Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 490 of the 130th G.A. **Date**: November 19, 2014

Status: As Reported by House Agriculture and Natural Resources **Sponsor**: Reps. Hall and Thompson

Local Impact Statement Procedure Required: No

Contents: Revises various laws relative to agriculture, natural resources, and environmental protection

State Fiscal Highlights

Department of Agriculture

- The bill transfers oversight of the Agricultural Pollution Abatement Program and the Agricultural Pollution Abatement Fund from the Department of Natural Resources to the Department of Agriculture.
- The bill requires the Department of Agriculture to administer the provisions in the bill that prohibit the application of fertilizer and manure (the latter after its transfer from the Department of Natural Resources) in the western basin of Lake Erie on frozen ground, saturated soil, and during certain weather conditions. The Department of Agriculture may incur new oversight costs as a consequence. These costs would be offset by civil penalties collected from violators. The receipts would presumably be deposited into the Agricultural Pollution Abatement Fund once transferred from the Department of Natural Resources.
- The bill creates a Deer Sanctuary Program to be overseen by the Department of Agriculture. The costs for administering the new program are to be covered by deer sanctuary license fees. Fees are to be deposited into the Deer Sanctuary Fund created by the bill.

Department of Natural Resources

- The Oil and Gas Well Fund (Fund 5180) could gain minimal new revenues from brine transportation registration fees paid by pipeline operators who apply for a brine transportation registration certificate under the bill.
- The Oil and Gas Well Fund (Fund 5180) could gain new revenues, likely in the tens of thousands of dollars annually, from fees for applications to plug back existing oil and gas wells.
- The Wildlife Fund (Fund 7015) could gain minimal new revenues from fees for incidental taking permits issued to qualified energy facilities.

Environmental Protection Agency

- If Ohio fails to enact the bill's revisions to the statute governing the prevention of lead contamination of drinking water, it becomes ineligible to receive certain federal grant program funds amounting to roughly $24 million a year, of which over 89%, or $21.4 million, is distributed to local governments in the form of loans and grants.
- If the Director of Environmental Protection opts to study nutrient loading to Ohio watersheds, the cost incurred over a two-year period is estimated at $200,000, with required subsequent updates costing $30,000 annually thereafter.

Public Utilities Commission

- The Public Utilities Commission may experience an increase in expenditures to establish a collaborative process to study, and to educate consumers about, the transition from the technology currently used to provide basic telephone service to Internet protocol switched technology. Any such expenditures would likely be paid using the existing main operating appropriation which draws on the Public Utilities Fund (Fund 5F60).

Local Fiscal Highlights

- **Oil and Gas Law and Water Pollution Control Law enforcement**. The bill's changes to the Oil and Gas Law and Water Pollution Control Law, including increases to civil and criminal penalties and allowances for the recovery of costs to respond to certain violations, may result in counties gaining additional fine moneys, and political subdivisions more generally collecting court-ordered response cost recoveries.
- **Federal Safe Drinking Water grants**. If Ohio fails to enact the bill's revisions to the statute governing the prevention of lead contamination of drinking water, local governments would lose around $21.4 million annually that is distributed by the Ohio Environmental Protection Agency to local governments in the form of loans and grants. In addition, local governments would no longer be eligible to apply directly to the U.S. Environmental Protection Agency for infrastructure grants that run in the millions of dollars annually.
- **Local boards of health.** Local boards of health could realize an increase in costs to evaluate household sewage systems of those property owners that opt out of connecting to a sewerage system. However, the bill specifies that the property owner is responsible for costs of the evaluation, so boards might realize a gain in revenue.
- **Local boards of health.** Local boards of health may experience an increase in costs to help develop and approve potential incremental repair or replacement plans if a nuisance is found to exist for certain household sewage systems.

- **Basic local exchange service (BLES).** To the extent that political subdivisions are consumers of BLES, those subdivisions may realize an increase in costs if BLES is withdrawn and the substitutes are more expensive than BLES.

Detailed Fiscal Analysis

The bill makes a number of changes to laws pertaining to agriculture, oil and gas resources, soil and water resources, and other environmental topics. Many of the changes do not have any substantial fiscal impact; that is, they will result in only minimal new administrative costs or can be implemented using existing resources. The provisions that could or do have a more than minimal fiscal effect are discussed below. For further details, please see the LSC Bill Analysis.

Revisions to agriculture laws

Agricultural Pollution Abatement Program

The Agricultural Pollution Abatement Program, currently overseen by the Department of Natural Resources' (DNR) Division of Soil and Water Resources, establishes standards and conservation practices in farming, silvicultural, and animal feeding operations in order to abate excessive soil erosion or the pollution of waters of the state by soil sediment and animal manure. The program also provides cost-sharing assistance to farmers to develop and implement best management practices which protect streams, creeks, and rivers. Under the bill, the Division would continue its responsibilities concerning soil erosion, but oversight of the program's animal manure functions would be transferred to the Department of Agriculture (AGR).

Under the transfer proposed by the bill, AGR would be responsible for establishing technically feasible and economically reasonable standards and enforcing rules intended to mitigate and prevent agricultural pollution from manure and residual farm products. Additionally, AGR would be responsible for establishing practices for composting dead animals and establishing requirements and procedures governing the review and approval or disapproval of composting plans by supervisors of soil and water conservation districts. AGR would also be responsible for determining eligibility standards for cost-sharing projects and administration of the cost-sharing portion of the program. Transferring oversight of these functions will also result in administrative and personal services costs and expenses under the cost-sharing program being shifted from the Division to AGR.

The most significant cost transferred to AGR would likely stem from personal services. According to AGR, three employees would be transferred from DNR to handle the new responsibilities. AGR estimates that personal services costs, including fringe benefits and other miscellaneous employee expenses, would total approximately $300,000 per year. Additionally, expenses under the cost-sharing program could be in the several thousands of dollars annually. For the FY 2012-FY 2013 biennium, DNR

contributed approximately $46,000 to cost-sharing programs. Currently the Division pays cost-sharing project expenses from the Soil and Water Districts Assistance Fund (Fund 5BV0).

Presumably, most of the expenses associated with the transferred responsibilities would be paid from the Agricultural Pollution Abatement Fund. This fund is used to pay costs associated with investigating, mitigating, minimizing, removing, or abating pollution of the waters of the state caused by agricultural pollution or unauthorized release, spill, or discharge of manure or residual farm products that requires emergency action to protect the public health. It is currently used by DNR to carry out these oversight functions, but would be used by AGR under the program transfer in the bill. Revenue from enforcement actions under the Agricultural Pollution Abatement Program, including penalties and judgments from civil actions, would be deposited into the fund to pay administrative and personal services costs as well as for grants under the cost-sharing portion of the program. However, it is uncertain whether enough revenue could be generated from penalties and civil actions to fully support the administrative costs associated with the Agricultural Pollution Abatement Program.

Fertilizer and manure on frozen fields

The bill prohibits application of fertilizer and manure in the western basin of Lake Erie in the following situations: (1) on snow-covered or frozen soil, (2) when the top two inches of soil are saturated from precipitation, or (3) when the weather forecast calls for greater than 50% chance of precipitation exceeding one-half inch in a 24-hour period. The bill requires the Director of AGR to administer the fertilizer provisions and the Chief of the Division of Soil and Water Resources to administer the manure provisions, but transfers the authority to oversee manure application from DNR to AGR on January 1, 2017. Until then, DNR and AGR will investigate complaints and assess civil penalties when necessary. Civil penalties would presumably be deposited into the Agricultural Pollution Abatement Fund.

Deer Sanctuary Program

The bill creates a Deer Sanctuary Program that will be overseen by the Department of Agriculture. A person who engages in raising or rehabilitating white-tailed deer that are not captive and not for sale or personal use can apply for a deer sanctuary license. AGR will incur additional costs to inspect all licensed deer sanctuaries and adopt rules under the program. Additional personnel may be needed depending on the number of licensed sanctuaries. However, this cost will be offset partially if not fully by the revenue collected from the deer sanctuary license fee. Fees are deposited into the Deer Sanctuary Fund, which the bill creates.

Debt limitations for county agricultural societies

The bill eliminates the 25% cap on total net indebtedness that may be incurred by a county agricultural society when entering into loans and obtaining lines of credit for expenses related to the purposes of the society. Under current law, if a county

agricultural society has purchased or leased real estate for more than 20 years, then the board of county commissioners may contribute to or pay the society's indebtedness from the county general fund. Eliminating the 25% cap on total net indebtedness may cause counties to pay more on the society's indebtedness from their general fund. However, it is permissive for counties to make such payments, and the amount paid would be dependent on the amount of debt accumulated by a society absent the 25% cap.

Video lottery terminal funding for health and retirement funds for horsemen

The bill specifies that the percentage of a lottery sales agent's commission required by R.C. 3769.087 to be paid to the State Racing Commission for the benefit of breeding and racing in Ohio be used exclusively to establish and administer the health and retirement funds for the benefit of horsemen, and to finance benefits from each fund. Ohio law provides for one such fund for each of thoroughbred and harness racing. A total of about $1.0 million in FY 2013 and $2.0 million in FY 2014 was distributed under this requirement.

Revisions to oil and gas administration laws

Brine transportation

Under current law, anyone who wishes to transport brine by vehicle must register with the Division and pay a fee of $500. The bill would extend this requirement to any manner of brine transportation, not only by vehicle, thereby encompassing pipelines. By including pipelines as a potential mode of brine transportation, the Division could collect brine transportation registration fees from pipeline operators. Actual new revenues to the Oil and Gas Well Fund (Fund 5180) from this fee would depend on the number of pipeline operators that transport brine via pipeline; however, this number is not likely to be very large, so new revenues from this fee are likely to be minimal.

Financial assurance for brine and other waste treatment

The bill requires a person to provide financial assurance in the form of a surety bond, cash, negotiable certificates of deposit, or irrevocable letter of credit issued by an Ohio bank or savings and loan to the Chief of Oil and Gas when applying for a permit to store, recycle, treat, or process brine or other waste substance related to oil and gas production. The bill authorizes the Chief to establish the amount of the surety by rule but establishes a maximum amount of $250,000. Under the bill, financial assurance must be maintained with the Chief until the location for which a permit was issued is closed and inspected and approved for closure by the Chief. Forfeiture of the surety may occur in the event that the permit holder fails to comply with a final nonappealable order issued or a compliance agreement to rectify a violation of the terms of the permit. If this occurs, the surety is deposited to the credit of the Oil and Gas Well Fund (Fund 5180).

Application fee for permit to plug back an existing well

Under current law, an applicant for a permit to plug back an existing oil or gas well is exempt from having to pay a fee. The bill removes this exemption and subjects such applications to a nonrefundable fee as follows:

1. $500 for a permit to conduct activities in a township with a population of fewer than 10,000;
2. $750 for a permit to conduct activities in a township with a population of 10,000 to 14,999; and
3. $1,000 for a permit to conduct activities in either a township with a population of 15,000 or more or a municipal corporation regardless of population.

According to the 2012 Ohio Oil and Gas Summary published by DNR, the most recent data available, there were 15 wells that were plugged back to a producing formation in that year. Depending on the number of wells that need to be plugged back in the future, as well as the locations of those wells, new revenues to the Oil and Gas Well Fund (Fund 5180) that result from these fees would likely total in the tens of thousands of dollars. Because most wells are currently drilled in areas with lower populations, it is more likely for either the $500 or $750 fees to be charged than the $1,000 fee.

Civil and criminal penalties for violations of the Oil and Gas Law

The bill modifies a number of civil and criminal penalties assessed for certain violations of the Oil and Gas Law. In general, the bill eases the penalties by either eliminating or reducing minimum dollar amounts assessed as civil penalties or fines and by modifying criminal sentencing allowing for shorter prison sentences than under current law. The bill also specifies that violators in certain cases are liable for damage or injury caused by the violation and the cost of rectifying the violation and any related conditions. Considering the potential for reduced penalties and fines, and potentially large payments for damage liability, it is unclear what effect, if any, these changes might have on revenue deposited into the Oil and Gas Well Fund (Fund 5180). Similarly, it is unclear what effect modifications to criminal sentencing would have on costs incurred by the Department of Rehabilitation and Correction and local jails to incarcerate individuals convicted of violations. However, assessment of these penalties or prison sentences resulting from violations is likely to be a rare occurrence.

Repeal of certain EPCRA reporting requirements pertaining to oil and gas facilities

The bill repeals certain provisions that require the owner of an oil or gas well to submit certain information to the Division of Oil and Gas Resources Management under the Emergency Planning and Community Right-to-Know Act (EPCRA) and regulations adopted under it. This includes the removal of a requirement that an owner or operator of an oil or gas facility submit a fee to the Emergency Response Commission when

reporting inventories of certain hazardous materials and chemicals, and the requirement that the Chief of the Division of Oil and Gas Resources Management adopt rules governing the creation and administration of a database of information required under EPCRA.

As a result of these changes, the Emergency Planning and Community Right-to-Know Fund (Fund 6790), used by the Ohio Environmental Protection Agency, would likely lose revenue from the fees currently charged to oil and gas facility owners or operators for hazardous materials reporting. Additionally, any costs to the Oil and Gas Well Fund (Fund 5180) that DNR's Division of Oil and Gas would have incurred to implement a database or promulgate rules under these provisions will no longer be incurred.

Mandatory pooling

The bill requires the Chief of Oil and Gas to issue an order to include property for which all of the mineral rights for oil and gas are owned by the Department of Transportation (ODOT) in a pool or unit of operation organized to develop oil and gas resources. As a member of the pool, ODOT would have the rights and responsibilities of any other member of the pool and be subject to the costs, and enjoy the benefits, including royalties, of participation in the pool. As a result, if any lands for which ODOT owns all of the mineral rights are pooled and oil and gas resources are developed and brought into production, ODOT could gain revenues from oil and gas royalties. Royalties under these pooling arrangements are credited to the participants in proportions equal to the percentage of land in the resource pool.

Revisions to wildlife laws

Incidental taking permits for wild animals

The bill authorizes the Chief of DNR's Division of Wildlife to establish a fee in administrative rules for a permit to a person operating an energy facility whose operation may result in the incidental taking (defined as the killing or injuring by chance or without intention) of a wild animal. The bill narrows the definition of "energy facility" for the purposes of this permit to certain wind turbines and associated facilities.

The Wildlife Fund (Fund 7015) could gain new revenues from this fee. However, the amount of any new income would depend on the number of permits issued and the amount of the fee established in rules. It is not likely that revenues from this fee would be substantial because of the limited number of facilities that would be eligible to apply.

Hunting permits for deer and wild turkey

The bill allows mobility impaired or blind persons under the age of 18 who are residents of Ohio and who are unable to engage in hunting without the assistance of another person to receive free deer and wild turkey permits upon application to the Chief of the Division of Wildlife. Additionally, an Ohio resident assisting mobility impaired or blind hunters under 18 is also to receive free deer or wild turkey permits

under the bill. Both the hunter and assistant would be required to obtain any applicable hunting license and pay the applicable fee for the required licenses.

Waiving the fee for deer and wild turkey permits for these hunters and their assistants would likely result in some lost revenue for the Wildlife Fund (Fund 7015). However, it is likely that few permits would be issued under this provision and any lost revenue would likely be negligible. The normal fee for these permits for hunters 18 and older is $24 ($23 deposited to the credit of Fund 7015 + $1 license agent commission). For youth hunters under 18 years old the permit fee is $12 ($11 for Fund 7015 + $1 agent commission).

Revisions to soil and water resources laws

Soil and Water Administration Fund

The bill creates the Soil and Water Resources Administration Fund for use by the Division of Soil and Water to administer and enforce the Soil and Water Resources Law. The fund is to consist of money credited to it from all fines, penalties, costs, and damages, except court costs, that are collected by either the Chief of the Division of Soil and Water Resources or the Attorney General. Revenue deposited into and costs paid from the fund will depend upon the number and nature of enforcement actions and the number and nature of convictions for violations of the Soil and Water Resources Law.

Withdrawal and consumptive use permits

The bill modifies the standards by which the Chief of Soil and Water must evaluate an application for a withdrawal and consumptive use permit issued to facilities withdrawing or consuming water from the Lake Erie watershed. In general, these modifications affect consideration that must be given to how the proposed water withdrawals or consumption will impact the quantity and quality of water in the lake. Overall, it does not appear that these changes would result in any significant fiscal effect for the state or political subdivisions. For further details on these changes, please see the LSC Bill Analysis.

Lead contamination of drinking water from plumbing

The bill revises the statute governing the prevention of lead contamination of drinking water from plumbing, including certain prohibitions, required actions of the owner or operator of a public water system, and definitions. These revisions reflect changes to state law necessitated by amendments to the federal Safe Drinking Water Act signed into law on January 4, 2011. The state of Ohio and its political subdivisions become ineligible to receive this federal grant funding if it does not comply. Ohio's compliance with these federal amendments is a condition of the Ohio Environmental Protection Agency's (Ohio EPA) primacy agreement with the U.S. Environmental Protection Agency (U.S. EPA) to administer the Safe Drinking Water Act in Ohio, which includes about $24 million in annual federal grant funding. Of the $24 million, 11% is retained by the Ohio EPA for technical assistance and administration costs, and 89% is

distributed to local governments in the form of grants and loans. Local governments would also become ineligible to apply directly to the U.S. EPA for infrastructure-related grants running in the millions of dollars annually.

Enforcement of Water Pollution Control Law

The bill increases criminal penalties for certain violations of the Water Pollution Control Law, establishes culpable mental states regarding certain violations, and provides that if a person is convicted of or pleads guilty to a violation of any provision of the Water Pollution Control Law, the sentencing court may order the person to reimburse the state agency or a political subdivision for any applicable response costs. A full breakdown of each change to a penalty can be found on page 62 of the LSC Bill Analysis.

These changes are not likely to have any discernible effect on the annual operating expenses of the common pleas, municipal, or county courts with jurisdiction over violations of the Water Pollution Control Law, but may generate a minimal annual incarceration cost increase if additional violators are sentenced to a local jail or state prison, or sentenced to a longer stay in such a facility than might have been the case under current law. Counties may gain additional fine moneys, and the state and/or its political subdivisions may collect court-ordered response cost recoveries.

Study of nutrient loading to Ohio watersheds

The bill permits the Director of Environmental Protection to conduct a study of nutrient loading to Ohio watersheds, requires the study's results be entered in a database and updated annually. Ohio EPA has estimated the two-year cost of the study at $200,000. This total includes: (1) $80,000 for staff allocated to the study, (2) $70,000 for a contract with a state of Ohio university for development of a spreadsheet tool to estimate the relative contributions from point and nonpoint sources, and (3) $50,000 to contract with the U.S. Geological Survey for assistance with nutrient modeling. Subsequent annual updates are expected to cost around $30,000.

Local health districts

The bill requires a person that submits plans to install a sewerage system to notify the owner of each parcel of property that is served by a household sewage treatment system and the applicable board of health of the installation if the owner or operator has determined that the parcel of property is reasonably accessible to the sewerage system and may be required to connect to it. The bill allows a property owner to elect out of connecting to a sewerage system if the person notifies the owner or operator of the sewerage system and the applicable board of health that the person is electing not to connect to the specified sewerage system and if the property owner's household sewage treatment system is operating and properly maintained, as determined by the local board of health. The bill requires the board of health to evaluate the household sewage treatment system serving the affected parcel of property to determine if the system operates and is properly maintained. The bill specifies that the

owner of the property is responsible for the costs of the evaluation. Thus, a local board of health could experience an increase in costs to evaluate the system, but could also realize a gain in revenue for conducting the evaluation.

If the board of health's evaluation finds that a nuisance exists related to the household sewage treatment system, the person may repair the system within 60 days or may develop an incremental repair or replacement plan with the board of health. Failure to repair, alter, or replace the system to eliminate the nuisance constitutes termination of the authorization granted under the bill for the property owner to elect out of connecting to the sewerage system. Local boards of health may experience an increase in costs to help develop and approve potential incremental repair or replacement plans, if needed.

Property tax valuation of oil and gas reserves

H.B. 490 specifies that county auditors may employ no method other than the discounted cash flow formula to determine the tax value of all oil or gas reserves, even in the absence of a developing and producing well. Under current law, the formula appears to apply only for the purposes of calculating the tax value of oil and gas reserves that are exploited by an active well that was not the subject of a recent arm's length sale.

As explained in the LSC Bill Analysis, methods that county auditors are required or allowed to use to value undeveloped oil and gas reserves are not explicitly stated in existing law. Currently, county auditors are required to increase the value of land or mineral rights if the auditor determines that their value has increased because of the discovery of oil or gas, construction of production facilities, commencement of drilling, or other factors. The bill states that it "clarifies the intent of the General Assembly" that the discounted cash flow formula "continues to represent the only method for valuing oil and gas reserves for property tax purposes," but it is not clear how the bill changes the property tax valuation methods of oil and gas reserves that exist under current law, if it changes them at all.

This provision of the bill has an indeterminate fiscal effect.

Local telephone exchanges

H.B. 490 establishes an exception to the current prohibition against incumbent local exchange carriers (ILECs) discontinuing basic local exchange service (BLES). The bill defines "voice service" in accordance with federal law, and explicitly excludes any voice service from the definition of BLES if customers are transitioned to a voice service following the BLES withdrawal authorized by the bill. According to the Public Utilities Commission Ohio's (PUCO's) website, Ohio has 44 incumbent local exchange carriers.

The Revised Code currently requires ILECs to provide BLES, which entails multiple customer protections[1] as well as rate increases being subject to PUCO regulation.

The BLES withdrawal authorized by H.B. 490 is dependent on future Federal Communications Commission (FCC) actions. A representative from one of Ohio's ILECs testified to the House Agriculture & Natural Resources Committee on November 13, 2014 that an Internet Protocol (IP) transition is ongoing today. The ILEC witness further testified that "the FCC is planning in earnest for the IP Transition," and "we[2] expect that the FCC will have a comprehensive plan in place within several years."

In the absence of H.B. 490, ILECs will be required to provide BLES regardless of whether a future FCC order allows ILECs to "withdraw the interstate-access component of its basic local exchange service." Based on witness testimony, this potential withdrawal of interstate services is likely related to an upcoming IP transition.

The current definition[3] of BLES describes it as "access to and usage of telephone-company-provided services," either over a single line (in the case of residential users) or over the primary access line (in the case of small-business-end-users), that "enables a customer to originate or receive voice communications." It is not so specific as to define the technology over which BLES is delivered. If ILECs transitioned from a copper-based telephone network to an IP-based network (or any other successive technology), the BLES provisions are presumably still applicable based upon current law.

Separately, the bill says PUCO must "plan for the transition, consistent with the directives and policies of the Federal Communications Commission, from the current public switched telephone network to an internet-protocol network that will stimulate investment in the internet-protocol network in Ohio and that will expand the availability of advanced telecommunications services to all Ohioans." PUCO must "report to the General Assembly on any further action required to be taken by the General Assembly to ensure a successful and timely transition."

H.B. 490 also requires PUCO to establish a "collaborative process" with stakeholders to "focus on the internet-protocol-network transition processes underway at the Federal Communications Commission" and "ensure that public education concerning the transition is thorough." The bill further stipulates that the collaborative process must include: (1) a review of the number and characteristics of basic-local-exchange-service customers in Ohio, (2) an evaluation of what alternatives are available to them, and (3) implementation of an education campaign plan for those customers' eventual transition to advanced services.

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[1] As described by PUCO: http://www.puco.ohio.gov/puco/index.cfm/consumer-information/consumer-topics/basic-local-exchange-service/#sthash.VfgewV6p.dpbs. The bill requires that the ILEC provides advance notice, and it provides opportunities for appeal for consumers that will no longer have voice services.

[2] Jon F. Kelly, General Attorney – AT&T.

[3] Refer to R.C. 4927.01(A)(1) for the complete definition.

These provisions of H.B. 490 have an indeterminate fiscal effect because several of them are predicated on future FCC actions. To the extent that political subdivisions are consumers of BLES, those subdivisions may realize an increase in costs if BLES is withdrawn and the substitutes are more expensive than BLES. Similarly, PUCO may incur some costs for developing a plan "consistent with the directives and policies" of the FCC, but it is difficult to estimate the cost because the FCC does not yet have a comprehensive transition plan. The bill also requires PUCO to establish a "collaborative process" and "ensure that public education concerning the [IP-network] transition is thorough"; this provision of the bill is not contingent on FCC action. The bill does not appropriate any funds for these agency expenditures. Any costs that PUCO might incur would likely be paid from the existing main operating appropriation, 870622, Utility and Railroad Regulation, which draws on the Public Utilities Fund (Fund 5F60).

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