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1 IN THE HOUSE

BY THE LOCAL GOVERNMENT COMMITTEE

2 CS FOR HOUSE BILL NO. 14

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating the Alaska Industrial Development  
7 Authority as a public corporation and political  
8 subdivision of the state with power to issue bonds  
9 to provide funds to acquire and construct manufactur-  
10 ing and industrial plants throughout the state for  
11 sale or lease to business enterprises and otherwise  
12 defining the purposes and powers and functions of  
13 the authority; and providing for an effective date."

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

15 \* Section 1. AS 44 is amended by adding a new chapter to read:

16 CHAPTER 61. ALASKA INDUSTRIAL DEVELOPMENT AUTHORITY.

17 ARTICLE 1. CREATION AND ORGANIZATION.

18 Sec. 44.61.010. LEGISLATIVE FINDING AND POLICY. (a) The  
19 legislature finds, determines and declares that

20 (1) there exist areas of the state in which seasonal and  
21 nonseasonal unemployment exist;

22 (2) this unemployment is a serious menace to the health,  
23 safety and general welfare, not only to the people in those areas,  
24 but also to the people of the entire state;

25 (3) the state lacks the basic manufacturing and industrial  
26 enterprises necessary to permit adequate development of its natural  
27 resources and the balanced growth of its economy;

28 (4) the establishment of industrial and manufacturing  
29 plants in Alaska is essential to the development of the natural

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1 resources and the long term economic growth of the state, and will  
2 directly and indirectly alleviate unemployment in the state;

3 (5) the achievement of the goal of full employment, and of  
4 establishment and continuing operation and development of industrial  
5 and manufacturing plants in the state, will be accelerated and  
6 facilitated by the creation of an instrumentality of the state with  
7 powers to incur debt for acquiring or constructing industrial and  
8 manufacturing plants for private operation and thus provide financial  
9 assistance for the establishment, operation and development of such  
10 plants on a basis offsetting in whole or in part construction, market-  
11 ing or other costs involved in such projects in this state.

12 (b) It is declared to be the policy of the state, in the  
13 interests of promoting the health, security and general welfare of  
14 all the people of the state, and a public purpose, to increase job  
15 opportunities and otherwise to encourage the economic growth of the  
16 state, including the development of its natural resources, through  
17 the establishment of manufacturing and industrial enterprises by  
18 creating the public corporation with power, duties and functions as  
19 provided in this chapter.

20 Sec. 44.61.020. CREATION OF AUTHORITY. There is created the  
21 Alaska Industrial Development Authority. The authority shall be a  
22 public corporation of the state and a body corporate and politic  
23 constituting a political subdivision within the Department of Economic  
24 Development, but with separate and independent legal existence.

25 Sec. 44.61.030. MEMBERSHIP OF THE AUTHORITY. (a) The members  
26 of the authority shall consist of the commissioner of commerce, the  
27 commissioner of economic development and the commissioner of natural  
28 resources, serving ex officio. If a state officer who is a member  
29 of the authority is unable for any reason to attend a meeting of the

1 authority, he may by an instrument in writing filed with the authority,  
2 designate his deputy or assistant commissioner to act in his place  
3 as a member at the meeting. For all purposes of this chapter the  
4 designee shall constitute a member of the authority at the meeting.

5 (b) After each time a certified copy of the resolution of the  
6 governing body of the political subdivision of the state, if any, in  
7 which a project is to be located consenting to a location as provided  
8 in sec. 160 of this chapter is filed with the authority, and the  
9 authority has made the findings regarding the project set out in the  
10 section, the governing body may by resolution appoint three persons  
11 who shall in connection only with subsequent action by the authority  
12 found by the chairman to concern the project, constitute members of  
13 the authority. Persons so appointed shall be residents of the  
14 political subdivision and may be members of its governing body, and shall  
15 be considered members of the authority for purposes of sec. 50 of this  
16 chapter only in connection with action by the authority concerning the  
17 project.

18 (c) Each further member of the authority appointed by the  
19 governing body shall serve as, and for all purposes of this chapter  
20 be, a member of the authority serving at the pleasure of the governing  
21 body until such time as bonds of the authority are issued under this  
22 chapter to finance any part of the project described in the resolution  
23 of the governing body consenting to the location, or the authority  
24 determines by resolution that the bonds will not be issued.

25 Sec. 44.61.040. CHAIRMAN AND VICE-CHAIRMAN. The commissioner  
26 of economic development shall be the chairman of the authority,  
27 preside over all meetings, and have the duties which the authority  
28 may direct. A vice-chairman may be elected by the authority from  
29 among its other members for one or more terms of one year each. The

1 vice-chairman shall preside over all meetings in the absence of the  
2 commissioner of economic development and shall have other duties which  
3 the authority may direct.

4 Sec. 44.61.050. MEETINGS, COMPENSATION, OFFICERS AND EMPLOYEES.

5 (a) A majority of the members of the authority constitutes a quorum  
6 for the transaction of business or the exercise of a power or function  
7 at a meeting of the authority.

8 (b) The members of the authority serve without salary but  
9 each member is entitled to reimbursement from authority funds for  
10 actual and necessary expenses incurred in the performance of his  
11 official duties as a member of the authority.

12 (c) The authority may appoint persons as officers it considers  
13 advisable, including an executive director or executive vice-president,  
14 and may employ professional advisors, counsel, technical experts,  
15 agents, and other employees it considers advisable.

16 ARTICLE 2. DEFINITIONS, PURPOSE AND POWERS.

17 Sec. 44.61.060. DEFINITIONS. In this chapter

18 (1) "authority" means the Alaska Industrial Development  
19 Authority created by this chapter;

20 (2) "business enterprise" means a corporation, firm,  
21 partnership or other association of persons organized in any manner,  
22 or a single proprietorship;

23 (3) "federal agency" means the United States and any  
24 officer, department, agency or instrumentality of the United States;

25 (4) "governing body of a political subdivision" means,  
26 when used with respect to the location of a project, the council of  
27 a city if the project is to be located in a city, or the borough  
28 assembly of an organized borough if the project is to be located in  
29 an area not in a city but in an organized borough;

1                   (5) "industrial plant" or "manufacturing plant" means a  
2 plant used or intended for use in connection with making, processing,  
3 preparing, or producing in any manner, goods, products or substances  
4 of any kind or nature or in connection with developing or utilizing  
5 a natural resource, or extracting, smelting, transporting, converting,  
6 assembling or producing in any manner, minerals, raw materials,  
7 chemicals, compounds, alloys, fibers, commodities and materials,  
8 products or substances of any kind or nature;

9                   (6) "plant" means real property, whether above or below  
10 mean high water, or an interest in it, and the buildings, improvements  
11 and structures constructed or to be constructed on or in it, whether  
12 above, at or below ground or water level, and may include fixtures,  
13 machinery and equipment on it or in it;

14                   (7) "project" means a manufacturing or industrial plant  
15 or plants, the construction or acquisition of which is to be financed  
16 in whole or in part by the authority under this chapter and the  
17 reasonable aggregate project cost of which to be financed by the  
18 authority under this chapter will exceed, in the opinion of the  
19 authority, \$500,000;

20                   (8) "project cost" or "cost of a project" means all or  
21 any part of the aggregate costs determined by the authority to be  
22 necessary to finance the construction or acquisition of a project,  
23 including without limitation the cost of acquiring real property, the  
24 cost of constructing buildings and improvements, the cost of construct-  
25 ing means of access to and from the project, the cost of constructing  
26 extensions of utility systems to the site of the project, the cost  
27 of financing the project, including, without limitation, interest  
28 charges before, during or after construction or acquisition of the  
29 project, costs related to the determination of the feasibility,

1 planning, design or engineering of the project and, to the extent  
2 determined necessary by the authority, administrative expenses, the  
3 cost of machinery or equipment to be used in the operation of the  
4 project and expenses of installation, replacement or rehabilitation,  
5 and all other costs, charges, fees and expenses which may be determined  
6 by the authority to be necessary to finance the construction or  
7 acquisition;

8 (9) "project occupant" means a business enterprise or  
9 enterprises proposing to use and occupy a project;

10 (10) "real property" means land and rights and interests  
11 in land, including, without limitation, interests less than full  
12 title such as easements, uses, leases, and licenses;

13 (11) "lease" includes, when used as a noun, an interest  
14 in, or when used as a verb, the transfer of an interest in, real  
15 property less than fee simple title, including, without limitation,  
16 when used as a noun, agreements to use or occupy real property.

17 Sec. 44.61.070. PURPOSE OF THE AUTHORITY. The purpose of the  
18 authority is to promote, develop and advance the general prosperity  
19 and economic welfare of the people of Alaska, to relieve problems  
20 of unemployment and to create additional employment by providing a  
21 means of financing industrial and manufacturing plant construction,  
22 conversion or expansion within the state, including the acquisition of  
23 real property, for lease or sale to business enterprises for industrial  
24 or manufacturing purposes.

25 Sec. 44.61.080. POWERS OF THE AUTHORITY. In furtherance of its  
26 corporate purposes, the authority shall have the following powers  
27 in addition to its other powers:

28 (1) to sue and be sued;

29 (2) to have a seal and alter it at pleasure;

1 (3) to make and alter bylaws for its organization and  
2 internal management;

3 (4) to make rules and regulations governing the exercise  
4 of its corporate powers;

5 (5) to acquire, whether by construction, purchase, gift  
6 or lease, and to improve and equip projects in the state;

7 (6) to lease to others a project acquired by it for the  
8 rentals and upon the terms and conditions the authority may consider  
9 advisable, including, without limitation, provisions for options to  
10 purchase or renew;

11 (7) to issue bonds to pay the cost of acquiring by  
12 construction, purchase or lease or improving and equipping a project  
13 and to secure payment of the bonds as provided in this chapter;

14 (8) to sell, exchange, donate, convey or encumber in any  
15 manner by mortgage or by creation of any other security interest,  
16 real or personal property owned by it, or in which it has an interest,  
17 when, in the judgment of the authority, the action is in furtherance  
18 of its corporate purposes;

19 (9) to accept gifts, grants or loans from, and enter into  
20 contracts or other transactions regarding them, with a federal agency  
21 or an agency or instrumentality of the state, a municipality, private  
22 organization or other source;

23 (10) to deposit or invest its funds, subject to agreements  
24 with bondholders;

25 (11) to enter into contracts or agreements with respect  
26 to the exercise of any of its powers, and to do all things necessary  
27 or convenient to carry out its corporate purposes and exercise the  
28 powers granted in this chapter.

29 **ARTICLE 3. FINANCIAL PROVISIONS.**

1           **Sec. 44.61.090. BONDS OF THE AUTHORITY. (a) The authority**  
2 **may borrow money and may issue bonds therefor, including but not**  
3 **limited to bonds on which the principal and interest are payable,**  
4 **(1) exclusively from the income and receipts or other money derived**  
5 **from the project financed with the proceeds of the bonds, (2)**  
6 **exclusively from the income and receipts or other money derived from**  
7 **designated projects whether or not they are financed in whole or in**  
8 **part with the proceeds of the bonds, or (3) from its income and**  
9 **receipts or other assets generally, or a designated part or parts**  
10 **of them.**

11           **(b) Bonds shall be authorized by resolution of the authority,**  
12 **and shall be dated and shall mature as the resolution may provide,**  
13 **except that no bond shall mature more than 40 years from the date**  
14 **of its issue. Bonds shall bear interest at the rate or rates, be**  
15 **in the denominations, be in the form, either coupon or registered,**  
16 **carry the registration privileges, be executed in the manner, be**  
17 **payable in the medium of payment, at the place or places, and be**  
18 **subject to the terms of redemption which the resolution or a**  
19 **subsequent resolution may provide.**

20           **(c) All bonds, regardless of form or character, shall be nego-**  
21 **tiable instruments for all the purposes of the Uniform Commercial**  
22 **Code.**

23           **(d) All bonds may be sold at public or private sale in the**  
24 **manner, for the price or prices, and at the time or times which the**  
25 **authority may determine.**

26           **(e) Before the issuance of any bonds, the authority shall make**  
27 **provision by lease or other agreement regarding the project or**  
28 **projects being financed by the issue of the bonds for rentals or other**  
29 **considerations at least sufficient, in the judgment of the authority,**

1 to pay the principal of and interest on the bonds as they become due  
2 and to create and maintain the reserves therefor as the authority  
3 considers necessary or desirable and to meet all obligations in  
4 connection with the lease or other agreement and all costs necessary  
5 to service the bonds unless the lease or agreement provides that the  
6 obligations are to be met or costs are to be paid by a party other  
7 than the authority.

8 (f) The superior court shall have jurisdiction to hear and  
9 determine suits, actions or proceedings relating to the authority,  
10 including suits, actions or proceedings brought to foreclose or  
11 otherwise enforce a mortgage, pledge, assignment or security interest  
12 or brought by or for the benefit or security of a holder of its  
13 bonds or by a trustee for or other representative of the holders.

14 Sec. 44.61.100. TRUST INDENTURES AND TRUST AGREEMENTS. In  
15 the discretion of the authority, an issue of bonds may be secured  
16 by a trust indenture or trust agreement between the authority and  
17 a corporate trustee (which may be a trust company, bank, or national  
18 banking association, with corporate trust powers, located inside or  
19 outside the state) or by a secured loan agreement or other instrument  
20 or under a resolution giving powers to a corporate trustee (hereinafter  
21 in this section referred to as "Trust Agreement") by means of which  
22 the authority may:

23 (1) make and enter into any and all the covenants and  
24 agreements with the trustee or the holders of the bonds which the  
25 authority may determine to be necessary or desirable, including,  
26 without limitation, covenants, provisions, limitations and agreements  
27 as to

28 (A) the application, investment, deposit, use and  
29 disposition of the proceeds of bonds of the authority or of

1 money or other property of the authority or in which it has  
2 an interest;

3 (B) the fixing and collection of rents or other  
4 consideration for, and the other terms to be incorporated in  
5 a lease or contract of sale of a project;

6 (C) the assignment by the authority of its rights  
7 in the lease or contract of sale of a project or in a mortgage  
8 or other security interest created with respect to a project  
9 to a trustee for the benefit of bondholders;

10 (D) the terms and conditions upon which additional  
11 bonds of the authority may be issued;

12 (E) the vesting in a trustee of rights, powers,  
13 duties, funds or property in trust for the benefit of bondholders,  
14 including, without limitation, the right to enforce payment,  
15 performance and all other rights of the authority or of the  
16 bondholders, under a lease, contract of sale, mortgage, security  
17 agreement, or trust agreement with respect to a project by  
18 mandamus or other proceeding or by taking possession of by  
19 agent or otherwise and operating a project and collecting rents  
20 or other consideration and applying the same in accordance with  
21 the trust agreement;

22 (2) pledge, mortgage or assign money, leases, agreements,  
23 property or other assets of the authority either presently in hand or  
24 to be received in the future, or both; and

25 (3) provide for any other matters of like or different  
26 character which in any way affect the security or protection of the  
27 bonds.

28 Sec. 44.61.110. VALIDITY OF PLEDGE. It is the intention of the  
29 legislature that a pledge made in respect of bonds shall be valid

1 and binding from the time the pledge is made; that the money or  
2 property so pledged and thereafter received by the authority shall  
3 immediately be subject to the lien of the pledge without physical  
4 delivery or further act; and that the lien of the pledge shall be  
5 valid and binding as against all parties having claims of any kind  
6 in tort, contract or otherwise against the authority irrespective of  
7 whether the parties have notice. Neither the resolution, trust agree-  
8 ment nor any other instrument by which a pledge is created need be  
9 recorded or filed under the provisions of the Uniform Commercial Code  
10 to be valid, binding or effective against the parties.

11 **Sec. 44.61.120. NONLIABILITY ON BONDS.** (a) Neither the members  
12 of the authority nor a person executing the bonds shall be liable  
13 personally on the bonds or be subject to personal liability or  
14 accountability by reason of the issuance of the bonds.

15 (b) The bonds issued by the authority shall not constitute an  
16 indebtedness or other liability of the state or of a political  
17 subdivision of the state, except the authority, but shall be payable  
18 solely from the income and receipts or other funds or property of the  
19 authority. The authority may not pledge the faith or credit of the  
20 state or of a political subdivision of the state (except the authority)  
21 to the payment of a bond and the issuance of a bond by the authority  
22 shall not directly or indirectly or contingently obligate the state  
23 or a political subdivision of the state to apply money from, or levy  
24 or pledge any form of taxation whatever to the payment of the bond.

25 **Sec. 44.61.130. PLEDGE OF THE STATE.** The state does hereby  
26 pledge to and agree with the holders of bonds issued under this  
27 chapter and with the federal agency which loans or contributes funds  
28 in respect to a project, that the state will not limit or alter the  
29 rights and powers vested in the authority by this chapter to fulfill

1 the terms of any contract made by the authority with the holders or  
2 federal agency, or in any way impair the rights and remedies of the  
3 holders until the bonds, together with the interest on them, with  
4 interest on unpaid installments of interest, and all costs and  
5 expenses in connection with any action or proceeding by or on behalf  
6 of the holders, are fully met and discharged. The authority is  
7 authorized to include this pledge and agreement of the state, insofar  
8 as it refers to holders of bonds of the authority, in a contract with  
9 the holders, and insofar as it relates to a federal agency, in a  
10 contract with such an agency.

11 Sec. 44.61.140. EXEMPTION FROM TAXATION. (a) The real and  
12 personal property of the authority and its assets, income and receipts  
13 are declared to be property of a political subdivision of the state  
14 and, together with any project financed under this chapter and a lease-  
15 hold interest created in a project occupant or other person under this  
16 chapter, devoted to an essential public and governmental function and  
17 purpose, and the property, assets, income, receipts, project and  
18 leasehold interests shall be exempt from all taxes and special  
19 assessments of the state or a political subdivision of the state,  
20 including, without limitation, all boroughs, cities, municipalities,  
21 school districts, public utility districts and other taxing units.  
22 All bonds of the authority are declared to be issued by a political  
23 subdivision of the state and for an essential public and governmental  
24 purpose and to be a public instrumentality and the bonds, and the  
25 interest on them, the income from them and the transfer of the bonds,  
26 and all assets, income and receipts pledged to pay or secure the  
27 payment of the bonds, or interest on them, shall at all times be  
28 exempt from taxation by or under the authority of the state, except  
29 for inheritance and estate taxes and taxes on transfers by or in

1 contemplation of death. Nothing in this section shall affect or limit  
2 an exemption from license fees, property taxes, or excise, income or  
3 any other taxes, provided under any other law.

4 (b) The authority may enter into agreements with a proposed  
5 project occupant or project occupant providing for payments, computed  
6 on a formula basis or otherwise, in lieu of taxes, which the authority  
7 may consider appropriate. The agreement may provide that the payments  
8 be made to the political subdivision of the state in which a project  
9 is or is to be located or to any other taxing unit of the state  
10 including, without limitation, a borough, city, municipality, school  
11 district or public utility district, the area of which is coterminous  
12 in whole or in part with that of the political subdivision.

13 (c) For the purposes of AS 14.17 relating to the computation of  
14 the required local effort by a district as defined in AS 14.17.250(3),  
15 all property exempted from taxation by this chapter shall be considered  
16 taxable real and personal property.

17 Sec. 44.61.150. BONDS LEGAL INVESTMENTS FOR FIDUCIARIES. The  
18 bonds of the authority are securities in which all public officers and  
19 bodies of the state and all municipalities and municipal subdivisions,  
20 all insurance companies and associations and other persons carrying on  
21 an insurance business, all banks, bankers, trust companies, savings  
22 banks, savings associations, including savings and loan associations  
23 and building and loan associations, investment companies and other  
24 persons carrying on a banking business, all administrators, guardians,  
25 executors, trustees and other fiduciaries, and all other persons  
26 whatsoever who are now or may hereafter be authorized to invest in  
27 bonds or other obligations of the state, may properly and legally  
28 invest funds including capital in their control or belonging to them.  
29 Notwithstanding any other provisions of law, the bonds of the authority

1 are also securities which may be deposited with and may be received by  
2 all public officers and bodies of this state and all municipalities  
3 and municipal subdivisions for any purpose for which the deposit of  
4 bonds or other obligations of the state is now or may hereafter be  
5 authorized.

6 **ARTICLE 4. GENERAL PROVISIONS.**

7 **Sec. 44.61.160. FINDINGS OF THE AUTHORITY.** Before entering into  
8 a lease or other agreement regarding a project as mentioned in sec.  
9 90(a) of this chapter there must have been filed with the authority a  
10 certified copy of a resolution of the governing body of the political  
11 subdivision of the state, if any, in which the project is to be  
12 located, consenting to the location (which consent need only refer  
13 to the general nature of the project ultimately to be acquired as  
14 set out in a request of the proposed project occupant), and the  
15 authority must find, on the basis of all information reasonably avail-  
16 able to it, that

17 (1) the project and its development under this chapter will  
18 be economically advantageous to the state and the general public  
19 welfare and will contribute to the economic growth of the state;

20 (2) the project occupant is financially responsible; and

21 (3) provision to meet increased demand upon public facilities  
22 that might result from the project is reasonably assured.

23 **Sec. 44.61.170. PURCHASE OF PROJECT AND LEASES.** (a) No provi-  
24 sion of this chapter shall prevent the inclusion in a lease or other  
25 agreement relating to a project of a provision granting the right to  
26 purchase the project, or to renew or extend the lease or agreement,  
27 upon the terms and conditions which may be provided for in the lease  
28 or agreement.

29 (b) A lease with respect to a project may provide for two or

1 more lessees with the legal relationship between themselves and the  
2 authority which the authority may approve, including without limitation,  
3 provisions to the effect that the obligations of the lessees under the  
4 lease for payment of rental or otherwise between themselves and the  
5 authority are several, joint, or joint and several and that said  
6 lessees lease the project as tenants-in-common, or otherwise.

7       Sec. 44.61.180. CONFLICTS OF INTEREST. (a) No member of the  
8 authority may vote on a resolution of the authority relating to a  
9 lease or contract to be entered into by the authority under this  
10 chapter if he is a party to the lease or contract or has a direct  
11 ownership or equity interest in a firm, partnership, corporation or  
12 association which may be a party to the contract or lease. If a  
13 person may not vote because of this prohibition, then for all purposes  
14 regarding action of the authority relating to adoption of the resolu-  
15 tion, the position of the person as a member shall be transferred to  
16 the first one of the following state officers who is not then acting  
17 as a member and would not be prohibited from voting on the resolution  
18 because of the same prohibition: commissioner of administration,  
19 attorney general, commissioner of revenue, commissioner of health and  
20 welfare, commissioner of labor, commissioner of public works, commis-  
21 sioner of public safety.

22       (b) Such state officer shall serve as such a member from time to  
23 time and for all purposes of this chapter shall be a member for the  
24 purpose of voting on the resolution but after each such vote the  
25 authority shall again consist of the members referred to in sec. 30  
26 of this chapter only, until one or more members may not again vote on  
27 a resolution because of the prohibition.

28       Sec. 44.61.190. OPERATION OF CERTAIN STATUTES EXCEPTED. (a) The  
29 authority shall not be considered or constitute (1) a political

1 subdivision of the state as the term is used in AS 37.10.085, (2) a  
2 municipal corporation or political subdivision of the state as the  
3 terms are used in AS 29, or (3) a state agency as the term is used  
4 in AS 37, but for all other purposes the authority constitutes a  
5 political subdivision and an instrumentality of the state as provided  
6 in this chapter.

7 (b) The funds, income or receipts of the authority shall not  
8 be considered or constitute money of the state, nor shall real property  
9 in which the authority has an interest be considered land owned in  
10 fee by the state or to which the state may become entitled or in any  
11 way lands belonging to the state, or state lands referred to in  
12 Art. VIII of the Alaska Constitution.

13 Sec. 44.61.200. ANNUAL AUDIT. The authority shall have its  
14 financial records audited annually by the legislative auditor or by  
15 a certified public accountant approved by the legislative auditor.  
16 The legislative auditor may prescribe the form and content of the  
17 financial records of the authority and shall have access to these  
18 records at any time.

19 Sec. 44.61.210. ANNUAL REPORT. Before December 1 of each year,  
20 the authority shall submit to the governor and the legislature a  
21 comprehensive report, in form prescribed by the governor, describing  
22 operations, income and expenditures for the preceding 12-month period.

23 \* Sec. 2. This Act takes effect on the day after its passage and approval  
24 or on the day it becomes law without approval.  
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