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HOUSE BILL 2065

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State of Washington

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By Representative Dunshee

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1 AN ACT Relating to impact fees for state-owned or operated  
2 transportation facilities; and amending RCW 36.70A.070, 36.70A.280,  
3 82.02.050, 82.02.060, 82.02.070, and 82.02.090.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 36.70A.070 and 1998 c 171 s 2 are each amended to read  
6 as follows:

7 The comprehensive plan of a county or city that is required or  
8 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,  
9 and descriptive text covering objectives, principles, and standards  
10 used to develop the comprehensive plan. The plan shall be an  
11 internally consistent document and all elements shall be consistent  
12 with the future land use map. A comprehensive plan shall be adopted  
13 and amended with public participation as provided in RCW 36.70A.140.

14 Each comprehensive plan shall include a plan, scheme, or design for  
15 each of the following:

16 (1) A land use element designating the proposed general  
17 distribution and general location and extent of the uses of land, where  
18 appropriate, for agriculture, timber production, housing, commerce,  
19 industry, recreation, open spaces, general aviation airports, public

1 utilities, public facilities, and other land uses. The land use  
2 element shall include population densities, building intensities, and  
3 estimates of future population growth. The land use element shall  
4 provide for protection of the quality and quantity of ground water used  
5 for public water supplies. Where applicable, the land use element  
6 shall review drainage, flooding, and storm water run-off in the area  
7 and nearby jurisdictions and provide guidance for corrective actions to  
8 mitigate or cleanse those discharges that pollute waters of the state,  
9 including Puget Sound or waters entering Puget Sound.

10 (2) A housing element ensuring the vitality and character of  
11 established residential neighborhoods that: (a) Includes an inventory  
12 and analysis of existing and projected housing needs; (b) includes a  
13 statement of goals, policies, objectives, and mandatory provisions for  
14 the preservation, improvement, and development of housing, including  
15 single-family residences; (c) identifies sufficient land for housing,  
16 including, but not limited to, government-assisted housing, housing for  
17 low-income families, manufactured housing, multifamily housing, and  
18 group homes and foster care facilities; and (d) makes adequate  
19 provisions for existing and projected needs of all economic segments of  
20 the community.

21 (3) A capital facilities plan element consisting of: (a) An  
22 inventory of existing capital facilities owned by public entities,  
23 showing the locations and capacities of the capital facilities; (b) a  
24 forecast of the future needs for such capital facilities; (c) the  
25 proposed locations and capacities of expanded or new capital  
26 facilities; (d) at least a six-year plan that will finance such capital  
27 facilities within projected funding capacities and clearly identifies  
28 sources of public money for such purposes; and (e) a requirement to  
29 reassess the land use element if probable funding falls short of  
30 meeting existing needs and to ensure that the land use element, capital  
31 facilities plan element, and financing plan within the capital  
32 facilities plan element are coordinated and consistent.

33 (4) A utilities element consisting of the general location,  
34 proposed location, and capacity of all existing and proposed utilities,  
35 including, but not limited to, electrical lines, telecommunication  
36 lines, and natural gas lines.

37 (5) Rural element. Counties shall include a rural element  
38 including lands that are not designated for urban growth, agriculture,

1 forest, or mineral resources. The following provisions shall apply to  
2 the rural element:

3 (a) Growth management act goals and local circumstances. Because  
4 circumstances vary from county to county, in establishing patterns of  
5 rural densities and uses, a county may consider local circumstances,  
6 but shall develop a written record explaining how the rural element  
7 harmonizes the planning goals in RCW 36.70A.020 and meets the  
8 requirements of this chapter.

9 (b) Rural development. The rural element shall permit rural  
10 development, forestry, and agriculture in rural areas. The rural  
11 element shall provide for a variety of rural densities, uses, essential  
12 public facilities, and rural governmental services needed to serve the  
13 permitted densities and uses. In order to achieve a variety of rural  
14 densities and uses, counties may provide for clustering, density  
15 transfer, design guidelines, conservation easements, and other  
16 innovative techniques that will accommodate appropriate rural densities  
17 and uses that are not characterized by urban growth and that are  
18 consistent with rural character.

19 (c) Measures governing rural development. The rural element shall  
20 include measures that apply to rural development and protect the rural  
21 character of the area, as established by the county, by:

22 (i) Containing or otherwise controlling rural development;

23 (ii) Assuring visual compatibility of rural development with the  
24 surrounding rural area;

25 (iii) Reducing the inappropriate conversion of undeveloped land  
26 into sprawling, low-density development in the rural area;

27 (iv) Protecting critical areas, as provided in RCW 36.70A.060, and  
28 surface water and ground water resources; and

29 (v) Protecting against conflicts with the use of agricultural,  
30 forest, and mineral resource lands designated under RCW 36.70A.170.

31 (d) Limited areas of more intensive rural development. Subject to  
32 the requirements of this subsection and except as otherwise  
33 specifically provided in this subsection (5)(d), the rural element may  
34 allow for limited areas of more intensive rural development, including  
35 necessary public facilities and public services to serve the limited  
36 area as follows:

37 (i) Rural development consisting of the infill, development, or  
38 redevelopment of existing commercial, industrial, residential, or  
39 mixed-use areas, whether characterized as shoreline development,

1 villages, hamlets, rural activity centers, or crossroads developments.  
2 A commercial, industrial, residential, shoreline, or mixed-use area  
3 shall be subject to the requirements of (d)(iv) of this subsection, but  
4 shall not be subject to the requirements of (c)(ii) and (iii) of this  
5 subsection. An industrial area is not required to be principally  
6 designed to serve the existing and projected rural population;

7 (ii) The intensification of development on lots containing, or new  
8 development of, small-scale recreational or tourist uses, including  
9 commercial facilities to serve those recreational or tourist uses, that  
10 rely on a rural location and setting, but that do not include new  
11 residential development. A small-scale recreation or tourist use is  
12 not required to be principally designed to serve the existing and  
13 projected rural population. Public services and public facilities  
14 shall be limited to those necessary to serve the recreation or tourist  
15 use and shall be provided in a manner that does not permit low-density  
16 sprawl;

17 (iii) The intensification of development on lots containing  
18 isolated nonresidential uses or new development of isolated cottage  
19 industries and isolated small-scale businesses that are not principally  
20 designed to serve the existing and projected rural population and  
21 nonresidential uses, but do provide job opportunities for rural  
22 residents. Public services and public facilities shall be limited to  
23 those necessary to serve the isolated nonresidential use and shall be  
24 provided in a manner that does not permit low-density sprawl;

25 (iv) A county shall adopt measures to minimize and contain the  
26 existing areas or uses of more intensive rural development, as  
27 appropriate, authorized under this subsection. Lands included in such  
28 existing areas or uses shall not extend beyond the logical outer  
29 boundary of the existing area or use, thereby allowing a new pattern of  
30 low-density sprawl. Existing areas are those that are clearly  
31 identifiable and contained and where there is a logical boundary  
32 delineated predominately by the built environment, but that may also  
33 include undeveloped lands if limited as provided in this subsection.  
34 The county shall establish the logical outer boundary of an area of  
35 more intensive rural development. In establishing the logical outer  
36 boundary the county shall address (A) the need to preserve the  
37 character of existing natural neighborhoods and communities, (B)  
38 physical boundaries such as bodies of water, streets and highways, and  
39 land forms and contours, (C) the prevention of abnormally irregular

1 boundaries, and (D) the ability to provide public facilities and public  
2 services in a manner that does not permit low-density sprawl;

3 (v) For purposes of (d) of this subsection, an existing area or  
4 existing use is one that was in existence:

5 (A) On July 1, 1990, in a county that was initially required to  
6 plan under all of the provisions of this chapter;

7 (B) On the date the county adopted a resolution under RCW  
8 36.70A.040(2), in a county that is planning under all of the provisions  
9 of this chapter under RCW 36.70A.040(2); or

10 (C) On the date the office of financial management certifies the  
11 county's population as provided in RCW 36.70A.040(5), in a county that  
12 is planning under all of the provisions of this chapter pursuant to RCW  
13 36.70A.040(5).

14 (e) Exception. This subsection shall not be interpreted to permit  
15 in the rural area a major industrial development or a master planned  
16 resort unless otherwise specifically permitted under RCW 36.70A.360 and  
17 36.70A.365.

18 (6) A transportation element that implements, and is consistent  
19 with, the land use element.

20 (a) The transportation element shall include the following  
21 subelements:

22 (i) Land use assumptions used in estimating travel;

23 (ii) Estimated traffic impacts to state-owned transportation  
24 facilities resulting from land use assumptions to assist the department  
25 of transportation in monitoring the performance of state facilities, to  
26 plan improvements for the facilities, ~~((and))~~ to assess the impact of  
27 land-use decisions on state-owned transportation facilities, and to  
28 assist cities and counties in determining the proper impact fee to be  
29 imposed for impacts to state facilities;

30 (iii) Facilities and services needs, including:

31 (A) An inventory of air, water, and ground transportation  
32 facilities and services, including transit alignments and general  
33 aviation airport facilities, to define existing capital facilities and  
34 travel levels as a basis for future planning. This inventory must  
35 include state-owned transportation facilities within the city or  
36 county's jurisdiction boundaries;

37 (B) Level of service standards for all locally owned arterials and  
38 transit routes to serve as a gauge to judge performance of the system.  
39 These standards should be regionally coordinated;

1 (C) For state-owned transportation facilities, level of service  
2 standards for highways, as prescribed in chapters 47.06 and 47.80 RCW,  
3 to gauge the performance of the system. The purposes of reflecting  
4 level of service standards for state highways in the local  
5 comprehensive plan are to monitor the performance of the system, to  
6 evaluate improvement strategies, (~~and~~) to facilitate coordination  
7 between the county's or city's six-year street, road, or transit  
8 program and the department of transportation's six-year investment  
9 program, and to provide a means of measuring the appropriate impact fee  
10 to be levied by cities and counties on the state's behalf. The  
11 concurrency requirements of (b) of this subsection do not apply to  
12 transportation facilities and services of state-wide significance  
13 except for counties consisting of islands whose only connection to the  
14 mainland are state highways or ferry routes. In these island counties,  
15 state highways and ferry route capacity must be a factor in meeting the  
16 concurrency requirements in (b) of this subsection;

17 (D) Specific actions and requirements for bringing into compliance  
18 locally owned transportation facilities or services that are below an  
19 established level of service standard;

20 (E) Forecasts of traffic for at least ten years based on the  
21 adopted land use plan to provide information on the location, timing,  
22 and capacity needs of future growth;

23 (F) Identification of state and local system needs to meet current  
24 and future demands. Identified needs on state-owned transportation  
25 facilities must be consistent with the state-wide multimodal  
26 transportation plan required under chapter 47.06 RCW;

27 (iv) Finance, including:

28 (A) An analysis of funding capability to judge needs against  
29 probable funding resources;

30 (B) A multiyear financing plan based on the needs identified in the  
31 comprehensive plan, the appropriate parts of which shall serve as the  
32 basis for the six-year street, road, or transit program required by RCW  
33 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795  
34 for public transportation systems. The multiyear financing plan should  
35 be coordinated with the six-year improvement program developed by the  
36 department of transportation as required by RCW 47.05.030;

37 (C) If probable funding falls short of meeting identified needs, a  
38 discussion of how additional funding will be raised, or how land use

1 assumptions will be reassessed to ensure that level of service  
2 standards will be met;

3 (v) Intergovernmental coordination efforts, including an assessment  
4 of the impacts of the transportation plan and land use assumptions on  
5 the transportation systems of adjacent jurisdictions;

6 (vi) Demand-management strategies.

7 (b) After adoption of the comprehensive plan by jurisdictions  
8 required to plan or who choose to plan under RCW 36.70A.040, local  
9 jurisdictions must adopt and enforce ordinances which prohibit  
10 development approval if the development causes the level of service on  
11 a state or locally owned transportation facility to decline below the  
12 standards adopted in the transportation element of the comprehensive  
13 plan, not including those exempt under subsection (6)(a)(iii)(C) of  
14 this section, unless transportation improvements or strategies to  
15 accommodate the impacts of development are made concurrent with the  
16 development. These strategies may include impact fees under chapter  
17 82.02 RCW, increased public transportation service, ride sharing  
18 programs, demand management, and other transportation systems  
19 management strategies. If a development application is approved,  
20 impact fees may only be assessed for those transportation impacts  
21 reasonably related to service needs created by that development. For  
22 the purposes of this subsection (6) "concurrent with the development"  
23 shall mean that improvements or strategies are in place at the time of  
24 development, or that a financial commitment is in place to complete the  
25 improvements or strategies within six years.

26 (c) The transportation element described in this subsection (6),  
27 and the six-year plans required by RCW 35.77.010 for cities, RCW  
28 36.81.121 for counties, RCW 35.58.2795 for public transportation  
29 systems, and RCW 47.05.030 for the state, must be consistent.

30 **Sec. 2.** RCW 36.70A.280 and 1996 c 325 s 2 are each amended to read  
31 as follows:

32 (1) A growth management hearings board shall hear and determine  
33 only those petitions alleging either:

34 (a) That a state agency, county, or city planning under this  
35 chapter is not in compliance with the requirements of this chapter,  
36 chapter 90.58 RCW as it relates to the adoption of shoreline master  
37 programs or amendments thereto, or chapter 43.21C RCW as it relates to

1 plans, development regulations, or amendments, adopted under RCW  
2 36.70A.040 or chapter 90.58 RCW; (~~or~~)

3 (b) That the twenty-year growth management planning population  
4 projections adopted by the office of financial management pursuant to  
5 RCW 43.62.035 should be adjusted;

6 (c) That the level of service standard adopted for state-owned or  
7 operated transportation facilities under RCW 36.70A.070 should be  
8 amended; or

9 (d) That an impact fee assessed for impacts to a state-owned or  
10 operated transportation facility violates RCW 82.02.050.

11 (2) A petition may be filed only by: (a) The state, or a county or  
12 city that plans under this chapter; (b) a person who has participated  
13 orally or in writing before the county or city regarding the matter on  
14 which a review is being requested; (c) a person who is certified by the  
15 governor within sixty days of filing the request with the board; or (d)  
16 a person qualified pursuant to RCW 34.05.530.

17 (3) For purposes of this section "person" means any individual,  
18 partnership, corporation, association, state agency, governmental  
19 subdivision or unit thereof, or public or private organization or  
20 entity of any character.

21 (4) When considering a possible adjustment to a growth management  
22 planning population projection prepared by the office of financial  
23 management, a board shall consider the implications of any such  
24 adjustment to the population forecast for the entire state.

25 The rationale for any adjustment that is adopted by a board must be  
26 documented and filed with the office of financial management within ten  
27 working days after adoption.

28 If adjusted by a board, a county growth management planning  
29 population projection shall only be used for the planning purposes set  
30 forth in this chapter and shall be known as a "board adjusted  
31 population projection". None of these changes shall affect the  
32 official state and county population forecasts prepared by the office  
33 of financial management, which shall continue to be used for state  
34 budget and planning purposes.

35 **Sec. 3.** RCW 82.02.050 and 1994 c 257 s 24 are each amended to read  
36 as follows:

37 (1) It is the intent of the legislature:



1 (a) To ensure that adequate facilities are available to serve new  
2 growth and development;

3 (b) To promote orderly growth and development by establishing  
4 standards by which counties, cities, and towns may require, by  
5 ordinance, that new growth and development pay a proportionate share of  
6 the cost of new facilities or improvements to existing facilities,  
7 including state-owned or operated transportation facilities needed to  
8 serve new growth and development; and

9 (c) To ensure that impact fees are imposed through established  
10 procedures and criteria so that specific developments do not pay  
11 arbitrary fees or duplicative fees for the same impact.

12 (2) Counties, cities, and towns that are required or choose to plan  
13 under RCW 36.70A.040 are authorized to impose impact fees on  
14 development activity as part of the financing for public facilities,  
15 provided that the financing for system improvements to serve new  
16 development must provide for a balance between impact fees and other  
17 sources of public funds and cannot rely solely on impact fees.

18 (3) The impact fees:

19 (a) Shall only be imposed for system improvements that are  
20 reasonably related to the new development;

21 (b) Shall not exceed a proportionate share of the costs of system  
22 improvements that are reasonably related to the new development; and

23 (c) Shall be used for system improvements that will reasonably  
24 benefit the new development.

25 (4) Impact fees may be collected and spent only for traffic  
26 management, traffic mitigation programs, and the public facilities  
27 defined in RCW 82.02.090 which are addressed by a capital facilities  
28 plan element of a comprehensive land use plan adopted pursuant to the  
29 provisions of RCW 36.70A.070 or the provisions for comprehensive plan  
30 adoption contained in chapter 36.70, 35.63, or 35A.63 RCW. After the  
31 date a county, city, or town is required to adopt its development  
32 regulations under chapter 36.70A RCW, continued authorization to  
33 collect and expend impact fees shall be contingent on the county, city,  
34 or town adopting or revising a comprehensive plan in compliance with  
35 RCW 36.70A.070, and on the capital facilities plan identifying:

36 (a) Deficiencies in public facilities serving existing development  
37 and the means by which existing deficiencies will be eliminated within  
38 a reasonable period of time;

1 (b) Additional demands placed on existing public facilities by new  
2 development; and

3 (c) Additional public facility improvements required to serve new  
4 development.

5 If the capital facilities plan of the county, city, or town is  
6 complete other than for the inclusion of those elements which are the  
7 responsibility of a special district, the county, city, or town may  
8 impose impact fees to address those public facility needs for which the  
9 county, city, or town is responsible, or on behalf of the state  
10 department of transportation to mitigate impacts to state-owned or  
11 operated transportation facilities.

12 **Sec. 4.** RCW 82.02.060 and 1990 1st ex.s. c 17 s 44 are each  
13 amended to read as follows:

14 The local ordinance by which impact fees are imposed:

15 (1) Shall include a schedule of impact fees which shall be adopted  
16 for each type of development activity that is subject to impact fees,  
17 specifying the amount of the impact fee to be imposed for each type of  
18 system improvement. The schedule shall be based upon a formula or  
19 other method of calculating such impact fees. In determining  
20 proportionate share, the formula or other method of calculating impact  
21 fees shall incorporate, among other things, the following:

22 (a) The cost of public facilities necessitated by new development;

23 (b) An adjustment to the cost of the public facilities for past or  
24 future payments made or reasonably anticipated to be made by new  
25 development to pay for particular system improvements in the form of  
26 user fees, debt service payments, taxes, or other payments earmarked  
27 for or proratable to the particular system improvement;

28 (c) The availability of other means of funding public facility  
29 improvements;

30 (d) The cost of existing public facilities improvements; and

31 (e) The methods by which public facilities improvements were  
32 financed;

33 (2) May provide an exemption for low-income housing, and other  
34 development activities with broad public purposes, from these impact  
35 fees, provided that the impact fees for such development activity shall  
36 be paid from public funds other than impact fee accounts;

37 (3) Shall provide a credit for the value of any dedication of land  
38 for, improvement to, or new construction of any system improvements

1 provided by the developer, to facilities that are identified in the  
2 capital facilities plan and that are required by the county, city, or  
3 town as a condition of approving the development activity;

4 (4) Shall allow the county, city, or town imposing the impact fees  
5 to adjust the standard impact fee at the time the fee is imposed to  
6 consider unusual circumstances in specific cases to ensure that impact  
7 fees are imposed fairly, if the state department of transportation  
8 concur insofar as state-owned or operated transportation facilities  
9 are impacted;

10 (5) Shall include a provision for calculating the amount of the fee  
11 to be imposed on a particular development that permits consideration of  
12 studies and data submitted by the developer to adjust the amount of the  
13 fee;

14 (6) Shall establish one or more reasonable service areas within  
15 which it shall calculate and impose impact fees for various land use  
16 categories per unit of development;

17 (7) May provide for the imposition of an impact fee for system  
18 improvement costs previously incurred by a county, city, or town to the  
19 extent that new growth and development will be served by the previously  
20 constructed improvements provided such fee shall not be imposed to make  
21 up for any system improvement deficiencies.

22 **Sec. 5.** RCW 82.02.070 and 1990 1st ex.s. c 17 s 46 are each  
23 amended to read as follows:

24 (1) Impact fee receipts shall be earmarked specifically and  
25 retained in special interest-bearing accounts. Separate accounts shall  
26 be established for each type of public facility for which impact fees  
27 are collected. All interest shall be retained in the account and  
28 expended for the purpose or purposes for which the impact fees were  
29 imposed. Annually, each county, city, or town imposing impact fees  
30 shall provide a report on each impact fee account showing the source  
31 and amount of all moneys collected, earned, or received and system  
32 improvements that were financed in whole or in part by impact fees.

33 (2) Impact fees for system improvements shall be expended only in  
34 conformance with the capital facilities plan element of the  
35 comprehensive plan.

36 (3) Impact fees shall be expended or encumbered for a permissible  
37 use within six years of receipt, unless there exists an extraordinary  
38 and compelling reason for fees to be held longer than six years. Such

1 extraordinary or compelling reasons shall be identified in written  
2 findings by the governing body of the county, city, or town, or when  
3 the impact fee is for a state-owned or operated transportation  
4 facility, the state.

5 (4) Impact fees may be paid under protest in order to obtain a  
6 permit or other approval of development activity.

7 (5) Each county, city, or town that imposes impact fees shall  
8 provide for an administrative appeals process for the appeal of an  
9 impact fee; the process may follow the appeal process for the  
10 underlying development approval or the county, city, or town may  
11 establish a separate appeals process. However, the growth management  
12 hearings board within which the state-owned or operated facility is  
13 located shall review appeals of impact fees assessed for impacts to  
14 state-owned or operated transportation facilities. The impact fee may  
15 be modified upon a determination that it is proper to do so based on  
16 principles of fairness. The county, city, or town may provide for the  
17 resolution of disputes regarding impact fees by arbitration.

18 **Sec. 6.** RCW 82.02.090 and 1990 1st ex.s. c 17 s 48 are each  
19 amended to read as follows:

20 Unless the context clearly requires otherwise, the following  
21 definitions shall apply in RCW 82.02.050 through 82.02.090:

22 (1) "Development activity" means any construction or expansion of  
23 a building, structure, or use, any change in use of a building or  
24 structure, or any changes in the use of land, that creates additional  
25 demand and need for public facilities.

26 (2) "Development approval" means any written authorization from a  
27 county, city, or town which authorizes the commencement of development  
28 activity.

29 (3) "Impact fee" means a payment of money imposed upon development  
30 as a condition of development approval to pay for public facilities  
31 needed to serve new growth and development, and that is reasonably  
32 related to the new development that creates additional demand and need  
33 for public facilities, that is a proportionate share of the cost of the  
34 public facilities, and that is used for facilities that reasonably  
35 benefit the new development. "Impact fee" does not include a  
36 reasonable permit or application fee.

37 (4) "Owner" means the owner of record of real property, although  
38 when real property is being purchased under a real estate contract, the

1 purchaser shall be considered the owner of the real property if the  
2 contract is recorded.

3 (5) "Proportionate share" means that portion of the cost of public  
4 facility improvements that are reasonably related to the service  
5 demands and needs of new development.

6 (6) "Project improvements" mean site improvements and facilities  
7 that are planned and designed to provide service for a particular  
8 development project and that are necessary for the use and convenience  
9 of the occupants or users of the project, and are not system  
10 improvements. No improvement or facility included in a capital  
11 facilities plan approved by the governing body of the county, city, or  
12 town shall be considered a project improvement.

13 (7) "Public facilities" means the following capital facilities  
14 owned or operated by government entities: (a) Public streets ((and)),  
15 roads, and highways, including state-owned or operated transportation  
16 facilities; (b) publicly owned parks, open space, and recreation  
17 facilities; (c) school facilities; and (d) fire protection facilities  
18 in jurisdictions that are not part of a fire district.

19 (8) "Service area" means a geographic area defined by a county,  
20 city, town, or intergovernmental agreement in which a defined set of  
21 public facilities provide service to development within the area.  
22 Service areas shall be designated on the basis of sound planning or  
23 engineering principles.

24 (9) "System improvements" mean public facilities that are included  
25 in the capital facilities plan and are designed to provide service to  
26 service areas within the community at large, in contrast to project  
27 improvements.

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