Phil Mullin *Legislative Service Commission*

Sub. H.B. 548

123rd General Assembly
(As Reported by H. State Government)

Reps. Terwilleger, Tiberi, Mead, Corbin, Allen, Callender, Willamowski, Grendell, Netzley, Jolivette, Vesper, Damschroder, O'Brien, Hollister, Van Vyven

BILL SUMMARY

- Creates from January 1, 2001, until December 31, 2004, the Sunset commissions, councils, committees, and other entities to which the Sunset abolished or continued.
- Extends until December 31, 2004, the expiration date of a number of state boards, commissions, councils, committees, and other entities scheduled

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CONTENT AND OPERATION

Sunset Review Law

Overview

Current law generally provides that certain state boards, commissions, councils, committees, and other entities exist only for four-year periods. The bill creates from January 1, 2001, until December 31, 2004, the Sunset Review Committee to (1) carry out a review of those entities to which the Sunset Review Law applies and (2) determine whether those entities should be abolished or continued.

Creation of Sunset Review Committee

The bill creates the Sunset Review Committee, to exist from January 1, 2001, until December 31, 2004. The Committee is composed of nine members, three to be Senate members appointed by the President of the Senate, three to be House of Representatives members appointed by the Speaker of the House of Representatives, and three to be appointed by the Governor with the advice and consent of the Senate. No more than two of the three members appointed by each of these officials may be members of the same political party. Appointments must be made within 15 days after the commencement of the first regular session of each General Assembly. (New section 101.84(A); Sections 8 and 9 of the bill.)

Each member appointed by the President of the Senate or the Speaker of the House of Representatives must serve until that Committee member's successor is appointed or until that Committee member is no longer a member of the Senate or the House of Representatives, whichever is applicable. Each member appointed by the Governor must serve a two-year term ending on December 31 of each even-numbered year. A vacancy on the Committee must be filled in the same manner as the original appointment. Members are to receive no compensation, but must be reimbursed for their necessary expenses incurred in the performance of their official duties. (New section 101.84(B).)

The Committee must meet no later than 30 days after the first day of the first regular session of the General Assembly to choose a chairperson and to commence establishment of the schedule for review required by the bill or perform other Committee duties under the bill. In the first regular session of a General Assembly, the chairperson of the Committee must be a member of the House of Representatives, and the vice-chairperson must be a member of the Senate; in the second regular session of a General Assembly, the chairperson of the Committee must be a member of the Senate, and the vice-chairperson must be a member of the

House of Representatives. Five members of the Committee constitute a quorum. (New section 101.84(B) and (C).)

The Committee must review the implementation and operation of the bill during the period between January 1, 2001, and December 31, 2004. As part of its review, the Committee must (1) determine whether there is a need to establish a *permanent legislative committee* to conduct an ongoing review of existing state agencies and an ongoing evaluation of proposed new state agencies and (2) determine what role, if any, the Department of Administrative Services could play in such an ongoing review and evaluation process. The Committee must report to the Governor, the Speaker of the House of Representatives, and the President of the Senate, by December 31, 2004, the findings and recommendations resulting from its review. (Section 7 of the bill.)

Review schedule and expiration dates

Review schedule. Not later than April 1, 2001, the Committee must schedule for review each "agency" (see "***Definitions***," below) in existence on January 1, 2001. The bill also authorizes the Committee, by a unanimous vote, to schedule for review any state board or commission that has the authority to issue any final adjudicatory order that may be appealed to a court of common pleas under the Administrative Procedure Act, and any board or commission so scheduled is considered an agency for purposes of the bill. Such a board or commission *generally is not considered to be an agency* under existing law (see "***Definitions***," below). (Sec. 101.85(A).)

The Committee's chairperson must send a copy of the schedule for review of agencies for each calendar year to each of the agencies scheduled for review during that year and to the Director of the Legislative Service Commission (LSC). The LSC Director must publish a copy of the schedule in the Ohio Administrative Code and in the Register of Ohio, and the LSC must provide the Committee with a list of agencies in existence on January 1, 2001, to assist the Committee in identifying agencies and exercising its duties with respect to agencies. (Sec. 101.85(B).)

Expiration dates. Under current law, an agency created after January 1, 1997, that is created on December 31 expires no later than four years after its creation. An agency created after January 1, 1997, that is created on any other date must be considered to have been created on the preceding December 31 and expires no later than four years after the date it was considered to have been created. Current law also provides that an agency in existence on January 1, 1997, expires on December 31 of the fourth year after the year in which it was most recently renewed, unless renewed under the Sunset Review Law's renewal

procedure. (Sec. 101.84(A); new sec. 101.83(A) under the bill.) If the General Assembly does not *renew or transfer* (see "***Definitions***," below) the agency, the agency expires on the expiration date explained above, and the Auditor of State is prohibited from authorizing the expenditure of any moneys for the agency on or after the date of its expiration (sec. 101.84(B); new sec. 101.83(B) under the bill).

The bill maintains the provisions described in the immediately preceding paragraph, except that it changes their references from January 1, 1997, to *January 1, 2001*, and specifies that an agency in existence on January 1, 2001, expires on December 31, 2004, unless renewed in accordance with the Sunset Review Law's procedure. Under the Sunset Review Law's renewal procedure, an agency may be renewed by passage of a bill that continues the statutes creating and empowering the agency, that amends or repeals those statutes, or that enacts new statutes, to improve agency usefulness, performance, or effectiveness. (New section 101.83(A) and (D).)

Review procedure and Committee report

During the four-year existence of the Sunset Review Committee, the bill requires the Committee, *no later than 12 months prior to the date on which an agency in existence on January 1, 2001, is scheduled to expire*, to hold hearings to receive the testimony of the public and that of the chief executive officer of each agency scheduled for review and otherwise to consider and evaluate the agency's usefulness, performance, and effectiveness (sec. 101.86(A)).

Each *agency* that is scheduled for review must submit to the Committee a *report* containing all of the following information (sec. 101.86(B)):

(1) The agency's primary purpose and its various goals and objectives;

(2) The agency's past and anticipated work load, the number of staff required to complete that work load, and the agency's total number of staff;

(3) The agency's past and anticipated budgets and its sources of funding;

(4) The number of members of the agency's governing board and their compensation, if any.

Each *agency* has the *burden of demonstrating a public need* for its continued existence. In determining whether an agency has demonstrated this need, the Committee is required to consider all of the following (sec. 101.86(C)):

(1) The extent to which the agency has permitted qualified applicants to serve the public;

(2) The agency's cost-effectiveness in terms of number of employees, services rendered, and administrative costs incurred, both past and present;

(3) The extent to which the agency has operated in the public interest, and whether its operation has been impeded or enhanced by existing statutes and procedures and by budgetary, resource, and personnel practices;

(4) Whether the agency has recommended statutory changes to the General Assembly that would benefit the public as opposed to the persons regulated by the agency, if any, and whether its recommendations and other policies have been adopted and implemented;

(5) Whether the agency has required any persons it regulates to report to it the impact of agency rules and decisions on the public as they affect service costs and service delivery;

(6) Whether persons regulated by the agency, if any, have been required to assess problems in their business operations that affect the public;

(7) Whether the agency has encouraged public participation in its rule-making and decision-making;

(8) The efficiency with which formal public complaints filed with the agency have been processed to completion;

(9) Whether the agency's programs or services duplicate or overlap those of other agencies;

(10) Whether the purpose for which the agency was created has been fulfilled, has changed, or no longer exists;

(11) Whether federal law requires that the agency be renewed in some form;

(12) Changes needed in the agency's enabling laws in order for it to comply with the criteria suggested by the considerations listed in items (1) to (11) above.

In its initial review of each agency, the Committee is required, whenever possible, to realign agency titles to conform to the following descriptions (sec. 101.86(D)):

- Commission: administrative appeals or hearing agency;

- Authority: agency empowered to issue bonds or notes;

- Board: agency having licensing function only;
- Council: advisory body to a major agency or department;
- Committee: advisory body to a minor agency or department.

After completing its evaluation *of all agencies*, the *Committee* must prepare and publish a *report of its findings and recommendations*. A copy of the report must be furnished to the President of the Senate, the Speaker of the House of Representatives, the Governor, and each affected agency and must be made available to the public in the offices of the House and Senate clerks during reasonable hours. As part of the report, the Committee must recommend one or more of the following to the General Assembly, in bill form (sec. 101.87(A)).

(1) Amendment or repeal of the statutes that created and empowered an agency, to abolish or terminate the agency;

(2) Amendment or repeal of the statutes that created and empowered an agency, or enactment of new statutes, to terminate the agency, to transfer the agency, or to improve its usefulness, performance, or effectiveness;

(3) Amendment or repeal of the statutes that created and empowered two or more agencies, or enactment of new statutes, to reorganize or transfer them and thereby improve agency usefulness, performance, or effectiveness;

(4) Amendment or continuation of the statutes that created and empowered an agency, or enactment of new statutes, to renew the agency.

The Committee's *recommendations* must indicate how or whether their implementation will do each of the following (sec. 101.87(B)):

(1) Promote economy in the operation of state government;

(2) Improve efficiency in the management of state government;

(3) Improve services rendered to Ohio citizens;

(4) Simplify and improve preparation of the state budget;

(5) Conserve the state's natural resources;

(6) Promote the orderly growth of the state and its government;

(7) Improve the effectiveness of the services performed by the state's service departments, including the Office of Budget and Management (OBM) and the Department of Administrative Services (DAS);

(8) Avoid duplication of effort by state agencies;

(9) Improve the organization and coordination of the state government in one or more of the ways listed in (1) through (8) above.

The bill requires OBM, DAS, LSC, the Auditor of State, and any other state agency, upon the Committee's request, to supply the Committee with material, information, and reports needed for the preparation of the report and its recommendations (sec. 101.87(C)).

General Assembly authority

The bill continues current law that authorizes the General Assembly to provide by law for the orderly, efficient, and expeditious conclusion of an agency's business and operation. The rules, orders, licenses, contracts, and other actions made, taken, granted, or performed by the agency must continue in effect according to their terms notwithstanding the agency's abolition, unless the General Assembly provides otherwise by law. The General Assembly may provide by law for the temporary or permanent transfer of some or all of a terminated or transferred agency's functions and personnel to a successor agency or officer. (Sec. 101.84(C); new sec. 101.83(C) under the bill.)

The bill also continues current law that provides that the abolition, termination, or transfer of an agency does not cause the termination or dismissal of any claim pending against the agency by any person, or any claim pending against any person by the agency. Unless the General Assembly provides otherwise by law for the substitution of parties, the Attorney General succeeds the agency with reference to any pending claim. (Sec. 101.84(C); new sec. 101.83(C) under the bill.)

Definitions

Current law includes the following definitions for the Sunset Review Law, which the bill does not change (sec. 101.82--not in the bill):

(1) "Agency" means any board, commission, committee, or council, or any other similar state public body required to be established under Ohio statutes for the exercise of any function of state government and to which members are appointed or elected. "Agency" does not include (a) the General Assembly or any commission, committee, or other body composed entirely of General Assembly

members, (b) any court, (c) any public body created by or directly pursuant to the Ohio Constitution, (d) the board of trustees of any institution of higher education financially supported in whole or in part by the state, (e) any public body that has the authority to issue bonds or notes or that has issued bonds or notes that have not been fully repaid, (f) the Public Utilities Commission of Ohio, (g) the Consumers' Council Governing Board, (h) the Ohio Board of Regents, (i) any state board or commission that has the authority to issue any final adjudicatory order that may be appealed to a court of common pleas under the Administrative Procedure Act, (j) any board of elections, (k) the Board of Directors of the Ohio Insurance Guaranty Association, and (l) the Board of Governors of the Ohio Fair Plan Underwriting Association.

(2) "Abolish" means to repeal the statutes creating and empowering any agency, remove its personnel, and transfer its records to the Department of Administrative Services pursuant to the state records administration program.

(3) "Terminate" means to amend or repeal the statutes creating and empowering an agency, remove its personnel, and reassign its functions and records to another agency or officer designated by the General Assembly.

(4) "Transfer" means to amend the statutes creating and empowering an agency so that its functions, records, and personnel are conveyed to another agency or officer.

(5) "Renew" means to continue an agency, and may include amendment of the statutes creating and empowering the agency, or recommendations for changes in agency operation or personnel.

Extension of the expiration date of certain state boards, commissions, councils, committees, and other entities

Section 27 of Sub. H.B. 670 of the 121st General Assembly specifies that the following state boards, commissions, councils, committees, and other entities (with their authorizing statutes indicated in parentheses) will expire on December 31, 2001. The bill extends their expiration dates until December 31, 2004 (Section 3 of the bill):

Advisory Council on Amusement Ride Safety (sec. 1711.51)

Advisory Board of Directors for Prison Labor (sec. 5145.162)

Appalachian Public Facilities Council (Section 3, H.B. 280, 121st G.A.)

Apprenticeship Council (sec. 4111.26)

Armory Board of Control (sec. 5911.09)

Banking Commission (sec. 1123.01)

Board of Voting Machine Examiners (sec. 3506.05(B))

Board of Governors, Medical Malpractice Joint Underwriting Association (sec. 3929.77)

Board of Tax Appeals (sec. 5703.02)

Brain Injury Advisory Committee (sec. 3304.231)

Capitol Square Review and Advisory Board (sec. 105.41)

Child Support Guideline Advisory Council (sec. 3113.215(G))

Children's Trust Fund Board (sec. 3109.15)

Citizen's Advisory Council of the Department of Mental Retardation and Developmental Disabilities (sec. 5123.092)

Citizen's Advisory Council of the Department of Mental Health (sec. 5119.81)

Civilian Conservation Advisory Committee (sec. 1553.10)

Coastal Resources Advisory Council (sec. 1506.12)

Commission on African-American Males (sec. 4112.12)

Commission on Hispanic-Latino Affairs (sec. 121.31)

Commodity Advisory Commission (sec. 926.32)

Community Mental Retardation and Developmental Disabilities Trust Fund Advisory Council (sec. 5123.353)

Continuing Education Committee for Sheriffs (sec. 109.80)

Controlling Board (sec. 127.12)

Council on Alcohol and Drug Addiction Services (sec. 3793.09)

Council on Unreclaimed Strip Mine Lands (sec. 1513.29)

County Sheriffs' Standard Car Marking and Uniform Commission (sec. 311.25)

Criminal Sentencing Advisory Committee (sec. 181.22)

Day-Care Advisory Council (sec. 5104.08)

Development Financing Advisory Council (sec. 122.40)

Electrical Safety Inspector Advisory Committee (sec. 3783.08)

Engineering Experiment Station Advisory Committee (sec. 3335.27)

Environmental Review Appeals Commission (sec. 3745.02)

Environmental Education Council (sec. 3745.21)

Forestry Advisory Council (sec. 1503.40)

Governor's Community Service Council (sec. 121.40)

Governor's Council on People with Disabilities (sec. 3303.41)

Hazardous Waste Facility Board (sec. 3734.05)

Health Care Quality Advisory Council (sec. 4121.442)

Health Data Advisory Committee (sec. 3729.61)

Hemophilia Advisory Council (sec. 3701.145)

Historic Site Preservation Advisory Board (sec. 149.301)

Home Health Agency Advisory Council (sec. 3701.88)

Hospital Advisory Committee and Medical Advisory Committee of the Joint Underwriting Association Board of Governors (sec. 3929.76)

Industrial Commission (sec. 4121.02)

Industrial Commission Nominating Council (sec. 4121.04)

Industrial Technology and Enterprise Advisory Council (sec. 122.29)

Insurance Agent Education Advisory Council (sec. 3905.483)

Interagency Recycling Market Development Workgroup (sec. 1502.10)

Joint Council on Mental Retardation and Developmental Disabilities (sec. 101.37)

Joint Select Committee on Volume Cap (sec. 133.021)

Labor-Management Government Advisory Council (sec. 4121.70)

Legal Rights Service Commission (sec. 5123.60)

Martha Kinney Cooper Ohioana Library Association Board of Trustees (sec. 3375.62)

Maternal and Child Health Council (sec. 3701.025)

Medicaid Long-Term Care Reimbursement Study Council (sec. 5111.34)

Medically Handicapped Children's Medical Advisory Council (sec. 3701.025)

Milk Sanitation Board (sec. 917.03)

Mine Subsidence Insurance Governing Board (sec. 3929.51)

Multi-Agency Radio Communications Systems Steering Committee (Section 21, H.B. 790, 120th G.A.)

Multidisciplinary Council (sec. 3746.03)

National Museum of Afro-American History and Culture Planning Committee (sec. 149.303)

Ohio Advisory Council for the Aging (sec. 173.03)

Ohio Arts Council (sec. 3379.02)

Ohio Arts and Sports Facilities Commission (sec. 3383.02)

Ohio Benefit Systems Data Linkage Committee (sec. 125.24)

Ohio Bicentennial Commission (sec. 149.32)

Ohio Cemetery Dispute Resolution Commission (sec. 4767.05)

Ohio Commission on Dispute Resolution and Conflict Management (sec. 179.02)

Ohio Educational Telecommunications Network Commission (sec. 3353.02)

Ohio Ethics Commission (sec. 102.05)

Ohio Expositions Commission (sec. 991.02)

Ohio Family and Children First Cabinet Council (sec. 121.37)

Ohio Geology Advisory Council (sec. 1505.11)

Ohio Grape Industries Committee (sec. 924.51)

Ohio Historical Society Board of Trustees (sec. 149.30)

Ohio Lake Erie Commission (sec. 1506.21)

Ohio Medical Quality Foundation (sec. 3701.89)

Ohio Natural Areas Council (sec. 1517.03)

Ohio Parks and Recreation Council (sec. 1541.40)

Ohio Peace Officer Training Commission (sec. 109.71)

Ohio Police and Fire Pension Board of Trustees (sec. 742.03)

Ohio Public Defender Commission (sec. 120.01)

Ohio Public Employees Deferred Compensation Board (sec. 145.72)

Ohio Quarter Horse Development Commission (sec. 3769.086)

Ohio Retirement Study Council (sec. 171.01)

Ohio Scenic Rivers Advisory Councils (sec. 1517.18)

Ohio Small Government Capital Improvements Commission (sec. 164.02)

Ohio Soil and Water Conservation Commission (sec. 1515.02)

Ohio Standardbred Development Commission (sec. 3769.085)

Ohio Steel Industry Advisory Council (sec. 122.97)

Ohio Teacher Education and Licensure Advisory Council (sec. 3319.28(D))

Ohio Thoroughbred Racing Advisory Committee (sec. 3769.084)

Ohio Tuition Trust Authority (sec. 3334.03)

Ohio University College of Osteopathic Medicine Advisory Committee (sec. 3337.10)

Ohio Vendors Representative Committee (sec. 3304.34)

Ohio Veterans' Home Board of Trustees (sec. 5907.02)

Ohio War Orphans Scholarship Board (sec. 5910.02)

Ohio Water Advisory Council (sec. 1521.031)

Oil and Gas Commission (sec. 1509.35)

Organized Crime Investigations Commission (sec. 177.01)

Parole Board (sec. 5149.10)

Pharmacy and Therapeutics Committee of the Department of Human Services (sec. 5111.81)

Physical Fitness and Sports Advisory Board (sec. 3701.77)

Power Siting Board (sec. 4906.02)

Private Water Systems Advisory Council (sec. 3701.346)

Public Employees Retirement Board (sec. 145.04)

Public Employment Risk Reduction Advisory Commission (sec. 4167.02)

Public Utilities Commission Nominating Council (sec. 4901.021)

Reclamation Commission (sec. 1513.05)

Recreation and Resources Commission (sec. 1501.04)

Recycling and Litter Prevention Advisory Council (sec. 1502.04)

Rehabilitation Services Commission Consumer Advisory Committee (sec. 3304.24) (see discussion in the next portion of this analysis)

School Employees Retirement Board (sec. 3309.04)

Select Commission on Pyrotechnics (Section 3, H.B. 508, 119th G.A.)

Services Committee of the Workers' Compensation System (sec. 4121.06)

Set Aside Review Board (sec. 123.151(C)(4))

Small Business Stationary Source Technical and Environmental Compliance Assistance Council (sec. 3704.19)

Solid Waste Management Advisory Council (sec. 3734.51)

State Board of Deposit (sec. 135.02)

State Board of Library Examiners (sec. 3375.47)

State Council of Uniform State Laws (sec. 105.21)

State Committee for the Purchase of Products and Services of Persons with Severe Disabilities (sec. 4115.32)

State Criminal Sentencing Council (sec. 181.21)[1]

State Fire Commission (sec. 3737.81)

State Highway Patrol Retirement Board (sec. 5505.04)

State and Local Government Commission of Ohio (sec. 105.45)

State Teachers Retirement Board (sec. 3307.04)

State Victims Assistance Advisory Committee (sec. 109.91)

Student Tuition Recovery Authority (sec. 3332.081)

Subcommittee of the State Board of Emergency Medical Services for Firefighter and Fire Safety Inspector Training (sec. 4765.55)

Submerged Lands Advisory Council (sec. 1506.37)

Tax Credit Authority (sec. 122.17)

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[1] *Effective March 23, 2000, the name of this entity will officially revert back to its former name--State Criminal Sentencing Commission--as a result of Am. Sub. S.B. 107 of the 123rd General Assembly.*

Technical Advisory Committee to Assist the Director of the Ohio Coal Development Office (sec. 1551.35)

Technical Advisory Council on Oil and Gas (sec. 1509.38)

Technical Advisory Committee for Education (Section 45.01, H.B. 117, 121st G.A.)

Unemployment Compensation Review Commission (sec. 4141.06)

Unemployment Compensation Advisory Council (sec. 4141.08)

Utility Radiological Safety Board (sec. 4937.02)

Veterans Advisory Committee (sec. 5902.02(K))

Water and Sewer Commission (sec. 1525.11(C))

Waterways Safety Council (sec. 1547.73)

Welfare Oversight Council (sec. 5101.93)

Wildlife Council (sec. 1531.03)

Women's Policy and Research Commission (sec. 121.51)

Workers' Compensation System Oversight Committee (Section 10, H.B. 222, 118th G.A.)

Wright-Dunbar State Heritage Commission (sec. 149.321)

Rehabilitation Services Commission Consumer Advisory Committee

Current law

Current statutory law requires the Rehabilitation Services Commission to appoint, upon the recommendation of the appropriate bureau director, a Bureau of Vocational Rehabilitation Advisory Committee (including at least two disabled persons) and a Bureau of Services for the Visually Impaired Advisory Committee (including at least two legally blind persons). These committees have the organization and duties that the Commission gives them. (Sec. 3304.24.)

Current statutory law also permits the Commission to appoint additional advisory committees it finds necessary (sec. 3304.24). Relatedly, Section 27 of Sub. H.B. 670 of the 121st General Assembly currently refers to the Commission's

Consumer Advisory Council and not to the statutorily required advisory committees mentioned above.

Changes proposed by the bill

The bill repeals the statutory requirement that the Commission appoint the two advisory committees mentioned in the second preceding paragraph and replaces them with a required Consumer Advisory Committee. Similar to current law, the Commission could appoint other advisory committees it finds necessary, which would be in addition to this Consumer Advisory Committee. (Sec. 3304.24; Section 3 of the bill.)

COMMENT

The bill technically amends several codified and uncodified laws to change their cross-references to the Sunset Review Law. The first statute, section 3109.401 of the Revised Code, pertains to the Task Force on Family Law and Children, which is exempted from the Sunset Review Law in division (C) of that section. The second statute, section 3318.30 of the Revised Code, pertains to the Ohio School Facilities Commission, which is exempted from the Sunset Review Law in division (D) of that section. The third statute, section 3701.264 of the Revised Code, pertains to the Ohio Cancer Incidence Surveillance System Advisory Board, which is exempted from the Sunset Review Law in the section's fourth paragraph. The fourth statute, section 3717.02 of the Revised Code, pertains to the Retail Food Safety Advisory Council, which is exempted from the Sunset Review Law in division (G) of that section. The fifth statute, section 4928.58 of the Revised Code, pertains to the Public Benefits Advisory Board, which is exempted from the Sunset Review Law in division (F) of that section.

The sixth statute, section 5101.343 of the Revised Code, pertains to the Ohio Commission on Fatherhood and exempts it from the Sunset Review Law. The seventh statute, section 6301.04 of the Revised Code, pertains to the State Workforce Policy Board, and exempts it from the Sunset Review Law. Finally, Section 3 of Am. Sub. H.B. 1 of the 123rd General Assembly pertains to the OhioReads Council and exempts it from the Sunset Review Law in division (B) of that section (Sections 5 and 6 of Sub. H.B. 548).

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	01-18-00	p.	1519
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