

1 AN ACT

2 RELATING TO PRIVATE SECTOR RETIREMENT; AMENDING THE
3 NEW MEXICO WORK AND SAVE ACT; PROVIDING FLEXIBILITY FOR THE
4 NEW MEXICO WORK AND SAVE BOARD TO IMPLEMENT THE PROVISIONS OF
5 THE NEW MEXICO WORK AND SAVE ACT; CLARIFYING DEFINITIONS;
6 CLARIFYING CERTAIN PROVISIONS OF THE WORK AND SAVE PROGRAMS;
7 PROVIDING A SCOPE OF AUTHORITY TO THE NEW MEXICO WORK AND
8 SAVE BOARD; PROVIDING THAT THE BOARD, BOARD MEMBERS AND THE
9 STATE ARE NOT GUARANTORS OF THE WORK AND SAVE PROGRAMS;
10 EXTENDING THE TIME LINE FOR IMPLEMENTATION OF THE NEW MEXICO
11 RETIREMENT PLAN MARKETPLACE AND THE NEW MEXICO WORK AND SAVE
12 IRA PROGRAM.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 58-33-1 NMSA 1978 (being Laws 2020,
16 Chapter 7, Section 1) is amended to read:

17 "58-33-1. SHORT TITLE.--Chapter 58, Article 33 NMSA
18 1978 may be cited as the "New Mexico Work and Save Act"."

19 SECTION 2. Section 58-33-2 NMSA 1978 (being Laws 2020,
20 Chapter 7, Section 2) is amended to read:

21 "58-33-2. DEFINITIONS.--As used in the New Mexico Work
22 and Save Act:

23 A. "board" means the New Mexico work and save
24 board;

25 B. "board member" means a member of the board;

1 C. "covered employee" means a person who is at
2 least eighteen years of age and who is employed by a covered
3 employer, either full time or part time, or a person who is
4 self-employed as a sole proprietor or an independent
5 contractor; provided that "covered employee" does not include
6 an employee:

7 (1) covered under the federal Railway Labor
8 Act;

9 (2) on whose behalf an employer makes
10 contributions to a multi-employer pension trust fund pursuant
11 to the federal Taft-Hartley Act; or

12 (3) of federal, state or local governments
13 or any agency, department, board, commission, institution or
14 instrumentality of those governments;

15 D. "covered employer" means a person engaged in a
16 business, industry, profession, trade, nonprofit or other
17 enterprise with its primary place of business physically
18 located in New Mexico, but does not include a federal,
19 state or local government or any agency, department, board,
20 commission, institution or instrumentality of those
21 governments;

22 E. "default investment option" means a Roth
23 individual retirement account with a target date fund
24 investment and a default contribution rate established by the
25 board;

1 F. "financial institution" means a duly
2 licensed bank, savings and loan association, credit union,
3 broker-dealer, asset manager, insurance company, mutual fund
4 or other financial entity;

5 G. "financial service provider" means a financial
6 or investment service provider that, if approved by the board
7 as meeting the eligibility criteria, may administer and
8 maintain one or more program participant investment accounts
9 or one or more marketplace participant accounts for which the
10 provider is a fiduciary;

11 H. "Internal Revenue Code" means the United States
12 Internal Revenue Code of 1986, as amended;

13 I. "IRA" means an individual retirement account
14 that conforms to the requirements of Section 408(a) of the
15 Internal Revenue Code;

16 J. "marketplace participant" means a covered
17 employer that establishes a plan through the New Mexico
18 retirement plan marketplace or a covered employee who
19 establishes an investment account through the New Mexico
20 retirement plan marketplace;

21 K. "New Mexico retirement plan marketplace" means
22 a board-approved web-based marketplace that facilitates
23 access to retirement savings plans for private sector and
24 nonprofit employers and employees, including
25 multiple-employer plans;

1 L. "New Mexico work and save IRA program" means
2 the retirement savings program, designed and implemented by
3 the board, that facilitates payroll deductions of program
4 participants in individual retirement accounts without any
5 contributions from covered employers;

6 M. "New Mexico work and save platform" means the
7 online digital service designed and implemented by the board
8 to facilitate interaction among covered employers, covered
9 employees, program participants, financial service providers
10 and other users via the internet;

11 N. "participating employer" means a covered
12 employer that provides payroll deductions for individual
13 retirement accounts through the New Mexico work and save IRA
14 program but that does not contribute to those accounts;

15 O. "program participant" means a covered employee
16 who is contributing to an individual retirement account
17 through the New Mexico work and save IRA program or has an
18 individual retirement account balance through the New Mexico
19 work and save IRA program;

20 P. "Roth individual retirement account" means a
21 voluntary payroll deduction Roth individual retirement
22 account that conforms to the requirements of Section 408A of
23 the Internal Revenue Code; and

24 Q. "total fees and expenses" means all fees, costs
25 and expenses, including administrative expenses, investment

1 expenses of the New Mexico work and save IRA program,
2 investment advice expenses, accounting costs, actuarial
3 costs, legal costs, marketing expenses, education expenses,
4 trading costs, insurance annuitization costs and other
5 operating expenses."

6 SECTION 3. Section 58-33-4 NMSA 1978 (being Laws 2020,
7 Chapter 7, Section 4) is amended to read:

8 "58-33-4. BOARD--SCOPE OF AUTHORITY--POWERS AND
9 DUTIES.--

10 A. The board shall not directly or indirectly
11 manage or maintain the funds or accounts of a program
12 participant. The board shall contract with appropriate
13 financial service providers to manage and maintain the funds
14 and accounts of a program participant.

15 B. In carrying out its duties to achieve the goals
16 and objectives of the New Mexico Work and Save Act, the board
17 shall:

18 (1) provide for the design, establishment
19 and operation of the New Mexico work and save IRA program
20 pursuant to the provisions of Section 58-33-9 NMSA 1978 and
21 shall provide oversight and modify the program as necessary;

22 (2) provide for the design, establishment
23 and operation of the New Mexico retirement plan marketplace
24 pursuant to the provision of Section 58-33-8 NMSA 1978 and
25 shall provide oversight and modify the marketplace as

1 necessary;

2 (3) be covered against liability pursuant to
3 the provisions of the Tort Claims Act and, in addition, shall
4 evaluate the need for, and procure as needed:

5 (a) insurance against any and all loss
6 in connection with the property, assets or activities of the
7 New Mexico retirement plan marketplace or the New Mexico work
8 and save IRA program; and

9 (b) insurance indemnifying each board
10 member from personal loss or liability, including legal fees
11 and expenses, resulting from a member's action or inaction as
12 a board member other than in cases of gross negligence as
13 determined by a final adjudication by a court of competent
14 jurisdiction;

15 (4) elect a chair and other officers it
16 deems necessary;

17 (5) meet as necessary to perform its duties;

18 (6) appoint an executive director, who shall
19 be the chief administrative officer of the board; and

20 (7) review and revise board rules and
21 processes as necessary in response to changes in applicable
22 state and federal laws to ensure the objectives of the
23 New Mexico Work and Save Act.

24 C. In the design and implementation of the
25 New Mexico work and save IRA program or the New Mexico

1 retirement plan marketplace, the board shall:

2 (1) act in accordance with best practices
3 for retirement saving vehicles;

4 (2) encourage participation, saving, sound
5 investment practices and appropriate selection of investment
6 options, including any default investments;

7 (3) maximize simplicity and ease of
8 administration for covered employers;

9 (4) minimize total costs, including by
10 collective investment and economies of scale;

11 (5) require portability of benefits;

12 (6) avoid preemption of the New Mexico work
13 and save IRA program by federal law;

14 (7) ensure that no assets of the New Mexico
15 retirement plan marketplace or the New Mexico work and save
16 IRA program are encumbered, expended or otherwise used for a
17 purpose other than one specified in the New Mexico Work and
18 Save Act;

19 (8) develop and implement an education and
20 outreach plan to gain input and disseminate information
21 regarding the New Mexico retirement plan marketplace, the
22 New Mexico work and save IRA program and retirement savings
23 in general, including timely information to covered employers
24 regarding the applicable provisions of the New Mexico work
25 and save IRA program;

1 (9) develop and implement an investment
2 policy and designate appropriate default investments for the
3 New Mexico work and save IRA program that include a mix of
4 asset classes, including target date funds and index funds,
5 that minimize program participant fees and total expenses;

6 (10) establish procedures for the timely and
7 fair resolution of any disputes related to accounts or
8 program operation; and

9 (11) perform other activities as are needed
10 to further the purposes of the New Mexico Work and Save Act.

11 D. The board may:

12 (1) promulgate rules as necessary and
13 appropriate to carry out the provisions of the New Mexico
14 Work and Save Act consistent with the Internal Revenue Code
15 and rules adopted in accordance with that code, including
16 ensuring that the New Mexico work and save IRA program
17 satisfies all criteria for favorable tax treatment and
18 complies with all applicable federal and state laws;

19 (2) enter into contracts, agreements,
20 memorandums of understanding or other arrangements with
21 private or nonprofit entities or with this or any other state
22 or their agencies or instrumentalities to operate or manage
23 any part of the New Mexico work and save IRA program or the
24 New Mexico retirement plan marketplace, including combining
25 resources, investments or administrative functions;

1 (3) sue and be sued in its name;

2 (4) fix, revise and collect fees and other
3 charges in connection with the New Mexico retirement plan
4 marketplace or the New Mexico work and save IRA program;

5 (5) contract with private and public
6 entities and professionals, technology entities or
7 professionals, financial institutions, depositories,
8 financial service providers, consultants, actuaries,
9 attorneys, auditors, investment advisers, investment
10 administrators, investment management firms, other investment
11 firms, third party administrators and other professionals as
12 may be appropriate or required;

13 (6) make and execute contracts, agreements
14 or instruments necessary or convenient in the exercise of the
15 powers and functions granted the board by the New Mexico Work
16 and Save Act; provided that the board may delegate that power
17 to the executive director and may limit the scope of that
18 delegation;

19 (7) invest and reinvest its funds in
20 accordance with applicable state and federal law; and

21 (8) collaborate with and evaluate the role
22 of financial service providers, advisors or other financial
23 professionals and financial institutions, including those
24 assisting and providing guidance to program participants."

25 SECTION 4. Section 58-33-7 NMSA 1978 (being Laws 2020,

1 Chapter 7, Section 7) is amended to read:

2 "58-33-7. BOARD AND BOARD EMPLOYEE REQUIREMENTS AND
3 PROHIBITIONS--CONFLICTS OF INTEREST.--

4 A. Board members and employees of the board shall
5 comply with the Gift Act, the Governmental Conduct Act, the
6 Open Meetings Act and any other applicable state or federal
7 laws.

8 B. Board members and employees of the board shall
9 not:

10 (1) directly or indirectly have any interest
11 in an investment of the New Mexico work and save IRA program
12 or in gains or profits accruing from that investment, other
13 than as program participants;

14 (2) borrow New Mexico retirement plan
15 marketplace or New Mexico work and save IRA program-related
16 funds or deposits or access and use those funds or deposits
17 for personal gain or as agents or partners of others; or

18 (3) become endorsers, sureties or obligors
19 on investments made pursuant to the New Mexico Work and Save
20 Act.

21 C. If a board member or employee of the board has
22 an interest, either direct or indirect, in a contract to
23 which the New Mexico retirement plan marketplace or the
24 New Mexico work and save IRA program is or is to be a party,
25 that interest shall be disclosed to the board in writing and

1 shall be set forth in the minutes of the board. The board
2 member or employee having that interest shall not participate
3 in an action by the board with respect to that contract.

4 D. Board members and employees of the board shall
5 act as fiduciaries with respect to the design, implementation
6 and oversight of the New Mexico retirement plan marketplace
7 and the New Mexico work and save IRA program, acting solely
8 in the best interests of the program participants and for
9 the exclusive purpose of providing benefits to program
10 participants and administering the marketplace and the IRA
11 program with the care, skill, prudence and diligence under
12 the circumstances then prevailing that a prudent person
13 acting in a like capacity and familiar with those matters
14 would use in the conduct of an enterprise of a like character
15 and with like aims."

16 SECTION 5. Section 58-33-8 NMSA 1978 (being Laws 2020,
17 Chapter 7, Section 8) is amended to read:

18 "58-33-8. NEW MEXICO RETIREMENT PLAN MARKETPLACE.--

19 A. The board shall provide for the design and
20 implementation of the New Mexico retirement plan marketplace
21 website. The New Mexico retirement plan marketplace will be
22 hosted on and accessible online through the New Mexico work
23 and save platform that provides covered employers and
24 employees with access to financial service providers that
25 have been approved by the board to administer and maintain

1 marketplace participant investment accounts. In developing
2 and implementing the New Mexico retirement plan marketplace,
3 the board may work in concert with other states or private or
4 nonprofit entities offering an online marketplace similar to
5 the New Mexico retirement plan marketplace website.

6 B. In establishing the New Mexico retirement plan
7 marketplace, the board shall:

8 (1) design the New Mexico retirement plan
9 marketplace as a website accessible online through the
10 New Mexico work and save platform to connect employers and
11 individuals with retirement savings plans, ensuring that the
12 design does not favor a particular kind of service provider
13 or business model;

14 (2) establish requirements for financial
15 service providers that participate in the marketplace and for
16 plans offered on the marketplace;

17 (3) develop marketing, outreach and
18 educational materials; and

19 (4) promote the benefits of retirement
20 savings and financial literacy.

21 C. The board shall provide public notice of the
22 process for inclusion on the New Mexico retirement plan
23 marketplace website before the website becomes publicly
24 available. The marketplace shall be available to the public
25 before the board opens the New Mexico work and save IRA

1 program for enrollment, and the marketplace website address
2 shall be included on any internet website posting or other
3 materials regarding the New Mexico work and save IRA program.
4 The board shall allow all financial service providers that
5 meet the requirements established by the board to participate
6 in the New Mexico retirement plan marketplace. In addition,
7 the board shall not exclude, by policy or otherwise, a
8 retirement plan or option within a plan that meets the
9 requirements of the board and is otherwise allowed under
10 federal or state law, including plan design options that are
11 selected by the employer.

12 D. Participation in plans offered on the
13 New Mexico retirement plan marketplace is voluntary for
14 covered employers and employees; provided that an employer
15 that offers a retirement plan through the New Mexico
16 retirement plan marketplace may use automatic enrollment and
17 automatic escalation of contributions but shall allow an
18 employee opt-out option.

19 E. The New Mexico retirement plan marketplace may
20 offer an array of private retirement plan options, including
21 a:

- 22 (1) simple individual retirement-type plan;
- 23 (2) payroll deduction individual
24 retirement-type plan;
- 25 (3) multiple-employer plan, if allowed under

1 federal law; and

2 (4) plan described in Section 401(a) or
3 403(b) of the Internal Revenue Code.

4 F. The New Mexico retirement plan marketplace
5 shall offer a financial literacy module for employers and
6 employees.

7 G. The New Mexico retirement plan marketplace
8 shall allow, but shall not require, the availability within
9 approved plans of distribution options that provide income in
10 retirement, including systematic withdrawal programs,
11 guaranteed lifetime withdrawal benefits and annuities.

12 H. The board shall establish administrative fees
13 for financial service providers that participate in the
14 New Mexico retirement plan marketplace. The fees shall be
15 sufficient to cover the actual cost of maintaining the
16 New Mexico retirement plan marketplace."

17 SECTION 6. Section 58-33-9 NMSA 1978 (being Laws 2020,
18 Chapter 7, Section 9) is amended to read:

19 "58-33-9. NEW MEXICO WORK AND SAVE IRA PROGRAM--
20 CREATED--IMPLEMENTATION.--

21 A. The New Mexico work and save IRA program
22 developed by the board under the New Mexico Work and Save Act
23 shall:

24 (1) facilitate the establishment of
25 individual retirement accounts for program participants that

1 are administered and managed by board-approved financial
2 service providers;

3 (2) provide that a covered employer may
4 voluntarily choose to participate in the New Mexico work and
5 save IRA program;

6 (3) provide that a participating employer
7 may automatically enroll its employees but shall allow its
8 employees to opt out;

9 (4) allow covered employees to voluntarily
10 contribute to an individual retirement account through
11 automatic payroll deductions, if allowed pursuant to federal
12 law;

13 (5) provide that the default investment
14 option for program participants shall be a Roth individual
15 retirement account with a target date fund investment and a
16 default contribution rate established by the board by rule;
17 provided that the board may establish a principal protection
18 fund for initial savings up to an amount established by the
19 board; and provided that a program participant may choose to
20 stop participating altogether, choose a different investment
21 from among the options available or choose to contribute at a
22 higher or lower contribution rate, subject to the Roth
23 individual retirement account contribution dollar limits
24 applicable under the Internal Revenue Code;

25 (6) offer default escalation of contribution

1 rates that can be increased or decreased by program
2 participants within the limits allowed by the Internal
3 Revenue Code;

4 (7) provide for direct deposit of
5 contributions into one or more investments approved by the
6 board;

7 (8) be professionally managed;

8 (9) not allow employer contributions by
9 covered employers;

10 (10) ensure that each board-approved
11 financial service provider submits a report on the status of
12 each program participant's account to each program
13 participant at least annually and provides annual reports to
14 the board regarding the number of program participant
15 accounts maintained by the financial service provider and the
16 overall value of those accounts;

17 (11) when practicable, use existing employer
18 and public infrastructure to facilitate contributions,
19 recordkeeping and outreach and use pooled or collective
20 investment arrangements;

21 (12) provide that each program participant
22 owns the contributions to and earnings on amounts contributed
23 to the participant's account under the New Mexico work and
24 save IRA program and that the state, the board and covered
25 employers have no proprietary interest, whether legal or

1 equitable, in those contributions or earnings;

2 (13) not impose any duties on employers
3 pursuant to the federal Employee Retirement Income Security
4 Act of 1974; and

5 (14) keep total fees and expenses below one
6 percent of the funds invested by a program participant in the
7 New Mexico work and save IRA program.

8 B. The board shall ensure that the New Mexico work
9 and save IRA program is financially self-sustaining no later
10 than five years after the date that it is fully implemented.

11 C. If a covered employer knowingly or
12 intentionally fails to transmit a payroll deduction
13 contribution to the New Mexico work and save IRA program on
14 the earliest date the amount withheld from the covered
15 employee's compensation can reasonably be segregated from the
16 covered employer's assets, but not later than the fifteenth
17 day of the month following the month in which the covered
18 employee's contribution amounts are withheld from the covered
19 employee's paycheck, the failure to remit those contributions
20 on a timely basis shall be subject to the same sanctions as
21 employer misappropriation of employee wage withholdings."

22 SECTION 7. Section 58-33-10 NMSA 1978 (being Laws 2020,
23 Chapter 7, Section 10) is amended to read:

24 "58-33-10. POLICIES AND PROCEDURES FOR THE NEW MEXICO
25 WORK AND SAVE IRA PROGRAM.--The board shall promulgate rules

1 to implement the New Mexico work and save IRA program that:

2 A. establish the processes by which a covered
3 employer may choose to voluntarily enroll in the New Mexico
4 work and save IRA program and become a participating
5 employer;

6 B. establish the processes for program
7 participants to enroll in and contribute to New Mexico work
8 and save IRA program payroll deduction individual retirement
9 accounts, including elections by covered employees,
10 withholding by participating employers of program
11 participants' payroll deduction contributions from wages and
12 remittance for deposit to the program participants'
13 individual retirement accounts and voluntary enrollment and
14 contributions by self-employed persons;

15 C. establish the processes for withdrawals,
16 rollovers, conversions and direct transfers from individual
17 retirement accounts in the interest of facilitating
18 portability and maximization of benefits;

19 D. establish processes governing the distribution
20 of funds from the New Mexico work and save IRA program; and

21 E. require education of and outreach to covered
22 employers, covered employees and the public regarding the
23 New Mexico work and save IRA program. The rules shall
24 specify the content, frequency, timing and means of required
25 disclosures from the New Mexico work and save IRA program to

1 covered employees, covered employers, program participants
2 and participating employers and other interested parties.

3 These disclosures shall include:

4 (1) the benefits associated with tax-favored
5 retirement saving;

6 (2) the potential advantages and
7 disadvantages associated with contributing to individual
8 retirement accounts through the New Mexico work and save IRA
9 program;

10 (3) the eligibility rules for individual
11 retirement accounts;

12 (4) that the program participant is solely
13 responsible for determining whether and, if so, how much the
14 program participant is eligible to contribute on a
15 tax-favored basis to an individual retirement account;

16 (5) the penalty for excess contributions to
17 individual retirement accounts and the method of correcting
18 excess contributions;

19 (6) instructions for enrolling, making
20 elections to contribute or to decline to contribute and
21 making elections regarding contribution rates, types of
22 individual retirement accounts and investments;

23 (7) instructions for implementing and for
24 changing the elections;

25 (8) the potential availability of a program

1 participant's tax credit, including the eligibility
2 conditions for the credit and instructions on how to claim
3 it;

4 (9) statements that the New Mexico work and
5 save IRA program, the board, board members or board
6 employees, a covered employer or the state does not offer
7 tax, investment or other financial advice, and that the
8 program participant should contact appropriate professional
9 advisors, and that only the program participant is liable for
10 decisions the program participant makes in relation to the
11 New Mexico work and save IRA program;

12 (10) statements that payroll deduction
13 individual retirement accounts are not intended to be
14 employer-sponsored retirement plans and that the New Mexico
15 work and save IRA program is not an employer-sponsored
16 retirement plan;

17 (11) the potential implications of account
18 balances in the New Mexico work and save IRA program for the
19 application of asset limits under certain public assistance
20 programs;

21 (12) that the program participant is solely
22 responsible for investment performance, including market
23 gains and losses, and that individual retirement accounts and
24 rates of return are not guaranteed by the New Mexico work and
25 save IRA program, the board, individual board members, board

1 employees, covered employers or the state or any of its
2 officers or employees;

3 (13) additional information and tools
4 designed to promote financial literacy and capability, which
5 may take the form of links to or explanations of how to
6 obtain such information; and

7 (14) how to obtain additional information
8 about the New Mexico work and save IRA program."

9 SECTION 8. Section 58-33-11 NMSA 1978 (being Laws 2020,
10 Chapter 7, Section 11) is amended to read:

11 "58-33-11. PROTECTION FOR COVERED EMPLOYERS.--

12 A. The New Mexico work and save IRA program is not
13 an employer-sponsored plan. A covered employer does not bear
14 responsibility for:

15 (1) the decision by a covered employee to
16 participate or not to participate in the New Mexico work and
17 save IRA program;

18 (2) the performance of a specific savings
19 option selection made by a program participant and
20 facilitated through the New Mexico work and save IRA program;

21 (3) investment decisions made by a program
22 participant;

23 (4) the administration, investment,
24 investment returns or investment performance of an IRA
25 savings option facilitated through the New Mexico work and

1 save IRA program, including interest rate or other rate of
2 return on a contribution or individual retirement account
3 balance;

4 (5) the design or administration of the
5 New Mexico work and save IRA program or the benefits paid to
6 or the earnings or losses of program participants;

7 (6) a program participant's awareness of or
8 compliance with the conditions and other provisions of the
9 tax laws that determine which persons are eligible to make
10 tax-favored contributions to individual retirement accounts,
11 in what amount and in what time frame and manner; or

12 (7) loss, failure to realize gain or other
13 adverse consequences, including adverse tax consequences or
14 loss of favorable tax treatment, public assistance or other
15 benefits incurred by a program participant as a result of
16 participating in the New Mexico work and save IRA program.

17 B. No covered employer shall be or shall be
18 considered to be a fiduciary under the New Mexico work and
19 save IRA program."

20 SECTION 9. Section 58-33-12 NMSA 1978 (being Laws 2020,
21 Chapter 7, Section 12) is amended to read:

22 "58-33-12. ANNUAL REPORT.--The board shall prepare an
23 annual report on the operation of the New Mexico work and
24 save IRA program and the New Mexico retirement plan
25 marketplace and shall provide the report to the governor,

1 the state treasurer and appropriate legislative interim
2 committees and shall make the report available to all program
3 participants, participating employers and the general
4 public."

5 SECTION 10. A new section of the New Mexico Work and
6 Save Act is enacted to read:

7 "BOARD AND STATE NOT GUARANTORS.--The board, each board
8 member and the state shall not guarantee any rate of return
9 or interest rate on any contribution made by a New Mexico
10 work and save IRA program participant or New Mexico
11 retirement plan marketplace participant."

12 SECTION 11. TEMPORARY PROVISION--NEW MEXICO WORK AND
13 SAVE ACT--IMPLEMENTATION DATES.--The New Mexico work and save
14 board shall implement the New Mexico retirement plan
15 marketplace and the New Mexico work and save IRA program on
16 or before July 1, 2024.

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