



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS**

Date:	<b>Enrolled</b>	Bill No:	<a href="#">Senate Bill 1156</a>
Tax Program:	<b>Transactions and Use</b>	Author:	<b>Steinberg</b>
Sponsor:	<b>Author</b>	Code Sections:	<b>HSC 34191.1, et al</b>
Related Bills:		Effective Date:	<b>01/01/13</b>

***This analysis only addresses the provisions that impact the BOE.***

**BILL SUMMARY**

Among other things, this bill authorizes specified local governments of a Sustainable Communities Investment Area, as described, to establish a Sustainable Communities Investment Authority to levy a transactions and use tax within those boundaries.

**ANALYSIS**

**CURRENT LAW**

The State Board of Equalization (BOE) administers locally-imposed sales and use taxes under the Bradley-Burns Uniform Local Sales and Use Tax Law (local taxes) and under the Transactions and Use Tax Law (district taxes), which are provided in separate parts of the Revenue and Taxation Code. Cities and counties are required to contract with the BOE to perform all functions in the administration and operations of the ordinances imposing the local and the district taxes.

The **Bradley-Burns Uniform Local Sales and Use Tax Law** (Part 1.5, commencing with Revenue and Taxation Code Section 7200) authorizes cities and counties to impose a local sales and use tax. The rate of tax is fixed at 1.25 percent of the sales price of tangible personal property sold at retail in the local jurisdiction, or purchased outside the jurisdiction for use within the jurisdiction. However, beginning July 1, 2004, and continuing through the “revenue exchange period” (also known as the “Triple Flip”), Section 7203.1 temporarily suspends the authority of a county or a city to impose a tax under Sections 7202 and 7203, and instead provides that the applicable rate is the following: (1) in the case of a county, 1 percent; and (2) in the case of a city, 0.75 percent or less. “Revenue exchange period” means the period on or after July 1, 2004, and continuing until the Department of Finance notifies the BOE, pursuant to Government Code Section 99006, that the \$15 billion Economic Recovery Bonds have been repaid or that there is sufficient revenue to satisfy the state’s bond obligations.

Of the 1 percent, cities and counties use the 0.75 percent to support general operations. The remaining 0.25 percent is designated by statute for county transportation purposes and may be used only for road maintenance or the operation of transit systems. The counties receive the 0.25 percent tax for transportation purposes regardless of whether the sale occurs in a city or in the unincorporated area of a county. All local jurisdictions impose the Bradley-Burns local taxes at the uniform rate of 1 percent.

The **Transactions and Use Tax Law** (Part 1.6, commencing with Revenue and Taxation Code Section 7251) and the **Additional Local Taxes Law** (Part 1.7, commencing with Section 7285) authorize cities and counties to impose district taxes

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under specified conditions. **Section 7285** authorizes a county to impose a district tax for general purposes at a rate of 0.125 percent, or a multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of the board of supervisors and a majority vote of the qualified voters of the county. **Section 7285.5** authorizes a county to impose a district tax for special purposes at a rate of 0.125 percent, or a multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of the board of supervisors and a two-thirds vote of the qualified voters of the county.

Counties can also establish a transportation authority to impose district taxes under the Public Utilities Code (PUC). Various statutes under the PUC authorize a county board of supervisors to create an authority within the county or designate a transportation-planning agency to impose a district tax, subject to the applicable voter approval requirement. District taxes imposed under the PUC must conform to the administrative provisions contained in the Transactions and Use Tax Law, including the requirement to contract with the BOE to perform all functions related to the administration and operation of the ordinance.

With respect to cities, **Section 7285.9** authorizes a city to impose a district tax for general purposes at a rate of 0.125 percent, or a multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of all members of the governing body and a majority vote of the qualified voters of the city. **Section 7285.91** authorizes a city to impose a district tax for special purposes at a rate of 0.125 percent, or a multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of all member of the governing body and a two-thirds vote of the qualified voters of the county.

Currently, all district tax ordinances administered by the BOE have boundaries coterminous with city or county lines.

The combined rate of all district taxes imposed in any county cannot exceed 2 percent.

#### PROPOSED LAW

Among other things, this bill would add Part 1.86 (commencing with Section 34191.10) to the Health and Safety Code to enact the Sustainable Communities Investment Program. The bill would authorize a city, county, city and county, or a special district, as specified, of a Sustainable Communities Investment Area, as described, to form a Sustainable Communities Investment Authority and specify that it must comply with the provisions of the Community Redevelopment Law, and the bill's provisions.

This bill, as it pertains to the BOE, would authorize a Sustainable Communities Investment Authority to implement a local transactions and use tax under Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, except that the resolution authorizing the tax may designate the use of the proceeds of the tax.

**Sustainable Communities Investment Authority (Authority).** The bill allows an Authority to be created as follows:

- 1) A city, county, city and county, or a special district may create an Authority by entering into a joint powers agreement, as specified. The joint powers agreement shall establish a governing board and designate the Sustainable Communities Investment Area.

- 2) A city may create an Authority, appoint the Authority governing board, designate a Sustainable Communities Investment Area within the city's incorporated area, and establish the parameters of the proposed economic development within a proposed Sustainable Communities Investment Area provided the economic development parameters are approved by the county.
- 3) A city and a county may create an Authority and appoint the Authority governing board, which shall be comprised of two members appointed by the city and two members appointed by the county. The governing board shall designate the Sustainable Communities Investment Area. The Sustainable Communities Investment Area may include an incorporated area or both an incorporated area and an unincorporated area.
- 4) A city may create an Authority, which shall constitute a legally distinct entity from that city, and appoint the Authority governing board, which may designate a Sustainable Communities Investment Area only within the incorporated limits of that city.
- 5) If the Sustainable Communities Investment Area is within an unincorporated area, the board of supervisors of a county may create an Authority and appoint the Authority governing board.

The bill specifies that a school district shall be excluded from participating in an Authority.

**Sustainable Communities Investment Area (SCIA).** A SCIA would include only the following:

- 1) Transit priority areas, which are areas where a transit priority project, as defined in Section 21155 of the Public Resources Code, may be constructed, provided that if the SCIA is based on proximity to a planned major transit stop or the high-quality transit corridor, the stop or the corridor must be scheduled to be completed within the planning horizon established by the Code of Federal Regulations. A transit priority area may include a military base reuse plan, as specified, and may include a contaminate site within a transit priority project area.
  - A. If the SCIA includes a high-speed rail station, the radius of the area may be up to one mile from a high-speed rail station. If the project area consists of a radius greater than one-half of one mile, at least 50 percent of property tax increment revenue derived from the area shall be used to support construction of the high-speed rail station and related infrastructure.
  - B. All or part of a transit priority project area may be included in the SCIA or an area may include one or more contiguous transit priority project areas.
  - C. Transit priority project areas shall be within the geographic boundaries of a metropolitan planning organization (MPO) in which a sustainable communities strategy has been adopted by the MPO and the State Air Resources Board (ARB), as specified, and the ARB has accepted the MPO's determination that the sustainable communities strategy would, if implemented, achieve the region's greenhouse gas emission reduction targets.
- 2) Areas that are small walkable communities, as defined in paragraph (4) of subdivision (e) of Section 21094.5 of the Public Resources Code, except that small walkable communities may also be designated in a city that is within the area of an MPO. No more than one small walkable community project area shall be designated within a city. All or part of a small walkable community may be included in the SCIA.

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- Small walkable community project means a project that is in an incorporated city and that satisfies the following requirements:
    - Has a project area of approximately one-quarter mile diameter of contiguous land completely within the existing incorporated boundaries of the city.
    - Has a project area that includes a residential area adjacent to a retail downtown area.
    - The project has a density of at least eight dwelling units per acre or a floor area ratio for retail or commercial use of not less than 0.50.
- 3) Sites that have land use approvals, covenants, conditions and restrictions, or other effective controls restricting the sites to clean energy manufacturing, and that are consistent with the use, designation, density, building intensity, and applicable policies specified for the SCIA in the applicable sustainable communities strategy, if those sites are within the geographic boundaries of an MPO. The bill specifies that clean energy manufacturing will consist of the manufacturing of any of the following:
- Components, parts, or materials for the generation of renewable energy resources;
  - Equipment designed to make buildings more energy efficient or the component parts thereof;
  - Public transit vehicles or the component parts thereof; or,
  - Alternative fuel vehicles or the component parts thereof.

The bill becomes effective on January 1, 2013.

#### **IN GENERAL – DISTRICT TAXES**

Voters in many of California cities and counties have approved new district taxes in their areas. These district taxes are levied exclusively within the borders of either a county or an incorporated city (with the exception of the Bay Area Rapid Transit District, which is comprised of the three counties Alameda, Contra Costa, and San Francisco, and the Sonoma-Marín Area Rail Transit District). Cities and counties that levy a district tax within their borders are referred to as “districts.”

District transactions (sales) taxes are imposed on the sale of tangible personal property in a district. If a retailer’s business is located in a district, his or her sales are generally subject to district sales tax, either when the purchaser picks up the property at the retailer’s place of business or when the retailer delivers the property to the purchaser in the district. Retailers in districts selling property, which they deliver outside the district, are generally not liable for district sales tax in their district. If a retailer’s business is not located in a district, his or her sales are generally not subject to district sales tax.

District use tax is imposed on the storage, use, or other consumption of tangible personal property in a district. Retailers may be responsible for reporting district use tax if they are “engaged in business” within a district. Retailers are considered “engaged in business” in a district if one of the following conditions applies:

- Maintains, occupies, or uses, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any type of office, sales room, warehouse, or other place of business in the district.
- Has any kind of representative operating in the district for the purposes of making sales or deliveries, installing or assembling tangible personal property, or taking orders.

- Receives rentals from a lease of tangible personal property located in the district.
- Is a retailer of vehicles or undocumented vessels which will be registered, or aircraft which will be licensed, in a district.

A retailer “engaged in business” in a district is generally required to collect and report district use tax on a sale. The following example illustrates when retailers should collect and report district use tax:

A retailer in Sacramento County makes a taxable sale of property, which it delivers to the purchaser in Contra Costa County, who will use the property there. Even though the sale is subject to the state sales tax, the sale would be exempt from Sacramento County district sales taxes because the property was required to be delivered pursuant to the contract of sale outside the county. However, use of the property in Contra Costa County makes the sale subject to the applicable district use taxes in Contra Costa County. If the retailer is “engaged in business” in Contra Costa County and delivers the property to the Contra Costa County location, he or she is responsible for collecting and reporting district use tax. Conversely, if the retailer is not engaged in business in Contra Costa County, the retailer is not responsible for collecting the district use tax.

#### **DISTRICT TAXES CURRENTLY ADMINISTERED BY THE BOE**

As previously stated, cities and counties may impose a district tax for general or specific purposes. These taxes can be imposed either directly by the city or county or through a special purpose entity established by the city or county. Counties can also establish a transportation authority to impose district taxes under the PUC.

Beginning October 1, 2012, there will be 147 local jurisdictions (city, county, and special purpose entity) imposing a district tax for general or specific purposes. Of the 147 jurisdictions, 41 are county-imposed taxes and 106 are city-imposed taxes.

The maximum combined rate of all district taxes imposed in any county cannot exceed 2 percent. The city district taxes count against the 2 percent maximum. District taxes increase the tax rate within a city or county by adding the district tax rate to the combined state and local (Bradley-Burns local tax) tax rate of 7.25 percent.

Generally, under the Transactions and Use Tax Law, district tax rates are imposed at a rate of 0.25 percent or in 0.25 percent increments up to the 2 percent limit. As discussed above, recent amendments to the Additional Local Taxes Law allow cities and counties to levy, increase or extend district taxes at a rate of 0.125 percent, or a multiple thereof. Currently, the district tax rates vary from 0.10<sup>1</sup> percent to 1 percent. The combined state, local, and district tax rates range from 7.375 percent to 9.25 percent, with the exception of the cities of South Gate and Pico Rivera (9.75%) in Los Angeles County.<sup>2</sup>

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<sup>1</sup>Some cities and counties are authorized by special legislation to impose a district tax at a rate other than a 0.25 percent. For example, the Fresno County Zoo Authority imposes a district tax at a rate of 0.10 percent.

<sup>2</sup>In 2003, SB 314 (Ch. 785, Murray) authorized the Los Angeles County Metropolitan Transportation Authority to impose a 0.50 district tax for specific transportation projects, and excluded that 0.50 percent tax from the 2 percent limitation. In 2009, voters within Los Angeles County approved an additional 0.50 percent effective July 1, 2009. The 0.50 percent tax increase in Los Angeles County raised the tax rate in the cities of South Gate and Pico Rivera from 9.25 to 9.75 percent.

Some cities and counties have more than one district tax in effect, while others have none. A listing of the district taxes, rates, and effective dates is available on the BOE's website: [www.boe.ca.gov/sutax/pdf/districtrelatelist.pdf](http://www.boe.ca.gov/sutax/pdf/districtrelatelist.pdf).

## COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by the author in order to authorize the use of tax increment as well as other funding sources, including imposing transactions and use taxes, to finance specified projects—small walkable communities, transit priority areas and clean energy manufacturing that would be part of the sustainable community strategy.

According to the author's office, "this bill sets forth a new vision of local economic development and housing policy for the 21<sup>st</sup> century, focused on building sustainable communities and creating the high skill, high wage jobs that are the key to our future prosperity."

- 2. Amendments.** The **August 24, 2012 amendments** made both substantive and technical changes that are unrelated to the BOE-related provisions. The **August 13, 2012 amendments** (1) specified procedures to create an Authority, (2) made clarifying amendments related to establishing a SCIA, (3) added legislative findings and declarations, and (4) made other substantive and technical amendments unrelated to the BOE.

- 3. An Authority imposing a tax along a partial county and a city boundary would create significant problems.** As of October 1, 2012, the BOE will administer a total of 147 district taxes for which all have boundaries equal to their respective city and county lines. Without having a defined city or county limits to impose the tax, administration and collection of the tax is extremely difficult. In processing returns, audits, and payments, the BOE assigns a specific code in order to properly identify accounts within a district. As long as a tax is imposed within city or county limits, the BOE can electronically identify accounts within such areas. However, because this bill would allow for the imposition of a tax along partial city and/or county lines, the BOE would have to manually identify accounts and addresses falling within the boundaries of the SCIA.

In addition, while taxpayers may be aware of city and county boundaries, the same cannot be said of SCIA boundaries. For example, two restaurants could be located across the street from each other, but charge two different district tax rates if one is in an SCIA and the other is not.

As previously stated, currently 147 cities and counties impose district taxes. Retailers in those cities and counties collect the applicable district tax rate for sales made at their business location; however, for shipments of taxable merchandise sent outside their district, they charge the statewide base sales and use tax rate (7.25%) unless they are also engaged in business in the district where the merchandise is shipped. If the latter is the case, retailers would have to determine whether its customers were located in SCIA's to determine the applicable tax rate. Retailers would likely be very confused about collecting and remitting the correct amount of tax.

- 4. Would a district tax levied in an SCIA generate sufficient revenue to fund an Authority's purposes?** As previously stated, the SCIA may cover only a portion of a city or the unincorporated area of a county. Further, the SCIA may include (1) for areas within an metropolitan planning organization with an adopted sustainable

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communities strategy that has been accepted by the Air Resources Board, transit priority areas, (2) small walkable communities, or (3) sites that have land use approvals or other controls restricting the site to clean energy manufacturing and sites consistent with the sustainable communities strategy, if those sites are within the geographic boundaries of an metropolitan planning organization.

Would these areas have a sufficient number of businesses to generate the district (sales) and use tax revenues needed to reimburse the BOE for its administrative costs and to fund the Authority's projects? For instance, would a site restricting the area to clean energy manufacturing of equipment designed to make buildings more energy efficient and/or the clean manufacturing of components or parts for the generation of renewable energy resources have businesses that report a sufficient amount of district sales and use tax revenue? Presumably, clean manufacturers would owe district use tax on their purchases of equipment and supplies which they consume in the manufacturing of the specified equipment, components, or parts. Would these revenues, however, be sufficient to pay for the specified activities?

**5. Other administrative and technical concerns.** There are several administrative and technical issues that would need to be addressed before the bill becomes law. BOE staff is available to work with the author's office to resolve these and other concerns that may be identified.

- **Conforming language.** The proposed H&SC Section 34191.19, subdivision (b) provides that an Authority may implement a local transactions and use tax under Part 1.6 (commencing with Section 7251) of the Revenue and Taxation Code. The language should specify that an Authority may impose a transactions and use tax which conforms to and/or is in accordance with the bill's provisions and Part 1.6 of the Revenue and Taxation Code.
- **Ordinance vs. Resolution.** Section 34191.19, subdivision (b) provides that the resolution authorizing the tax may designate the use of the proceeds of the tax. However, current statutes of the Revenue and Taxation Code require that an ordinance, not a resolution authorize the imposition of the tax. Certain sections of the Transactions and Use Tax Law in the Revenue and Taxation Code were amended to clarify that an ordinance, not a resolution, is necessary for the adoption of the tax. Prior to these amendments, administrative issues arose, including delays in implementation, when a jurisdiction attempted to levy district taxes using a resolution. It is recommended that the term "resolution" be replaced with "ordinance."
- **Tax rate.** The bill does not specify a rate or rates. Under the Transactions and Use Tax Law, there are various statutes authorizing cities and counties to levy a district tax, all of which specify a rate. As stated under "Current Law," cities and counties may levy a district tax for general or special purposes at a minimum rate of 0.125 percent and in 0.125 percent increments. Under the PUC, counties may levy a district tax for transportation purposes at a rate of 0.25 percent or increments of 0.25 percent. Does the author wish to specify a rate or rates?
- **No language referencing voter approval requirements.** The various statutes under the Transactions and Use Tax authorizing cities and counties to impose district taxes all include provisions pertaining to vote requirements for adopting new taxes, both by the appropriate governing body and those voting in an election on the issue. Moreover, the various statutes in the PUC authorizing

counties to establish a transportation authority to levy district taxes for transportation purposes all contain provisions pertaining to vote requirements for both the governing body of the authority and the local electors. It is recommended that the bill add language clarifying the vote requirement for this tax.

- **Operative date.** Any new district tax would become operative on the first day of a calendar quarter commencing more than 110 days after the adoption of the ordinance pursuant to Transactions and Use Tax Law Section 7265. However, the 110-day timeframe may not provide the BOE sufficient time to effectively implement multiple district tax ordinances. As previously stated, BOE staff would have to manually identify accounts and addresses falling within the boundaries of the SCIA. The Authority imposing the new district tax would have to provide a complete alphabetical list of all streets within the affected area with beginning and ending street numbers. This information is essential to identify businesses that must be changed to account for the new tax. An Authority may need at least 30 days to provide this information. It is recommended that the bill be amended to provide for a separate statutory provision under the Health and Safety Code related to the operative date of an SCIA ordinance. Further, it is suggested that the bill provide for an operative date of the first day of the first calendar quarter commencing more than 150 days after the adoption of the ordinance by the voters.
  - **Preparatory Costs.** Preparatory costs include developing procedures, programming for data processing, developing and adopting appropriate regulations, designing and printing forms, developing instructions for BOE staff and taxpayers, and any other necessary preparatory costs. The Transactions and Use Tax Law limits these costs to be paid by a district at \$175,000. BOE staff anticipates that its costs to implement a larger SCIA ordinance would exceed the \$175,000 limit in law. As previously stated, because the tax would be imposed along partial city and county lines, the Board would have to manually identify the accounts and addresses falling within the boundaries of the SCIA, and then recode those accounts. For these reasons, it is recommended that the bill be amended to provide specific statutory authority in the Health and Safety Code allowing the Board to charge a maximum of \$500,000 in preparatory costs to implement a new SCIA district tax. BOE staff will work with the author's office to draft amendments that will address this concern.
- 6. This bill may set a precedent for special districts and special project areas to impose a district tax.** As previously stated, the BOE currently administers 147 district taxes that impose a tax, but the boundaries of these districts are coterminous with the boundaries of the cities and counties in which the tax is collected.
- There are approximately 12,000 special districts (includes cities, redevelopment agencies, school districts, and other special districts) in California. These districts were formed for various purposes, such as air pollution, airports, fire, flood, hospitals, libraries, mosquito abatement, park, public safety, school districts, sewer, and water. Some of these districts have boundaries that include multiple cities and counties. Furthermore, these districts sometime include portions of cities and counties.

Due to the budget cuts experienced by local governments, many special districts are concerned that these cuts will affect the services they provide. The varying tax rates and varying districts with uneven boundaries would create an enormous burden on taxpayers.

In addition, the bill would authorize the use of transactions and use taxes to fund the development of an SCIA, which would consist of transit priority projects, small walkable communities, and clean energy manufacturing sites. Similar to special districts, these project areas also have uneven boundaries. The varying tax rates and varying special project areas would make compliance extremely difficult for taxpayers.

## **COST ESTIMATE**

This bill does not increase administrative costs to the BOE because it only authorizes an Authority to impose a tax. Voter approval would be required before any tax is levied pursuant to these provisions.

If an Authority adopted an ordinance to levy the tax, the Authority would be required to contract with the BOE to perform all functions related to the ordinance, and pay to the BOE its costs of preparation to administer the ordinance as well as the costs for the BOE's services in actually administering the ordinance pursuant to the Transactions and Use Tax Law. Costs for preparation and administration of this tax could be higher than other district taxes the BOE administers since the proposed tax is unlike other district taxes.

**Preparatory costs.** Based on the BOE's experience with city and county imposed taxes, the one-time preparatory costs typically can range from \$12,000 to \$138,000. Preparatory costs are the actual costs to update publications and returns, perform programming for data processing, develop instructions for both BOE staff and taxpayers, notify taxpayers, and other necessary costs which include costs from other state agencies (e.g., California Department of Motor Vehicles costs to train staff and program computers). In addition, various factors can have an impact on the BOE's preparatory costs. For example, the BOE mails a special notice to taxpayers in the affected city or county, including adjacent areas. If a city or county has a large number of seller's permits, the BOE's mailing costs could be substantially higher.

In addition, because of certain fixed costs, the preparatory costs can vary depending on the number of new district taxes being implemented at the same time. For example, the cost of updating a publication and return to add four new taxes is similar to the cost to add one new tax. Moreover, those costs would be shared among four new districts versus one district. Thus, depending on the number of district taxes being implemented at the same time, the preparatory costs can vary.

**One-time programming costs.** The BOE anticipates one-time programming costs of \$275,000 to make extensive modifications to the BOE's computer system to identify and track a district tax for an SCIA. The majority of these costs would be for the initial programming to set up new processes for the SCIA's. These costs would be the same regardless if one Authority or ten Authorities adopt an ordinance to impose the new tax. Of the \$275,000, a minor amount would be for programming related to subsequent Authorities adopting an ordinance.

As previously stated, current law authorizes the BOE to bill a new district for preparatory charges to administer the new district tax based on actual costs. The maximum amount of preparatory costs cannot exceed \$175,000. Because of the additional workload involved to prepare to administer an SCIA ordinance, the BOE anticipates that some ordinances may exceed the maximum amount of \$175,000. For these reasons, the BOE is recommending a maximum amount of \$500,000 in preparatory costs to be paid by a SCIA Authority (see Comment 5).

It should be noted that the first entities to adopt a new tax under this bill would incur the one-time programming costs for implementation.

**On-going administrative costs.** As a point of perspective, the BOE's estimated 2010-11 administrative costs assessed to the existing city and county special taxing jurisdictions range from \$2,000 to \$2,624,000, with the exception of Los Angeles County (Los Angeles County has a substantial higher number of sellers permits and, consequently, their administrative costs are higher than other jurisdictions).

### REVENUE ESTIMATE

This bill would only authorize a city and county of a SCIA to establish an Authority to levy a transactions and use tax within the SCIA. However, the bill does not specify an amount or the range of that tax and does not specify the SCIA in which the tax would be imposed. Accordingly, a revenue estimate could not be prepared.

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