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FISCAL NOTE

I. REQUEST

Bill/Resolution No. proposed (Dept. of Law File #J-77-046-82  
 Title "An Act relating to confidentiality of trade secrets supplied to DEC."  
 Requested by the Dept. of Environmental Conservation Date 1/6/82

II. FISCAL DETAIL

Agency Affected there is potential for all State agencies to be affected  
 Program Category Affected see above  
 BRU, Program, Or Subprogram(s) Affected see above  
 (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	-0-	-0-	-0-			
200 TRAVEL	-0-	-0-	-0-			
300 CONTRACTUAL	-0-	-0-	-0-			
400 COMMODITIES	-0-	-0-	-0-			
500 EQUIPMENT	-0-	-0-	-0-			
600 LAND & STRUCTURES	-0-	-0-	-0-			
700 GRANTS, CLAIMS, ETC.	-0-	-0-	-0-			
TOTAL	-0-	-0-	-0-			

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	-0-	-0-	-0-			
FEDERAL FUNDS	-0-	-0-	-0-			
OTHER (Specify Source)	-0-	-0-	-0-			

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	-0-	-0-	-0-			
PART TIME	-0-	-0-	-0-			
TEMPORARY	-0-	-0-	-0-			

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

IV. DATE January 5, 1982 PREPARED BY Lynn H. Suksdorf  
 AGENCY Dept. Environmental Conservation  
 Original: Legislative Finance PHONE 465-2640  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

## COMMENTS ON SENATE BILL 652

"An Act relating to confidentiality of trade secrets supplied to the Department of Environmental Conservation"

Senate Bill 652 would allow DEC to maintain confidential certain types of information supplied to us. It would apply to all DEC programs. The Department currently has confidentiality clauses for our air, hazardous waste, radiation, and oil pollution control programs.

However, our wastewater disposal statute requires that we send permit applications to other agencies, and our own regulations provide that "all Department records are available to the public unless they are exempt by law."

Why is this bill needed?

The basic purpose of this statute is to allow the Department to keep confidential from potential competitors information we need from permit applicants to assure that their operations will meet Alaska's environmental standards. This bill was drafted by the Department as a result of public hearings throughout the state last June, regarding the possible development of a petrochemical industry in Alaska.

If you recall, the Department's report concluded that certain types of petrochemical development could be carried out in Alaska without major adverse environmental effects, if available methods of pollution control were employed. It was emphasized that the Department would require information on processes and wastes to determine if state standards could be met. Such information in the chemical industry could be of value to competitors. Mr. Arch Cook, a Dow engineer supervising the construction of Alberta Gas Ethylene's polyethylene plant in Red Deer, Alberta, told me that the catalyst to be used there is a company secret and a definite competitive advantage.

If spent catalyst is proposed for disposal under our current hazardous waste statute, we can keep that information confidential. If it somehow becomes involved in a wastewater disposal, we cannot.

This issue is not limited to the petrochemical industry. The Department has been, for several months, working with a corporation regarding the future development of a mining property within Alaska. This corporation wishes to prevent future air and water pollution from the operation and has involved us in their work. They have a considerable amount of information developed at great cost. If copies of their reports are provided to

us, they could be the subject of a public information request to us from other leaseholders in the area. To avoid duplicating their work in our environmental quality monitoring program, we have requested and have received from them a summary of what they have done, and they have discussed its significance with us. This process would be easier, however, if we had an overall ability to protect genuine proprietary information.

Another case recently occurred on the Kenai Peninsula where a septage pumper asked us not to release the engineering design for a disposal facility he was proposing.

The state technical team which worked on the petrochemical project frequently encountered a need for information which may be proprietary. Information was needed on processes and by-products to determine the needs for safety precautions, spill prevention and cleanup, treatment requirements, and overall environmental impact.

This Department has no interest in keeping pollutant emission levels confidential. The components of waste streams being released to the state's lands, air or water will be provided to the public. Our air statute is worded to specifically exclude emission data from confidentiality provisions. But such public disclosure need not require provision of detailed process flow charts or engineering designs.

We would have no objection to providing information to another agency, if that agency could maintain its confidentiality. It may be appropriate to amend such a provision into the bill. We encourage your enactment of Senate Bill 652.

By Glenn Akins, Deputy Commissioner  
Department of Environmental Conservation

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K--STATE CAPITOL  
JUNEAU, ALASKA 99811

April 2, 1982

Senator Vic Fischer, Chairman  
Senate Affairs Committee  
Alaska State Senate  
Pouch V  
Juneau, AK 99811

Re: Proposed changes to SB 652 (Confidentiality  
of trade secrets)

Dear Senator Fischer:

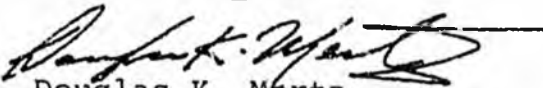
At the committee hearing on SB 652, you asked me to draft suggested changes to the bill to take care of two problems in the current version. Enclosed is a redraft which deals with two areas: 1) it clears up the definition of what type of information is entitled to confidentiality, by substituting language which is used in the caselaw to define "trade secrets"; and 2) it provides a procedure for allowing the department to dispute a designation of information as a trade secret.

In the draft, the new material is underlined and deleted material is bracketed.

Let me know if there is anything more I can do.

Sincerely,

WILSON L. CONDON  
ATTORNEY GENERAL

By:   
Douglas K. Mertz  
Assistant Attorney General

DKM/jb

Enclosure

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 11, 1982

The Honorable Jalmar Kerttula  
President of the Senate  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

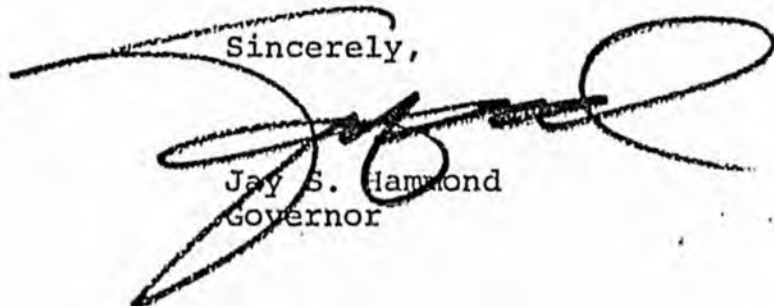
Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to preservation of the confidentiality of trade secrets and other proprietary information submitted to the Department of Environmental Conservation. The bill improves access by the department to confidential information by assuring the person supplying the information that confidentiality would be preserved. This is especially important to effectively regulate air and water quality and solid waste discharges.

The bill is very similar to the provisions of SB 90 and HB 7 which are currently in the Senate Rules and House Judiciary committees, respectively. The provisions of AS 46.03-.865(a), (b), (c) and (e) in sec. 1 of the bill are nearly identical to the provisions of AS 40.25.015(e)(11), (f), (g), and (h), respectively, which would be enacted by SB 90.

The primary differences between this bill and SB 90 are that this bill (1) deals only with trade secret information submitted to the Department of Environmental Conservation; (2) includes trade secrets voluntarily submitted to the department; (3) requires a written request of confidentiality; (4) allows release of the confidential information sooner than 20 years after submittal, upon authorization of the person supplying the information; and (5) requires the department to provide a general description of all information which it is keeping confidential.

Sincerely,



Jay S. Hammond  
Governor

IV. DATE January 5, 1982

PREPARED BY Lynn H. Suksdorf

AGENCY Dept. Environmental Conservation

Original: Legislative Finance

PHONE 465-2640

cc: Budget and Management

(Direct Legislator Named)

Introduced: 1/12/82  
Referred: State Affairs and  
Labor & Commerce

1 IN THE SENATE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 652

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to confidentiality of trade secrets  
7 supplied to the Department of Environmental Conserva-  
8 tion."

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

10 \* Section 1. AS 46.03 is amended by adding a new section to read:

11 Sec. 46.03.865. CONFIDENTIAL INFORMATION. (a) The department  
12 shall, upon written request of the person supplying the information,  
13 preserve the confidentiality of trade secrets, privileged information,  
14 and confidential, commercial, financial, or engineering information  
15 furnished voluntarily or in compliance with a statute or regulation.

16 (b) Information kept confidential by the department under (a) of  
17 this section becomes public 20 years after submittal unless the person  
18 who supplied the information authorizes earlier release in writing.

19 (c) Information kept confidential by the department under (a) of  
20 this section may be released for valid statistical or other information  
21 gathering purposes if

22 (1) information which would tend to identify the person to  
23 whom the record pertains is deleted; and

24 (2) disclosure is made in a manner which would not compromise  
25 or defeat the purposes of a statute designed to maintain the confiden-  
26 tiality of the information.

27 (d) A general description of information kept confidential by the  
28 department under (a) of this section must be available to the public  
29 upon request.

1 (e) Nothing in this section prohibits the release or production of  
2 subpoenaed records or information to a court or state or municipal  
3 agency.  
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