THE STATE of ALASKA
GOVERNOR BILL WALKER

Department of Law

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Via Hand Delivery
Senate Community and Regional Affairs Committee
Alaska Legislature
State Capitol
Juneau, Alaska

Re: House Bill 374

Dear Senate Community and Regional Affairs Committee Members:

The Department of Law has continuing concerns with HB 374 ver. \E that consumers will lack a remedy for, or even an effective forum for resolving, disputes that arise from on-bill financing arrangements. As background, the Department of Law has primary responsibility for consumer protection under AS 45.50.495, which is shared with the Regulatory Commission of Alaska as to utilities under AS 45.50.481(a) to the extent that the utility's behavior regulated by the RCA would also be unlawful under the Unfair Trade Practices Act (UPTA). The scheme created by HB 374, in its current form, significantly diminishes the ability of consumers, and the Department of Law and the RCA on their behalf, to protect their rights by decoupling payment for services from the provision of services.

Because the installation and financing of the energy efficiency and conservation improvements will be offered by or through their utility, and paid for through their utility bill (under threat of disconnection of utility service), consumers should be able to look to their utility if their energy efficiency or conservation improvement does not function. This is generally a reasonable expectation, because under AS 42.05.291(a) utilities are required to provide "adequate, efficient, and safe service and facilities. This service shall be reasonably continuous and without unreasonable interruption or delay." But this expectation is illusory as to the subject matter of HB 374 because installation and financing of the energy efficiency and conservation improvements are not regulated public utility services. Arguably, even a fully regulated utility would not have to obtain RCA approval of the terms and conditions under which it offers installation and financing of the energy efficiency and conservation improvements. Further, HB 374 applies to all public utilities, including those that are exempt municipal or cooperative utilities (against which the RCA lacks most enforcement options short of a certificate revocation).

As a result, a consumer could be faced with an energy efficiency or conservation improvement that no longer functions, or which provides less benefit than expected, but is still required to pay for the energy efficiency or conservation improvement subject to disconnection of essential utility service. If the utility contracted with a third party to "perform functions" of the program, the consumer cannot bring an action against the utility to remedy the situation. While the original purchaser might be able to pursue an action against the third party, a subsequent purchaser has no such option, because the subsequent purchaser has no contractual relationship with the third party. Even if the utility provided the installation initially, a subsequent purchaser would have no action against the utility because the

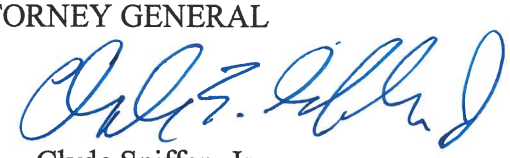
subsequent purchaser has no contractual relationship with the utility as to the energy efficiency or conservation improvement.

This is particularly troubling because the magnitude of the meter conservation charge is not limited by the HB 374; neither the amount financed nor the interest rate is capped. Utility presentations to the RCA, media reports, and academic studies (such as a paper by UAF Masters candidate Jordan Hume) suggest that the costs associated with one suggested use of the program (conversion of space heating from fuel oil to natural gas) would be in the range of $4,000 to $16,000. For illustration purposes, $14,000 financed at 6% for 15 years is $118.14 per month. Even $4,000 financed at 1% for 5 years is $68.37. In either case, financing payments would be on the same order of magnitude as the utility service itself.

In short, the HB 374 exposes consumers to significant risks, while asymmetrically shielding the utility from any significant responsibility for the program. Without substantial additional protections, this bill subjects consumers to the very real possibility of having utility service disconnected because they cannot pay for the financing of an improvement they didn't buy, or receive the benefit of, and that no longer works. The Department of Law is available to work with the committee or sponsor to resolve this issue, but until it is resolved, these concerns outweigh any possible public benefit from HB 374.

Sincerely,

JAHNA LINDEMUTH
ATTORNEY GENERAL

By: 
Clyde Sniffen, Jr.
Deputy Attorney General

cc: Darwin Peterson, Legislative Director
Representative Adam Wool