

- 1863 -

83 WisACT 425

1983 Assembly Bill 1034

Date of enactment: May 9, 1984  
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## 1983 Wisconsin Act 425

AN ACT to repeal 144.794 (1) (a) and (c) and 144.794 (1) (p) and (q); to renumber and amend 144.794 (4) and 144.794 (12) (b) to (e); to amend 144.43 (4r), 144.792 (5), 144.792 (6), 144.792 (7), 144.794 (1) (b), (d), (j) and (k), 144.794 (2) (intro.), (b) and (d), 144.794 (3) (intro.), 144.794 (3) (b) and (d), 144.794 (4) (title), 144.794 (5) (b), 144.794 (6) (intro.) and (a), 144.794 (7) (intro.) and (a), 144.794 (8) (e) and (g), 144.794 (9) (b), 144.794 (10) (intro.) and (a), 144.794 (12) (a), 144.794 (15) and 196.01 (5); to repeal and recreate 144.794 (13) (b) and 144.794 (14); and to create 59.07 (134), 61.57, 62.155, 144.794 (4) (b), 144.794 (5) (e), 144.794 (7) (d) and (e), 144.794 (8) (k), 144.794 (10) (f), 144.794 (12) (b) and (c) and 144.794 (13) (c) of the statutes; and to affect 1983 Wisconsin Act 27, section 2043 (3), relating to the definition of "solid waste disposal", recycling and resource recovery including exemption from certain bidding requirements, waste flow control powers and procedures and other related changes.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 59.07 (134) of the statutes is created to read:

59.07 (134) **ACQUISITION OF RECYCLING OR RESOURCE RECOVERY FACILITIES WITHOUT BIDS.** Contract for the acquisition of any element of a recycling or resource recovery facility without submitting the contract for bids as required under s. 59.08 if the county invites developers to submit proposals to provide a completed project and evaluates proposals according to site, cost, design and the developers' experience in other similar projects.

SECTION 2. 61.57 of the statutes is created to read:

**61.57 Acquisition of recycling or resource recovery facilities without bids.** A village may contract for the acquisition of any element of a recycling or resource recovery facility without submitting the contract for bids as required under ss. 61.54 to 61.56 if the village invites developers to submit proposals to provide a completed project and evaluates proposals according to site, cost, design and the developers' experience in other similar projects.

SECTION 3. 62.155 of the statutes is created to read:

**62.155 Acquisition of recycling or resource recovery facilities without bids.** A city may contract for the acquisition of any element of a recycling or resource recovery facility without submitting the contract for bids as required under s. 62.15 if the city invites developers to submit proposals to provide a completed project and evaluates proposals according to site, cost, design and the developers' experience in other similar projects.

SECTION 4. 144.43 (4r) of the statutes is amended to read:

144.43 (4r) "Solid waste disposal" means the discharge, deposit, injection, dumping or placing of any solid waste into or on any land or water ~~in a manner which may permit the solid waste or any constituent of the solid waste to be emitted into the air, to be discharged into any waters of the state or otherwise to enter the environment.~~ This term does not include the transportation, storage or treatment of solid waste.

SECTION 5. 144.792 (5) of the statutes, as created by 1983 Wisconsin Act 27, is amended to read:

144.792 (5) That utilization of existing recycling and resource recovery systems and operations should be encouraged ~~with particular emphasis on municipal systems and operations in areas where municipalities are actively involved in solid waste management.~~

SECTION 6. 144.792 (6) of the statutes, as created by 1983 Wisconsin Act 27, is amended to read:

144.792 (6) That ~~municipal~~ recycling and resource recovery systems and operations are to be encouraged to the maximum extent feasible especially in the design, development, financing, construction and operation of new systems and operations.

SECTION 7. 144.792 (7) of the statutes, as created by 1983 Wisconsin Act 27, is amended to read:

144.792 (7) That solid waste recycling and resource recovery efforts in this state should be planned and coordinated in order to maximize beneficial results while minimizing duplication, ~~and inefficiency and excessive competition~~ and to achieve these goals the legislature recognizes the necessity of the state to occupy a regulatory role in this field and the necessity to give ~~municipal recycling and resource recovery systems and operations certain exclusive benefits and privileges~~ municipalities certain powers to adopt waste flow control ordinances in order to require the use of recycling and resource recovery facilities.

SECTION 8. 144.794 (1) (a) and (c) of the statutes, as created by 1983 Wisconsin Act 27, are repealed.

SECTION 9. 144.794 (1) (b), (d), (e), (j) and (k) of the statutes, as created by 1983 Wisconsin Act 27, are amended to read:

144.794 (1) (b) "Collection" means the aggregating of solid waste from its primary source and includes all activities up to such time as the waste is delivered to a ~~transfer station~~ facility for transfer, processing or disposal.

(d) "Facilities for the recycling of solid waste or for the recovery of resources from solid waste" means facilities the primary use of which is to convert or recycle solid waste into usable materials, products or energy or to incinerate solid waste for energy recovery.

(e) "Municipality" means a county, a city ~~or~~, a village or a town if the town has a population of 10,000 or more. Notwithstanding the fact that the population of a town is less than 10,000, if the town enters into an agreement with a city or village concerning the establishment of a facility for the recycling of solid waste or for the recovery of resources from solid waste and concerning the required use of that facility, the town shall be considered a municipality except the town may not be the municipality responsible for a facility.

(j) "Solid waste disposal" means the discharge, deposit, injection, dumping or placing of any solid waste into or on any land or water ~~in a manner which may permit the solid waste or any constituent of the solid waste to be emitted into the air, to be discharged into any waters of the state or otherwise to enter the environment.~~ This term does not include the transportation, storage or treatment of solid waste.

(k) "Solid waste facility" means a facility for solid waste treatment, solid waste storage or solid waste disposal, and includes commercial, industrial, municipal, state and federal establishments or operations such as, without limitation because of enumeration, facilities for the recycling of solid waste or for the recovery of resources from solid waste, sanitary landfills, dumps, land disposal sites, incinerators, transfer stations, storage facilities, collection and transportation services and processing, treatment and recovery facilities. This term includes the land where the facility is located. This term does not include a facility for the processing of scrap iron, steel or nonferrous metal using large machines to produce a principal product of scrap metal for sale or use for remelting purposes. This

term does not include a facility which uses large machines to sort, grade, compact or bale clean wastepaper, fibers or plastics, not mixed with other solid waste, for sale or use for recycling purposes. This term does not include an auto junk yard or scrap metal salvage yard.

SECTION 10. 144.794 (1) (p) and (q) of the statutes, as created by 1983 Wisconsin Act 27, are repealed.

SECTION 11. 144.794 (2) (intro.), (b) and (d) of the statutes, as created by 1983 Wisconsin Act 27, are amended to read:

144.794 (2) REQUIRED USE; IMPLEMENTATION PROCEDURE. (intro.) A municipality may require the use of a facility for the recycling of solid waste or for the recovery of resources from solid waste by any local unit of government, occupant of a single-family or multifamily residence, retail business, commercial business or industry to use a facility for the recycling of solid waste or for the recovery of resources from solid waste generated within the limits of the municipality ~~which generates or collects solid waste~~ which is not exempt under sub. (5) if:

(b) The municipality prepares or arranges for the preparation of a comprehensive facility project description report and submits this report to the department.

(d) ~~The municipality constructs, operates, maintains, expands, modifies and closes the facility is constructed, operated, maintained, expanded, modified and closed in compliance with ch. 144 this chapter and obtains all necessary permits, licenses and approvals required by the department are obtained.~~

SECTION 12. 144.794 (3) (intro.) of the statutes, as affected by 1983 Wisconsin Act 27, is amended to read:

144.794 (3) REQUIRED USE; JOINT IMPLEMENTATION PROCEDURE. (intro.) Two or more municipalities may enter into an agreement concerning the establishment of a facility for the recycling of solid waste or for the recovery of resources from solid waste and concerning the required use of that facility. The municipalities which enter into this type of agreement may require the use of a facility for the recycling of solid waste or for the recovery of resources from solid waste by any local unit of government, occupant of a single-family or multifamily residence, retail business, commercial business or industry to use a facility for the recycling of solid waste or for the recovery of resources from solid waste generated within the limits of those municipalities ~~which generates or collects solid waste~~ which is not exempt under sub. (5) if:

SECTION 13. 144.794 (3) (b) and (d) of the statutes, as created by 1983 Wisconsin Act 27, are amended to read:

144.794 (3) (b) The municipality which is responsible for the facility prepares or arranges for the preparation of a comprehensive facility project description report and submits this report to the department.

(d) ~~The municipality which is responsible for the facility constructs, operates, maintains, expands, modifies and closes the facility is constructed, operated, maintained, expanded, modified and closed in compliance with ch. 144 this chapter and obtains all necessary permits, licenses and approvals required by the department are obtained.~~

SECTION 14. 144.794 (4) (title) of the statutes, as created by 1983 Wisconsin Act 27, is amended to read:

144.794 (4) (title) REQUIRED USE; CONFLICTS BETWEEN MUNICIPALITIES.

SECTION 15. 144.794 (4) of the statutes, as created by 1983 Wisconsin Act 27, is renumbered 144.794 (4) (a) and amended to read:

144.794 (4) (a) (title) *Conflicts in nonpopulous counties.* If one municipality has ~~adopted an a valid~~ initial intent resolution, no other municipality may adopt an initial intent resolution or solid municipal waste flow control ordinance which covers the same

type of solid waste generated in the same recycling or resource recovery area ~~unless the first municipality or, if the municipality enters an agreement under sub. (3), the responsible municipality fails to prepare and submit the comprehensive facility project description report within the time limit specified under sub. (7), unless the first municipality fails to adopt a municipal waste flow control ordinance under sub. (10) within 7 years after the initial intent resolution is adopted or unless the first municipality revises its initial intent resolution or adopts a solid municipal waste flow control ordinance so that there is no conflict. This paragraph is not applicable to a county with a population of 500,000 or more or to any municipality in this type of county.~~

SECTION 16. 144.794 (4) (b) of the statutes is created to read:

144.794 (4) (b) *Conflicts in a populous county.* 1. If a city, a village or a town which is a municipality in a county with a population of 500,000 or more has a valid initial intent resolution, the county may not adopt an initial intent resolution or municipal waste flow control ordinance which covers the same type of solid waste generated in the same recycling or resource recovery area unless the city, a village or a town which is a municipality revises its initial intent resolution or adopts a municipal waste flow control ordinance so that there is no conflict.

2. An initial intent resolution for a county with a population of 500,000 or more is not valid for a city, a village or a town which is a municipality in that county if the city, a village or a town which is a municipality adopts a resolution of refusal to participate in a county waste flow control program within 6 weeks after the county initial intent resolution is adopted and if the city, a village or a town which is a municipality adopts an initial intent resolution of its own within 3 months after the county initial intent resolution is adopted.

SECTION 17. 144.794 (5) (b) of the statutes, as created by 1983 Wisconsin Act 27, is amended to read:

144.794 (5) (b) Solid waste consisting of scrap, new material or used material which is separated from other waste ~~and held by the generator for sale or~~ reuse or recycling.

SECTION 18. 144.794 (5) (e) of the statutes is created to read:

144.794 (5) (e) Solid waste produced by a commercial business or industry which is disposed of or held for disposal in an approved facility, as defined under s. 144.441 (2) (a) 1, owned by the generator and designed and constructed for the purpose of accepting that type of solid waste.

SECTION 19. 144.794 (6) (intro.) and (a) of the statutes, as created by 1983 Wisconsin Act 27, is amended to read:

144.794 (6) INITIAL INTENT RESOLUTION. (intro.) A municipality may adopt an initial intent resolution at any time except as provided under sub. (4) and except that a municipality may not adopt more than one initial intent resolution covering a specific recycling or resource recovery service area within a 10-year period. An initial intent resolution remains valid only if a comprehensive facility project description report is submitted within 2 years after that resolution is adopted and if a municipal waste flow control ordinance is adopted within 5 years after that resolution is adopted. An initial intent resolution shall include:

(a) A statement of the municipality's intention to establish or utilize or to contract for the establishment or utilization of a facility for the recycling of solid waste or for the recovery of resources from solid waste or, if the municipality enters into an agreement under sub. (3) but is not the responsible municipality, a statement of the municipality's intention to participate in a that project for the establishment of a facility for the recycling of solid waste or the recovery of resources from solid waste.

SECTION 20. 144.794 (7) (intro.) and (a) of the statutes, as created by 1983 Wisconsin Act 27, are amended to read:

144.794 (7) COMPREHENSIVE FACILITY PROJECT DESCRIPTION REPORT. (intro.) ~~Within 2 years after~~ After an initial intent resolution is adopted and prior to the adoption of a waste flow control ordinance, the responsible municipality is required to prepare or arrange for the preparation of a comprehensive facility project description report and submit it to the department for review in order to assess the environmental regulatory permits, licenses and approvals required for the facility and to determine the acceptability of the proposed effective period. At a minimum, this ~~plan~~ report shall include:

(a) A detailed description of the proposed facility for the recycling of solid waste or for the recovery of resources from solid waste, including details on facility size and location, preliminary engineering design plans, a study of the required waste quantities and waste composition and a detailed report of the facility anticipated capital and operating costs.

SECTION 21. 144.794 (7) (d) and (e) of the statutes are created to read:

144.794 (7) (d) An identification of the quantity, composition and types of solid waste to be processed at the proposed facility for the recycling of solid waste or for the recovery of resources from solid waste, an identification of the quantity, composition and types of solid waste in the municipality which are not to be processed at that facility, plans for the treatment or disposal of this residual solid waste and a summary of the economic and environmental impacts of the reduction in volume or the change in characteristics of the residual solid waste on existing solid waste treatment and disposal facilities serving the recycling or resource recovery area.

(e) The proposed effective period for any municipal waste flow control ordinance adopted for the facility. The department shall determine if the proposed effective period is acceptable based upon all of the following:

1. The expected life of the facility.
2. The length of time required to finance the capital cost of the facility.
3. The potential for the development of improved or alternate methods or technology for the recycling or the recovery of resources from the types of solid waste to be processed at the facility.

SECTION 22. 144.794 (8) (e) and (g) of the statutes, as created by 1983 Wisconsin Act 27, are amended to read:

144.794 (8) (e) Alternatives to required use which may be used to obtain the necessary type and quantity of solid waste have been ~~explored~~ compiled, analyzed and considered.

(g) Required use is consistent with any current solid waste management plan ~~prepared~~ adopted and approved under ss. 144.781 to 144.784.

SECTION 23. 144.794 (8) (k) of the statutes is created to read:

144.794 (8) (k) Proposed effective period is reasonable based upon the factors specified under sub. (7) (e) 1 to 3.

SECTION 24. 144.794 (9) (b) of the statutes, as created by 1983 Wisconsin Act 27, is amended to read:

144.794 (9) (b) Any person adversely affected by the municipality's determination concerning best public interest under sub. (8) may appeal the determination ~~to the commission. The commission shall investigate the matter and if there appears grounds for the appeal, the commission shall conduct a review hearing after at least 10 days' notice to the person and the municipality. After the review hearing, the commission shall issue a decision on the validity of the municipal determination concerning best public interest. In issuing this decision, the commission shall decide if there is sufficient evidence on the record to support the municipal determination under sub. (8). The commission shall bill any expense attributable to investigations and proceedings under this paragraph to the municipality under s. 196.85 (1) under ch. 68.~~

SECTION 25. 144.794 (10) (intro.) and (a) of the statutes, as created by 1983 Wisconsin Act 27, are amended to read:

144.794 (10) MUNICIPAL WASTE FLOW CONTROL ORDINANCE. (intro.) Except as provided under sub. (4), a municipality may adopt a municipal waste flow control ordinance if the municipality adopted an appropriate initial intent resolution under sub. (6), if the municipality or, if the municipality enters into an agreement under sub. (3), the responsible municipality ~~prepared~~ submitted the necessary comprehensive facility project description report ~~and required under sub. (7)~~, if the municipality issued a determination of best public interest utilizing criteria under sub. (8) after conducting the required hearing required under sub. (9) and if the municipality facility complies with ch. 144 with respect to the facility this chapter and obtains all permits, licenses and approvals required by the department are obtained. The municipal waste flow control ordinance shall include:

(a) A description of the applicable facility for the recycling of solid waste or for the recovery of resources from solid waste ~~which the municipality or, if the municipality enters into an agreement under sub. (3), the responsible municipality has established or is establishing.~~

SECTION 26. 144.794 (10) (f) of the statutes is created to read:

144.794 (10) (f) The effective period of the municipal waste flow control ordinance. The effective period and any revision of the effective period is required to be approved by the department based upon factors specified under sub. (7) (c) 1 to 3. A municipal waste flow control ordinance is not valid after the expiration of its effective period.

SECTION 27. 144.794 (12) (a) of the statutes, as created by 1983 Wisconsin Act 27, is amended to read:

144.794 (12) (a) The municipality shall notify those persons who are subject to the required use order at least 90 days prior to the effective date of that order. ~~Notification to a local unit of government shall be in writing. All other persons shall be notified by publication of~~ The municipality shall notify in writing all licensed collectors operating in the recycling or resource recovery area at least 90 days prior to the effective date of that order. The municipality shall notify other local units of government in the recycling or resource recovery area by providing a written notice to the clerk of those units of government. The municipality shall notify in writing the owner or operator of all solid waste disposal and treatment facilities located in or serving generators located in the recycling or resource recovery area at least 90 days prior to the effective date of that order. In addition, the municipality shall publish a class 3 notice, under ch. 985, in a newspaper having general circulation in the area. The Each notification shall include information specified under sub. (11) (a) to (e). During the 90-day period following the notification, the municipality shall negotiate with any or all of the persons subject to the order and attempt to develop a contractual agreement on the terms of required usage of the facility. In addition, each notification shall include a statement that compensation may be available to affected solid waste facilities and services and a summary of the provisions in sub. (14).

SECTION 28. 144.794 (12) (b) to (e) of the statutes, as created by 1983 Wisconsin Act 27, are renumbered 144.794 (12) (d) to (g), and 144.794 (12) (g), as renumbered, is amended to read:

144.794 (12) (g) The municipality shall provide procedures so that any person adversely affected by the issuance of a special enforcement order may appeal that decision ~~to the commission. The commission shall investigate the matter and if there appears grounds for the appeal, the commission shall conduct a review hearing after at least 10 days' notice to the person and the municipality. After the review hearing, the commission shall determine if the special enforcement order is reasonable and just and may affirm the special adjustment order, may adjust or modify the order so that it is reason-~~

~~able and just or may void the order. The commission shall bill any expense attributable to investigations and proceedings under this paragraph to the municipality under s. 196.85 (1) under ch. 68.~~

SECTION 29. 144.794 (12) (b) and (c) of the statutes are created to read:

144.794 (12) (b) If a municipality fails to notify a person required to be notified under par. (a), the required use order is not effective and may not be enforced with respect to that person. If a municipality fails to notify the owner or operator of a solid waste disposal or treatment facility as required under par. (a), the required use order is not effective and may not be enforced with respect to that owner or operator or to a person furnishing solid waste to the owner or operator.

(c) During the 90-day period following the notification, the municipality shall negotiate with any or all of the persons subject to or affected by the required use order and attempt to develop a contractual agreement on the terms of required usage of the facility or to reach an agreement concerning compensation.

SECTION 30. 144.794 (13) (b) of the statutes, as created by 1983 Wisconsin Act 27, is repealed and recreated to read:

144.794 (13) (b) The obligations of a person under a required use order issued under this section may not be terminated or affected unless the municipality consents to the termination or revision.

SECTION 31. 144.794 (13) (c) of the statutes is created to read:

144.794 (13) (c) A municipality shall consent to the termination or revision of a required use order if the person subject to the order establishes that solid waste generated by that person will be recycled or treated for the recovery of resources and that:

1. The proposed recycling or recovery of resources is economically efficient;
2. The proposed recycling or recovery of resources would not reduce the type or quantity of solid waste available to the facility for which the required use order was issued to such an extent that the facility could not maintain minimum operational volumes necessary to fulfill existing contractual obligations for products or energy or necessary to make the facility economically feasible; and
3. The proposed recycling or recovery of resources results in a higher or better use of solid waste resources. A higher or better use of solid waste resources results if:
  - a. Recyclable or reusable materials are derived from the solid waste resources; or
  - b. Energy is derived from the solid waste resources.

SECTION 32. 144.794 (14) of the statutes, as created by 1983 Wisconsin Act 27, is repealed and recreated to read:

144.794 (14) COMPENSATION; AFFECTED SOLID WASTE FACILITIES AND SERVICES. (a) If a licensed collector or an owner or operator of a solid waste disposal or treatment facility is affected adversely, either directly or indirectly, by a required use order, the person may seek compensation by submitting a request to the municipality within 90 days after the person receives notification under sub. (12) (a). The request shall include a statement of the amount of compensation requested. If a person does not submit a request for compensation within this time limit or if the person enters into a contract with the municipality concerning compensation, the person is not entitled to compensation under this subsection.

(b) The owner or operator of a solid waste disposal facility is eligible for compensation under this subsection only if the facility is an approved facility, as defined under s. 144.441 (2) (a).

(c) For a solid waste disposal facility which serves only generators within the recycling or resource recovery area, the municipality may elect to compensate the owner by either:

1. Purchasing the solid waste disposal facility at its fair market value considering the remaining site life computed on the basis of the design capacity of the facility in relation to the remaining capacity and considering the site, equipment and structures reasonably necessary for the operation of the facility; or

2. Paying the owner an amount equal to the fair market value of the affected portion of the solid waste disposal facility based upon the percentage the affected portion bears to the remaining site life computed by dividing the original design capacity of the facility into the capacity projected for the remaining site life of the facility.

(d) For a solid waste disposal facility which serves generators within and outside the recycling or resource recovery area, the municipality shall compensate the owner by paying an amount equal to the fair market value of the affected portion of the solid waste disposal facility based on the percentage the affected portion bears to the remaining site life computed by dividing the original design capacity of the facility into the capacity projected for the remaining site life of the facility.

(e) For a licensed collector, the municipality shall compensate the collector for additional costs incurred as a result of complying with the required use order. Compensation for a licensed collector is limited to the value of the remaining contract or agreement under which the collector is furnishing collection services at the time the required use order takes effect at the rates in effect at that time adding reasonably anticipated inflationary increases and deducting existing escalator clauses or reduced cost resulting from the imposition of the required use order. Additional costs include but are not limited to:

1. Increased travel expenses resulting from increased travel distances and time.
2. Increased travel expenses resulting from restructuring collection routes.
3. Increased operational expenses.

(f) A municipality shall provide procedures so that any person adversely affected by the municipality's decision concerning compensation may appeal that decision under ch. 68.

SECTION 33. 144.794 (15) of the statutes is amended to read:

144.794 (15) (title) FEE AND RATE REVIEW. The tipping fee, rates and other charges and any revision in the tipping fee, rates and other charges established by a municipality for use of a facility for the recycling of solid waste or for the recovery of resources from solid waste which is required under this section are subject to approval by the commission after notice and an opportunity for a hearing before the commission. ~~Expenses incurred by the commission in the performance of its duties under this subsection shall be paid by the municipality under s. 196.85 (1) review under ch. 68.~~

SECTION 34. 196.01 (5) of the statutes, as affected by 1983 Wisconsin Acts 27 and 53, is amended to read:

196.01 (5) "Public utility" means every corporation, company, individual, association, their lessees, trustees or receivers appointed by any court, and every sanitary district, town, village or city that may own, operate, manage or control any toll bridge or all or any part of a plant or equipment, within the state, for the conveyance of telephone messages, for the receiving, transmitting or delivery of messages by telegraph, or for the production, transmission, delivery or furnishing of heat, light, water or power either directly or indirectly to or for the public. "Public utility" does not include a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power or water to its members only. ~~"Public utility" includes any person requiring the use of a facility for the recycling of solid waste or for the recovery of resources from solid waste if a municipal waste flow control ordinance is adopted under s. 144.794 (10) with respect to that facility.~~ "Public utility" includes any person engaged in the transmission or delivery of natural gas for compensation within this state by means of pipes or mains.

- 1871 -

83 WisACT 425

SECTION 35. 1983 Wisconsin Act 27, section 2043 (3) is repealed.

SECTION 36. **Program responsibility changes.** In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

(1) PUBLIC SERVICE COMMISSION.

A	B	C
Statute Sections	References Deleted	References Inserted
15.791, as affected by 1983 Wis. Act 27	144.794 (9)(b), (14) (e) and (15)	none

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