. letter
April 7 case.
   a) She got caught up in procedure.
   b) Board waived her appeal

Terry Cramer
   a) emotional hardship
   b) no new recent cases

Person appeals
1) by letter

Taken Back to Blue Ribbon Commission to see whether or not it is needed.

May work against retiree.
Error against person might actually benefit that person.
preclude any adjustment.
adjusts repayment of benefits.

[redacted] Bob Cooksey,
1) 2 years adequate time to discover error
2) relieves department also.
~~3)~~

Vic
1) no big waves
3) pass it out - no strong feeling about the bill.

3) errors are made
4) person's retirement should be checked out so they can be secure.

Introduced: 1/18/83
Referred: State Affairs and Judiciary

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

IN THE SENATE

SENATE BILL NO. 59

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

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

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

(1) during working hours;

(2) with the contribution of the state beyond what is available to the public in general in the form of facilities, equipment, 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

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

(A) produce or improve an intellectual work product;

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

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

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

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

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

(2) assign to the state the entire right, title, and interest in and to the intellectual work product if not already waived by signing of a general waiver upon commencement of employment in accordance with AS 39.05.160 or as part of a contract for services; and

(3) upon request by the council, execute and reasonably assist in the prosecution of an application for a trademark, copyright, or patent.

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

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

(2) waive all right, title, and interest in and to a trademark, copyright, or patent but reserve a nonexclusive, irrevocable,

royalty-free license in the intellectual work product with power to grant licenses for all Alaska governmental purposes.

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

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

Sec. 39.52.030. ARBITRATION OF DISAGREEMENTS. (a) Disagreements between a public officer or employee or a person under contract with the state and the council pertaining to ownership of an intellectual work product or obligations of the respective parties shall be disposed of by

(1) voluntary arbitration of all relevant issues, if the disagreeing parties agree to be bound by the decision upon arbitration;

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

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

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

(c) If arbitration is used to settle disagreements, the provisions of AS 09.43 (Uniform Arbitration Act) shall govern.

(d) [Below]

Sec. 39.52.040. EXCEPTIONS. The provisions of this chapter do

* [(d) ~~Disagreements pertaining to~~ Ownership of intellectual work product SB 59 or obligations of the respective parties are not subjects of collective bargaining, and disagreements are not subject to resolution by means other than those provided in this section.

not apply to a public officer or employee associated with or a person under contract with the University of Alaska. Those persons shall be governed by the provisions of AS 14.40.345. The provisions of this chapter do not apply to a member of the legislature.

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

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

(1) "council" means the Alaska Council on Science and Technology established in AS 44.21.241;

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

(A) discovery, invention, or idea;

(B) process, system, or method;

(C) machine, manufacture, or product;

(D) composition of matter;

(E) design or composition in letters, art, or graphics;

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

(G) certification mark, trademark, patent, or copyright.

(3) "in substantial part" means

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

Sec. 14.40.345. INTELLECTUAL PROPERTY DEVELOPED AT THE EXPENSE OF THE UNIVERSITY. All right, title, and interest in and to an intellectual work product developed by a public officer or employee associated with or a person under contract with the University of Alaska is the property of the university in accordance with a general policy

established by the university. The policy adopted by the University of Alaska may provide for ownership, control, management, and disposal of intellectual work products by an independent foundation created for the purpose of obtaining intellectual work products, receiving gifts, administering or disposing of interests in intellectual work products, and promoting research.

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

ARTICLE 5. WAIVER OF RIGHT TO INTELLECTUAL PROPERTY.

Sec. 39.05.160. WAIVER OF RIGHT TO INTELLECTUAL PROPERTY. (a) A public officer or employee of the state, before engaging in the duties of the office or employment, shall sign a waiver of all right, title, and interest in and to an intellectual work product that may be developed by the officer or employee at the expense of the state as set out in AS 39.52.

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

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

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

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

(9) consistent with the provisions of AS 39.52, retain, assign, license, transfer, sell, or otherwise dispose of, in whole or in part and upon terms that the council may direct, any and all rights to, interests in, or income from intellectual work products acquired by the council under AS 39.52;

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

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

MP

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SB 57 Date on Bill: 1-18-83
Title: An Act Limiting the Adjustment of Retirement Benefits
Sponsor: Rules Committee
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			-0-	-0-	-0-	-0-		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

Undoubtedly there will be some costs to the retirement systems, but they cannot be measured. In most instances the individual adjustment would be small.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor.

Prepared By: J.K. Humphreys, Director Phone: 465-4460
Division: Retirement & Benefits Date: 2/24/83

Approved by Commissioner: [illegible] Date: 3/2/83
Department: [illegible]

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/8/83

STATE OF ALASKA
FISCAL NOTE

Revision Date 4/19 , 1983

I. REQUEST

Bill/Resolution No.: SB 59
Title: "An act relating to...intellectual work products...at the expense of the state"
Sponsor: Rules by request of the Legislative
Requestor: Council for the Blue Ribbon Commission...

II. FISCAL DETAIL

Agency Affected: Dept. of Administration
Program Category Affected: General Government
BRU, Program of Subprogram(s) Affected: AK Council on Science & Technology

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		50.0	50.0	50.0	50.0	50.0
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		50.0	50.0	50.0	50.0	50.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		50.0	50.0	50.0	50.0	50.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Christopher Noah, Executive Director — Phone: 465-3510
Division: Alaska Council on Science and Technology — Date: April 19, 1983

Approved by Commissioner: Commissioner Lisa Rudd — Date: April 19, 1983
Department: Department of Administration

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

JUNEAU, ALASKA

MEMORANDUM

January 25, 1983

TO: Senate State Affairs Committee

FROM: Teresa B. Cramer Teresa B Cramer
Administrative Assistant

SUBJECT: Senate Bill 57 - Limiting the Adjustment of Retirement Benefits

On several occasions the Blue Ribbon Commission has heard testimony about problems created by overpayments of retirement benefits. Retired state employees may have substantial difficulties if they are required to repay retirement benefits improperly received because of errors made by the Division of Retirement and Benefits or because of a change in law. The commission is proposing legislation to limit the authority of the division to collect amounts paid improperly through no fault of the beneficiary or retired person if the error is not corrected within two years.

One woman testified to the commission that before she retired she asked the division to verify her years of credited service. Several years later a court-ordered change in retirement regulations reduced the number of years for which she received credit. Her employment with the University of Alaska could no longer be counted as credited service in PERS. As a result she had received more than $5000 in benefits to which she was not entitled. The division reduced her benefit to the correct amount and began withholding an additional $100 per month to be applied to the overpayment. She appealed to the Public Employees Retirement Board asking that collection of the overpayment be waived.

Both the Public Employees' Retirement Board and the Teachers' Retirement Board have authority to waive collection of overpayments, but the uncertainty of an appeal can cause considerable stress to people on fixed incomes. Both boards are required to determine whether there would be undue hardship imposed by requiring repayment. AS 14.25.175 and AS 39.35.522. In establishing whether there is financial hardship, the entire family financial situation is considered, not just the resources of the petitioner.

The commission recommends that a two-year statute of limitations be placed on the collection of overpayments which resulted from errors which were not caused by the retired state employee. Two years provides ample opportunity for the division to audit its records and correct any errors. After that period, a retired person should not be required to repay benefits erroneously received if he or she did not cause the error. The division would still correct the amount of future benefits paid to the retired person.

Bill Analysis

Page 1 Line 7	The first section of the proposed legislation adds the two-year statute of limitations to the Teachers' Retirement System.
Line 18	The second section adds the same provision to the Public Employees' Retirement System. The amendment to PERS is applied only to state employees because the Blue Ribbon Commission considered that requiring other participating employers to pay for errors made by the state was inappropriate.
Line 29	The third section makes the bill effective retroactively to July 1, 1979, in order to apply to those individuals whose situations came to the commission's attention.
Page 2 Line 2	The fourth section of the bill contains an immediate effective date clause.

COMMITTEE MINUTES RELATING TO SB 57

SENATE STATE AFFAIRS
STANDING COMMITTEE
February 8, 1983
3:00 p.m.

Members Present: Senator Victor Fischer, Chair
Senator Bill Ray
Senator Arliss Sturgulewski
Senator Pat Rodey
Senator Tim Kelly

COMMITTEE CALENDAR

SCR 3 — Amended Title: Extending the life of the Blue Ribbon Commission on the state personnel act.

HCR 5 — Relating to the seventeenth annual boys' state at camp carrol.

HCR 6 — Relating to the fifteenth annual girls' state at the Sitka Public Safety Academy.

SB 55 — An act relating to collective bargaining; and providing for an effective date.

SB 57 — An act limiting the adjustment of retirement benefits; and providing for an effective date.

SB 83 — An act relating to court leave for nonpermanent and temporary employees of the state.

WITNESS REGISTER

Terry Cramer
Blue Ribbon Commission on Personnel
Pouch YG
Juneau, Alaska 99811
465-4442
Position Statement: Spoke in reference to SB 55, SB 57, and SB 83.

Cherie Shelley
APEA
340 N. Franklin Street
Juneau, AK 99801
586-2334

Testified on SB 55, SB 57, SB 83, and SCR 3
Ken Humphreys, Director,
Division of Retirement Benefits
Department of Administration, Pouch CR
Juneau, AK 99811
465-2200
Position Statement: Answered questions on SB 57

Eleanor Andrews
Department of Administration
Pouch C
Juneau, AK 99811
465-2200
Position Statement: Testified in regards to SB 55

John Rubini
Department of Law
Pouch K
Juneau, AK 99811
465-3600
Position Statement: Testified on SB 55

ACTION NARRATIVE

TAPE# 1 of 02/08/83, Side 1 SB 57

Recording Number 802	Senator V. Fischer: This bill was before the committee last year. Passed to finance where it died.
Number 812	Terry Cramer of the Blue Ribbon Commission: This bill addresses overpayments to retired employees. We now have the option to waive collection. But going through a hearing can be stressful for retirees. This bill allows the state only 2 years to make corrections and collect arrearages. The bill also applies to municipalities covered under PERA.
Number 849	Senator Ray: Relates a real life story of someone who was traumatized by the state collecting on a benefit error.
Number 866	Senator Sturgulewski: Are there other cases? (End of Side 1. Turn tape over)
Number 001	Senator Ray: Don't know of other cases recently. (Senator Ray excuses himself for a dentist's appointment)
Number 068	Senator Kelly: Wants to amend the bill by adding language which would deny excess

benefits even after 2 years if person had knowledge of overpayment.

Number 086 — Cherie Shelley of APEA: Testifies strongly in favor of bill. Retirees often have no representation. Hearings are ordeals for old folks. Doesn't recommend intent language.

Number 158 — Senator Rodey: Intent is hard to prove. Have to have involved administrative hearings.

Number 168 — Rapid discussion on several related topics.

Number 176 — Ken Humphries, Director of the Division of Retirement Benefits: The Department of Administration has not yet formulated a position on this issue. Not sure he understands the retroactive provisions. The bill doesn't have a great fiscal impact. Bill doesn't provice any kind of oversight. Most, if not all, old overpayments have been waived. Necessary to show extreme hardship which is easy to prove in most cases. He prefers the board to make individual decisions based on the circumstances.

Number 331 — Senator Sturgulewski: Is the existing mechanism adequate:

Number 350 — Ken Humphreys: Answer: Existing mechanism is adequate.

Number 400 — Senator Sturgulewski: What is the magnitude of the problem?

Number 416 — Ken Humphries: Can provide data on number of overpayment cases and disposition.

Number 433 — Senator V. Fischer: Will hold the bill over.

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS COMMITTEE
SENATOR VIC FISCHER, CHAIRMAN
POUCH V, JUNEAU 99811
(907) 465-4954

Sectional Analysis CSSB57 State Affairs

April 18, 1983
Prepared by: Suzanne Tryck,
Senate State Affairs Committee

Section 1: Adds a two year statute of limitations for the state to collect overpayment of retirement benefits to TRS.

Section 2: makes the same provisions for PERS. Paragraph (3) states that other participating employers are not responsible for the payments due to the recipient because of errors made by the state.

Section 3: provides an immediate effective date.

CSSB 57 State Affairs does not contain the retroactive clause included in the original bill as there are no longer any outstanding cases where the state is trying to collect overpayment from recipients under TRS and PERS.

The other changes are minor, technical alterations.

I. REQUEST

Bill/Resolution No. Work Draft Paper 13-0034 Asper 9-17

Title An Act Limiting the Adjustment of Retirement Benefits

Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Administration - Division of Retirement & Benefits

Program Category Affected Labor Services

BRU, Program, or Subprogram(s) Affected 02-96-8-01-01 (PERS)

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100	PERSONAL SERVICES						
100	RETIREMENT BENEFITS						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
700	STATE TRS MATCHING						
	TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND							
FEDERAL FUNDS							
VETERAN'S FUND							
FISH & GAME FUND							
HIGHWAY FUND							
AIRPORT FUND							
CAPITAL FUND							
PERS							
TRS							

POSITIONS

FULL TIME							
PART TIME							
TEMPORARY							

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Undoubtedly there will be some costs to the retirement system but they cannot be measured. In most instances the individual adjustment would be small.

IV. DATE 10-28-82 PREPARED BY J.K. Humphreys, Director

AGENCY Division of Retirement & Benefits

PHONE 465-4460

Original: Legislative Finance

cc: Budget and Management
Prime Sponsor (First Legislator Named)
Office of the Governor (Keith Specking)

DRAFT

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

JUNEAU, ALASKA

MEMORANDUM

January 25, 1983

TO: Senate State Affairs Committee

FROM: Teresa B. Cramer Teresa B Cramer
Administrative Assistant

SUBJECT: Senate Bill 57 - Limiting the Adjustment of Retirement Benefits

On several occasions the Blue Ribbon Commission has heard testimony about problems created by overpayments of retirement benefits. Retired state employees may have substantial difficulties if they are required to repay retirement benefits improperly received because of errors made by the Division of Retirement and Benefits or because of a change in law. The commission is proposing legislation to limit the authority of the division to collect amounts paid improperly through no fault of the beneficiary or retired person if the error is not corrected within two years.

One woman testified to the commission that before she retired she asked the division to verify her years of credited service. Several years later a court-ordered change in retirement regulations reduced the number of years for which she received credit. Her employment with the University of Alaska could no longer be counted as credited service in PERS. As a result she had received more than $5000 in benefits to which she was not entitled. The division reduced her benefit to the correct amount and began withholding an additional $100 per month to be applied to the overpayment. She appealed to the Public Employees Retirement Board asking that collection of the overpayment be waived.

Both the Public Employees' Retirement Board and the Teachers' Retirement Board have authority to waive collection of overpayments, but the uncertainty of an appeal can cause considerable stress to people on fixed incomes. Both boards are required to determine whether there would be undue hardship imposed by requiring repayment. AS 14.25.175 and AS 39.35.522. In establishing whether there is financial hardship, the entire family financial situation is considered, not just the resources of the petitioner.

The commission recommends that a two-year statute of limitations be placed on the collection of overpayments which resulted from errors which were not caused by the retired state employee. Two years provides ample opportunity for the division to audit its records and correct any errors. After that period, a retired person should not be required to repay benefits erroneously received if he or she did not cause the error. The division would still correct the amount of future benefits paid to the retired person.

Bill Analysis

Page 1 Line 9	The first section of the proposed legislation adds the two-year statute of limitations to the Teachers' Retirement System.
Line 18	The second section adds the same provision to the Public Employees' Retirement System. The amendment to PERS is applied only to state employees because the Blue Ribbon Commission considered that requiring other participating employers to pay for errors made by the state was inappropriate.
Line 29	The third section makes the bill effective retroactively to July 1, 1979, in order to apply to those individuals whose situations came to the commission's attention.
Page 2 Line 2	The fourth section of the bill contains an immediate effective date clause.

REPORT OF THE

BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT

TO THE

TWELFTH ALASKA STATE LEGISLATURE

FIRST SESSION

Senator Bill Ray
Chairman

February, 1981

SB 195

SB 57

SENATE BILL 195: LIMITING THE ADJUSTMENT OF RETIREMENT BENEFITS.

PURPOSE

This bill remedies a problem which the commission was advised of in testimony from a retired state employee. When the employee retired in 1976, she had been advised on four separate occasions by the staff of the Division of Retirement and Benefits that she was eligible for more than nine years of credited service with the state. Shortly after she retired the legislature amended the retirement laws and she was told that she would receive credit for an additional three years because of her military service. She began receiving retirement benefits on that basis.

In 1979 the division wrote to advise her that their original computations had been in error and that her years of employment with the University of Alaska could not be included in her credited service. Therefore, she had received over $5000 in benefits which she would have to repay. They reduced the amount of her check by $100 to be credited towards that overpayment, in addition to reducing the check to the amount she was actually entitled to receive. The basis for denying credit for the employee's period of service with the University of Alaska was a regulation adopted by the Division of Retirement and Benefits in 1978 -- two years after she had retired.

The employee appealed to the Public Employee Retirement Board, which can waive collection of overpayments in cases of hardship. In

determining whether there would be hardship to the employee, the board considered her family's financial situation and found that she was not entitled to the waiver.

Commission members discovered that this was not an isolated instance. A number of retired state employees have undergone similar experiences. They relied on assurances from the division of retirement and benefits only to discover a considerable time later that errors had been made and that their benefits would be reduced.

The commission recommends that a two-year statute of limitations be placed on the collection of overpayments. Two years gives the Division of Retirement and Benefits ample time to audit its records and find and correct any errors made. After that period of time, a retired person should be freed from the burden of having to pay back the state for mistakes of the state's employees. This protection should be available only in cases where the retired person did not contribute to causing the error. It should not apply to persons working for employers other than the state, since those employers may not be in a financial position to absorb the cost of errors made by state employees.

SECTION BY SECTION ANALYSIS

Section 1. AS 14.25.173 is amended by adding a new subsection to read:

(b) An adjustment which requires repayment of benefits may not be made under this section if

(1) the incorrect benefit was first paid two years or more before the member or teacher or beneficiary was notified of the change

or error; and

(2) the change or error was not caused by the member or teacher or beneficiary.

Comment

This section amends the Teachers Retirement System by prohibiting the Division of Retirement and Benefits from decreasing enefits in order to collect for a previous overpayment if two conditions are met. The first condition is that the overpayment began two years or more before the division told the retired teacher of the error. The second condition is that the teacher did not cause the error.

Sec. 2. AS 39.35.520 is amended by adding a new subsection to read:

(b) An adjustment which requires repayment of benefits may not be made under this section if

(1) the incorrect benefit was first paid two years or more before the employee or beneficiary was notified of the change or error;

(2) the change or error was not caused by the employee or beneficiary; and

(3) the change or error relates to the employee's credited service with the state and not with another participating employer.

Comment

This section amends the Public Employee Retirement System in the same way that section 1 amends the TRS. However, in this section there is an additional condition. The error in computation must relate to the employee's credited

service with the state, and not with another participating employer.

Sec. 3. This Act is retroactive to July 1, 1979.

Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Comment

Section 3 makes the Act retroactive in order to include the retired person who testified before the commission. Section 4 provides that the Act takes effect immediately in order to address the hardship to retired state employees.

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION
DIVISION OF RETIREMENT & BENEFITS
POUCH CR
JUNEAU, ALASKA 99811

Public Employees' Retirement System
Teachers' Retirement System
Judicial Retirement System
Elected Public Officirs Retirement System
National Guard Retirement System
Territorial Retirement System
Retirees' Voluntary Dental-Vision-Audio Plan
Supplemental Benefits System
Group Health/Life Insurance Benefits
Deferred Compensation Plan
Public Employers Social Security Contributions

Bill Sheffield, Governor
(907) 465-4460

February 16, 1983

The Honorable Vic Fischer
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Fischer:

At the February 8 meeting of the Senate State Affairs Committee on SB 57, I was asked to provide information on appeals for a waiver of adjustment in the Public Employees' Retirement System (PERS) and the Teachers' Retirement System (TRS) over the last few years. The enclosed chart gives basic information on the seven appeals for waiver of overpayment that have come before the boards since July 1, 1979.

As you can see, more than two years had elapsed in every case before the error was discovered and in every case except one the board waived the adjustment of the overpayment. None of these errors occurred after 1976.

I have also been asked to prepare a draft committee substitute which would address the division's main concerns and still preserve the primary intent of SB 57. I have enclosed such a draft but suggest that the committee might wish to delay action briefly to provide members of the two retirement boards an opportunity to comment.

Please let me know if you have an further questions or would like more information.

Sincerely,

J.K. Humphreys

J.K. Humphreys
Director

JKH/jb
Enclosures

cc: Eleanor Andrews
Deputy Commissioner for
Personnel Management

Members of Senate State Affairs Committee

PERS and TRS board members

02-B4LH

NOTE: Please Include Your Social Security Number In All Correspondence & Requests

TRS and PERS Board Appeals for a Waiver of Adjustment
of an Overpayment Since July 1, 1978

APPELLANT	SYSTEM	MEETING	ERROR MADE	ERROR DISCOVERED	AMOUNT OF OVERPAYMENT	BOARD ACTION
Katharina Riech	TRS	Fall, 1979	1971	1978	$14,233	Request Denied
Ella Vaughn	TRS	Fall, 1979	1970	1979	$ 3,535	Adj. of Overpayment Waived
Julie Isaac	PERS	Spring, 1980	1976	1979	$ 5,055	Adj. of Overpayment and Service Credit Waived
Woodrow, Brown	PERS	Spring, 1981	1971	1980	$ 6,242	Adj. of Overpayment Waived
Dean Bronson	PERS	Fall, 1981	1974	1981	$ 2,517	Adj. of Overpayment Waived
Leo Likit	PERS	Fall, 1981	1974	1981	$ 6,903	Adj. of Overpayment Waived
Evelyn Nowell	PERS	Fall, 1982	1976	1981	$ 2,889	Adj. of Overpayment Waived

Sec. 39.35.510. Voluntary waiver of benefits. A retired employee may, in writing, request the administrator to suspend, for any period of time, payment of all or part of the benefits to which he is entitled. The administrator shall grant the request and may not require the retired employee to disclose his reason for desiring the suspension. Amounts which are suspended pursuant to the request are forfeited. The retired employee may subsequently terminate the suspension by filing a written notice with the administrator which states his desire to revoke the suspension. Upon receipt of the notice, the administrator shall authorize resumption of the retired employee's regular pension payments. (§ 40 ch 143 SLA 1960; am § 49 ch 128 SLA 1977)

Effect of amendment. — The 1977 amendment substituted "administrator" for "board" throughout the section.

Sec. 39.35.520. Adjustments. When a change or error is made in the records maintained by the system, or an error is made in computing a benefit, and as a result an employee or beneficiary receives from the system more or less than he would have been entitled to receive had the records been correct or had the error not been made, (1) the records or error shall be corrected and (2) as far as practicable, future payments shall be adjusted so that the actuarial equivalent of the pension or benefit to which the employee or beneficiary was correctly entitled shall be paid. If no future payment is due, a person who was paid any amount to which he was not entitled is liable for repayment of that amount, and a person who was not paid the full amount to which he was entitled shall be paid the balance of that amount. (§ 42 ch 143 SLA 1960; am § 4 ch 81 SLA 1976)

Effect of amendment. — The 1976 amendment added the second sentence.

Sec. 39.35.522. Waiver of adjustments. (a) Upon appeal by an affected member or beneficiary under (b) of this section, the board may waive an adjustment or any portion of an adjustment made under AS 39.35.520 if

(1) the adjustment or portion of the adjustment will, in the opinion of the board, cause undue hardship to the member or beneficiary;

(2) the member is retired or has submitted notification of impending retirement to his employer to be effective no later than 180 days after the adjustment was made, or the beneficiary was eligible to receive or was receiving benefits under this chapter before the adjustment;

(3) the adjustment will result in a loss of eligibility for benefits for the member or beneficiary or result in a reduction of benefits being received by the member or beneficiary of $50 per month or more;

Sec. 39.35.510. Voluntary waiver of benefits. A retired employee may, in writing, request the administrator to suspend, for any period of time, payment of all or part of the benefits to which he is entitled. The administrator shall grant the request and may not require the retired employee to disclose his reason for desiring the suspension. Amounts which are suspended pursuant to the request are forfeited. The retired employee may subsequently terminate the suspension by filing a written notice with the administrator which states his desire to revoke the suspension. Upon receipt of the notice, the administrator shall authorize resumption of the retired employee's regular pension payments. (§ 40 ch 143 SLA 1960; am § 49 ch 128 SLA 1977)

Effect of amendment. — The 1977 amendment substituted "administrator" for "board" throughout the section.

Sec. 39.35.520. Adjustments. When a change or error is made in the records maintained by the system, or an error is made in computing a benefit, and as a result an employee or beneficiary receives from the system more or less than he would have been entitled to receive had the records been correct or had the error not been made, (1) the records or error shall be corrected and (2) as far as practicable, future payments shall be adjusted so that the actuarial equivalent of the pension or benefit to which the employee or beneficiary was correctly entitled shall be paid. If no future payment is due, a person who was paid any amount to which he was not entitled is liable for repayment of that amount, and a person who was not paid the full amount to which he was entitled shall be paid the balance of that amount. (§ 42 ch 143 SLA 1960; am § 4 ch 81 SLA 1976)

Effect of amendment. — The 1976 amendment added the second sentence.

Sec. 39.35.522. Waiver of adjustments. (a) Upon appeal by an affected member or beneficiary under (b) of this section, the board may waive an adjustment or any portion of an adjustment made under AS 39.35.520 if

(1) the adjustment or portion of the adjustment will, in the opinion of the board, cause undue hardship to the member or beneficiary;

(2) the member is retired or has submitted notification of impending retirement to his employer to be effective no later than 180 days after the adjustment was made, or the beneficiary was eligible to receive or was receiving benefits under this chapter before the adjustment;

(3) the adjustment will result in a loss of eligibility for benefits for the member or beneficiary or result in a reduction of benefits being received by the member or beneficiary of $50 per month or more;

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

JUNEAU, ALASKA

MEMORANDUM

January 25, 1983

TO: Senate State Affairs Committee

FROM: Teresa B. Cramer Teresa B Cramer
Administrative Assistant

SUBJECT: Senate Bill 57 - Limiting the Adjustment of Retirement Benefits

On several occasions the Blue Ribbon Commission has heard testimony about problems created by overpayments of retirement benefits. Retired state employees may have substantial difficulties if they are required to repay retirement benefits improperly received because of errors made by the Division of Retirement and Benefits or because of a change in law. The commission is proposing legislation to limit the authority of the division to collect amounts paid improperly through no fault of the beneficiary or retired person if the error is not corrected within two years.

One woman testified to the commission that before she retired she asked the division to verify her years of credited service. Several years later a court-ordered change in retirement regulations reduced the number of years for which she received credit. Her employment with the University of Alaska could no longer be counted as credited service in PERS. As a result she had received more than $5000 in benefits to which she was not entitled. The division reduced her benefit to the correct amount and began withholding an additional $100 per month to be applied to the overpayment. She appealed to the Public Employees Retirement Board asking that collection of the overpayment be waived.

Both the Public Employees' Retirement Board and the Teachers' Retirement Board have authority to waive collection of overpayments, but the uncertainty of an appeal can cause considerable stress to people on fixed incomes. Both boards are required to determine whether there would be undue hardship imposed by requiring repayment. AS 14.25.175 and AS 39.35.522. In establishing whether there is financial hardship, the entire family financial situation is considered, not just the resources of the petitioner.

The commission recommends that a two-year statute of limitations be placed on the collection of overpayments which resulted from errors which were not caused by the retired state employee. Two years provides ample opportunity for the division to audit its records and correct any errors. After that period, a retired person should not be required to repay benefits erroneously received if he or she did not cause the error. The division would still correct the amount of future benefits paid to the retired person.

Bill Analysis

Page 1 Line 9	The first section of the proposed legislation adds the two-year statute of limitations to the Teachers' Retirement System.
Line 18	The second section adds the same provision to the Public Employees' Retirement System. The amendment to PERS is applied only to state employees because the Blue Ribbon Commission considered that requiring other participating employers to pay for errors made by the state was inappropriate.
Line 29	The third section makes the bill effective retroactively to July 1, 1979, in order to apply to those individuals whose situations came to the commission's attention.
Page 2 Line 2	The fourth section of the bill contains an immediate effective date clause.

SB 57
SB 195 died in S. Finance
repayment of benefits

good bill

1) adjustment that requires retired persons to repay benefits received by the state, when the state was in violation, may no longer be made.
   A) 24 yr. statute of limitation
   B) The division would still collect the amount of future benefits.

minutes of each meeting where bill was heard

each one in state affairs
1) know what came out of state affairs.
2) helpful to have minutes and bill explanation

Collective Bargaining
- amended on floor of senate
1) different - got version senate passed.
2) do ask questions

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

JUNEAU, ALASKA

MEMORANDUM

January 25, 1983

TO: Senate State Affairs Committee

FROM: Teresa B. Cramer Teresa B Cramer
Administrative Assistant

SUBJECT: Senate Bill 57 - Limiting the Adjustment of Retirement Benefits

On several occasions the Blue Ribbon Commission has heard testimony about problems created by overpayments of retirement benefits. Retired state employees may have substantial difficulties if they are required to repay retirement benefits improperly received because of errors made by the Division of Retirement and Benefits or because of a change in law. The commission is proposing legislation to limit the authority of the division to collect amounts paid improperly through no fault of the beneficiary or retired person if the error is not corrected within two years.

One woman testified to the commission that before she retired she asked the division to verify her years of credited service. Several years later a court-ordered change in retirement regulations reduced the number of years for which she received credit. Her employment with the University of Alaska could no longer be counted as credited service in PERS. As a result she had received more than $5000 in benefits to which she was not entitled. The division reduced her benefit to the correct amount and began withholding an additional $100 per month to be applied to the overpayment. She appealed to the Public Employees Retirement Board asking that collection of the overpayment be waived.

Both the Public Employees' Retirement Board and the Teachers' Retirement Board have authority to waive collection of overpayments, but the uncertainty of an appeal can cause considerable stress to people on fixed incomes. Both boards are required to determine whether there would be undue hardship imposed by requiring repayment. AS 14.25.175 and AS 39.35.522. In establishing whether there is financial hardship, the entire family financial situation is considered, not just the resources of the petitioner.

The commission recommends that a two-year statute of limitations be placed on the collection of overpayments which resulted from errors which were not caused by the retired state employee. Two years provides ample opportunity for the division to audit its records and correct any errors. After that period, a retired person should not be required to repay benefits erroneously received if he or she did not cause the error. The division would still correct the amount of future benefits paid to the retired person.

Bill Analysis

Page 1 Line 9	The first section of the proposed legislation adds the two-year statute of limitations to the Teachers' Retirement System.
Line 18	The second section adds the same provision to the Public Employees' Retirement System. The amendment to PERS is applied only to state employees because the Blue Ribbon Commission considered that requiring other participating employers to pay for errors made by the state was inappropriate.
Line 29	The third section makes the bill effective retroactively to July 1, 1979, in order to apply to those individuals whose situations came to the commission's attention.
Page 2 Line 2	The fourth section of the bill contains an immediate effective date clause.

SB

59

National Conference of State Legislatures

Headquarters Office
(303) 292-6600

1125 Seventeenth Street
Suite 1500
Denver, Colorado
80202

President
Miles 'Cap' Ferry
President of the Senate
State of Utah

Executive Director
Earl S. Mackey

February 3, 1984

Suzanne Tryck
Office of Senator Vic Fischer
Pouch V
Juneau, AK 99811

Dear Suzanne:

As promised in my letter of January 23, I am enclosing a copy of Public Act 83-493, House Bill 726 enacted by the Illinois Legislature on employee patents. I hope this will be useful.

If we can be of further assistance, please contact us.

Sincerely,

Michelle Glastetter

Michelle Glastetter
Legislative Information S

enclosure

File
SB59

EMPLOYEE PATENT ACT

PUBLIC ACT 83-493

HOUSE BILL 726

AN ACT concerning employee inventions.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

[S.H.A. ch. 140, ¶ 301]

Section 1. This Act shall be known and may be cited as the "Employee Patent Act".

[S.H.A. ch. 140, ¶ 302]

Section 2. Employee rights to inventions-conditions).

(1) A provision in an employment agreement which provides that an employee shall assign or offer to assign any of the employee's rights in an invention to the employer does not apply to an invention for which no equipment, supplies, facilities, or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless (a) the invention relates (i) to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer. Any provision which purports to apply to such an invention is to that extent against the public policy of this State and is to that extent void and unenforceable. The employee shall bear the burden of proof in establishing that his invention qualifies under this subsection.

(2) An employer shall not require a provision made void and unenforceable by subsection (1) of this Section as a condition of employment or continuing employment. This Act shall not preempt existing common law applicable to any shop rights of employers with respect to employees who have not signed an employment agreement.

(3) If an employment agreement entered into after January 1, 1984, contains a provision requiring the employee to assign any of the employee's rights in any invention to the employer, the employer must also, at the time the agreement is made, provide a written notification to the employee that the agreement does not apply to an invention for which no equipment, supplies, facility, or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless (a) the invention relates (i) to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer.

[S.H.A. ch. 140, ¶ 303]

Section 3. This Act takes effect upon becoming a law.

APPROVED: September 17, 1983 EFFECTIVE: September 17, 1983

Additions in text are indicated by underline; deletions by ~~strikeouts~~

SENATE STATE AFFAIRS COMMITTEE

Date received _____

Bill Number _____ Title _____

Fiscal Note	Position Paper	Date requested	From	Amount	Date Rec'd Note	Date Rec'd Paper

CONTACTS

Rich Jones - NCSL
Stan Moberly - Division of Fish

Backup list

HEARING INFORMATION:

NOTES:

8:35 Tues
ST fiscall
Millie
Glastetter
NCSL
303-292-6600
intellectual work prob.

FINAL ACTION _____ DATE _____

National Conference of State Legislatures

Headquarters Office
(303) 292-6600

1125 Seventeenth Street
Suite 1500
Denver, Colorado
80202

President
Miles 'Cap' Ferry
President of the Senate
State of Utah

Executive Director
Earl S. Mackey

January 23, 1984

Suzanne Tryck
Office of Senator Vic Fischer
Pouch V
Juneau, AK 99811

Dear Suzanne:

Thank you for your request regarding ways that business and other states define who owns intellectual work products developed by employees. As we discussed by phone, enclosed is a copy of an article found in The New York Times which might be of interest to you, and copies of relevant sections of employment contracts from IBM and Bell Laboratories. I hope this information will be helpful.

I would also suggest that you obtain a copy of the Report to the Legislature Pursuant to Sec. 45, Ch. 143, SLA 1982 from your Code Revision Commission which deals with laws relating to computer crime, privacy, and intellectual property.

I am expecting a copy of an Illinois statute enacted in 1983 which partly concerns protection of work products. As soon as I receive this statute, I will forward it to you.

If we can be of further service, please contact us.

Sincerely,

Michelle Glastetter

Michelle Glastetter
Legislative Information Services

enclosures

The New York Times/Terrence McCarthy

Robert Spanner, a lawyer in California's Silicon Valley and author of "Who Owns Innovation?," said overly strict legal measures restricting new technological companies might work against the national interest.

Spinoff Suits Mount In Silicon Valley

By ROBERT REINHOLD

Special to The New York Times

PALO ALTO, Calif., Jan. 1 — Last April 22, two engineers at the International Business Machines Corporation's research center in nearby San Jose were summarily dismissed after I.B.M. discovered they planned to start their own company to make the same kind of product they were working on. The same day, I.B.M. sued them, charging theft of trade secrets and breach of fiduciary duty.

And, two weeks ago, to the astonishment of this center of high technology innovation — better known as Silicon Valley — I.B.M. also sued the men's lawyers: Mosher, Pooley, Sullivan & Henderson, a prominent Palo Alto firm that specializes in protecting trade secrets. The suit charged that the firm had disclosed — to an I.B.M. competitor, the Control Data Corporation — I.B.M. secrets obtained confidentially in defending the suit against the engineers.

The case is an example of a growing tendency of companies to sue to halt what they see as the hemorrhage of vital technology and secrets when trusted employees leave to form new companies.

Such suits are not new, but lawyers say they are proliferating because a flood of new capital has given birth to many new spinoffs and because the frantic pace of technical innovation makes it all the more crucial to protect proprietary information.

The companies argue that such suits are meant merely to deter the misappropriation of trade secrets. But lawyers for new companies contend that many suits are designed to frighten off new competition.

There is some irony in all this, for many of the major firms that are suing today themselves started as tiny spinoffs from tolerant companies. And some here feel that the mounting litigation might threaten the risk-taking spirit of the valley, where new companies formed by creative spirits, unhappy with the

Continued on Page 35

4th-Quarter Profit Jump Is Forecast

Cost-Cutting, Economic Rise Lift Estimates

By KENNETH N. GILPIN

Reflecting the growing economy and severe cost-cutting, corporate profits for the fourth quarter are expected to show another solid advance, economists and industry analysts say.

Compared with a year earlier, when profits bottomed out at the trough of the recession, the gains should be particularly impressive.

In 1982, "companies were very concerned about their financial survival and took many measures to reduce costs," said M. Kathyrn Eickoff, executive vice president at Townsend-Greenspan & Company, the economic consulting firm. "With breakeven points dramatically reduced, this year they are getting the benefit, and that is reflected in bottom-line gains."

Prediction of 32 Percent Jump

Over all, she concluded, "We are looking at some pretty big numbers for the fourth quarter." Townsend Greenspan is forecasting that profits after taxes could exceed $149 billion at a seasonally adjusted annual rate up 32 percent from a year earlier.

The increase is not limited to year-to-year comparisons. Paced by healthy gains from automobile manufacturers, retailers and other consumer goods companies, after-tax profits should rise more than 12 percent from the third quarter, said Jesse M. Abraham, an economist at Data Resources Inc.

He and other analysts say corporations are even healthier than the profits indicate.

Moves

n the N.Y.S.E.

0, 1983, that were listed on

mment

INES

- ssue and plastic producer verses five-year slump
- emiconductor and drug ompany has new invention
- eading performer among trong farm machinery issues
- omputer-aided design sys-ems concern triples earnings
- Yeak furniture division sold ff to focus on food products
- Electronic parts distributor rebounds after dismal 1982
- Diversified company back in black, sells trucking division
- Trucking subsidiary thrives under deregulation
- Large American Motors order revives diversified company
- Rapidly expanding women's apparel retailer is booming
- Piano maker turned conglomerate plunges into Chapter 11
- Toymaker zapped by fading of video game fad
- Weight-loss chain shuts over 50 money-losing centers
- Computer service company is overloaded with debt
- Subscription television service hurt by cable shakeout
- Oil field hardware company devastated by drilling slump
- Los Angeles-based retailer squeezed by
- Tougher ... of telephone
- Costly ... financial
- Fare wars, labor problems trouble debt-plagued airline

Source: Media General Financial Services

The New York Times / Terrence McCarthy

Robert Spanner, a lawyer in California's Silicon Valley and author of "Who Owns Innovation?," said overly strict legal measures restricting new technological companies might work against the national interest.

Spinoff Suits Mount In Silicon Valley

By ROBERT REINHOLD

Special to The New York Times

PALO ALTO, Calif., Jan. 1 — Last April 22, two engineers at the International Business Machines Corporation's research center in nearby San Jose were summarily dismissed after I.B.M. discovered they planned to start their own company to make the same kind of product they were working on. The same day, I.B.M. sued them, charging theft of trade secrets and breach of fiduciary duty.

And, two weeks ago, to the astonishment of this center of high technology innovation — better known as Silicon Valley — I.B.M. also sued the men's lawyers: Mosher, Pooley, Sullivan & Henderson, a prominent Palo Alto firm that specializes in protecting trade secrets. The suit charged that the firm had disclosed — to an I.B.M. competitor, the Control Data Corporation — I.B.M. secrets obtained confidentially in defending the suit against the engineers.

The case is an example of a growing tendency of companies to sue to halt what they see as the hemorrhage of vital technology and secrets when trusted employees leave to form new companies.

Such suits are not new, but lawyers say they are proliferating because a flood of new capital has given birth to many new spinoffs and because the frantic pace of technical innovation makes it all the more crucial to protect proprietary information.

The companies argue that such suits are meant merely to deter the misappropriation of trade secrets. But lawyers for new companies contend that many suits are designed to frighten off new competition.

There is some irony in all this, for many of the major firms that are suing today themselves started as tiny spinoffs from tolerant companies. And some here feel that the mounting litigation might threaten the risk-taking spirit of the valley, where new companies formed by creative spirits, unhappy with the

Continued on Page 35

4th-Quarter Profit Jump Is Forecast

Cost-Cutting, Economic Rise Lift Estimates

By KENNETH N. GILPIN

Reflecting the growing economy and severe cost-cutting, corporate profits for the fourth quarter are expected to show another solid advance, economists and industry analysts say.

Compared with a year earlier, when profits bottomed out at the trough of the recession, the gains should be particularly impressive.

In 1982, "companies were very concerned about their financial survival and took many measures to reduce costs," said M. Kathyrn Eickoff, executive vice president at Townsend-Greenspan & Company, the economic consulting firm. "With breakeven points dramatically reduced, this year they are getting the benefit, and that is reflected in bottom-line gains."

Prediction of 32 Percent Jump

Over all, she concluded, "We are looking at some pretty big numbers for the fourth quarter." Townsend-Greenspan is forecasting that profits after taxes could exceed $149 billion at a seasonally adjusted annual rate, up 32 percent from a year earlier.

The increase is not limited to year-to-year comparisons. Paced by healthy gains from automobile manufacturers, retailers and other consumer goods companies, after-tax profits should rise more than 12 percent from the third quarter, said Jesse M. Abraham, an economist at Data Resources Inc.

He and other analysts say corporate ... are even healthier than the ... its indicate. ...

Moves

...n the N.Y.S.E.

...0, 1983, that were listed on

...nment

...ssue and plastic producer ...verses five-year slump

...emiconductor and drug ...ompany has new invention

...eading performer among ...trong farm machinery issues

...omputer-aided design sys...ems concern triples earnings

...Veak furniture division sold ...ff to focus on food products

...lectronic parts distributor ...ebounds after dismal 1982

Diversified company back in black, sells trucking division

Trucking subsidiary thrives under deregulation

Large American Motors order revives diversified company

Rapidly expanding women's apparel retailer is booming

...INES

Piano maker turned conglomerate plunges into Chapter 11

Toymaker zapped by fading of video game fad

Weight-loss chain shuts over 50 money-losing centers

Computer service company is overloaded with debt

Subscription television service hurt by cable shakeout

Oil field hardware company devastated by drilling slump

Los Angeles-based ... squeezed by ...

Toughening ... of tele...

Costly ... financial ...

Fare wars, labor problems trouble debt-burdened ...

I.D.S. account, by ... no announcement made, probably be-

Silicon Valley's Spinoff Suits

Continued From First Business Page

Trimedia find venture capital, let a representive from Control Data, a recognition accorded by bigger companies or thirsting for instant riches, have traditionally been a leading source of innovation.

The nature of computer research has rendered meaningless much of the existing patent law, leaving a murky gray area that case law has yet to define.

"It is extremely difficult to distinguish between an employee's general knowledge and proprietary information," said Robert Spanner, a young lawyer with Beckford, Spanner & Kelley of Palo Alto. Mr. Spanner, author of a new book, "Who Owns Innovation?", argues that overly strict legal measures to restrict new technological companies might work against the national interest.

They Work for Intel

Traditionally lax about security, many companies here are clamping down. A leader has been the Intel Corporation of Santa Clara, which makes semiconductors and microprocessers. In addition to signing the normal nondisclosure statement on hiring, Intel employees are annually required to define the proprietary part of their work. This is done again when the employee leaves. Intel also informs new employers and venture capitalists backing new companies of the departed employees legal obligation to Intel.

"We are trying to make our employees aware that they work for Intel, that they cannot serve two masters," said Intel's spokesman, James Jarrett. To reinforce the message, Intel has sued and won a settlement with one breakaway group, Seeq Technology of San Jose and its financial backers, and has threatened to sue 17 employees who resigned from Intel's microprocessing installation in Portland, Ore., on the same day last January to start a competing company, called Sequent.

The I.B.M. case offers a glimpse of the fierce competitiveness of doing business in Silicon Valley. The two employees who were sued, Atel Eltoukhy and Mohammed S. Shaikh, had been working for less than two years for I.B.M., developing a new process for depositing a thin film of magnetic material on disks used to store computer information. Together, they decided to strike out on their own and drew up a business plan, giving it to a freelance typist. According to their lawyer, James H. Pooley of the Mosher, Pooley firm, the typist's husband was an I.B.M. manager and he showed it to his employer.

That plan, I.B.M. charged, showed the two men illegally planned to exploit confidential information on thin-film technology. Ultimately, an out-of-court settlement was reached whereby an independent monitor inspects the new company, called Trimedia, to be sure it is not using I.B.M. techniques.

I.B.M. Disclosed Secrets

But in the course of negotiating that settlement, I.B.M. had to disclose certain trade secrets to Trimedia's lawyer, Mr. Pooley. The Santa Clara County Superior Court ordered those secrets be held in confidence.

In its suit against the lawyer, I.B.M. said Mr. Pooley, while helping potential investor, see a confidential document. Mr. Pooley acknowledged that, but said it was inadvertent, and partly because I.B.M. transmitted the document improperly.

Mr. Pooley, author of a widely used handbook titled "Trade Secrets," said Trimedia, in which his firm has invested, settled simply to avoid the enormous costs of fighting the suit.

Mr. Pooley said plaintiffs may be motivated by factors other than protection of secrets — to exact revenge, to stifle competition or to find a scapegoat for managerial problems.

Stephen Quigley, spokesman for I.B.M. at its headquarters in Armonk, N.Y., said I.B.M. goes to court only to protect patentable trade secrets. "We seek legal recourse solely to protect our legitimate interests," he said. "It's absolute nonsense to assert we do so for any other purpose."

The irony in Intel's new stance lies in its formation in 1968 by two renegades from the Fairchild Instrument and Camera Corporation, Gordon E. Moore and Robert N. Noyce, now chairman and vice chairman of Intel. But according to Mr. Jarrett, the Intel spokesman, Mr. Moore and Mr. Noyce left Fairchild because that company was not interested in integrated circuits, and they pioneered in that new technology rather than duplicate Fairchild's work.

Mr. Jarrett said numerous spinoffs enjoy friendly relations with Intel. For example, Allen H. Michels formed Convergent Technologies of Santa Clara to build microcomputer systems Intel was uninterested in. They are now good customers of Intel, as is Daisy Systems of Sunnyvale, builders of computer-aided design equipment, formed by another

Car Production Up 33.6% in '83

DETROIT, Jan. 2 (AP) — Domestic auto makers built more cars in 1983 than in any other year since 1979, Ward's Automotive Reports said in its current edition.

The trade journal said auto makers assembled 6,778,995 cars last year, 33.6 percent more than the 5,073,214 built in 1982, which was a 23-year low. The 1983 production was the most since 8,422,074 cars were built in 1979, Ward's said.

The General Motors Corporation produced 3,974,301 cars, a 58.6 percent share of the total domestic industry output, compared with 3,173,145 in 1982, or 62.5 percent. The Ford Motor Company built 1,546,874 cars, or 22.8 percent of the total, compared with 1,104,075, or 21.8 percent, in 1982. The Chrysler Corporation built 902,859 cars, or 13.3 percent of the total, compared with 600,502 in 1982, or 11.8 percent.

The American Motors Corporation built 200,672 cars, or 3 percent ... the market, compared with 109,746, or 2.2 percent, in 1982. Volkswagen of America Inc. built 98,611 cars, or 1.5 percent of the market, compared with 84,246, or 1.7 percent, in 1982.

Honda of America Manufacturing Inc. produced 55,474 cars at its Marysville, Ohio, plant, an eight-tenths of 1 percent share of industry output in its first full year of production in the United States.

Industry Gain Seen by U.S.

WASHINGTON, Jan. 2 (Reuters) — Most of the nation's industries will improve in 1984 as the economic recovery spreads through more busi-

IBM

Agreement Regarding Confidential Information and Intellectual Property

In consideration of my employment by IBM or my continued employment at will by IBM, and the payment to me of the salary or other compensation that I shall receive during my employment, I agree as follows:

1. I will not, without IBM's prior written permission, disclose to anyone outside of IBM or use in other than IBM's business, either during or after my employment, any confidential information or material of IBM or its subsidiaries, or any information or material received in confidence from third parties by IBM or its subsidiaries. If I leave the employ of IBM, I will return all IBM property in my possession, including all confidential information or material such as drawings, notebooks, reports, and other documents.

   Confidential information or material of IBM or its subsidiaries is any information or material:
   (a) generated or collected by or utilized in the operations of IBM or its subsidiaries that relates to the actual or anticipated business or research and development of IBM or its subsidiaries; or
   (b) suggested by or resulting from any task assigned to me or work performed by me for or on behalf of IBM;
   and which has not been made available generally to the public.

2. I will not disclose to IBM, use in IBM's business, or cause IBM to use, any information or material which is confidential to others.

3. I will comply, and do all things necessary for IBM and its subsidiaries to comply, with the laws and regulations of all governments under which IBM does business, and with provisions of contracts between any such government or its contractors and IBM or its subsidiaries that relate to intellectual property or to the safeguarding of information.

4. I hereby assign to IBM my entire right, title and interest in any idea, invention, design of a useful article (whether the design is ornamental or otherwise), computer program and related documentation, and other work of authorship (all hereinafter called "Developments"), hereafter made or conceived solely or jointly by me, or written wholly or in part by me, whether or not such Developments are patentable, copyrightable or susceptible to other forms of protection, and the Developments:
   (a) relate to the actual or anticipated business or research or development of IBM or its subsidiaries; or
   (b) are suggested by or result from any task assigned to me or work performed by me for or on behalf of IBM.

   In the case of any "other work of authorship," such assignment shall be limited to those works of authorship which meet both conditions (a) and (b) above.

   The above provisions concerning assignment of Developments apply only while I am employed by IBM in an executive, managerial, product or technical planning, technical, research, programming or engineering capacity (including development, product, manufacturing, systems, applied science, and field engineering). Excluded are any Developments that I cannot assign to IBM because of prior agreement with

   [e.g. name of a prior employer] which is effective until

   _____ *(Give name and date or write "none").*

   I acknowledge that the copyright and any other intellectual property right in designs, computer programs and related documentation, and works of authorship, created within the scope of my employment, belong to IBM by operation of law.

5. In connection with any of the Developments assigned by Paragraph 4:
   (a) I will promptly disclose them to IBM Patent Operations or IBM management as appropriate; and
   (b) I will, on IBM's request, promptly execute a specific assignment of title to IBM, and do anything else reasonably necessary to enable IBM to secure a patent, copyright or other form of protection therefor in the United States and in other countries.

6. IBM and its subsidiaries and their licensees (direct and indirect) are not required to designate me as author of any design, computer program or related documentation, or other work of authorship assigned in Paragraph 4 when distributed publicly or otherwise, nor to make any distribution. I waive and release, to the extent permitted by law, all my rights to the foregoing.

7. I have identified on the back hereof all Developments not assigned by Paragraph 4 in which I have any right, title or interest, and which were previously made or conceived solely or jointly by me, or written wholly or in part by me, but neither published nor filed in any patent office.

   If I do not have any to identify, I have written "none" on this line: _____
   (It is in your interest to establish that any of the above were made, conceived or written before your employment by IBM. You should not disclose them in detail, but identify them only by the titles and dates of documents describing them. If you wish to interest IBM in any of them, you may contact External Submissions at Corporate Headquarters, which will provide you with instructions for submitting them to IBM.)

AGREEMENT FOR ASSIGNMENT OF INVENTIONS

Code Number

IN CONSIDERATION of my employment by Bell Telephone Laboratories, Incorporated, during such time as may be mutually agreeable to that Corporation and myself, I hereby assign and agree to assign to said Corporation, its successors and assigns, all my rights to inventions which, during the period of my employment by said Corporation or by its successors in business, I have made or conceived or may hereafter make or conceive, either solely or jointly with others, in the course of such employment or with the use of said Corporation's time, material or facilities, or relating to any subject matter with which said Corporation is or may be concerned; and I further agree, without charge to said Corporation, but at its expense, to execute, acknowledge and deliver all such further papers, including applications for patents, as may be necessary to obtain patents for said inventions in any and all countries and to vest title thereto in said Bell Telephone Laboratories, Incorporated, its successors or assigns.

WITNESS my hand and seal this_____day of_____19____

_____(Seal)

WITNESS

_____

E-1867 (1-62)

ACK - SEND TO TERRY CRAMER

ACST
THE ALASKA COUNCIL ON SCIENCE AND TECHNOLOGY

November 19, 1982

Senator Bill Ray, Chairman
Blue Ribbon Commission on
the Personnel Act
Alaska State Legislature
Pouch YG
Juneau, Alaska 99811

Dear Senator Ray,

Based upon discussions held at our November 17, 1982 meeting, I am sending suggestions for consideration for the draft legislation entitled "An Act Relating to Government Interests in Intellectual Work Products Developed at the Expense of the State."

The Council suggests that this act be written similarly to the statutes adopted by the federal government. These statutes differ somewhat according to application for specific agencies, but generally all follow the same general philosophy, particularly related to patents. Also, the University of Alaska has an existing policy that works well and has stood the test of time, having been in effect for more than a decade. A general state policy might consider the university approach as well.

These various federal and university policy statements or statutes contain several key elements and philosophical tenets which may be helpful to you. In summary these are:

1. Recognition that patentable inventions produced in the line of work duty may be primarily owned by the sponsoring agency, but that, depending upon the specific circumstances, the originator might rightfully have a partial ownership interest, or at least that it is in the public welfare to award such partial ownership;

2. Recognition that in accepting ownerships of a potential invention, the government or agency accepts responsibility to pursue patenting and management of the patent in a fashion that promotes its usefulness to society;

3. Recognition than in order to promote employee intellectual pursuit, to avoid infringement upon individual freedom, to avoid unnecessary litigation, and to avoid much needless work on the part of agency personnel, that the policy statements or statutes are

Christopher Noah, Executive Director - Pouch CV, Juneau, Alaska 99811 - (907) 465-3510

written to pertain strictly to patentable inventions. (We suggest that the existing wording in the draft bill, specifically the wording "intellectual work product" and its definitions as given in Section 39:52.099 are too broad to be effective and may well be challengeable on Constitutional grounds. The proposed statute, we suggest, should pertain to patentable inventions only.); and

4. Recognition, also that for every "idea" that eventually leads to a patent deemed desirable for agency ownership, there are dozens that do not. (Hence, we suggest that the state needs an inexpensive, effective mechanism to weed out ideas of an unpatentable nature or which, if patented, have no economic value to the state. Examination of established procedures will show that the process must start as close to the inventor as possible--specifically, within the agency wherein the employee works. Determination of patentability and/or desirability of patentability should be conducted within the employee's agency. Determination of desired state ownership should be made by the employer's agency acting in conjunction with the Attorney General's office. It may be appropriate to specify in the proposed bill that the ACST would act as a participant in the decision regarding appropriate share of state ownership, once desirability of patenting has been determined.)

A useful guide to framing a patent regulation for Alaska may be the enclosed copy of patent regulations used by the U.S. Department of Interior. Additionally, as earlier stated, another useful guide could be the patenting policy of the University of Alaska. The process used there involves initial internal determination of patentability, followed by a review made by a specialized non-profit patenting organization which then takes a percentage of ownership in payment for its services should all agree that the pursuit of a patent is desirable. In this case the shares in the ownership of the patent between the non-profit corporation, the university, and the inventor are negotiated.

We trust these comments are useful to you. As this bill proceeds in the legislation process we would be pleased to offer further information for your consideration or testify upon your request.

Sincerely,

David M. Hickok
Chairman

DMH/sw
Enclosure

National Park Service will be granted by the head of the Service or his authorized representative in his discretion and on acceptance by the applicant of the conditions set forth in paragraph (d) (3) of this section.

(d) *Form of application.* The following form is prescribed for an application for permission to make a motion picture, television production, or sound track on areas administered by the United States Fish and Wildlife Service or the National Park Service:

Date _____

To the head of the _____
Service, Department of the Interior _____
(Area)

(1) Permission is requested to make, in the area mentioned above, a _____

(2) The scope of the filming (or production or recording) and the manner and extent thereof will be as follows

Weather conditions permitting, work will commence on approximately _____ and will be completed on approximately _____

_____

_____

(An additional sheet should be used if necessary.)

(3) The undersigned accepts and will comply with the following conditions:

(i) Utmost care will be exercised to see that no natural features are injured, and after completion of the work the area will, as required by the official in charge, either be cleaned up and restored to its prior condition or left, after clean-up, in a condition satisfactory to the official in charge.

(ii) Credit will be given to the Department of the Interior and the Service involved through the use of an appropriate title or announcement, unless there is issued by the official in charge of the area a written statement that no such courtesy credit is desired

(iii) Pictures will be taken of wildlife only when such wildlife will be shown in its natural state or under approved management conditions if such wildlife is confined.

(iv) [Deleted]

(v) Any special instructions received from the official in charge of the area will be complied with.

(vi) Any additional information relating to the privilege applied for by this application will be furnished upon request of the official in charge.

_____
(Applicant)

For _____
(Company)

Bond Requirement $ _____

Approved: _____
(Date)

_____
(Title)

[22 FR 1987, Mar. 26, 1957, as amended at 36 FR 2972, Feb. 13, 1971]

§ 5.2 Areas administered by the Bureau of Indian Affairs.

(a) *Individual Indians.* Anyone who desires to go on the land of an Indian to make pictures, television productions or sound tracks is expected to observe the ordinary courtesy of first obtaining permission from the Indian and of observing any conditions attached to such permission.

(b) *Indian groups and communities.* Anyone who desires to take pictures, including motion pictures, or to make a television production or a sound track of Indian communities, churches, kivas, plazas, or ceremonies performed in such places, must obtain prior permission from the proper officials of the place or community. Limitations which such officials may impose must be scrupulously observed.

(c) *Use of Indian lands.* If the filming of pictures or the making of television productions or sound tracks requires the actual use of Indian lands, a lease or permit must be obtained pursuant to 25 CFR Part 131.

(d) *Employment of Indians.* Any motion picture or television producer who obtains a lease or permit for the use of Indian land pursuant to 25 CFR Part 131 shall be expected to pay a fair and reasonable wage to any Indians employed in connection with the production activities.

[22 FR 1987, Mar. 26, 1957]

PART 6—PATENT REGULATIONS

Subpart A—Inventions by Employees

Sec.
6.1 Definitions.
6.2 Report of invention.
6.3 Action by supervisory officials.
6.4 Action by Solicitor.
6.5 Rights in inventions.
6.6 Appeals by employees.
6.7 Domestic patent protection.
6.8 Foreign filing.
6.9 Publication and public use of invention before patent application is filed.

Sec.
6.10 Publicity concernin
after patent applicatio
6.11 Condition of employr

Subpart B—Lic

6.51 Purpose.
6.52 Patents.
6.53 Unpatented invention
6.54 Use or manufacture b
ernment.
6.55 Terms of licenses or s
6.56 Issuance of licenses.
6.57 Evaluation Committe

AUTHORITY: 5 U.S.C. 301;
zation Plan No. 3 of 1950,
ecutive Order 10096, 15 FR
tive Order 10930, 26 FR 258

SOURCE: 29 FR 260, Jan.
6498, May 19, 1964, unless

Subpart A—Inventions

§ 6.1 Definitions.

As used in this subpart

(a) The term "Depart
the Department of the I

(b) The term "Secreta
Secretary of the Interior

(c) The term "Solicito
Solicitor of the Departm
terior, or anyone author
him.

(d) The term "Commis
the Commissioner of Pa
Assistant Commissioner
for the Commissioner of

(e) The term "Inventio
new and useful art, pro
machine, manufacture, o
of matter, or any new a
provement thereof, or an
of plant, or any new, ori
namental design for an a
ufacture, which is or ma
able under the laws of
States.

(f) The term "employe
this part includes a part
tant, a part time employe
employee (as defined in 1
of the Department insof
tions made during perio
duty are concerned, exce
cial circumstances in a sp
quire an exemption in o
the needs of the Depar
such exemption to be su
approval of the Commissio

pproved: _____
(Date)

_____
(Title)

1987, Mar. 28, 1957, as amended at 972, Feb. 13, 1971]

reas administered by the Bureau of an Affairs.

ndividual Indians. Anyone who to go on the land of an Indian te pictures, television produc- sound tracks is expected to ob- ne ordinary courtesy of first ob- permission from the Indian observing any conditions at- to such permission.

ndian groups and communities. who desires to take pictures, ng motion pictures, or to make vision production or a sound of Indian communities, es, kivas, plazas, or ceremonies ned in such places, must obtain mission from the proper offi- the place or community. Limi- which such officials may must be scrupulously observed.

se of Indian lands. If the film- pictures or the making of televi- roductions or sound tracks re- the actual use of Indian lands, a permit must be obtained pur- to 25 CFR Part 131.

Employment of Indians. Any picture or television producer btains a lease or permit for the Indian land pursuant to 25 CFR 31 shall be expected to pay a id reasonable wage to any Indi- nployed in connection with the ction activities.

1987, Mar. 20, 1957]

2T (—PATENT REGULATIONS

ubpart A—Inventions by Employees

AUTHORITY: 5 U.S.C. 301; sec. 2, Reorganization Plan No. 3 of 1950, 15 FR 3174; Executive Order 10096, 15 FR 389; and Executive Order 10930, 26 FR 2583.

SOURCE: 29 FR 260, Jan. 10, 1964; 29 FR 6498, May 19, 1964, unless otherwise noted.

Subpart A—Inventions by Employees

§ 6.1 Definitions.

As used in this subpart:

(a) The term "Department" means the Department of the Interior.

(b) The term "Secretary" means the Secretary of the Interior.

(c) The term "Solicitor" means the Solicitor of the Department of the Interior, or anyone authorized to act for him.

(d) The term "Commissioner" means the Commissioner of Patents, or any Assistant Commissioner who may act for the Commissioner of Patents.

(e) The term "invention" means any new and useful art, process, method, machine, manufacture, or composition of matter, or any new and useful improvement thereof, or any new variety of plant, or any new, original and ornamental design for an article of manufacture, which is or may be patentable under the laws of the United States.

(f) The term "employee" as used in this part includes a part time consultant, a part time employee or a special employee (as defined in 18 U.S.C. 202) of the Department insofar as inventions made during periods of official duty are concerned, except when special circumstances in a specific case require an exemption in order to meet the needs of the Department, each such exemption to be subject to the approval of the Commissioner.

(g) The term "governmental purpose" means the right of the Government of the United States (including any agency thereof, state, or domestic municipal government) to practice and have practiced (made or have made, used or have used, sold or have sold) throughout the world by or on behalf of the Government of the United States.

(h) The "making of the invention" means the conception or first actual reduction to practice of such invention.

§ 6.2 Report of invention.

(a) Every invention made by an employee of the Department shall be reported by such employee through his supervisor and the head of the bureau or office to the Solicitor, unless the invention obviously is unpatentable. If the invention is the result of group work, the report shall be made by the supervisor and shall be signed by all employees participating in the making of the invention. The original and two copies of the invention report shall be furnished to the Solicitor. The Solicitor may prescribe the form of the report.

(b) The report shall be made as promptly as possible, taking into consideration such factors as possible publication or public use, reduction to practice, and the necessity for protecting any rights of the Government in the invention. Although it is not necessary to withhold the report until the process or device is completely reduced to practice, reduction to practice assists in the preparation of a patent application and, if diligently pursued, protects the interests of the Government and of the inventor. If an invention is reduced to practice after the invention report is filed, the Solicitor must be notified forthwith.

(c) For the protection of the rights of the Government and of the inventor, invention reports and memoranda or correspondence concerning them are to be considered as confidential documents.

(d) An invention report shall include the following:

(1) A brief but pertinently descriptive title of the invention;

(2) The full name, residence, office address, bureau or office and division, position or title, and official working place of the inventor or inventors;

(3) A statement of the evidence that is available as to the making of the invention, including information relative to conception, disclosures to others, and reduction to practice. Examples of such information are references to signed, witnessed and dated laboratory notebooks, or other authenticated records pertaining to the conception of the invention, operational data sheets, analysis and operation evaluation reports pertaining to a reduction to practice, and visitor log books, letters and other documents pertaining to disclosures to others. These need not be submitted with the report, only the identifying data is required, e.g., volume and page number in a laboratory notebook;

(4) Information concerning any past or prospective publication, oral presentation or public use of the invention;

(5) The problem which led to the making of the invention;

(6) The objects, advantages, and uses of the invention;

(7) A detailed description of the invention;

(8) Experimental data;

(9) The prior art known to the inventor(s) and the manner in which the invention distinguishes thereover;

(10) A statement that the employee:

(i) Is willing to and does hereby assign to the Government:

(*a*) The entire rights (foreign and domestic) in the invention;

(*b*) The domestic rights only, but grants to the Government an option to file for patent protection in any foreign country, said option to expire as to any country when it is decided not to file thereon in the United States, or within six months after such filing;

(ii) Requests, pursuant to § 6.2(e), a determination of the respective rights of the Government and of the inventor.

(e) If the inventor believes that he is not required by the regulations in this subpart to assign to the Government the entire domestic right, title, and interest in and to the invention, and if he is unwilling to make such an assignment to the Government, he shall, in his invention report, request that the Solicitor determine the respective rights of the Government and of the inventor in the invention, and he shall include in his invention report information on the following points, in addition to the data called for in paragraph (d) of this section:

(1) The circumstances under which the invention was made (conceived, actually reduced to practice or constructed and tested);

(2) The employee's official duties, as given on his job sheet or otherwise assigned, at the time of the making of the invention;

(3) The extent to which the invention was made during the inventor's official working hours, the extent use was made of government facilities, equipment, funds, material or information, and the time of services of other government employees on official duty;

(4) Whether the employee wishes a patent application to be prosecuted under the Act of March 3, 1883, as amended (35 U.S.C. 266), if it should be determined that he is not required to assign all domestic rights to the invention to the Government; and

(5) Whether the employee would be willing, upon request, to voluntarily assign foreign rights in the invention to the Government if it should be determined that an assignment of the domestic rights to the Government is not required.

§ 6.3 Action by supervisory officials.

(a) The preparation of an invention report and other official correspondence on patent matters is one of the regular duties of an employee who has made an invention and the supervisor of such employee shall see that he is allowed sufficient time from his other duties to prepare such documents. The supervisor shall ascertain that the invention report and other papers are prepared in conformity with the regulations of this part; and, before transmitting the invention report to the head of the bureau or office, shall check its accuracy and completeness, especially with respect to the circumstances in which the invention was developed, and shall add whatever com-

ments he may deem to b
desirable. The supervisor
the file whatever inform
have concerning the gov
commercial value of the

(b) The head of the bu
shall make certain that
report is as complete as
permit. He shall report
formation may be ava
agency concerning the
and commercial value of
and the foreign countrie
likely that the invent
most useful and would h
est commercial value.

(c) If the employee inv
that the Solicitor determ
in the invention, the
bureau or office shall st
sions with respect to suc

(d) The head of the bu
shall indicate whether
ment, the invention is li
in the public interest, a
out the facts supporting
whenever the employ
report does not contain
formation on this point.

§ 6.4 Action by Solicitor.

(a) If an employee inv
pursuant to paragraph
that such determination
Solicitor shall determi
tive rights of the emplo
Government in and to
His determination shal
review by the Commiss
cases under Executive
and 10930 and the ru
tions issued by the Com
the approval of the Pre

(b) If the Governmen
obtain the entire dome
and interest in and t
made by an employee
ment, the Solicitor, su
by the Commissione
may take such action
invention as he deems
visable to protect the
United States.

§ 6.5 Rights in invention:

(a) The rules prescri
tion shall be applied
the respective rights
ment and of an emplo

report, request that the
termine the respective
Government and of the
he invention, and he shall
is invention report infor-
ne following points, in ad-
data called for in para-
this section:
rcumstances under which
n was made (conceived, ac-
ced to practice or con-
tested);
nployee's official duties, as
ich sheet or otherwise as-
he time of the making of
n;
xtent to which the inven-
ade during the inventor's
king hours, the extent use
of government facilities,
funds, material or infor-
d the time or services of
rnment employees on offi-

her the employee wishes a
plication to be prosecuted
Act of March 3, 1883, as
35 U.S.C. 266). If it should
ined that he is not required
ll domestic rights to the in-
the Government; and
ther the employee would be
pon request, to voluntarily
ign rights in the inven-
vernment if it should be de-
that an assignment of the
rights to the Government is
ed.

n by supervisory officials.

preparation of an invention
d other official correspond-
patent matters is one of the
uties of an employee who has
invention and the supervisor
mployee shall see that he is
sufficient time from his other
prepare such documents. The
r shall ascertain that the in-
report and other papers are
in conformity with the regu-
f this part; and, before trans-
the invention report to the
the bureau or office, shall
s accuracy and completeness,
y with respect to the circum-
n which the invention was de-
and shall add whatever com-

ments he may deem to be necessary or desirable. The supervisor shall add to the file whatever information he may have concerning the governmental and commercial value of the invention.

(b) The head of the bureau or office shall make certain that the invention report is as complete as circumstances permit. He shall report whatever information may be available in his agency concerning the governmental and commercial value of the invention, and the foreign countries in which it is likely that the invention would be most useful and would have the greatest commercial value.

(c) If the employee inventor requests that the Solicitor determine his rights in the invention, the head of the bureau or office shall state his conclusions with respect to such rights.

(d) The head of the bureau or office shall indicate whether, in his judgment, the invention is liable to be used in the public interest, and he shall set out the facts supporting his conclusion whenever the employee's invention report does not contain sufficient information on this point.

§ 6.4 Action by Solicitor.

(a) If an employee inventor requests pursuant to paragraph (e) of § 6.2, that such determination be made, the Solicitor shall determine the respective rights of the employee and of the Government in and to the invention. His determination shall be subject to review by the Commissioner in proper cases under Executive Orders 10096 and 10930 and the rules and regulations issued by the Commissioner with the approval of the President.

(b) If the Government is entitled to obtain the entire domestic right, title and interest in and to an invention made by an employee of the Department, the Solicitor, subject to review by the Commissioner in proper cases, may take such action respecting the invention as he deems necessary or advisable to protect the interests of the United States.

§ 6.5 Rights in inventions.

(a) The rules prescribed in this section shall be applied in determining the respective rights of the Government and of an employee of the Department in and to any invention made by the employee.

(b)(1) Except as indicated in the succeeding paragraphs, (b)(1)—(4), of this section, the Government shall obtain the entire domestic right, title, and interest in and to any invention made by an employee of the Department (i) during working hours, or (ii) with a contribution by the Government of facilities, equipment, materials, funds, or information, or of time or services of other government employees on official duty, or (iii) which bears a direct relation to or is made in consequence of the official duties of the inventor.

(2) In any case where the contribution of the Government, as measured by any one or more of the criteria set forth in paragraph (b)(1) of this section, to the invention is insufficient equitably to justify a requirement of assignment to the Government of the entire domestic right, title, and interest in and to such invention, or in any case where the Government has insufficient interest in an invention to obtain the entire domestic right, title, and interest therein (although the Government could obtain same under paragraph (b)(1) of this section), the Solicitor, subject to the approval of the Commissioner, shall leave title to such invention in the employee, subject, however, to the reservation to the Government of a nonexclusive, irrevocable, royalty-free license in the invention with power to grant sublicenses for all governmental purposes, such reservation, in the terms thereof, to appear, where practicable, in any patent, domestic or foreign, which may issue on such invention.

(3) In applying the provisions of paragraphs (b)(1) and (2) of this section to the facts and circumstances relating to the making of any particular invention, it shall be presumed that any invention made by an employee who is employed or assigned (i) to invent or improve or perfect any art, machine, manufacture, or composition of matter, or (ii) to conduct or perform research, development work, or both, or (iii) to supervise, direct, coordinate, or review Government financed or conducted research, development work, or both, or (iv) to act in a liaison capacity among governmental or non-

governmental agencies or individuals engaged in such work, falls within the provisions of paragraph (b)(1) of this section and it shall be presumed that any invention made by any other employee falls within the provisions of paragraph (b)(2) of this section. Either presumption may be rebutted by a showing of the facts and circumstances in the case and shall not preclude a determination that these facts and circumstances justify leaving the entire right, title and interest in and to the invention in the government employee, subject to law.

(4) In any case wherein the Government neither (i) obtains the entire domestic right, title, and interest in and to an invention pursuant to the provisions of paragraph (b)(1) of this section, nor (ii) reserves a nonexclusive, irrevocable, royalty-free license in the invention, with power to grant sublicenses for all governmental purposes, pursuant to the provisions of paragraph (b)(2) of this section, the Solicitor, subject to the approval of the Commissioner, shall leave the entire right, title, and interest in and to the invention in the employee, subject to law.

(c) In the event that the Solicitor determines, pursuant to paragraph (b)(2) or (4) of this section, that title to an invention will be left with an employee, the Solicitor shall notify the employee of this determination and promptly prepare, and preserve in appropriate files, accessible to the Commissioner, a written signed, and dated statement concerning the invention including the following:

(1) A description of the invention in sufficient detail to identify the invention and show the relationship to the employee's duties and work assignment;

(2) The name of the employee and his employment status, including a detailed statement of his official duties and responsibilities at the time the invention was made; and

(3) A statement of the Solicitor's determination and reasons therefor. The Solicitor shall, subject to considerations of national security, or public health, safety, or welfare, submit to the Commissioner a copy of this written statement. This submittal in a case falling within the provisions of paragraph (b)(2) of this section shall be made after the expiration of the period prescribed in § 6.6 for the taking of an appeal, or it may be made prior to the expiration of such period if the employees acquiesces in the Solicitor's determination. The Commissioner thereupon shall review the determination of the Solicitor and the Commissioner's decision respecting the matter shall be final, subject to the right of the employee or the Solicitor to submit to the Commissioner within 30 days (or such longer period as the Commissioner may, for good cause, shown in writing, fix in any case) after receiving notice of such decision, a petition for the reconsideration of the decision. A copy of such petition must also be filed by the inventor with the Solicitor within the prescribed period.

§ 6.6 Appeals by employees.

(a) Any employee who is aggrieved by a determination of the Solicitor pursuant to § 6.5(b) (1) or (2) may obtain a review of the determination by filing, within 30 days (or such longer period as the Commissioner may for good cause shown in writing, fix in any case) after receiving notice of such determination, two copies of an appeal with the Commissioner. The Commissioner then shall forward one copy of the appeal to the Solicitor.

(b) On receipt of a copy of an appeal filed pursuant to paragraph (a) of this section, the Solicitor shall, subject to considerations of national security, or public health, safety, or welfare, promptly furnish both the Commissioner and the inventor with a copy of a report containing the following information about the invention involved in the appeal:

(1) A copy of a statement containing the information specified in § 6.5(c), and

(2) A detailed statement of the points of dispute or controversy, together with copies of any statements or written arguments that may have been filed, and of any other relevant evidence that the Solicitor considered in making his determination of Government interest. Within 25 days (or such longer period as
er may, for good cau
any case) after the
copy of the Solicito
employee, the empl
reply thereto with-
and file one copy the
licitor.

(c) After the time f
reply to the Solicito
pired and if the em
que ed in his appeal,
for the hearing of o
the employee (or
whom he designates
of attorney filed b
hearing) and the Sc
shall be otherwise o
hearing begins, oral
limited to thirty min
The employee need
torney or request a
secure full considera
and his arguments.
such consideration
Commissioner whe
intend to file a reply
report.

(d) After a hearing
a hearing was reques
ration of the period
reply to the Solicit
hearing is set, the C
issue a decision on
decision shall be fin
for asking reconside
on the date that a
tion for reconsidera
posed of. Any reque
ation or modificatio
must be filed within
date of the original
such an extension
set by the Commis
original period ex
missioner's decision
after consideration
of fact in the empl
Solicitor's report, a
reply, but the Con
discretion and with
rights and convenie
and the Solicitor, m
statements on spe
fact or may requ
dence in the form
positions on specific

ie provisions of para-
this section shall be
: expiration of the
:d in § 6.6 for the
eal, or it may be made
iration of such period
: acquiesces in the So-
nation. The Commis-
n shall review the de-
the Solicitor and the
decision respecting
ll be final, subject to
: employee or the So-
. to the Commissioner
:or such longer period
sioner may, for good
writing, fix in any
g notice of such de-
for the reconsider-
.ion. A copy of such
lso be filed by the in-
e Solicitor within the
d.

employees.

oyee who is aggrieved
ation of the Solicitor
6.5(b) (1) or (2) may
of the determination
in 30 days (or such
as the Commissioner
ause shown in writing.
) after receiving notice
ination, two copies of
the Commissioner. The
then shall forward one
eal to the Solicitor.
t of a copy of an appeal
to paragraph (a) of this
licitor shall, subject to
of national security, or
, safety, or welfare,
ish both the Commis-
inventor with a copy of
ining the following in-
out the invention in-
ppeal:
a statement containing
on specified in § 6.5(c),

iled statement of the
ute or controversy, to-
pies of any statements
uments that may have
d of any other relevant
the Solicitor considered
: determination of Gov-
est. Within 25 days (or

such longer period as the Commissioner may, for good cause shown, fix in any case) after the transmission of a copy of the Solicitor's report to the employee, the employee may file a reply thereto with the Commissioner and file one copy thereof with the Solicitor.

(c) After the time for the employee's reply to the Solicitor's report has expired and if the employee has so requested in his appeal, a date will be set for the hearing of oral arguments by the employee (or by an attorney whom he designates by written power of attorney filed before, or at the hearing) and the Solicitor. Unless it shall be otherwise ordered before the hearing begins, oral arguments will be limited to thirty minutes for each side. The employee need not retain an attorney or request an oral hearing to secure full consideration of the facts and his arguments. He may expedite such consideration by notifying the Commissioner when he does not intend to file a reply to the Solicitor's report.

(d) After a hearing on the appeal, if a hearing was requested, or after expiration of the period for the inventor's reply to the Solicitor's report, if no hearing is set, the Commissioner shall issue a decision on the matter, which decision shall be final after the period for asking reconsideration expires or on the date that a decision on a petition for reconsideration is finally disposed of. Any request for reconsideration or modification of the decision must be filed within 30 days from the date of the original decision (or within such an extension thereof as may be set by the Commissioner before the original period expires). The Commissioner's decision shall be made after consideration of the statements of fact in the employee's appeal, the Solicitor's report, and the employee's reply, but the Commissioner, at his discretion and with due respect to the rights and convenience of the inventor and the Solicitor, may call for further statements on specific questions of fact or may request additional evidence in the form of affidavits or depositions on specific facts in dispute.

§ 6.7 Domestic patent protection.

(a) The Solicitor, upon determining that an invention coming within the scope of § 6.5(b) (1) or (2) has been made, shall thereupon determine whether patent protection will be sought in the United States by the Department for such invention. A controversy over the respective rights of the Government and of the inventor in any case shall not delay the taking of the actions provided for in this section. In cases coming within the scope of § 6.5(b) (2), action by the Department looking toward such patent protection shall be contingent upon the consent of the inventor.

(b) Where there is a dispute as to whether paragraphs (b)(1) or (2) of § 6.5 applies in determining the respective rights of the Government and of an employee in and to any invention, the Solicitor will determine whether patent protection will be sought in the United States pending the Commissioner's decision on the dispute, and, if he determines that an application for patent should be filed, he will take such rights as are specified in § 6.5(b) (2), but this shall be without prejudice to acquiring the rights specified in § 6.5 (b) (1) should the Commissioner so decide.

(c) Where the Solicitor has determined to leave title to an invention with an employee under § 6.5(b) (2), the Solicitor will, upon the filing of an application for patent and pending review of the determination by the Commissioner, take the rights specified in that paragraph, without prejudice to the subsequent acquisition by the Government of the rights specified in § 6.5(b) (1) should the Commissioner so decide.

(d) In the event that the Solicitor determines that an application for patent will not be filed on an invention made under the circumstances specified in § 6.5(b) (1) giving the United States the right to title thereto, the Solicitor shall subject to considerations of national security, or public health, safety, or welfare, report to the Commissioner promptly upon making such determination, the following information concerning the invention:

PO-147 O—61——11

(1) Description of the invention in sufficient detail to permit a satisfactory review;

(2) Name of the inventor and his employment status;

(3) Statement of the Solicitor's determination and reasons therefor.

The Commissioner, may, if he determines that the interest of the Government so requires and subject to considerations of national security, or public health safety, or welfare, bring the invention to the attention of any Government agency to whose activities the invention may be pertinent, or cause the invention to be fully disclosed by publication thereof.

§ 6.8 Foreign filing.

(a) *By Government.* (1) In every case where the employee has indicated pursuant to § 6.2(d)(10), his willingness to assign the domestic patent rights in the invention to the Government, or where it has been determined pursuant to § 6.5 that the Government shall obtain the entire domestic patent rights, the Government shall reserve an option to acquire assignment of all foreign rights including the rights to file foreign patent applications or otherwise to seek protection abroad on the invention,

(2) The Government's option shall lapse as regards any foreign country:

(i) When the Solicitor determines after consultation with the agency most directly concerned, not to cause an application to be filed in said foreign country or otherwise to seek protection of the invention, as by publication;

(ii) When the Solicitor fails to take action to seek protection of the invention in said foreign country (a) within six months of the filing of an application for a United States patent on the invention, or (b) within six months of declassification of an invention previously under a security classification, whichever is later.

(b) *By Employee.* (1) No Department employee shall file or cause to be filed an application for patent in any foreign country on any invention in which the Government has acquired the entire (foreign and domestic) patent rights, or holds an unexpired option to acquire the patent rights in said foreign country, or take any steps which would preclude the filing of an application by or on behalf of the Government.

(2) An employee may file in any foreign country where the Government has not exercised its option acquired pursuant to § 6.2(d)(10), to do so, or determines not to do so.

(3) The determination or failure to act as set forth in § 6.8(a)(2) shall constitute a decision by the Government to leave the foreign patent rights to the invention in the employee, subject to a nonexclusive, irrevocable, royalty-free license to the Government in any patent which may issue thereon in any foreign country, including the power to issue sublicenses for governmental purposes or in furtherance of the foreign policies of the Government or both.

§ 6.9 Publication and public use of invention before patent application is filed.

(a) Publication or public use of an invention constitutes a statutory bar to the granting of a patent for the invention unless a patent application is filed within one year of the date of such publication or public use. In order to preserve rights in unpatented inventions, it shall be the duty of the inventor, or of his supervisor if the inventor is not available to make such report, to report forthwith to the Solicitor any publication or use (other than experimental) of an invention, irrespective of whether an invention report has previously been filed. If an invention report has not been filed, such a report, including information concerning the public use or publication, shall be filed at once. If an invention is disclosed to any person who is not employed by the Department or working in cooperation with the Department upon that invention, a record shall be kept of the date and extent of the disclosure, the name and address of the person to whom the disclosure was made, and the purpose of the disclosure.

(b) No description, specification, plan, or drawing of any unpatented invention upon which a patent application is likely to be filed shall be published, nor shall any written descrip-

tion, specification, plan
such invention be furni
other than an employee
ment or a person work
tion with the Departm
invention, unless the S
opinion that the intere
ernment will not be
such action. If any pub
ing the invention, not
proved by the Solicito
attention of the invent
visor, it shall be the
person to report such
the Solicitor.

§ 6.10 Publicity concern
after patent applicati

In order that the pu
the greatest possible
ventions in which th
transferable interests
signed to the Secret
patent applications
shall be publicized as
ble, within limitations
the Department, by
agency, by the divisi
inventor is employed,
ventor himself in his
dustries in which the
may be useful. Regula
lication shall be utili
est extent possible. In
be the duty of the
being advised of the
patent assigned to t
take steps towards li
as available for licen
ble.

§ 6.11 Condition of emp

(a) The regulations
shall be a condition o
all employees of the
shall be effective as t
tions. These regulatio
tive without regard t
future contracts to
tered into by any em
partment with any p
the Government.

(b) If a patent ap
upon an invention
made by an employe
ment under circumst
the Government to
tle right, title and i
the invention, but wi

tion, specification, plan, or drawing of such invention be furnished to anyone other than an employee of the Department or a person working in cooperation with the Department upon that invention, unless the Solicitor is of the opinion that the interests of the Government will not be prejudiced by such action. If any publication disclosing the invention, not previously approved by the Solicitor, comes to the attention of the inventor or his supervisor, it shall be the duty of such person to report such publication to the Solicitor.

§ 6.10 Publicity concerning the invention after patent application is filed.

In order that the public may obtain the greatest possible benefit from inventions in which the Secretary has transferable interests, inventions assigned to the Secretary upon which patent applications have been filed shall be publicized as widely as possible, within limitations of authority, by the Department, by the originating agency, by the division in which the inventor is employed, and by the inventor himself in his contacts with industries in which the invention is or may be useful. Regular organs of publication shall be utilized to the greatest extent possible. In addition, it shall be the duty of the Solicitor, upon being advised of the issuance of any patent assigned to the Secretary, to take steps towards listing the patent as available for licensing, where feasible.

§ 6.11 Condition of employment.

(a) The regulations in this subpart shall be a condition of employment of all employees of the Department and shall be effective as to all their inventions. These regulations shall be effective without regard to any existing or future contracts to the contrary entered into by any employee of the Department with any person other than the Government.

(b) If a patent application is filed upon an invention which has been made by an employee of the Department under circumstances that entitle the Government to the entire domestic right, title and interest in and to the invention, but which has not been reported to the Solicitor pursuant to the regulations in this subpart, title to such invention shall immediately vest in the Government, as represented by the Secretary, and the contract of employment shall be considered an assignment of such rights.

Subpart B—Licenses

§ 6.51 Purpose.

It is the purpose of the regulations in this subpart to secure for the people of the United States the full benefits of Government research and investigation in the Department of the Interior (a) by providing a simple procedure under which the public may obtain licenses to use patents and inventions in which the Secretary of the Interior has transferable interests and which are available for licensing; and (b) by providing adequate protection for the inventions until such time as they may be made available for licensing without undue risk of losing patent protection to which the public is entitled.

[31 FR 10706, Aug. 13, 1966]

§ 6.52 Patents.

Patents in which the Secretary of the Interior has transferable interests, and under which he may issue licenses or sublicenses, are classified as follows:

(a) *Class A.* Patents, other than those referred to in paragraph (c) of this section, which are owned by the United States, as represented by the Secretary of the Interior, free from restrictions on licensing except such as are inherent in Government ownership;

(b) *Class B.* Patents in which the interest of the United States, as represented by the Secretary of the Interior, is less than full ownership, or is subject to some express restriction upon licensing or sublicensing (including patents upon which the Secretary of the Interior holds a license, patents assigned to the Secretary of the Interior as trustee for the people of the United States, and patents assigned to the Secretary of the Interior upon such terms as to effect a dedication to the public);

(c) *Class C.* Patents and patent rights acquired by the Secretary of the Interior pursuant to the Act of April 5, 1944 (58 Stat. 190; 30 U.S.C. 321—325), and any amendments thereof.

[29 FR 260, Jan. 10, 1964, as amended at 31 FR 10796, Aug. 13, 1966]

§ 6.53 Unpatented inventions.

The Secretary of the Interior may also have transferable interests in inventions which are not yet patented. In order to protect the patent rights of the Department, for the eventual benefit of the public, a license may be granted with respect to such an invention only if (a) a patent application has been filed thereon; (b) the invention has been assigned to the United States, as represented by the Secretary of the Interior, and the assignment has been recorded in the Patent Office; and (c) the Solicitor of the Department is of the opinion that the issuance of a license will not prejudice the interests of the Government in the invention. Such licenses shall be upon the same terms as licenses relating to patents of the same class, as described in § 6.52.

§ 6.54 Use or manufacture by or for the Government.

A license is not required with respect to the manufacture or use of any invention assigned or required to be assigned without restrictions or qualifications to the United States when such manufacture or use is by or for the Government for governmental purposes. A license or sublicense may be required, however, for such manufacture or use in the case of Class B patents or patent rights when the terms under which the Secretary of the Interior acquires interests therein necessitate the issuance of a license or sublicense in such circumstances.

[31 FR 10796, Aug. 13, 1966]

§ 6.55 Terms of licenses or sublicenses.

(a) No license or sublicense shall be granted under any patent in which the Secretary of the Interior has transferable interests, except as set forth under these regulations, the terms and conditions of which shall be expressly stated in such license and sublicense. The terms of licenses and sublicenses issued under this subpart shall not be unreasonably restrictive.

(b) To the extent that they do not conflict with any restrictions to which the licensing or sublicensing of Class B patents and unpatented inventions may be subject, all licenses and sublicenses relating to Class A and Class B patents and unpatented inventions shall be subject to the following terms and provisions, and to such other terms and conditions as the Solicitor may prescribe:

(1) The acceptance of a license or sublicense shall not be construed as a waiver of the right to contest the validity of the patent. A license or sublicense shall be revocable only upon a finding by the Solicitor of the Department that the terms of the license or sublicense have been violated and that the revocation of the license or sublicense is in the public interest. Such finding shall be made only after reasonable notice and an opportunity to be heard.

(2) Licenses and sublicenses shall be nontransferable. Upon a satisfactory showing that the Government or public will be benefited thereby, they may be granted to properly qualified applicants royalty-free. If no such showing is made, they shall be granted only upon a reasonable royalty or other consideration, the amount or character of which is to be determined by the Solicitor. A cross-licensing agreement may be considered adequate consideration.

(3) Licensees and sublicensees may be required to submit annual or more frequent technical or statistical reports concerning practical experience acquired through the exercise of the license or sublicense, the extent of the production under the license or sublicense, and other related subjects.

(4) A licensee or sublicensee manufacturing a patented article pursuant to a license or sublicense shall give notice to the public that the article is patented by affixing thereon the word "patent", together with the number of the patent, or when, from the character of the article, this cannot be done, by fixing to it, or to the package in

which it is enclosed, a
such notice.

(c) Licenses and sub
to Class C patents a
shall be granted upon
conditions as may be p
ant to sections 3 and
April 5 1944, and a
thereof.

[29 FR 260, Jan. 10, 1964.
FR 10796, Aug. 13, 1966]

§ 6.56 Issuance of licens

(a) Any person desir
lating to an invention
Secretary of the In
patent or patent righ
the Solicitor of the De
Interior an applicatio
stating:

(1) The name, addr
ship of the applicant;

(2) The nature of his

(3) The patent or
which he desires a lice

(4) The purpose for
a license;

(5) His experience in
desired license;

(6) Any patents, lic
patent rights which h
the field of the desired

(7) The benefits, if
applicant expects the
from his proposed use

(b) It shall be the du
tor, after consultation
most directly intereste
or invention involved i
for a license, and with
Committee if royalti
charged, to determine
cense shall be grante
mines that a license is
he shall execute on be
retary, an appropriate l

§ 6.57 Evaluation Commi

At the request of th
Evaluation Committee
ed by the Secretary
royalty rates with resp
ents or inventions for
may be charged.

such license and sublicense.
of licenses and sublicenses
er this subpart shall not be
bly restrictive.
he extent that they do not
th any restrictions to which
ng or sublicensing of Class B
nd unpatented inventions
bject, all licenses and subli-
ting to Class A and Class B
nd unpatented inventions
bject to the following terms
sions, and to such other
conditions as the Solicitor
ibe:
acceptance of a license or
shall not be construed as a
the right to contest the va-
ie patent. A license or subli-
l be revocable only upon a
the Solicitor of the Depart-
the terms of the license or
have been violated and that
tion of the license or subli-
the public interest. Such
all be made only after rea-
otice and an opportunity to

se and sublicenses shall be
eable. Upon a satisfactory
that the Government or
be benefited thereby, they
anted to properly qualified
royalty-free. If no such
made, they shall be granted
a reasonable royalty or
sideration, the amount or
of which is to be determined
Solicitor. A cross-licensing
may be considered ade-
ideration.
sees and sublicensees may
d to submit annual or more
technical or statistical re-
erning practical experience
hrough the exercise of the
ublicense, the extent of the
under the license or subli-
other related subjects.
ensee or sublicensee manu-
a patented article pursuant
se or sublicense shall give
he public that the article is
y affixing thereon the word
ogether with the number of
, or when, from the charac-
rticle, this cannot be done
o it, or to the package in

which it is enclosed, a label containing such notice.

(c) Licenses and sublicenses relating to Class C patents and patent rights shall be granted upon such terms and conditions as may be prescribed pursuant to sections 3 and 5 of the Act of April 5 1944, and any amendments thereof.

[29 FR 260, Jan. 10, 1964, as amended at 31 FR 10796, Aug. 13, 1966]

§ 6.56 Issuance of licenses.

(a) Any person desiring a license relating to an invention upon which the Secretary of the Interior holds a patent or patent rights may file with the Solicitor of the Department of the Interior an application for a license, stating:

(1) The name, address, and citizenship of the applicant;

(2) The nature of his business;

(3) The patent or invention upon which he desires a license;

(4) The purpose for which he desires a license;

(5) His experience in the field of the desired license;

(6) Any patents, licenses, or other patent rights which he may have in the field of the desired license; and

(7) The benefits, if any, which the applicant expects the public to derive from his proposed use of the invention

(b) It shall be the duty of the Solicitor, after consultation with the bureau most directly interested in the patent or invention involved in an application for a license, and with the Evaluation Committee if royalties are to be charged, to determine whether the license shall be granted. If he determines that a license is to be granted, he shall execute on behalf of the Secretary, an appropriate license.

§ 6.57 Evaluation Committee.

At the request of the Solicitor, an Evaluation Committee will be appointed by the Secretary to recommend royalty rates with respect to any patents or inventions for which royalties may be charged.

PART 7—EMPLOYEES: INTEREST IN LANDS AND RESOURCES

Sec.
7.1 Authority.
7.2 Definitions.
7.3 Prohibition.
7.4 Exceptions.
7.5 Multiple Use Advisory Boards.
7.6 Applications for a farm unit.
7.7 Requests for advice.
7.8 Penalty.

AUTHORITY: R.S. 452; 5 U.S.C. 301, 43 U.S.C. 11.

SOURCE: 27 FR 3812, Apr. 20, 1962, unless otherwise noted.

§ 7.1 Authority.

The regulations in this part are based on (a) section 161 of the Revised Statutes (5 U.S.C. 22) which authorizes the Secretary of the Interior to prescribe regulations not inconsistent with law for the government of his Department and the conduct of its officers and employees; and (b) section 452 of the Revised Statutes (43 U.S.C. 11) which prohibits employees of the Bureau of Land Management from directly or indirectly purchasing or becoming interested in the purchase of any of the public land, and which provides that any person who violates the section shall forthwith be removed from his office.

§ 7.2 Definitions.

(a) The term "employee" as used in this part includes any person employed by the Department of the Interior, or any of its bureaus or offices however designated.

(b) The term "interest" means any direct or indirect ownership in whole or in part of the lands or resources in question, or any participation in the earnings therefrom, or the right to occupy or use the property or to take any benefits therefrom based upon a lease or rental agreement, or upon any formal or informal contract with a person who has such an interest. It includes membership in a firm, or ownership of stock or other securities in a corporation which has such an interest: *Provided*, That stock or securities traded on the open market may be purchased by an employee if the ac-

ALASKA CODE REVISION COMMISSION

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4678

REPORT TO THE LEGISLATURE

PURSUANT TO SEC. 45, CH. 143, SLA 1982

A STUDY OF LAWS RELATING TO COMPUTERS AND TELECOMMUNICATIONS SYSTEMS

--PRIVACY, INTELLECTUAL PROPERTY, COMPUTER CRIME--

JUNE 8, 1983

TABLE OF CONTENTS

APPENDICES (cont'd)

APPENDICES (cont'd)

REPORT TO THE LEGISLATURE
PURSUANT TO SEC. 45, CH. 143, SLA 1982

Introduction

In the last days of the 1982 legislative session, the following floor amendment to HCS CSSB 535 (2d Jud) am H, offered by Representative Brian Rogers, was adopted and became part of ch. 143, SLA 1982:

> Sec. 45. The Alaska Code Revision Commission shall, after consultation with the Department of Law and the Division of Telecommunications Systems, conduct a comprehensive study of laws relating to computers and telecommunications systems. The Commission shall make recommendations to the First Session of the Thirteenth Legislature concerning offenses involving computer equipment, offenses against intellectual property, and privacy implications of computer and telecommunications uses.

This report is in response to the quoted section.

I. STUDY OF LAWS RELATING TO COMPUTERS AND TELECOMMUNICATIONS SYSTEMS.

The first sentence of the section calls for a comprehensive study of laws relating to computers and telecommunications systems. Fortunately for the limited resources the commission had to conduct a study, there is a comprehensive review of state laws in this field printed in Jurimetrics Journal, Volume 20, Number 3, Spring 1980. This "Digest and Analysis of State Legislation Relating to Computer Technology" authored by John C. Lautsch, Appendix A to this report, is brought up to date with our additions. It is supplemented by copies of the principal Alaska laws referred to in this study. Some are in other appendices according to subject matter. Some of the more general laws on telecommunications are grouped together in Appendix B. Copies of the texts of laws from other states that we obtained for this study generally are not forwarded with this report but are available for review and copying in the office of the code revision commission, Room No. 5, 110 Seward Street, Juneau.

Although some rudimentary understanding of existing and potential future federal law is useful toward determining what, if any, Alaska legislation should be enacted, an exhaustive study of federal law is beyond the scope of this study. Existing federal statutes that may be pertinent to the study are listed in Appendix K, at page 17.

One potential future federal law in the subject area of this report is a "Federal Computer Systems Protection Act". It is HR 1092 in the 98th Congress, known as "the Nelson bill" for its sponsor, Representative Bill Nelson of Florida. Since it would make a federal crime of various acts relating to computers, it is discussed in a section on computer crime later in this report. (See Appendix U)

Laws making computer crime a separate category of state crime have been enacted in some sixteen states. They are discussed in the general survey of state laws (Appendix A); the texts are appended as Appendix P to the separate section of this report on computer crime.

In the Lautsch study (Appendix A) a question is raised about Alaska's having placed central control over all state computers in the Department of Administration, an agency of the executive branch of government. Cases are there discussed dealing with constitutional separation of powers issues raised in other states. Appendix A, pages 204-207; see especially, Opinion of the Justices to the House of Representatives, 309 N.W.2d 476 (Mass. 1974). There being obvious advantages to centralization, the legislature should at least be aware that the central control provided in AS 44.21.150--44.21.170 (included in Appendix B) may be challenged on constitutional grounds.

Beyond this, the Lautsch study shows Alaska's adoption of various computer-related statutes in comparison to the other states and does not single out Alaska as noteworthy.

Since Appendix A, these notes, and related appendices, comprise the general study called for by the first sentence of sec. 45, ch. 143, SLA 1982, this report proceeds to what is called for by the second sentence of that section.

II. PRIVACY.

"Privacy implications of computer and telecommunications uses" is a broad subject or a relatively narrow one depending upon one's focus.

Here we briefly treat the broad concept of privacy and then go to more specific applications of the right to privacy as it applies to computers and telecommunications.

The law on privacy in Alaska starts with Article I, Section 22 of the Alaska Constitution:

> The right of the people to privacy is recognized and should not be infringed. The legislature shall implement this section.

The right has been construed by the state supreme court in several decisions, generally in ways not related to computers and telecommunications. (The section is fully annotated in Volume I of Alaska Statutes and citations are not repeated here. Citations are also set out in Appendix A at pages 223-224.) The court's decision in State v. Glass, 585 P.2d 514 (Alaska, 1978), should be noted especially. That case involved use in evidence of a recording of a telephone conversation made by investigators with the consent of only one of the participants to the conversation, the court holding the other participant's constitutional right to privacy was abridged. Since the telephone is the primary telecommunication device, whether it is used in voice transmission or in nonverbal communication with a computer, the case has broad application. Alaska's "right to privacy" covers commercial privacy as well as individual privacy: It protects the privacy of certain business information, the disclosure of which would advantage a competitor. Woods and Rohde v. State Dept. of Labor, 565 P.2d 138 (Alaska, 1977).

The constitutional right to privacy, specific in the Alaska Constitution, implied in the U.S. Constitution (see Harlan concurrence in Katz v. United States, 389 U.S. 347 (1967), the reasoning adopted for Alaska in Glass, supra) is not absolute. In the case of public records there is continuous tension between the right to privacy and the public information laws. Confidentiality of certain information is required by numbers of Alaska statutes. Records that are protected as confidential include certain vital statistics, medical, tax, employment security, social services, state loans, oil and gas, educational and criminal justice records. But the public's "right to know" is a countervailing interest, a right that often collides with the right to privacy. The Alaska and federal public information law, AS 09.25.110--09.25.120 and 5 U.S.C. § 552 and the Privacy Act of 1974, 5 U.S.C. § 552a, are attached as Appendix C.

The conflict between privacy and openness is explored in several opinions of the Attorney General, copies of which are retained and available in the files of the code revision commission.

Regulations were adopted in 1982 on procedures that apply under the state's freedom of information act, AS 09.25.-110--09.25.120. The regulations, 6 AAC 95.010--6 AAC 95.900, deal in part with the conflict between laws that protect privacy and those that promote openness in government. Generally, the same regulations apply to information whatever its form. However, 6 AAC 95.140 contains special provisions on information that must be decoded or otherwise converted. The section puts the burden on the requestor to decode or convert. By its terms the section could apply to any record in a computer or on a magnetic tape, since the record must be converted to be read. According to Assistant Attorney General Tom Jahnke, however, the section is not intended to apply to a record in a computer or on tape if the record can be printed out without decoding. Jahnke's

section analysis of the regulations and the regulations themselves are attached as Appendix D. We invite attention to Jahnke's explanation of 6 AAC 95.140.

The freedom of information act, AS 09.25.110--09.25.-120, as distinguished from the regulations that implement it, does not deal specially with records in computer storage and apparently requires the state to call up a requested record from storage for inspection no matter what means of storage is used. Therefore, although our focus here is on privacy rather than on public access, we note that a question might be raised about validity of the restrictions on access in 6 AAC 95.140.

Computers are central to the Alaska Justice Information System (AJIS), and nowhere in the state's regulations is the tension between privacy and public access to information in computers more thoroughly dealt with than in AJIS regulations. The system with its computer access to criminal history record information and the broader category of criminal justice information is the subject of AS 12.62 and regulations 6 AAC 60. AJIS is overseen by the Governor's Commission on the Administration of Justice and its functionary, the Alaska justice information coordinator, as provided in AS 44.19.122. These statutes and regulations are attached for reference. Appendix E.

In most states privacy in relation to computers and telecommunications is considered largely a practical problem of implementing existing law on what information is to be kept confidential. It is possible to construct a separate system of requirements for businesses and governmental units that keep personal data in their computer memory banks, of course. An example is the Computer Privacy Act included in 1978 Suggested State Legislation of the Council of State Governments (Appendix F).

Since 1978 when that broad Act was suggested, the minicomputer has come into common use. The headnote to the Computer Privacy Act is a good resume of the registration and reporting

requirements of that act. From it we can judge whether the act is practical given the proliferation of computer use. Even before the explosion in minicomputers often with ties to larger business computers, voices were raised warning that the pervasive regulation provided by such statutes was an inflationary pressure hard to quantify and isolate, and urging relative simplicity in the legislative scheme to protect against invasion of privacy. (Appendix A, p. 210)

Attached is a Uniform Information Practices Code drafted as proposed uniform legislation by the National Conference of Commissioners on Uniform State Laws in 1980 (Appendix G). No states have adopted the uniform law.

Also attached is a Privacy Act included in 1978 Suggested State Legislation of the Council of State Governments (Appendix H). The various model and uniform acts overlap each other and cover some ground already covered by Alaska and other states' laws.

An explanation precedes each of these model and uniform acts in the appendices, drafted in a way favorable to the Act in each instance.

As noted, there are attached as appendices three information practices codes, one from the National Conference of Commissioners on Uniform State Laws and two from the Council of State Governments. Although there are differences between the codes and differences especially in the scope of their coverage, they have a common ancestry in federal studies published in 1973 and in 1977. The 1973 Report of the Secretary's Advisory Committee on Automated Personal Data Systems, Department of Health, Education and Welfare, entitled "Records, Computers and the Rights of Citizens" is attached as Appendix I. This report resulted in enactment of the U.S. Privacy Act of 1974, PL 93-579, 5 U.S.C., § 552a, to regulate the computerized personnel record keeping of federal agencies. The 1973 report was followed in 1977 by the

report of the federal Privacy Protection Study Commission, attached as Appendix J. The history and influence of these studies is set out in J. Lautsch, "Law and Computer Privacy in the States of the USA," 1 Information Privacy 100, at 101-102, attached as Appendix K.

The basic parts of this "information-practices" approach to computer privacy, contained in each of the codes are:

(1) the establishment of notice (disclosure) requirements;

(2) the establishment of standards for the use of personal information;

(3) legislating specific record keeping rules for accounting for and access to personal information;

(4) the establishment of a right of inquiry; and

(5) a right of inspection and challenge.

Lautsch (Appendix K, at pp. 101-102) explains each of these concepts and follows with acknowledgment of their usefulness as social policy but criticises their enactment into detailed state statutory requirements. According to Lautsch in his computer privacy article (Appendix K at p. 101), the concepts of the influential 1973 report to the secretary were never intended to be lifted out in total to form statutory enactments. However, that has been the result in some states. Lautsch in his general survey (Appendix A, at p. 216), includes Alaska's law on security and privacy in the Criminal Justice Information System among the laws of sixteen states where some aspects of the "information practices" approach is adopted. He also lists AS 18.23.030 in this category, but that categorization is scarcely justified. And so far Alaska has not seen fit to enact anything comparable to the general information practices codes, Appendices F, G, and H.

Principal federal laws on information privacy are listed in Lautsch, "A DP Management Guide to Privacy Legislation",

a publication of Aurbach Publishers, Inc. (Appendix L, at p. 17). The collected federal citations are followed by citations to selected state laws. That publication is included in the report for an excellent discussion of the constitutional basis for a federal right to privacy, as well as for an overview of pertinent federal statutes.

III. INTELLECTUAL PROPERTY.

This study is to include "recommendations . . . concerning offenses against intellectual property" (sec. 45, ch. 143, SLA 1982).

The subject will be further treated as part of "computer crime", a later section of this report. However, since one immediately associates intellectual property with copyright law, some mention is made of copyrights.

In outline the recommendation is simple: No good reason appears for the state to legislate on copyrights.

It is a field regulated by Congress under the commerce clause. If copyrighting in relation to computer and telecommunications is not a field preempted by Congress, it is all but preempted, and the chance of an unconstitutional state enactment is great. A statutory expression of this preemption is in 17 U.S.C. § 301(a). It declares that as to rights covered by the 1976 Copyright Act " . . . no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State." The 1976 Copyright Act, Pub. L. 94-553, 90 Stat. 2572, 17 U.S.C. § 101, et seq., resulted after decades of effort to modernize copyright law. Even so, it leaves open some questions on computer technology, apparently for future federal legislation, by the following section:

> Sec. 117. Scope of exclusive rights: Use in conjunction with computers and similar information systems.
>
> Notwithstanding the provisions of sections 106 through 116 and 118, this title does not

> afford to the owner of copyright in a work any greater or lesser rights with respect to the use of the work in conjunction with automatic systems capable of storing, processing, retrieving, or transferring information, or in conjunction with any similar device, machine, or process, than those afforded to works under the law, whether title 17 or the common law or statutes of a State, in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title.

Reed C. Lawlor, a California patent attorney, summarizes the "prevailing views under the old 1909 law and under the new 1976 law" ("CONTU" in the following quotation means the Commission on New Technological Use of Copyrighted Works, a presidential commission):

> 1. It is generally agreed that computer programs are copyrightable under the old law, at least in written or printed form. There is hardly any question that this is also the case under the new law.
>
> 2. There are some who argue that when a program is in a machine-readable form it is not protected under the old copyright law. But under the new law programs in machine-readable form are protected, if such protection is constitutional.
>
> 3. There is a general belief that copying of a computer program that is in machine-readable form does not constitute copyright infringement under the old law. But it is generally agreed that, except for a constitutional question, making a machine-readable copy of a machine-readable program constitutes copyright infringement under the new law. This should also apply to loading program into a computer memory. At one point CONTU seems to interpret the law to mean that copying of a program into computer memory is a 'use' under present Section 117 (CONTU Report page 30). But it also makes a strong statement to the contrary. (CONTU Report page 31)
>
> 4. There is little question that a proprietor of a computer program had a common law right to treat the program as a trade secret under the old law and to license or lease the program as a trade secret and to receive payment in terms of the execution time of the program, as well as on a weekly or monthly basis, or possibly in other ways.

> 5. But under Section 117, the protection remains almost the same as under the old law as far as program execution is concerned, whatever that is.

Lawlor, "A Proposal for Strong Protection of Computer Programs Under the Copyright Law," Jurimetrics Journal, Fall 1979, at 18-29.

Lawlor, in his article, outlines proposals for revision and extension of the 1976 Copyright Act made by CONTU, the commission appointed by President Ford in 1975 that worked for three years on the subject. Lawlor also outlines his own different proposals. At the heart of the issue is the traditional common law limitation on copyright--the concept that ideas are in the public domain, free for use by anyone. It is only the way in which they are expressed that may be protected by copyright.

It is on the national level that these issues over technological property must be worked through, and the influence of Alaskans should be expressed through the routes available in the federal system.

There is little in existing Alaska law on intellectual property, except as noted in the following section on computer crime. Perhaps the single exception is AS 45.50.330--45.50.430 on protection of copyrighted musical compositions. (Appendix M) It is old law carried over from ACLA 1949. We have been unable to determine whether there have been prosecutions under the anti-monopoly provision of the law, or what the level of compliance is with the filing requirements of the law, but we find there are some current filings under it.

IV. COMPUTER CRIME.

"A computer crime is defined as any illegal act for which knowledge of computer technology is essential for its perpetration, investigation, or prosecution (U.S. Department of Justice, 1979). Computer crime can be divided into two main

categories. In the first category, the computer is a tool of a crime, such as fraud, embezzlement, and theft of property; or it can be used to plan or manage a crime. In such crimes, the criminal offense is clear: The perpetrator is directly gaining money or property for himself or another and uses the computer in the act. In the second category, the computer is the object of a crime, such as sabotage, theft or alteration of computerized data, and theft of computer services. In the latter category, data represent money directly, for instance in Electronic Fund Transfer Systems, or indirectly in the costs of replacing erased or altered data or the costs represented by the loss if data are disclosed or used without authorization. Thus, underlying the definition of computer crime is the concept that data represent money." (Extract from Appendix Q)

A growing number of states have concluded that special computer crime legislation in one form or another is needed (see Lautsch report, Appendix A). Some have adopted legislation patterned after the model proposed by the National Association for State Information Systems (NASIS). Its "Guidelines for Development of Computer Crime Legislation", a 1979 publication with sample bill attached is Appendix N. The Alaska bill in the Twelfth Legislature, HB 419 (Appendix O), is a somewhat over-simplified version of that model bill. (The NASIS model was also included in 1981 Suggested State Legislation of the Council of State Governments.)

Attached as Appendix P are computer crime statutes of the states that have enacted statutes in the category.

Although no one denies there is computer crime, its relative incidence is disputed. Director of the National Computer Crime Data Center Jay Becker, one of the authorities in the field, asserts that

> Non-reporting represents a serious problem in the area of computer crime--far more than is even the case with white-collar

> crime in general. IBM and the U.S. Chamber of Commerce estimate that no more than 15% of all computer crime is reported. Several reasons appear to lie at the base of this non-reporting. A primary one is the fear on the part of businesses that admitting their computer's fallibility will have a severe effect on their customers' confidence in the business operations. Additionally, businesses may well assume that local law enforcement agencies do not have the expertise to deal with computer crimes. The third possible factor is the absence of the usual 'old boy' networks through which company security personnel might become familiar with local law enforcement officers who are interested and experienced in investigating computer crime cases.

A good overview of the problems to be met by enacting computer crime statutes--as well as some analysis of existing state laws--is a paper prepared for an International Commercial Crime Conference, October 1981, by Donn Parker of SRI International, Appendix Q. It is a guide to the kinds of computer abuses that criminal laws seek to control.

Bringing a local focus to these problems, Carl Krefting, Deputy Director of the Division of Data Processing in the Alaska Department of Administration, has put together scenarios--computer abuses that can occur, and in some instances have occurred, in use of the state's computers (Appendix R).

Any number of articles in the popular press have covered certain spectacular computer crimes and attempted computer crimes. A sample from Business Week, April 20, 1981, pp. 81-92 is enclosed as Appendix S. It includes discussion of such popular subjects as the $21.3 million embezzlement by computer from Wells Fargo Bank. But for the purpose of our study, the following in its discussion of encryption (scrambling) is more striking:

> Some vendors have had more luck selling encryption to security-minded oil companies, possibly becuase the only known tap on a data line involved information on oil lease bids that was stolen during transmission from an oil company's computer in Texas to its terminal in Alaska. The victimized company, which private investigators refuse to identify, became suspicious when it

was narrowly outbid at many lease sales. It commenced an investigation that turned up a wiretap a few miles down the road from its Alaska terminal.

Television, too, has had its share of spectaculars about computer crime. One is a well done NOVA program on PBS, a transcript of which is retained and available upon request of the code revision office.

The amount of material available on computer crime makes selection difficult. However, if one is seeking a single guide a 1979 Criminal Justice Resource Manual on Computer Crime, published by the Bureau of Justice Statistics, U.S. Department of Justice, is a suitable single source. The "Executive Summary and Guide" and table of contents of its 400 pages are attached as Appendix T. The volume is retained for use through the code revision office, Juneau, and additional copies are readily available.

Near the start of this report we mention the "Nelson Bill", HR 1092 in the 98th Congress, a bill that would create a "Federal Computer Systems Protection Act of 1983". The bill and the materials used by Representative Nelson of Florida in explaining the purpose of the bill are Appendix U. In a hearing on HR 3970, an earlier version of the bill, in September 1982, there was only luke warm support for it. At that hearing, Representative Nelson asserted that studies dealing with the need for federal legislation on computer crime are requested of the Library of Congress and the Office of Technology Assessment. We have asked for copies of the studies when they are available, and we will be mailed a copy of the hearing transcript when it is printed. When received, these things will be retained and available in the code revision commission office as a part of this study.

Generally Alaska's criminal laws relating to information do not deal with information in computers as a separate

species. The crime of tampering with public records (AS 11.56.-820, Appendix V) is general without special reference to computers. As noted later in this report, any state records are confidential. However, computer storage of and access to these records has not brought about special statutes. The misuse of public records is a general crime (AS 11.56.860, also in Appendix V) and misuse of confidential records is also made a crime in the various statutes relating to specific confidential records. But computerized records are not separately covered, with the exceptions noted below.

Although it is mentioned in the section on privacy earlier in this report, we refer again to the Alaska Justice Information System (AJIS) and note that it establishes both civil and criminal penalties for breaching the privacy provisions of AS 12.62. (Reference Appendix E, especially AS 12.62.010)

Existing Alaska criminal law especially directed toward computers includes AS 11.46.985:

> Sec. 11.46.985. DECEIVING A MACHINE. In a prosecution under this chapter for an offense that requires 'deception' as an element it is not a defense that the defendant deceived or attempted to deceive a machine. For purposes of this section, 'machine' includes a vending machine, computer, turnstile, or automated teller machine.

A part of the general criminal code revision that took effect in 1980, it is unique among state laws. Its effectiveness has not been tested.

Perhaps more significant is an amended definition of intangible property in ch. 143, SLA 1982. As revised the definition that applies throughout the criminal code, AS 11, is:

> Sec. 11.81.900(b)(44) 'property' means an article, substance, or thing of value, including money, tangible and intangible personal property <u>including data or information stored in a computer program, system, or network</u>, real property, a credit card, a <u>domestic pet or livestock regardless of value,</u>

> choses-in-action, and evidence of debt or of contract; [,] a commodity of a public utility such as gas, electricity, steam, or water constitutes property but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment is considered a rendition of a service rather than a sale or delivery of property; (The 1982 insertions and deletions are shown.)

Although the amendment seems no more than a clarification of existing law, its effect is to evoke possible prosecutions of computer-related property crimes that might not have been successfully prosecuted under the former definition.

A printout of the many criminal statutes that are affected by this amendment to the definition of "property" is retained in the code revision commission office, and it may be readily duplicated on the legislature's computer and provided to a user of this report. For a ready concept of the pervasiveness of property crimes that can be "computer crimes" by virtue of AS 11.81.900(b)(44), following are the titles of the code sections affected by the revised definition:

Sec. 11.41.510.	ROBBERY IN THE SECOND DEGREE.
Sec. 11.41.520.	EXTORTION.
Sec. 11.41.530.	COERCION.
Sec. 11.46.100.	THEFT DEFINED.
Sec. 11.46.110.	CONSOLIDATION OF THEFT OFFENSES: PLEADING AND PROOF.
Sec. 11.46.120.	THEFT IN THE FIRST DEGREE.
Sec. 11.46.130.	THEFT IN THE SECOND DEGREE.
Sec. 11.46.140.	THEFT IN THE THIRD DEGREE.
Sec. 11.46.150.	THEFT IN THE FOURTH DEGREE.
Sec. 11.46.160.	THEFT OF LOST OR MISLAID PROPERTY.
Sec. 11.46.180.	THEFT BY DECEPTION.
Sec. 11.46.190.	THEFT BY RECEIVING.
Sec. 11.46.200.	THEFT OF SERVICES.
Sec. 11.46.210.	THEFT BY FAILURE TO MAKE REQUIRED DISPOSITION OF FUNDS RECEIVED OR HELD.
Sec. 11.46.220.	CONCEALMENT OF MERCHANDISE.
Sec. 11.46.230.	REASONABLE DETENTION AS DEFENSE.
Sec. 11.46.260.	REMOVAL OF IDENTIFICATION MARKS.
Sec. 11.46.270.	UNLAWFUL POSSESSION.
Sec. 11.46.280.	ISSUING A BAD CHECK.
Sec. 11.46.285.	FRAUDULENT USE OF A CREDIT CARD.
Sec. 11.46.290.	OBTAINING A CREDIT CARD BY FRAUDULENT MEANS.
Sec. 11.46.300.	BURGLARY IN THE FIRST DEGREE.
Sec. 11.46.310.	BURGLARY IN THE SECOND DEGREE.

Sec. 11.46.320.	CRIMINAL TRESPASS IN THE FIRST DEGREE.
Sec. 11.46.330.	CRIMINAL TRESPASS IN THE SECOND DEGREE.
Sec. 11.46.340.	DEFENSE: EMERGENCY USE OF PREMISES.
Sec. 11.46.400.	ARSON IN THE FIRST DEGREE.
Sec. 11.46.410.	ARSON IN THE SECOND DEGREE.
Sec. 11.46.430.	CRIMINALLY NEGLIGENT BURNING.
Sec. 11.46.450.	FAILURE TO CONTROL OR REPORT A DANGEROUS FIRE.
Sec. 11.46.480.	CRIMINAL MISCHIEF IN THE FIRST DEGREE.
Sec. 11.46.481.	CRIMINAL MISCHIEF IN THE SECOND DEGREE.
Sec. 11.46.482.	CRIMINAL MISCHIEF IN THE SECOND DEGREE.
Sec. 11.46.484.	CRIMINAL MISCHIEF IN THE THIRD DEGREE.
Sec. 11.46.486.	CRIMINAL MISCHIEF IN THE FOURTH DEGREE.
Sec. 11.46.488.	LITTERING.
Sec. 11.46.500.	FORGERY IN THE FIRST DEGREE.
Sec. 11.46.505.	FORGERY IN THE SECOND DEGREE.
Sec. 11.46.510.	FORGERY IN THE THIRD DEGREE.
Sec. 11.46.520.	CRIMINAL POSSESSION OF A FORGERY DEVICE.
Sec. 11.46.530.	CRIMINAL STIMULATION.
Sec. 11.46.540.	OBTAINING A SIGNATURE BY DECEPTION.
Sec. 11.46.550.	OFFERING A FALSE INSTRUMENT FOR RECORDING.
Sec. 11.46.570.	CRIMINAL IMPERSONATION.
Sec. 11.46.600.	SCHEME TO DEFRAUD.
Sec. 11.46.620.	MISAPPLICATION OF PROPERTY.
Sec. 11.46.630.	FALSIFYING BUSINESS RECORDS.
Sec. 11.46.660.	COMMERCIAL BRIBE RECEIVING.
Sec. 11.46.670.	COMMERCIAL BRIBERY.
Sec. 11.46.710.	DECEPTIVE BUSINESS PRACTICES.
Sec. 11.46.720.	MISREPRESENTATION OF USE OF A PROPELLED VEHICLE.
Sec. 11.46.730.	DEFRAUDING CREDITORS.
Sec. 11.46.980.	DETERMINATION OF VALUE; AGGREGATION OF AMOUNTS.
Sec. 11.46.985.	DECEIVING A MACHINE.
Sec. 11.46.990.	DEFINITIONS.
Sec. 11.56.510.	INTERFERENCE WITH OFFICIAL PROCEEDING.
Sec. 11.56.800.	MAKING A FALSE REPORT.
Sec. 11.61.100.	RIOT.
Sec. 11.61.210.	MISCONDUCT INVOLVING WEAPONS IN THE SECOND DEGREE.
Sec. 11.66.130.	PROMOTING PROSTITUTION IN THE THIRD DEGREE.
Sec. 11.66.270.	FORFEITURE.
Sec. 11.66.280.	DEFINITIONS.
Sec. 11.81.250.	CLASSIFICATION OF OFFENSES.
Sec. 11.81.350.	JUSTIFICATION: USE OF FORCE IN DEFENSE OF PROPERTY AND PREMISES.
Sec. 11.81.615.	OFFENSES DEFINED BY AGE OR VALUE.

Against these two Alaska criminal statutes--AS 11.46.-985 and AS 11.81.900(b)(44)--and their effect upon other Alaska criminal statutes one can juxtapose the nearest thing to a "model" law on computer crime. It is contained in a 1979 report of the Standing Committee on Security, Privacy and Confidentiality of the National Association for State Information Systems. The re-

port, called "Guidelines for Development of Computer Crime Legislation" has been referred to earlier in this section and is Appendix N.

This sample law, modeled after the Florida Computer Crimes Act, Fla. Stat. Ann., §§ 815.01--815.07 (West Supp.), is a suitable prototype for Alaska, assuming, after a study of the foregoing report, a finding by the legislature that there is a need in Alaska for legislation making crimes of

(1) misconduct involving the intellectual property that is in a computer (like confidential or secret information) or used with a computer (like a program),

(2) misconduct involving computer equipment or supplies (damaging, sealing, modifying it),

(3) misconduct involving computer usage.

The model (NASIS) act makes separate crimes of misconduct in these three areas.

It is the tentative view of the code revision commission that a statute like the NASIS sample is desirable to fill gaps in Alaska's criminal law. However, this report has not yet been circulated. We believe the report will best serve a useful purpose if it leaves questions open until more persons actively involved in the subject areas of the report have been heard from.

Should the legislature so direct, the code revision commission can circulate the report for review and written comment during the interim between sessions and provide what is received to an appropriate committee of the legislature as it convenes in 1984.

It is likely, too, that more helpful material on computer crime will become available during the interim. Due late in the summer or in early fall is a report being prepared by Jay BloomBecker, Director of the National Center for Computer Crime Data, for the U.S. Senate Judiciary Committee. It will

list the experience of the various states with their computer crime statutes, and should be relevant to Alaska's legislative decision-making. The studies being done for the U.S. House Judiciary Committee, earlier referred to, may also be completed before the second session of our Thirteenth Legislature. Legislatures, state and national, are feeling their way. As more evidence comes in, we will provide it.

Introduced: 1/18/83
Referred: State Affairs and Judiciary

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

IN THE SENATE

SENATE BILL NO. 59

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

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

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

(1) during working hours;

(2) with the contribution of the state beyond what is available to the public in general in the form of facilities, equipment, 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

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

(A) produce or improve an intellectual work product;

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

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

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

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

(1) fully and promptly disclose the intellectual work product to the Alaska Council on Science and Technology (AS 44.21.-241); (or supervisor),

(2) assign to the state the ~~entire~~ right, title, and interest in and to the intellectual work product if not already waived by signing of a general waiver upon commencement of employment in accordance with AS 39.05.160 or as part of a contract for services; and

(3) upon request by the council, execute and reasonably assist in the prosecution of an application for a trademark, copyright, or patent.

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

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

(2) waive all right, title, and interest in and to a trademark, copyright, or patent but reserve a nonexclusive, irrevocable,

royalty-free license in the intellectual work product with power to grant licenses for all governmental purposes.

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

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

Sec. 39.52.030. ARBITRATION OF DISAGREEMENTS. (a) Disagreements between a public officer or employee or a person under contract with the state and the council pertaining to ownership of an intellectual work product or obligations of the respective parties shall be disposed of by

(1) voluntary arbitration of all relevant issues, if the disagreeing parties agree to be bound by the decision upon arbitration;

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

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

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

(c) If arbitration is used to settle disagreements, the provisions of AS 09.43 (Uniform Arbitration Act) shall govern.

Sec. 39.52.040. EXCEPTIONS. The provisions of this chapter do