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STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House C+RA 2-29-88 3:00p.m.

2/22
D
David
will
2/23

(R)

F

Gov
P

Gov.
N

BILL PREPARATION/ACTION*

Bill # CS SB 282 (CRA) Date Referred: 2/19/88 Out:

Title: Municipal Sales & Use Taxes

Sponsor: S CRA Referrals: CRA

CONTACTS:*****

Name _____

DCRA
FN PP w Bill; 2/24 [2/24]

Wes Coyner 2/23 ^{but} info to David;

Markie Campbell 3818
Linda & Kim will be there
2/25 [2/24]; 2/29 sched 1 CT unless has other mta

REMARKS: _____

MEETINGS:*****

Date _____ Action _____

2/29/88 Passed 3DP

*See other side for additional information.

CONTAC.TXT

HOUSE COMMITTEE REPORT

CS SB 282
(CRA)

(5)

Date referred: 2/19/88

FURTHER REFERRALS:

Judiciary

FEB 29 1988

DATE: _____

The Community and Regional Affairs Committee has considered CSSB 282 (C&RA)

"An Act relating to municipal sales and use taxes; and providing for an effective date."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published 2/10/88
- zero with analysis

SIGNING DO PASS:

Bette Auto Auto
Jim Zawacki Zawacki
Heinrich Springer Springer

SIGNING OTHER RECOMMENDATIONS:

Springer Heinrich Springer
 Chairman's signature

File Contents

CSSB 282(CRA) - Municipal Sales and Use Taxes

<u>No.</u>	<u>Description</u>
1.	Bill copy
1.1.	Fiscal Note - DCRA
2.	Position Paper - Alaska Banker's Association
3.	Bill Review - HCRA Staff-Harrision
4.	Memo - SCRA
5.	Statutes

STATE OF ALASKA
1988 LEGISLATIVE SESSION

1.1 CS SB 282 (CRA) CS for 2/1/88 ME
BILL VERSION: SB 282 (CRA)
PUBLISH DATE: 2-10-88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to municipal sales and use taxes."
Sponsor: Senate C&RA Committee
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: Municipal & Regional Assistance
Components: State Assessor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jim Plasman, Deputy Director
Division: Municipal & Regional Assistance Phone: 465-4750
Date: 1-19-88
Approved by Commissioner: [Signature] Date: 1-19-88
Agency: Community & Regional Affairs

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

ALASKA BANKERS ASSOCIATION

December 15, 1987

Draft Position Paper For Amending Alaska Law Relating To Liens
For Sales, Use And Personal Property Taxes.

Brief History of Municipal/Borough Priority Tax Lien Issue

Local government entities have experienced difficulty in collecting unpaid sales, use and personal property taxes for a number of years. During the 1970's various municipalities enacted laws to establish sales tax liens as a means of collecting unpaid taxes; however, in 1980 the Alaska State Supreme Court ruled that municipalities which levied sales and use taxes had no authority to assert a lien for unpaid taxes except through the normal judicial process. The Supreme Court said further that authorization of such liens "should be addressed by specific legislation rather than by municipal, or judicial fiat".

In 1983, legislation was proposed that would have given boroughs and municipalities a sales tax lien with the full force, priority and duration of a judgement lien; however, this legislation did not become law. When this legislation became law in 1985, the provision that the sales tax obtain an attachment lien was changed in the final draft to give the lien a priority; a priority over all other liens including mortgages, security interests, judgement liens, and the claims of anyone who claims an interest in either real or personal property. This change from the initial version of the 232 page Municipal Code Revision, and the full impact this change was not observed by the banks, the title companies, nor other affected parties. Only when some of the boroughs and municipalities began enforcing their new priority lien, was its significant impact realized.

No Other Tax Lien Has Such A Priority

Not even the State of Alaska, nor the Internal Revenue Service, have such a priority lien. Real property taxes have a clear priority over all other interests. But the real property tax is a charge against the property itself and real estate is immobile. All who deal with real estate know it is subject to annual taxation by a single authority. The lien amount can be readily determined and a reserve fund established to ensure its payment. This is not possible with a sales tax or a tax on personal property. It is patently unfair that, under present law, a lender can make a loan secured by real or personal property with all taxes or liens current and have a subsequent lien due to unpaid taxes at some future date preempt the position. There is no way for a lender to protect itself from this kind of action.

Existing Law Is Not Specific Who Must Pay - It Is Aimed At Everybody

The priority lien provision A.S. 29.45.650(e) gives broad authority to municipalities/boroughs to exact payment from prior lienholders who had nothing to do with the transaction that gave rise to the tax and also to innocent buyers who pay the tax to a seller and then the seller fails to remit the proceeds to the municipality. The priority lien law goes further; it authorizes a municipality to assert a lien on any property of the buyer and it accords that lien a priority over any other lien.

Personal property is highly mobile and can be readily moved from district to district. There is no means of knowing that it is subject to a sales or use tax lien nor any way to determine the amount.

Does an individual now have to call local government to find out if a local auto dealer has remitted all sales tax collected and paid his personal property taxes? Under this law he does or he can lose the automobile, and the lienholder will also lose its lien. In effect, the priority tax lien requires an innocent third party to guaranty tax payments to a municipality or a borough.

A lender relies on the information available at the time a loan is made and then relies on its priority lien to protect it over the term of its loan. Permitting a higher priority lien long after a loan is made and over which a lender has no knowledge or control to erode its safety margin is unfair. It will also have an effect on secondary financing by outside investors and could eventually impact AHFC and AIDA programs as existence of the priority lien becomes known.

Existing Law Is Unclear

It appears that this outcome is not what the drafters of the priority lien provision wanted. What is wanted is authority for a lien on the seller's property to secure the seller's obligation to remit the taxes collected, yet the only authority the present statute grants is for a lien to secure payment of the tax, a liability of the buyer. It is now clear that a revision is needed in this new law to better describe who has the tax obligation and what is a fair priority for a lien on a violator's property.

It is not contended that municipalities and boroughs with sales and use taxes should not have the authority to assert liens; however, that authority should be confined to asserting the lien against property of the violator and the lien's relative priority over other innocent claimants should be determined by the date notice of the lien is filed.

Proposed Compromise Amendment

At a November 13, 1987 meeting between the Alaska Bankers Association and attorneys for the Alaska Municipal League, a compromise solution was recommended. The municipalities and boroughs would give up the 1985 priority lien position in exchange for a sales and use tax lien which is the equivalent of an attachment lien but without the need of first bringing suit. The municipalities and boroughs could also obtain a priority lien on the seller's business assets to secure the seller's obligation to collect and remit sales tax. A priority lien could be achieved on all additional or future advances but only after giving legal notice to senior lienholder(s) that sales and/or use taxes are due and unpaid. A simple lien search will reveal if a senior lienholder exists and its address. This priority lien on commercial financing of business assets (i.e. accounts receivable and inventory) is similar to the lien priority that can be obtained by the Internal Revenue Service and offers the senior lienholder(s) the option of either declining further advance requests or insuring that sales or use taxes are paid. It also elevates concern for remitting local tax payments to a much higher level for local businessmen. The Alaska Bankers Association finds this type of compromise acceptable.

Summary

The 1985 statute authorizing a priority lien for municipal sales and use taxes, as it now exists, is an onerous law and goes beyond what is reasonable and fair. With a single last minute word change, local government gained the power to assert its lien on any property of any innocent buyer (a consumer who purchased in good faith and paid his tax) and it can place a secured creditor in a subordinated position without notice, without knowledge, and even though he had no part in the taxable transaction. Further, the municipalities and borough governments did not achieve a very good vehicle to collect from the real potential violator, the seller who fails to remit taxes collected.

The Alaska Bankers Association does not believe there should be no authority for sales and use tax liens. However, such a law should be worded carefully to restrict the lien to only property of the violator and lien priority to other innocent lienholders should be based on date notice is filed. This law should treat all parties in commerce equally and offer an opportunity to do business without a surprise. A provision that permits a priority lien against subsequent advances after direct notice to a secured party seems fair and should go far in solving the delinquent sales and use tax problems the boroughs and municipalities have experienced.

Alaska State Legislature

House of Representatives

Committee on Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4831



2/29/'88

TO: Rep. Henry Springer, Chairman HCRA

FROM: David C. Harrison, P.A. HCRA

Subject: BILL REVIEW:
CS SB 282 (CRA) "An Act relating to municipal sales and use taxes: and providing for an effective date." [Sponsor: SCRA]

*Section 1. AS 29.10..200(42) is amended to read:

(42) AS 29.45.650.(c), (d), (e), and (f) (sales and use tax)

Sec. 2. AS 29.45.650.(e) is amended to read:

(e) A borough may provide for the creation, recording, and notice of a lien on real and personal property to secure the payment of a sales and use tax, and the interest, penalties, and administration costs in the event of delinquency. When recorded, the sales tax lien has priority over all other liens except (1) liens for property taxes and special assessment; and (2) liens that were perfected before the recording of the sales tax lien. This subsection applies to home rule and general law municipalities.

COMMENTS: The underlined section provides for certain conditions in which banks, institutions and or individuals must record and perfect liens before the recording of the sales or use tax liens in order to establish priority lien on real or personal property.

Home rule and general municipalities sales tax liens and special property assessments have priority lien when recorded prior to liens record by banks, institutions and or individuals.

Deleted part: [When recorded, a lien authorized under this section has priority over other liens except those for property taxes and special assessments.]

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
TIM KELLY, Vice Chairman
RICK HALFORD
MIKE SZYMANSKI
FRED ZHAROFF



P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4989

Senate Community and Regional Affairs Committee

TO: SENATE C&RA MEMBERS

FEB 9, 1988

FROM: SENATE C&RA STAFF

A handwritten signature in dark ink, appearing to be "MEL".

RE: CSSB 282 (C&RA) - "AN ACT RELATING TO MUNICIPAL SALES AND USE TAXES."

UNDER EXISTING LAW (29.45.650(E)) MUNICIPALITIES MAY PLACE LIENS ON REAL OR PERSONAL PROPERTY TO SECURE PAYMENT OF SALES AND USE TAX. THIS ABILITY IS NEW, ADDED UNDER THE TITLE 29 REVISION TWO YEARS AGO.

THE SECTION WAS ADDED TO TITLE 29 IN RESPONSE TO A FAIRBANKS COURT CASE IN WHICH THE JUDGE RULED THAT MUNICIPALITIES DID NOT HAVE THE POWER TO PLACE SUCH LIENS. THE TITLE 29 TECHNICAL COMMITTEE AT THE TIME RECOMMENDED THAT SUCH LIENS HAVE THE FORCE OF JUDGEMENT LIENS, HOWEVER, ALSO ADDED AT THAT TIME WAS A SENTENCE THAT GAVE SUCH LIENS PRIORITY OVER OTHER LIENS, EXCEPT FOR PROPERTY TAXES AND SPECIAL ASSESSMENTS.

THIS PRIORITY CONFLICTS WITH 34.36.060 WHICH GIVES LABOR LIENS FIRST POSITION AND MORTGAGES SECOND POSITION. ACCORDING TO REPRESENTATIVES OF THE HOME MORTGAGE INDUSTRY, INCLUDING AHFC,

THIS PRIORITY FOR SALES TAX LIENS COULD CAUSE MAJOR DISRUPTIONS IN THE HOME MORTGAGE INDUSTRY AND RAISE INTEREST RATES.

SB 282 WOULD ALTER THIS PRIORITY. THE PROPOSED CS GIVES SALES TAX LIENS PRIORITY OVER ALL OTHER LIENS EXCEPT (1) LIENS FOR PROPERTY TAXES AND SPECIAL ASSESSMENTS; AND (2) LIENS THAT WERE PERFECTED BEFORE THE RECORDING OF THE SALES TAX LIEN FOR AMOUNTS ACTUALLY ADVANCED BEFORE THE RECORDING OF THE SALES TAX LIEN.

THIS DRAFT WAS DEVELOPED WITH THE ASSISTANCE OF TOM BOEDEKER, MUNICIPAL ATTORNEY FOR THE KENAI BOROUGH, AND WES COYNER, LOBBYIST FOR THE BANKING INDUSTRY. MR. BOEDEKER, WHO HAS TAKEN THE LEAD FOR THE MUNICIPALITIES ON THIS ISSUE, WOULD PREFER TO LIMIT THE PRIORITY TO PROPERTY TAXES, SPECIAL ASSESSMENTS, AND PRIOR RECORDED MORTGAGES, TRUST DEEDS, AND LAND SALE CONTRACTS; BUT HE BELIEVES THE PROPOSED CS IS REASONABLE AND TECHNICALLY CORRECT.

BOTH GENTLEMEN WILL BE AT THE COMMITTEE TO TESTIFY. THE CS HAS A ZERO FISCAL NOTE FROM THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS.

Chapter 29.45, 1944
November 1944

Sec. 29.45.570. SALES AND USE TAX. (a) A borough may levy and collect a sales tax not exceeding six percent on sales, rents, and on services made within the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) No change.

(c) No change.

(d) If the assembly of a home rule or general law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed 15 percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

new (e) A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure the payment of a sales or use tax, and for interest, penalties and administration costs in the event of delinquencies. A lien established under this section has the force, priority and duration of a judgment lien.

EXPLANATION: (a) changed to make it clear that tax can be levied on sales and rents, not just one or the other. (d) interest rate raised from eight to 15 percent. (e) added to allow liens for the collection of sales and use taxes.

TITLE 29 TECHNICAL COMM.

furnished and labor was done "in connection with the work done upon the claims" does not comply with the statute. *Goldstein v. Noble*, 6 Alaska 282 (1926).

A lien on a building for materials furnished cannot include another structure against which a lien is not filed, and into the construction, alteration, and repairs of which some or all of the materials were employed or used. *Burr v. House*, 3 Alaska 641 (1909).

The general rule is that a lessee cannot impose any charge upon the reversion or estate of the lessor (see *reof. Morris v. Marsh*, 3 Alaska 140 (1906)).

Nor does the fact that the lessor acquiesces in the improvement by the lessee subject his reversion to the mechanics' liens therefor. *Morris v. Marsh*, 3 Alaska 140 (1906).

Unless lessor fails to give notice of nonresponsibility or his agent causes improvement. — This section, AS 34.35.050 and AS 34.35.065, construed together, mean that the person in charge of the work shall prima facie be deemed to be the agent of the owner, and the property of the latter shall be charged with the lien under the express provisions of AS 34.35.050; that, if the person in charge is not in fact such agent, the interest of the owner shall, nevertheless, be liable for the improvement if it is constructed with his knowledge, and he fails to post the required notice disclaiming responsibility; and that, if the work is done for a lessee of the property, liability is confined to the

lessee's estate, if the owner had no knowledge of the construction of the improvement, or if, having such knowledge, he gave notice that he would not be responsible. *Caswell v. Winchell*, 101 F. 241 (9th Cir. 1900). See AS 34.35.115.

To determine whether or not modular units are sufficiently attached to the land on which they are situated, the supreme court will look to the following elements: (1) physical annexation, (2) adaptation to use with real property, (3) intention to annex to realty, (4) relationship of the claiming parties, (5) the relative difficulty of removal, (6) the nature of the article annexed, and (7) whether the fact of the annexation is open and apparent. *Dannemiller v. AMFAC Distribution Corp.*, Sup. Ct. Op. No. 1152 (File No. 2895), 566 P.2d 615 (1977).

Applied in *Torkko-Korman-Engineers v. Penland Ventures*, Sup. Ct. Op. No. 2757 (File No. 6489), 673 P.2d 769 (1983).

Quoted in *Jorgensen Co. v. Sheldon*, 2 Alaska 607 (1905).

Stated in *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Collateral references. — 53 Am. Jur. 2d, *Mechanics' Liens*, §§ 28-48.

Public property as subject to lien. 28 ALR 325.

Vendor's interest as subject to mechanic's lien. 58 ALR 911; 102 ALR 233.

Quantity or area of land around improvement which may be subject to lien. 84 ALR 123.

Sec. 34.35.060. Priorities. (a) Except as provided in (c) of this section, an encumbrance which is properly recorded shall be preferred to a lien created under AS 34.35.050 — 34.35.120 unless the claim of lien under AS 34.35.070 or notice of right to lien under AS 34.35.064 has been recorded before the encumbrance. The preference granted for a prior mortgage or deed of trust under this section applies without regard to when the sums are disbursed or whether the disbursements are required under the terms of a loan agreement.

(b) [Repealed, § 19 ch 175 SLA 1978.]

(c) A lien created by AS 34.35.050 — 34.35.120 in favor of an individual actually performing labor upon a building or other improvement in its original construction or of a trustee of an employee benefit trust for those individuals is preferred to a prior encumbrance upon the land on which the building or other improvement is constructed.

(d) In enforcing the lien, the building or other improvement may be sold separately from the land. When sold separately, the purchaser may remove the building or other improvement within a reasonable time after the sale, not to exceed 30 days, upon the payment to the owner of the land of a reasonable rent for its use from the date of its purchase to the time of removal. If removal is prevented by legal proceedings, the 30 days does not begin to run until the final determination of the proceedings in the court of first resort, or in the appellate court if appeal is taken. (§ 26-1-3 MCLA 1919; am § 1 ch 111 SLA 1953; am § 1 ch 7 SLA 1955; am §§ 2, 3, 19 ch 175 SLA 1978)

NOTES TO DECISIONS

Editor's notes. — The cases annotated below were decided under this section as it existed prior to the 1978 amendment, which, among other things, rewrote subsection (a) and repealed subsection (b), which provided when a lien created by AS 34.35.050 — 34.35.120 was preferred to a lien, mortgage, or other encumbrance which is unrecorded.

Legislative intent. — The legislative intent is to limit the priority granted generally to situations where the construction preceded all other construction in and upon a given area of vacant or cleared land. *Lynch v. McCann*, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

In the case of "original construction," the legislature intended in subordinate to some extent the principle of first in time, first in right, to a social interest in securing mechanics' liens. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

For purposes of this section, a deed of trust and a mortgage are not differentiated. *Thorpe Constr. Co. v. Irvin & Co.*, 367 F. Supp. 87 (D Alaska 1973).

This section protects the security of a mortgage or beneficiary of a deed of trust against mechanics' liens so long as his encumbrance attaches and is recorded before the mechanics' lienor commences his labor or furnishes materials, except where "original construction" is performed. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

A beneficiary of a deed of trust whose interest attaches and who records before

any alteration or repair begins or materials are furnished has priority over a mechanics' lienor, except in the case of original construction under this section. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 659 (File No. 1119, 1154), 478 P.2d 829 (1970).

Scheme of priorities not overcome by posting notices of nonresponsibility. — Mortgagees and beneficiaries of deeds of trust need not post notices of nonresponsibility, and if they do, the notices do not overcome the scheme of priorities established in this section. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

A mechanics' lienor has priority over the beneficiary of a deed of trust in the case of original construction under subsection (c), regardless of whether the beneficiary of the deed of trust posts a notice of nonresponsibility. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

The legislature, in subsection (c), provided that mechanics' lienors performing original construction should have priority over earlier security interests. The scheme of priorities endorsed by the legislature in the circumstances of original construction would be defeated if beneficiaries of deeds of trust could attain priority over mechanics' lienors by posting notices of nonresponsibility. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Construction lenders can protect themselves from mechanics' liens on

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: SB 282
Publish Date: _____

REQUEST: _____
Revision Date: _____
Title: "An Act relating to municipal sales and use taxes."
Sponsor: Senate C&RA Committee
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: State Assessor
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Mike Worley, State Assessor
Division: Municipal & Regional Assistance

Phone: 465-4750
Date: 5/6/87

Approved by Commissioner: Mike Worley for D.H. Hoffman
Agency: Community & Regional Affairs

Date: 5/6/87

Distribution (by preparer):

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- Impacted Agency(ies)
- Senate Secretary