

Legal Assistance Resource Center

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H.B. 5591 -- On-bill financing of energy-related technology upgrades

Energy and Technology Committee public hearing -- March 5, 2013

Testimony of Raphael L. Podolsky

**Recommended legislative action: NO USE OF TERMINATION
OF UTILITY SERVICE TO ENFORCE FINANCING**

H.B. 5591 proposes to use “on-bill financing” to finance energy-related improvements, including for residential properties. “On-bill financing” refers to the making of property improvement loans which are repaid through surcharges on a customer’s utility bill -- usually the electric bill. We support the bill’s underlying purpose of increased energy efficiency, and we do not object to repayment through utility bill surcharges. On-bill financing programs, however, often use termination of service as a sanction for non-payment of the surcharge. We strongly oppose any legislation authorizing on-bill financing which also permits termination of a residential customer’s service for failure to pay financing surcharges. We also oppose the application of such programs to renters, rather than property owners. To the extent that H.B. 5591 makes these elements part of its program, we oppose the bill.

- Loss of service: Termination is an extraordinarily powerful remedy that is not granted even to utility companies for anything other than the provision of actual utility service. State utility regulations are specific on this point. Precisely because of the extraordinarily harsh impact of utility shutoffs, Connecticut statutes have long contained strong protections against the loss of service. This is especially important for low-income households -- both owner- and renter-occupied -- which are at greatest risk for non-payment. These impacts are not mere matters of convenience but involve health and safety as well. Excluding shutoff as a remedy would not leave lenders without an “enforcement mechanism.” Loan repayment is always enforceable through ordinary judicial process, e.g., by collection lawsuits and through the use of liens. No creditor in Connecticut, however, is allowed to collect on an unpaid loan by shutting off the debtor’s utility service, nor is this a power given to merchants as a way to compel payment for their goods or services. It is too unbalanced a power. Such creditors routinely use other enforcement mechanisms. It is neither desirable nor appropriate to incorporate such provisions into an energy efficiency upgrade program.
- Application to renters: It is not clear whether H.B. 5591 is intended to apply to renters, but some proposals in the past have done so. Application to renters would raise numerous practical issues, since a renter does not own the furnace, as well as creating conflict with the landlord-tenant laws. For example, on-bill

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financing appears to allow the landlord to transfer the cost of the facility that provides heat to the tenant, contrary to the landlord's duties under the Landlord-Tenant Act. Combined with tying the debt to the meter, it would also extend this obligation to subsequent tenants with no ability to opt out of this debt. To the extent that on-bill financing is adopted, it should not apply to renters.

- Uncertain assumptions about the need for utility shutoff: Proponents of utility termination as an enforcement tool have, in the past, made at least three assumptions that we think should not be taken for granted. First, they assume that lenders will not engage in on-bill financing unless they are guaranteed the right to terminate utility service. We do not believe that is necessary to run a successful program. Second, they assume that on-bill financing will routinely produce a net cost-reduction on the customer's utility bill, thereby suggesting that the consumer is getting a new furnace for free or even at a profit. This, in our opinion, is less than certain. Third, it is our understanding that most on-bill financing programs for which actual experience exists involve business customers. It is not clear to what extent that experience is transferable to the residential setting.

These and other factors lead us to believe that on-bill financing is not desirable for residential properties if it is to be accompanied by the use of utility shutoff as an enforcement tool. We urge the Committee to take no further action on this bill unless it is clear that utility shutoff cannot be used to enforce payment and that the program is for property owners only.