

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9218 HOUSE JUDICIARY

**HB**

**444**

House District 36

Alatna  
 Alcan  
 Allakaket  
 Aniak  
 Anvik  
 Arctic Village  
 Beaver  
 Bettles  
 Birch Creek  
 Canyon Village  
 Central  
 Chalkyitsik  
 Chicken  
 Chistochina  
 Chitina  
 Chuathbaluk  
 Circle  
 Circle Hot Springs  
 Coldfoot  
 Copper Center  
 Copperville  
 Crooked Creek  
 Dot Lake  
 Dry Creek  
 Eagle  
 Eagle Village  
 Evansville  
 Fort Yukon  
 Gakona  
 Galena  
 Grayling  
 Gulkana  
 Healy Lake  
 Holy Cross  
 Hughes  
 Huslia  
 Kaltag  
 Koyukuk  
 Lime Village  
 Livengood  
 Lake Minchumina  
 Lower Kalskag  
 Manley  
 Marshall  
 McCarthy  
 McGrath  
 Medfra  
 Mentasta  
 Minto  
 Nabesna  
 Nenana  
 Nikolai  
 Northway  
 Nulato  
 Pilot Station  
 Rampart  
 Red Devil  
 Ruby  
 Russian Mission  
 Shageluk  
 Slana  
 Sleetmute  
 Stevens Village  
 Stony River  
 Takotna  
 Tanacross  
 Tanana  
 Telida  
 Tetlin  
 Tok  
 Tuloksak  
 Tyonek  
 Upper Kalskag  
 Venetie  
 Wiseman

## Representative Irene K. Nicholia

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Resources  
 Rules  
 Military and Veterans Affairs  
 World Trade and State/Federal Relations

### SPONSOR STATEMENT

#### House Bill 444

*In my home village of Tanana lives a man who was named as the father of a child. He always denied being the father of this child, and ultimately genetic tests proved that what he said was true. But he did not respond to the accusations made against him by the State of Alaska, and he could not afford a lawyer to help him. Finally an attorney agreed to represent him and this man went before a judge. The judge listened to all the evidence, and agreed that he was not the father, and disestablished paternity. Initially, the judge also extinguished all the past debt that had accrued--the child support for this child that is not his. But then the judge changed her mind and reinstated the debt--more than \$100,000. So here is my constituent, a married man with two children of his own, who is being forced to pay this huge debt for a child that everyone agrees is not his.*

HB 444 attempts to address one of the problems that can lead to the kind of injustice described above. Current law lacks flexibility in dealing with previously incurred debt, in part because the federal government has taken the stance that retroactively modifying a child support debt violates their rules. That is a point for our Congressional delegation to handle. But we need to clarify that in Alaska, a person who has been proven not to be the father and who has always denied parentage should not be strapped with debt.

- This bill adds a new section to Title 25 that requires the court to vacate a paternity decision if genetic tests prove that a man could not be the father of a child, and to extinguish arrearages against him for child support and public assistance.
- HB 444 allows a person to petition to disestablish paternity at any time, so that people not wealthy or sophisticated enough to work through the State's rules and procedures don't end up like my constituent--paying for a child that was never his.
- The bill requires the state to pay back any money collected for public assistance debt.

We all agree that parents should pay for the care of their children. But I think that none of us wishes to see a person unfairly shouldering another person's obligations. My constituent's children are going without because he is being forced to pay for the support of another man's child. I encourage your support for this measure.

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Chitina  
Chuathbaluk  
Circle  
Circle Hot Springs  
Coldfoot  
Copper Center  
Copperville  
Crooked Creek  
Dot Lake  
Dry Creek  
Eagle  
Eagle Village  
Evansville  
Fort Yukon  
Gakona  
Galena  
Grayling  
Gulkana  
Healy Lake  
Holy Cross  
Hughes  
Huslia  
Kaltag  
Koyukuk  
Lime Village  
Livengood  
Lake Minchumina  
Lower Kalskag  
Manley  
Marshall  
McCarthy  
McGrath  
Medfra  
Mentasta  
Minto  
Nabesna  
Nenana  
Nikolai  
Northway  
Nulato  
Pilot Station  
Rampart  
Red Devil  
Ruby  
Russian Mission  
Shageluk  
Slana  
Sleetmute  
Stevens Village  
Stony River  
Takatna  
Tanacross  
Tannan  
Telida  
Tetlin  
Tok  
Tuluksak  
Tyonek  
Upper Kalskag  
Venetie  
Wiseman

## Representative Irene K. Nicholia

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*Resources*  
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### Sectional Analysis House Bill 444

#### Section 1

Adds a new section requiring a court to vacate a judgment of paternity if a genetic test proves that a man was not the father of a child, as long as the previous determination was not based on a genetic test that was accepted as accurate at the time and the man in question never acknowledged paternity or admitted to be the father of the child in question. A person may bring an action to vacate a court determination of paternity at any time, but only once per child.

If a paternity determination is vacated under this section, then the man's child support obligation or liability for public assistance that the mother had collected are extinguished.

#### Section 2

Allows a person to petition the Division of Child Support Enforcement to disestablish paternity at any time (currently this must be done within three years "after the petitioner knew or should have known of the father's putative paternity of the child").

#### Section 3

Requires that if paternity is disestablished, then the state must repay to the petitioner any payments made to the state for the mother's public assistance.

#### Section 4

Because section 1 has the effect of amending a court rule (Rule 60 regarding providing another basis for relief from a judgment or order), it requires a 2/3 majority vote of each house.

#### Section 5

Although sections 1 and 3 have the effect of amending a court rule (Rule 90.3(h) by allowing retroactive modification of child support under circumstances involving disestablishment or vacation of paternity decisions), the rule affected is an interpretive rule and thus requires only a simple majority vote of each house of the legislature.

**HB**

**451**

(7)  
Date Referred to Committee: February 18, 1998 FURTHER REFERRALS: Judiciary

Date of Committee Action: 4/3/98

The LABOR AND COMMERCE Committee considered: HB 451

HOUSE BILL NO. 451 ASSISTIVE TECHNOLOGY & MOBILITY AIDS

"An Act relating to assistive technology devices and mobility aids for physically disabled persons."

recommends it be replaced with the following committee substitute CS HB 451(L+C)  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_  
 fiscal note(s) \_\_\_\_\_  fiscal note(s) \_\_\_\_\_

zero fiscal note(s) LAW  zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>John J. Condeery</i>	✓			
<i>David Brier</i>	✓			
<i>Steve Kuchera</i>	✓			
<i>Joe Ryan</i>	✓			
<i>Steve Kelly</i>	✓			

CHAIR'S SIGNATURE *Steve Kelly* 4-3-98

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. HB 451 | \_\_\_\_\_

Revision Date (Note if correction) _____	Dept. Affected _____	Law _____
Title <u>An Act relating to assistive technology devices</u>	BRU _____	Civil Division _____
<u>and mobility aids for physically disabled persons.</u>	Component _____	Fair Business Practices _____
Sponsor <u>Representative Green</u>	_____	
Requester <u>House Labor and Commerce</u>	Component Serial No _____	<u>2206</u>

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY98) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

HB 451 adds a new Article to Title 45, Chapter 45 (Trade Practices) relating to warranties for assistive technology devices and mobility aids. The bill requires assistive technology devices and mobility aids be covered by an express warranty stating that the device or aid is free from any condition or defect that substantially impairs the use, value, or safety of the device or aid. The new Article further delineates the terms of repair and or refunds when the device or aid does not conform to the warranty.

This bill will have no fiscal impact on the Department of Law.

Prepared by Jean M. Kasson *Jean M. Kasson*  
 Division Attorney General's Office  
 Approved by Commissioner Bruce M. Botelho, Attorney General  
 Agency Department of Law

Phone 465-5370  
 Date 2/10/98  
 Date 2/10/98

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CS FOR HOUSE BILL NO. 451(L&C)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES GREEN, Davies, Berkowitz

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to assistive technology devices and mobility aids for physically  
2 disabled persons."

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

4 \* Section 1. AS 45.45 is amended by adding new sections to read:

5 **Article 8A. Warranties For Assistive Technology Devices and Mobility Aids.**

6 **Sec. 45.45.600. Express warranty required.** A manufacturer who sells an  
7 assistive technology device or a mobility aid to a consumer, either directly or through  
8 a dealer, shall furnish the consumer with an express warranty stating that the assistive  
9 technology device or mobility aid is free from any nonconformity. The duration of the  
10 express warranty shall be not less than one year after first delivery of the assistive  
11 technology device or mobility aid to a consumer. If a manufacturer fails to furnish an  
12 express warranty as required by this section, the assistive technology device or  
13 mobility aid shall be covered by the express warranty as if the manufacturer had  
14 furnished an express warranty to the consumer as required by this section.

1           **Sec. 45.45.610. Repairs of nonconformities.** If a new assistive technology  
2 device or mobility aid does not conform to an applicable express warranty and the  
3 consumer reports the nonconformity to the manufacturer, the lessor, or any of the  
4 manufacturer's authorized dealers and makes the assistive technology device or  
5 mobility aid available for repair before one year after first delivery of the assistive  
6 technology device or mobility aid to a consumer, the nonconformity shall be repaired  
7 and the manufacturer shall pay collateral costs incurred by the consumer.

8           **Sec. 45.45.620. Returns of nonrepairable goods; refunds.** If, after a  
9 reasonable attempt to repair, the nonconformity reported under AS 45.45.610 is not  
10 repaired, the manufacturer shall

11           (1) at the direction of a consumer who has not leased the assistive  
12 technology device or the mobility aid from a dealer, do one of the following:

13                   (A) accept return of the assistive technology device or mobility  
14 aid and replace the assistive technology device or mobility aid with a  
15 comparable new assistive technology device or mobility aid and, within 30  
16 days, refund any collateral costs:

17                   (B) accept return of the assistive technology device or mobility  
18 aid and, within 30 days, refund to the consumer and to a holder of a perfected  
19 security interest in the consumer's assistive technology device or mobility aid,  
20 as their interest may appear, the full purchase price plus any finance charge,  
21 amount paid by the consumer at the point of sale, and collateral costs, less a  
22 reasonable allowance for use: a reasonable allowance for use may not exceed  
23 the amount obtained by multiplying the full purchase price of the assistive  
24 technology device or mobility aid by a fraction, the denominator of which is  
25 1,825 and the numerator of which is the number of days that the assistive  
26 technology device or mobility aid was used before the consumer first reported  
27 the nonconformity to the dealer:

28           (2) with respect to a consumer who has leased the assistive technology  
29 device or mobility aid from a dealer, accept return of the assistive technology device  
30 or mobility aid, refund to the lessor and to a holder of a perfected security interest in  
31 the assistive technology device or mobility aid, as their interest may appear, the current

1 value of the written lease, and refund to the consumer the amount that the consumer  
2 paid under the written lease plus any collateral costs, less a reasonable allowance for  
3 use: in this paragraph.

4 (A) the current value of the written lease equals the total  
5 amount for which that lease obligates the consumer during the period of the  
6 lease remaining after its early termination, plus the dealer's early termination  
7 costs and the value of the assistive technology device or mobility aid at the  
8 lease expiration date if the lease sets out that value, less the lessor's early  
9 termination savings:

10 (B) a reasonable allowance for use may not exceed the amount  
11 obtained by multiplying the total amount for which the written lease obligates  
12 the consumer by a fraction, the denominator of which is 1,825 and the  
13 numerator of which is the number of days that the consumer used the assistive  
14 technology device or mobility aid before first reporting the nonconformity to  
15 the manufacturer, lessor, or dealer.

16 **Sec. 45.45.630. Procedures for returns and refunds.** (a) To receive a  
17 comparable new assistive technology device or mobility aid or a refund under  
18 AS 45.45.620(1), a consumer shall offer to transfer possession of the assistive  
19 technology device or mobility aid having the nonconformity to its manufacturer. No  
20 later than 30 days after that offer, the manufacturer shall provide the consumer with  
21 the comparable new assistive technology device or mobility aid or with a refund.  
22 When the manufacturer provides the new assistive technology device or mobility aid  
23 or refund, the consumer shall return the assistive technology device or mobility aid  
24 having the nonconformity to the manufacturer, along with any endorsements necessary  
25 to transfer real possession to the manufacturer.

26 (b) To receive a refund under AS 45.45.620(2), a consumer shall offer to  
27 return the assistive technology device or mobility aid having the nonconformity to its  
28 manufacturer. No later than 30 days after that offer, the manufacturer shall provide  
29 the refund to the consumer. When the manufacturer provides the refund, the consumer  
30 shall return to the manufacturer the assistive technology device or mobility aid having  
31 the nonconformity.

1 (c) To receive a refund under AS 45.45.620(2), a lessor shall offer to transfer  
2 possession of the assistive technology device or mobility aid having the nonconformity  
3 to its manufacturer. No later than 30 days after that offer, the manufacturer shall  
4 provide the refund to the lessor. When the manufacturer provides the refund, the  
5 lessor shall provide to the manufacturer any endorsements necessary to transfer legal  
6 possession to the manufacturer.

7 **Sec. 45.45.640. Lease unenforceable after refund.** A person may not enforce  
8 the lease for an assistive technology device or a mobility aid against the consumer  
9 after the consumer receives a refund under AS 45.45.600 - 45.45.690.

10 **Sec. 45.45.650. Limits on sale or lease of returned equipment.** An assistive  
11 technology device or mobility aid returned by a consumer or a lessor in this state  
12 under AS 45.45.600 - 45.45.690, or by a consumer or lessor in another state under a  
13 similar law of that state, may not be sold or leased again in this state unless full  
14 disclosure of the reasons for return is made to any prospective buyer or lessee.

15 **Sec. 45.45.660. Rights may not be waived.** A waiver by a consumer of rights  
16 under AS 45.45.600 - 45.45.690 is void.

17 **Sec. 45.45.670. No limitation of other rights.** AS 45.45.600 - 45.45.690 do  
18 not limit rights or remedies available to a consumer under any other law.

19 **Sec. 45.45.680. Action for damages authorized.** In addition to pursuing  
20 another remedy, a consumer may bring an action to recover for damages caused by a  
21 violation of AS 45.45.600 - 45.45.690. The court shall award a consumer who prevails  
22 in an action under this section twice the amount of any pecuniary loss, together with  
23 costs, disbursements, and reasonable attorney fees, and any equitable relief that the  
24 court determines is appropriate.

25 **Sec. 45.45.690. Definitions.** In AS 45.45.600 - 45.45.690,

26 (1) "assistive technology device" means an item, piece of equipment,  
27 or product system, whether acquired commercially off the shelf, modified, or  
28 customized, that is used or designed to be used to increase, maintain, or improve a  
29 functional capability of an individual with disabilities; an assistive technology device  
30 system that, as a whole, is within the definition of "assistive technology device," is  
31 itself an assistive technology device, and in such case the term also applies to each

1 component product of the assistive technology device system that is itself ordinarily  
2 an assistive technology device; to the extent that a device otherwise meets the  
3 requirements of this paragraph, "assistive technology device" includes

4 (A) wheelchairs and scooters of any kind, and other aids that  
5 enhance the mobility or positioning of an individual, such as motorization,  
6 motorized positioning features, and the switches and controls for motorized  
7 features;

8 (B) hearing aids, telephone communication devices for the deaf,  
9 and other assistive listening devices;

10 (C) computer equipment and reading devices with voice output,  
11 optical scanners, talking software, braille printers, and other aids and devices  
12 that provide access to text;

13 (D) computer equipment with voice output, artificial larynges,  
14 voice amplification devices, and other alternative and augmentative  
15 communication devices;

16 (E) voice recognition computer equipment, software and  
17 hardware accommodations, switches, and other forms of alternative access to  
18 computers;

19 (F) environmental control units; and

20 (G) simple mechanical aids that enhance the functional  
21 capabilities of an individual with disabilities;

22 (2) "assistive technology device system" means the final product  
23 resulting from a manufacturer customizing, adapting, reconfiguring, refitting,  
24 refurbishing, or composing into a system one or more component products, whether  
25 or not new, that may be assistive technology devices or standard products of the same  
26 or other manufacturer;

27 (3) "collateral costs" means the following expenses incurred by a  
28 consumer:

29 (A) medical expenses for the treatment of a physical injury  
30 caused by a nonconformity in an assistive technology device or mobility aid;

31 (B) the cost to rent a substitute assistive technology device or

1 mobility aid during the time repairs are attempted for an assistive technology  
2 device or mobility aid that has a nonconformity and during the time preceding  
3 receipt of a replacement when repairs have been unsuccessful;

4 (C) the cost of shipping an assistive technology device or  
5 mobility aid that has a nonconformity to a manufacturer, lessor, or authorized  
6 dealer for repair or replacement; and

7 (D) the documented costs of long-distance telephone calls and  
8 facsimile transmissions used to contact the manufacturer, lessor, or authorized  
9 dealer for the purpose of effecting a repair or replacement of an assistive  
10 technology device or mobility aid that has a nonconformity;

11 (4) "consumer" means

12 (A) the purchaser of an assistive technology device or mobility  
13 aid, if the assistive technology device or mobility aid was purchased from a  
14 dealer or manufacturer for purposes other than resale;

15 (B) a person to whom the assistive technology device or  
16 mobility aid is transferred for purposes other than resale, if the transfer occurs  
17 before the expiration of an express warranty applicable to the assistive  
18 technology device or mobility aid;

19 (C) a person who may enforce the warranty; or

20 (D) a person who leases an assistive technology device or a  
21 mobility aid from a lessor under a written lease;

22 (5) "dealer" means a person who is in the business of selling assistive  
23 technology devices or mobility aids;

24 (6) "demonstrator" means an assistive technology device or a mobility  
25 aid used primarily for the purpose of demonstration to the public;

26 (7) "early termination cost" means any expense or obligation that a  
27 lessor incurs as a result of both the termination of a written lease before the  
28 termination date set out in that lease and the return of an assistive technology device  
29 or mobility aid to a manufacturer; "early termination cost" includes a penalty for  
30 prepayment under a finance arrangement;

31 (8) "early termination savings" means any expense or obligation that

1 a lessor avoids as a result of both the termination of a written lease before the  
 2 termination date set out in that lease and the return of an assistive technology device  
 3 or mobility aid to a manufacturer; "early termination savings" includes an interest  
 4 charge that the lessor would have paid to finance the assistive technology device or  
 5 mobility aid or, if the lessor does not finance the assistive technology device or  
 6 mobility aid, the difference between the total amount for which the lease obligates the  
 7 consumer during the period of the lease term remaining after the early termination and  
 8 the present value of that amount at the date of the early termination;

9 (9) "lessor" means a person who leases an assistive technology device  
 10 or mobility aid to a consumer, or who holds the lessor's rights, under a written lease;

11 (10) "manufacturer" means a person who manufactures or assembles  
 12 assistive technology devices or mobility aids and agents of that person, including an  
 13 importer, a distributor, factory branch, distributor branch, and any warrantors of the  
 14 manufacturer's assistive technology devices or mobility aids, but does not include a  
 15 dealer;

16 (11) "mobility aid" means equipment or a device, including a  
 17 demonstrator, designed to assist the mobility of a physically disabled person, that a  
 18 consumer purchases or accepts transfer of in this state; in this paragraph, "device"  
 19 includes

20 (A) a motorized or nonmotorized wheelchair;

21 (B) a scooter;

22 (C) an automotive crane;

23 (D) a van lift; and

24 (E) special hand controls for a motor vehicle;

25 (12) "nonconformity" means a condition or defect that substantially  
 26 impairs the use, value, or safety of an assistive technology device or mobility aid or  
 27 a component of the assistive technology device or mobility aid, but does not include  
 28 a condition or defect that is the result of abuse, neglect, or unauthorized modification  
 29 or alteration of the assistive technology device or mobility aid or a component of the  
 30 assistive technology device or mobility aid by a consumer;

31 (13) "reasonable attempt to repair" means either of the following

1 occurring within the term of an express warranty applicable to a new assistive  
2 technology device or mobility aid or within one year after first delivery of the assistive  
3 technology device or mobility aid to a consumer, whichever is sooner:

4 (A) the same nonconformity with the warranty is subject to  
5 repair by the manufacturer, lessor, or any of the manufacturer's authorized  
6 dealers at least four times and the nonconformity continues;

7 (B) the assistive technology device or mobility aid is out of  
8 service for an aggregate of at least 30 days because of warranty  
9 nonconformities.

10 \* Sec. 2. APPLICABILITY. This Act applies to sales and leases of assistive technology  
11 devices or mobility aids entered into on or after the effective date of this Act.

# Alaska State Legislature

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& ECONOMIC GROWTH  
ANCHORAGE, ALASKA

Representative Joe Green  
District 10

## Sponsor Statement

### HB 451 - Warranties for Assistive Technology and Mobility Aids

HB 451 establishes an express warranty for technology designed to assist physically disabled persons. Under the terms of the bill, if a consumer reports a nonconformity to a manufacturer within a year of delivery, the manufacturer must repair or replace the equipment, or offer a refund of the purchase price.

Assistive technology and mobility aids for the physically disabled are not covered by "lemon laws" and consumer protection statutes in title 45. The automobile lemon law in chapter 45 makes no mention of wheel chairs. Similarly, the Unfair Trade Practices and Consumer Protection Act, found in chapter 50, makes no mention of assistive equipment. Yet, 11 states have passed such laws, and others are considering doing so.

Non-working assistive equipment can be not only inconvenient, but dangerous. Many of us have experienced the frustration of dealing with a non-responsive salesperson far from Alaska; imagine doing so without the benefit of the equipment you depend upon to communicate, or get around. When people lose their mobility, or ability to communicate, they may not be aware of, or may not be able to remove themselves from, dangerous situations. Assistive technology allows the physically disabled to operate in a manner most of us take for granted.

I ask for your support in enacting a law that affords basic protection to a group of consumers who already face obstacles unimagined by most of us.

## **Sectional Description of CSHB 451 (L&C)**

### **Relating to warranties for assistive technology for physically disabled persons.**

By Representative Joe Green

**45.45.600. Express warranty required.** Manufacturers who sell assistive technology or mobility aids, directly, or through a dealer, must furnish an express warranty for the equipment they sell. The duration of the warranty cannot be for less than one year. If the manufacturer fails to provide the warranty, the equipment will be covered as if the manufacturer had provided it.

**45.45.610. Repairs of nonconformities.** If a consumer reports a nonconformity to the manufacturer within one year after first delivery, the nonconformity shall be repaired.

**45.45.620 Returns of nonrepairable goods; refunds.** If the consumer makes a reasonable attempt, but fails, to get the nonconformity repaired, the manufacturer shall

- A) accept return of the nonconforming equipment, and replace it with "comparable new" equipment, or
- B) refund the full purchase price, collateral costs, and any finance charge to the consumer, or the full lease amount to the lessor.

**45.45.630. Procedures for returns and refunds.** Requires consumers to "offer to transfer possession" of the nonconforming equipment to the manufacturer in order to get the "comparable new" equipment, or a refund. Within 30 days after the consumer makes the offer, the manufacturer must act.

**45.45.640. Leases unenforceable after refund.** If you lease assistive equipment, and it is returned for a refund, the lease cannot be enforced.

**45.45.650. Limits on sale or lease of returned mobility aids.** If assistive equipment is returned for nonconformity, it can't be leased or sold to another consumer without full disclosure of the reasons for the return.

**45.45.660. Rights may not be waived.** Consumers cannot waive the rights granted to them under this legislation.

**45.45.670. No limitation of other rights.** Nothing in this bill limits rights or remedies available to consumers under other laws.

**45.45.680. Action for damages authorized.** A consumer may bring a legal action to recover damages resulting from a violation of the provisions of the bill. The court shall award twice the amount of any pecuniary loss, together with costs, disbursements, and reasonable attorney fees, and any equitable relief that the court determines is appropriate to a consumer who prevails in an action.

**45.45.690. Definitions.**

The following information on Assistive Technology Lemon Laws is from RESNA's publication RESNA TAP Bulletin (May 1995), which is a monthly publication of the RESNA Technical Assistance Project.

## **ASSISTIVE TECHNOLOGY LEMON LAWS**

American consumers have long demanded warranties on large purchases such as automobiles and household appliances to protect themselves against the occasional dryer that no longer tumbles three weeks after purchased or the car that needs a new transmission one year after the purchase date. In other words, the proverbial "lemon." Individuals with disabilities are now demanding the same guarantees for purchases of assistive technology (AT).

Assistive technology for persons with disabilities is often an integral part of that person's ability to work, communicate, and live independently. Proper operation of equipment is critical to self-reliance. Yet, not all AT has a manufacturer's warranty. Some devices that carry a purchase tag of thousands of dollars carry only a 90-day or six-month warranty.

In many states, consumers of AT are standing up and speaking out, demanding replacement equipment, loaners while equipment is being fixed, free service on equipment and outright refunds! This issue of The TAP Bulletin examines assistive technology "lemon" or warranty legislation passed by states to date.

Twelve states have passed consumer protection legislation, commonly referred to as assistive technology "lemon laws." These states are: California, Georgia, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, New York, Pennsylvania, Washington, and Wisconsin. A few other states have similar legislation pending or are working on drafts for future introduction in their state legislatures.

Lemon laws typically demand a minimum one-year warranty on assistive equipment beginning on the date of delivery, not the purchase date. This is an important specification because some consumers wait weeks or months from the order date to the delivery date. While some state warranty laws cover all AT or AT over a specified dollar amount, most cover only motorized wheelchairs (see state-specific data chart).

Louisiana's "lemon law" is considered by many legal experts to be the nation's model AT lemon law because it contains the broadest coverage. The law applies to all assistive devices, without limits. To qualify as a lemon the product must have either broken two times for the same reason within the first year, or have been out-of-service 30 days for any reason within the first year. These provisions within Louisiana's AT lemon law give consumers of AT in Louisiana broader protection than in any other state in the country.

In contrast, New York's lemon law provides narrower coverage. To qualify as a lemon, the product must have been repaired four times for the same reason and been out-of-service 30 days within the first year, or have been out-of-service for 60 days for the same reason within the first year. New York's Technology Related Assistance for Individual's with Disabilities (TRAID) Project plans to undertake a review of the impact of their state's lemon law later this year (see page 2 for more on NY's law).

## **LOUISIANA**

Due to efforts of the Louisiana Assistive Technology Access Network (LATAN), an equipment lemon law was passed, House Bill No. 1956, which provides warranties for new assistive devices, time limits for warranties, and nonconformity disclosure requirements. It defines terms such as: "collateral costs," "consumer/agency," "early termination cost," "early termination savings," "manufacturer," "assistive device," and "reasonable attempt to repair." It also provides for reimbursements and replacements.

## **MINNESOTA**

In Minnesota, the Assistive Device Warranty Protection Act was signed into law by the governor May 19, 1995 and becomes effective August 1, 1995. It was a Department of Administration initiative that was started by the governor's advisory council on technology for people with disabilities and the department's Minnesota STAR Program. The AT lemon law protects the rights of people with disabilities in the purchase of assistive devices. While it does not alter any warranty that offers greater protection, it affords a basic level of consumer protection by providing that if a device is taken in for repairs three times in the first year for the same problem, or if it is in the repair process for over thirty days in the first year, then the device can either be returned for a full refund or exchanged for a new device at the consumer's option. The warranty does not include defects that result from misuse or alterations. It also has a provision that it is the manufacturer's responsibility to provide a replacement device or reimbursement for temporary replacement of assistive devices for the duration of the repair period.

## **PENNSYLVANIA**

Pennsylvania's Motorized Wheelchair Warranty Act covers motorized wheelchairs for at least a year that have been repaired four times for the same nonconformity or have been out-of-service for an "aggregate" of at least 30 days. Like Minnesota's lemon law, it also does not cover defects resulting from abuse, neglect or unauthorized modifications by the consumer.

## **MARYLAND**

Maryland Technology Assistance Program (TAP) researched national lemon law legislation. This resulted in the Motorized Wheelchair Warranty Enforcement Act signed into law by Governor William Donald Schaefer on April 12, 1994. This act defines a lemon as "a motorized wheelchair or scooter with a "substantial" defect, which the manufacturer or its authorized dealer has unsuccessfully attempted to repair at least four times, or which has been out-of-service because of "substantial" defects for a total of thirty calendar days within one year after first delivery to the consumer. The thirty days DO NOT have to be consecutive." [Tapping Technology, p 2. (Maryland TAP newsletter)]. Specific provisions of the bill include, but are not limited to: certain express warranties; duration of certain warranties; prohibiting resale of returned non-conforming wheelchairs without full disclosure; repair, return and replacement of wheelchair; procedures for return of certain non-conforming wheelchairs; any waiver of consumer rights is void under this Act; and authorization of consumer action for damages, fees, costs and other equitable relief (Provisions of the Motorized Wheelchair Warranty Enforcement Act fact sheet, Maryland TAP).

## **WISCONSIN**

In Wisconsin, a law was enacted in 1992 also relating to motorized wheelchair warranties. Wisconsin Act 222 requires manufacturers to issue express warranties to consumers purchasing motorized wheelchairs with the duration of the warranty being one year after first delivery to the consumer. It also includes provisions in case a "reasonable attempt to repair" the wheelchair fails. Replacement of the wheelchair with a comparable new motorized wheelchair and refunding "collateral costs" is one option. Collateral costs is defined in this act as "expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative wheelchair or other assistive device for mobility" [Sec. 134.87 (a)]. The other option is accepting the return of the "lemon" and refunding the consumer. Collateral costs and usage of the device are considered in regard to refunds. If the consumer demands a refund, they may receive collateral costs as well. Other refund and replacement provisions are included in this act as well.

## **MICHIGAN**

Michigan's lemon law (Public Act #54 of 1994) is similar to the above mentioned laws requiring an express warranty (one-year minimum) by the manufacturer and states, "If the manufacturer is found to have violated this act the courts shall award the consumer twice the amount of any damages plus attorney fees." [Tech 2000, p.3 (Michigan's AT project newsletter)]. The Michigan Tech Act project, Michigan Tech 2000, is currently working to amend this act, trying to get coverage for all AT and to extend the warranty from one year after first delivery to three years.

## **MISSOURI**

The Missouri Assistive Technology Project (MATP) efforts to promote the passage of a one-year warranty and lemon protection for all assistive devices used by consumers with disabilities successfully passed the state legislature and was signed into law June 13, 1995.

A lemon is an assistive device with a substantial defect which rises in the device itself and not from consumer abuse. After attempting to repair the device four times, or being without the device for 30 days due to a substantial defect, the device can be returned to the manufacturer for a comparable device or refund. Project staff report that early opposition focused on arguments that distributors would make good faith efforts to work with consumers who purchased defective equipment to repair or replace the device and that distributors with unfair practices would be naturally weeded out of the market. The MATP was able to demonstrate that comparison shopping for AT is rarely possible, since only one manufacturer may produce a particular device or a third-party payor may fund only a single approved vendor. Therefore using the free market to address lemons is not practical.

Many devices are purchased with tax dollars through Vocational Rehabilitation or Medicaid and lemons bought with these dollars are a waste of public money on the initial purchase. The MATP is now beginning to disseminate information on the new statute to consumers and the general public through press releases to disability and advocacy related organizations.

## **NEW YORK**

The Motorized Wheelchair Lemon Law (General Business Law § 670) enacted in August 1993, provides a minimum one-year warranty covering both parts and labor from the date of first delivery to the consumer. The lemon law covers

only motorized wheelchairs but includes those purchased, leased or transferred in New York to a consumer. A consumer is protected when purchasing a wheelchair previously returned to the manufacturer under New York's or a similar lemon law of another state. The manufacturer may not sell or lease the returned wheelchair again in New York unless full disclosure of the reasons for return is made to the prospective buyer or lessor. The law also incorporates an alternative arbitration program for disputes. Arbitration offers the consumers an option that may be less complicated, time consuming and expensive than choosing to go to court.

The Attorney General's office of New York State Department of Law prepared a booklet "New York's Motorized Wheelchair Lemon Law: A Guide For Consumers" to help consumers understand the warranty law and instructions for the NY State Arbitration Program. Page 3 of the guide states: "If the wheelchair does not conform to the terms of the written warranty and the manufacturer or its authorized dealer is unable to repair the wheelchair after a reasonable number of attempts during the first year, the consumer can choose a full refund or a comparable new replacement wheelchair."

An important consumer tip in this guide includes the necessity of the consumer keeping "careful records of all complaints and copies of all work orders, repair bills and correspondence." The consumer has the burden of proving he/she owns a lemon and must have documentation of repeated attempts to have it repaired. Under the arbitration program, a consumer who does not have all the documents, may request the arbitrator to direct the manufacturer to provide necessary information or to subpoena documents or witnesses.

## **MONTANA**

The Montana Wheelchair Warranty Act was endorsed by the Montana Consortium for Assistive Technology and developed by MonTECH and the Montana Advocacy Program through an agreement with the Protection & Advocacy service. The law takes effect October 1, 1995 and will cover any manually-powered or motor-driven wheelchair, scooter or other motorized device that is used for mobility assistance and costs \$500 or more. The act states that failure by the manufacturer to provide a written warranty (minimum one year) results in the wheelchair to be covered under warranty "for a period of 2 years following the date of delivery of the wheelchair to the consumer." [H.B. 0335 Sec.3 (3).]

## **SOUTH DAKOTA**

DakotaLink (South Dakota's Tech Act project) is currently surveying consumers and manufacturers to lay the groundwork for AT lemon legislation. They seek to build upon the state's General Product Liability Law, which is based

upon the federal Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (P.L. 93-637). Signed into law in January 1975, P.L. 93-637 recognizes the need for minimum warranty protection for consumers, for consumer understanding of warranties, for assurance of performance and for better product reliability.

## **GEORGIA**

Georgia Tools For Life worked to get the Assistive Technology Warranty Act (House Bill 93) and Motorized Wheelchair Warranty Act (Senate Bill 11) passed in Georgia State. The Assistive Technology Warranty Act covers AT devices defined as "any device or equipment with a retail cost of \$1,000 or more, that assists a person with disabilities to perform specific tasks such as moving, walking, standing, speaking, breathing, hearing, seeing, grasping, or caring for himself or herself that would not be possible for such person without an assistive technology device." [H.B. 93 Sec.1 Art. 31 (1)].

## **CALIFORNIA**

The California Civil Code contains two sections relating to AT warranties, Section 1793.02 Written Warranty to Accompany Assistive Devices and Section 1793.025, Warranty Requirements for Motorized Wheelchairs; Disclosure Requirements for Defective Wheelchairs. Section 1793.02 (a) states that all new and used AT sold at retail in California may be returned to the seller within 30 days of actual receipt by the consumer or completion of fitting by the seller, whichever occurs later. Civil Code Section 1793.025 (a) states that "the warranty shall be for a period of at least one year from the date of the first delivery of the wheelchair to the consumer." The wheelchair may be repaired four or more times by the "manufacturer, lessor, or an agent of."

## **STATES WITH PENDING LEMON LAWS**

The Massachusetts Assistive Technology Partnership Center is pursuing passage of a lemon law bill covering customized wheelchairs in Massachusetts. The Illinois Assistive Technology Project is working with the Attorney General's Office on the development of a warranty act that would cover all AT. In Utah a lemon law has been presented but not passed. The Utah Assistive Technology Program will introduce a lemon law again in 1996 as part of its legislative agenda.

To find out more about these lemon laws, contact the state Tech Act project directly. For state project contact information, see the state contact list.

## ASSISTIVE TECHNOLOGY LEMON LAWS AT-A-GLANCE

STATE	TYPES OF AT COVERED	TO QUALIFY AS A LEMON THE AT MUST HAVE BEEN REPAIRED	OUT-OF-SERVICE FOR:
CA	motorized wheelchairs	4x for the same reason	30 days, any reason
GA	AT costing \$1,000 or more	4x for the same reason	30 days, any reason
LA	all AT (any cost)	2x for the same reason within the first year	30 days, any reason within the first year
MD	motorized wheelchairs and scooters	4x for the same reason	30 days (do not have to be consecutive),
MI	motorized wheelchairs, manual wheelchairs & scooters	4x for the same reason	30 days within the first year
MN	all AT except electrical nerve stimulators	3x for the same reason	over 30 days within the first year

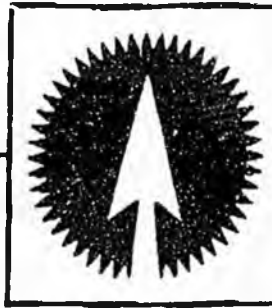
MO	all assistive technology	4x	30 days
MT	manually-powered wheelchairs, motorized wheelchairs, and scooters costing \$500 or more	2x for the same reason	45 days
NY	motorized wheelchairs	4x for the same reason AND was out-of-service for 30 days within the first year	60 days, for the same reason within the first year
PA	motorized wheelchairs	4x for the same reason	at least "an aggregate of" 30 days
WA	motorized wheelchairs	4x for the same reason	30 days, any reason
WI	motorized wheelchairs	4x for the same reason	30 days, any reason

The RESNA Technical Assistance Project (#HN92031001) is funded by the National Institute on Disability and Rehabilitation Research (NIDRR), U.S. Department of Education (ED) under the Technology-Related Assistance for Individuals with Disabilities Act Amendments of 1994. The information contained herein does not necessarily reflect the position or policy of NIDRR/ED or RESNA and no official endorsement of the material should be inferred.

**HB**

**452**

# Alaska Forest Association, Inc.



111 STEDMAN SUITE 200  
KETCHIKAN, ALASKA 99901-6599  
Phone 907-225-6114  
FAX 907-225-5920

March 5, 1998

The Honorable Joe Green  
House of Representatives  
State Capitol  
Juneau, AK 99801

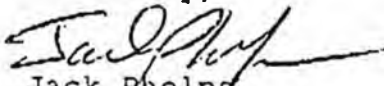
Dear Representative Green:

The Alaska Forest Association supports the concept of House Bill 452, "An Act relating to disclosures and reports by certain nonprofit corporations." Alaskans have a right to know about the unseen hand providing money to organizations in Alaska, especially those that primarily exist for political purposes. Many of these organizations work to influence public policies that affect the lives of working Alaskans. Disclosure is especially important for money directed to those organizations which hide their political activities under the guise of disseminating "educational" information, thereby retaining the full benefit of their 501(c)(3) tax status.

It is entirely reasonable for the state to require non-Alaska based organizations to report grants given to groups in Alaska. The public needs a mechanism which allows it to stay abreast of Outside forces working to change the conditions under which they live and work.

Thank you for introducing this legislation. We will be carefully monitoring its progress.

Sincerely,

  
Jack Phelps  
Executive Director

Jrn9803\_ltr.wpd, March 5, 1998

organization and internal affairs differ from the laws of the state. Nothing in this chapter authorizes the state to regulate the organization or the internal affairs of a foreign corporation. (§ 1 ch 99 SLA 1968)

**Collateral references.** — 36 Am. Jur. 2d, Foreign Corporations, § 1 et seq.  
20 C.J.S., Corporations, § 1810 et seq.

**Sec. 10.20.460. Activities excluded from regulations.** Without excluding other activities which may not constitute transacting business in the state, a foreign corporation does not transact business in the state by carrying on any of the following activities:

- (1) maintaining or defending any action or suit of an administrative or arbitration proceeding, or effecting its settlement or the settlement of claims or disputes;
- (2) holding meetings of its directors, shareholders, or members or carrying on other activities concerning its internal affairs;
- (3) maintaining bank accounts;
- (4) securing or collecting debts, or enforcing rights in property securing debts;
- (5) transacting business in interstate commerce;
- (6) granting funds;
- (7) distributing information to members;
- (8) conducting an isolated transaction completed within a period of 30 days not in the course of a number of repeated transactions of like nature. (§ 1 ch 99 SLA 1968)

**Revisor's notes.** — In 1989 the words "or members" were inserted in (2) of this section to correct a manifest error of omission in ch. 99, SLA 1968.

**Sec. 10.20.465. Powers of a foreign corporation.** A foreign corporation which has received a certificate of authority enjoys the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set out in the application under which the certificate of authority is issued and, except as otherwise provided in this chapter, is subject to the duties, restrictions, penalties and liabilities imposed upon a domestic corporation of like character. (§ 1 ch 99 SLA 1968)

**Sec. 10.20.470. Corporate name of foreign corporation.** A certificate of authority may not be issued to a foreign corporation unless the corporate name of the corporation

- (1) does not contain a word or phrase which indicates or implies that it is organized for any purpose other than the purpose contained in its articles of incorporation;
- (2) is not the same as, or deceptively similar to, the name of a corporation, whether for profit or not for profit, existing under the laws of this state, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, or a corporate or business name reserved or registered as permitted by the laws of this state. (§ 1 ch 99 SLA 1968; am § 42 ch 170 SLA 1976)

**Collateral references.** — 36 Am. Jur. 2d, Foreign Corporations, §§ 185 — 192. domestic corporation and foreign corporation not qualified to do business in state. 26 ALR3d 994.  
Right to protection of corporate name, as between

**Sec. 10.20.471. Assumed corporate name.** When a foreign corporation, applying for a certificate of authority, has a name the same as or deceptively similar to that of a corporation operating under this chapter, it shall

- (1) select a name under which it elects to do business in the state;
- (2) clearly identify on all advertising, contracts and other legal documents its true corporate name as well as its assumed name. (§ 43 ch 170 SLA 1976)

**Sec. 10.20.475. Change of name by foreign corporation.** When a foreign corporation authorized to transact business in the state changes its name to one under which

a certificate of authority would not be granted to it, the certificate of authority of the corporation is suspended and it may not transact business in the state until it has changed its name to a name available to it under the laws of the state. (§ 1 ch 99 SLA 1968)

**Sec. 10.20.480. Application for certificate of authority.** To procure a certificate of authority to transact business in the state, a foreign corporation shall file an application in duplicate with the commissioner. (§ 1 ch 99 SLA 1968)

**Sec. 10.20.485. Contents of application.** The application must set out

- (1) the name of the corporation and the state or country under the laws of which it is incorporated;
- (2) the date of incorporation and the period of duration of the corporation;
- (3) the address of the principal office of the corporation in the state or country under the laws of which it is incorporated;
- (4) the address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state at that address;
- (5) the purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in the state;
- (6) the names and addresses of the directors and officers of the corporation;
- (7) additional information which may be necessary or appropriate in order to enable the commissioner to determine whether the corporation is entitled to a certificate of authority to conduct affairs in the state;
- (8) the name and address of a person owning at least five per cent of the shares, or five per cent of any class of shares, and the percentage of the shares or class of shares owned by that person. (§ 1 ch 99 SLA 1968; am § 44 ch 170 SLA 1976)

**Sec. 10.20.490. Form of application.** The application shall be on forms prescribed and furnished by the commissioner and shall be executed in duplicate by the corporation, by its president or vice president, and by its secretary or an assistant secretary, and verified by one of the officers signing the application. (§ 1 ch 99 SLA 1968)

**Sec. 10.20.495. Filing of application for certificate of authority.** (a) Upon finding that the application conforms to law, the commissioner shall, when all fees prescribed in this chapter have been paid

- (1) endorse on each document the word "filed," and the date of the filing;
- (2) file one duplicate original of the application in the commissioner's office;
- (3) issue a certificate of authority to transact business in the state and affix the other duplicate original application to it.

(b) The certificate of authority, together with the duplicate original of the application affixed to it by the commissioner, shall be returned to the corporation or its representative. (§ 1 ch 99 SLA 1968)

**Sec. 10.20.500. Effect of certificate of authority.** Upon the issuance of a certificate of authority by the commissioner, the corporation may transact business in the state for the purpose set out in its application, subject, however, to the right of the state to suspend or revoke the authority as provided in this chapter. (§ 1 ch 99 SLA 1968)

**Sec. 10.20.505. Registered office and registered agent of foreign corporation.** Each foreign corporation authorized to transact business in the state shall have and continuously maintain in the state a registered

- (1) office which may be, but need not be, the same as its place of business in the state;

# Alaska State Legislature

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CHAIRMAN JUDICIARY COMMITTEE  
VICE CHAIRMAN HEALTH, EDUCATION  
& SOCIAL SERVICES COMMITTEE  
MEMBER RESOURCES COMMITTEE

FINANCE SUBCOMMITTEES  
DEPT. OF COMMERCE & ECONOMIC  
DEVELOPMENT  
ALASKA COURT SYSTEM

Representative Joe Green  
District 10

## Sponsor Statement

### **HB 452 - Financial Disclosures of Non-profit Corporations**

I believe that public policy formulation in Alaska should be just that -- public. Unfortunately, forces not apparent to most Alaskans are participating in some of the most important debates of our day.

Private, non-profit foundations, headquartered far from Alaska, are participating in the public policy process by directing large sums of money to organizations active in our state. While I support the right of foundations to donate money to organizations of their choice, and of their client organizations to participate in public, political discussions, I also believe Alaskans have a right to "follow the money."

HB 452 will allow the public to follow the flow of money from donors to recipients. It allows the public to observe the activities of various organizations with full knowledge of the source of financial support. Reporting and disclosure requirements also provide the public with the data necessary to detect irregularities in the process. In short, I agree with former Supreme Court Justice Louis Brandeis when he said "Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."

**CS FOR HOUSE BILL NO. 452(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered  
Referred:**

**Sponsor(s): REPRESENTATIVE GREEN**

**A BILL**

**FOR AN ACT ENTITLED**

**1 "An Act relating to disclosures and reports by certain nonprofit corporations."**

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

**3 \* Section 1. AS 10.20 is amended by adding a new section to read:**

**4           Sec. 10.20.063. Additional requirements for certain corporations. (a)**

**5           Notwithstanding AS 10.20.460, a foreign nonprofit corporation is considered to be**  
**6           transacting business in the state if the corporation provided an aggregate of \$5,000 or**  
**7           more during the calendar year of the corporation to nonprofit corporations operating**  
**8           in the state.**

**9           (b) In addition to the biennial report required under AS 10.20.620, a**  
**10          corporation that is subject to (a) of this section shall file with the department by July 1**  
**11          each year on forms provided by the department a report that contains the following**  
**12          information and that may be included in the biennial report when the corporation files**  
**13          its biennial report:**

**14                   (1) the purpose for which the corporation was organized; and**

**15                   (2) a list of all payments made by the foreign corporation to nonprofit**

1 corporations in the state, or to a third person for transmittal to a nonprofit corporation  
2 in the state; the list must include the full name and address of the principal office of  
3 each nonprofit corporation that receives the payments, the amounts of the payments,  
4 and the purpose of the payments.

5 (c) In this section, "nonprofit corporation" means a corporation that is exempt  
6 from federal taxation under 26 U.S.C. 501(c)(3) (Internal Revenue Code).

7 \* Sec. 2. AS 10.20.585 is amended to read:

8 **Sec. 10.20.585. Revocation of certificate of authority.** The certificate of  
9 authority of a foreign corporation to transact business in the state may be revoked by  
10 the commissioner when

11 (1) the corporation fails to file its biennial report within the time  
12 required by this chapter, fails to file an annual report required by AS 10.20.063, or  
13 fails to pay fees or penalties prescribed in this chapter when they are due and payable;

14 (2) the corporation fails to appoint and maintain a registered agent in  
15 this state;

16 (3) the corporation fails, after change of its registered office or  
17 registered agent, to file with the commissioner a statement of the change as required  
18 by this chapter;

19 (4) the corporation fails to file with the department an amendment to  
20 its articles of incorporation or articles of merger within the time prescribed by this  
21 chapter;

22 (5) a misrepresentation has been made of a material matter in an  
23 application, report, affidavit, or other document submitted under this chapter; or

24 (6) the corporation is 90 days delinquent in filing a notice of change  
25 of an officer or director as required by this chapter.

**Sec. 10.20.720. Definitions.** In this chapter, unless the context otherwise requires,

- (1) "articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments to them, including articles of merger;
- (2) "board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which the group is designated;
- (3) "bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which the rules are designated;
- (4) "commissioner" means commissioner of commerce and economic development;
- (5) "corporation" or "domestic corporation" means a nonprofit corporation subject to the provisions of this chapter, except a foreign corporation;
- (6) "department" means the Department of Commerce and Economic Development;
- (7) "foreign corporation" means a nonprofit corporation organized under laws other than the laws of this state;
- (8) "insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business;

## Foundations' growth may mean more grants

The Washington Post

The nation's biggest charitable foundations grew 22 percent richer last year as skyrocketing stock prices increased the value of their assets by more than \$23 billion.

The growth means foundations will have more money to give away in 1998, according to the Chronicle of Philanthropy, a publication that surveyed 121 of the nation's largest private foundations.

The latest increases drive the total endowments of the top foundations to more than \$126 billion, or more than 12 times as much as the U.S. government spent last year on welfare aid to the poor.

The soaring value of foundation assets might spur new discussion of how much foundations should give away each year. Foundations receive federal

tax breaks and are required, in turn, to give away about 5 percent of investment assets annually to comply with the law.

While most foundations will increase their largess to meet the 5 percent requirements, some critics are suggesting that boom times should trigger even greater generosity in grant-making.

"I believe that 5 percent in recent years is on the low side" for grants, said Waldemar Nielsen, an author and foundation adviser. "The purpose of foundations is not to accumulate further wealth for some time in the future when there are not going to be any more philanthropists. This doesn't make any sense."

Seven of 10 foundations surveyed by the Chronicle reported plans to increase grants. The J.A. and Kathryn Albertson Foundation in Boise, Idaho, experienced

the largest percentage increase in assets last year, growing from a \$40 million to a \$700 million institution with the gift of Albertson's grocery chain stock. The foundation plans to increase its grants from \$2 million to about \$35 million this year, primarily to improve public education in Idaho. While the actual dollar amount is significantly more, the percentage of assets is still about 5 percent.

The W.K. Kellogg Foundation, which saw its assets increase from \$5.9 billion to \$7.8 billion last year, intends to increase its giving this year, but "it is too early to say how much," according to Thomas Springer, staff editor at the foundation. Kellogg is the nation's fourth largest foundation, after the Lilly Endowment, the Ford Foundation and the David and Lucile Packard Foundation.

## RECENT FOUNDATION GRANTS FOR GREEN GROUPS ACTIVE IN ALASKA

### Brainerd Foundation

Alaska Center for the Environment (1996) <i>membership canvassing and outreach focusing on Chugach forest issues</i>	\$15,000
Alaska Clean Water Alliance (1995) <i>for monitoring pulp mill pollution in Southeast Alaska</i>	\$15,000
Alaska Conservation Foundation (1995) <i>for development of effective messages and communications training for Alaska environmental groups</i>	\$35,000
Alaska Conservation Foundation (1996) <i>for development of effective messages and communications training for Alaska environmental groups</i>	\$35,000
Alaska Conservation Foundation (1996) <i>for public education and outreach concerning Tongass forest issues</i>	\$12,000
Alaska Forum for Environmental Responsibility (1996) <i>for general support and watchdog for Trans-Alaska Pipeline</i>	\$10,500
Alaskans for Juneau <i>for organizing public participation in A-J permitting process</i>	\$6,000
Lynn Canal Conservation <i>for organizing opposition to the Kensington mine</i>	\$7,500
Northern Alaska Environmental Center (1995) <i>for protection of ANWR</i>	\$19,500
Sitka Conservation Society (1996) <i>for GIS analysis of USFS data showing areas affected by alternatives of draft Tongass Management plan</i>	\$15,000
Southeast Alaska Conservation Society (1995) <i>for general support</i>	\$14,500
Southeast Alaska Conservation Society (1996 - 2 grants) <i>for general support (\$20,000) and computer equipment (\$17,750)</i>	\$37,750

**RECENT FOUNDATION GRANTS FOR GREEN GROUPS  
ACTIVE IN ALASKA (Cont'd)**

**Brainerd Foundation (cont'd)**

Tongass Conservation Society (1995) <i>for awareness of local discharges of hazardous substances</i>	\$10,000
Tongass Conservation Society (1996) <i>for public health expert to address pollution problems caused by Ketchikan pulp mill</i>	\$15,000
Trustees for Alaska (1996) <i>to research environmental threats to ANWR</i>	\$10,000
The Wilderness Society (1995) <i>for national ANWR campaign</i>	\$15,000

**Bullitt Foundation**

Alaskans for Juneau (1996) <i>for organizing public opposition to re-opening A-J mine and computer upgrade</i>	\$8,000
Southeast Alaska Conservation Council (1994) <i>for training activists to appeal USFS timber sales</i>	\$20,000

**Compton Foundation**

American Wildlands, Englewood CO (1994 or 1993) <i>for Tatshenshini Campaign</i>	\$10,000
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**Energy Foundation**

Alaska Center for the Environment (1994 - 2 years) <i>for promoting alternative and efficient transportation in Alaska</i>	\$60,000
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**George Gund Foundation**

Alaska Conservation Foundation (1997 - 2 years) <i>for general support</i>	\$50,000
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**RECENT FOUNDATION GRANTS FOR GREEN GROUPS  
ACTIVE IN ALASKA (Cont'd)**

**Ben & Jerry's Foundation**

Gwich'in Steering Committee (1996) \$10,000  
*for campaign against oil development in ANWR*

**William & Flora Hewlett Foundation**

Alaska Conservation Foundation (1997 - 2 years) \$200,000  
*for the Community Development Grantmaking Fund*

**McIntosh Foundation**

Southeast Alaska Conservation Council (1993) \$50,000

**Charles Stewart Mott Foundation**

Alaska Conservation Foundation (1996 - 2 years) \$200,000  
*for Alaska Rainforest Campaign*

Alaska Conservation Foundation (1996 - 2 years) \$100,000  
*for Rapid Response Fund*

**New-Land Foundation**

Southeast Alaska Conservation Council (1993) \$15,000

**Patagonia**

Alaska Boreal Forest Council (1996) \$2,945  
*to fight timber industry proposals to log the state's pristine boreal forests*

Alaskans for Juneau (1996) \$7,500  
*to fight the Kensington and AJ mines.*

Northern Alaska Environmental Center (1996) \$10,000  
*to duplicate and distribute a video to combat oil exploration in ANWR.*

Public Media Center (1996) \$1,100  
*to fund printing of a brochure opposing oil development in ANWR*

**RECENT FOUNDATION GRANTS FOR GREEN GROUPS  
ACTIVE IN ALASKA (Cont'd)**

**Patagonia (cont'd)**

Southeast Alaska Conservation Council (1996) \$9,000  
*to fund opposition to logging in the Tongass National Forest.*

**David and Lucile Parkard Foundation**

Alaska Conservation Foundation (1994) \$20,000  
*for Alaska Marine Conservation Council's bycatch reduction program*

**The Pew Charitable Trusts**

Alaska Conservation Foundation (1995 -- 15 months) \$470,000

**Rockefeller Family Fund**

Alaska Conservation Foundation (1994) \$40,000  
*support for its fourth biannual membership challenge campaign*

Alaska Conservation Foundation (1995) \$40,000  
*support for grassroots organizing and media activities in Washington, D.C., to increase level for concern among national organizations for Alaskan issues, especially clearcutting in Tongass and opening ANWR to oil exploration*

Alaska Conservation Foundation (1996) \$20,000  
*for Oilwatch Alaska*

Alaska Conservation Foundation (1996) \$20,000  
*funding for citizen participation initiatives to increase the capabilities and effectiveness of indigenous Alaskan groups*

Alaskan Forum for Environmental Responsibility (1996) \$25,000  
*to assist whistleblowers who work on the Alaska pipeline*

Alaska Wilderness League (1996) \$75,000  
*funding for an organizing and advocacy campaign on Alaska wilderness issues, particularly protection for ANWR*

**RECENT FOUNDATION GRANTS FOR GREEN GROUPS  
ACTIVE IN ALASKA (Cont'd)**

**Rockefeller Family Fund (cont'd)**

Government Accountability Project (1994) <i>funding for the Alaska Project which will work with whistleblowers to promote reforms and increase accountability in the Alaska oil industry</i>	\$30,000
Government Accountability Project (1995) <i>funding for Alaska Forum for Environmental Responsibility to protect whistleblowers, address employee concerns about safety of the Alaskan pipeline, create a timber observer program, and promote reforms in the Alaska oil industry</i>	\$30,000
Northern Alaska Environmental Center (1996) <i>assistance for ANWR protection efforts and defend it from "oil drilling assaults"</i>	\$20,000
Southeast Alaska Conservation Council (1996) <i>support nationwide organizing drive to respond to attacks on the Tongass Timber Reform law and develop strategies for timber industry conversion</i>	\$20,000
Trustees for Alaska (1995) <i>funding for its work as advisor and counsel to the Cook Inlet keeper project</i>	\$20,000
Trustees for Alaska (1994) <i>for litigation and creation of a Cook Inlet keeper program, which will be largely supported by settlements paid by polluters</i>	\$25,000

**Rockefeller Brothers Fund**

Alaska Conservation Foundation (1995 -- 2 years)	\$200,000
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**Florence and John Schumann Foundation**

Alaska Wilderness League (1993) <i>for "protecting" ANWR</i>	\$75,000
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**Strong Foundation for Environmental Values**

Northern Alaska Environmental Center (1993)	\$1,900
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**RECENT FOUNDATION GRANTS FOR GREEN GROUPS  
ACTIVE IN ALASKA (Cont'd)**

**Surdna Foundation**

Alaska Center for the Environment (1994 - 2 years) <i>for promoting alternative and efficient transportation in Alaska</i>	\$60,000
Alaska Coastal Rain Forest Campaign (1994 - 2 years)	\$200,000
Alaska Conservation Foundation <i>help mobilize Alaskan environmental interests and citizens for a national public education initiative that will counter threats to the ANWR, the Tongass National Forest and other ecologically valuable public lands</i>	\$50,000
Alaska Marine Conservation Council (1996) <i>to support fundamental fisheries management reform in the North Pacific at the regional and federal levels</i>	\$40,000
Southeast Alaska Conservation Foundation (1996) <i>for an initiative to protect the Tongas National Forest</i>	\$25,000

**Town Creek Foundation**

Alaska Wilderness League (1993)	\$15,000
Gwich'in Steering Committee (1993)	\$10,000

**Turner Foundation**

Gwich'in Steering Committee (amount unknown)

**Weeden Foundation**

Alaska Conservation Foundation (1994, 1995 -- 2 grants)	\$20,000
American Rivers (1994, 1995 -- 2 grants)	\$25,000
American Wildlands (1994) <i>for Tatshenshini River Campaign</i>	\$10,000

**RECENT FOUNDATION GRANTS FOR GREEN GROUPS  
ACTIVE IN ALASKA (Cont'd)**

**Wilburforce Foundation**

Alaska Center for the Environment (1997) <i>for grassroots membership development</i>	\$30,000
Alaska Center for the Environment (1996) <i>for Alaska message development project and Alaska reorganization project</i>	\$25,000
Alaska Center for the Environment (1997) <i>for the Alaska Conservation Alliance start-up (\$30,000) and travel expenses for Alaska Conservation Alliance planning meeting (\$1,000)</i>	\$31,000
Alaska Clean Water Alliance (1996) <i>for strategic planning retreat</i>	\$5,000
Alaska Wilderness League (1997) <i>for ANWR Campaign</i>	\$40,000
Forest Service Employees for Environmental Ethics (1997) <i>for the Tongass in transition program</i>	\$40,000
Great Land Trust (1996) <i>for start-up funding and organizational development</i>	\$7,000
Gwich'in Steering Committee (1997) <i>for press relations training</i>	\$15,000
Kachemak Heritage Land Trust (1996) <i>for the Alaska Land Trust Computer Network</i>	\$15,000
Kachemak Heritage Land Trust (1997) <i>for the Kenai Peninsula Riparian Corridor Protection Strategy</i>	\$15,000
National Wildlife Federation (1997) <i>for the Alaska Women's Environmental Network</i>	\$10,000
Northern Alaska Environmental Center (1996) <i>for capacity building and general support of work to protect ANWR</i>	\$41,000

**RECENT FOUNDATION GRANTS FOR GREEN GROUPS  
ACTIVE IN ALASKA (Cont'd)**

**Wilburforce Foundation (cont'd)**

Southeast Alaska Conservation Council <i>for the Native Claims education project</i>	\$10,000
Trustees for Alaska (1996) <i>for a strategic planning retreat</i>	\$30,000
Trustees for Alaska (1997) <i>for general support</i>	\$30,000
Trust for Public Land <i>for development of Alaska programs</i>	\$100,000

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**The greening of a movement**

**Big money is bankrolling select environmental causes**

By Scott Allen, Globe Staff, 10/19/97

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**F**irst of two parts

Oil baron Joseph N. Pew Jr. was an old-time Republican Party boss who despised government regulation and whose oil refinery in Marcus Hook, Pa., emitted noxious fumes that made the town's air almost unbreathable.

The senior executive of Sun Oil Company in Philadelphia in the 1940s and '50s was called many things in his life: humorless, corrupt, Roosevelt-hater. "Environmentalist" was not one of them.

But 35 years after his death, a family charity started by Pew is one of the leading funders of the American environmental movement, pumping an expected \$22.5 million this year into causes that Pew himself might well have loathed. In particular, the Pew Charitable Trusts played a key role in convincing President Clinton to adopt tough air pollution regulations that the oil industry strenuously opposed.

"The founders of Pew would be rolling in their graves if they knew," said Robert Schaeffer, a Boston-based consultant to environmental groups.

In growing numbers, the heirs of yesterday's polluters are becoming the allies of today's environmentalism, one of the fastest growing causes in the United States over the past decade. And environmental coffers also are being swollen by newer fortunes built on modern technologies like computers and television.

This growing stream of "big money" support has buoyed the environmental movement even as grass-roots contributions have faltered, but in some eyes it raises a troubling question: Are the funders now calling the shots?

In one of history's ironies, a generational shift among wealthy families in the last 15 years has brought environmentally conscious leaders to

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charities built on the profits of such historic targets of environmentalists as Sun Oil, The Wall Street Journal, and H.J. Heinz.

The shift has brought into power new philanthropists such as Joseph N. Pew's grandson, J. Howard "Howdy" Pew II, an avid outdoorsman who visits environmental hot spots like the Amazon rain forest. The result has been a windfall for groups such as the influential Conservation Law Foundation of Boston, which gets 60 percent of its income from foundations such as Pew.

Likewise, people who got rich in newer industries are increasingly targeting their largesse at environmental causes. A charity run by Cable News Network founder Ted Turner and wife Jane Fonda is on track to become one of the top two or three environmental funders by 1998, while Microsoft cofounder Paul Allen gave \$5 million last year to the Nature Conservancy.

Including new money from corporate foundations such as Exxon's, which just pledged \$5 million to protect tigers from extinction, charities invest at least \$400 million a year in environmental advocacy and research.

But the rise of environmental philanthropists is creating a new - and controversial - class of powers behind the throne who are shaping the movement with their money. Some, such as Turner and Teresa Heinz, wife of Senator John F. Kerry, are well known; many more, such as Joshua Reichert at Pew, are obscure. But collectively they are putting an indelible stamp on the movement by picking which issues get the public's attention - and which don't.

For instance, foundations have pumped millions of dollars into Alaska in recent years to preserve wilderness, holding the annual meeting of the Environmental Grantmakers' Association near Anchorage last month to underscore the issues. Meanwhile, urban-based groups that work on issues like hazardous waste complain they can't get the attention of major funders.

Critics on the left, suspicious of the money's origins, believe that foundations are turning environmentalists into compromisers rather than principled battlers. While groups that espouse confrontation are starved for money, they say, millions flow toward organizations that preach market-based environmental solutions or collaboration with industry.

"The environmental movement is now accurately described as just another cynical, well-financed special interest group," sneers Jeff St. Clair, editor of the Wild Forest Review, who argues that the movement's stock portfolios give foundations a vested interest in environmental destruction.

But conservatives, too, are aghast that so much money from wealthy

families and corporations goes to a cause that often costs business money. The pro-business Capital Research Center released a report last year denouncing corporate giving to most environmental groups as "funding enemies, forsaking friends."

Conservative "wise use" activists have targeted foundations, too, accusing them of being a "cartel of eco-money." Two years ago, they picketed a Washington meeting of the Environmental Grantmakers.

And the growing importance of charity - highlighted by this year's national summit on voluntarism in Philadelphia - has put a critical spotlight on an enterprise that was thought of as do-gooder work, if it was thought of at all. The Philadelphia media has been rife with attacks on the Pew Trusts from people who didn't get grants or who disagree with its interventionist style.

"We expect to be treated very much like environmental groups are treated," says Reichert, shrugging off the criticism. "We are a foundation ... trying to effect powerful changes from the unique perspective of an American philanthropy."

Unlike traditional charities, whose trustees are more at home giving to museums and universities, the new philanthropists are sophisticated students of environmental issues. Teresa Heinz is vice chairman of the 300,000-member Environmental Defense Fund, while Ted Turner hired the former director of Greenpeace USA to run his charity.

Many of the new philanthropists see themselves as guiding - or even shoving - activists away from the polarized thinking that often framed issues as a choice between jobs and the environment. As wealthy people, the philanthropists are certainly not antibusiness, and many are Republicans, but they disagree profoundly with recent Congressional attempts to weaken or repeal environmental protections.

In New England, four leading foundations met with area groups in 1995 and concluded that the movement needed a less confrontational approach, moving away from attacking farmers, fishermen, and other "resource users" and instead working with them toward conservation goals.

"If environmental protection is imposed upon people, we will surely fail. But if it is accomplished with, for, and because of people, we may succeed," said the foundations' report, titled "New England's Environmental Futures."

The rise of the environmental philanthropists comes at a time when the movement is trying to recover from the disappointment that the 1990s did not turn out to be "the decade of the environment." Although author Gregg Easterbrook regards environmentalism as the most successful social movement in the United States since World War II, its growth

clearly has stalled.

Since the heady days of 1990, when the 20th anniversary of Earth Day drew 250,000 people to a celebration on the Charles River Esplanade, the proportion of households that make individual donations to environmental causes has dropped from 16.3 to 11.5 percent.

Greenpeace USA is the most prominent casualty so far. In August, Greenpeace laid off three-quarters of its 400 employees, closed its 10 regional offices, and canceled door-to-door fundraising after membership dropped from a high of 1.2 million in 1991 to only 400,000.

"I don't think it's a question of whether we are going to survive at this point. [But] if we hadn't taken such drastic measures ... that would be in question," said Deb Rephan, a Greenpeace spokeswoman.

In the face of this decline, environmental groups have turned to the wealthy. The Sierra Club began soliciting large individual donations from wealthy donors several years ago after falling membership forced the group to lay off 26 employees. Today, 15 percent of the group's \$52.6 million in income comes from "major donors."

"We were one of the few that had not invested in a major donors program," says Sierra Club conservation director Bruce Hamilton, adding, "Strictly relying on our dues was not a way we could sustain ourselves."

In truth, wealthy Americans were among the earliest supporters of conservation. They were the hunters, fishermen, and backwoods hikers who saw firsthand the threat that unchecked development and industry posed to nature, and they had the resources to do something about it.

To this day, conservatives and corporations are major supporters of land preservation. The Nature Conservancy, a largely apolitical group focused on acquiring and preserving unspoiled land, collected more than \$1 million each last year from General Motors, Dow Chemical, and power plant developer Enron Corp., all of whom have tangled with environmentalists.

But foundations only came to support a tougher brand of activism, such as suing polluters, as changes in the controlling families or professional staffs brought a new generation to power.

McGeorge Bundy, a former top aide to President John F. Kennedy, set the tone in the late 1960s when he took over the Ford Foundation and began underwriting environmental causes. Established by pioneer car maker Henry Ford, the foundation even put up \$400,000 for the Natural Resources Defense Council to sue the US Environmental Protection Agency for not controlling smog - much of it caused by auto exhaust.

By the early 1980s, when President Reagan slashed environmental programs and scandal engulfed the EPA, foundations began steering big money toward the environment.

Charles H.W. Foster, former dean of the Yale School of Forestry, was invited to Charlottesville, Va., in 1982 to start one of the first of a new wave of environmental charities. The modest W. Alton Jones Foundation had suddenly been catapulted into the ranks of the top 100 charities when Occidental Petroleum bought out Cities Service Oil, sending the value of stock owned by the foundation through the roof.

Founder W. Alton "Pete" Jones, a former chief executive of Cities Service, was known for his big heart, but he was no environmentalist. "Mr. Jones himself had no perceived interest in such things," recalled Foster.

But Foster's widow, Nettie Marie Jones, and their two daughters had different ideas, and concentrated their giving in two areas: the environment and the nuclear arms race.

Today, the W. Alton Jones Foundation is a major thorn in the side of Pete Jones' former industry. Not only is it the sixth largest foundation supporter of environmental causes, but the charity gave \$1 million in 1995 alone to promote automobiles that run on batteries and fuels other than gasoline.

The shift at Jones has been replicated around the country, including New England. In Massachusetts, the 1982 death of Jessie B. Cox, heir to the company that owns The Wall Street Journal, created a charity that gave more than \$1 million to the environment last year. Similarly, Francis W. Hatch, a former Republican leader and candidate for governor, began directing money from the John Merck Fund toward the environment in 1987, following the death of his mother-in-law, Serena Merck.

But the biggest conversion of all came at the Pew Charitable Trusts. Long a conservative organization, the \$3.8 billion Pew Trusts had helped create the Hoover Institution on War, Revolution, and Peace at Stanford University, where economist Milton Friedman argues that corporations should give nothing to charity except to gain tax breaks.

After the four founding family members died, reform-minded Pew trustees hired former nurse Rebecca Rimel as executive director to reorganize the grant programs. Rimel replaced her senior staff with knowledgeable activists, including Joshua Reichert, who created one of the largest and most influential environmental giving programs in the country.

Though Pew grants began paying for work that the oil industry

disagreed with, Reichert kept the support of Pew family members on the board, especially Howdy Pew. An avid hunter and fisherman, Pew traveled with Reichert and Rimel on environmental field trips to Madagascar and the Amazon.

And Reichert suggests that the founders of the Pew Charitable Trusts might also support the new direction had they lived to see it. "The Pew family members look at this institution evolving as American society evolves," he said.

In this decade, a wave of newly rich people, most of whom came of age after the first Earth Day in 1970, have begun paying for more controversial efforts. Ted Turner's foundation, for instance, will give away \$18 million this year, mainly to new groups that include such hardliners as the Native Forest Council in Oregon, which opposes almost all logging on federal land.

Now, with philanthropy analysts predicting an unprecedented inter-generational transfer of wealth as an unusually large number of wealthy people die, environmentalists appear to stand on the brink of another leap in foundation support.

Already, the children of Hewlett-Packard founder David Packard, who died last year, have said that a chunk of the \$4.6 billion he left to the family foundation will fund environmental causes, while Turner has pledged \$1 billion to the United Nations and plans to leave much of his vast estate to fund environmental and youth concerns.

The looming question is what effect all this money, and influence that comes with it, will have. On the one hand, philanthropists have been a shot in the arm, allowing start-up groups to survive and funding new ideas such as a bank that loans only to environmentally friendly businesses. But, some wonder, can a wealthy elite really guide a popular movement?

"These are not people who have been to inner city Chicago or to 'cancer alley' or on a Native American reservation in the southwest," says William Shutkin of Alternatives for Community and Environment in Roxbury. "That's where you run into the limits of foundations."

This story ran on page A01 of the Boston Globe on 10/19/97.  
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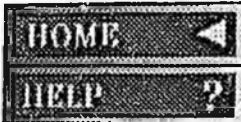
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## Environmental donors set tone

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### Activists affected by quest for funds

By Scott Allen, Globe Staff, 10/20/97

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**S**econd of two parts

Not long ago, environmentalists didn't have to worry about the corrupting influence of money - they didn't have much.

In the 1970s, major groups such as the Environmental Defense Fund in New York and the Conservation Law Foundation in Boston were run by low-paid idealists, and grassroots groups had almost no budget at all. The joke about so-called "tainted money" from corporations was that there 'taint enough of it."



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Today, the environmental movement is far more diverse, sophisticated, and affluent. The 10 largest groups alone have 3,400 full-time employees, including leaders who often make \$150,000 a year or more, as well as a small army of outside contractors such as scientists, lawyers, and public relations specialists.

"A lot of the environmental movement's message has been embedded in the society. In many ways, we've won," declares Doug Foy of the Conservation Law Foundation, whose \$3.7 million budget is 40 times bigger than it was two decades ago.

But success has its price. Large donors increasingly shape the environmental agenda, pushing activists to the political center and away from hard-line positions that call for drastic changes in the economy or society. The quest for money, say critics, is poisoning the environmental movement.

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movement.

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"It's like throwing a huge steak in among a bunch of starving lions. The lions will jump on it even if it is laced with arsenic," said Tim Hermach of the Oregon-based Native Forest Council, who blames big donors for undermining his campaign to end commercial logging on federal land.

Most of the environmentalists' \$4 billion in annual revenue comes from average individuals in the form of membership dues, T-shirt sales, entry fees at sanctuaries and so on, but that's not the money that speaks the loudest.

Charitable foundations, which allow wealthy individuals, families, and corporations to give away money tax-exempt, may be the most influential income of all, even though it accounts for less than 20 percent of environment groups' income. Foundation grants are vital to centrist groups such as the Conservation Law Foundation in Boston (60 percent grant-funded) and the Environmental Defense Fund in New York (28 percent). Many new groups such as Alternatives for Community and Environment in Roxbury (70 percent grant-funded) would never get started without grants.

Even groups that get only a small portion of their income from foundations put special emphasis on their needs. Unlike membership drives, which are both labor-intensive and time-consuming, getting a grant is like winning the lottery. In 1995, the average Pew Charitable Trusts grant was \$340,000.

As a result, foundations get up to 10 times as many requests for money as they can grant - and environmentalists willingly modify their agenda to please big funders.

"If a foundation had a large interest in Alaska and a lot of money, you definitely had a large interest in Alaska," joked former Wilderness Society director Bill Turnage to journalist Mark Dowie a few years ago.

But parroting a foundation's agenda is not enough to get its money. Faced with the deluge of applications, foundation officials often target the big bucks to environmentalists they know, creating an inner circle of "haves," along with a bunch of outsiders looking in.

"It is an extraordinarily incestuous world out there," said Bob Schaeffer, a Boston-based consultant who represents several groups that are heavily funded by foundations.

The Heinz Endowments, for instance, gives large grants to people Teresa Heinz knows personally, such as environmental architect Bill McDonough, a family friend who once employed Heinz's son, or the Environmental Defense Fund, of which Heinz is vice chairwoman.

And when the Pew Charitable Trusts moved its marine fellowship

program to the New England Aquarium, it was only a matter of months before the Trusts gave a \$150,000 fellowship to Greg Stone of the aquarium, to go with a \$266,000 grant Stone had received a few months before.

While the grant recipients may be deserving, the "have-nots" complain that they tend to fit a narrow profile: political centrists who push scientific research or solutions that industry can support.

That may reflect the roots of the leading environmental foundations in heavy industry - two carmakers, two oil executives, real estate developers, and a bigtime logger founded six of the 10 largest environmental charities. The foundations are run separately from the people who founded them, generally by people who see themselves as committed environmentalists, but the founders' influence often continues on the board of directors or in the stock portfolio.

Bill Shutkin, director of Alternatives for Community and Environment in Roxbury, said urban-based groups such as his simply can't crack the inner circle of these elite foundations, forcing them to turn to smaller organizations, such as Echoing Green or the Nathan Cummings Fund of New York, for help.

The big funders, Shutkin said, "have got a ton of money, but if you're not right at the core of the mainstream organizations, it's really hard to break into that circle."

Inside the downtown Philadelphia offices of the nation's fourth largest charity, Pew Charitable Trusts, Joshua Reichert plays a subtle game of kingmaker. As the man in charge of doling out the single largest block of money earmarked for environmental causes, Reichert's ideas have a way of becoming reality.

When Reichert suggests two environmental groups should merge, they quickly meet to discuss the idea. When Reichert became frustrated that environmentalists are losing the public relations wars, Pew created a public relations firm to join the fray. If Reichert doesn't like the way a group is being run, he withholds its money.

Most importantly, Reichert consistently pushes environmentalists to be practical, even if that means bruising egos or accepting compromises that purists detest. Along the way, Pew has reshaped the debate on issues such as logging, air pollution and energy conservation - and made some enemies, too.

"They have been bullies .... They are arrogant," said Beth Daley, vice president of the National Center for Responsive Philanthropy in Washington, D.C., which monitors foundations.

The ascendance of Reichert, who has a doctorate in anthropology and a

deep background in international environmental issues, marks a dramatic change from the days when charities were staffed with men in green eyeshades who passively wrote checks to causes they dimly understood. Pew and other foundations are more like overseers of environmentalists, auditing their books, suggesting personnel changes, and specifying in great detail how the money should be spent.

The agendas of the funders are as varied as the people providing the money, who range from the ambitious Reichert to the more restrained Francis W. Hatch, the 1978 Republican candidate for governor in Massachusetts.

But philanthropists increasingly view their charity as "strategic investments" with a business-like demand for performance. "We are very product-oriented," said Reichert. "We need to demonstrate a return on these investments ... that is measurable."

The demand for performance can range from the trivial - Appalachian Mountain Club staffers had to dress up in costumes to help with a corporate-sponsored Halloween Party last year to please one funder - to profound issues such as how to balance the needs of industry and the environment.

And, if existing environmental groups can't do the job, foundations may set up new ones. This year, officials at the Heinz Endowments of Pittsburgh set up a \$700,000 organization to scrutinize deregulation of the electric industry, complete with a "grassroots" coordinator to whip up support among groups such as the elderly and organized labor.

Pew Charitable Trusts has created several environmental organizations, including a strategy-plotting group, a Boston-based task force on air pollution and energy, and a public relations firm, the Environmental Information Center, which played a key role in pressuring President Clinton to approve new air pollution rules this year.

Taken together, these new activist foundations are reshaping the movement in controversial ways. Working largely out of the limelight, people such as Reichert, Rockefeller representative Donald Ross and Denis Hayes at Seattle's Bullitt Foundation are making the movement more pragmatic and, some say, less worthy. For example:

A growing emphasis on "winning" rather than being ideologically correct. Reichert has said his ideal strategist would be James Carville, the ultrapragmatic consultant behind Clinton's election in 1992. "I don't want someone who knows the facts, or can articulate them persuasively; I want someone who wants to win and knows how," he told one interviewer.

More emphasis on solutions that balance environmental and economic interests. The national environmental group that receives the greatest

share of its income from foundations, the Environmental Defense Fund, has pioneered partnerships with industry, including a highly touted waste-reduction program with the McDonald's restaurant chain.

And the largest environmental gift in US history, a \$20 million donation from the Heinz Endowments, created a research center in Washington, D.C., to bring together industry, academics, and environmentalists to solve environmental problems.

More emphasis on national, rather than local, issues.

Though there have been efforts to shift the balance - several Massachusetts foundations set up a new fund for grassroots groups, and Ted Turner specializes in funding small upstarts - foundation money still flows overwhelmingly to big organizations working nationally. Half of all donations last year went to a handful of organizations with budgets above \$5 million.

"We're kind of lost in the cracks," said Matt Wilson of the Toxic Action Center, a Boston-based group that assists 60 local groups on toxic-waste issues. "Our status in the funding world is not where it should be."

Some of these trends might have happened without foundation influence, of course. The Republican takeover of Congress in 1994 threw environmentalists onto the defensive as they fought off efforts to weaken or repeal environmental laws. Under the circumstances, winning and compromising became hot topics and the political focus was naturally on the national stage.

But there is little doubt that the foundations are getting more heavily involved in directing environmental activism - and opinion is sharply divided as to whether that is a good thing.

Armond Cohen, director of the Pew-backed Clean Air Task Force, believes leading environmental funders are bringing some order to a movement that has often been too decentralized for its own good. Pew, in particular, has relentlessly pushed environmental groups to work together in alliances.

"As a community, we are all tactics and no strategy," said Cohen, whose organization works behind the scenes to educate politicians about air pollution and energy issues.

At their best, say defenders, foundations can be the voices of reason, drawing attention to problems before they become a crisis. For instance, the Merck Fund of Boston helped short circuit the anti-environment "wise use" movement in New England by calling attention to their activities early and persuading activists to take a more conciliatory approach toward forest and river issues.

For those who have the funders' trust, there is sometimes an invigorating dialogue about where the environmental movement ought to go. In Alaska, environmentalists credit Reichert with devising the national strategy that helped bring an end to two subsidized logging contracts in the Tongass National Forest.

"I treat the relationship as honest partnering," said Jan Konigsberg of the Alaska Conservation Foundation. "I tell [Reichert] what I think, and he tells me what he thinks. That sort of dialogue is essential to any project."

And lawyers at the Conservation Law Foundation, the most successful New England environmental group at attracting grants, succeeded in turning around both Pew and the San Francisco-based Energy Foundation on the issue of energy deregulation.

Both foundations had invested heavily in energy conservation programs across the country that would be imperiled if the power industry were no longer required to do them. However, Conservation Law director Douglas Foy argued that deregulation was inevitable and could even be helpful to the environment if it encouraged the construction of less polluting power plants.

"You couldn't stop a freight train, but you could steer it," said Foy, describing his argument that environmental groups should encourage rather than fight deregulation. Now, Conservation Law Foundation has collected more than \$1 million in grants from the Energy Foundation to push deregulation.

But Conservation Law's position is at odds with most other environmental groups in the region, which has prompted bitter fights and, recently, a decision by the Merck Fund to help other groups working to keep deregulation from proceeding too quickly.

It is precisely such conflicts that convinces some observers that the power of the charitable foundations will always be limited. Despite critics' theories that the foundations are coming together as an "eco-cartel," others say the foundations simply disagree too much to wield power collectively.

In fact, Denis Hayes of the Bullitt Foundation says that's exactly the problem: the environmental movement has always been decentralized and lacked a charismatic leader such as Ralph Nader or Jesse Jackson who could unify it, making it vulnerable to internal division.

Since the 1994 elections, he said, some environmentalists "started training their guns on one another rather than on people they have nothing in common with. It's time for us to step back a little bit from that confrontation."

But others argue that foundations such as Hayes' helped cause the internal fighting by giving compromisers the loudest voice in environmental debates and marginalizing the purists. For instance, the foundation-funded Northern Forest Alliance, the dominant environmental voice in New England's Northern Forest, stresses sustainable logging and alliances with businesses, leaving the messy business of protest to low budget groups such as the Native Forest Network, whose members chained themselves to logging equipment in August.

"Foundations think they are a moderating influence, but they are a stifling influence," said Mark Dowie, who is writing a book about the role of charity in social causes.

End of series

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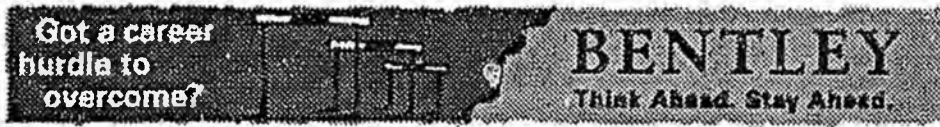
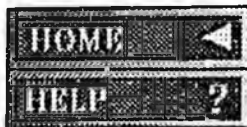


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### TED TURNER

# Media mogul on course to be one of movement's top funders

By Scott Allen, Globe Staff, 10/19/97

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**T**ed Turner painted himself into a corner last year when he called rival billionaires "ol' skinflints" for giving so little to charity and suggested that someone make a list of the most generous among America's super-wealthy.

Imagine the embarrassment of the Cable News Network founder when Bill Gates' on-line magazine, Slate, took him up on it - and Turner didn't make the list. There, at No. 10, was the "skinflint" founder of Microsoft with \$27 million in donations, much of it to Harvard University.



But Turner became one of the big guns of American charity last month with his promise to give the United Nations \$1 billion for causes such as removing land mines and helping refugees. "What good is wealth sitting in the bank?" he asked.

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With less fanfare, Turner also has set a course to become one of the top funders of the US environmental movement, handing out \$18 million this year through his seven-year-old Turner Foundation. His 1998 goal of dishing out \$25 million is likely to be exceeded by only two or three other philanthropies.

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"It is not so much that he wants this foundation to be No. 1, but it is more a reflection that he would really like to see people measure their success by something positive," says Peter Bahouth, the former Greenpeace USA director who runs the Turner Foundation.

But Turner's links to the environmental scene go back much further, at least to the 1970s when he began reading about over-

population, resource depletion, and species extinction. In the early 1980s, he began airing National Geographic and National Audubon Society programs on his Turner Broadcasting System, along with "Captain Planet," an ecological cartoon that annoys conservatives.

Then came Jane Fonda, who met Turner in 1989 and married him two

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years later. A longtime activist, she quickly took a lead role at the foundation and helped focus it on environmental and youth issues.

Forest activist Jeff DeBonis, who obtained an early Turner grant, recalls the day in 1992 when Fonda took him on a tour of the CNN Center in Atlanta while they waited for Turner. After swinging through the news studio, she led DeBonis into a meeting room adorned with the politically incorrect heads of big game animals.

"This is from Ted's old days," said Fonda, suggesting, not too subtly, that Turner had changed since he met her. Turner quickly approved the grant to DeBonis's group and left it to Fonda to work out the details.

Unlike foundations that give mainly to established groups and institutions, Turner seeks out effective and sometimes scrappy grass-roots groups. He has funded protest groups, such as the Native Forest Network, whose members chained themselves to logging equipment in Vermont last August.

But Bahouth, who led flamboyant protests at Greenpeace in the 1980s, stressed that Turner is not on the political left. He noted that the foundation also funds hunters who want to help the environment.

But to get his money, environmentalists must put up with Turner's quirks. He gives preference to groups in Montana, New Mexico, and other states where he owns ranches. Bahouth defends the favoritism, suggesting that the states where Turner owns land need more activism.

Denis Hayes, an environmentalist in Turner-ranch-free Washington state, figures there is a way to capitalize on Turner's idiosyncrasy:

"We're trying to convince Ted to buy a ranch in Washington."

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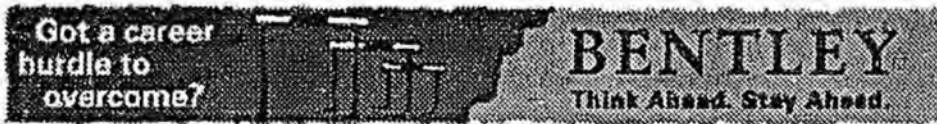
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TERESA HEINZ

# Senator's wife uses influence, donations to effect change

By Scott Allen, Globe Staff, 10/19/97

One day, she is having dinner with a Republican presidential candidate, urging him to call her friend, energy guru Amory Lovins, to learn about global warming.

On another, she is giving the Chinese ambassador a list of "environmentally friendly" companies that could help his country's economy and impress the United States at the same time.

On still another, she is approving the largest environmental grant in American history, \$20 million for a research center named for her late husband, Senator John Heinz.

"Teresa is very well respected in the environmental community. This is very near and dear to her heart," says Anthony Cortese, president of a Heinz-financed company, Second Nature, which helps colleges teach about the environment. "She challenges people to think and act differently."

Heinz, a leading stockholder in the \$10 billion H.J. Heinz Co., has been deeply involved in environmental causes for decades. In 1989, she helped stop a highway through the Amazon jungle, and in 1984 she and Sen. Heinz created a foundation that paid for causes such as a guide to socially responsible grocery shopping and a public relations firm that recruits Hollywood stars to support environmental efforts.

But she rose to new prominence after her husband's death, reorganizing the \$1.1 billion Heinz Endowments in Pittsburgh and creating a program to aid environmental groups. Under Andrew McElwaine, Heinz' former Senate aide, the environmental program gave out \$8.2 million last year, mainly in Pennsylvania. And, McElwaine says, "We're just hitting our stride."

But that hasn't kept her from coming under attack from some environmentalists because of her ties to the H.J. Heinz food company, whose tuna suppliers were once blamed for killing dolphins. Heinz says

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the attacks were untrue and unfair, noting that she pushed the company back in 1990 to reduce the number of dolphins caught in tuna nets. It was one of the first to go "dolphin-safe," losing \$15 million in business in the process, according to company estimates.

In general, Heinz dismisses attacks from both left and right, arguing that their ideologies make them inflexible.

"All I want is for people to be practical," says Heinz, a native of Mozambique who speaks with a slight Portuguese accent. "It's not comfortable because you can't be pure .... You have to wallow in practicality, but to raise a child you have to change dirty diapers."

Like many of the new generation of environmental philanthropists, Heinz regards money as only one tool in her arsenal. As the wife of a US senator, a major corporate stockholder, and a top official at a big environmental group, she has extraordinary access to advance her causes.

For instance, when Heinz became concerned about a proposed Air Force bombing range in Idaho three years ago, she met with Air Force Secretary Sheila Widnall to object. The Air Force subsequently shelved the plan.

Yet Heinz believes that her initiatives are small steps toward profound changes that are needed to save the planet and the people on it.

"I don't think we will ever be able to turn our ways around unless we rethink what is really valuable for us," Heinz says. "Look at how we measure the gross national product. How do we value poetry reading? How do we value good marriages? .... We have been asking the wrong questions."

SCOTT ALLEN

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LOIS GIBBS

# Bricklayer's daughter woos wealthy benefactors

By Scott Allen, Globe Staff, 10/20/97

**L**ois Gibbs was nervous when she pulled up to Abby Rockefeller's home in Cambridge last May - with good reason.

Gibbs, the self-described housewife made famous by her fight against the infamous Love Canal hazardous-waste site, had asked a member of America's most famous rich family to host a fundraiser for Gibbs' environmental group.

Though Gibbs was accustomed to giving rousing speeches to large crowds without notes, her brush with 20 members of society's upper crust was different. She had made her reputation as an environmentalist for the Big Mac crowd, helping community groups fight sludge dumps, incinerators and the like, and she was braced for a stiff, conservative crowd.

It turned out that Rockefeller, daughter of financier David Rockefeller, shared Gibbs' passion for sludge, even running a company that makes composting toilets. Dressed in a vest and with her long gray hair tied back, Rockefeller looked more like an activist than an heiress as she introduced Gibbs to affluent guests such as Pillsbury heir George Pillsbury.

"They were very much like people I work with, except they have more money," jokes Gibbs, director of the Virginia-based Center for Health, Environment and Justice.

Environmental causes can make for strange bedfellows, bringing together well-to-do funders with front-line activists who are often both less wealthy and more liberal than their benefactors. One survey of leaders of charitable foundations found that 53 percent regard themselves as Republicans, while environmental groups more often support Democrats.

"It's demographically, socially, culturally very different sets of people," said Ruth Hennig, environmental program officer at the Boston-based

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John Merck Fund. "Our board wouldn't necessarily have cocktails with" the activists they fund. "They don't even see them, but they very much support the work they do."

In fact, protecting the environment, especially the land, appealed to some conservatives and wealthy people long before the Democratic party discovered the issue. Republican Teddy Roosevelt, after all, is the father of the national park system, while foundations controlled by the Rockefeller family are among the biggest funders of environmental causes.

The Merck Fund, a \$102 million charity set up by Serena Merck, widow of the chief executive of Merck Pharmaceuticals, became the top funder of Massachusetts environmental groups under Francis W. Hatch, the 1978 Republican candidate for governor and author of one of the state's first wetland protection laws.

Hatch, derided during his 1978 campaign for a privileged lifestyle that included a Beverly Farms estate with horses, pool, and tennis court, has readily reached across economic and political lines to make grants, Hennig says. Among others, Merck funds the Massachusetts Public Interest Research Group, founded by consumer crusader Ralph Nader.

"Our board has been able to stretch and to understand where the best value for our resources lie," Hennig explains.

Meanwhile, activist Gibbs, the high school educated daughter of a bricklayer, is learning to woo upper income people who can help her fight to clean up Superfund sites and other hazards.

For years after she succeeded in pressing the federal government to evacuate the Love Canal neighborhood near Buffalo, she paid for her fights with grassroots support and small grants. But now, with an \$800,000 budget, Gibbs needs affluent benefactors.

"The people we are working for don't have the resources to support us," concedes Gibbs. "We need to talk to people who do have the resources."

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## ALASKA CONSERVATION FOUNDATION

*Jonathan Adler's book, Environmentalism at the Crossroads: Green Activism in America, prompted extensive curiosity about how the environmental movement in Alaska is financed. In order to answer this question, recent reports (1993) filed by the Alaska Conservation Foundation were examined.*

The Alaska Conservation Foundation (ACF), headquartered in Anchorage, is a tax-exempt, non-profit with the stated purpose of awarding grants to environmental groups and encouraging scientific efforts in support of the environment and conservation issues in the public interest. As a 501(c)(3), the Foundation cannot engage in lobbying, but as we shall see, it does finance groups who do engage in lobbying and political advocacy.

In 1993, ACF had revenues of \$1,691,645. Over ninety percent of this was from foundation grants including grants from The Pew Charitable Trusts, Joyce Mertz-Gilmore Foundation, The Bullitt Foundation, Surdna Foundation and the American Conservation Association. The donors of two large grants are confidential. ACF also received about \$145,000 in Federal grants from the Department of State, National Fish and Wildlife Foundation and the U.S. Agency for International Development. Membership dues make an insignificant contribution to revenues.

A generous portion of ACF's revenues (\$324,299 plus an unknown confidential amount) is spent on grants to environmental organizations involved in the Alaska Rainforest Campaign. The Foundation has also given grants (\$25,467) to the Thane Neighborhood Association for legal efforts to halt AJ mine and has given significant grants to advocacy groups involved in Alaska boreal forest issues. ACF also runs Alaska Community Share which collects and distributes money contributed by Federal and other public employees through payroll deductions to environmental groups.

ACF also plays a major role in the Arctic Network which tries to influence official positions adopted in the Arctic Council/Arctic Environmental Protection Strategy (an international diplomatic organization comprising the eight arctic nations) and raise the importance of the Arctic among policy-makers. Apparently, most of the Federal money ACF receives helps finance ACF's Arctic Network activities and ACF also made a confidential grant to the Network.

The following environmental groups have received grants totalling more than \$10,000 from ACF: Trustees for Alaska (\$104,020), Sierra Club Legal Foundation (\$103,350), Southeast Alaska Conservation Council (\$91,750), Alaska Center for the Environment (\$89,355), Natural Resources Defense Council (\$69,250), Northern Alaska Environmental Center (\$38,420), Alaska Environmental Lobby (\$25,810), Thane Neighborhood Association (\$25,467), Alaska Wildlife Alliance (\$14,000), American Rivers (\$12,449), Alaska Environmental Assembly (\$10,000) and the Amiq Institute (\$10,000). ACF made confidential grants to the Alaska Marine Conservation Council, Wilderness Society and U.S. Arctic Network which were probably large.

## **BANKROLLING THE ALASKA CONSERVATION FOUNDATION -- WHO ARE THE PLAYERS?**

The Alaska Conservation Foundation (ACF) and the foundations which support it are members of the **Environmental Grantmakers Association (EGA)** which was established in 1987 in order to promote recognition that the environment and its inhabitants are endangered by unsustainable human activities, develop collaboration among active and potential members, and increase the resources available to address environmental concerns. Grantmakers decide who gets the money; therefore, they have a powerful voice in setting the environmental agenda and influencing the programs carried out by the activists. The EGA coordinator is Donald Ross, also director of the Rockefeller Family Fund, who believes that foundations have a "major role to play" in determining environmental policies. At the beginning of 1995, EGA had 182 members from private, corporate and community foundations.

The **Pew Charitable Trusts** (bestowed \$515,000 on ACF) consists of seven individual trusts established between 1948 and 1979 by the four sons and daughters of Joseph N. Pew, founder of the Sun Oil Company. The Pew Trusts are reportedly the largest environmental grantmakers, giving about \$35 million annually to environmental groups. Assets exceed \$2.3 billion.

**Joyce Mertz-Gilmore Foundation** (gave \$175,000 to ACF) was established as the Mertz Foundation by the Mertz family of New York. The name was changed in 1974 when Joyce Mertz Gilmore died and left the Foundation a considerable bequest. The Foundation gives around \$2.5 million annually in environmental groups. Assets exceed \$66.6 million.

**The Bullitt Foundation** (granted \$106,000 to ACF) was established in 1952 by Dorothy S. Bullitt, founder of King Broadcasting in Seattle. The primary goal of the Foundation is to protect and restore the natural physical environment of the Pacific Northwest. One of the Foundation's main interests is the Alaska Rainforest Campaign. The Bullitt Foundation distributed over \$4.1 million in environmental grants in 1993. Assets are \$88.3 million.

**Surdna Foundation** (dispensed \$100,000 to ACF) is a family foundation, established in 1917 by John E. Andrus (Andrus spelled backwards is Surdna) whose businesses included gold, oil, timber, and real estate. Surdna disbursed nearly \$5.3 million in environmental grants during 1993. Assets are more than \$354.7 million.

**American Conservation Association** (granted \$85,000 to ACF) was founded by Laurance S. Rockefeller in 1958. It usually receives a large annual contribution from the Jackson Hole Preserve, another environmental grantmaking entity supported by Rockefeller funds. In 1992, the American Conservation Association also gave \$75,000 to the Sierra Club Legal Defense Fund for "protection of natural resources in Alaska." The American Conservation Association disburses about \$1.5 million per year to environmental groups.



# Gwich'in Steering Committee

P.O. Box 302788 - Anchorage, Alaska 99520 • (907) 258-0014 • Fax (907) 258-4580

*"In no case may a people be deprived of their own means of subsistence"*  
International Covenant on Human Rights

November 25, 1997

Commissioner John Shively  
Department of Natural Resources  
3601 C Street, Suite 1210  
Anchorage, Alaska 99503



## PUBLIC RECORDS REQUEST

Dear Commissioner Shively,

This is a request for information pursuant to the Alaska Public Records Act, AS 09.25.110 and AS 09.25.120. Within ten working days of your receipt of this letter, please furnish us with a copy of the documents described below.

For the period from July 1, 1996 to the present, copies of:

1. Any and all budgets and/or plans for expending \$600,000 fiscal year 1998 appropriation to the Governor's office to promote oil development in the Arctic National Wildlife Refuge and on Alaska's North Slope;
2. Any and all materials that address plans, efforts, budgets, expenditures, or possible future activities by Alaska Native corporations, labor unions, Arctic Power, North Slope Borough or others to promote oil development in the Arctic National Wildlife Refuge, or related activities, including cooperative or coordinated activities of the State of Alaska, if any;
3. Any and all materials (including notes, plans, budgets, phone messages or documentation thereof, email communications, and/or interoffice memoranda), including all communications between the Department of Natural Resources and the Office of the Governor (both in Alaska and in Washington, D.C.); Arctic Power, its officers, employees, or consultants; representatives from labor unions or related organizations; representatives of Alaska Native corporations; the Alaska legislature; North Slope Borough; and any others, which address the

Sarah James, Arctic Village • Jonathon Solomon, Ft. Yukon • Norma Kessel, Old Crow • Johnny Charlie, Ft. McPherson  
Ernest Erick, Venetia • Kay Wallis, Ft. Yukon • Gladys Netto, Old Crow • Alestine Andra, Arctic Red River

promotion of oil leasing in the Arctic National Wildlife Refuge. Including any of the following:

- a. Education or advocacy efforts in Washington, D.C. aimed at Members of Congress, the White House, Department of the Interior, or Department of Energy, including any and all trip reports, records of direct contacts, and any information which identifies or prioritizes individuals as potential targets for education or advocacy efforts, as helping or supporting the State's and/or Arctic Power's efforts, or as points of contact; and/or
- b. Information which identifies or prioritizes States, regions, or Congressional districts as potential target areas for educational or advocacy efforts, including any and all records of all past direct or indirect contacts, and any information which identifies or prioritizes individuals in those areas for education or advocacy efforts, as helping or supporting the State's and/or Arctic Power's efforts, or as points of contact; and/or
- c. Information which identifies or prioritizes state or national labor unions or their subdivisions as potential targets for educational or advocacy efforts, including any and all records of all past direct or indirect contacts, and any information which identifies or prioritizes individuals for education or advocacy efforts, as helping or supporting the State's and/or Arctic Power's efforts, or as points of contact; and/or
- d. Efforts aimed at getting print and electronic media coverage of the position of the State of Alaska, Arctic Slope Regional Corporation, North Slope Borough, Arctic Power, labor unions, or others regarding oil leasing in the Arctic National Wildlife Refuge or on Alaska's North Slope; and/or
- e. V.I.P. tours to the North Slope for Members of Congress, their staffs, the press, or others, whether sponsored by the State of Alaska or its political subdivisions, Arctic Slope Regional Corporation, Arctic Power, ARCO, BP, or any other entity, including records of all past trips, including expense and narrative reports of trips and the reaction of visitors, and any information which identifies or prioritizes individuals for possible future trips; and/or
- f. Discussions of a generic campaign that Alaska can do development right; and/or
- g. Any and all correspondence to or from, any records of the meetings of, or any communications to or from the members of, the Governor's Oil and Gas Policy Council regarding oil leasing in the Arctic National Wildlife Refuge and/or the Gwich'in Steering Committee; and/or
- h. Any and all discussion of Gwich'in efforts to oppose oil development in the Arctic National Wildlife Refuge, or of actions that could be taken to counter

support for the Gwich'in, or which identifies leaders of the Gwich'in Steering Committee or any individual associated with the efforts of the Gwich'in people or the Gwich'in Steering Committee, or of efforts to seek support among Alaska Natives, Native American tribes or organizations outside Alaska, churches, or religious groups.

If you determine that any of the requested documents are exempt from release, please identify and describe the exempted materials and specify the grounds for that exemption.

If you determine that portions of the requested documents are exempt from release, please segregate those portions and release the remainder of the documents. We encourage you to release any documents which may technically be shielded by exemptions if there is no purpose served by withholding the requested documents.

We also request that you waive any applicable fees since furnishing this material is in the public interest. The Gwich'in Steering Committee is a village-based Alaska Native organization representing Gwich'in speaking individuals across the State of Alaska. The Gwich'in Steering Committee, among other priorities, encourages the dissemination of public information and will make the requested information available to our members and the general public, upon request.

Thank you for your cooperation and prompt attention. Please direct your response to Bob Randall at Trustees for Alaska, 725 Christensen Dr., Suite 4, Anchorage, Alaska 99501, (907) 276-4244.

Sincerely,

*Jonathan Solomon*

Jonathan Solomon, Chair

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Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY97) cost: \_\_\_\_\_

POSITIONS

POSITIONS	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

[Empty box for analysis]

Prepared by \_\_\_\_\_

Division \_\_\_\_\_

Approved by \_\_\_\_\_

Agency \_\_\_\_\_

House, State Affairs  
Rep. Jewnette James  
Chair

Phone \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

# ALASKA STATE LEGISLATURE

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**REPRESENTATIVE MARK D. HODGINS**  
**House District 9**

## **Sponsor Statement** **House Bill 466**

### **"An Act relating to violations of state election laws."**

The intent of House Bill 466 is to clean up certain campaign tactics that are illegal and unethical. The practice of casting unproven dispersions in a desperate attempt to sway public opinion during the last few weeks of an election has become pervasive in recent elections and needs to be stopped.

Candidates have had their reputations and integrity impugned as well as causing long lasting emotional damage to their families and friends. This type of slanderous campaign activity should not be tolerated as it erodes the foundation of the entire election process. The public is clearly fed up with this type campaign tactic.

Current law prohibits the practice of knowingly circulating false or misleading information, but as it is only a class A misdemeanor, State prosecutors have all but ignored any attempt to curb this practice. By increasing the penalty to a class C felony, we will send a strong message that this type of campaign misconduct will no longer be tolerated.