AMENDED

March 29, 2017

**H. 3450**

Introduced by Rep. Spires

S. Printed 3/29/17--H.

Read the first time January 12, 2017.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on January 12, 2017**

**State Expenditure**

This bill requires a person to be licensed by Board of Medical Examiners (board) to practice or teach electrology, or represent himself or herself as authorized to practice or teach electrology. Requirements to be licensed to practice or teach electrology are specified in the bill, with the board authorized to promulgate other requirements by regulation.

The bill creates an Electrology Licensure Committee of five members appointed by the Governor to serve as an advisory body to the board, and in some cases, to act under the auspices of the board. The committee is authorized to employ staff and have a licensed physician available as a consultant. The committee is required to meet at least twice annually. Committee members are entitled to per diem, subsistence, and mileage. Among its responsibilities, the committee is required to adopt practice standards; recommend licensing procedures; recommend continuing education requirements; conduct investigations and hearings of violations; conduct or cause inspections of electrology offices; initially establish reasonable fees to cover the cost of the committee’s operations; provide for the administration of examinations; and recommend standards for, and evaluate and approve electrology education programs.

The board is directed to promulgate regulations establishing license, examination and inspection fees, which are to support the program; continuing education requirements; standards for the imposition of civil penalties for violations by an applicant or licensee, which may be used by the committee to reimburse its enforcement expenses; and as noted above, additional requirements for licensure.

Violations of provisions of this bill are a misdemeanor, punishable by imprisonment of not more than one year, or a fine of not more than $50,000.

**Department of Licensing, Labor, and Regulation.** The department indicates this bill will have an undetermined expenditure impact on other funds. New duties will result in expenditures from other funds of at least $44,063 for one FTE and $1,200 for a laptop computer. The salary will consist of $26,998 plus $15,875 in employer contributions. However, other costs are undetermined.

The committee is allowed to employ staff, have a physician available as a consultant, investigate violations, conduct inspections, and administer examinations. Board members must be compensated for mileage, subsistence, and per diem. However, due to the unknown number of applicants and licensees, travel requirements, number of committee meetings, and the need to consult a physician and his or her rates, the full expenditure impact is undetermined. The bill will have no expenditure impact on the general fund or federal funds.

**State Revenue**

This bill allows for licensure, inspection and examination fees to be charged to electrology license applicants and licensees. The board does not know the demand for licenses, and is unable to estimate the expected revenue. Fees borne by applicants are expected to generate the revenue needed to address any anticipated expenditures.

The amount of revenue that would be generated from fines imposed for criminal violations is undetermined, because the bill creates new offenses for which data is not available. Any revenue would be distributed to the general fund, state agencies and local government according to existing statutes.

**Local Revenue**

The amount of revenue from fines imposed for criminal violations is undetermined, because the bill creates new offenses for which data is not available. Any revenue would be distributed to the general fund, state agencies and local government according to existing statutes.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “ELECTROLOGY PRACTICE ACT” BY ADDING ARTICLE 11 TO CHAPTER 47, TITLE 40 SO AS TO PROVIDE A CITATION, TO PROVIDE PURPOSES, TO PROVIDE NECESSARY DEFINITIONS, TO PROHIBIT CERTAIN CONDUCT CONCERNING THE PRACTICE AND TEACHING OF ELECTROLOGY WITHOUT LICENSURE, TO CREATE THE ELECTROLOGY LICENSURE COMMITTEE AS AN ADVISORY BOARD UNDER THE AUSPICES OF THE COSMETOLOGY BOARD, TO PROVIDE FOR THE COMPOSITION AND ORGANIZATION OF THE COMMITTEE, TO PROVIDE THE POWERS AND DUTIES OF THE COMMITTEE, TO PROVIDE REQUIREMENTS FOR LICENSURE AS AN ELECTROLOGIST AND REQUIREMENTS FOR LICENSURE AS AN ELECTROLOGY INSTRUCTOR, TO PROVIDE REQUIREMENTS FOR THE CONDUCT OF LICENSEES, TO PROVIDE PROCEDURES FOR VOLUNTARY SURRENDER OF A LICENSE AND SUBSEQUENT REINSTATEMENT, TO PROVIDE PENALTIES FOR VIOLATIONS, AND TO PROVIDE DISCIPLINARY PROCEDURES FOR VIOLATIONS, AMONG OTHER THINGS.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 47, Title 40 of the 1976 Code is amended by adding:

“Article 11

Electrology Practice Act

Section 40‑47‑1700. This article must be known and may be cited as the ‘Electrology Practice Act’.

Section 40‑47‑1705. The purposes of this article are to ensure minimum standards of competency, protect the public from misrepresentation of status and qualifications by persons who hold themselves out to be ‘licensed electrologists’ or ‘licensed electrology instructors’, and provide the public with safe care by the mandatory licensing of electrologists and electrology instructors.

Section 40‑47‑1710. As used in this article:

(1) ‘Board’ means the Board of Medical Examiners of South Carolina.

(2) ‘Committee’ means the Electrology Licensure Committee.

(3) ‘Electrologist’ means an individual who practices electrology.

(4) ‘Electrology’ means the art and practice relating to the removal of hair from the normal skin of the human body by application of an electric current to the hair papilla by means of a needle or needles so as to cause growth inactivity of the hair papilla and thus permanently remove the hair.

(5) ‘Electrology instructor’ means an individual who practices electrology and teaches an electrology education program.

(6) ‘License’ means, unless the context requires otherwise, a license issued by the board to practice:

(a) electrology; or

(b) electrology and teach an electrology education program.

(7) ‘Licensed electrologist’ means an electrologist who is licensed pursuant to this article to practice electrology.

(8) ‘Licensed electrology instructor’ means an electrologist licensed pursuant to this article to practice electrology and teach an electrology education program.

Section 40‑47‑1715. (A) A person may not practice, attempt to practice, or offer to practice electrology, or teach, attempt to teach, or offer to teach an electrology education program in this State unless licensed pursuant to this article or practicing electrology as a student in an approved clinical electrology education program.

(B) A person may not represent to the public by title, description of services, methods, procedures, or otherwise that the person is authorized to practice electrology or to teach an electrology education program in this State unless licensed pursuant to this article.

(C) A person who violates a provision of this article is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than fifty thousand dollars, pursuant to Section 40‑1‑200.

Section 40‑47‑1720. (A)(1) There is created the Electrology Licensure Committee, an advisory committee under the auspices of the board. The committee shall consist of five members appointed by the Governor and who are residents of the State, including:

(a) three electrologists who have actively been engaged in the practice of electrology for at least three years and are licensed by the committee;

(b) one physician licensed by the State; and

(c) a public member who has not practiced electrology, who is not in training to become an electrologist, who does not participate in the electrology field, and who is not immediately related to anyone who has practiced electrology, trained to become an electrologist, or participates in the electrology field.

(2) In nominating the three initial electrologist members of the board, the Governor must accept nominations for appointment from the South Carolina Association of Electrologists. If the Governor does not approve the recommendations, the association may provide the Governor with another list of nominees. The Governor may select a nominee from the second list provided, if any, or appoint another suitable candidate of the Governor’s choice. (B)(1) A member is appointed for a term of three years and may serve until a successor is appointed and qualified.

(2)(a) Of the members initially appointed:

(i) one of the electrologist members shall serve a term of one year;

(ii) the public member and a second electrologist member shall serve a term of two years; and

(iii) the physician member and a third electrologist member shall serve a term of three years.

(b) The terms of all initial appointments shall commence within thirty days after the effective date of this act.

(3) A member may serve not more than two consecutive full terms.

(C) A vacancy must be filled by the Governor to serve the remainder of an unexpired term and until his successor is appointed and qualified.

(D) The Governor or the board may remove a committee member for gross neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings is disqualified from all committee business until the charges are resolved.

(E) A member of the committee is entitled to per diem, subsistence, and mileage as provided by law for members of state boards, committees, and commissions.

(F) The committee may employ a staff and have a physician licensed by this State available as a consultant.

(G) The committee shall elect, from among its members, a chairman, a secretary, and a treasurer, and other officers that the committee considers appropriate. The committee shall determine the manner of election of officers and their terms of office.

(H) The committee annually shall hold at least two meetings to conduct its business, and shall adopt rules governing the calling, holding, and conducting of regular and special meetings. A majority of the members shall constitute a quorum.

Section 40‑47‑1725. In addition to the powers and duties set forth elsewhere in this article, the committee shall:

(1) adopt standards for the practice of electrology and for electrology instruction, and recommend procedures related to licensing to the board to be promulgated by the board in regulation;

(2) keep records of its proceedings;

(3) keep a list of all currently licensed electrologists and licensed electrology instructors;

(4) submit an annual report to the board on duties performed, actions taken and recommendations made;

(5) recommend continuing education requirements to be promulgated in regulation;

(6) conduct investigations and hearings under the auspices of the board concerning an alleged violation of this article, and make findings and recommendations to the board for penalties and sanctions for the violation, which the board may adopt;

(7) incur necessary expenses in conducting its business and that relate to the referral of an alleged violation of the criminal provisions of this article;

(8) review, at its discretion, advertising by licensed electrologists or licensed electrology instructors; and

(9) conduct or cause to be conducted inspections of electrology offices for compliance with provisions of this article and regulations promulgated pursuant to this article and the Centers for Disease Control.

Section 40‑47‑1730. (A) The committee shall recommend to the board regulations to establish reasonable fees for the issuance and renewal of licenses, for examination of applicants and licensees and inspection of their offices, and for its other services, and the board shall promulgate these regulations upon its approval. These fees must be sufficient, but not excessive, to cover expenses for carrying out the operations of the committee. The committee shall receive and account for all monies under a provision of this article and shall pay all monies collected to the board for deposit with the State Treasurer as provided for by law. Except as provided temporarily in subsection (B), no fee may be charged pursuant to this section.

(B) The committee initially may by rule establish the fees provided in subsection (A) which only may be in effect for a period of eighteen months after the effective date of this act, during which time the board must promulgate regulations to permanently provide for the fees. The temporary fees provided in this subsection expire when these regulations take effect.

Section 40‑47‑1735. To apply for a license as an electrologist, an applicant must:

(1) be at least eighteen years of age;

(2) be a high school graduate or have completed equivalent education;

(3) either:

(a) have successfully completed an electrology education program in this State approved by the committee and taught by a licensed electrology instructor that includes six hundred hours of instruction in the theory and clinical practice of electrology, or another amount of time as provided for in regulation, and meets the requirements for content recommended by the committee and established by the board; or

(b) have successfully completed an electrology education program in another state that is approved by the committee as being substantially equal in content and hours to that required of schools in this State;

(4) submit to the committee an application on a form prescribed by the committee;

(5) pay to the committee an application fee and an office inspection fee;

(6) pay for and pass a written examination pursuant to Section 40‑47‑1745 or be exempt from examination pursuant to Section 40‑47‑1745 or Section 40‑47‑1750;

(7) agree to initial and subsequent onsite inspections of the facilities used in electrology;

(8) agree to comply with infection‑control standards for the practice of electrology as established by the Centers for Disease Control or other organization specified in the rules and regulations, including, but not limited to, independent sterilization testing; and

(9) meet other requirements as provided for in regulation.

Section 40‑47‑1740. To apply for a license as an electrology instructor, an applicant must:

(1) be a licensed electrologist;

(2) have practiced electrology actively for at least four years before applying;

(3) submit to the committee an application on a form prescribed by the committee;

(4) pay to the committee an application and school inspection fee;

(5) agree to initial and subsequent onsite inspections of the facilities used in electrology instruction;

(6) agree to comply with infection control standards for the practice of electrology as established by the Centers for Disease Control or other organization specified in rules and regulations, including, but not limited to, independent sterilization testing; and

(7) meet other requirements as provided in regulation.

Section 40‑47‑1745. (A) An applicant shall pay for and pass the International Board of Electrologist Certification examination or other similar examination approved by the committee, administered pursuant to regulation.

(B) The committee shall administer or coordinate administration of examinations to applicants at least once a year at the times and places that the committee determines. The committee may provide for reexaminations to applicants who fail all or part of the examination at the times and places that the committee determines. The committee shall have the final decision in determining the subjects, scope, form, and passing score for examinations required pursuant to this article. An examination must include a section on the theory of electrology, a section on the clinical practice of electrology and a section on proper sterilization and infection control techniques.

(C) An applicant may retake an examination or a failed section of an examination after paying the committee a reexamination fee, as provided for in regulation. An applicant who fails two reexaminations only may retake the examination if he:

(1) retakes the entire examination;

(2) pays the full examination fee; and

(3) completes additional training as required by the committee.

(D) The committee shall waive the examination for an applicant who is licensed to practice electrology in another state if the applicant provides evidence acceptable to the committee that he:

(1) meets the qualifications otherwise required by this article;

(2) became licensed in the other state after passing in that or another state an examination that is substantially equal to the examination for which the applicant is seeking the waiver; and

(3) became licensed in the other state after meeting requirements that are substantially equal to the requirements of this article.

(E) The committee shall waive the examination for an applicant who presents evidence of having passed the American Electrology Association Certified Professional Electrology examination.

(F) Unless authorized by the committee, the public member may not participate in an activity related to examinations required pursuant to this article.

Section 40‑47‑1750. (A) The committee shall, after an applicant meets additional requirements of subsection (B), waive the licensing requirements pursuant to Section 40‑47‑1735(3) and (6), if the applicant applies for licensure within one hundred eighty days after the effective date of this act and has been actively engaged in the practice of electrology in this State during the three years immediately preceding the date of application. For purposes of this section, ‘actively engaged in the practice of electrology’ means that an applicant has performed electrology on a regular basis for compensation, which the applicant can substantiate by providing evidence of paid advertising, tax returns, or other written records of compensation, affidavits from clients or business owners who can attest to the applicant practicing electrology for compensation, or other evidence acceptable to the committee. The applicant shall provide this evidence to the committee with a notarized affidavit certifying its authenticity.

(B) The committee may require an applicant seeking exemption from education and examination requirements under this section to undertake additional instruction in infection control standards for the practice of electrology, as established by the Centers for Disease Control or other organization as provided in regulation, if the applicant is unable to provide evidence of adequate prior instruction. This additional instruction must be determined by the committee and must be taken from an approved instructor.

Section 40‑47‑1755. (A) The board, upon the recommendation of the committee, shall issue a license to an applicant who meets the requirements of this article, pays applicable license and inspection fees, and receives a satisfactory inspection of his electrology facility. The committee shall include on each license a designation as an electrologist license or an electrology instructor license.

(B) A licensed electrologist only may use the title ‘licensed electrologist’ and the abbreviation ‘L.E.’. A licensed electrology instructor also may use the title ‘licensed electrology instructor’ and the abbreviation ‘L.E.I.’. In addition, a licensee may use the title ‘Certified Professional Electrologist’ and the abbreviation ‘C.P.E.’ if the licensee has an unexpired certificate for this designation from the International Board of Electrology Certification of the American Electrology Association.

(C) A licensee only may practice electrology in a permanent establishment, referred to in this article as an office. The board shall, with input from the committee, promulgate regulations concerning sanitation standards, equipment, supplies, and facilities to be used and maintained in an office. An office is subject to random and periodic inspections during business hours by members of the committee or its agents or assistants.

(D) A licensed electrologist shall notify the committee in writing no later than ten business days after a change of address or opening of a new office.

(E) A licensed electrologist shall display the license in a conspicuous place in the office.

Section 40‑47‑1760. (A) A license issued pursuant to this article for an electrologist or electrology instructor is valid for two years and must be renewed biennially. At least one month before the license expires, the committee shall send to the licensee, by first class mail to the last known address provided by the licensee, a renewal notice that states:

(1) the date on which the current license expires:

(2) the date by which the renewal application must be received by the committee for the renewal to be issued and mailed before the license expires; and

(3) the amount of the renewal fee as provided for in the rules.

(B) The board, upon the recommendation of the committee, shall renew the license of a licensee who submits a renewal application on a form prescribed by the committee, pays the renewal fee, submits satisfactory evidence of compliance with continuing education requirements pursuant to Section 40‑47‑1765, has complied with all sterilization testing requirements and has received satisfactory facility inspections, if any, all as provided for in regulation.

(C) Any person who has failed to renew a license for more than ninety days after expiration may have it reinstated by applying to the committee for reinstatement on a form approved by the committee, furnishing a statement of the reason for failure to apply for renewal prior to the deadline and paying the required fee. Beyond ninety days, the committee may require the applicant to provide evidence of competency, including repeating any or all of the requirements of Section 40‑47‑1735.

(D) A licensee is solely responsible for notifying the committee of any change of address for correspondence.

Section 40‑47‑1765. (A) The committee shall recommend to the board for promulgation in regulation the number of hours and subject matter of continuing education required as a condition of license renewal. The committee may offer continuing education to the licensees under this article or may approve programs offered at other institutions or by other electrologists.

(B) Upon request, the committee may grant approval to a continuing education program or course upon finding that the program or course offers a worthwhile educational experience for licensed electrologists.

(C) Upon application for license renewal, each licensee shall provide the committee with records or transcripts of the approved educational course work completed, including the subject matter and the number of hours of each course.

Section 40‑47‑1770. (A) Upon written request by a licensee for inactive status, the committee shall place the licensee’s name on the inactive list. While on the inactive list, the person is subject to renewal requirements and may not practice electrology in this State.

(B)(1) A person on inactive status who seeks to return to active status shall submit to the committee a:

(a) reactivation application on a form furnished by the committee; and

(b) reactivation fee.

(2) If the period of inactivity has exceeded two years, the committee may require the applicant to provide evidence of competency, including repeating any requirements of Section 40‑47‑1735, before returning the applicant to the active status. A person whose license has lapsed or expired for a period of five years or more must take and pass the examination for licensure before the license can be reactivated.

Section 40‑47‑1775. (A) A licensed electrologist or licensed electrology instructor may voluntarily surrender a license by expressing this voluntary surrender in writing to the committee and returning the license to the committee. If the license is lost, the individual shall submit a notarized statement to that effect to the committee.

(B) A licensed electrologist or licensed electrology instructor may not surrender his license and the license may not lapse by operation of law while the licensee is under investigation or while charges are pending against the licensee, unless the committee agrees to accept the surrender of a license. However, the committee may set conditions on its agreement with the licensed electrologist or licensed electrology instructor under investigation or against whom charges are pending to accept surrender of the license.

Section 40‑47‑1780. (A) Regarding electrology education programs, the committee also shall:

(1) recommend standards by which a program may be approved for the board to promulgate in regulation;

(2) survey and evaluate proposed programs;

(3) evaluate the need for a program in the geographical area in which the program will be located;

(4) keep a list of institutions that currently offer electrology education programs that are approved by the committee pursuant to this section; and

(5) encourage schools of higher learning to establish programs in the theory and practice of electrology.

(B) Before an institution may operate an electrology education program in this State, the committee must approve the program. The institution first shall submit evidence to the committee that the institution is prepared to:

(1) meet the standards provided in subsection (A)(1); and

(2) carry out an education program of at least six hundred combined instructional hours or another amount of time as provided for in regulation, in the:

(a) theory of electrology, pursuant to the provisions of Section 40‑47‑1735; and

(b) clinical practice of electrology, pursuant to the provisions of Section 40‑47‑1735.

(C) The committee periodically may evaluate electrology programs in this State. If an institution that offers an approved electrology education program violates a standard provided in subsection (A)(1), the committee shall give the institution specific written notice of the violation.

(D) The committee may remove an institution from a list of institutions that offer approved electrology education programs, subject to the hearing provisions of Section 40‑47‑1795 if the institution:

(1) is guilty of fraud or deceit in obtaining or attempting to obtain approval;

(2) acts in a manner inconsistent with generally accepted standards for the practice of electrology;

(3) advertises in a manner that the board determines violates this article;

(4) violates the standards provided in this article and does not correct the violation in a reasonable time after notice is given; or

(5) no longer operates a program that qualifies for approval under this article.

(E) An action taken pursuant to this section must comply with the notice and hearing provisions of the Administrative Procedures Act.

(F) Nothing in this article shall prevent a cosmetology school licensed pursuant to Chapter 13, Title 40 from submitting an electrology education program to the committee for approval.

Section 40‑47‑1785. (A) Subject to the hearing provisions of Section 40‑47‑1795, the board, upon the recommendation of the committee, may deny a license or renewal of a license to an applicant or licensee, reprimand a licensee, place a licensee on probation, or suspend or revoke a license if the applicant or licensee:

(1) fraudulently or deceptively obtains or attempts to obtain or renew a license for the applicant or licensee or for another;

(2) fraudulently or deceptively uses a license;

(3) as part of the practice of electrology, knowingly acts beyond the scope of the practice of electrology, as provided in this article;

(4) is grossly negligent in practicing electrology or in teaching an electrology education program;

(5) acts in a manner inconsistent with generally accepted standards for the practice of electrology;

(6) is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not an appeal or other proceeding is pending to have the conviction or plea set aside;

(7) is disciplined by a licensing or disciplinary authority of another state or country, or is convicted or disciplined by a court of another state or country for an act that would be grounds for disciplinary action pursuant to this article;

(8) provides professional services while under the influence of alcohol or uses a narcotic or controlled substance, as defined in Section 44‑53‑110, or another drug that is in excess of therapeutic amounts or without valid medical indication;

(9) practices electrology with an unauthorized person or supervises or aids an unauthorized person in the practice of electrology;

(10) wilfully makes or files a false report or record in the practice of electrology;

(11) wilfully fails to file or record a report as required by law; wilfully impedes or obstructs the filing or recording of the report or induces another to fail to file or record the report;

(12) submits a false statement to collect a fee;

(13) violates a provision of this article;

(14) uses or promotes or causes the use of misleading, deceiving, or untruthful advertising matter, promotional literature, or testimonial, or advertising that violates a provision of this article;

(15) is professionally, physically, or mentally incompetent;

(16) promotes the sale of devices, appliances, or goods to a patient so as to exploit the patient for financial gain;

(17) behaves immorally in the practice of electrology;

(18) commits an act of unprofessional conduct in the practice of electrology;

(19) does not comply with infection control standards for the practice of electrology as established by the Centers for Disease Control or another agency mandated by the committee in regulation, including, but not limited to, failure to submit to independent sterilization testing; or

(20) fails to remedy a violation of a regulation noted as a result of an office inspection.

(B) If a license is suspended or revoked for a period of more than one year, the board, upon the recommendation of the committee, may reinstate the license after one year.

Section 40‑47‑1790. (A) If after a hearing pursuant to Section 40‑47‑1795, the committee finds that there are grounds pursuant to Section 40‑47‑1785 to suspend or revoke a license, an individual whose license is being revoked or suspended shall return the license to the committee. If the license is lost, the individual shall submit a notarized statement to that effect to the committee.

(B) If after a hearing pursuant to Section 40‑47‑1795, the committee finds that there are grounds pursuant to Section 40‑47‑1785 to suspend or revoke a license, the board, upon recommendation of the committee, may impose a penalty instead of suspending the license or in addition to suspending or revoking the license.

(C) The board, upon the recommendation of the committee, shall promulgate regulations to set standards for the imposition of penalties under this section.

(D) The committee shall use a penalty collected pursuant to this section to reimburse its costs for enforcing the terms of this article and the rules promulgated pursuant to this article, and shall provide any excess to the board for deposit with the State Treasurer as provided for by law.

Section 40‑47‑1795. (A) Before taking an action pursuant to Sections 40‑47‑1780, 40‑47‑1785, or 40‑47‑1790, the committee shall give the person against whom the action is contemplated an opportunity for a hearing before the committee.

(B) The committee shall give notice in writing at least thirty days before the hearing and hold the hearing pursuant to the Administrative Procedures Act.

(C) The person may be represented at the hearing by counsel.

(D) The board, upon request of the committee, shall issue subpoenas, and the committee shall administer oaths in connection with a proceeding under this section.

(E) If after due notice the person against whom the action is contemplated fails or refuses to appear, the committee may hear and determine the matter in the person’s absence.

Section 40‑47‑1800. A person aggrieved by a final decision of the board, upon the recommendation of the committee, in a contested case, as defined in the Administrative Procedures Act, may appeal the decision in accordance with the Administrative Procedures Act.”

SECTION 2. This act takes effect upon approval by the Governor.

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