



*Jill Rowland*

## ***Bill Analysis***

*Legislative Service Commission*

### **H.B. 367**

124th General Assembly  
(As Introduced)

**Reps. Core, Willamowski, Grendell, Faber, Reinhard, Kearns, Metzger,  
Hagan, Husted, Schaffer, Distel, Latell, Jerse, Seaver**

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#### **BILL SUMMARY**

- Establishes application procedures and requirements for enrollment in an agricultural security area, and establishes criteria, including a minimum acreage criterion, for enrollment.
- Allows two or more landowners to aggregate their land in order to satisfy the minimum acreage criterion for enrollment in an agricultural security area.
- Requires applicable boards of township trustees and boards of county commissioners to conduct a public hearing on an application for enrollment in an agricultural security area and to provide prior public notice of the hearing.
- Requires applicable boards of township trustees and boards of county commissioners to adopt a resolution in order to create an agricultural security area, and establishes requirements concerning the content of the resolution.
- Specifies that an agricultural security area may continue in existence for ten years unless certain conditions occur, authorizes renewal of an agricultural security area, and authorizes and establishes procedures for a landowner's withdrawal from an agricultural security area.
- Requires the county auditor to certify to the Tax Commissioner notice of certain events that may disqualify the continued enrollment of land in an agricultural security area.
- Authorizes the creation of a tax exemption for qualifying real property in an agricultural security area, and requires the applicable boards of

township trustees and boards of county commissioners to establish the number of years that the exemption will apply together with the amount of the exemption, which may equal up to 75% of the taxable value of the qualifying real property.

- For tax years 2004 and thereafter, creates a nonrefundable credit against the corporation franchise tax that is equal to 50% of current property taxes paid by a taxpayer or pass-through entity on qualified property enrolled in an agricultural security area in the calendar year immediately preceding the tax year.
- For tax years 2004 and thereafter, creates a nonrefundable income tax credit that is equal to 50% of current property taxes paid by a taxpayer or pass-through entity on qualified property enrolled in an agricultural security area in the taxpayer's or entity's taxable year.
- Under certain conditions, authorizes any amounts of tax credits created by the bill that exceed the amount of tax due to be carried forward to the ensuing three tax years.
- Provides for the recoupment of tax savings from the bill's tax exemption, corporation franchise tax credit, or income tax credit if the qualifying property that the tax exemption or credit involves becomes ineligible for continued enrollment in an agricultural security area.
- Authorizes a landowner to transfer two out of every 40 acres in an agricultural security area to a relative for purposes of building a residence for the relative, and specifies that the transferred acreage must be included in determining the acreage of the area.
- Authorizes, upon the request of a landowner and the approval by resolution of the applicable board of township trustees and board of county commissioners, the establishment in an agricultural security area of a business that does not impair agriculture.
- Requires the Director of Agriculture, upon request, to provide guidance and technical assistance to landowners, boards of township trustees, and boards of county commissioners in the creation of agricultural security areas.

- Requires the Director to prepare and submit an annual report on agricultural security areas to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

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## CONTENT AND OPERATION

### Overview

The bill provides for the establishment of agricultural security areas and allows limited use of land in such areas for purposes other than agriculture. In addition, the bill establishes certain tax exemptions and credits for land within those areas.

### Application requirements for enrollment in an agricultural security area

Under the bill, a person owning land who wishes to enroll the land in an agricultural security area may submit an application to the board of township trustees of each township and to the board of county commissioners of each county in which the land is located requesting the establishment of such an area.

The application must be on the form that the Director of Agriculture prescribes and must contain a map that complies with all of the following:

- (1) Is prepared and certified by a regional or county planning commission established under current law or a professional engineer or surveyor registered under current law;
- (2) Identifies the area of land to which the application applies;
- (3) Shows the boundaries of the land to be enrolled in an agricultural security area;
- (4) Shows the names and locations of all streams, creeks, or other bodies of water, roads, railroads, utility lines, and water and sewer lines together with any existing residential, recreational, commercial, or industrial facilities that are on or are situated on the land to be included in the area and within 500 feet of the perimeter of the area;
- (5) Indicates the date on which the map was prepared; and
- (6) Identifies the person or persons who prepared the map.

The application also must identify the other boards of township trustees and boards of county commissioners to whom an application has been submitted. The Director must provide copies of the application form to county auditors. (Sec. 931.02(A).)

**Criteria for enrollment in an agricultural security area**

Under the bill, an area for which an application has been submitted must be established as an agricultural security area when all of the following criteria are satisfied:

- (1) The area consists of not less than 1,000 acres of contiguous farmland (sec. 931.02(B)). The bill defines "contiguous farmland" as geographically contiguous property used for agriculture, noncontiguous property used for agriculture that is owned by one person and connected by a right-of-way that the person controls and to which the public does not have access, or two or more pieces of property used for agriculture that would be geographically contiguous but for the fact that the property is separated by a public or private right-of-way or rights-of-way or by rivers, streams, creeks, or other bodies of water (sec. 931.01(C)). Under the bill, "agriculture" is defined to include farming; ranching; aquaculture; apiculture and related apicultural activities, production of honey, beeswax, honeycomb, and other related products; horticulture; viticulture, winemaking, and related activities; animal husbandry, including, but not limited

to, the care and raising of livestock, equine, and fur-bearing animals; poultry husbandry and the production of poultry and poultry products; dairy production; the production of field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; pasturage; any combination of the above; the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, such husbandry or production; and any additions or modifications to the above made by the Director by rule adopted under the Administrative Procedure Act (sec. 931.01(A) by reference to sec. 1.61, not in the bill).

(2) The land forming the area is in an agricultural district or districts established under current law;<sup>1</sup>

(3) The land forming the area is valued and assessed for real property tax purposes in accordance with its current agricultural use value (CAUV) under the CAUV tax program established under current law.<sup>2</sup> Land forming the area that is a portion of a farm on which is located a dwelling house, a yard, or outbuildings such as a barn or garage is deemed to satisfy this criterion despite the fact that it does not qualify for CAUV because it is not land devoted exclusively to agricultural use;

(4) All of the applications from the owner or owners of the land forming the area are approved in accordance with the bill by the boards of township trustees of all of the townships in which the land is located; and

(5) All of the applications from the owner or owners of the land forming the area are approved in accordance with the bill by the boards of county commissioners of all of the counties in which the land is located (sec. 931.02(B)).

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<sup>1</sup> *Agricultural land may be enrolled in an agricultural district if it meets certain criteria. Enrollment in an agricultural district is renewable every five years and provides the landowner with certain protections. These protections include exemption from the collection of real property assessments for purposes of sewer, water, or electrical service and a defense in civil actions for nuisances involving agricultural activities. (Chapter 929., not in the bill.)*

<sup>2</sup> *The CAUV program enables land that fits the definition of "land devoted exclusively to agricultural use" to be taxed in accordance with its current agricultural use value rather than its true taxable value. This valuation of land under the CAUV program results in tax savings for the owner of the land. (Secs. 5713.30 to 5713.38, not in the bill.)*

**Aggregation of land to satisfy acreage requirement**

For purposes of establishing an agricultural security area, two or more owners of contiguous farmland may aggregate the land in order to satisfy the bill's requirement that such an area must consist of not less than 1,000 acres of contiguous farmland. Each owner must submit an application to the appropriate boards of township trustees and boards of county commissioners requesting establishment of an agricultural security area together with the required map. (Sec. 931.02(C).)

**Establishment of an agricultural security area**

**Hearing on application**

Not later than 45 days after receipt of an application for enrollment in an agricultural security area submitted under the bill, the board of township trustees of each township in which the land that is proposed for enrollment in an agricultural security area is located and the board of county commissioners of each county in which the land is located must hear the application at the next regularly scheduled meeting of the board. A board, not later than seven days prior to the time of the meeting, must cause a notice containing the time and place of the meeting to be published in a newspaper of general circulation in the township or county, as applicable, and to be sent to the superintendent of each school district within the proposed agricultural security area. (Sec. 931.03(A).)

**Procedures for incorrect or incomplete application**

Not later than 60 days after hearing the application, a board must adopt a resolution either approving or rejecting the application. However, if a board determines that the information in the application is incorrect or the application is incomplete, the board must return the application to the applicant, by certified mail, with an enumeration of the items that are incorrect or incomplete.

Upon receipt of the returned application, the applicant may amend the application and, not later than 15 days after receipt of the returned application, may submit an amended application to each board of township trustees and each board of county commissioners to whom the original application was submitted. Not later than 30 days after receipt of an amended application, a board must adopt a resolution either approving or rejecting the amended application. (Sec. 931.03(A).)

**Adoption of resolution establishing an agricultural security area**

An agricultural security area is established, and the land that is proposed for inclusion in the area is enrolled in the area, upon the adoption of a resolution by



each of the affected boards of township trustees and boards of county commissioners approving the same version of the application requesting the establishment of the area (sec. 931.03(B)). Not later than five days after adoption of the resolution, a board must notify the applicant, by certified mail, of the board's decision to approve or reject the application (sec. 931.03(A)). Not later than 30 days after a board adopts a resolution approving the application, the board must send a copy of the resolution, by certified mail, to the Director of Agriculture, the Tax Commissioner, and the county auditor (sec. 931.03(B)).

A resolution approving the establishment of an agricultural security area must include all of the following:

(1) A statement that the board of township trustees or board of county commissioners, as applicable, commits not to initiate, approve, or finance any development for residential, commercial, or industrial purposes, including construction of new roads and water and sewer lines, within the area for a period of ten years (sec. 931.03(C)(1));

(2) A requirement that the owner or owners of the land in the area use best management practices (sec. 931.03(C)(2)). The bill defines "best management practices" as the engagement of agricultural production and management, including practices such as manure handling, tillage, forestry management, and similar practices, in a manner that is generally accepted in the agriculture industry and that is approved by the United States Department of Agriculture, the Natural Resources Conservation Service in the United States Department of Agriculture, the Department of Natural Resources, or a soil and water conservation district established under current state law. With respect to organic or sustainable production methods, best management practices include those practices that are approved by a conservation professional whom the Director approves as having expertise in those methods. (Sec. 931.01(B).)

(3) A statement that describes the agreement that was reached with other boards, if applicable, under the bill (see "*Tax exemption*," below) concerning the percentage of the taxable value of qualifying agricultural real property in the agricultural security area that is to be exempted from taxation under the bill and the number of years that the tax exemption will apply to that property (sec. 931.03(C)(3)).

### *Term of an agricultural security area*

The bill specifies that an agricultural security area may continue in existence for ten years unless one of the following occurs: (1) the owner or owners of all of the land in the area fail to renew the enrollment of the land in accordance with the bill (see "*Renewal of enrollment in an agricultural security*

area," below), (2) the sole owner of land enrolled in the area withdraws (see "Withdrawal from an agricultural security area," below), or (3) an owner's land is no longer enrolled in an agricultural district, no longer qualifies for the CAUV tax program, or fails to satisfy the 1,000 contiguous acres criterion unless certain exceptions to the acreage requirement apply (see "Exceptions to acreage requirement," below) (sec. 931.03(D)).

### **Renewal of enrollment in an agricultural security area**

The bill specifies that not later than 180 days prior to the expiration of an agricultural security area, an owner of land that is enrolled in the area may renew the enrollment. The bill's procedures for the initial enrollment of land in an agricultural security area apply to the renewal of enrollment. In addition, all of the requirements governing initial enrollment apply to enrollment renewal. (Sec. 931.06.)

### **Withdrawal from an agricultural security area**

Under the bill, an owner of land that is enrolled in an agricultural security area may withdraw from the area at any time. To withdraw, the owner must send written notice of withdrawal, by certified mail, to the county auditor of each county, the board of township trustees of each township, and the board of county commissioners of each county in which the land is located. (Sec. 931.07(A).) Upon receipt of a notice of withdrawal, a board of township trustees or a board of county commissioners immediately must send a certified copy of the notice to the Director of Agriculture. The copy must indicate the name of the township or county, as applicable. (Sec. 931.07(B).)

### **Exceptions to acreage requirement**

If an owner of land that is enrolled in an agricultural security area withdraws from the area or if at any time an owner's land is no longer enrolled in an agricultural district or no longer qualifies for the CAUV tax program, any other owners of land that is enrolled in that area who aggregated their acreage in order to satisfy the bill's 1,000 contiguous acres requirement may continue to have their land enrolled in the agricultural security area until the enrollment expires, provided that they do not withdraw their land from the area and that their land still is enrolled in an agricultural district and qualifies for the CAUV tax program (sec. 931.07(C)(1)).

If the state or a municipal corporation appropriates part of the land that is enrolled in an agricultural security area and, as a result of the appropriation, the area fails to satisfy the bill's 1,000 contiguous acres requirement, the owners of land enrolled in the area whose land still is enrolled in an agricultural district and

qualifies for the CAUV tax program may continue to have their land enrolled in the agricultural security area until the enrollment expires (sec. 931.07(C)(2)).

### **County auditor's certification to Tax Commissioner upon certain events**

Under the bill, the county auditor must certify to the Tax Commissioner notice of any of the following events occurring with respect to land that is enrolled in an agricultural security area: (1) the owner of the land withdraws all or a portion of it from the agricultural security area, (2) the owner of the land withdraws all or a portion of it from an agricultural district, (3) the land is removed from the agricultural district in which it is situated because of the termination of the district, and a renewal application has not been filed within the time prescribed under the Agricultural Districts Law or has not been approved under that Law, or (4) all or a portion of the land is converted from being land devoted exclusively to agricultural use and therefore is no longer eligible for participation in the CAUV tax program unless the conversion is incident to the appropriation of the land by the state, one of its political subdivisions, or a public or private agency that is authorized by law to appropriate property in Ohio courts.

The county auditor must certify the notice within 30 days after discovering or determining that such a withdrawal, removal, or conversion has occurred. The notice must be made in the form and manner prescribed by the Tax Commissioner and must indicate the identity of the owner of the land, the date on which the withdrawal, removal, or conversion occurs or takes effect, and any other information prescribed by the Tax Commissioner. (Sec. 931.08.)

### **Tax exemption**

Under the bill, a percentage of the taxable value of qualifying agricultural real property first appearing on the real and public utility property tax list in a tax year during which the land is enrolled in an agricultural security area may be exempted from taxation. The bill defines "qualifying agricultural real property" as a building, structure, improvement, or fixture located on land enrolled in an agricultural security area and having a true value in money of \$5,000 or more. The board of township trustees of each township in which the land that is enrolled in the agricultural security area is located and the board of county commissioners of each county in which the land is located must confer with each other and reach an agreement concerning the tax exemption. (Sec. 5709.28.)

The agreement must establish the percentage of the taxable value of qualifying agricultural real property that is to be exempted from taxation and the number of years that the tax exemption will apply. The agreement cannot exempt from taxation more than 75% of the taxable value of the qualifying agricultural real property and cannot apply the exemption to any tax year after the scheduled

expiration of the agricultural security area. Each time that a renewal application is filed for an agricultural security area that involves qualifying agricultural real property that has been the subject of an exemption, the applicable boards must reach a new agreement concerning the exemption before any of the boards adopts a resolution either approving or rejecting the renewal application. (Sec. 5709.28.)

If the county auditor certifies a notice to the Tax Commissioner under the bill with respect to a taxpayer that claimed a tax exemption established under the bill for a prior tax year (see "County auditor's certification to Tax Commissioner upon certain events," above), the amount of tax otherwise imposed on the qualifying agricultural real property that was the subject of the exemption must be increased for the tax year immediately following the tax year in which the Tax Commissioner receives the notice. The amount of the increase must equal the aggregate value of the tax exemption received by the taxpayer in the five tax years preceding and including the tax year in which the Tax Commissioner receives the notice, plus interest on that amount at the average bank prime rate, as determined under the Agricultural Districts Law, at the time that the Tax Commissioner receives the notice. (Sec. 5709.28.)

#### Corporation franchise tax credit

For tax years 2004 and thereafter, the bill allows a nonrefundable credit against the corporation franchise tax imposed under current law that is equal to 50% of qualified farm property taxes paid by a taxpayer or pass-through entity in the calendar year immediately preceding the tax year (sec. 5733.45(B)).<sup>3</sup> The bill defines "qualified farm property taxes" as the current taxes charged against qualified farm property owned by a taxpayer or by a pass-through entity in which a taxpayer is an owner and payable without penalty within the qualifying period (sec. 5733.45(A)(2)).<sup>4</sup> "Qualified farm property" is defined as property that was

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<sup>3</sup> A nonrefundable tax credit is a credit against tax liability that cannot exceed the amount of the pre-credit liability; e.g., if a credit is computed to be \$250, but the tax liability owed is only \$200, the maximum net credit allowed is limited to \$200; the \$50 difference is not paid as a refund. A pass-through entity is a form of business organization that generally is not taxable at the level of the organization; instead, each of the constituent owners of the organization is taxed in proportion to the owner's interest in the organization and claims a proportionate share of any tax offsets such as deductions and credits. All items of income or offsets retain the same character at the owner level as they had at the organization level. Examples include partnerships, S corporations, and limited liability companies. (Sec. 5733.04, not in the bill.)

<sup>4</sup> The bill defines "current taxes" as all taxes charged against an entry on the general tax list and duplicate of real and public utility property that have not appeared on that list and duplicate for any prior tax year (by reference to sec. 323.01, not in the bill).

enrolled in an agricultural security area for the entire calendar year immediately preceding the tax year for which the bill's corporation franchise tax credit is claimed (sec. 5733.45(A)(1)). Under the bill, "qualifying period" means each ten-year period during which qualified farm property is enrolled in an agricultural security area (sec. 5733.45(A)(3)). If the qualified farm property taxes were paid by a pass-through entity, a taxpayer may claim the taxpayer's distributive or proportionate share of the credit distributed by the pass-through entity (sec. 5733.45(B)).

The credit must be claimed in accordance with the order prescribed for claiming corporation franchise tax credits (sec. 5733.45(B)). The corporation franchise tax credit allowed by the bill is 17th in that order (sec. 5733.98(A)(17)).

If the amount of the credit exceeds the amount of tax otherwise due after deducting any credits that precede the bill's corporation franchise tax credit in that order, the taxpayer may carry forward to the ensuing three tax years the portion of the credit that is not claimed in the tax year immediately following the calendar year in which the qualified farm property taxes were paid and must deduct the amount of the excess credit allowed for any such year from the balance carried forward to the next year. Any balance carried forward from a prior tax year may not be claimed for a tax year unless the farm property was enrolled in an agricultural security area for the entire preceding calendar year. (Sec. 5733.45(B).)

If the county auditor certifies a notice to the Tax Commissioner under the bill with respect to a taxpayer that claimed a corporation franchise tax credit under the bill for a prior tax year (see "County auditor's certification to Tax Commissioner upon certain events," above), the amount of corporation franchise tax otherwise imposed under current law must be increased for the tax year immediately following the tax year in which the Tax Commissioner receives the notice. The amount of the increase must equal the aggregate amount of corporation franchise tax credits received by the taxpayer under the bill for qualifying farm property taxes paid in the same qualifying period, not to exceed five years, plus interest on the taxes at the average bank prime rate, as determined under the Agricultural Districts Law, at the time that the Tax Commissioner receives the notice. (Sec. 5733.45(C).)

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*"Current taxes" does not include certain penalties on taxes that may be charged under existing law.*



### **Income tax credit**

For taxable years beginning in 2004 and thereafter, the bill allows a nonrefundable income tax credit equal to 50% of qualified farm property taxes paid by a taxpayer or pass-through entity in the taxpayer's or entity's taxable year (sec. 5747.64(B)). The bill defines "qualified farm property taxes" and "qualifying period" in the same manner as for the corporation franchise tax credit (see above) (sec. 5747.64(A)(2) and (3)). It defines "qualified farm property" as property that was enrolled in an agricultural security area for the entire calendar year that includes the first day of the taxable year for which the income tax credit is claimed under the bill (sec. 5747.64(A)(1)). If the qualified farm property taxes were paid by a pass-through entity, a taxpayer may claim the taxpayer's distributive or proportionate share of the credit distributed by the pass-through entity (sec. 5747.64(B)).

The credit must be claimed in accordance with the order prescribed under current law for claiming income tax credits (sec. 5747.64(B)). The income tax credit allowed by the bill is 24th in that order (sec. 5747.98(A)(24)).

If the amount of the credit exceeds the amount of tax otherwise due after deducting any credits that precede the bill's income tax credit in that order, the taxpayer may carry forward to the ensuing three tax years the portion of the credit that is not claimed in the tax year immediately following the calendar year in which the qualified farm property taxes were paid and must deduct the amount of the excess credit allowed for any such year from the balance carried forward to the next year. Any balance carried forward from a prior year may not be claimed for a taxable year unless the farm property was enrolled in an agricultural security area for the entire calendar year that includes the beginning of the taxable year. (Sec. 5747.64(B).)

If the county auditor certifies a notice to the Tax Commissioner under the bill with respect to a taxpayer that claimed an income tax credit for a prior taxable year (see "**County auditor's certification to Tax Commissioner upon certain events**," above), the amount of income tax otherwise imposed under current law must be increased for the taxable year that includes the year in which the Tax Commissioner receives the notice. The amount of the increase must equal the aggregate amount of income tax credits received by the taxpayer under the bill for qualifying farm property taxes paid in the same qualifying period, not to exceed five years, plus interest on the taxes at the average bank prime rate, as determined under the Agricultural Districts Law, at the time that the Tax Commissioner receives the notice. (Sec. 5747.64(C).)

**Authorized nonagricultural uses of land in an agricultural security area: residence or business**

The bill authorizes two uses of land in an agricultural security area other than agriculture. Accordingly, the bill specifies that an owner of land that is enrolled in an agricultural security area may do either or both of the following: (1) develop, authorize the development of, or, for the purpose of developing, transfer ownership of not more than two acres per each 40 acres of the owner's land within the agricultural security area for constructing or otherwise establishing a residence for an individual who is related by consanguinity or by affinity to the owner, or (2) request approval to operate any business that does not impair the owner's ability to engage in agriculture from the board of township trustees of the township and the board of county commissioners of the county in which the proposed business will be located (sec. 931.04(A)). The amount of land that is used for either of these authorized purposes must be included when determining whether the bill's 1,000 contiguous acres requirement is satisfied (see above) (sec. 931.04(C)).

**Request to operate a business**

To obtain approval to operate a business in an agricultural security area, a person must send a written request, by certified mail, to the appropriate board of township trustees and the appropriate board of county commissioners. The request must contain a description of the proposed business, a description of the intended location of the business, a description of the intended size of the business, and, if applicable, a detailed description of any construction, renovation, or excavation that will occur for purposes of the proposed business. (Sec. 931.04(B)(1).)

Not later than 30 days after receipt of a request to operate a business in an agricultural security area, a board must adopt a resolution either approving or rejecting the request. If the board approves the request, it must send by certified mail, not later than 30 days after adopting the resolution, a copy of the resolution to the Director of Agriculture, the appropriate county auditor, and the person requesting the business. (Sec. 931.04(B)(2).) If both the board of township trustees and the board of county commissioners adopt a resolution approving the request to operate a business, the person making the request may establish the requested business (sec. 931.04(B)(3)).

**Provision of guidance and technical assistance by Director**

The bill requires the Director of Agriculture or the Director's authorized representative, upon request, to provide guidance and technical assistance to owners of land who are seeking enrollment in agricultural security areas and to boards of township trustees and boards of county commissioners who receive

resolutions requesting the establishment of agricultural security areas (sec. 931.05).

**Director's annual report**

Under the bill, the Director must prepare and submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives an annual report concerning agricultural security areas in the state. The report must include information concerning the number of acres that are enrolled in agricultural security areas and their location, proposed development that did not occur due to the establishment of agricultural security areas, if known, and tax exemptions granted and tax credits claimed under the bill. (Sec. 931.09.)

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**HISTORY**

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Introduced	09-13-01	p. 830

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