

# Associated General Contractors of NH Legislative Report



APRIL 2009

## Legislative Executive Summary

By Gary Abbott, Executive Vice President



This year, AGC has decided to issue the Legislative Report during crossover between the Senate and the House. AGC played an active role in this session, speaking out on behalf of its members, and working with other organizations and lawmakers to rewrite unfair or unclear legislation. The top bills inside are ones that could have the greatest impact on AGC members, for better or for worse.

This session, I have found that committees have retained several bills. Retaining a bill means the committee wants to keep the bill and work on it over the summer. The committee will have to report to the Clerk's office by November, and the full House or Senate, depending on which body the bill is before. The Legislature will then vote on the bill in early January 2010. Therefore, several of these bills you find retained, the Association will continue to follow when they resurface over the summer, and may need member participation. Additionally, AGC saw several of last year's bills crop up this year with new titles and language.

The following is a brief synopsis of the most important bills AGC faced this year:

- Increasing the gas tax by 15 cents over three years (HB 644). AGC followed this bill from the Public Works Committee as it passed the House and then went to the Ways and Means Committee for a financial review. AGC was adamant in its support of this bill, as it will greatly improve New Hampshire's infrastructure and provides a long-term solution to our needs.
- Contractor accountability and disclosure was brought up again, this time in Senate Bill 78. This bill would create unnecessary paperwork as well as open the door for individuals outside of the project to file complaints.
- When it came to the environment, the most complex bill involved adding indirect impacts to wetlands permits (HB 222). The bill went through several versions before being retained in committee.
- In regards to current economic situation, providing notice for layoffs (SB 40) was an important bill this year, but would require most in construction to file annually.

As this year's session reaches the midpoint, the bills that have not been killed or retained will have a second chance in either the House or the Senate. AGC would like to thank the many members who have showed up on these important bills this year. The members who took time out of their busy schedules include, AGC President Glenn Cairns of George R. Cairns & Sons; Jim Gove of Gove Environmental Services; Erik Stevenson of Brox Industries; Al Chouinard of Gilbane Building Company; Mark LaFave of Carroll Concrete; Ryan Crosbie, Alex Phelps, Newb LeRoy, Larry Major, and Derrick Hill of Pike Industries; Richard Piper of R.M. Piper; Craig Sliter of CWS; Mark and Rick Charbonneau of Continental Paving; Dan Church and John Timmeny of The Rowley Agency; Ron Ciotti of Hinckley, Allen and Snyder, Rich Lambert of Pro Con, Inc; Caroline Bergeron of Harvey Construction; and Rusty Mosca of Nathan Wechsler and Company, as well as those we might have missed. Member participation goes a long way to strengthening our voice and helping to make a difference.

## Top Bills inside...

### Building

- Building Compliance with Access Standards
- Regional Impact Guidelines
- Contractor Accountability & Disclosure
- Creation of Expressed Trusts
- Driveway Permit Fees

### Environment

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### Highway

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- Working Families Flexibility

### Labor

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- Outsourcing Labor
- Giving Advance Notice of Layoffs



## Building

### Compliance with Access Standards

House Bill 530 pertains to the inspection of public buildings for compliance with access standards. The bill requires public buildings to meet access standards contained in the state building code and establishes a procedure for the inspection and enforcement of the access standards in new construction. This new level of inspection would be done in addition to the municipal building code official inspections at the completion of the project. This inspection would be covered by an inspector who is certified to do so.

**AGC in Action:** On February 19th, AGC opposed this bill before the House Commerce and Consumer Affairs Committee.

✓ **Status:** The Commerce and Consumer Affairs Committee held a subcommittee work session on March 12th. An amendment was added to the bill. The amendment adds additional language regarding specific statutes, but doesn't change the intent of the original legislation. During the executive session on March 17th, the committee voted 17-0 ought to pass with amendment. The bill made its way to the House floor and, through a voice vote, was voted ought to pass with amendment.

### Establishing Guidelines for Regional Impact of Developments

Senate Bill 29 is relative to the review of developments of regional impact. This bill requires regional planning commissions to establish guidelines to assist local land use boards in determining whether a development has the potential for regional impact. The bill requires applicants to pay plan review costs incurred by the regional planning commissions.

**AGC in Action:** AGC testified in opposition to this bill before the Senate Public and Municipal Affairs Committee. AGC felt that there were no guidelines to prevent abuse when reviewing plan costs. AGC recommended a \$750 cap and language to limit the review to the materials filed.

✓ **Status:** An amendment was proposed at the hearing on January 22nd, which changed the bill to say regional planning commissions may develop guidelines every five years with public participation. The amendment also removed the review by the regional planning commissions at the applicants expense. At the executive session, the committee voted ought to pass with amendment. On March 4th, the full Senate concurred and

voted ought to pass with amendment. The bill now goes to the House for consideration as amended.

### Contractor Accountability and Disclosure

Senate Bill 78 is relative to contractor accountability and disclosure in the public works construction procurement process. The bill mandates that general contractors must provide the Public Works Agency with a list of names, addresses, CEO, CFO, other LLC principals, and each subcontractor



that will be used in the project within 48 hours of the contract award. It forbids the addition of subcontractors after a subcontractor's listed. Furthermore, at the beginning of onsite work on a State construction project, the contractor or manager must provide the awarding agency with a complete list of subcontractors and independent contractors on the jobsite, whom they are directly contracted to, and who insures them for workers' compensation purposes. This list must be posted in a visible location on the jobsite as well as on the agency website, and be updated as needed. Any contractor or subcontractor who is not on the list is not allowed to be on a State construction site. This bill, as written, is similar to last year's Senate Bill 438.

**AGC in Action:** On February 24th, before the Senate Commerce, Labor, and Consumer Protection Committee, Rich Lambert of Pro Con, Inc. testified in opposition to this bill. AGC handed in written testimony in opposition to this bill, citing that these regulations aren't compatible with design build methods that are becoming popular.

**Status:** The Senate has not taken action at this time, but is working on an amendment with Administrative Services.

### Creation of Express Trusts

Senate Bill 94 is relative to the creation of express trusts for payment of claims for materials and services rendered in building projects. The bill requires contractors and subcontractors to hold money received from projects for payments of building materials and services in express trusts.

**AGC in Action:** Curtis Barry of the Lumber Association, spoke with AGC's Building Committee to show them a draft of the bill. The Building Committee voiced concerns about the bill. AGC testified in opposition of this bill before the Senate Commerce, Labor, and Consumer

Protection Committee on March 9th. While AGC agrees with the concept of the bill, it felt the language needed work. One of AGC's concerns is that there is no payment priority defined in the bill.

✓ **Status:** Prime Sponsor, Representative Robert Le-tourneau, asked the committee to re-refer the bill to allow time to work on the language, as well as collaborate with AGC and other organizations to reach a compromise on this bill. An executive session immediately followed the hearing, the committee unanimously voted to re-refer the bill. Meetings will probably be held this summer; AGC will keep you updated.

### Major Developmental Driveway Permit Fees

Senate Bill 104, which pertains to driveway permit fees, allows the Department of Transportation (DOT) to charge fees to cover the costs associated with certain driveway permits. The DOT asserts there is a yearly average of 30 major developmental driveway permit applications. These major developmental driveways require an extensive study on traffic impact as part of the permitting process. The fees would cover work performed by DOT technical and engineering personnel, and outside consultants to assist DOT staff as needed. The fee for DOT employees would be \$65 per hour, and consultants would charge their normal rates.

**AGC in Action:** The AGC opposed the original legislation as there was no cap to what an applicant could be charged. AGC recommended that maybe these projects should have a fee system like environmental permits based on the type of project.

AGC worked with the NH DOT on this language prior to the vote by the House Ways & Means Committee on the budget. At this time, AGC is not sure if this will be included in the budget legislation.

✓ **Status:** The bill was heard on February 11th before the Senate Transportation Committee, and was voted inexpedient to legislate. Following the hearing, the full Senate agreed with the committee, killing the bill.

However, the Governor's Budget (House Bill 2) included the passage of Senate Bill 104, which has now been inserted as amendment number 0572h with the following changes. A fee of \$65 per hour will be charged for work done by the DOT, and in no case shall the total fee exceed a cap based on the project size.

## Environment

### Permitting Municipalities to Enact Ordinances Concerning Groundwater Withdrawal

House Bill 60, relative to large groundwater withdrawals, would permit municipalities to enact local ordinances affecting large groundwater withdrawals.

**AGC in Action:** On January 21st, before the House Municipal and County Government Committee, AGC testified in opposition to this bill, as it would permit municipalities to enact ordinances concerning large groundwater withdrawals.

✓ **Status:** During the executive session on February 4th, the House Municipal and County Government Committee voted 15-4 inexpedient to legislate. Those opposed to the bill (the majority), felt that the flow of water has no boundaries, which led them to believe that this issue needs a state and regional solution. The groundwater commission, as created by House Bill 1353, was directed to consider appropriate roles for municipalities in regards to the permitting and regulation of large ground water withdrawals. Those in favor of the bill stated that this bill returned the responsibility of a local resource, groundwater, to the community. Both sides agreed that the nature, extent, and capacities of aquifers within the state are unknown.

On February 12th, the full House voted the bill inexpedient to legislate by a voice vote, effectively killing the bill.

### Indirect Impacts on Wetlands

House Bill 222, relative to fill and dredge permits in wetlands, requires the Department of Environmental Services (DES) to consider direct and indirect impacts of project proposals on wetlands.

**AGC in Action:** At the hearing on January 27th, before the House Resources, Recreation, and Development Committee, Jim Gove, of Gove Environmental Services, on behalf of AGC, testified in opposition; he believed the bill was premature and not a true wetlands issue. Jim Gove also stated that he is currently serving on a study commission to review these issues.



✓ **Status:** Subcommittee work sessions were held in order to clarify the language. It was agreed that certain items needed to be defined to make the bill's requirements

clear. After attending all of the subcommittee work sessions, Jim Gove was asked to establish a committee to define certain elements in the bill. The Resources, Recreation, and Development Committee decided to retain this bill.

### **Zoning of Fluvial Erosion Hazards**

House Bill 290 pertains to the authorization of fluvial erosion hazard zoning. The bill would add fluvial erosion hazard zoning to permissible innovative land use controls. Fluvial erosion hazards refer to major streambed and streambank erosion associated with the often catastrophic physical adjustment of stream channel dimensions and location that can occur during flooding. The bill seeks to establish zoning around these hazards to prohibit development in probable flood areas.

**AGC in Action:** AGC opposed this legislation because it added fluvial to the items a municipality could add set backs to, without any guidance or basis.

✓ **Status:** The House Municipal and County Government Committee held an informational session on fluvial erosion hazards because there was a general lack of knowledge about the subject. AGC's Environment Committee members attended the session, and concluded that AGC could now support the bill since an amendment was introduced which stated, "towns shall follow DES guidelines for zoning." However, the Municipal Association reworded the amendment to "towns may follow DES guidelines," which returned AGC's position to opposed. AGC is concerned that if towns do not follow DES guidelines for zoning, the zoning laws will not be scientifically based. The committee unanimously voted 14-0 ought to pass with the Municipal Association amendment. On March 24th, the full House voted ought to pass with amendment.

### **Impact Studies for Groundwater Withdrawals**

House Bill 314 is relative to municipalities contracting for impact studies for large groundwater withdrawals. This bill permits individuals and municipalities to submit impact studies for large groundwater withdrawals within 60 days of notification by the Department of Environmental Services (DES) that an application for such withdrawal has been filed.

**AGC in Action:** AGC opposed this bill before the House Resources, Recreation & Development Committee. The bill is at the applicant's expense, and gives the town control, whereas AGC would like the applicant to have control, not the town.

✓ **Status:** On March 12th, the committee voted ought

to pass with amendment by a 16-1 vote. The amendment replaced the entire legislation with language that allows the town where the well is to be located to hire a licensed engineer or geologist to review the documents submitted at the applicant's expense. This is so the towns can communicate any concerns to DES regarding the permit requested. The majority of the committee felt this bill gives municipalities some measure of assurance that permits will not be issued that compromise their water supplies. The full House voted ought to pass with amendment by voice vote.

### **Filing an EIS on all Construction Projects with the DES**

House Bill 652 pertains to the impact of demolition and construction projects on the environment. This bill requires persons or public agencies to file an environmental statement with the Department of Environmental Services (DES), as well as adhering to certain disclosure and hearing procedures when a project involves demolition or construction.

**AGC in Action:** On February 4th, before the House Environment and Agriculture Committee, AGC felt that there are already enough requirements on construction projects to protect the environment without adding this to all new construction projects.

✓ **Status:** During the executive session on February 19th, the committee voted to retain this bill.

## **Highway**

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### **Gas Tax Increase for Transit Systems**

House Bill 125-FN-A would have increased the rate of the gas tax and dedicated the increased revenues to development and improvement of highway-related transit systems serving New Hampshire residents.

**AGC in Action:** On February 17th, before the House Public Works and Highways Committee, AGC testified in opposition to this bill, citing its unconstitutional nature. New Hampshire Motor Transport also testified in opposition to the bill.

✓ **Status:** During the executive session on February 19th, the House Public Works and Highways Committee considered this bill to be unconstitutional because it breaks Part II, Article 6A of the New Hampshire Constitution, which prohibits the use of gas tax funds to be used in this manner. The bill was voted 16-1 inexpedient to legislate. On March 4th, the full House was in agreement with the Public Works and Highways Committee, and voted the bill inexpedient to legislate through a voice vote.

## Selling a Portion of I-95 & Open Road Tolling

House Bill 391 authorizes the Department of Transportation (DOT) to convey a portion of interstate highways to the bureau of turnpikes, to redefine the eastern New Hampshire turnpike, and to increase the aggregate amount of bonds the state may issue. The bill is at the request of the DOT, and would allow them to transfer a portion of I-95 to the bureau of turnpikes, and authorizes the DOT to install open road tolling. This bill is also included in the Governor's Budget.

**AGC in Action:** AGC decided to monitor this legislation.

✓ **Status:** The House Public Works and Highways Committee believe this bill, as amended, authorizes the DOT to convey, to the NH bureau of turnpikes, a portion (1.6 miles) of I-95 for \$120 million, paying the highway trust fund an anticipated \$15 million per year for the first two years then \$7.5 million per year for 18 years. The amendment clarifies the intent of the bill to include installation of open road tolling for the Hampton toll on I-95, increasing the Hampton toll by 50 cents, and correcting figures in the original bill.

On February 12th, the Public Works Committee unanimously voted ought to pass with amendment. The bill was then put on the House floor on March 4th and voted 230-138 ought to pass with the amendment.

## Clarifying of a Transfer of General Funds

House Bill 403 clarifies the intent of a transfer of general funds to the highway fund. This bill explains that the purpose of a transfer of general funds to the highway fund is to provide state matching funds for the purchase and operating costs of buses as part of the I-93 corridor construction project.

**AGC in Action:** On January 27th, AGC and the Motor Transport Association testified in support of this bill. The bill avoids any possible issues regarding violations of Part II, Article 6-a of the NH Constitution.

✓ **Status:** The House Public Works and Highways Committee voted unanimously that the bill ought to pass on February 3rd. Following the committee hearing, an amendment was added. The bill was amended to the following: first, it provides the state match for federal funds to be used in part of the I-93 widening project, and second it properly accomplishes the transfer of the FY09 highway fund to the general fund. The latter part was originally included in HB 30, which was already approved. Also, there is a statement of intent, which clarifies the use of the state funds as the match for the I-93 bus service. On February 12th, the full House voted

ought to pass with amendment by voice vote. The bill made its way to the Finance Committee on March 8th, and went into executive session on March 13th, where it was voted 20-0 ought to pass with amendment. The bill returned to the House floor, where it was voted ought to pass with amendment.

## Increasing the Gas Tax

House Bill 644 raises the rate of the road toll (5 cents each year over three years), establishes the New Hampshire road and bridge account, limits the use of road toll revenues, and estab-



lishes a commission to study future sustainable revenue sources. This bill is intended to provide long-term funds to fix the state's infrastructure problems.

**AGC in Action:** On February 17th, before the House Public Works and Highways Committee, AGC testified in support of this bill. Gary Abbott, Executive Vice President, and Glenn Cairns, AGC President, spoke on behalf of AGC in support of the bill, as well as passing out "In the Red," an informational booklet created by Safer Roads, a coalition of organizations including AGC of NH.

✓ **Status:** The Public Works and Highways Committee held its executive session on February 19th. The committee voted 14-3 ought to pass with amendment. On March 4th, the full House voted 190-162 ought to pass with amendment. The bill went before the House Ways and Means Committee for a financial review. During this hearing on March 13th, an amendment was added to extend the increase in the diesel tax out to ten years. Several AGC members testified in support of this bill, along with the Municipal Association and the NH Good Roads Association. The Timber and Motor Transport Associations were the only organizations opposed to the bill.

## EZ Pass Discount Reduced & Monthly Cap for Frequent Users

House Bill 670, as introduced, changed the EZ Pass discount to zero and placed a \$30 cap per month for frequent users, the bill was at the request of the Department of Transportation (DOT). This bill is also included in the Governor's Budget. At the hearing on February 10th, before the House Public Works and Highways Committee, the DOT Commissioner, George Campbell, handed out an amendment. The amendment stated a 15% discount for passenger cars, including motorcycles, leaving the 10% discount for commercial vehicles, with a \$33 cap

per month, with the Commissioner able to change the discount at his discretion.

**AGC in Action:** AGC was monitoring this bill, but upon review of the amendment at the hearing, testified with concerns over the future changes with the discount.

✓ **Status:** At the executive session, the Public Works and Highways Committee proposed an amendment. Their amendment stated a 15% discount for passenger cars, including motorcycles, leaving the 10% discount for commercial vehicles, with a cap of 33 transactions per month. The Committee voted 10-7 ought to pass, with the House amendment. Those who voted in favor of the bill believed instating a cap would be beneficial for commuting residents. This bill is a fair way of tolling the turnpike system, while maintaining a neutral financial impact. Those who opposed the bill felt it not only reduces the amount of revenue generated by the EZ Pass system, but it also reverses legislature instated when the EZ Pass system was first introduced. When the EZ Pass system was introduced, the discount was given to promote the ease of the EZ Pass, this bill now takes away 15% of that discount; negating original promises. Additionally, the minority felt the bill is not a fair proposal, meaning that frequent users are not paying their share of usage. Where as infrequent users are paying more than they originally had.

On March 4th, a motion was made on the House floor that the bill ought to pass, but the motion failed with a vote of 161-181. Representative Chandler made a motion for inexpedient to legislate, and through a voice vote the bill was killed on the House floor.

### **Design-Build for Transportation Projects**

Senate Bill 69 eliminates the \$5 million financial ceiling on design-build contracting for transportation projects. This bill, requested by the Department of Transportation (DOT), allows certain transportation projects to utilize the design-build concept, and excludes these projects from the financial contract ceiling. The bill would also change the cap to all transportation projects.

**AGC in Action:** The AGC reviewed the bill, and proposed putting a cap in the language so one company couldn't get one large project. At the hearing on February 11th, AGC testified that there are concerns with the bill as it is, and that they would like to introduce an amendment. Ron Ciotti and Glenn Cairns worked on AGC's proposed amendment. AGC presented the Senate Committee and worked with NH DOT on amend-

ing this legislation to give the department the ability to proceed on any project up to \$25 million and for projects over that amount to require a public hearing and approval of the Executive Council prior to proceeding.

✓ **Status:** On February 26th, the committee voted ought to pass with amendment. AGC made some final revisions to the amendment before it hit the Senate floor. While on the Senate floor, prime sponsor, Senator Robert Letourneau added the floor amendment. The floor amendment made the effective date of this upon passage, in case any stimulus funds become available. On March 4th, the full Senate voted ought to pass with amendment by voice vote. This bill will now go before the House Public Works and Highways Committee.

### **Permit Fees on Overweight/Oversize Vehicles**

Senate Bill 105 is relative to permit fees for certain vehicles. The bill is at the request of the Department of Transportation (DOT), and would increase certain permit fees collected by the department. The increases in fees would pertain to vehicles that are over-length, weight, and height. The DOT claimed the proposed fee increase would have generated an additional \$233,575 for the Highway Fund for the 2008 calendar year.

**AGC in Action:** AGC is monitoring this bill because it proposes an 80% increase in overweight/oversize permit fees.

✓ **Status:** The bill was heard on February 5th before the Senate Transportation Committee, and was voted inexpedient to legislate. The full Senate agreed with the committee, voting inexpedient to legislate, killing the bill.

However, the Governor's Budget (House Bill 2) included the same language as Senate Bill 105 and the House Ways and Means Committee is considering it.

## **Human Resources**

### **Establishing Family Leave Insurance**

House Bill 661 is relative to family leave insurance. This bill establishes a family leave insurance program to allow parents to take off time for a newborn, newly placed child, or to care for a family member with serious health problems. The bill also institutes the benefit at up to six weeks of \$250 per week.

**AGC in Action:** AGC's Human Resources Committee reviewed this bill and voiced concerns over it. On February 3rd, before the House Commerce and Consumer Affairs Committee, AGC signed in opposition of this bill.

✓ **Status:** During the executive session on February 11th, the committee decided to retain this bill.

### **Paid Sick Leave for Employees**

House Bill 662 is relative to paid sick leave for employees. The bill requires that employers provide paid sick leave for their employees. The general court finds that if employees have paid time off, they will be able to go to the doctor regularly, thus reducing healthcare costs paid for by the State.

**AGC in Action:** AGC's Human Resources Committee reviewed this bill and shared concerns over it. At the hearing on February 3rd, before the House Labor, Industrial and Rehabilitative Services Committee, AGC signed in opposition to this bill.

✓ **Status:** On February 11th, during the executive session, the committee voted to retain this bill.

### **Working Families' Flexibility**

House Bill 663 refers to working families' flexibility. The bill creates a process for employees to request flexibility regarding certain conditions of employment.

**AGC in Action:** AGC's Human Resources Committee reviewed this bill and had concerns. AGC opposed this bill before the House Labor, Industrial and Rehabilitative Services Committee on February 3rd.

✓ **Status:** During the executive session, on February 11th, the House Commerce & Consumer Affairs committee decided to retain this bill.

## **Labor**

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### **Recovering Workers' Compensation**

House Bill 108 establishes procedures for a private right of action to recover workers' compensation coverage payments. Any employer may file in superior court a civil action against any other employer engaged in generally the same industry to recover amounts that should have been paid by the defending employer pursuant to provide workers' compensation coverage to the defending employer's employees who engaged in employment in the State.

**AGC in Action:** On January 29th, before the House Labor, Industrial, and Rehabilitative Services Committee, AGC testified in opposition to this bill.

✓ **Status:** During the executive session on March 18th, the committee voted 17-1 to retain this bill.

### **Outsourcing Labor**

House Bill 133 requires employers to report certain information regarding outsourcing to the Department of Labor. This bill requires companies who have reduced their employment by 50 or more employees to provide the Department of Labor with information including the number of jobs that were lost to outsourcing to foreign countries.

**AGC in Action:** AGC's Legislative and Human Resources Committee reviewed this bill and were concerned how it would affect the construction industry, since it is a seasonal business. On January 21st, AGC testified in opposition to this bill in front of the House Labor, Industrial and Rehabilitative Services Committee.

✓ **Status:** Subcommittee work sessions were held during January, February, and March. On March 12th, the Labor, Industrial and Rehabilitative Services Committee decided to retain this bill.

### **Giving Advance Notice of Layoffs**

Senate Bill 40 refers to providing workers and local governments with advance notice of impending plant closures and layoffs. This bill was at the request of the Department of Labor. Eighteen of our twenty-four State Senators sponsored this bill.

**AGC in Action:** The AGC Human Resources Committee reviewed this bill and issued concerns. On March 17th, AGC's Gary Abbott and Caroline Bergeron of Harvey Construction, and Chair of the Human Resources Committee testified in opposition to this bill. While AGC understands the intent of the legislation, it has practical business issues for those in the construction industry, since we could meet the triggers in the legislation although our projects are seasonal or temporary in nature. We do not believe the exemptions in the original legislation are clear enough. The association was also concerned with language that would make officers of the corporations personally liable if they do not meet the requirements of this law.



✓ **Status:** The Senate is now working with the Commissioner of the Department of Labor on amending the legislation to address some of the concerns raised at the hearing. AGC's Human Resources Committee will be discussing possible amendment language at their next meeting to propose when this legislation goes to the House.

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