

JAN 17 2020

A BILL FOR AN ACT

RELATING TO AGRICULTURAL ENTERPRISES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 **"CHAPTER**

5 **AGRICULTURAL ENTERPRISES**

6 § -1 **Purpose.** Article XI, section 3, of the Hawaii
7 State Constitution establishes in part that the "State shall
8 conserve and protect agricultural lands, promote diversified
9 agriculture, increase agricultural self-sufficiency and assure
10 the availability of agriculturally suitable lands."

11 The legislature finds that smaller scale farming
12 operations, particularly those associated with diversified
13 agriculture, usually do not have ready access to, nor the
14 resources to pay for, their own modern processing, packing,
15 storage, and distribution enterprises to expand or maximize
16 productivity of their agricultural operations. Due to global
17 competition and the recent implementation of national food



1 safety standards, the department of agriculture has found it
2 necessary to support the growth of diversified agriculture by
3 encouraging agricultural enterprises on the department of
4 agriculture's lands through activities including planning,
5 designing, constructing, operating, and managing agricultural
6 enterprises to ensure the economic viability of agricultural
7 operations, as well as allowing lessees to do the same.
8 Therefore, the legislature finds that it is in the State's best
9 interests to promote and support diversified agriculture and
10 increase agricultural self-sufficiency by establishing an
11 agricultural enterprise program within the department of
12 agriculture, for the purpose of complying with the requirements
13 of article XI, section 3, of the state constitution.

14 Accordingly, the purpose of this chapter is to authorize
15 the department of agriculture or a lessee to plan, design,
16 construct, operate, manage, maintain, repair, demolish, and
17 remove infrastructure or improvements on any lands over which
18 the department has jurisdiction, to support and promote
19 agriculture, and to accept from the department of land and
20 natural resources the transfer of any lands that will support an
21 agricultural purpose and to operate or manage those resources.



1 § -2 **Definitions.** As used in this chapter, unless the
2 context otherwise requires:

3 "Agricultural activities" include:

- 4 (1) The care and production of livestock; livestock
5 products; poultry; poultry products; and apiary,
6 horticultural, and floricultural products;
- 7 (2) The planting, cultivating, and harvesting of crops or
8 trees; and
- 9 (3) Any other activity that is directly associated with
10 agriculture.

11 "Agricultural enterprise" means an activity directly and
12 primarily supporting the production and sale of agriculture in
13 the State.

14 "Agricultural enterprise lands" means agricultural lands
15 that are not designated as agricultural parks or non-
16 agricultural park lands pursuant to chapter 166 or 166E,
17 respectively.

18 "Aquacultural activities" means the farming or ranching of
19 any plant or animal species in a controlled salt, brackish, or
20 freshwater environment; provided that the farm or ranch is on or
21 directly adjacent to land.



1 "Board" means the board of agriculture.

2 "Department" means the department of agriculture.

3 "Lessee" means a lessee under a lease issued by or
4 transferred to the department, or any tenant, licensee, grantee,
5 assignee, or other person authorized to conduct an agricultural
6 enterprise by the board or department.

7 § -3 **Department's powers in general; agricultural**
8 **enterprises.** In addition to any other powers authorized in this
9 chapter, to support and promote agriculture, the department may:

10 (1) Plan, design, construct, operate, manage, maintain,
11 repair, demolish, and remove infrastructure or
12 improvements on any lands under the jurisdiction of
13 the department; and

14 (2) Permit a lessee to plan, design, construct, operate,
15 manage, maintain, repair, demolish, and remove
16 infrastructure or improvements on any lands under the
17 jurisdiction of the department.

18 § -4 **Transfer and management of agricultural enterprise**
19 **lands and agricultural enterprises; agricultural enterprise**
20 **program.** (a) Upon mutual agreement and approval by the board
21 and the board of land and natural resources:



1 (1) The department may accept from the department of land
2 and natural resources the transfer and management of
3 certain qualifying agricultural enterprise lands and
4 agricultural enterprises; and

5 (2) Certain assets, including position counts, related to
6 the management of existing encumbered and unencumbered
7 agricultural enterprise lands and agricultural
8 enterprises and related facilities shall be
9 transferred to the department.

10 (b) The department shall administer an agricultural
11 enterprise program to manage the transferred agricultural
12 enterprise lands and agricultural enterprises under rules
13 adopted by the board pursuant to chapter 91. The program and
14 its rules shall be separate and distinct from the respective
15 programs and rules for agricultural parks and non-agricultural
16 parks. Agricultural enterprise lands and agricultural
17 enterprises shall not be the same as, and shall not be selected
18 or managed as, lands under agricultural park or non-agricultural
19 park leases. Notwithstanding any other law to the contrary, the
20 agricultural enterprise program shall include the following
21 conditions pertaining to the transfer of encumbered or



1 unencumbered agricultural enterprise lands and agricultural
2 enterprises:

3 (1) As of the time of transfer:

4 (A) The lessee or permittee shall be in full
5 compliance with the existing lease or permit;

6 (B) The lessee or permittee shall not be in arrears
7 in the payment of taxes, rents, or other
8 obligations owed to the State or any county; and

9 (C) The lessee's or permittee's agricultural
10 operation shall be economically viable as
11 determined by the board;

12 (2) No encumbered or unencumbered agricultural enterprise
13 lands and agricultural enterprises with soils
14 classified by the land study bureau's detailed land
15 classification as overall (master) productivity rating
16 class A or B shall be transferred for the use or
17 development of golf courses, golf driving ranges, or
18 country clubs; and

19 (3) The board shall determine the manner of transfer of
20 agricultural enterprise lands and agricultural
21 enterprises.



1 (c) For any encumbered or unencumbered agricultural
2 enterprise lands and agricultural enterprises transferred to the
3 department that are not being utilized or required for the
4 public purpose stated in an executive order issued by the
5 governor to the department pursuant to section 171-11, the order
6 setting aside the lands shall be withdrawn and the lands shall
7 be returned to the department of land and natural resources.

8 § -5 **Conversion of qualified and encumbered other**
9 **agricultural lands.** The department shall establish criteria and
10 rules pursuant to chapter 91 and, subject to approval by the
11 board, may convert qualified and encumbered agricultural
12 enterprise lands and agricultural enterprises to department
13 leases or other forms of encumbrance.

14 § -6 **Extension of qualified and encumbered agricultural**
15 **enterprise lands and agricultural enterprises.** Notwithstanding
16 chapter 171, the board shall establish criteria and rules to
17 allow the cancellation, renegotiation, and extension of
18 transferred encumbrances by the department. Notwithstanding any
19 law to the contrary, qualified and encumbered agricultural
20 enterprise lands and agricultural enterprises transferred to the
21 department shall not have the respective length of term of the



1 lease or rents reduced over the remaining fixed term of the
2 applicable encumbrances.

3 § -7 **Board rules.** The board shall adopt rules pursuant
4 to chapter 91, including eligibility requirements for each
5 disposition and applicant qualification, to effectuate the
6 purposes of this chapter.

7 § -8 **Agricultural enterprise special fund; established.**

8 (a) There is established in the state treasury the agricultural
9 enterprise special fund to be administered by the department,
10 into which shall be deposited:

- 11 (1) Legislative appropriations to the fund; and
- 12 (2) All lease rent, fees, penalties, and any other revenue
13 or funds collected from agricultural enterprise lands
14 and agricultural enterprises, together with the
15 revenue or funds collected from agricultural
16 enterprise lands and agricultural enterprises that are
17 transferred, or in the process of being transferred,
18 to the department under this chapter.

19 (b) Moneys in the special fund shall be used for planning,
20 designing, constructing, operating, maintaining, managing,
21 repairing, demolishing, and removing infrastructure or



1 improvements on agricultural enterprise lands and for
2 agricultural enterprises under this chapter.

3 § -9 **Disposition.** (a) Notwithstanding any provision of
4 this chapter and chapter 171 to the contrary, the department may
5 dispose of the following by negotiation, drawing of lots,
6 conversion, or public auction:

7 (1) Public lands and related enterprises set aside and
8 designated for use pursuant to this chapter; and

9 (2) Other lands and enterprises under the jurisdiction of
10 the department pursuant to section -10.

11 Except as provided by subsection (d), the department shall
12 dispose of public lands by lease.

13 (b) In all dispositions, the department shall be subject
14 to the requirements set forth in rules adopted by the board
15 consistent with section -7 and subject to the following:

16 (1) All land and enterprises shall be disposed of in a
17 manner that supports or promotes agricultural or
18 aquacultural activities;

19 (2) Each lessee shall derive a major portion of the
20 lessee's total annual income earned from the lessee's



- 1 activities on the premises; provided that this
- 2 restriction shall not apply if:
 - 3 (A) Failure to meet the restriction results from
 - 4 mental or physical disability of the lessee or
 - 5 the loss of the lessee's spouse; or
 - 6 (B) The premises are fully used to support or promote
 - 7 the agricultural or aquacultural activities for
 - 8 which the disposition was granted;
- 9 (3) The lessee shall comply with all federal and state
- 10 laws regarding environmental quality control;
- 11 (4) The board shall:
 - 12 (A) Determine the specific uses for which the
 - 13 disposition is intended;
 - 14 (B) Parcel the land into minimum size economic units
 - 15 sufficient for the intended uses;
 - 16 (C) Make, or require the lessee to make, improvements
 - 17 that are necessary to achieve the intended uses;
 - 18 (D) Set the upset price or lease rent based upon an
 - 19 appraised evaluation of the property value,
 - 20 adjustable to the specified use of the lot;



1 (E) Set the term of the lease, which shall not be
2 less than fifteen years or more than sixty-five
3 years, including any extension granted for
4 mortgage lending or guarantee purposes; and
5 (F) Establish other terms and conditions that it
6 deems necessary, including restrictions against
7 alienation and provisions for withdrawal by the
8 board; and
9 (5) Any transferee, assignee, or sublessee of an
10 agricultural enterprise lease shall first qualify as
11 an applicant under this chapter. For the purpose of
12 this paragraph, any transfer, assignment, sale, or
13 other disposition of any interest, excluding a
14 security interest, by any legal entity that holds an
15 agricultural enterprise lease shall be treated as a
16 transfer of the agricultural enterprise lease and
17 shall be subject to the approval of the board,
18 reasonable terms and conditions consistent with this
19 chapter, and rules adopted pursuant to this chapter.
20 No transfer shall be approved by the board if the
21 disposition of the stock or assets or other interest



1 of the applicant would result in the failure of the
2 person to qualify for an agricultural enterprise
3 lease.

4 (c) A violation of any provision in this section shall be
5 cause for the board to cancel the lease and take possession of
6 the land, or take other action as the board, in its sole
7 discretion, deems appropriate; provided that the board shall
8 provide notice to the lessee of the violation in accordance with
9 rules adopted pursuant to section -7.

10 (d) The board may issue easements, licenses, permits, and
11 rights-of-entry for uses that are consistent with the purposes
12 for which the lands were set aside or are otherwise subject to
13 the authority of the department pursuant to section -10.

14 § -10 Authority to plan, design, develop, and manage
15 agricultural enterprise lands and agricultural enterprises. The
16 department, or its lessees subject to the department's approval,
17 may plan, design, develop, and manage agricultural enterprise
18 lands and agricultural enterprises on:

19 (1) Public lands set aside by executive order pursuant to
20 section 171-11 for use as agricultural enterprise
21 lands and agricultural enterprises;



1 (2) Other lands with the approval of the board that may be
2 subject to a joint venture partnership agreement
3 pursuant to section -11; and

4 (3) Lands acquired by the department by way of
5 foreclosure, voluntary surrender, or otherwise
6 pursuant to section 155-4(11).

7 § -11 **Agricultural enterprise lands and agricultural**
8 **enterprise development.** On behalf of the State or in
9 partnership with a federal agency, a county, or a private party,
10 the department may develop agricultural enterprise lands and
11 agricultural enterprises.

12 § -12 **Lease negotiation.** (a) The department may
13 negotiate and enter into leases with any person who:

- 14 (1) Holds a revocable permit for agricultural purposes;
- 15 (2) Has formerly held an agricultural lease or a holdover
16 lease of public land that expired within the last ten
17 years and has continued to occupy the land; or
- 18 (3) Is determined by the department to have a beneficial
19 impact on agriculture;

20 provided that the department shall notify in writing those
21 eligible for lease negotiations under this section and shall



1 inform the applicants of the terms, conditions, and restrictions
2 provided by this section.

3 Any eligible person may apply for a lease by submitting a
4 written application to the department within thirty days from
5 the date of receipt of notification; provided that the
6 department may require documentary proof from any applicant to
7 determine that the applicant meets eligibility and qualification
8 requirements for a lease.

9 (b) Lands eligible for lease negotiations under this
10 section are limited to lands that are:

11 (1) Determined to be sufficiently capable of serving
12 agricultural purposes;

13 (2) Set aside for agricultural or agricultural-related
14 uses, by the governor through an executive order, to
15 the department; and

16 (3) Not needed by any state or county agency for any other
17 public purpose.

18 (c) In negotiating and executing a lease pursuant to this
19 section, the board shall:

20 (1) Require the appraisal of the parcel using the Uniform
21 Standards of Professional Appraisal Practice to



1 determine the rental amount, including percentage
2 rent;

3 (2) Require the payment of a premium, computed as twenty-
4 five per cent of the annual lease rent; provided that
5 the premium to be added to the annual lease rent for
6 each year of the lease shall be equal to the number of
7 years the lessee has occupied the land; provided
8 further that the premium period shall not exceed seven
9 years; and

10 (3) Recover from the lessee the costs of expenditures
11 required by the department to convert the parcel into
12 leasehold.

13 § -13 Policy. Notwithstanding chapter 171, disposition
14 of lands set aside for use pursuant to this chapter shall not be
15 subject to the prior approval of the board of land and natural
16 resources.

17 § -14 Rights of holders of security interests. (a)
18 Prior board action shall be required when an institutional
19 lender acquires the lessee's interest through a foreclosure
20 sale, judicial or nonjudicial, or by way of assignment in lieu
21 of foreclosure, or when the institutional lender sells or causes



1 the sale of the lessee's interest in a lease by way of a
2 foreclosure sale, judicial or nonjudicial. The institutional
3 lender shall convey a copy of the sale or assignment as recorded
4 in the bureau of conveyances.

5 (b) Notwithstanding any other provision of this chapter,
6 for any lease that is subject to a security interest held by an
7 institutional lender who has given to the board a copy of the
8 encumbrance as recorded in the bureau of conveyances:

9 (1) If the lease is canceled for violation of any non-
10 monetary lease term or condition, or if the lease is
11 deemed terminated or rejected under bankruptcy laws,
12 the institutional lender shall be entitled to issuance
13 of a new lease in its name for a term equal to the
14 term of the lease remaining immediately prior to the
15 cancellation, termination, or rejection, with all
16 terms and conditions being the same as in the
17 canceled, terminated, or rejected lease, except only
18 for the liens, claims, and encumbrances, if any, that
19 were superior to the institutional lender before the
20 cancellation, termination, or rejection; provided that
21 a lease that is rejected or deemed rejected under



1 bankruptcy law shall be deemed canceled and terminated
2 for all purposes under state law;

3 (2) If the lessee's interest under a lease is transferred
4 to an institutional lender, including by reason of
5 paragraph (1), acquisition of the lessee's interest
6 pursuant to a judicial or nonjudicial foreclosure
7 sale, or an assignment in lieu of foreclosure:

8 (A) The institutional lender shall be liable for the
9 obligations of the lessee under the lease for the
10 period of time during which the institutional
11 lender is the holder of the lessee's interest;
12 provided that the institutional lender shall not
13 be liable for any obligations of the lessee
14 arising after the institutional lender has
15 assigned the lease; and

16 (B) Section -9(b)(1) and (2) shall not apply to
17 the lease or the demised land during the time the
18 institutional lender holds the lease; provided
19 that:

20 (i) For non-monetary lease violations, the
21 institutional lender shall first remedy the



1 lease terms that caused the cancellation,
2 termination, or rejection to the
3 satisfaction of the board; and
4 (ii) The new lease issued to the institutional
5 lender shall terminate one hundred twenty
6 days from the effective date of issuance, at
7 which time the institutional lender shall
8 either sell or assign the lease and section
9 -9(b)(1) and (2) shall apply to the new
10 lease;
11 (3) If there is a delinquent loan balance secured by a
12 security interest:
13 (A) The lease shall not be canceled or terminated,
14 except for cancellation by reason of default of
15 the lessee;
16 (B) No increase over and above the fair market rent,
17 based upon the actual use of the land demised and
18 subject to the use restrictions imposed by the
19 lease and applicable laws, shall be imposed or
20 become payable; and



1 (C) No lands shall be withdrawn from the lease,
2 except either by eminent domain proceedings
3 beyond the control of the board or with prior
4 written consent of the institutional lender which
5 shall not be unreasonably withheld; and

6 (4) If the lease contains any provision requiring the
7 payment of a premium to the lessor on assignment of
8 the lease, any premium shall be assessed only after
9 all amounts owing by any debt secured by a security
10 interest held by an institutional lender have been
11 paid in full.

12 (c) Ownership of both the lease and the security interest
13 by an institutional lender shall not effect or cause a merger
14 thereof, and both interests shall remain distinct and in full
15 force and effect unless the institutional lender elects in
16 writing to merge the lease and security interest with the
17 consent of the board.

18 (d) The board may include in any consent form or document
19 provisions consistent with the intent of this section as may be
20 required to make a lease mortgageable or more acceptable for
21 mortgageability by an institutional lender.



1 (e) The rights of a purchaser, assignee, or transferee of
2 an institutional lender's security interest, including a junior
3 lien holder, shall be exercisable by the purchaser, assignee, or
4 transferee as successor in interest to the institutional lender;
5 provided that:

6 (1) The purchase, assignment, or transfer shall conform
7 with subsection (b)(4); and

8 (2) The purchase, assignment, or transfer of the rights
9 shall be reserved for and exercisable only by an
10 institutional lender.

11 Other purchasers shall not be precluded from acquiring the
12 institutional lender's security interest but shall not have
13 exercisable rights as successor in interest to the original
14 institutional lender.

15 (f) For the purposes of this section:

16 "Institutional lender" means a federal, state, or private
17 lending institution, licensed to do business in the State, that
18 makes loans to qualified applicants on the basis of a lease
19 awarded for security, in whole or in part, together with any
20 other entity that acquires all or substantially all of an
21 institutional lender's loan portfolio.



1 "Makes loans" means lends new money or renews or extends
2 indebtedness owing by a qualified applicant to an institutional
3 lender, after June 30, 2006.

4 "Security interest" means any interest created or perfected
5 by a mortgage, assignment by way of mortgage, or by a financing
6 statement and encumbering a lease, land demised by the lease, or
7 personal property located at, affixed or to be affixed to, or
8 growing or to be grown upon the demised land."

9 SECTION 2. Section 141-1, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§141-1 Duties in general.** The department of agriculture
12 shall:

13 (1) Gather, compile, and tabulate, from time to time,
14 information and statistics concerning:

15 (A) Entomology and plant pathology: Insects, scales,
16 blights, and diseases injurious or liable to
17 become injurious to trees, plants, or other
18 vegetation, and the ways and means of
19 exterminating pests and diseases already in the
20 State and preventing the introduction of pests
21 and diseases not yet ~~[here]~~ in the State; and



- 1 (B) General agriculture: Fruits, fibres, and useful
2 or ornamental plants and their introduction,
3 development, care, and manufacture or
4 exportation, with a view to introducing,
5 establishing, and fostering new and valuable
6 plants and industries;
- 7 (2) Encourage and cooperate with the agricultural
8 extension service and agricultural experiment station
9 of the University of Hawaii and all private persons
10 and organizations doing work of an experimental or
11 educational character coming within the scope of the
12 subject matter of chapters 141, 142, and 144 to 150A,
13 and avoid, as far as practicable, duplicating the work
14 of those persons and organizations;
- 15 (3) Enter into contracts, cooperative agreements, or other
16 transactions with any person, agency, or organization,
17 public or private, as may be necessary in the conduct
18 of the department's business and on [~~such~~] any terms
19 as the department may deem appropriate; provided that
20 the department shall not obligate any funds of the
21 State, except the funds that have been appropriated to



1 the department. Pursuant to cooperative agreement
2 with any authorized federal agency, employees of the
3 cooperative agency may be designated to carry out, on
4 behalf of the State the same as department personnel,
5 specific duties and responsibilities under chapters
6 141, 142, 150A, and rules adopted pursuant to those
7 chapters, for the effective prosecution of pest
8 control and animal disease control and the regulation
9 of import into the State and intrastate movement of
10 regulated articles;

11 (4) Secure copies of the laws of other states,
12 territories, and countries, and other publications
13 germane to the subject matters of chapters 141, 142,
14 and 144 to 150A, and make laws and publications
15 available for public information and consultation;

16 (5) Provide buildings, grounds, apparatus, and
17 appurtenances necessary for the examination,
18 quarantine, inspection, and fumigation provided for by
19 chapters 141, 142, and 144 to 150A; for the obtaining,
20 propagation, study, and distribution of beneficial
21 insects, growths, and antidotes for the eradication of



1 insects, blights, scales, or diseases injurious to
2 vegetation of value and for the destruction of
3 injurious vegetation; and for carrying out any other
4 purposes of chapters 141, 142, and 144 to 150A;

5 (6) Formulate and recommend to the governor and
6 legislature additional legislation necessary or
7 desirable for carrying out the purposes of chapters
8 141, 142, and 144 to 150A;

9 (7) Publish at the end of each year a report of the
10 expenditures and proceedings of the department and of
11 the results achieved by the department, together with
12 other matters germane to chapters 141, 142, and 144 to
13 150A and that the department may deem proper;

14 (8) Administer a program of agricultural planning and
15 development, including the formulation and
16 implementation of general and special plans, including
17 but not limited to the functional plan for
18 agriculture; administer the planning, development, and
19 management of the agricultural park program; plan,
20 construct, operate, and maintain the state irrigation
21 water systems; plan, design, construct, operate,



1 manage, maintain, repair, demolish, and remove
2 infrastructure or improvements on any lands of which
3 the department has jurisdiction; review, interpret,
4 and make recommendations with respect to public
5 policies and actions relating to agricultural land and
6 water use; assist in research, evaluation,
7 development, enhancement, and expansion of local
8 agricultural industries; and serve as liaison with
9 other public agencies and private organizations for
10 the above purposes. In the foregoing, the department
11 shall act to conserve and protect agricultural lands
12 and irrigation water systems, promote diversified
13 agriculture, increase agricultural self-sufficiency,
14 and ensure the availability of agriculturally suitable
15 lands; and

- 16 (9) Manage, administer, and exercise control over any
17 public lands, as defined under section 171-2, that are
18 designated important agricultural lands pursuant to
19 section 205-44.5, including but not limited to
20 establishing priorities for the leasing of these
21 public lands within the department's jurisdiction."



1 SECTION 3. There is appropriated out of the general
 2 revenues of the State of Hawaii the sum of \$ or so
 3 much thereof as may be necessary for fiscal year 2020-2021 to be
 4 deposited into the agricultural enterprise special fund.

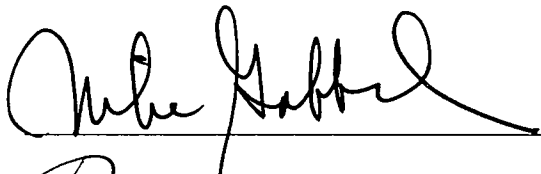


5 SECTION 4. There is appropriated out of the agricultural
 6 enterprise special fund the sum of \$ or so much
 7 thereof as may be necessary for fiscal year 2020-2021 for the
 8 planning, design, construction, operation, management,
 9 maintenance, repair, demolition, and removal of infrastructure
 10 on lands under the jurisdiction of the department of agriculture
 11 to support and promote agriculture.

12 The sum appropriated shall be expended by the department of
 13 agriculture for the purposes of this Act.

14 SECTION 5. Statutory material to be repealed is bracketed
 15 and stricken. New statutory material is underscored.

16 SECTION 6. This Act shall take effect on July 1, 2020.

17

INTRODUCED BY: 





S.B. NO. 2708

Report Title:

HDOA; Agricultural Enterprises; Agricultural Enterprise Special Fund; Appropriation

Description:

Authorizes the Department of Agriculture to plan, design, construct, operate, manage, maintain, repair, demolish, and remove infrastructure on any lands under the jurisdiction of the department, to support and promote agriculture. Establishes the agricultural enterprise program. Establishes the Agricultural Enterprise Special Fund. Makes an appropriation. Effective 7/1/2020.

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