

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Commerce and Consumer Services Committee

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BILL: SB 2482

INTRODUCER: Senators Alexander and Hill

SUBJECT: Unemployment Compensation

DATE: April 19, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gordon	Cooper	CM	<b>Pre-meeting</b>
2.	_____	_____	TA	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill creates an alternative base period to be used in determining an individual's unemployment compensation (UC) benefits when the worker has not had sufficient employment to qualify for benefits under the base period provided in current law. Florida law, s. 443.111(2), F.S., currently requires that an applicant for UC benefits have earned wages during at least 2 calendar quarters of the previous year of work in order to qualify for benefits. That previous year of work is known as the base period and is described as "the first four of the last five complete calendar quarters immediately preceding the first day of an individual's benefit year<sup>1</sup>."<sup>2</sup> This base period does not include the most recent quarter of work. SB 2482<sup>3</sup> would require the Agency for Workforce Innovation (AWI or the agency),<sup>4</sup> the state agency that administers Florida's UC program, to include the last four quarters of the year immediately preceding an individual's benefit year if that person does not qualify for benefits under existing law.

This bill amends the following sections of the Florida Statutes: 443.036.

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<sup>1</sup> Florida statute defines "benefit year," in pertinent part, as "the 1-year period beginning with the first day of the first week for which the individual first files a valid claim for benefits..." Section 443.036(9), F.S.

<sup>2</sup> Section 443.036(7), F.S. (Reference added).

<sup>3</sup> Similar versions of this bill have been heard previously in the Legislature, including, but not limited to: CS/CS/SB 470 (2003) by Senators Wasserman-Schultz and Diaz de la Portilla (died in messages in the House of Representatives); CS/SB 1220 (2002) by Senator Wasserman-Shultz and others (died in Senate Appropriations) and SB 1740 (2001) by Senator Dyer (died in Senate Appropriations).

<sup>4</sup> The bill uses the term "division" throughout to refer to the entity that has authority over the UC system. This is a technical deficiency. The Division of Unemployment Compensation was abolished by the Legislature effective October 1, 2000. The Office of Unemployment Compensation Services was then created within AWI to administer the UC program pursuant to s. 20.50(2)(c)1, F.S. According to s. 443.1317(1)(a), F.S., AWI has ultimate authority over the administration of the UC program. Therefore, all references to the "division" should be changed to "agency" to reflect the proper authority.

**II. Present Situation:**

**Unemployment Compensation Overview**

According to the United States Department of Labor (USDOL), the Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no-fault of their own (as determined under state law) and who meet the requirements of state law.<sup>5</sup> The program is administered as a partnership of the Federal government and the states. The individual states collect UC payroll taxes on a quarterly basis, which are used to pay benefits while the Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA), used to provide grants to the states to fund UC administration (the FUTA is codified at 26 U.S.C. 3301-3311).

**Eligibility for Unemployment Compensation in Florida**

Under current law, eligibility for unemployment compensation is based on the work performed by an individual during a 1-year period referred to as the “base period.” The base period is the first four of the last five completed calendar quarters immediately before the individual filed a valid claim for benefits.<sup>6</sup> The fifth completed calendar quarter – the “lag quarter” – is not used to determine monetary eligibility. The following chart provided by AWI, illustrates the relationship between the filing date of an initial claim and the corresponding base period.<sup>7</sup>

Base Period Chart									
Year Preceding Prior year		Prior Year				Current Year			
July Aug. Sept.	Oct. Nov. Dec.	Jan. Feb. March	April May June	July Aug. Sept.	Oct. Nov. Dec.	Jan. Feb. March	April May June	July Aug. Sept.	Oct. Nov. Dec.
	Base Period (Oct. 1 – Sept. 30)			Lag quarter	<b>Claim Filed</b>				
		Base Period (Jan. 1 – Dec. 31)			Lag quarter	<b>Claim Filed</b>			
			Base Period (Apr. 1 – Mar. 31)		Lag quarter	<b>Claim Filed</b>			
				Base Period (July 1 – June 30)			Lag quarter	<b>Claim Filed</b>	

According to s. 443.111(2), F.S., in order to establish a benefit year for UC benefits, an individual must:

- Have been paid wages in two or more calendar quarters in the base period; *and*

<sup>5</sup> USDOL, *State Unemployment Insurance Benefits*, <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp>. 17 April 2006.

<sup>6</sup> Section 443.036(7), F.S.

<sup>7</sup> See, AWI, *Analysis of SB 2482*, on file with the Committee on Commerce.

- Have minimum total base period wages equal to the high quarter wages multiplied by 1.5, but at least \$3,400 in the base period.

The most recent quarter of work can not be credited toward the two-quarter requirement or the \$3,400 requirement. Therefore, individuals who have been employed in only two quarters may not be able to establish eligibility. For example, an employee who has only worked during the two quarters immediately before filing a claim would not qualify for benefits even if he or she earned more than \$3,400. Consequently, some seasonal workers and short-term members of the labor market may not be able to establish monetary eligibility for benefits calculated using the base period in current law.

### **Alternative Base Period**

Benefits available under the UC program are intended to provide temporary financial assistance to unemployed workers. According to the National Employment Law Program (NELP) and the Center for Economic Policy Research (CEPR), such benefits are particularly helpful to low-wage workers who “are more vulnerable than high-wage workers to unemployment.”<sup>8</sup> Some states have implemented an alternative base period to provide benefits to workers who may not otherwise qualify for benefits. According to the NELP website,

[t]he ABP [alternative base period] corrects a timing flaw that unnecessarily limits UI eligibility. UI eligibility is determined by analyzing earnings records reported by employers each quarter. Because of processing delays, the standard base period (SBP) excludes up to six months of a worker’s earnings. In states with the ABP, claims who fail the SBP can use more of their recent wages to meet state eligibility requirements.<sup>9</sup>

Nineteen other states and the District of Columbia have enacted alternative base period legislation including: Connecticut, Georgia, Hawaii, Illinois, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Rhode Island, Virginia, Vermont, Washington and Wisconsin.<sup>10</sup> As a result of the implementation of alternative base period legislation in several states, 211,000 more jobless workers were monetarily eligible for UI benefits in 2003.<sup>11</sup> Based on data from FY 2004-05, AWI estimates that 7,879 UC claims will be determined to be monetarily eligible for benefits.

### **Employer Wage and Tax Reports**

Pursuant to s. 443.1316, F.S., unemployment taxes are collected by the Department of Revenue under contract with the Agency for Workforce Innovation. Wage records used in determining

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<sup>8</sup> Andrew Stettner, National Employment Law Project (NELP), Heather Boushey, Center for Economic and Policy Research (CEPR) and Jeffrey Wenger, University of Georgia, *Executive Summary, Clearing the Path to Unemployment Insurance for Low-Wage Workers: An Analysis of Alternative Base Period Implementation*, p. 2 (August 2005).

<sup>9</sup> NELP, Synopsis of Report referenced in note 7, *supra*, [http://www.nelp.org/ui/initiatives/low\\_wage/abpreport.cfm](http://www.nelp.org/ui/initiatives/low_wage/abpreport.cfm). 12 April 2006 (alteration in original).

<sup>10</sup> See, Legal Services, White Paper: *Why Enact the Alternate Base Period?*, on file with the Committee on Commerce. See also, note 8, *supra*.

<sup>11</sup> See, note 8, *supra*.

the amount of benefits that may be paid to an unemployed worker are provided through reports furnished by employers on a quarterly basis to the Department of Revenue (DOR). Employers have until the last day of the month following the end of a calendar quarter to submit their quarterly wage and tax reports. The reports provide the wage data for each individual's base period, which is used to determine the amount of benefits that are paid to an individual worker.

According to AWI, DOR generally requires two months to process approximately 450,000 employer reports and enter the wage information into its database in preparation for claims that will be filed during the next quarter. Thus, under current law, the lag quarter is not used to determine monetary eligibility for unemployment compensation because the agency lacks the necessary wage data at the time a claim is filed. AWI estimates that the wages for the last complete quarter of an individual's work history will not be readily available for as much as 67 percent of the applicants who will use the alternative base period. The agency cites employers not having reported the wages or wages not yet being entered into the mainframe database as the reasons for the projected lack of wage information.

Employers who fail to timely submit their quarterly reports are subject to being assessed a penalty by the Department of Revenue pursuant to s. 443.141(1)(b)1., F.S., in the amount of \$25 per month or fraction of a month that the report is delinquent.

### **Determinations and Redeterminations**

Section 443.151(3), F.S., outlines the process used by AWI to make UC benefit determinations and redeterminations. Determinations and redeterminations are statements by the agency regarding the application of law to an individual's eligibility for benefits or the effect of the benefits on an employer's tax account. A party who believes a determination is inaccurate may request reconsideration within 20 days from the mailing date of the determination. The agency must review the information on which the request is based and issue a redetermination. If a party disagrees with the determination or redetermination, the applicant or employer may request an administrative hearing before an appeals referee.

During FY 2004-05, AWI processed 47,759 requests for monetary redeterminations resulting from the applicants' disagreement with the agency statement regarding their UC benefits claim. Of this number, 22,650 applicants requested reconsideration of their wages because their base period wages were insufficient to establish a claim—a situation the alternative base period is intended to address. As a result of these requests, 16,305 claimants were issued redeterminations. Of this number, 8,914 workers were determined to be eligible for benefits. However, 6,345 requests could not be resolved due to insufficient employment information.

### **Financing Unemployment Compensation**

According to a USDOL Unemployment Insurance Report published during the 4<sup>th</sup> Quarter of 2005, Florida had a UC Trust Fund balance of over \$1.8 billion.<sup>12</sup> The trust fund is primarily financed through the contributory method—by employers who pay taxes on employee wages.<sup>13</sup>

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<sup>12</sup> USDOL, Unemployment Insurance Data Summary, 4<sup>th</sup> Quarter 2005, [http://workforcesecurity.doleta.gov/unemploy/content/data\\_stats/datasum05/4thqtr/DataSum\\_2005\\_4.pdf](http://workforcesecurity.doleta.gov/unemploy/content/data_stats/datasum05/4thqtr/DataSum_2005_4.pdf), p. 19. 17 April 2006.

Under the contributory method, employers pay quarterly taxes on the first \$7,000 of each employee's annual wages. The method of determining varying tax rates assigned to taxpaying employers is referred to as "experience rating," and is based on an employer's experience in laying off workers. Employers who lay off the most workers are charged the highest tax rates. The purpose of experience rating under Florida's UC law is to keep the Unemployment Compensation Trust Fund stabilized, and to ensure that employers with higher unemployment compensation costs pay a higher tax rate.

An employer's experience rate is based on the employer's own employment record in relation to the employment records of all other employers. The rate at which taxes are paid is based on the employer's experience with unemployment during the 3-year period before the effective date of the tax rate. An employer's initial tax rate is 2.7 percent. After an employer is subject to benefit charges for 10 or 11 calendar quarters (depending on when the employer became subject to charges), the tax rate is adjusted between a low of 0.1 percent and a high of 5.4 percent. The adjustment in the tax rate is determined by calculating several factors.

The benefit ratio is the most significant factor in determining the tax rate, and it is the factor over which the employer has control. The benefit ratio is the cost of benefit charges as a percentage of the employer's taxable wages and is calculated by dividing the total compensation charged to the employer's record over the preceding 3 years by the amount of the employer's payroll during the same 3-year period.

When an individual receives unemployment compensation based on the wages an employer paid the worker, benefit charges are assigned to that employer's account. The account of each employer who paid an individual \$100 or more during the period of a claim is subject to being charged a proportionate share of the compensation paid to the individual. However, an employer can obtain relief from benefit charges by responding to a notification of the claim with information concerning the reason for the individual's separation from work or refusal to work. In general, an employer can earn a lower tax rate by limiting the amount of benefit charges to the employer's account.

Compensation that cannot be charged against any employer's account is recovered through adjustment factors that socialize the cost of this compensation among all contributory employers who, during the previous 3 years, had benefit experience. These adjustment factors include the noncharge adjustment factor, the excess payments adjustment factor, and the positive fund size adjustment factor.

Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the Unemployment Compensation Trust Fund. The effect is an increase in the adjustment factors, which consequently increases tax rates for all contributory employers. Conversely, when unemployment is low, the adjustment factors decrease and tax rates for rated employers are reduced accordingly.

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<sup>13</sup> Nonprofit employers may choose to finance compensation through either the contributory method or the reimbursement method. A reimbursing employer is one who must pay the Unemployment Compensation Trust Fund on a dollar-for-dollar basis for the benefits paid to its former employees. The employer is otherwise not required to make payments to the trust fund.

### Study of Monetary Eligibility Feasibility

In 1997, the Florida Department of Labor and Employment Security conducted a study for the United States Department of Labor to determine the benefits to claimants and the impact on employers of using an alternative base period to calculate unemployment compensation.<sup>14</sup> The Florida study estimated that implementing an alternative base period would result in monetary eligibility for an additional 4,000 claimants at a cost of approximately \$4 million to the trust fund. That report also found that the Florida Department of Labor and Employment Security (now AWI) would have to expend \$150,000 for initial programming plus \$45,000 per year for an additional staff person in the monetary reconsideration unit. AWI indicates that, using data for FY 2004-2005, up to an additional 7,879 claims would be determined monetarily eligible to receive UC benefits at a cost of \$17,130,916 to the UC trust fund.<sup>15</sup> AWI also indicates it will need approximately 7 additional programmers and will be required to expend an estimated \$55,748 for initial computer programming and \$340,020 in FY 06-07, from the Employment Security Administration Trust Fund<sup>16</sup> to pay up to 7 programmers.

### III. Effect of Proposed Changes:

**Section 1** of the bill amends s. 443.036(7), F.S., to require AWI to use an alternative base period under certain circumstances (paragraph (a)) and to permit individuals requesting benefits to submit an affidavit supporting their claim (paragraph (b)).

Currently, s. 443.036(7), F.S., defines the “base period” as the first four of the last five complete calendar quarters immediately preceding the first day of an individual’s benefit year. For a benefit year commencing on or after October 1, 2006, paragraph (a) of the bill requires AWI to determine monetary eligibility for unemployment compensation using wages from an “alternative base period” (the last four completed calendar quarters) for those individuals who are ineligible to receive benefits under current law (the first four of the last five completed calendar quarters).

Using the alternative base period, an individual’s most recent quarter of work would count toward the two-quarter requirement and the \$3,400 requirement. As a result, individuals could qualify for benefits having worked for the two quarters immediately preceding the filing of a claim, rather than the three quarters required under current law.

The effect of the bill is illustrated by the following example: an individual who had not worked during the previous year was hired on January 1, 2005, and terminated, through no fault of his or her own on July 1, 2005. The employee earned a total of \$2,000 during the months of January, February, and March 2005, and a total of \$2,000 during the months of April, May, and June 2005. The employee filed a claim for unemployment compensation benefits on July 2, 2005:

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<sup>14</sup> Division of Unemployment Compensation, Florida Department of Labor and Employment Security, *Monetary Eligibility Study: Variable Base Period, Final Report* (June 1997).

<sup>15</sup> UC Benefits are funded through the UC Trust Fund.

<sup>16</sup> Administrative grants are received from USDOL for UC operational costs through the Employment Security Administration Trust Fund.

- ***Under current law: Not eligible for benefits*** – The employee’s base period would be April 1, 2004, through March 30, 2005 (the first four of the last five completed calendar quarters). Since the employee did not work for at least two quarters, nor earned at least \$3,400 during the base period, the employee would be ineligible for benefits.
- ***Under the bill: Eligible for benefits*** – After finding the employee ineligible for benefits under current law, AWI would apply the “alternative base period” as required under this bill. The employee’s alternative base period would be July 1, 2004, through June 30, 2005, which includes the most recent quarter worked. Since the employee worked for at least two quarters and earned at least \$3,400 within the alternative base period, the employee would be eligible for benefits.

The bill also provides that wages used in a base period to establish monetary eligibility for unemployment compensation may not be used to establish eligibility for claims in a subsequent benefit year. This portion of the bill prevents an individual from claiming benefits based on the same time period more than once.

When an individual files a claim under the alternative base period, if the necessary wage information has not been input by the Department of Revenue into the Agency for Workforce Innovation’s mainframe database from the employer’s quarterly wage and tax reports or is otherwise unavailable, the bill requires AWI to request the wage information from the employer. The bill also requires an employer to respond to such a request within 10 days after receiving the request. If an employer fails to respond within the required time, the employer is subject to a \$25 penalty for filing a delinquent report as set forth in s. 443.141(1)(b)1., F.S. According to that statutory provision, the \$25 penalty is assessed for each 30 days or fraction thereof that the request is delinquent.

AWI indicates that it will be unable to impose a penalty on employers for failing to respond because it will not be able to establish the date that the employer received the request for information. In order to ensure an employer’s receipt of the request, the notice would require mailing via certified or registered mail, thereby increasing costs to the agency. In addition, according to AWI, the volume of requests (an estimated 100,000) would make special mailing impractical. The agency indicates that the USDOL will not provide additional funding for such mailing since it deems special mailing unnecessary for the proper and efficient administration of the UC program

Under paragraph (b), if the Agency for Workforce Innovation is unable to access the necessary wage information through its mainframe database, the bill permits the agency to make a monetary determination of eligibility under the alternative base period based upon an affidavit submitted by the unemployed individual. This portion of the bill requires the individual requesting benefits to furnish any available payroll information in support of the affidavit. This portion of the bill also requires AWI to adjust a determination of benefits when the quarterly report of wage information is received from the employer, if such a change is required to reflect the new data.

The agency asserts that it will come to rely on wage information provided from workers in determining the wages in the most recent quarter because employers will realize that a penalty

cannot reasonably be imposed. However, as noted in a 1998 USDOL study,<sup>17</sup> the agency contends such wage information is prone to inaccuracies, and the agency will ultimately be required to redetermine a large number of claims when wage reports are finally processed by DOR. The end result will be increased administrative costs associated with implementation of the alternative base period.

DOR also indicates that it is not yet clear whether additional time and resources would be required in order to obtain and process wage information. Nevertheless, DOR notes that the bill provides no additional resources to support any additional functions that may be required by the bill.<sup>18</sup>

**Section 2** provides an effective date of October 1, 2006.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

Unemployment compensation benefits are financed by a tax on employers' payrolls. The accounts of employers that are subject to charge for benefit payments will see an increase in their individual tax rates depending on the amount of the charges in relation to the amount of payroll the employer has in his or her employment record.

##### **B. Private Sector Impact:**

The cost of benefits that are not charged to an individual employer's account and the cost of benefits that the UC Trust Fund cannot recoup from individual employers will be shared among all employers insured under the program.

##### **C. Government Sector Impact:**

AWI estimates the following costs for implementation of an alternative base period:

<sup>17</sup> Note 7, *supra*, relying on, U.S. Department of Labor, *Implementing ABP, Volume II: Impact of the Alternative Base Period on Administrative Costs*, p.12 (1998). <http://wdr.doleta.gov/owsdrr/98-4/98-4vol2.pdf>. 13 April 2006.

<sup>18</sup> See, DOR, Analysis of SB 2482, on file with the Senate Committee on Commerce.

<b><u>Nonrecurring Impact:</u></b>	<b>FY 05-06</b>	<b>FY 6-07</b>	<b>FY 07-08</b>
<b>Employment Security Administration Trust Fund</b>			
<b>Contracted Services</b> (Computer programming)	\$ 55,748	\$ 269,600	\$ 0
OPS	\$	\$	\$ 0
Expense	\$	\$ 45,220	\$ 0
OCO <sup>19</sup>	\$	\$ 25,200	\$ 0
<b>• Total Non-Recurring Expenditures</b>	<b>\$ 55,748</b>	<b>\$ 340,020</b>	<b>\$ 0</b>

<b><u>Recurring Impact:</u></b>	<b>FY 06-07</b>	<b>FY 07-08</b>
<b>UC Trust Fund - Benefits for Alternative Base Period</b>	\$ 17,130,916	\$ 22,841,221

<b>Employment Security Administration Trust Fund</b>			
Salaries from additional FTE's	\$ 581,604	\$ 597,604	
OPS	\$	\$	
Expense	\$ 91,182	\$ 93,918	
OCO	\$	\$	
	<u>\$ 672,786</u>	<u>\$ 691,522</u>	
<b>• Total Recurring Expenditures</b>	<b>\$ 17,130,916</b>	<b>\$ 22,841,221</b>	
	<u>\$ 672,786</u>	<u>\$ 691,522</u>	
	<b>\$ 17,803,702</b>	<b>\$ 23,532,743</b>	

Therefore, total costs will be: \$55,748 for FY 05-06; \$18,143,722 for FY 06-07 and \$23, 532,743 for FY 07-08

When the balance in the UC Trust fund is below 3.7 percent of the state's one-year taxable payroll, a positive adjustment factor is automatically triggered to be included in the tax rate computation formula. This factor is designed to maintain the stability of the fund and prevent insolvency. For calendar year 2004 a positive adjustment factor was added to the rate calculation for the first time in 20 years and remained in effect for 2005 and 2006. Increasing benefit payments will make it more difficult for the fund balance to rise above the level necessary to turn the trigger off. Moreover, AWI reports that while tax collections would increase if this bill were passed, there will also be a loss of interest earned by the trust fund because of the increased benefit payouts.

**VI. Technical Deficiencies:**

The bill makes several changes to s. 443.036(7), F.S., by amending the definition, directing AWI to implement the alternative base period and adopt several procedures related to it, requiring employers to comply with AWI requests, and requiring claimants to furnish certain information

<sup>19</sup> OCO stands for Operating Capital Outlay, the one-time initial cost for creating workspace for a new position.

to AWI. While amending the definition in that statutory section is appropriate, the remaining changes belong elsewhere in the statute. A new subsection in s. 443.091, F.S., related to benefit eligibility conditions may be a more appropriate statutory location for the directives to AWI, employers and individuals as outlined in this bill.

The bill uses the term “division” throughout to refer to the entity that has authority over the UC system. This is a technical deficiency. The Division of Unemployment Compensation was abolished by the Legislature effective October 1, 2000. Subsequently, the Office of Unemployment Compensation Services in AWI was created pursuant to s. 20.50(2)(c)1, F.S. According to s. 443.1317(1)(a), F.S., AWI has ultimate authority over the administration of the UC program. Therefore, all references to the “division” should be changed to “agency” to reflect this authority.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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