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HOUSE BILL 529

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

MURRAY RYAN

AN ACT

RELATING TO BANKING; CHANGING PROVISIONS IN THE BANKING ACT AND
IN THE CONSUMER CREDIT BANK ACT.

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

Section 1. Section 58-1-1 NMSA 1978 (being Laws 1963,
Chapter 305, Section 1) is amended to read:

"58-1-1. SHORT TITLE. -- ~~[This act, and all of Articles 1
through 13 of Chapter 48, New Mexico Statutes Annotated, 1953
Compilation]~~ Chapter 58, Articles 1, 2 through 6 and 8 NMSA 1978
may be cited as the "Banking Act". "

Section 2. Section 58-1-21 NMSA 1978 (being Laws 1963,
Chapter 305, Section 21, as amended) is amended to read:

"58-1-21. LOANS. --

A. A state bank may lend on the security of the
personal obligation of the borrower.

Underscored material = new
[bracketed material] = delete

1 B. A state bank may lend on the security of personal
2 property but shall not make any loan on the security of its own
3 stock, [~~of stock of a holding company of which the bank is a~~
4 ~~part~~] of stock of another bank where the borrower owns, controls
5 or holds with the power to vote ten percent or more of the
6 outstanding voting securities of both [~~such~~] that bank and the
7 lending bank or of its obligation subordinate to deposits.

8 C. Any state bank may make real estate loans secured
9 by liens upon unimproved real estate, upon improved real estate,
10 including improved farmland and improved business and
11 residential properties, and upon real estate to be improved by a
12 building [~~or buildings~~] to be constructed or in the process of
13 construction in an amount [~~which~~] that when added to the amount
14 unpaid upon prior mortgages, liens and encumbrances, if any,
15 upon [~~such~~] the real estate does not exceed the respective
16 proportions of appraised value as provided in this section. A
17 loan secured by real estate within the meaning of this section
18 shall be in the form of an obligation [~~or obligations~~] secured
19 by a mortgage, trust deed or other instrument, which shall
20 constitute a lien on real estate in fee or under such rules and
21 regulations as may be prescribed by the [~~commissioner on a~~
22 ~~leasehold under a lease which does not expire for at least ten~~
23 ~~years beyond maturity date of the loan~~] director and any state
24 bank may purchase or sell any obligations so secured in whole or
25 in part. The amount of any such loan [~~hereafter~~] made shall not

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1 exceed sixty-six and two-thirds percent of the appraised value
2 if [~~such~~] the real estate is unimproved, [~~seventy-five~~] eighty
3 percent of the appraised value if [~~such~~] the real estate is
4 improved by off-site improvements such as streets, water, sewers
5 or other utilities, seventy-five percent of the appraised value
6 if [~~such~~] the real estate is in the process of being improved by
7 a building [~~or buildings~~] to be constructed or in the process of
8 construction or ninety percent of the appraised value if [~~such~~]
9 the real estate is improved by a building [~~or buildings~~]. If
10 any such loan exceeds sixty-six and two-thirds percent of the
11 appraised value of the real estate or if the real estate is
12 improved with a one to four-family dwelling, installment
13 payments shall be required [~~which~~] that are sufficient to
14 amortize the entire principal of the loan within a period of not
15 more than thirty years. However:

16 (1) the limitations and restrictions set forth
17 in this subsection [~~of this section~~] shall not prevent the
18 renewal or extension of loans heretofore made and shall not
19 apply to real estate loans [~~which~~] that are guaranteed or
20 insured by the United States or an agency thereof or by a state
21 or agency or instrumentality thereof; and

22 (2) loans [~~which~~] that are guaranteed or
23 insured as described in Paragraph (1) of this subsection shall
24 not be taken into account in determining the amount of real
25 estate loans [~~which~~] that a state bank may make in relation to

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[bracketed material] = delete

1 its capital and surplus or its time and savings deposits or in
2 determining the amount of real estate loans secured by other
3 than first liens; and where the collateral for any loan consists
4 partly of real estate security and partly ~~[or]~~ of other
5 security, only the amount by which the loan exceeds the value as
6 collateral of such other security shall be considered a loan
7 upon the security of real estate, and in no event shall a loan
8 be considered as a real estate loan where there is a valid and
9 binding agreement ~~[which]~~ that is entered into by a financially
10 responsible lender or other party either directly with the bank
11 ~~[which]~~ that is for the benefit of or has been assigned to the
12 bank and pursuant to which agreement the lender or other party
13 is required to advance to the bank within sixty months from the
14 date of the making of ~~[such]~~ the loan the full amount of the
15 loan to be made by the bank upon the security of real estate.
16 ~~[Except as otherwise provided, no such bank shall make real~~
17 ~~estate loans in an aggregate sum in excess of the amount of the~~
18 ~~capital stock of such bank paid in and unimpaired plus the~~
19 ~~amount of its unimpaired surplus fund, or in excess of the~~
20 ~~amount of its time and savings deposits, whichever is greater;~~
21 ~~provided that]~~ The amount unpaid upon any real estate loan
22 secured by other than a first lien, when added to the amount
23 unpaid upon prior mortgages, liens and encumbrances, shall not
24 exceed in an aggregate sum twenty percent of the amount of the
25 capital stock of ~~[such]~~ the bank paid in and unimpaired plus

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[bracketed material] = delete

1 twenty percent of the amount of its unimpaired surplus fund.
2 D. Any state bank may make real estate loans secured
3 by liens upon forest tracts ~~[which]~~ that are properly managed in
4 all respects. ~~[Such]~~ The loans shall be in the form of an
5 secured by mortgage, trust deed or other such instrument; and
6 any state bank may purchase or sell any obligations so secured
7 in whole or in part. The amount of any such loan, when added to
8 the amount unpaid upon prior mortgages, liens and encumbrances,
9 if any, shall not exceed sixty-six and two-thirds percent of the
10 appraised fair market value of the growing timber, lands and
11 improvements thereon offered as security, and the loan shall be
12 made upon such terms and conditions as to assure that at no time
13 shall the loan balance, when added to the amount unpaid upon
14 prior mortgages, liens and encumbrances, if any, exceed
15 sixty-six and two-thirds percent of the original appraised total
16 value of the property then remaining. No such loan shall be
17 made for a longer term than three years; except that ~~[any such]~~
18 a loan may be made for a term not longer than fifteen years if
19 the loan is secured by an amortized mortgage, deed of trust or
20 other such instrument under the terms of which the installment
21 payments are sufficient to amortize the principal of the loan
22 within a period of not more than fifteen years and at a rate of
23 at least six and two-thirds percent per ~~[annum]~~ year. All such
24 loans secured by liens upon forest tracts shall be included in
25 the permissible aggregate of all real estate loans and, when

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1 secured by other than first liens, in the [~~permissible~~]
2 permissible aggregate of all real estate loans secured by other
3 than first liens prescribed in Paragraph (2) of Subsection C of
4 this section, but no state bank shall make forest tract loans in
5 an aggregate sum in excess of fifty percent of its capital stock
6 paid in and unimpaired plus fifty percent of its unimpaired
7 surplus fund.

8 E. Loans made to finance the construction of a
9 building [~~or buildings~~] and having maturities of not to exceed
10 sixty months where there is a valid and binding agreement
11 entered into by a financially responsible lender or other party
12 to advance the full amount of the bank's loan upon completion of
13 the building [~~or buildings~~] and loans made to finance the
14 construction of residential or farm buildings and having
15 maturities of not to exceed forty-two months may be considered
16 as real estate loans if the loans qualify under this section, or
17 such loans may be classed as commercial loans whether or not
18 secured by a mortgage or similar lien on the real estate upon
19 which the building [~~or buildings are~~] is being constructed, at
20 the option of each state bank that may have an interest in
21 [~~such~~] the loan; provided that no state bank shall invest in or
22 be liable on any such loans classed as commercial loans under
23 this subsection in an aggregate amount in excess of one hundred
24 percent of its actually paid-in and unimpaired capital plus one
25 hundred percent of its unimpaired surplus fund.

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[bracketed material] = delete

1 F. Notes representing loans made under this section
2 to finance the construction of residential or farm buildings and
3 having maturities of not to exceed nine months shall be eligible
4 for discount as commercial paper if accompanied by a valid and
5 binding agreement to advance the full amount of the loan upon
6 the completion of the building entered into by an individual,
7 partnership, association or corporation acceptable to the
8 discounting bank.

9 G. Loans made to any borrower [~~1~~] where the bank
10 looks for repayment by relying primarily on the borrower's
11 general credit standing and forecast of income, with or without
12 other security, or [~~2~~] loans secured by an assignment of rents
13 under a lease and where [~~in either case described in 1) or 2)~~
14 ~~above~~] the bank wishes to take a mortgage, deed of trust or
15 other instrument upon real estate, whether or not constituting a
16 first lien, as a precaution against contingencies and loans in
17 which the small business administration cooperates through
18 agreements to participate in an immediate or deferred or
19 guaranteed basis under the Small Business Act shall not be
20 considered as real estate loans within the meaning of this
21 section but shall be classed as commercial loans.

22 H. A state bank may make loans upon the security of
23 real estate that do not comply with the limitations and
24 restrictions in this section if the total unpaid amount loaned,
25 exclusive of loans [~~which~~] that subsequently comply with [~~such~~]

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[bracketed material] = delete

1 those limitations and restrictions, does not exceed five percent
2 of the amount that a state bank may invest in real estate loans.
3 The total unpaid amount so loaned shall be included in the
4 aggregate sum that [~~such~~] the bank may invest in real estate
5 loans.

6 I. Loans made pursuant to this section shall be
7 subject to such conditions and limitations as the [~~commissioner~~]
8 director may prescribe by rule or regulation."

9 Section 3. Section 58-1-22 NMSA 1978 (being Laws 1963,
10 Chapter 305, Section 22, as amended) is amended to read:

11 "58-1-22. INVESTMENTS. --

12 A. In addition to other investments expressly
13 authorized by the Banking Act, a state bank may:

14 (1) purchase or discount obligations [~~which~~]
15 that satisfy the requirements of the Banking Act for loans;

16 (2) purchase or discount obligations of the
17 United States or a state of the United States or bonds or
18 debentures issued pursuant to the Federal Farm Loan Act, as
19 amended, and the Farm Credit Act of 1933, as amended;

20 (3) purchase or discount obligations in amounts
21 not to exceed ten percent of its capital and surplus for each of
22 the following: the inter-American development bank, the African
23 development bank, the Asian development bank and the
24 international bank for reconstruction and redevelopment;

25 (4) purchase or discount obligations of a

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[bracketed material] = delete

1 territory of the United States, a subdivision or instrumentality
2 of a state or territory of the United States or an authority
3 organized under either state law, an interstate compact or by
4 substantially identical legislation adopted by two or more
5 states;

6 (5) purchase or discount obligations of a
7 corporation chartered by the United States or a state thereof
8 doing business in the United States ~~[which]~~ that are approved by
9 the director for investment;

10 (6) invest in industrial revenue bonds issued
11 by the state or any of its political subdivisions up to twenty
12 percent of its capital and surplus for any one issue, with a
13 total in all such issues not to exceed fifty percent of its
14 capital and surplus;

15 (7) invest an amount not exceeding twenty
16 percent of its capital and surplus in any one issue for revenue
17 obligations issued to provide, enlarge or improve electric
18 power, gas, water, sewer facilities and other public facilities
19 by any city or town located in the state; and

20 (8) invest in any obligation in which a
21 national bank is authorized to invest at the time of making the
22 investment, notwithstanding any provisions to the contrary in
23 the Banking Act.

24 B. A state bank authorized to exercise trust powers
25 may invest an amount not exceeding ten percent of its capital in

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1 the stock of a corporation owned entirely by banks and
2 exclusively engaged in a trust company business and maintaining
3 its offices on the premises used by the bank or another bank
4 also owning part of its capital stock or adjacent to the
5 premises of any bank owning part of its stock.

6 C. A state bank may invest an amount not exceeding
7 twenty-five percent of its capital and surplus in the stock and
8 obligations of a corporation owning the premises occupied by the
9 bank for the transaction of its business.

10 D. A state bank may purchase or sell without
11 recourse against it any security upon the order of a customer
12 and for his account.

13 E. A state bank may invest an amount approved by the
14 director in the stock of a corporation owned entirely by banks
15 and engaged in providing record-keeping services using
16 electronic or other similar machines.

17 F. A state bank may make an investment or conduct an
18 activity the director determines is a part of or is incidental
19 to the business of banking notwithstanding any provision to the
20 contrary in the Banking Act."

21 Section 4. Section 58-1-41 NMSA 1978 (being Laws 1985,
22 Chapter 30, Section 1, as amended) is amended to read:

23 "58-1-41. SUPERVISION FEES. --

24 A. Each state bank shall annually pay to the
25 director a supervision fee. The amount of the supervision fee

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1 paid by each state bank is computed as follows, based upon
2 assets as of December 31:

3 If the bank's total assets are-- The assessment is--

4	Over-	But not over-	This amount-	Plus-	Of excess over-
5	(Thousand)	(Thousand)			(Thousand)
6	- 0 -	30, 000	- 0 -	. 000210	- 0 -
7	30, 000	60, 000	6, 300	. 000182	30, 000
8	60, 000	100, 000	11, 745	. 000168	60, 000
9	100, 000	150, 000	18, 465	. 000158	100, 000
10	150, 000	200, 000	26, 340	. 000147	150, 000
11	200, 000		33, 690	. 000143	200, 000.

12 B. The fee shall be paid on or before the March 1
13 following the asset computation. For failure to pay the
14 supervision fee when due, unless excused for cause by the
15 director, the bank shall pay to the ~~[financial institutions]~~
16 division one hundred dollars (\$100) for every day of its
17 delinquency.

18 C. The director may proscribe lower supervision fees
19 by regulation. In determining the amounts of the lower fees,
20 the director may use criteria other than total assets of banks."

21 Section 5. Section 58-1-52 NMSA 1978 (being Laws 1963,
22 Chapter 305, Section 41) is amended to read:

23 "58-1-52. INCORPORATORS.--A state bank may be organized by
24 five or more individual incorporators or a bank holding company
25 subject to the requirements of the Banking Act. A majority of

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[bracketed material] = delete

1 the incorporators shall be residents of the state. Each
2 incorporator shall subscribe and pay in full in cash for stock
3 having a value of not less than one percent of the authorized
4 capital structure. "

5 Section 6. Section 58-1-54 NMSA 1978 (being Laws 1973,
6 Chapter 130, Section 1) is amended to read:

7 "58-1-54. POWERS OF ~~[COMMISSIONER OF BANKING]~~ DIRECTOR AND
8 OF STATE BANKS. --In addition to other powers provided for the
9 ~~[commissioner of banking]~~ director and for state banks in the
10 Banking Act and notwithstanding anything to the contrary in that
11 act, the ~~[commissioner of banking]~~ director may ~~[adopt such~~
12 ~~rules and regulations as he deems necessary and proper,~~
13 ~~granting]~~ grant to state banks any of the powers and authority
14 that national banks are or may ~~[hereafter]~~ be authorized,
15 empowered, permitted or otherwise allowed to exercise ~~[under~~
16 ~~federal statutes, rules or regulations]~~. "

17 Section 7. Section 58-1-76 NMSA 1978 (being Laws 1963,
18 Chapter 305, Section 64) is amended to read:

19 "58-1-76. UNAUTHORIZED CONDUCT OF BANKING BUSINESS. --It is
20 unlawful for any unauthorized person to engage in the business
21 of ~~[receiving]~~ holding deposits ~~[discounting evidences of~~
22 ~~indebtedness or receiving money for transmission]~~ or to
23 represent that he is or is acting for a bank or to use an
24 artificial or corporate name ~~[which]~~ that purports to be or
25 suggests that it is the name of a bank. "

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[bracketed material] = delete

1 Section 8. Section 58-1A-3 NMSA 1978 (being Laws 1993,
2 Chapter 11, Section 3, as amended) is amended to read:

3 "58-1A-3. ORGANIZATION OF CONSUMER CREDIT BANK. -- With the
4 approval of the director, a domestic bank, foreign bank,
5 international bank or holding company may organize, own and
6 control a consumer credit bank in accordance with the following
7 terms and conditions:

8 A. in connection with the application to organize or
9 to own and control a consumer credit bank, the applicant shall
10 pay to the director a filing fee of six thousand dollars
11 (\$6,000) and a nonrefundable investigation fee of one thousand
12 dollars (\$1,000);

13 B. the shares of a consumer credit bank shall be
14 owned solely by a domestic bank, foreign bank, international
15 bank or holding company;

16 C. a consumer credit bank shall accept deposits only
17 at a single location in this state;

18 D. a consumer credit bank shall maintain capital
19 stock and paid-in surplus of not less than [~~four million dollars~~
20 ~~(\$4,000,000)~~] two million dollars (\$2,000,000);

21 E. a consumer credit bank may engage in the business
22 of soliciting, processing and making loans pursuant to credit
23 card accounts and conducting other necessarily incidental
24 activities, including the taking of a security interest in any
25 property to secure a loan;

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[bracketed material] = delete

1 F. a consumer credit bank may accept deposits only
2 of one hundred thousand dollars (\$100,000) or more and only from
3 affiliates of the consumer credit bank or from persons having
4 their principal place of business or residence outside New
5 Mexico; but the limitation provided pursuant to this subsection
6 shall not apply to deposits made for the purpose of security
7 taken pursuant to Subsection E of this section;

8 G. a consumer credit bank shall, prior to commencing
9 business, obtain and thereafter maintain insurance of its
10 deposits by the federal deposit insurance corporation;

11 H. a consumer credit bank may not engage in the
12 business of making commercial loans, but may issue credit cards
13 and create credit card accounts for commercial customers;

14 ~~I. a consumer credit bank shall have no less than~~
15 ~~twenty-five employees located in this state engaged in credit~~
16 ~~card activities on or before the first anniversary of its~~
17 ~~commencement of operations;~~

18 J.] I. a consumer credit bank shall provide the
19 following services in this state:

20 (1) the initial distribution of credit cards or
21 other devices, or both, designed and effective to access credit
22 card accounts;

23 (2) the preparation of periodic statements of
24 amounts due under credit card accounts; and

25 (3) the maintenance of financial records

State of New Mexico
House of Representatives

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4 **FORTY-THIRD LEGISLATURE**
5 **FIRST SESSION, 1997**
6
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8 **February 25, 1997**
9

10
11 **Mr. Speaker:**
12

13 **Your BUSINESS AND INDUSTRY COMMITTEE, to whom has**
14 **been referred**

15 **HOUSE BILL 529**
16

17 **has had it under consideration and reports same with**
18 **recommendation that it DO PASS, amended as follows:**
19

20 **1. On page 12, between lines 16 and 17, insert the following**
21 **new section:**

22 **"Section 7. Section 58-1-65 NMSA 1978 (being Laws 1963,**
23 **Chapter 305, Section 53, as amended) is amended to read:**
24

25 **"58-1-65. DIRECTORS AND OFFICERS. --**

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HBI C/HB 529

Page 17

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A. The affairs of a state bank shall be managed by a board of directors, which shall exercise its powers and be responsible for the discharge of its duties. The number of directors, not less than three and not more than twenty-five, shall be fixed by the bylaws and the number so fixed shall be the board, regardless of vacancies. At least three-fourths of the directors shall be citizens of the United States and two-thirds shall be residents of the state. ~~[Each director shall have full record and beneficial ownership free of lien or encumbrance on common stock of the bank, or, when a bank is controlled by a bank holding company, either ownership of the common stock of the bank or ownership in a similar manner of shares of common stock of the bank holding company, of the book value of at least one thousand dollars (\$1,000).]~~ Any director who becomes disqualified shall forthwith resign his office, but, upon removal of the disqualification, he shall be eligible for election. A director who is disqualified may be removed by the board ~~[of directors]~~ or by the director of the division. No action taken by a director prior to the resignation or removal shall be subject to attack on the ground of his disqualification.

B. Directors shall receive such reasonable compensation as the bylaws may prescribe and shall serve until their successors are elected and qualify.

C. Directors shall be elected by the stockholders at the first meeting and thereafter at the annual meeting or at a special meeting called for that purpose. If the articles of

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HBI C/HB 529

Page 18

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2 incorporation provide for cumulative voting, the votes of each
3 share may be cast for one person or divided among two or more as
4 the stockholder may choose. The person or persons, according to
5 the number of directors to be elected, having the largest number
6 of votes shall be elected.

7 D. The term of office of directors shall be one year
8 or, if the bylaws so provide, three years, in which case one-third
9 of the directors, or as near to one-third as possible, shall be
10 elected for each year following the first election of directors.
11 Vacancies at any one time, to the number of one-third of the
12 board, may be filled by vote of the board [~~of directors~~] until the
13 next meeting of the stockholders. The director of the division
14 may designate a director to fill a vacancy that has continued for
15 longer than three months, and a director so designated shall serve
16 until a successor is elected and has qualified.

17 E. A director may be removed by the stockholders at a
18 meeting. Where cumulative voting for directors is provided in the
19 articles of incorporation, no director shall be removed unless the
20 votes cast against a motion for his removal are less than the
21 total number of shares outstanding divided by the number of
22 authorized directors, but all of the directors shall be removed if
23 a majority of the outstanding shares approves a motion for the
24 removal of all.

25 F. The officers designated by the bylaws shall be
elected by the board [~~of directors~~]. A member of the board [~~of~~

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HBI C/HB 529

Page 20

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Hobbs, Olguin, J. G. Taylor

Absent: Getty

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HBIC/HB 529

Page 21

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 12, 1997

Mr. President:

Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
whom has been referred

HOUSE BILL 529, as amended

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Roman M. Maes, III, Chairman

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1 HBIC/HB 529

Page 22

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Fidel, Griego, Howes

Absent: None

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