

**HB**

**374**

<TARGET><BILL>HB 374</BILL><SUBJECT>HB  
374</SUBJECT><COMM>SCRA30</COMM></TARGET>

# Representative Adam Wool

Alaska State Legislature • District 5 Fairbanks



Chena Ridge • College • University West • Geist • UAF Campus • South Van Horn • Cripple Creek  
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## Sponsor Statement

### CSHB 374 (L&C)

#### On-Bill Financing for Energy Upgrades

HB 374 would allow a utility to voluntarily create an on-bill financing or on-bill repayment program to help customers finance energy improvements. The improvement must utilize renewable energy or include switching to a more efficient device or fuel that does not increase greenhouse gas emissions. This legislation will be particularly useful as the Interior Energy Project expands its reach and a large number of Fairbanks residents choose to convert from oil to natural gas to heat their homes.

The on-bill financing program allows a utility customer to borrow money for an energy improvement and then repay it through a "meter conservation charge" on their utility bill. A customer's utility bill, even with the meter conservation charge, is often immediately lower due to savings in energy costs due to increased efficiency.

Examples of energy improvements that would qualify under HB 374 include: adding solar panels to a house; converting to a cleaner burning wood stove; and converting a boiler or furnace to natural gas.

HB 374 allows for utilities to create either an "on-bill financing" or an "on-bill repayment" program. Under the former type of program, the utility provides the capital for the loan to the customer and under the latter a third party financial institution would provide the capital.

A utility may recoup all of their costs associated with the program through a line item on the bill of a customer who has elected to utilize the program for an energy improvement. The balance of the costs on an on-bill financing agreement may be recovered by the utility when a property is sold.

HB 374 provides an optional tool for utilities and their customers to lower energy costs and improve air quality in Alaska.

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## Sectional Analysis

### CSHB 374 (L&C)

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

#### **Sec. 42.05.750 On-bill financing of energy efficiency improvements: authorization and eligibility.**

- (a) Allows a utility to enter into an on-bill financing agreement with a customer to finance energy conservation systems. The agreement provides for the utility to cover costs through a meter conservation charge on the customer's utility bill.
- (b) Building must be occupied and not under initial construction to be eligible.
- (c) The interest rate on the loan to finance the energy improvement must be fixed.
- (d) Balance of loan may be paid in full without penalty at any time.
- (e) Nothing in this section requires a utility to enter into an agreement with a specific customer or for a specific device or system.

#### **Sec. 42.05.751 Meter conservation charge.**

- (a) A meter conservation charge may be used to recover actual costs, including administrative costs, and repayment of costs performed by a third party.
- (b) To recover costs under an on-bill financing agreement, a utility may assess a meter conservation charge on the customer who initially entered into the on-bill financing agreement; or a subsequent purchaser of the property.
- (c) A meter conservation charge must be shown as a separate item on a customer's bill.
- (d) A utility may treat failure to pay a meter conservation charge the same as failure to pay the utility or gas account and may disconnect service in response to non-payment. A utility may not remove an energy improvement system in response to non-payment.
- (e) Money collected by a utility as a meter conservation charge may not be taxed as revenue.
- (f) The billing and collection of a meter conservation charge does not subject a utility to the laws that regulate financial institutions.

**Sec. 42.05.752 Notice of on-bill financing agreement and meter conservation charge.**

- (a) A utility that enters into an on-bill financing agreement must file notice of the agreement, intended to give a subsequent purchaser notice that the building is subject to a meter conservation charge.
- (b) A utility must file notice when an on-bill financing agreement is paid in full.

**Sec. 42.05.753 Transferability of on-bill financing balances to subsequent purchasers.**

A utility that enters into an on-bill financing agreement may recover costs from a subsequent purchaser.

**Sec. 42.05.754 Rental Property.**

(a) A utility may recover costs under an on-bill financing agreement by accessing a meter conservation charge for a rental property only if the landlord is responsible for the entire utility bill, including the meter conservation charge.

**Sec. 42.05.755 Third parties; contracting and liability.**

- (a) A utility may contract with a third party for financing the costs of an energy conservation system.
- (b) If a third party installs, operates or maintains the energy conservation system, the utility is not liable for these functions and may not provide a warranty of fitness on the system.
- (c) When a utility contracts with a third party to perform administrative or financing functions:
  - (1) & (2) The third party is not liable for the energy conservation system and may not provide a warranty of fitness on the system.
- (d) The provisions in (b) and (c) above may not be construed to impair the rights of a utility customer against any parties involved in the purchase or installation of an energy conservation system.

**Sec. 42.05.756. Definitions.**

- (1) "energy conservation system" includes a fuel-switching system that does not increase greenhouse gas emissions and is either more efficient or results in lower fuel expenses.
- (2) "meter conservation charge" means a charge placed on a customer's utility bill by which the utility recovers all costs related to the utility having entered into an on-bill financing agreement with the customer.
- (3) "on-bill financing agreement" means an agreement entered into under AS 42.05.750.

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## CSHB 374 (L&C) Explanation of Changes

### Changes from HB 374 (L&C) Version E to Version S

#### Page 2, line 6 INSERTED:

(d) An on-bill financing agreement is not valid under this section unless the utility has offered the customer in writing the option of purchasing a repair and maintenance agreement for the renewable energy system, energy efficiency device, energy storage device, or energy conservation system before the purchase and installation of the system or device. A repair and maintenance agreement under this section must

- (1) be for a term of not less than the duration of the on-bill financing agreement;
- (2) benefit the customer and any subsequent owner of the residence or building from whom the utility may recover the costs under the on-bill financing agreement under AS 42.05.753;
- (3) for a fixed periodic fee, maintain the original function and performance of the renewable energy system, energy efficiency device, energy storage device, or energy conservation system.

**This insertion requires 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.**

**Page 2, line 20 INSERTED:**

(e) A customer may decline to purchase a repair and maintenance agreement described under (d) of this section only if the customer enters into an agreement in writing with the utility to pay the balance of the on-bill financing agreement before transferring ownership of the residence or building. At the time of transfer of ownership, the subsequent owner may waive the requirement that the customer pay the balance of the on-bill financing agreement by notifying the utility in writing that the subsequent owner assumes the balance owed on the on-bill financing agreement. **This insertion requires that, if the customer refuses the maintenance agreement, the customer must agree to pay off the remaining balance of the on-bill financing agreement. A subsequent purchaser, however, may agree to waive this requirement of the customer.**

**Page 3, lines 8-9 INSERTED:**

(3) periodic fee for a repair and maintenance agreement under AS 42.05.750(d)

**If the periodic fee for a maintenance agreement is rolled into the loan, then it can be recovered by the utility as part of the meter conservation charge.**

**Page 4, lines 7-9 INSERTED:**

whether the system or device is covered by a repair and maintenance agreement described in AS 42.05.750 (d),

**This makes sure that the existence of a maintenance agreement is included in the notification requirements of this legislation.**

**Page 3, line 12; Page 4, line 3; and Page 4, line 15:**

**“purchaser” was DELETED and “owner” was INSERTED**

**Page 4, line 5 and Page 4, line 14:**

**“purchasers” was DELETED and “owners” was INSERTED**

**With these changes, the legislation now covers instances of property transfer that don't involved a purchase, such as inheriting property.**

**SENATE CS FOR CS FOR HOUSE BILL NO. 374(CRA)**

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

**THIRTIETH LEGISLATURE - SECOND SESSION**

**BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE**

**Offered: 5/1/18**

**Referred: Rules**

**Sponsor(s): REPRESENTATIVES WOOL, Parish, Kawasaki, Gara, Kito, Josephson, Spohnholz**

**A BILL**

**FOR AN ACT ENTITLED**

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

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

4 **\* Section 1.** AS 42.05 is amended by adding new sections to read:

5 **Article 8A. On-Bill Financing of Energy Efficiency and Conservation Improvements.**

6 **Sec. 42.05.750. On-bill financing of energy efficiency and conservation**  
7 **improvements; authorization and eligibility.** (a) A utility may enter into a written  
8 on-bill financing agreement with a customer to finance the purchase and installation of  
9 a renewable energy system, energy efficiency device, energy storage device, or energy  
10 conservation system in a residence or building that is eligible under (b) of this section  
11 by assessing a meter conservation charge on the customer's utility bill.

12 (b) A residence or building is eligible for on-bill financing under (a) of this  
13 section if, at the time the financing agreement is entered into, the residence or building

14 (1) is occupied or in use; and

*Items added by Senate CRA are in yellow.*

1 (2) is not under initial construction.

2 (c) An on-bill financing agreement must clearly state the interest rate to be  
3 charged for financing the purchase and installation of the renewable energy system,  
4 energy efficiency device, energy storage device, or energy conservation system. The  
5 interest shall be set at a rate that is fixed over the term of the agreement.

6 (d) An on-bill financing agreement is not valid under this section unless the  
7 utility has offered the customer in writing the option of purchasing a repair and  
8 maintenance agreement for the renewable energy system, energy efficiency device,  
9 energy storage device, or energy conservation system before the purchase and  
10 installation of the system or device. A repair and maintenance agreement under this  
11 section must

12 (1) be for a term of not less than the duration of the on-bill financing  
13 agreement;

14 (2) benefit the customer and any subsequent owner of the residence or  
15 building from whom the utility may recover the costs under the on-bill financing  
16 agreement under AS 42.05.753;

17 (3) for a fixed periodic fee, maintain the original function and  
18 performance of the renewable energy system, energy efficiency device, energy storage  
19 device, or energy conservation system.

20 (e) A customer may decline to purchase a repair and maintenance agreement  
21 described under (d) of this section only if the customer enters into an agreement in  
22 writing with the utility to pay the balance of the on-bill financing agreement before  
23 transferring ownership of the residence or building. At the time of transfer of  
24 ownership, the subsequent owner may waive the requirement that the customer pay the  
25 balance of the on-bill financing agreement by notifying the utility in writing that the  
26 subsequent owner assumes the balance owed on the on-bill financing agreement.

27 (f) The balance owed on an on-bill financing agreement may be paid in full at  
28 any time without penalty.

29 (g) Nothing in this section requires a utility to enter into an on-bill financing  
30 agreement with a specific customer or for a specific device or system.

31 **Sec. 42.05.751. Meter conservation charge.** (a) A meter conservation charge

1 assessed under AS 42.05.750(a) may only be used to recover the

2 (1) actual costs incurred by the utility for the purchase, installation,  
3 and financing of the renewable energy system, energy efficiency device, energy  
4 storage device, or energy conservation system, including the administrative costs of  
5 the on-bill financing agreement and the cost of filing notice under AS 42.05.752;

6 (2) repayment of costs incurred by a third party that has performed a  
7 function under AS 42.05.755; and

8 (3) periodic fee for a repair and maintenance agreement under  
9 AS 42.05.750(d).

10 (b) A utility may assess a meter conservation charge on

11 (1) the customer who entered into the on-bill financing agreement; or

12 (2) a subsequent owner of the residence or building under  
13 AS 42.05.753. *(replaced "purchaser")*

14 (c) A meter conservation charge must be shown as a separate line item on a  
15 customer's bill.

16 (d) A utility may treat a customer's failure to pay a meter conservation charge  
17 as a failure to pay the utility account, and the utility may disconnect the utility service  
18 for nonpayment of the meter conservation charge, if the utility complies with  
19 AS 42.05.381(c), AS 42.20.040, and any other applicable law. A utility may not  
20 remove a renewable energy system, energy efficiency device, energy storage device,  
21 or energy conservation system for failure to pay a meter conservation charge or when  
22 disconnecting service for failure to pay a meter conservation charge.

23 (e) Money collected by a utility as a meter conservation charge is not revenue  
24 subject to state taxes under AS 43.20.

25 (f) The billing and collection of a meter conservation charge does not subject a  
26 utility to the laws that regulate financial institutions, escrow depositories, or collection  
27 agencies. A utility is not responsible for a lending, underwriting, or credit  
28 determination for an on-bill financing agreement.

29 **Sec. 42.05.752. Notice of on-bill financing agreement and meter**  
30 **conservation charge.** (a) A utility that enters into an on-bill financing agreement shall  
31 file notice of the on-bill financing agreement and related meter conservation charge in

1 the recording district in which the residence or building subject to the agreement is  
 2 located. Notice under this subsection does not constitute a lien on the property, but is  
 3 intended to give an owner of the residence or building notice that the residence or  
 4 building is subject to a meter conservation charge. Notice is considered given if it is  
 5 sufficient to disclose to prospective owners the existence of the meter conservation  
 6 charge, including the balance owed under the on-bill financing agreement, whether the  
 7 system or device is covered by a repair and maintenance agreement described in  
 8 AS 42.05.750(d), and the length of time the meter conservation charge is expected to  
 9 remain in effect.

10 (b) A utility shall file notice of satisfaction when an on-bill financing  
 11 agreement is paid in full. Notice of satisfaction shall be filed in the recording district  
 12 in which the residence or building subject to the agreement is located.

13 **Sec. 42.05.753. Transferability of on-bill financing balances to subsequent**  
 14 **owners.** A utility that enters into an on-bill financing agreement may recover the  
 15 balance of the costs allowed under the agreement from a subsequent owner of the  
 16 residence or building in which the renewable energy system, energy efficiency device,  
 17 energy storage device, or energy conservation system was installed if the utility gives  
 18 notice under AS 42.05.752 that the residence or building is subject to the agreement.

19 **Sec. 42.05.754. Rental property.** A utility may recover the costs under an on-  
 20 bill financing agreement for a rental property by assessing a meter conservation charge  
 21 on a utility bill only if the landlord is responsible for the entire utility bill, including  
 22 the meter conservation charge.

23 **Sec. 42.05.755. Third parties; contracting and liability.** (a) A utility may  
 24 contract with a third party to perform functions permitted under AS 42.05.750 -  
 25 42.05.754, including financing the purchase and installation costs for a renewable  
 26 energy system, energy efficiency device, energy storage device, or energy  
 27 conservation system. The third party shall comply with AS 42.05.750 - 42.05.754.

28 (b) If the installation, operation, or maintenance of a renewable energy system,  
 29 energy efficiency device, energy storage device, or energy conservation system is  
 30 performed by a third party,

31 (1) the utility is not liable for the installation, operation, or

1 maintenance of the renewable energy system, energy efficiency device, energy storage  
2 device, or energy conservation system;

3 (2) the utility may not provide, nor is there implied, a warranty of  
4 merchantability or fitness of the renewable energy system, energy efficiency device,  
5 energy storage device, or energy conservation system; and

6 (3) no action may be brought against the utility related to the failure of  
7 the renewable energy system, energy efficiency device, energy storage device, or  
8 energy conservation system.

9 (c) When a utility contracts with a third party to perform administrative or  
10 financing functions,

11 (1) the third party is not liable for the installation, operation, or  
12 maintenance of the renewable energy system, energy efficiency device, energy storage  
13 device, or energy conservation system;

14 (2) the third party may not provide, nor is there implied, a warranty of  
15 merchantability or fitness of the renewable energy system, energy efficiency device,  
16 energy storage device, or energy conservation system; and

17 (3) no action may be brought against the third party related to the  
18 failure of the renewable energy system, energy efficiency device, energy storage  
19 device, or energy conservation system.

20 (d) The provisions of (b) and (c) of this section may not be construed to impair  
21 the rights and remedies of a utility customer against any other parties to a transaction  
22 involving the purchase or installation of a renewable energy system, energy efficiency  
23 device, energy storage device, or energy conservation system.

24 **Sec. 42.05.756. Definitions.** In AS 42.05.750 - 42.05.756,

25 (1) "energy conservation system" includes a fuel-switching system; in  
26 this paragraph, "fuel-switching" means the replacement of existing fuel consuming  
27 equipment using a particular fuel with equipment that uses another fuel that does not  
28 increase greenhouse gas emissions and that

29 (A) is more fuel efficient; or

30 (B) results in lower fuel expenses;

31 (2) "meter conservation charge" means a charge placed on a customer's

1 utility bill by a utility to recover costs under an on-bill financing agreement;  
2 (3) "on-bill financing agreement" means an agreement entered into  
3 under AS 42.05.750.

# Fiscal Note

State of Alaska  
2018 Legislative Session

Bill Version:	CSHB 374(ENE)
Fiscal Note Number:	1
(H) Publish Date:	3/9/2018

Identifier: HB374-DCCED-RCA-02-23-18  
 Title: ON-BILL FINANCING OF ENERGY IMPROVEMENTS  
 Sponsor: WOOL  
 Requester: (H) Energy

Department: Department of Commerce, Community and Economic Development  
 Appropriation: Regulatory Commission of Alaska  
 Allocation: Regulatory Commission of Alaska  
 OMB Component Number: 2417

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2019 Request	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
<b>OPERATING EXPENDITURES</b>	<b>FY 2019</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
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>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<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>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

**Change in Revenues**

None							
<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>	<b>0.0</b>

**Estimated SUPPLEMENTAL (FY2018) cost:** 0.0 (separate supplemental appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

**Estimated CAPITAL (FY2019) cost:** 0.0 (separate capital appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
 If yes, by what date are the regulations to be adopted, amended or repealed? N/A

**Why this fiscal note differs from previous version/comments:**

Not applicable, initial version.

Prepared By: Stephen McAlpine, Chairman  
 Division: Regulatory Commission of Alaska  
 Approved By: Catherine Reardon, Director  
 Agency: Division of Administrative Services, DCCED

Phone: (907)276-6222  
 Date: 02/23/2018  
 Date: 02/23/18

## FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2018 LEGISLATIVE SESSION**Analysis**

HB 374 would add new sections to statute (AS 42.05.750 - 42.05.756) to allow an electric or gas distribution utility to enter into a financing arrangement with a customer or landlord to finance the purchase and installation of a renewable energy system, energy efficiency device, or energy conservation system in an eligible residence or building.

The utility is allowed to recover the purchase, installation, and financing costs through a meter conservation charge on the customer's utility bill, with the utility also allowed to assess interest. This legislation establishes a meter conservation charge as a line item charge on the customer's bill, with the utility allowed to disconnect electric or gas service for nonpayment of the meter conservation charge.

HB 374 also addresses notice requirements for and the transferability of the financing arrangement, adds provisions specific to rental properties, and provides the utility with the ability to contract with a third party to administer the financing program.

The Regulatory Commission of Alaska (RCA) would be required to review and approve tariff revisions filed by regulated electric and gas companies seeking to establish program rules and cost assessment methodologies. The RCA would also be required to review proposed interest rates and disconnection provisions to ensure compliance with statute, with the possibility of a rulemaking proceeding to address general program guidelines. Once implemented, the RCA could be required to address consumer complaints regarding the assessment amount or disconnection process.

The RCA expects to implement the provisions of this legislation with existing resources.



March 7, 2018

Representative Adam Wool  
State Capitol Building Room 412  
Juneau, Alaska 99801

Dear Representative Wool:

Thank you for introducing House Bill 374, An Act relating to on-bill financing by an electric or gas distribution utility for certain energy efficiency and conservation improvements.

I currently serve as the AIDEA Project Team Lead for the Interior Energy Project (IEP). This project is designed to provide an alternative and affordable source of fuel to Interior Alaska using a suite of financing tools provided by the Legislature in 2013. As this project has advanced, contractual agreements have been signed, and infrastructure investment is underway, to expand the availability and use of natural gas in the Interior.

As steps are taken to increase the availability of natural gas to potential customers, Fairbanks Natural Gas, which is currently owned by AIDEA, has reviewed various means of assisting customers with conversion to natural gas when it is available. An on-bill financing, or on-bill repayment mechanism is an important tool to help achieve this goal. In order to assess the potential rate of customer conversions in the future, the IEP worked with focus groups and found that access to an on-bill repayment mechanism, that allows conversion costs to be spread over an extended period of time, was very attractive to consumers.

AIDEA has identified potential sources of federal funding that eligible Alaska electric and gas distribution utilities may be able to access to assist utility customers with energy efficiency financing. For example, the Rural Energy Savings Program administered by the USDA Rural Utility Service identified a preferred repayment mechanism in which customer energy efficiency improvements "shall be repaid through charges added to the electric bill for the property". Although funding from these sources is not certain, availability of an on-bill financing, or repayment, mechanism may be a provision that makes a significant difference.

I look forward to working with you as you move HB 374 through the legislative process.

Gene Therriault  
AIDEA IEP Team Lead

From: Margo Waring <[margowaring@gmail.com](mailto:margowaring@gmail.com)>  
Sent: Wednesday, March 07, 2018 9:54 AM  
To: Rep. Adam Wool <[Rep.Adam.Wool@akleg.gov](mailto:Rep.Adam.Wool@akleg.gov)>; Rep. Justin Parish  
<[Rep.Justin.Parish@akleg.gov](mailto:Rep.Justin.Parish@akleg.gov)>  
Subject: HB 374

Dear Representatives Wool and Parish,

Renewable Juneau thanks you for introducing HB 374 for on bill financing of certain electric or gas improvements for energy efficiency and conservation. Renewable Juneau is a local non profit that educates and advocates for greater use of local renewable energy, especially in transportation and heating in order to promote a more healthy and resilient community while decreasing our use of fossil fuels.

Early on, we identified the lack of available financing as a barrier to greater adoption of more energy efficient heating systems, especially those using ground source and air source heat pumps. While AHFC offers some support for energy efficiency, the process is not as accessible as what is being proposed in HB 374. On-bill financing for residential and other buildings is the effective tool used in many locales to simplify access to energy efficiencies. This approach is especially attractive to households who cannot afford the initial capital outlay that has hampered much adoption of energy efficiency improvements.

Our only wish would be that utilities be required to offer on-bill financing, rather than leaving it optional for them.

Please share our comments with committee members.

Margo Waring  
Board Member  
Renewable Juneau

**From:** Pokon, Emma K (LAW) <emma.pokon@alaska.gov>

**Sent:** Friday, April 20, 2018 12:48 PM

**To:** Sen. Click Bishop <Sen.Click.Bishop@akleg.gov>; Sen. Anna MacKinnon <Sen.Anna.MacKinnon@akleg.gov>; Sen. Lyman Hoffman <Sen.Lyman.Hoffman@akleg.gov>; Sen. Bert Stedman <Sen.Bert.Stedman@akleg.gov>; Sen. Berta Gardner <Sen.Berta.Gardner@akleg.gov>

**Cc:** John Manly <John.Manly@akleg.gov>; Peterson, Darwin R (GOV) <darwin.peterson@alaska.gov>; Gorle, Nicole A (GOV) <nicole.gorle@alaska.gov>; Rob Earl <Rob.Earl@akleg.gov>; Peter Fellman <Peter.Fellman@akleg.gov>; Peter Fellman <Peter.Fellman@akleg.gov>; Christopher Clark <Christopher.Clark@akleg.gov>

**Subject:** HB 374 (on bill financing)

Dear Senate Community and Regional Affairs Committee Members:

Please find attached a letter from the Department of Law expressing our consumer protection concerns with HB 374.

We touched base with Representative Wool's office again this morning and they are working with us on a solution.

Please let us know if you have any questions.

Thank you,

Emma Pokon  
Assistant Attorney General  
State of Alaska Department of Law  
(907) 269-5215



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

Department of Law

CIVIL DIVISION  
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Anchorage, AK 99501  
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Fax: (907) 269-5110

April 20, 2018

*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.

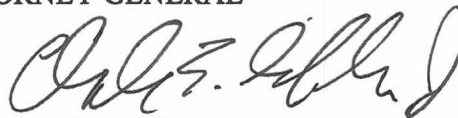
This is particularly troubling because the magnitude of the meter conservation charge is not limited by the HB 374; neither the amount financed nor the interest rate is capped. Utility presentations to the RCA, media reports, and academic studies (such as a paper by UAF Masters candidate Jordan Hume) 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

**From:** Pokon, Emma K (LAW)  
**Sent:** Friday, April 20, 2018 12:25 PM  
**To:** Earl, Rob (LEG) (rob.earl@akleg.gov) <rob.earl@akleg.gov>  
**Cc:** Peterson, Darwin R (GOV) <darwin.peterson@alaska.gov>; Gorle, Nicole A (GOV) (nicole.gorle@alaska.gov) <nicole.gorle@alaska.gov>; 'Goering, Stuart W (LAW) (stuart.goering@alaska.gov)' <stuart.goering@alaska.gov>  
**Subject:** HB 374 (on bill financing) - consumer protection concerns

Dear Rob,

As discussed, Law's concerns can be addressed by requiring that the consumer have the ability to obtain on-going maintenance and support for their energy efficiency and conservation improvements. This could be accomplished by inserting a sub-section in AS 42.05.750 (probably between current sub-sections (c) and (d), at page 2 line 6-7):

(d) An on-bill financing agreement is not valid unless the customer has been offered, in writing prior to purchase and installation of the energy efficiency and conservation improvements, the option of purchasing a repair and maintenance agreement from the seller or installer of the energy efficiency and conservation improvements. The term of the repair and maintenance agreement may be no less than the duration of the on-bill financing agreement, and shall be for the benefit of the customer and any subsequent purchaser of the residence or building. The repair and maintenance agreement must, for a fixed periodic fee, require the seller or installer to maintain the original function and performance of the energy efficiency and conservation improvements. The customer may decline to purchase a repair and maintenance agreement only if the customer agrees, in writing, to pay the balance owed on the on-bill financing agreement in full prior to selling the residence or building.

To allow the cost of the repair and maintenance agreement to be recovered on the utility bill, a sub-paragraph should be added to AS 42.05.751(a) (probably after current sub-paragraph (a)(2) at page 2 lines 18-19):

(3) periodic fee for a repair and maintenance agreement under AS 42.05.750(d).

To insure that the subsequent purchaser can enforce the pre-payment obligation, the last sentence of AS 42.05.752(a) should be changed to read (page 3, lines 14-18): "Notice is considered given if it is sufficient to disclose to prospective purchasers the existence of the meter conservation charge, including the balance owed under the on-bill financing agreement, whether a repair and maintenance agreement covers the property, and the length of time the meter conservation charge is expected to remain in effect."

Please let us know if you'd like to discuss further.

Thank you,

Emma Pokon  
Special Assistant to the Attorney General  
Department of Law  
(907) 269-5215

*How would a lender see this?*

**From:** Gene Therriault <GTherriault@aidea.org>  
**Sent:** Monday, April 30, 2018 2:05 PM  
**To:** Christopher Clark <Christopher.Clark@akleg.gov>  
**Cc:** Rob Earl <Rob.Earl@akleg.gov>  
**Subject:** response to question on HB 374

Chris:

During the S/C&RA hearing on HB 374, Senator MacKinnon asked how prevalent the on-bill financing/repayment mechanism is in the United States. I elicited the assistance of staff at the National Association of State Energy Officials (NASEO), the National Conference of State Legislatures (NCSL) and the Environmental and Energy Study Institute (EESI) for updated information and have the following response.

Statutes regulating utility activity vary from state to state resulting in on-bill programs in some states without specific statutory authority. Some states required specific statutory authority and others, like Alaska, required clarification. There are currently over 80 on-bill programs (financing and repayment) currently operating in 27 states. Not all of them are linked specifically to energy efficiency or clean energy.

NASEO and EESI staff recommended Illinois, Minnesota and South Carolina as good examples of straightforward legislation for on-bill. HN 374 is patterned after the South Carolina legislation.

GeneT

# US Department of Energy:

## On-Bill Financing and Repayment



On-bill financing and on-bill repayment programs provide two options for property owners to pay for investments in clean energy upgrades through their utility. While electric utilities and natural gas companies typically run on-bill programs, there is an opportunity for state and local governments to capitalize on new on-bill loan funds and/or provide credit enhancement for existing on-bill funds. Depending on the programs available in a given jurisdiction, some government entities may also be able to take advantage of on-bill programs to finance projects for their own facilities.

**On-bill financing** allows the utility to incur the cost of the clean energy upgrade, which is then repaid on the utility bill. **On-bill repayment** options require the customer to repay the investment through a charge on their monthly utility bill as well, but with this option, the upfront capital is provided by a third party, not the utility. Additionally, on-bill repayment allows for a streamlined process as utilities already have a billing relationship with their customers, as well as access to information about their energy usage patterns and payment history. In some on-bill repayment programs, the loan is transferable to the next owner of the home or building.

### On-Bill Financing and Repayment Program Challenges

There are two issues that state and local governments should be aware of when considering providing support to an on-bill program: (1) changing the billing system to allow for on-bill repayment appears to be difficult for some utilities; and (2) repayment allocation (i.e., who is paid first) is an issue when customers partially pay their bills. When using a third-party source of capital for the program, the utility usually covers the gas or electric charge first, increasing the risk to the lender, which is why credit enhancement is useful to attract private capital.

Despite these challenges, on-bill financing and repayment programs offer some of the most elegant solutions to energy financing as the savings are on the same bill as the repayment. On-bill programs work best when there is a cooperative utility.

### ADVANTAGES

- Savings are paired directly with repayment on the same bill
- Can be structured to meet the needs of different markets
- Provides a secure revenue stream because failure to pay can be tied to disconnection
- Can use past bill repayment as a proxy for credit

### DISADVANTAGES

- Utilities are often reluctant to take on role of financing entity; potential exposure to consumer lending laws and alterations to billing systems are required
- Can be complicated to set up

If transferability is not allowed, businesses or homeowners must pay off entire loan upon sale of property, which could result in not all of the energy savings being realized

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

April 25, 2018

3:29 p.m.

**DRAFT**

**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  
sponsor of HB 333  
Alaska State Legislature  
I 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 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.

3:54:38 PM

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 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 the device.

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 and 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.