

1-1 By: Nichols, Whitmire S.B. No. 211
1-2 (In the Senate - Filed March 4, 2013; March 12, 2013, read
1-3 first time and referred to Committee on State Affairs;
1-4 April 3, 2013, reported favorably by the following vote: Yeas 9,
1-5 Nays 0; April 3, 2013, sent to printer.)

1-6 COMMITTEE VOTE

| | Yea | Nay | Absent | PNV |
|------|--------------|-----|--------|-----|
| 1-7 | | | | |
| 1-8 | Duncan | X | | |
| 1-9 | Deuell | X | | |
| 1-10 | Ellis | X | | |
| 1-11 | Fraser | X | | |
| 1-12 | Huffman | X | | |
| 1-13 | Lucio | X | | |
| 1-14 | Nichols | X | | |
| 1-15 | Van de Putte | X | | |
| 1-16 | Williams | X | | |

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the continuation and functions of the Texas Facilities
1-20 Commission; authorizing fees.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 443.007, Government Code, is amended by
1-23 adding Subsection (a-1) to read as follows:

1-24 (a-1) If the board updates or modifies its long-range master
1-25 plan for the preservation, maintenance, restoration, and
1-26 modification of the Capitol and the Capitol grounds, the board must
1-27 conform its plan to the Capitol Complex master plan prepared by the
1-28 Texas Facilities Commission under Section 2166.105.

1-29 SECTION 2. Section 2152.002, Government Code, is amended to
1-30 read as follows:

1-31 Sec. 2152.002. SUNSET PROVISION. The Texas Facilities
1-32 [~~Building and Procurement~~] Commission is subject to Chapter 325
1-33 (Texas Sunset Act). Unless continued in existence as provided by
1-34 that chapter, the commission is abolished and this subtitle, except
1-35 for Chapter 2170 and Section 2157.121, expires September 1, 2021
1-36 [~~2013~~].

1-37 SECTION 3. Subchapter B, Chapter 2152, Government Code, is
1-38 amended by adding Section 2152.066 to read as follows:

1-39 Sec. 2152.066. NEGOTIATED RULEMAKING AND ALTERNATIVE
1-40 DISPUTE RESOLUTION POLICY. (a) The commission shall develop and
1-41 implement a policy to encourage the use of:

1-42 (1) negotiated rulemaking procedures under Chapter
1-43 2008 for the adoption of commission rules; and

1-44 (2) appropriate alternative dispute resolution
1-45 procedures under Chapter 2009 to assist in the resolution of
1-46 internal and external disputes under the commission's
1-47 jurisdiction.

1-48 (b) The commission's procedures relating to alternative
1-49 dispute resolution must conform, to the extent possible, to any
1-50 model guidelines issued by the State Office of Administrative
1-51 Hearings for the use of alternative dispute resolution by state
1-52 agencies.

1-53 (c) The commission shall:

1-54 (1) coordinate the implementation of the policy
1-55 adopted under Subsection (a);

1-56 (2) provide training as needed to implement the
1-57 procedures for negotiated rulemaking or alternative dispute
1-58 resolution; and

1-59 (3) collect data concerning the effectiveness of those
1-60 procedures.

1-61 SECTION 4. Section 2165.055, Government Code, is amended to

2-1 read as follows:

2-2 Sec. 2165.055. REPORT ABOUT IMPROVEMENTS AND REPAIRS. The
2-3 commission [~~biennially~~] on July 1 of each even-numbered year
2-4 [~~December 1st~~] shall electronically submit a report to the
2-5 governor, lieutenant governor, speaker of the house of
2-6 representatives, comptroller, and Legislative Budget Board on:

2-7 (1) all improvements and repairs that have been made,
2-8 with an itemized account of receipts and expenditures; and

2-9 (2) the condition of all property under its control,
2-10 with an estimate of needed improvements and repairs.

2-11 SECTION 5. Subsection (e), Section 2165.2035, Government
2-12 Code, is amended to read as follows:

2-13 (e) On or before December 1 of each even-numbered year, the
2-14 commission shall electronically submit a report to the legislature
2-15 and the Legislative Budget Board describing the effectiveness of
2-16 the program under this section.

2-17 SECTION 6. Section 2165.2046, Government Code, is amended
2-18 to read as follows:

2-19 Sec. 2165.2046. REPORTS ON PARKING PROGRAMS. On or before
2-20 December [~~October~~] 1 of each even-numbered year, the commission
2-21 shall electronically submit a report to the legislature and
2-22 Legislative Budget Board describing the effectiveness of parking
2-23 programs developed by the commission under this subchapter. The
2-24 report must, at a minimum, include:

2-25 (1) the yearly revenue generated by the programs;

2-26 (2) the yearly administrative and enforcement costs of
2-27 each program;

2-28 (3) yearly usage statistics for each program; and

2-29 (4) initiatives and suggestions by the commission to:

2-30 (A) modify administration of the programs; and

2-31 (B) increase revenue generated by the programs.

2-32 SECTION 7. Chapter 2165, Government Code, is amended by
2-33 adding Subchapter H to read as follows:

2-34 SUBCHAPTER H. PUBLIC AND PRIVATE FACILITIES AND INFRASTRUCTURE:

2-35 QUALIFYING PROJECTS

2-36 Sec. 2165.351. DEFINITIONS. In this subchapter:

2-37 (1) "Partnership Advisory Commission" means the
2-38 Partnership Advisory Commission created by Chapter 2268.

2-39 (2) "Qualifying project" has the meaning assigned by
2-40 Section 2267.001, as added by Chapter 1334 (S.B. 1048), Acts of the
2-41 82nd Legislature, Regular Session, 2011.

2-42 Sec. 2165.352. COMMISSION REVIEW GUIDELINES AND POLICIES.

2-43 (a) In adopting the qualifying project review guidelines required
2-44 by Section 2267.052, as added by Chapter 1334 (S.B. 1048), Acts of
2-45 the 82nd Legislature, Regular Session, 2011, the commission must
2-46 include review criteria and documentation to guide the initial
2-47 review of each substantially complete qualifying project proposal
2-48 received by the commission.

2-49 (b) The review criteria required under Subsection (a) at a
2-50 minimum must include:

2-51 (1) the extent to which the qualifying project meets a
2-52 public need;

2-53 (2) the extent to which the project meets the
2-54 objectives and priorities of the commission and aligns with any
2-55 applicable commission plans, including the Capitol Complex master
2-56 plan developed under Section 2166.105;

2-57 (3) the technical and legal feasibility of the
2-58 project;

2-59 (4) the adequacy of the qualifications, experience,
2-60 and financial capacity of a private entity or other person
2-61 submitting the proposal;

2-62 (5) any potentially unacceptable risks to this state;
2-63 and

2-64 (6) whether an alternative delivery method is feasible
2-65 and more effectively meets this state's goals.

2-66 (c) The commission's qualifying project review guidelines
2-67 must:

2-68 (1) specify the types of professional expertise,
2-69 including financial, real estate, legal, and other related

3-1 expertise, needed to effectively protect this state's interest when
3-2 considering and implementing a qualifying project;
3-3 (2) specify the range of professional expertise needed
3-4 at each stage of the project, including proposal evaluation,
3-5 financial analysis, risk allocation analysis, contract
3-6 negotiation, and contract and performance monitoring, to evaluate
3-7 the qualifying project proposal; and
3-8 (3) require the oversight committee established by the
3-9 commission for each qualifying project to report to the commission
3-10 the results of the committee's evaluation of the project, including
3-11 the schedules, procedures, proposal evaluation criteria, and
3-12 documentation required in the guidelines for the evaluation.
3-13 (d) The commission shall:
3-14 (1) for each qualifying project proposal, post on the
3-15 commission's Internet website the oversight committee's review
3-16 report and other evaluation documents; and
3-17 (2) before posting the report and documents required
3-18 under Subdivision (1), redact all information included in the
3-19 report and documents that is considered confidential under Section
3-20 2267.066(c).
3-21 (e) The expertise described by Subsection (c) may be
3-22 provided by commission staff or outside experts.
3-23 Sec. 2165.353. QUALIFYING PROJECT FEES. (a) The
3-24 commission may charge a reasonable fee to cover the costs of
3-25 reviewing a qualifying project. The commission shall develop and
3-26 adopt a qualifying project proposal fee schedule sufficient to
3-27 cover its costs, including at a minimum the costs of processing,
3-28 reviewing, and evaluating the proposals.
3-29 (b) The commission shall use the professional expertise
3-30 information required under Section 2165.352(c) to determine the
3-31 amount of the fee charged by the commission to review a qualifying
3-32 project proposal. The amount must be reasonable in comparison to
3-33 the level of professional expertise required for the project and
3-34 may include the cost of staff time required to process the proposal
3-35 and other direct costs.
3-36 (c) The commission may use the money from the fees collected
3-37 under this section to hire or contract with persons who have the
3-38 professional expertise necessary to effectively evaluate a
3-39 qualifying project proposal.
3-40 Sec. 2165.354. INITIAL REVIEW OF QUALIFYING PROJECT
3-41 PROPOSAL. (a) The commission staff shall conduct an initial
3-42 review of each qualifying project proposal submitted to the
3-43 commission and provide to commission members a summary of the
3-44 review, including an analysis and recommendations.
3-45 (b) Subject to Subsection (c), the commission shall use a
3-46 value for money analysis in evaluating each qualifying project
3-47 proposal to:
3-48 (1) conduct a thorough risk analysis of the proposal
3-49 that identifies specific risks shared between this state and the
3-50 private partner and subjects the risks to negotiation in the
3-51 contract;
3-52 (2) determine if the proposal is in the best long-term
3-53 financial interest of this state; and
3-54 (3) determine if the project will provide a tangible
3-55 public benefit to this state.
3-56 (c) If commission staff determine that a value for money
3-57 analysis is not appropriate for evaluating a specific qualifying
3-58 project proposal, the staff shall submit to the commission a
3-59 written report stating the reasons for using an alternative
3-60 analysis methodology.
3-61 (d) The commission shall coordinate with the commission's
3-62 office of internal audit for review and receipt of comments on the
3-63 reasonableness of the assumptions used in the value for money
3-64 analysis or alternative analysis methodology used to evaluate a
3-65 qualifying project proposal under this section.
3-66 Sec. 2165.355. INITIAL PUBLIC HEARING ON QUALIFYING PROJECT
3-67 PROPOSAL. (a) Before submitting a detailed qualifying project
3-68 proposal to the Partnership Advisory Commission as required under
3-69 Section 2268.058, the commission must hold an initial public

4-1 hearing on the proposal.

4-2 (b) The commission must post a copy of the detailed
 4-3 qualifying project proposal on the commission's Internet website
 4-4 before the required public hearing and, before posting the
 4-5 proposal, redact all information included in the proposal that is
 4-6 considered confidential under Section 2267.066(c).

4-7 (c) After the hearing, the commission shall:

4-8 (1) modify the proposal as the commission determines
 4-9 appropriate based on the public comments; and

4-10 (2) include the public comments in the documents
 4-11 submitted to the Partnership Advisory Commission and provide any
 4-12 additional information necessary for the evaluation required under
 4-13 Chapter 2268.

4-14 Sec. 2165.356. SUBMISSION OF QUALIFYING PROJECT CONTRACT TO
 4-15 CONTRACT ADVISORY TEAM. (a) Not later than the 60th day before the
 4-16 date the commission is scheduled to vote on approval of a qualifying
 4-17 project contract, the commission must submit to the Contract
 4-18 Advisory Team established under Subchapter C, Chapter 2262,
 4-19 documentation of the modifications to a proposed qualifying project
 4-20 made during the commission's evaluation and negotiation process for
 4-21 the project, including a copy of:

4-22 (1) the final draft of the contract;

4-23 (2) the detailed qualifying project proposal; and

4-24 (3) any executed interim or other agreement.

4-25 (b) The Contract Advisory Team shall review the
 4-26 documentation submitted under Subsection (a) and provide written
 4-27 comments and recommendations to the commission. The review must
 4-28 focus on, but not be limited to, best practices for contract
 4-29 management and administration.

4-30 (c) Commission staff shall provide to the commission
 4-31 members:

4-32 (1) a copy of the Contract Advisory Team's written
 4-33 comments and recommendations; and

4-34 (2) the staff's response to the comments and
 4-35 recommendations.

4-36 Sec. 2165.357. PROHIBITED EMPLOYMENT OF COMMISSION
 4-37 EMPLOYEE. (a) A commission employee may not be employed or hired
 4-38 by another person to perform duties that relate to the employee's
 4-39 specific duties in developing and implementing a qualifying
 4-40 project, including review, evaluation, development, and
 4-41 negotiation of a qualifying project proposal.

4-42 (b) The commission shall obtain from each commission
 4-43 employee sufficient information for the commission to determine
 4-44 whether:

4-45 (1) the employee is employed by another person; and

4-46 (2) a potential conflict of interest exists between
 4-47 the employee's commission duties and the employee's duties with the
 4-48 other employer.

4-49 (c) Each commission employee whose commission duties relate
 4-50 to a qualifying project, including long-range planning, real estate
 4-51 management, space management, and leasing services, shall attest
 4-52 that the employee is aware of and agrees to the commission's ethics
 4-53 and conflict-of-interest policies.

4-54 (d) To the extent the employment is authorized by commission
 4-55 policy, this section does not prohibit additional employment for a
 4-56 commission employee whose commission duties are not related to a
 4-57 qualifying project.

4-58 SECTION 8. Section 2166.001, Government Code, is amended by
 4-59 amending Subdivisions (1) and (1-a) and adding Subdivision (1-b) to
 4-60 read as follows:

4-61 (1) "Capitol Complex" has the meaning prescribed by
 4-62 Section 411.061(a)(1).

4-63 (1-a) "Commission" means the Texas Facilities
 4-64 Commission.

4-65 (1-b) [~~(1-a)~~] "Construction" includes acquisition and
 4-66 reconstruction.

4-67 SECTION 9. Subsection (d), Section 2166.101, Government
 4-68 Code, is amended to read as follows:

4-69 (d) The commission shall summarize its findings on the

5-1 status of state-owned buildings and current information on
 5-2 construction costs in an electronically submitted [a] report [it
 5-3 shall make available] to the governor, lieutenant governor, speaker
 5-4 of the house of representatives, comptroller, and Legislative
 5-5 Budget Board not later than July 1 of each even-numbered year [the
 5-6 legislature, and the state's budget offices].

5-7 SECTION 10. Subsection (b), Section 2166.102, Government
 5-8 Code, is amended to read as follows:

5-9 (b) The commission shall maintain a six-year capital
 5-10 planning cycle and shall electronically submit [file] a master
 5-11 facilities plan with the governor, lieutenant governor, speaker of
 5-12 the house of representatives, [Governor's Office of Budget and
 5-13 Planning, the] Legislative Budget Board, and [the] comptroller
 5-14 before July 1 of each even-numbered year.

5-15 SECTION 11. Subsection (b), Section 2166.103, Government
 5-16 Code, is amended to read as follows:

5-17 (b) Not later than July 1 of each even-numbered year [Before
 5-18 each legislative session], the commission shall electronically
 5-19 submit [send] to the governor, the lieutenant governor, the speaker
 5-20 of the house of representatives, the comptroller, and the
 5-21 Legislative Budget Board a report identifying counties in which
 5-22 more than 50,000 square feet of usable office space is needed and
 5-23 the commission's recommendations for meeting that need. The
 5-24 commission may recommend leasing or purchasing and renovating one
 5-25 or more existing buildings or constructing one or more buildings.

5-26 SECTION 12. Subchapter C, Chapter 2166, Government Code, is
 5-27 amended by adding Sections 2166.105, 2166.106, 2166.107, and
 5-28 2166.108 to read as follows:

5-29 Sec. 2166.105. CAPITOL COMPLEX MASTER PLAN. (a) The
 5-30 commission shall prepare a Capitol Complex master plan that at a
 5-31 minimum includes:

5-32 (1) an overview and summary of the previous plans for
 5-33 the Capitol Complex;

5-34 (2) a stated strategic vision and long-term goals for
 5-35 the Capitol Complex;

5-36 (3) an analysis of state property, including
 5-37 buildings, in the Capitol Complex and of the extent to which this
 5-38 state satisfies its space needs through use of the property;

5-39 (4) in consultation with the General Land Office, an
 5-40 analysis of the current and forecasted real estate market
 5-41 conditions in the Austin area;

5-42 (5) detailed, site-specific proposals for developing
 5-43 state property in the Capitol Complex, including proposals on the
 5-44 use of property and space for public or private sector purposes;

5-45 (6) an analysis of and recommendations for building
 5-46 design guidelines to ensure appropriate quality in new or remodeled
 5-47 buildings in the Capitol Complex;

5-48 (7) an analysis of and recommendations for Capitol
 5-49 Complex infrastructure needs, including transportation, utilities,
 5-50 and parking;

5-51 (8) for projects identified in the plan, an analysis
 5-52 of and recommendations for financing options, including private
 5-53 sector participation;

5-54 (9) time frames for implementing the plan components
 5-55 and any projects identified in the plan;

5-56 (10) consideration of alternative options for meeting
 5-57 state space needs outside the Capitol Complex; and

5-58 (11) other information relevant to the Capitol Complex
 5-59 as the commission determines appropriate.

5-60 (b) The commission shall ensure that the General Land
 5-61 Office, the State Preservation Board, the Texas Historical
 5-62 Commission, and other relevant interested parties are included in
 5-63 each stage of the development of the Capitol Complex master plan.

5-64 (c) The commission shall submit to the governor, lieutenant
 5-65 governor, speaker of the house of representatives, comptroller, and
 5-66 Legislative Budget Board:

5-67 (1) not later than July 1, 2014, the initial Capitol
 5-68 Complex master plan; and

5-69 (2) not later than July 1 of each even-numbered year

6-1 thereafter, updates to the plan.

6-2 (d) The commission shall ensure that the Capitol Complex
6-3 master plan and the master facilities plan developed under Section
6-4 2166.102 do not conflict and together comprehensively address the
6-5 space needs of state agencies.

6-6 Sec. 2166.106. REVIEW OF PROPOSED CAPITOL COMPLEX MASTER
6-7 PLAN BY STATE PRESERVATION BOARD AND GENERAL LAND OFFICE. (a) Not
6-8 later than the 90th day before the date the commission holds a
6-9 public meeting to discuss a proposed Capitol Complex master plan,
6-10 the commission must submit the proposed plan to the State
6-11 Preservation Board and the General Land Office for review and
6-12 comment.

6-13 (b) Not later than the 60th day before the date the
6-14 commission holds a public meeting to discuss a proposed update to
6-15 the Capitol Complex master plan, the commission must submit the
6-16 proposed update to the State Preservation Board and the General
6-17 Land Office for review and comment.

6-18 (c) Not later than the 90th day after the date the State
6-19 Preservation Board receives from the commission a proposed Capitol
6-20 Complex master plan and not later than the 60th day after the date
6-21 the board receives from the commission a proposed update to the
6-22 plan, the board may:

6-23 (1) by a public vote disapprove the plan or update if
6-24 the board determines that the goals or recommendations in the plan
6-25 or update are not in the best interest of the state or of the Capitol
6-26 Complex; and

6-27 (2) submit to the commission written comments and
6-28 recommended modifications to the plan or update.

6-29 (d) The proposed Capitol Complex master plan or the proposed
6-30 update to the plan is considered to be approved by the State
6-31 Preservation Board if the board does not hold the public vote
6-32 authorized by Subsection (c) on or before the date required under
6-33 that subsection.

6-34 (e) The review of the Capitol Complex master plan under this
6-35 section is in addition to the review required for a proposed project
6-36 under Section 443.0071.

6-37 Sec. 2166.107. COMPREHENSIVE PLANNING AND DEVELOPMENT
6-38 PROCESS. (a) The commission by rule shall adopt a comprehensive
6-39 process for planning and developing state property in the
6-40 commission's inventory, including property in the Capitol Complex,
6-41 and for assisting state agencies in space development planning for
6-42 state property under Sections 2165.105 and 2165.1061.

6-43 (b) The process under this section at a minimum must
6-44 include:

6-45 (1) a clear approach and specific time frames for
6-46 obtaining input throughout the planning and development process
6-47 from the public, interested parties, and state agencies, including
6-48 the General Land Office and, for Capitol Complex property, the
6-49 State Preservation Board and the Texas Historical Commission;

6-50 (2) specific schedules for providing to the commission
6-51 regular updates on planning and development efforts;

6-52 (3) a public involvement policy to ensure that before
6-53 the commission makes a decision on the use or development of state
6-54 property the public and interested parties have the opportunity to
6-55 review and comment on the commission's plans; and

6-56 (4) confidentiality policies consistent with Chapter
6-57 552.

6-58 Sec. 2166.108. COMPREHENSIVE CAPITAL IMPROVEMENT AND
6-59 DEFERRED MAINTENANCE PLAN. (a) The commission shall develop a
6-60 comprehensive capital improvement and deferred maintenance plan
6-61 that clearly defines the capital improvement needs and critical and
6-62 noncritical maintenance needs of state buildings.

6-63 (b) The comprehensive capital improvement and deferred
6-64 maintenance plan must:

6-65 (1) with respect to deferred maintenance projects:

6-66 (A) list, with regular updates, deferred
6-67 maintenance projects that contain critical high-priority projects
6-68 and lower-priority, non-health and safety projects;

6-69 (B) state the commission's plan for addressing

7-1 the projects;
 7-2 (C) account for the completion of high-priority
 7-3 projects;
 7-4 (D) estimate when the lower-priority projects
 7-5 may become higher-priority projects; and
 7-6 (E) be modified as necessary to include
 7-7 additional maintenance projects;
 7-8 (2) contain a list of all predictable capital
 7-9 improvement projects, including a time frame and a cost estimate
 7-10 for each project; and
 7-11 (3) contain a plan, updated biennially, for responding
 7-12 to emergency repairs and replacements that, in consultation with
 7-13 the Legislative Budget Board, identifies potential sources of
 7-14 funds, which may include bonds and bond interest, that may be used
 7-15 to pay the costs of emergency repair and replacement projects.

7-16 (c) The comprehensive capital improvement and deferred
 7-17 maintenance plan must include for each segment of the plan
 7-18 described by Subsection (b) a prioritized list by state agency
 7-19 facility of each project that includes an estimate of the project's
 7-20 cost and the aggregate costs for all facility projects.

7-21 (d) The commission shall include the comprehensive capital
 7-22 improvement and deferred maintenance plan and regular updates to
 7-23 the plan in its long-range plan under Section 2166.102. The
 7-24 information included in the long-range plan must include the
 7-25 aggregate project costs for each state agency but may exclude the
 7-26 cost of each specific facility project.

7-27 SECTION 13. Subsection (d), Section 31.155, Natural
 7-28 Resources Code, is amended to read as follows:

7-29 (d) The duty under this subchapter of the division to review
 7-30 and verify real property records and to make recommendations
 7-31 regarding real property and of the commissioner to prepare a report
 7-32 involving real property does not apply to:

7-33 (1) the real property of an institution of higher
 7-34 education;

7-35 (2) the real property that is part of a fund created or
 7-36 specifically authorized by the constitution of this state and that
 7-37 is administered by or with the assistance of the land office;

7-38 (3) the real property of the Employees Retirement
 7-39 System of Texas; ~~and~~

7-40 (4) the real property of the Teacher Retirement System
 7-41 of Texas; and

7-42 (5) the real property included in the Capitol Complex
 7-43 as defined by Section 411.061(a)(1), Government Code.

7-44 SECTION 14. The Texas Facilities Commission shall:

7-45 (1) not later than January 1, 2014:

7-46 (A) develop the qualifying project review
 7-47 guidelines required by Section 2165.352, Government Code, as added
 7-48 by this Act;

7-49 (B) develop the qualifying project proposal fee
 7-50 schedule required by Section 2165.353, Government Code, as added by
 7-51 this Act; and

7-52 (C) adopt the comprehensive planning and
 7-53 development process required by Section 2166.107, Government Code,
 7-54 as added by this Act; and

7-55 (2) not later than July 1, 2014:

7-56 (A) prepare the Capitol Complex master plan
 7-57 required by Section 2166.105, Government Code, as added by this
 7-58 Act, and submit the plan as required by that section; and

7-59 (B) prepare the comprehensive capital
 7-60 improvement and deferred maintenance plan required by Section
 7-61 2166.108, Government Code, as added by this Act.

7-62 SECTION 15. This Act takes effect immediately if it
 7-63 receives a vote of two-thirds of all the members elected to each
 7-64 house, as provided by Section 39, Article III, Texas Constitution.
 7-65 If this Act does not receive the vote necessary for immediate
 7-66 effect, this Act takes effect September 1, 2013.

7-67

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