

**ALASKA STATE LEGISLATURE**  
**SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE**

April 25, 2018

3:29 p.m.

**MEMBERS PRESENT**

Senator Click Bishop, Chair  
Senator Anna MacKinnon  
Senator Lyman Hoffman  
Senator Bert Stedman  
Senator Berta Gardner

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 333(CRA) AM

"An Act authorizing a municipality to adopt an ordinance prohibiting certain uses of cellular telephones while driving in school zones or on school property."

- MOVED CSHB 333(CRA) AM OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 374(L&C)

"An Act relating to on-bill financing by a utility for certain energy efficiency and conservation improvements."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 333

SHORT TITLE: MUNI: DRIVER PHONE USE IN SCHOOL ZONE

SPONSOR(S): REPRESENTATIVE(S) BIRCH

02/07/18	(H)	READ THE FIRST TIME - REFERRALS
02/07/18	(H)	CRA, JUD
04/12/18	(H)	CRA AT 8:00 AM BARNES 124
04/12/18	(H)	Moved CSHB 333(CRA) Out of Committee
04/12/18	(H)	MINUTE(CRA)
04/13/18	(H)	CRA RPT CS(CRA) 4DP 1AM
04/13/18	(H)	DP: LINCOLN, TALERICO, PARISH, ZULKOSKY

04/13/18 (H) AM: RAUSCHER  
04/17/18 (H) DISCHARGE FROM JUD MOTION WITHDRAWN  
04/17/18 (H) JUD REFERRAL WAIVED MOTION  
04/17/18 (H) SUSTAINED RULING OF CHAIR Y37 N2 A1  
04/23/18 (H) TRANSMITTED TO (S)  
04/23/18 (H) VERSION: CSHB 333 (CRA) AM  
04/24/18 (S) READ THE FIRST TIME - REFERRALS  
04/24/18 (S) CRA  
04/25/18 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)

BILL: HB 374

SHORT TITLE: ON-BILL FINANCING OF ENERGY IMPROVEMENTS

SPONSOR(S): REPRESENTATIVE(S) WOOL

02/21/18 (H) READ THE FIRST TIME - REFERRALS  
02/21/18 (H) ENE, L&C  
03/01/18 (H) ENE AT 10:15 AM CAPITOL 17  
03/01/18 (H) Heard & Held  
03/01/18 (H) MINUTE(ENE)  
03/08/18 (H) ENE AT 10:15 AM CAPITOL 17  
03/08/18 (H) Moved CSHB 374(ENE) Out of Committee  
03/08/18 (H) MINUTE(ENE)  
03/09/18 (H) ENE RPT CS(ENE) 2DP 1NR 2AM  
03/09/18 (H) DP: CLAMAN, WOOL  
03/09/18 (H) NR: JOHNSON  
03/09/18 (H) AM: JOHNSTON, RAUSCHER  
03/16/18 (H) L&C AT 3:15 PM BARNES 124  
03/16/18 (H) Heard & Held  
03/16/18 (H) MINUTE(L&C)  
03/26/18 (H) L&C AT 3:15 PM BARNES 124  
03/26/18 (H) Heard & Held  
03/26/18 (H) MINUTE(L&C)  
03/31/18 (H) L&C AT 1:00 PM BARNES 124  
03/31/18 (H) Moved CSHB 374(L&C) Out of Committee  
03/31/18 (H) MINUTE(L&C)  
04/02/18 (H) L&C RPT CS(L&C) NT 4DP  
04/02/18 (H) DP: WOOL, JOSEPHSON, EDGMON, KITO  
04/09/18 (H) TRANSMITTED TO (S)  
04/09/18 (H) VERSION: CSHB 374(L&C)  
04/10/18 (S) READ THE FIRST TIME - REFERRALS  
04/10/18 (S) CRA  
04/11/18 (S) CRA WAIVED PUBLIC HEARING NOTICE, RULE  
23  
04/12/18 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)  
04/12/18 (S) -- MEETING CANCELED --  
04/17/18 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)  
04/17/18 (S) Heard & Held

04/17/18 (S) MINUTE (CRA)  
04/18/18 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)  
04/18/18 (S) -- MEETING CANCELED --  
04/20/18 (S) CRA AT 3:30 PM FAHRENKAMP 203  
04/20/18 (S) -- MEETING CANCELED --  
04/25/18 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)

#### **WITNESS REGISTER**

REPRESENTATIVE BIRCH  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of HB 333.

ASHTON COMPTON, staff to Representative Birch  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Commented on HB 333.

REPRESENTATIVE WOOL  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of HB 374.

ROB EARL, staff to Representative Wool  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Commented on HB 374.

GENE THERRIAULT  
Alaska Industrial Development and Energy Authority (AIDEA)  
Juneau, Alaska

**POSITION STATEMENT:** Commented on HB 374.

STUART GOERING, Senior Assistant Attorney General  
Department of Law (DOL)  
Anchorage, Alaska

**POSITION STATEMENT:** Commented on HB 374.

#### **ACTION NARRATIVE**

[3:29:33 PM](#)

**CHAIR CLICK BISHOP** called the Senate Community and Regional Affairs Standing Committee meeting to order at 3:29 p.m. Present at the call to order were Senators Stedman, Gardner, and Chair Bishop.

[3:30:57 PM](#)

SENATOR HOFFMAN joined the meeting.

**HB 333-MUNI: DRIVER PHONE USE IN SCHOOL ZONE**

[3:31:13 PM](#)

CHAIR BISHOP announced consideration of HB 333. [CSHB 333(CRA) am, version 30-LS1297\D.A, was before the committee.]

REPRESENTATIVE BIRCH, sponsor of HB 333, Alaska State Legislature, Juneau, Alaska, said HB 333 is enabling legislation that authorizes a municipality to adopt an ordinance prohibiting certain uses of cell phones while driving a vehicle through a school zone or on school property.

The idea for this legislation came from a constituent who volunteers as a crossing guard at Bowman Elementary School in South Anchorage, District 26, who in the regular course of his duties routinely saw dangerous situations with people making cell phone calls while driving around school children. In addition, he was rear-ended by someone distracted on a cell phone while stopping abruptly to avoid hitting a child running across the street. While the constituent was working with the Municipality of Anchorage to try to pass an ordinance to prohibit cell phone use within school zones or on school property, he learned it was not possible to do this without a piece of enabling legislation at the state level.

SENATOR GARDNER said this is akin to speed zone differences in school areas and asked if that is required to be in statute.

ASHTON COMPTON, staff to Representative Birch, Alaska State Legislature, Juneau, Alaska, said she would get that answer to her.

SENATOR GARDNER said that wasn't necessary, but she was a little bit curious.

REPRESENTATIVE BIRCH pointed out that this allows hands free driving through a school zone or on immediate school property and has "great support" from the Anchorage School District, AAA, and the Alaska Municipal League (AML). The AML also appreciates the opt-in piece.

[3:33:30 PM](#)

SENATOR MACKINNON joined the meeting.

[3:34:49 PM](#)

CHAIR BISHOP, finding no further questions, opened public testimony, and finding none, closed it.

SENATOR STEDMAN moved to report CSHB 333(CRA), version 30-LS1297 \D.A, from committee with individual recommendations and attached fiscal note(s). There were no objections and it was so ordered.

[3:35:47 PM](#)

At ease

**HB 374-ON-BILL FINANCING OF ENERGY IMPROVEMENTS**

[3:37:34 PM](#)

CHAIR BISHOP called the meeting back to order and announced consideration of HB 374. [CSHB 374(L&C), version 30-LS1333\E, was before the committee]

SENATOR STEDMAN moved to adopt the SCS CSHB 374( ), version 30-LS1333\S.

CHAIR BISHOP objected for purposes of discussion.

REPRESENTATIVE WOOL, sponsor of HB 374, Alaska State Legislature, Juneau, Alaska, said the changes in the committee substitute (CS) came from Department of Law (DOL) concerns about consumer protection. Someone who chooses to have an energy device financed through the utility and then after having the device installed in their home had a problem with it and didn't want to continue to pay for it, in doing so, would also lose their utility, which could be dangerous, especially in the winter.

As a solution, the bill now offers a warranty or maintenance package through the utility that the consumer could either accept or not. It would be like an insurance policy similar to an appliance extended warranty. If a customer accepts the policy, they pay a monthly charge, and then if something goes wrong, it's covered. It will be repaired, and the customer can continue paying his utility bill, so their utilities won't be shut off.

[3:40:52 PM](#)

SENATOR GARDNER asked if these kinds of warranties are currently available for the products covered in this bill.

REPRESENTATIVE WOOL replied that most appliances, like a furnace, have an implicit factory warranty for one or two years. This would be more of an overall maintenance package and something a utility would have to acquire. They probably don't do this right now.

CHAIR BISHOP asked for a sectional analysis of SCS CSHB 374( ), version S.

[3:41:55 PM](#)

ROB EARL, staff to Representative Wool, Alaska State Legislature, Juneau, Alaska, explained the changes from version E to version S. Language on page 2, line 6, inserts a requirement that a customer must be offered by the utility in writing the option to purchase a maintenance agreement for the energy improvement or else the on-bill financing agreement will not be valid. Under this provision, the utility would be able to work with an insurance provider that offers this type of maintenance product.

Subsection (e) on page 2, line 20, inserts a requirement that if the customer refuses the maintenance agreement, he must agree to pay off the remaining balance of the on-bill financing agreement. However, a situation could be possible where the interest rate on the on-bill financing agreement is lower than the interest rate on a mortgage. So, a subsequent purchaser can waive that requirement.

[3:43:17 PM](#)

On page 3, lines 8-9 are conforming language allowing a periodic fee for the maintenance agreement to be rolled into the loan to be recovered by the utility as part of the meter conservation charge. An insertion on page 4, lines 7-9, makes sure that the existence of a maintenance agreement is included in the notification requirements of the bill.

The last changes from "purchaser or purchasers" to "owner or owners" is the only change not requested by the Department of Law (DOL). It is just clean-up language. There are five other instances of this language on pages 3 and 4.

[3:44:17 PM](#)

CHAIR BISHOP asked if the Department of Law was fine with this version, because their goal is to protect the consumer, at the end of the day.

MR. EARL answered yes. Consumers are protected.

SENATOR MACKINNON said language on page 2, line 2, says interest rates must be clearly stated and asked if there is any cap on the interest rate. It would be a willing customer and she thinks of rural Alaska and the cost of the smaller utilities whose overhead costs are extreme would be allowed to perform these renewable tasks.

MR. EARL answered said an earlier version of the bill had a provision that the utilities cannot charge more than 2 points over prime and through feedback from a utility they didn't want to have that restriction. They further reasoned that nobody would use it if it was an onerous interest rate.

[3:47:34 PM](#)

CHAIR BISHOP opened public testimony.

GENE THERRIAULT, Alaska Industrial Development and Energy Authority (AIDEA), Juneau, Alaska, referenced Senator MacKinnon's last question saying he looked at a number of potential sources of federal funds from the USDA Rural Utilities Services (RUS) and the Rural Energy Savings Program specifically makes reference to a loan that is repaid by an addition to an electric bill. If their payment is not made, shutting off the utility is an important component in order to bid competitively for some of the federal sources. Because the federal sources are low cost sources of capital, use of RUS monies restricts interest rates to no more than 3 percent. However, a utility may work with a local lender as a source of capital.

[3:50:20 PM](#)

SENATOR MACKINNON noted that a bill from last year has the same issues as this bill. A utility is not responsible for lending, underwriting, or credit determination. So, this bill is allowing utilities to issue money without any of the restrictions or the ability or capability to actually collect, because language on page 3, line 27, explicitly states that they don't have to comply: "If the billing and collection of a meter conservation charge does not subject a utility to laws that regulate financial institution escrow depositories or collection agencies." So, the utility is going to make a loan for a product that it can't remove and then the utility and its ratepayers are subject to paying for. Then page 4, line 2, says: "Notice under this subsection does not constitute a lien on the property." She asked how if someone isn't paying for their meter and is being charged interest ever recover once they get behind and it can't

be removed. They can't remove the meter based on not paying for the charge. "Help me understand."

MR. THERRIAULT explained that, similar to the PACE legislation last year, which used the property tax as a means of assuring the obligation is ultimately paid for, this obligation attaches to the utility meter. So, the utility service at that residence can be terminated until that bill is paid. That is the mechanism that allows these programs to have very low default rates across the nation where they have been applied.

The language on page 3 saying this program is not to be considered lending is to make sure that the utility doesn't come under Dodd Frank restrictions. No utilities would want to offer their bill as a collection means: the money comes to the utility then is passed back to the entity that provided the funds for the loan. Utilities would not offer that service if they were going to be treated like a lender.

SENATOR MACKINNON asked if one has to be a property owner to apply for the loan or can a renter do that.

MR. THERRIAULT replied originally the bill was available to renters who had the utility in their name, but due to concerns about how that would work, the prime sponsor removed that section. Now, one can only get this mechanism by being the owner of the properties with the utilities in his name. Some states do allow renters to apply.

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CHAIR BISHOP asked how many other states have a version of this bill.

MR. THERRIAULT said he wasn't sure, but HB 374 is modeled after South Carolina's legislation. A number of states have done it by just having their utility commission approve it or they have done it in statute.

SENATOR GARDNER asked if the person who is financing this loan is a lender and the utility company is processing the loan payments instead of going through bank.

MR. THERRIAULT replied that the loan could be done a couple of different ways and explained that the utility may strike a deal with a local lender to provide the funds or it may be able to tap into some of the RUS funds, and if so, they would have an obligation to pay back the RUS, but the source of the funds

would not be the utility. It is just a means of using an existing relationship in the monthly bill that goes out to the consumer as a convenient way to do the collection, and the power to terminate the service guarantees that the payments are made and that the obligation is ultimately paid off. A utility could come up with funds of their own, but that is very unlikely.

CHAIR BISHOP asked the assistant attorney general if he wanted to add anything.

[3:56:22 PM](#)

STUART GOERING, Senior Assistant Attorney General, Department of Law (DOL), Anchorage, Alaska, answered yes. He said his staff had asked earlier today if version \S addressed their concerns in a letter signed by the Deputy Attorney General, Ed Sniffen, on the previous version of the bill, and the simple answer to that is yes. He offered to explain why this bill version addresses those concerns.

CHAIR BISHOP asked him to go ahead.

MR. GOERING said the initial concern was that consumers could be exposed to a couple different potential problems that they might not have a remedy for, one of which would be that they would have to pay a financing charge on their bill for an improvement that no longer worked, which is not typically what happens when getting a service from a utility; usually if you pay the bill the utilities work.

The second concern was because the obligation to pay the meter conservation charge could be passed on to a subsequent purchaser, that someone who did not make the initial decision to install the energy efficiency device might have an obligation to pay for something they either didn't want or that was no longer working. This bill addresses that in two important ways. First, it gives the consumer a mechanism to make sure that their energy efficiency and conservation improvement continues to work throughout the entire duration of the financing. The mechanism for that is the provision of repair and maintenance agreement, which has been characterized as insurance, but the idea is that someone is available to make sure this device continues to work for as long as the customer has financed it. It's important for a consumer to know that even if they decline to buy it, just the offer helps the consumer understand the life-time cost of the energy conservation or improvement device that they are installing instead of having the information about the upfront costs and not knowing what the maintenance of it is likely to

be. This is not the sort of purchase, unlike a motor vehicle or a refrigerator that people do routinely, that people have a lot of experience with. Knowing what life cycle costs will likely be is very helpful even if they choose not to take the repair and maintenance agreement.

Secondly, if the repair and maintenance agreement is declined, the subsequent owner of the property would not have the consequences of the decision to decline that coverage while at the same time having the obligation of paying for the no-longer functional improvement.

SENATOR MACKINNON said lenders have reasons for having rules for loans: one is consumer protection, and another is the lender's protection. She is also a big supporter of renewable projects and wants to reduce carbon emissions wherever possible. Then she asked what the terms for these loans are. For instance, if it was a bond for a maintenance project, one couldn't pay off the maintenance project before the life cycle was complete. She didn't see any of that in this bill.

[4:04:19 PM](#)

REPRESENTATIVE WOOL said he understood her concern. This bill is very broad in terms of products - a solar panel might have a 30-year life-span and a heat pump which may have a 10-year life span - and the length of the loan will not extend beyond the expected life of the product. This legislation came about envisioning conversion from heating oil to gas in the Interior, and since this covers a broad range of products they didn't insert a defined length of term on the loan. He would think that the parties involved in the transaction would all be aware of these parameters and structure the loan accordingly. He pointed out that it is optional for the utilities to enter into the transaction as well as the consumer.

He also stated that the Department of Law mentioned a new owner wouldn't want to buy a house that they would have to make payments on that had an appliance that didn't work. If something doesn't work between a buyer and seller either it's not paid for or it's repaired.

[4:08:25 PM](#)

SENATOR MACKINNON said another concern she had is because the utility is being used as a conduit for payments no matter who finances it and it's not subject to financial documentation of any kind, if you owe something and your property is being held as the backer of that, it would be listed on a plat note as a

lien against the property. How would a future owner know that there is a lien against the property as the utilities transfer? That is not part of the closing process.

REPRESENTATIVE WOOL agreed that it's not on the deed and a title search wouldn't turn it up. He would hope the buyer would be aware of this contract through some contractual mechanism.

[4:09:22 PM](#)

MR. GOERING added that he could cut through this discussion quickly for Senator MacKinnon. Language on page 3, line 29 and following, and the new section AS 42.05.752 provides that the utility has to place a notice in the recording district in which the residence or building is located and it has to include that there is a meter conservation charge, what the balance owed is, whether or not the system or device is covered by a repair and maintenance agreement and the length of time that the meter conservation charge is expected to remain in effect. This would be sufficient to notify a subsequent purchaser.

[4:10:29 PM](#)

SENATOR MACKINNON said she appreciated that it is noticed, but language on page 4, line 2, saying that the notice does not constitute a lien on the property doesn't mean there isn't a lien on their utility bill.

MR. GOERING agreed that the notice is similar to a lien in the sense that a bill is going to be collected over the objection of the purchaser. However, two things protect the customer in this case. The first is that a lien can be foreclosed on by the lender and sold to satisfy the debt. HB 374 says it's not a lien so it's not subject to those provisions. But secondly, the person who agreed to install the energy efficiency device for improvement has committed in writing to pay off the loan prior to transferring the property to a subsequent purchaser. So, if the subsequent purchaser doesn't waive that requirement, that meter conservation charge will never apply to them. That provision is found on page 2, line 23, of the bill (in AS 42.05.750 (e)).

SENATOR MACKINNON remarked: So, they get a notice if everything goes as planned in this bill.

MR. GOERING replied that would be correct. Another provision satisfied them that this is not an issue and that is if the utility doesn't file a notice correctly, then they wouldn't be

able to collect the meter conservation charge from a subsequent purchaser.

SENATOR MACKINNON thanked him for those comments and said if it's not a lien, the potential new owner doesn't have a lot of recourse. Her experience in closing on a few homes over long periods of time is that people sign a lot of paperwork without reading it.

CHAIR BISHOP commented that a home purchase has to have an appraisal. Years ago, when he purchased a home in Fairbanks, banks required a new sewer system before providing a new home loan.

[4:14:21 PM](#)

SENATOR GARDNER wanted to know if she got it right. Language on page 2, line 23, says at the time of transfer of ownership of a home if she hasn't explicitly waived a requirement that the original purchaser pays the balance, then she is not assuming the balance owed and is responsible for the utility only.

CHAIR BISHOP responded that at that point, the title agency would be double-checking that box, because they don't want you to have a clouded title.

REPRESENTATIVE WOOL said that is correct; a title search will show this item.

SENATOR GARDNER asked if this means she cannot be surprised that there is this extra little charge. The utility has to be told in writing that a purchaser is willing to take over those charges.

SENATOR MACKINNON wanted the DOL to confirm that.

MR. GOERING said that is correct. The meter conservation charge can't be collected from a subsequent purchaser unless they have explicitly waived in writing the requirement for it to be paid off. If for some reason it wasn't paid off in closing by the previous purchaser, that would be a matter between the utility and the original owner of the property because that is who the utility contracted with.

SENATOR MACKINNON asked who owns the device at the point at which the property is sold and someone else is still making payments on it.

MR. GOERING answered most of these devices, probably 100 percent of them, would be considered fixtures, which would make them part of the real estate. So, if the seller transferred title to the real estate, the improvement would be part of that, and the subsequent purchaser would own everything.

[4:19:31 PM](#)

CHAIR BISHOP closed public testimony and said HB 374 would be held in committee. He asked that any amendments be submitted by tomorrow at 9 a.m.

[4:20:27 PM](#)

CHAIR BISHOP adjourned the Senate Community and Regional Affairs Committee meeting at 4:20 p.m.