

ALERT

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Illegal Tax Will Increase Energy, Fuel Costs in State



Three California Chamber of Commerce-opposed “job killer” bills that will increase energy costs, including fuel prices,

on consumers and businesses, passed legislative policy committees this week.

AB 1532 (J. Pérez; D-Los Angeles)/ AB 2404 (Fuentes; D-Los Angeles)/ SB 1572 (Pavley; D-Agoura Hills) allocate funds from an illegal tax to various programs that are not necessary to cost-effectively implement the market-based trading mechanism under AB 32, the 2006 climate change law.

Increased Costs

In opposing the bills, the CalChamber has pointed out that the California Air Resources Board (ARB) lacks authority and has been unable to justify the need to raise billions of dollars in revenue for purposes anticipated in these bills.

ARB’s plan to impose a “cap-and-tax” will hurt jobs, and increase costs to the state and consumers. AB 32 was not intended to be a revenue source. The decision to move forward with a billion-dollar auction will have devastating impacts on the state’s economy.

Entities subject to the illegal tax include manufacturers, public agencies, *See Illegal: Page 4*

Legislation Provides More Regulatory Certainty for Business



Two California Chamber of Commerce-supported job creator bills that

improve regulatory certainty for business won approval from legislative policy committees this week.

● **SB 1099 (Wright; D-Inglewood)** provides certainty for business by creating a predictable and easy-to-track implementation schedule for new regulations.

● **AB 1982 (Gorell/Wagner)** provides certainty and flexibility for businesses by extending the time frame when they are required to comply with new regulations.

Both bills are consistent with the goals of the CalChamber’s 2012 Renew Agenda and will help position California for economic recovery.

Tracking Proposed Rules

Each year, state agencies draft and implement numerous regulations that go into effect 30 days after being filed with the Secretary of State. Keeping track of these regulations throughout the year presents a difficult challenge for California businesses, particularly small businesses that have limited resources. The current regulatory process often results in businesses being out of compliance and subject to administrative penalties.

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Photo by Megan Wood

Brenda M. Coleman testifies before the Assembly Natural Resources Committee on April 23 against ‘job killer’ bills imposing an illegal tax increase.

Labor Law Corner

Employers Must Provide Employee Payroll Records Upon Request



Barbara Wilber
HR Adviser

Is an employer required to provide copies of payroll records to employees?

The answer is yes if you are referring to the information that appears on the itemized wage statement issued with the payroll check.

Required Information

Labor Code Section 226(a) requires employers to list the gross wages, total hours worked, piece rate units, number of piece rate units earned, all deductions, net wages earned, inclusive dates of the pay period, name of the employee and an identification number, the employer and the address, and all hourly rates, including the corresponding number of hours worked at each rate.

Review the complete Section 226 for exceptions to the general items listed here.

Records Requests

Labor Code Section 226(b) refers specifically to the information contained in Section 226(a) and requires that employers shall afford current and former employees the right to inspect or copy those records upon reasonable request.

Employers should comply with the request as soon as practicable, but no later than 21 calendar days from the date

of the request. The section further states an employer may charge for the actual reproduction cost of any copies provided.

An employer who fails to provide such access within 21 days of the date of any oral or written request may be assessed a fine of \$750.

In addition, knowing and intentional failure to comply with a request may subject you to court action. An employee may recover the greater of actual damages or \$50–\$100 for the initial and subsequent violations, up to \$4,000 plus costs and attorney fees.

Review requests to determine exactly which records are being requested and comply accordingly.

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 www.hrcalifornia.com.

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CalChamber-Sponsored Seminars/Trade Shows

More information
at www.calchamber.com/events.

Labor Law

- Pregnancy Disability Leave and Baby Bonding Webinar. CalChamber. May 17. (800) 331-8877.
- Paid or Unpaid—Leaves of Absence for California Employees Webinar. CalChamber. June 21. (800) 331-8877.
- Hiring and Onboarding Basics Webinar. CalChamber. July 19. (800) 331-8877.
- Conducting Effective Performance Appraisals Webinar. CalChamber. August 16. (800) 331-8877.

Business Resources

- Strategic Management for Competitive Advantage. University of Southern California Marshall School of Business Executive Education. May 1–3, Los Angeles. (213) 740-8990.
- Delta Levees Standards Conference. Water Education Foundation. May 2, Sacramento. (916) 444-6240.
- Chick-fil-A Leadercast 2012. GNB Corporation. May 4, Elk Grove. (916) 478-4000.

International Trade

- Basics of Exporting - Webinars. U.S. Department of Commerce.
 - May 2-Duty Drawbacks;
 - May 16-Taking Advantage of NAFTA;
 - May 30-Completing Certificates of Origin;
 - June 13-Financing Your Exports and Getting Paid;
 - June 27-Temporary Exports-Carnets and Other Tools. (800) 872-8723.
- See CalChamber-Sponsored: Page 6*

Labor law answers
online HRCalifornia.com



Call Center ‘Job Killer’ Bill Fails in Assembly Committee



A California Chamber of Commerce-opposed “job killer” bill placing a targeted burden on companies with call centers

failed to pass the Assembly Labor and Employment Committee on April 18.

AB 2217 (Pan; D-Sacramento) discourages businesses from even locating a call center in California by requiring the business to adhere to overreaching mandates.

In opposing the bill, the CalChamber and a coalition of associations pointed out that AB 2217 improperly seeks to penalize California companies that have moved their call centers out of state.

Moreover, AB 2217 also appears to exceed the boundaries of California’s jurisdiction by regulating activities in other states and even other countries, and is therefore likely unlawful.

The *Orange County Register* recently reported that 254 businesses left California in 2011, which was 26% more than in 2010. One main motivation for businesses to leave the state is costly laws and regulations that make it too hard to do business here.

Another Burden

Instead of alleviating some of those

burdensome regulations, AB 2217 adds to the problem and seeks to penalize such companies for leaving California by expanding the California plant closure notification law (WARN Act) to apply to call centers that have 50 or more employees, instead of the general threshold of 75 or more employees that applies to other businesses.

AB 2217 also requires any customer service representative who calls or talks to a person who resides in California to identify the representative’s location, and if requested, transfer the phone call to a call center within the United States.

Interstate Impact

California’s attempt through AB 2217 to regulate activities in another state and even another country has a direct impact on interstate commerce and therefore is likely unconstitutional under the Commerce Clause.

Trade Implications

AB 2217 also likely violates international trade agreements. Both multilateral trade policies established by the World Trade Organization and bilateral, regional trade agreements such as the North American Free Trade Agreement, assure international obligations to prevent impediments to global trade.

AB 2217 represents a return to protectionism that will surely be seen as an affront to our trading partners. Therefore, the matter must be addressed at the federal level and Congress appears poised to do just that.

Despite its stated intent to address data breaches in foreign countries, AB 2217 does nothing to resolve this alleged problem. If data breaches truly are occurring in other states or countries, forcing a company to notify California of its relocation or to transfer a call back to a call center within the United States will not fix this issue.

The CalChamber and coalition are not aware of any data breaches that occur solely due to the location of the call center.

Key Vote

AB 2217 failed to pass Assembly Labor and Employment on a vote of 1-3:
Ayes: Allen (D-Santa Rosa).

Noes: Gorell (R-Camarillo), Morrell (R-Rancho Cucamonga), Swanson (D-Alameda).

Absent/abstaining/not voting: Alejo (D-Watsonville), B. Lowenthal (D-Long Beach), Yamada (D-Davis).

The bill was granted reconsideration.
Staff Contact: Jennifer Barrera

Labor Commissioner Releases Updated Wage Notice and FAQ

The California Division of Labor Standards Enforcement (DLSE) has released an updated version of the Labor Code section 2810.5 wage-and-employment notice and a second update to its frequently asked questions (FAQs) on the notice.

The Wage Theft Protection Act of 2011 requires employers to provide nonexempt employees with a notice — Notice to Employee (Labor Code section 2810.5)—at the time of hire that lists specified wage information.

California employers struggled with putting the provisions of the initial

template provided by the DLSE into effect. The DLSE revised its template on April 12.

The Labor Commissioner also has issued its second update to the FAQs about the wage-and-employment notice to help answer questions from employers. The second update to the FAQs, released on April 12, revises several of the previous FAQs and also contains five additional questions and answers.

For new hires made after April 12, 2012, the newer posted version of the template must be used. The DLSE will archive any earlier template on its website

for informational purposes.

Employers are required to provide the notice at the time of hire in the language the employer normally uses to communicate employment-related information.

The updated wage-and-employment notice (in English and Spanish) is available for download from *HRCalifornia*.

An on-demand version of the CalChamber “Paying and Scheduling Nonexempt Employees” webinar is available at www.calchamber.com/2012webinars.

Staff Contact: Gail Cecchetti Whaley

Illegal Tax Will Increase Energy, Fuel Costs in State

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universities, refineries, food processors and others. The impact on these entities will be severe and will be on top of the higher fuel and energy costs due to other climate change regulations.

No Authority

Raising “upward of \$3 billion” in 2012–2013 alone as estimated by the Legislative Analyst for purposes of funding various state programs is well beyond ARB’s authority and runs contrary to the requirements expressly stated in AB 32, which is that of maximizing benefits and minimizing leakage risks and costs.

Nothing in AB 32 expressly grants ARB authority to raise and distribute revenue in the cap-and-trade program. In fact, AB 32 explicitly provides ARB with the authority to raise revenue only for direct costs incurred in administration of the program. In a letter to the journal, then-Assembly Speaker Fabián Núñez, the author of AB 32, clarified that the fee authority in AB 32 is “solely” for the purpose of administrative costs.

The inclusion of a “market mechanism” in AB 32 was intended to allow consideration of market dynamics to find the most cost-effective emission reductions. The definition of “market mechanism” alone does not grant revenue-raising authority and without such authority, imposing an auction is legally questionable.

Cap-and-Trade

An auction is not necessary for a successful cap-and-trade program. The cap-and-trade program will achieve targeted emission reductions without the revenue raising of a state-run auction.

Historically, successful emission trading programs such as the Clean Air Acid Rain Program and the Lead



Phasedown programs have relied on the free distribution of allowances. A system of free allocation has proven to promote cost-effective emission reduction while enabling entities to buy and sell credits (i.e., allowances) amongst themselves in the secondary market. A system of free allocation is economically beneficial, promotes market liquidity and diversity and decreases the risk of market speculation.

Illegal Tax

These bills presume that expenditures of revenue from the proposed cap-and-trade program would be legal so long as they are made in compliance with the California Supreme Court decision in *Sinclair Paint v. State Board of Equalization*, 15 Cal. 4th 866 (1997).

But the applicability of the *Sinclair* decision to the planned collection and distribution of auction revenue raises legal uncertainties. This assessment assumes that the facts and background underlying the *Sinclair* decision are analogous to those underlying AB 32, which is not the case.

Unlike AB 32, the statute at issue in *Sinclair* [AB 2038: Connelly, 1991], expressly granted the relevant state agency the power to impose a mitigation fee.

In addition, the legislation stated specifics about how those fees were to be used, and described the entities that would be required to pay the fee and the amount to be collected.

Moreover, the *Sinclair* court decision held that the fees must bear a proportional relationship to the adverse impacts—in that case the lead contamination—caused

by the source. In comparison, nothing in AB 32 expressly granted ARB the legal authority to impose a mitigation fee, significantly undermining the argument that a court would treat the proposed cap-and-trade auction similarly to the fee authorized by AB 2038.

If AB 32 does not, in fact, authorize the auction, expenditures of proceeds from that auction would require new legislative approval that would be governed by the provisions of Proposition 26. Passed by voters in 2010, Proposition 26 clarified the definition of a “tax,” making it clear that any assessment providing public benefits extending beyond the regulated industry would require a two-thirds vote.

These bills provide for the unjustified use of revenue and go beyond the economic and environmental harm that will arise from ARB’s imposition of a cap-and-tax on California employers.

Key Votes

● **AB 1532** and **AB 2404** passed the Assembly Natural Resources Committee on April 23 on votes of 5-3:

Ayes: Chesbro (D-North Coast), Dickinson (D-Sacramento), Huffman (D-San Rafael), Monning (D-Carmel), Skinner (D-Berkeley).

Noes: Grove (R-Bakersfield), Halderman (R-Fresno), Knight (R-Antelope Valley).

Absent/abstaining/not voting: Brownley (D-Santa Monica).

● **SB 1572** passed the Senate Environmental Quality Committee on April 23 on a vote of 5-2:

Ayes: Hancock (D-Berkeley), Kehoe (D-San Diego), A. Lowenthal (D-Long Beach), Pavley (D-Agoura Hills), Simitian (D-Palo Alto).

Noes: Blakeslee (R-San Luis Obispo), Strickland (R-Thousand Oaks).

Staff Contact: Brenda M. Coleman

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Write your legislator.
calchambervotes.com

Legislative Committees Reject Job Creators



A number of California Chamber of Commerce-supported “job creator” bills

are likely dead for the year, having been rejected by legislators in the first policy committees to review the proposals.

These bills are a part of CalChamber’s 2012 Renew Agenda and will help position California for economic recovery.

The following “job creator” bills failed to get enough bipartisan support in their initial policy hearings:

● **AB 1789 (Morrell; R-Rancho Cucamonga) – Private Attorney General Act Exemption:** This CalChamber-sponsored bill eliminates the threat of frivolous litigation with regard to ambiguous provisions of the Industrial Welfare Commission Wage Orders that have not been substantively reviewed or revised for the past 10 years. Failed to pass the Assembly Labor and Employment Committee on a vote of 2-5.

● **AB 1804 (Valadao; R-Hanford) – Project Labor Agreements:** Promotes job and economic growth by freeing up local funds through elimination of penalties on local government that prohibit project labor agreements. Failed to pass the Assembly Local Government Committee on a vote of 3-3.

● **AB 2043 (Wagner; R-Irvine) — Increases Class Action Fairness:** Helps prevent meritless class actions by allowing defendants an equal right to appeal a court order granting certification of a class. Failed to pass the Assembly Judiciary Committee on a vote of 3-7.

● **AB 2091 (B. Berryhill; R-Ceres) — Increases Regulatory Certainty:** Provides certainty and the ability for businesses to meet government mandates by requiring that new technology required to implement a new regulation is available and affordable. Failed to pass Assembly Business, Professions and Consumer Protection Committee on a vote of 3-4.

● **SB 1114 (Dutton; R-Rancho Cucamonga) – Reduces Wage-and-Hour Competitive Disadvantage for California Employers:** Lowers costly daily overtime requirement for California



Photo by Megan Wood

CalChamber Policy Advocate Mira Guertin testifies in support of job creator AB 2043 (Wagner; R-Irvine), increasing class action fairness, before the bill is rejected by the Assembly Judiciary Committee on April 24.

employers by requiring payment of overtime only after 10 hours in a workday. Failed to pass the Senate Labor and Industrial Relations Committee on a vote of 1-4.

● **SB 1115 (Dutton; R-Rancho Cucamonga) – Workplace Flexibility for Small Employers:** Alleviates the burden of unnecessary regulations by allowing an employer with 10 or fewer

employees to implement an alternative workweek schedule at the request of the employees. Failed to pass the Senate Labor and Industrial Relations Committee on a vote of 1-3. The bill was granted reconsideration.

For updates on the remaining “job creator” bills, visit www.calchamber.com/jobcreators.

Staff Contact: Marc Burgat



“CalChamber has been an invaluable partner in helping OUTSOURCE provide excellent resources and tools to help our clients navigate the complexities of staying up-to-date and in compliance with state and federal employment laws.”

SANDRA FLOYD
PRESIDENT AND CHIEF EXECUTIVE OFFICER
OUTSOURCE CONSULTING SERVICES, INC.
OAKLAND

Bill Improves California Workforce



A California Chamber of Commerce-supported bill that helps improve

alignment of the state's workforce needs and education resources passed the Senate Education Committee this week.

SB 1402 (Lieu; D-Torrance) reauthorizes the Economic and Workforce Development Program within the California Community College system.

This bill is a part of CalChamber's 2012 Renew Agenda and will help position California for economic recovery.

The Economic and Workforce Development Program was created to advance California's economic growth and global competitiveness through development of high-quality education and services focusing on continuous workforce improvement, technology deployment, and business development, consistent with the current needs of the

state's regional economies.

Over the last five years, total funding for the program has fallen by more than 40%, making it harder for program managers to coordinate with the various entities working toward the same mission and meet market needs.

Revised Program

SB 1402 establishes a revised program to operate until January 1, 2018, and revises the Economic and Workforce Development Program to improve its functions in three primary ways:

- Making the program more nimble and better able to respond to changing economic conditions;
- Making the program more accountable for investments and performance by strengthening the evaluation framework for economic and workforce development grants and programs; and
- Encouraging better integration and communication of economic and workforce development programs with career technical education programs.

The Economic and Workforce Development Program funds both long-term and short-term activities in strategic priority areas, including advanced transportation, biotechnology, environmental technologies, health care delivery, and international trade.

Reauthorization of the program, as redesigned, will help ensure that students continue to have access to programs targeted toward employable career paths, and that employers have access to a growing pool of qualified workers trained in the subject areas in highest demand.

Key Vote

SB 1402 passed the Senate Education Committee on a vote of 8-0.

Ayes: Alquist (D-Santa Clara), Hancock (D-Berkeley), Huff (R-Diamond Bar), Liu (D-La Cañada Flintridge), A. Lowenthal (D-Long Beach), Price (D-Los Angeles), Simitian (D-Palo Alto), Vargas (D-San Diego).

No Vote Recorded: Blakeslee (R-San Luis Obispo), Runner (R-Antelope Valley).
Staff Contact: Mira Guertin

CalChamber-Sponsored Seminars/Trade Shows

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U.S.-China Business Summit. China-U.S. Business Summit Committee, Global Times and China Light Industrial Corporation for Economic & Technical Co-Operation. April 29-May 1, Los Angeles. (312) 912-2502.

Annual Investment Meeting. United Arab Emirates Ministry of Foreign Trade. May 1-3, Dubai, United Arab Emirates. (714) 214-9749.

Embracing Global Trade Alliances. National U.S.-Arab Chamber of Commerce. May 2, Los Angeles.

World Trade Week Kickoff Breakfast. Los Angeles Area Chamber of Commerce. May 4, Los Angeles. (213) 580-7569.

Green Trade Mission to Brazil Briefing. U.S. Department of Commerce. May 9, Los Angeles. (310) 882-1750.

International Fair of Technologies (IFT) Energy 2012. Chilean Ministry of Energy and CORFO. May 9-11,

Santiago, Chile. (877) 492-7028.

Consular Corps Luncheon. Northern California World Trade Center. May 22, Davis. (916) 312-9146.

California Ag Trade Mission to China/South Korea. Fresno Center for International Trade Development. June 9-16, China and South Korea. (559) 324-6401.

U.S.-Africa Infrastructure Conference. Corporate Council on Africa. June 18-20, Washington, D.C. (202) 835-1115.

California Pavilion at Chile-Expo Hospital 2012. Los Angeles Area Chamber of Commerce and CalChamber. June 27-29, Santiago, Chile. (213) 580-7570.

Food Taipei 2012. Taiwan Trade Center, San Francisco. June 27-30, Taiwan. (408) 988-5018.

2012 India Trade Conference. Port of Los Angeles, U.S. Commercial Service, Quanta Consulting. June 28, Cerritos. (949) 480-9466.

Intersolar-North America. Northern California Regional Center for International Trade Development. July 10-12, San Francisco. (916) 563-3222.

Hong Kong Food Expo. Hong Kong Trade Development Council. August 16-20, Hong Kong, China. (310) 973-3175.

CalChamber Calendar

Water Resources Committee:

May 21, Sacramento

Host Reception/Host Breakfast:

May 21-22, Sacramento

Board of Directors:

May 21-22, Sacramento

CalChamber Fundraising Committee:

May 22, Sacramento

Environmental Regulation Committee:

May 22, Sacramento

Air Board Gets OK to Enforce Low Carbon Fuel Rule While Court Case Pending

The California Air Resources Board (ARB) will be allowed to continue crafting new regulations to implement the state's Low Carbon Fuel Standard (LCFS) while a federal appeals court decides whether it violates the U.S. Constitution's Commerce Clause.

The LCFS requires producers, refiners and importers of gasoline and diesel to reduce the carbon-intensity of their fuel by a minimum of 10% over the next decade, in keeping with California's global warming law, AB 32.

Enforcement of the standard was halted temporarily in December 2011

by the U.S. District Court in Fresno. In granting the request for an injunction, the judge wrote that the LCFS violates the U.S. Constitution's Commerce Clause because it discriminates against out-of-state fuel producers.

The ruling did not invalidate the ARB's program or its reporting requirements, but it did remove the board's ability to punish fuel wholesalers and refiners that sell gasoline or biofuels whose carbon footprint exceeds state guidelines.

A coalition that included the Consumer Energy Alliance and the

National Petrochemical & Refiners Association applauded the decision, saying the program would raise fuel costs for California consumers.

Earlier this week, however, the U.S. 9th Circuit Court of Appeals in San Francisco removed the lower court's injunction, allowing the ARB to enforce the rule while the issue is resolved in court.

There is no indication when the final judicial decision will be made.

Staff Contact: Brenda M. Coleman

Legislation Provides More Regulatory Certainty for Business

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SB 1099 provides that all regulations must go into effect on January 1, April 1, July 1 or October 1 while still allowing for the adoption of emergency regulations when necessary.

The bill also requires the Office of Administrative Law to make available on its website a list of proposed regulations awaiting implementation.

Legislative Review

AB 1982 requires regulations expected to have a fiscal impact of \$50 million or more to be sent to the Legislature for review. The Legislature will then have 90 days to act before the rules go into effect,

thereby extending the existing timeframe from 30 days to 90 days.

In addition to providing the Legislature with an opportunity to weigh in on some of the most expensive regulations, AB 1982 also allows more time for businesses to prepare for the rules and make changes needed to stay in compliance.

Key Votes

SB 1099 passed the Senate Environmental Quality Committee on April 23 with unanimous support:

Ayes: Blakeslee (R-San Luis Obispo), Hancock (D-Berkeley), Kehoe (D-San Diego), A. Lowenthal (D-Long

Beach), Pavley (D-Agoura Bills), Simitian (D-Palo Alto), Strickland (R-Thousand Oaks).

AB 1982 passed the Assembly Business, Professions and Consumer Protection Committee on April 24 by a vote of 6-2.

Ayes: Allen (D-Santa Rosa), B. Berryhill (R-Ceres), Hagman (R-Chino Hills), Hayashi (D-Hayward), Ma (D-San Francisco) and Smyth (R-Santa Clarita).

Noes: Butler (D-Los Angeles), Hill (D-San Mateo).

Absent/abstaining/not voting: Eng (D-Monterey Park).

Staff Contact: Marc Burtat

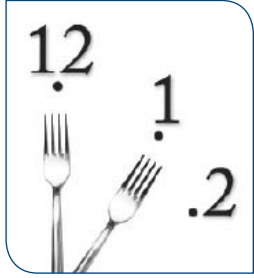
CalChamber Positions on June Ballot Propositions

Proposition	Subject	Position
Proposition 28	Limits on Legislators' Terms in Office	Support
Proposition 29	Additional Tax on Cigarettes for Cancer Research	Oppose

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Meal and rest break rules in California have changed.



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The question of whether employers must ensure employees take breaks or must simply provide breaks has been a source of significant litigation in both federal and state courts.

The California Supreme Court recently rendered its long-awaited decision in *Brinker Restaurant Corp. v. Superior Court*. Ensure you're ready to implement the Court's new ruling by purchasing our on-demand webinar: **Meal and Rest Breaks: What Does the Brinker Decision Mean for Your Workplace?**

Our employment law experts break down the decision in plain English. You learn best practices and tips on complying with the Court's decision, too.

Learn from the California Employment Law Experts



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