

ALERT

VOLUME 38, NUMBER 2 • JANUARY 27, 2012

 **CalChamber**
CALIFORNIA CHAMBER OF COMMERCE

State of State: Governor Calls for Cuts, Temporary Taxes

Saying the state's structural deficit is a fourth the size it was last year, Governor Edmund G. Brown Jr., in his State of the State address, called for cuts and temporary taxes to close the remaining budget gap.

"Neither is popular, but both must be done," the Governor said in the January 18 speech.

Governor Brown is seeking to qualify an initiative for the November ballot to gain voter approval of the taxes—an increase in personal income tax on annual earnings above \$250,000 for five years and a half-cent increase in the sales and use tax for four years.

In his State of the State address, the Governor described his initiative as "fair... temporary [and] half of what people were paying in 2010."

'Unspent Potential'

Contrary to critics, "who fantasize that California is a failed state," Brown said, he sees "unspent potential and incredible opportunity."

By working together in 2012, he said, Californians can:

- **Stimulate jobs.** The Governor said that the rate of growth in California personal income and jobs were higher than the nation's in 2011. A new law restructures the office of business development and places it in the Governor's office. GO-BIZ will be businesses' point of contact "at the highest level."

- **Reach agreement on a plan to fix the Delta.** Brown commented that Secretary of the Interior Ken Salazar had met with members of the Governor's

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Bill to Create State Government-Run Health Care System Fails to Pass Senate



A California Chamber of Commerce-opposed bill to create a new, government-run, multibillion-dollar socialized health care

system supported by an unspecified "premium structure" fell short of votes needed to pass the state Senate on January 26.

SB 810 (Leno; D-San Francisco), identified as a "job killer" bill, failed passage on a vote of 19-15, with bipartisan opposition.

The premium structure in SB 810 was to be determined by 2014. The bill also prohibits the sale of any private health care insurance.

Federal Law in Motion

In opposing the bill, the CalChamber commented that SB 810 becomes irrelevant as a vehicle to provide universal coverage for California considering the 2009 enactment of the federal law that comprehensively reformed the health care system nationally.

The new federal law creates universal health care throughout the country to be implemented over the next several years. The California Legislature has been, and

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In his State of the State address, Governor Edmund G. Brown Jr. calls for cuts and temporary taxes to close the state budget deficit. At left is Assembly Speaker John A. Pérez; at right is Senate President Pro Tem Darrell Steinberg.

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Victories: Pages 5–6

Cal/OSHA Corner

Post Injury/Illness Summary (Form 300A) on February 1



Mel Davis
Cal/OSHA Adviser

What companies are required to post the Form 300 beginning February 1?

If your company had 10 or fewer employees at all times during the last calendar year, your company does not need to keep Cal/OSHA injury and illness records. This exemption also applies if your company's Standard Industrial Classification (SIC) code is included

in Table 1 of Appendix A, Section 14300.2, Article 2 of the regulations adopted by California's Division of Labor Statistics and Research, and enforced by Cal/OSHA. However, the federal Occupational Safety and Health Administration (OSHA) or the U.S. Bureau of Labor Statistics may ask you to participate in a random survey to provide records as detailed in the provisions of Section 14300.41 or Section 14300.42.

Form 300: Not Posted

The Form 300 is used to record, or log, all injuries and illnesses, except those that have been determined to be first aid only. Typically, the Form 300 is not posted because there may be employee privacy issues involved.

As an employer, you are not to include the employee's name for specific injuries or illnesses listed in Section 14300.29(b) (7), such as needle sticks, HIV infection, hepatitis, sexual assault and others. In addition, an employee suffering from an injury or illness not listed as a privacy issue may request that his/her name not be entered on the log.

Post Form 300A

Another form, the 300A, must be completed and posted beginning February 1. This form contains a summary of the total number of job-related injuries and illnesses that occurred during the previous year. Employers are required to post only the summary (Form 300A)—not the Form 300 (Log)—from February 1 to April 30.

The summary must list the total number of job-related injuries and illnesses that occurred in the previous year and were logged on the Form 300 (Log). Employment information about

the annual average number of employees and total hours worked during the calendar year also is required to assist in calculating incidence rates. Companies with no recordable injuries or illnesses in the previous year must post the summary with zeros on the "total" line. A company executive must certify all establishment summaries.

The form is to be displayed in a common area where notices to employees usually are posted. Employers must make a copy of the summary available to employees who move from worksite to worksite, such as construction workers, and employees who do not report to any fixed establishment on a regular basis.

More Information/Forms

Employers are responsible for providing a safe and healthful workplace for their employees. The role of OSHA is to assure the safety and health of U.S. workers by setting and enforcing standards; providing training, outreach and education; establishing partnerships; and encouraging continual improvement in workplace safety and health.

A free Log 300 wizard is available at calchamberstore.com/log300wizard to help a business determine whether it is subject to recordkeeping requirements.

For more information on Form 300 filing and posting requirements, or copies of the OSHA Forms 300, 300A and 301 visit hrcalifornia.com.

The Labor Law Helpline is a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262, or submit your question at hrcalifornia.com.

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CalChamber-Sponsored Seminars/Trade Shows

More information at www.calchamber.com/events.

Business Resources

Refocusing the Lens on Human Rights.

UL Responsible Sourcing. February 9, Los Angeles. (310) 215-0554.

Farm-to-Table Tour in California.

Culinary One Investments Group.

February 12–18. (916) 799-8345.

REACH Workshop. Tetra Tech.

March 27, Los Angeles. (734) 213-5057.

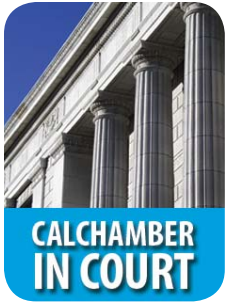
International Trade

World Ag Expo. California State Trade and Export Promotion (STEP). February 14–16, Tulare. (209) 384-5892.

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State High Court Orders Review on Legality of Rounding Employee Timecard Entries



At the request of the California Chamber of Commerce, the California Supreme Court has ordered a review of a trial court decision to clarify whether rounding employees' timecard entries is legal.

In November 2011, the CalChamber submitted an *amicus curiae* letter to the California Supreme Court in support of the petition for review filed by See's Candy Shops. Previously, in October 2011, the CalChamber urged the 4th District Court of Appeal to grant a petition by See's Candy Shops to review a San Diego County Superior Court decision that the practice of rounding employee time entries to the nearest six minutes violates California law.

Until recently, employers have had no reason to suspect that rounding time entries might be unlawful, the CalChamber said in its "friend-of-the-court" letter. For

many years, employers have relied on the position of the U.S. Department of Labor (DOL) and state Division of Labor Standards Enforcement that rounding is a lawful practice, the letter states.

That approval is reflected in DOL regulations and the California Labor Commissioner's enforcement policy, which follows the DOL regulations.

The issue of rounding time entries is a matter of widespread concern to California employers. The CalChamber regularly receives inquiries from its members concerning the rounding of time entries. Clarifying this issue will be very helpful to California employers and help prevent litigation.

After extensive research, the CalChamber concluded that the California Labor Code does not prohibit rounding and no California appellate decision has held that rounding is illegal.

Class Action Lawsuits

Nevertheless, some class action lawsuits already have been filed in California by plaintiffs alleging that rounding is illegal and seeking damages and pen-

alties under the Private Attorneys General Act (PAGA).

The CalChamber is concerned that the trial court decision in the See's case may lead to the filing of many more class action lawsuits attacking rounding practices that employers have believed were completely lawful.

Many employers will feel they have no choice but to stop their practice of rounding time to avoid the risk of class litigation, which often leads to large settlements due to the costs of defending these cases, the CalChamber states in the letter.

Employers Need Certainty

The filing of class actions alleging novel legal theories and designed to result in large settlements is bad for the California economy and encourages businesses to leave the state, the CalChamber tells the court.

The CalChamber believes it would be best for this issue to be resolved now so California businesses will have certainty regarding this important timekeeping issue. **Staff Contact: Erika Frank**

Governor Seeks Cuts, Temporary Taxes to Continue Closing Budget Gap

From Page 1
administration who are working to complete the Bay Delta Conservation Plan. Declaring his commitment to "the dual goals of restoring the Delta ecosystem and ensuring a reliable water supply," the Governor said getting the project done will "require time, political will and countless permits from state and federal agencies. I invite your collaboration and constructive engagement."

● **Improve schools.** The Governor said responsibility must be "clearly delineated between the various levels of power that have a stake in our educational system." Citing the system's dependence on elected school boards, principals and the teachers they hire, the Governor said "we should set broad goals and have a good accountability system, leaving the real work to those closest to the students."

He commented that his budget proposes replacing categorical programs with a new

weighted student formula that "provides a basic level of funding with additional money for disadvantaged students and those struggling to learn English."

Besides giving more authority to local school districts, the Governor said, his plan also will "create transparency, reduce bureaucracy and simplify complex funding streams."

He also said it is time to reduce the number of tests and get the results to teachers, principals and superintendents "in weeks, not months." The Governor voiced support for a site visitation program and said he will work with the State Board of Education to develop the proposal.

● **Build renewable energy.** The Governor said he has set a goal of 20,000 megawatts of renewable energy by 2020.

● **Reduce pollution and greenhouse gases.** He cited the state's vehicle emissions standards, adopted by the federal government for the rest of the nation, and

the state attracting 40% of clean tech venture capital investments.

● **Build a high-speed rail system,** connecting Northern and Southern California.

● **Reform pensions.** Referring to his 12-point pension reform proposal, the Governor commented, "Three times as many people are retiring as are entering the workforce. That arithmetic doesn't add up." He called for taking action this year to balance benefits, contributions and the age of retirement.

● **Make sure prison realignment is working.** The task is just beginning, the Governor said.

'Declinists' Wrong

The Governor said he wants to prove that "once again, the declinists" about California are wrong.

"We're on the move, we're on the mend. Let's get it done," he concluded.

CalChamber Hosts New British Consul General

Trade and investment were among the topics of discussion when the California Chamber of Commerce hosted a meeting with the new consul general of the United Kingdom on January 19.

Consul General Priya Guha was appointed to San Francisco in August 2011. She has responsibility for a seven-state area consisting of Northern California, Washington, Oregon, Alaska, Idaho, Montana and Northern Nevada.

More than a million Americans go to work every day for British companies and the reverse is true as well. In California, British investment supports approximately 90,000 jobs, according to the British Consulate General in San Francisco.

The United Kingdom has been a vital trading partner for California for decades and is California's ninth largest export partner.

According to statistics from the U.S. Department of Commerce:

- In 2010, California exported \$4.2 billion to the United Kingdom—more than most states.

- Computers and electronic products make up the largest export, totaling \$1.4 billion, roughly 32 percent of total exports to the United Kingdom.

- Transportation equipment exports increased between 2007 and 2008, and

then returned to \$634 million in 2010. Exports in transportation equipment currently make up 15% of total California exports bound for the United Kingdom.

- Chemical, miscellaneous and machinery manufactures are also strong sectors that, combined, are roughly equal in export revenue to that of transportation equipment.

The California Tourism and Travel Commission reports that the United Kingdom sends more tourists to California than any other country. In 2009, 663,000 UK citizens visited California.

Staff Contact: Susanne Stirling



Pictured (from left) are Allan Zaremberg, CalChamber president and CEO; the Honorable Priya Guha, consul general, British Consulate General, San Francisco; Susanne Stirling, CalChamber vice president, international affairs; and the Honorable Robin Newmann, vice consul, British Consulate General, San Francisco.

CalChamber-Sponsored Seminars/Trade Shows

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Visit California Outlook Forum. Tourism Board of California. February 21–23, Sacramento. (916) 319-5422.

CeBIT. California STEP. March 6–10, Hannover, Germany.

International Environment Expo.

California STEP. March 7–9, Shanghai, China. (310) 973-3161.

Trade Connect-CalAgX Export Training. Port of Los Angeles. March 8–May 17, California. (310) 732-7765.

COSMOPROF Worldwide. California STEP. March 9–12, Bologna, Italy. (562) 938-5018.

GLOBE 2012. GLOBE. March 14–16, Vancouver, Canada. (800) 274-6097.

WorldBEX. California STEP and Northern California Regional Center for International Trade Development. March 14–18, Manila, Philippines and Singapore. (916) 563-3222.

China Trade Mission and Import Expo. California Asian Pacific Chamber and CalChamber. March 25–April 1, Kunshan, China. (916) 446-7883.

Sri Lanka Expo. Sri Lanka Consulate. March 28–30, Colombo, Sri Lanka. (213) 387-0214.

Ag Trade Mission to Asia. California STEP and Fresno Center for International Trade Development.

April 21–28, China and South Korea. (559) 324-6401.

Labor Law

HR 201: California Labor Law Update Seminar. CalChamber. February 6, On Demand. (800) 331-8877.

Technology and the Workplace Webinar. CalChamber. February 16. (800) 331-8877.

Recordkeeping 101 Webinar. CalChamber. March 15. (800) 331-8877.

HR 101: Intro to HR Administration Seminar. CalChamber. April 11, Sacramento. (800) 331-8877.

Performance Evaluations, Discipline and Termination. CalChamber. April 12, Sacramento. (800) 331-8877.

Hiring, Onboarding and Recordkeeping 101. CalChamber. April 12, Sacramento. (800) 331-8877.

CalChamber Calendar

Public Affairs Council Retreat:

February 2–3, Santa Monica

Taking Your Chamber's PAC to the Next Level: March 16, Sacramento

Successes help employers, jobs and the economy

CAPITOL WATCHDOG

Each year CalChamber tracks more than 3,000 legislative proposals on behalf of member businesses.

GRASSROOTS ACTION

Comments from employers yield results. See hot issues at www.calchambervotes.com.

ABOUT US

CalChamber is the largest, broad-based business advocate, working at the state and federal levels to influence government actions affecting all California business. As a not-for-profit, we leverage our front-line knowledge of laws and regulations to provide affordable and easy-to-use compliance products and services.

2011 Major Victories

Fighting for Jobs, Creating Certainty in an Uncertain Economy

The California Chamber of Commerce is the voice of California business, expert at speaking for pro-job policies and advising employers on how state laws and regulations will affect the workplace. We track more than 3,000 legislative proposals every year, sounding the alarm when a bill will hurt employers and the economy, and working to win support for legislation that will help the jobs climate. Policymakers listen to CalChamber advocates, knowing that we speak for more than 13,000 member businesses employing a fourth of the state's private workforce and reflecting the diversity of the California business community.

Further emphasizing our message are the thousands of individuals who use our Web-based grassroots center, www.calchambervotes.com, to make their views known to their elected representatives. Each year, website visitors use the grassroots center to send some 200,000 letters about state and federal issues affecting business operations.

Read on to learn how CalChamber advocacy in 2011 helped employers. See the Advocacy Return on Investment sheet for estimates of employer savings on some of these victories.

Stopping 29 of 30 'Job Killer' Bills

The skill of CalChamber policy advocates, joining forces with other business groups and pro-jobs legislators, prevented all but five "job killer" bills from passing the Legislature. The Governor vetoed four of the five "job killers." Below is a sampling of "job killers" that won't become law. More information at www.calchamber.com/jobkillers.

- **Stopped costly workplace mandates**, such as an automatic minimum wage increase (AB 10); changes increasing workers' compensation costs (AB 375, AB 1155); protected classification for employees who use medical marijuana (SB 129); and elimination of secret ballot elections for agricultural workers (SB 104).
- **Prevented expansion of employer liability** by proposals to add more reasons for taking family and medical leave (AB 59); mandate paid sick leave (AB 400); and elevate bereavement leave to the same level as the right to be free from racial or gender discrimination (AB 325).
- **Kept lid on inflated liability costs** by advocating veto of a bill undermining judicial discretion (AB 559); securing amendments to legislation that could have led to new shakedown lawsuits against businesses (SB 111); and killing a bill that would have undermined enforcement of arbitration agreements in contracts (AB 1062).
- **Blocked new barriers to economic development**, such as a requirement for certain contractors to retain the employees of a former contractor (AB 350); a proposal requiring tax credits to sunset (SB 508); a "split roll" property tax (AB 448); and a multitude of hidden and specific tax hike proposals (AB 832, AB 1130, AB 1239, SB 237, SB 535, SB 653, SBX1 23).
- **Halted expensive, unnecessary regulatory burdens**, including a ban on the use of polystyrene foam food containers (SB 568); and a complex, unworkable health care rate regulation process (AB 52).

Promoting Expansion of Trade Opportunities for California Goods and Services

Part of broad-based coalitions whose five-year campaigns secured congressional passage of free trade agreements with Korea, Panama and Colombia, estimated to increase U.S. exports by billions of dollars and improve the jobs climate.



Helping Control Workers' Compensation Costs

Backed proposals signed into law to lower pharmaceutical costs, lower frictional costs in the workers' compensation system, streamline the process, establish a fee schedule for vocational experts and ensure contractors have coverage (AB 378, AB 335, AB 1426, AB 1168, AB 397).

Improving Education

Supported legislation signed into law that will increase high school graduation rates, improve the college and workplace readiness of those graduates and train teachers to better prepare California's students to compete in a global economy by emphasizing education programs that provide students with real-world experience and rigorous coursework to help them engage and excel (SB 611, SB 612).

Conforming State to Federal Law on Dependent Health Care

Supported conforming state to federal law regarding treatment of employee premium payments for adult children health care coverage as non-taxable income (AB 36).

Preventing Electricity Cost Increases

Stopped eight-year extension of a tax (public goods charge) on electricity ratepayers in the territories of the investor-owned utilities (AB 724, SBX1 28).

Preserving Employer Ability to Use Payroll Cards

Secured veto of bill essentially prohibiting financial institutions from charging fees related to the use of payroll cards, thereby imposing a de facto ban on the product and eliminating employers' ability to offer this cost-beneficial option for paying wages to employees (SB 931).

Preventing Interference with Employment Contracts

Opposed and secured veto of proposal that would have limited parties' right to contract by characterizing any non-California choice-of-forum clauses and/or choice-of-law clauses in employment contracts as void and unenforceable, unless additional compensation was paid to include such provisions (AB 267).

Clarifying Leave Requirements

Sponsored legislation signed into law to clarify the requirements of paid bone marrow and/or organ donation leave, to provide employers with certainty as to how this leave should be implemented (SB 272).

Keeping Lid on Mortgage Costs

Stopped a \$20,000 per foreclosure tax that would have been used for purposes unrelated to the foreclosure and increased the costs of homeownership for new borrowers (AB 935).

Reforming Regulatory Process

Worked for legislation to reform the regulatory process by requiring an economic analysis of all major regulations at the beginning of the regulatory process, thus providing more transparency and better data on which to base selection of most cost-effective regulatory alternative (SB 617).

Protecting Victims of Identity Theft

Backed urgency bill to authorize restitution for expenses for three years to monitor an identity theft victim's credit report and for the costs to repair the victim's credit (SB 208).

Protecting California Agriculture

Provided farmers and ranchers an additional tool to help prevent vertebrate pests from destroying valuable California agricultural products by allowing the use of carbon monoxide for vertebrate pest control purposes (SB 634).

Promoting Food Safety

Supported urgency legislation clarifying which food facilities are subject to food safety training rules and who can offer certification courses (SB 303).

CalChamber Goes Neutral as Author Amends Job Killer in Response to Concerns



A bill that would have imposed a hidden tax on software has been amended in response to opponents' concerns and therefore is no longer on the California

Chamber of Commerce-opposed "job killer" list.

AB 832 (Ammiano; D-San Francisco) would have made it virtually impossible for the software's owner to show that embedded software is eligible for a property tax exemption.

The CalChamber will be working with the state Board of Equalization (BOE) as part of an interested parties process to develop more guidelines for assessors

and businesses to use in the valuation of embedded software.

Before the amendments, business groups argued that the regulatory process was more suited to addressing the concerns raised by the county assessors; the amended bill reflects this argument.

Current Law

Under current law, embedded software is exempt from personal property taxes. If embedded software is sold with equipment at a single (bundled) price, however, a county assessor is allowed to presume that the single price includes only taxable property under existing law.

A taxpayer may overcome this presumption by providing information that identifies the nontaxable application

software and showing its value.

Former Problem

Before amendments, AB 832 would have required taxpayers, in order to exclude nontaxable embedded software when purchased in a bundled transaction, to identify the software and to prove its value by "clear and convincing evidence" in order to overcome the presumption that the bundled price represents entirely taxable property. The proposed standard was inconsistent with the current standard applied in software disputes and that applied nearly universally throughout property tax law, i.e., a "preponderance of the evidence" or "more likely than not" standard.

Staff Contact: Mira Guertin

Bill to Create State Government-Run Health Care Fails to Pass Senate

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will continue to be diligently implementing the federal law and should not be derailed by creating a new system.

Furthermore, the CalChamber opposes a government-run system and supports the role of the Legislature and the administration in implementing the federal reforms.

New Bureaucracy

The new bureaucracy proposed by SB 810 was to be funded through premiums set by an appointed commission and paid by all employers. To balance the budget for the program, premiums could be increased, benefits and provider payments reduced, and copayments and deductibles imposed.

Further added tax burdens on individuals and employers would have led to declining General Fund tax revenues and job loss jeopardizing the state's already-troubled economy without addressing escalating medical costs.

Wrong Approach

Although SB 810's goal of providing health coverage for all Californians is laudable, establishing a single-payer

statewide bureaucracy is the wrong approach.

The CalChamber fundamentally disagrees with the two major premises of the bill—that government systems are more efficient than private business; and that a single-payer system would be less costly than the current private system.

Voters Oppose

California voters have twice rejected a government-run health care system—most recently in Proposition 72 in 2004 and previously in 1994.

Focus groups and numerous opinion polls on health care reform have reinforced that California residents do not want a single-payer, government-run system.

Furthermore, Congress rejected the notion of a single-payer system when enacting comprehensive reform. California should not create a new system that would conflict with the recently enacted federal program.

Key Vote

The January 26 vote on SB 810 was:
Ayes: Alquist (D-Santa Clara), Corbett (D-San Leandro), De León (D-Los

Angeles), DeSaulnier (D-Concord), Evans (D-Santa Rosa), Hancock (D-Berkeley), Hernandez (D-West Covina), Kehoe (D-San Diego), Leno (D-San Francisco), Lieu (D-Torrance), Liu (D-La Cañada Flintridge), A. Lowenthal (D-Long Beach), Negrete McLeod (D-Chino), Pavley (D-Agoura Hills), Price (D-Los Angeles), Simitian (D-Palo Alto), Steinberg (D-Sacramento), Wolk (D-Davis), Yee (D-San Francisco).

Noes: Anderson (R-El Cajon), Berryhill (R-Modesto), Blakeslee (R-San Luis Obispo), R. Calderon (D-Montebello), Cannella (R-Ceres), Correa (D-Santa Ana), Dutton (R-Rancho Cucamonga), Emmerson (R-Hemet), Fuller (R-Bakersfield), Gaines (R-Roseville), Harman (R-Huntington Beach), Huff (R-Diamond Bar), LaMalfa (R-Richvale), Strickland (R-Thousand Oaks), Walters (R-Laguna Niguel).

Absent/abstaining/not voting: Padilla (D-Pacoima), Rubio (D-East Bakersfield), Runner (R-Antelope Valley), Vargas (D-San Diego), Wright (D-Inglewood), Wyland (R-Escondido).

The bill was granted reconsideration.
Staff Contact: Marti Fisher



LIVE WEBINAR | FEBRUARY 16, 2012 | 10 – 11:30 A.M. PST

What's your company's policy on social media use at work?

The risks and benefits associated with social media in the workplace continue to evolve, leaving many unanswered questions for employers. Join our employment law experts for our 90-minute **Technology and the Workplace Webinar** as they cover the significant issues created when employees misuse the Internet, e-mail, smartphones, blogs and social media sites. The discussion includes:

- Policy suggestions to avoid the pitfalls of social media in the workplace
- Privacy concerns and the current status of claims before the National Labor Relations Board (NLRB) about social media use



REGISTER at calchamber.com/technology or call (800) 331-8877. Mention priority code TWA.

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