Original: 2141

South Creek Township

PO Box 60
Gillett PA 16925-0060

Office Phone 570-596-3058 - Fax 570-596-2589
Garage Phone 570-596-2476

02-13-01

Independent Regulatory Commission
Att: Robert Nyce, Executive Director
Via: Fax

RE: #2-133(#2141) Comments on "Clean & Green" Proposed Regulations

Dear Mr. Nyce,

This small, rural township is being very adversely affected by the more lenient "Clean and Green" standards. Our total township real estate tax as of 12-31-2000 is $13,268,850.00. On December 31,1999, it was $14,168,900.00. This is a decrease of $900,050.00. This is very significant for this size municipality.

Many of the properties that are being put into Clean and Green are absentee landowners who use the land for hunting. Some of them still post the land. There is even one that has a rental manufactured home on it. There is little or nothing the township can do to police this.

It was our understanding that the original intent of this law was to protect and preserve farmland. We have only 6 working farms left in the township and the rest of the Clean and Green property is owned by folks who have nothing to do with farming. We also have over 1200 acres of State Gamelands and one large farm that was purchased by the Nature Conservancy and will be donated to the Gameland program. We get a grand total of $508.84 in lieu of taxes for the present Gamelands property.

We really need to get some help with this matter. We don't care if real farmers get tax relief through Clean and Green. We do not believe that just anybody who owns over a certain amount of land or owns a horse or two should be able to get into Clean and Green. If that is not legal, then we feel that you should give the tax break to everybody or nobody.

Thank you for listening to our concerns. We did not raise our tax rate this year, but we will definitely have to for 2002 if something is not done to ease our loss from Clean and Green.

The Supervisors of South Creek Township

Kelly Aldred

Stan Sterling

pc: PSATS

Original: 2141

Fax Cover Sheet

TO: INDEPENDENT REGULATORY COMMISSION

ATTN: ROBERT NYCE (RE: #2-133(#2141)

FAX: 717-783-2664

FROM: South Creek Township
PO Box 60
Gillett PA 16925-0060

Telephone – Office 570-596-3058
Garage 570-596-2476
Fax 570-596-2589

DATE: 02-13-01

******PLEASE DELIVER THIS FAX IMMEDIATELY******

TOTAL PAGES (including this page) 2

If this Fax does not fully transmit or is difficult to read, please notify the sender.

Pennsylvania
Farm Bureau

Original: 2141

February 16, 2001

Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

RE: Department of Agriculture Regulation # 2-133 (IRRC # 2141) - Preferential Assessment of Farmland and Forest Land under the Clean and Green Act

Dear Mr. Nyce:

On February 5, we submitted comments expressing serious concern over the final-form regulations which had originally been submitted by the Department of Agriculture in the aforementioned matter and recommending the regulations be disapproved by the Commission. In response to our concerns and the concerns expressed by the House and Senate Agriculture and Rural Affairs Committees, the Department withdrew its original final-form regulations and resubmitted a revised version of its final-form regulations.

We have reviewed the amendments made in the revised final-form regulations, and believe the revisions have fully addressed and satisfied our concerns. We therefore recommend that the Commission approve the revised final-form regulations.

We wish to express our appreciation to the House and Senate Agriculture and Rural Affairs Committees and to the Department for their willingness to consider and address our concerns.

Sincerely,

John J. Bell
Counsel, Governmental Affairs

cc: Sen. Michael L. Waugh
Sen. Michael A. O'Pake
Rep. Raymond Bunt, Jr.
Rep. Peter J. Daley, II
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510 S 31st St - P.O. Box 8736 - Camp Hill PA 17001-8736 - Phone (717) 761-2740 - FAX (717) 731-3506

PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

Original: 2141

February 2, 2001

Mr. Robert E. Nyce, Director
IRRC
333 Market Street, 14th Floor
Harrisburg, PA 17101

Dear Mr. Nyce:

This letter is in response to the request from the Pennsylvania Department of Agriculture to comment on the "final-form" version of regulations #2-133 (#2141). There are 1,457 townships of the second class in Pennsylvania, many of which contain vast amounts of farmland and land devoted to various agricultural activities. These regulations could dramatically reduce the real estate tax revenue stream to local governments. As a result, these local governments will be forced to raise the millage on all real estate lessening, and possibly negating, the effects of preferential assessments on agricultural land.

Several changes were made to titles of subsections, including the elimination of the word "transfer" in Sections 137b.75 and 76. The word "conveyance" was substituted for "transfer" throughout the regulations. However, while the term "transfer" was still defined, the regulations fail to define "conveyance". In fact, "conveyance" was inserted into the definition of "transfer". This is confusing and needs to be clarified.

The Association's current policy regarding the Act 156 of 1998 amendments to "Clean and Green" was established by resolution at our annual convention in April of 2000. This policy requests a delay in the implementation of these regulations until the financial effects that the regulations will have on townships is both determined and addressed. The regulations do point out that counties will be impacted to a large extent. However, there is no mention of the impact on school districts and townships. Nor was this issue addressed to our members' satisfaction when it was initially raised with the Department of Agriculture. This potential reduction in revenue would adversely affect townships and place an undue burden on most municipalities.

3001 Gettysburg Road
Camp Hill, PA 17011-7296
Telephone: (717) 763-0930
Fax: (717) 763-9732
Internet: www.psats.org

On behalf of the 1,457 townships in Pennsylvania, we would like to thank you for the opportunity to comment on these proposed regulations. If you have any questions or wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

Elam M. Herr
Assistant Executive Director,
Legislative Affairs and Policy Development

EMH:ls

cc: Representative Raymond Bunt, Jr.
Representative Peter Daley, II
Senator Michael Waugh
Senator Michael O'Pake

PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

Original: 2141

February 2, 2001

Mr. Robert E. Nyce, Director
IRRC
333 Market Street, 14th Floor
Harrisburg, PA 17101

Dear Mr. Nyce:

This letter is in response to the request from the Pennsylvania Department of Agriculture to comment on the "final-form" version of regulations #2-133 (#2141). There are 1,457 townships of the second class in Pennsylvania, many of which contain vast amounts of farmland and land devoted to various agricultural activities. These regulations could dramatically reduce the real estate tax revenue stream to local governments. As a result, these local governments will be forced to raise the millage on all real estate lessening, and possibly negating, the effects of preferential assessments on agricultural land.

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Sincerely,

Elam M. Herr
Assistant Executive Director,
Legislative Affairs and Policy Development

EMH:ls

cc: Representative Raymond Bunt, Jr.
Representative Peter Daley, II
Senator Michael Waugh
Senator Michael O'Pake

Pennsylvania
Farm Bureau

February 7, 2001

Original: 2141

Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

RE: Department of Agriculture Regulation # 2-133 (IRRC # 2141) - Preferential Assessment of Farmland and Forest Land under the Clean and Green Act

Dear Mr. Nyce:

Pennsylvania Farm Bureau is a statewide general farm organization with a membership of more than 28,000 farm and rural families in the Commonwealth.

Farm Bureau is deeply concerned over the substantive changes to current law and practice that is being proposed in regulations 137b.84 (split-off that does not comply with section 6(a.1)(1)(i) of the Act) and 137b.52(d) (payment of roll-back taxes does not affect preferential assessment of remaining land). For the reasons stated below, we urge the Commission to ***disapprove*** the Department of Agriculture's final-form regulations until further amendments are made to these provisions.

Duty of the Commission in consideration of final-form regulation.

In determining whether or not to disapprove a final-form regulation, the Commission is required to consider the following:

- Whether the regulation conforms to the intention of the General Assembly in the statute on which the regulation is based.
- The reasonableness of the final-form regulation in terms of possible conflict with existing statutes or regulations and in terms of the requirements to be imposed upon the public and private sector.
- Whether the final-form regulation represents a policy decision of such a substantial nature that it requires legislative review.[1]

[1] Section 5.a(h) and (i) of the Regulatory Review Act, 71 P.S. § 745.5a(h) and (i).

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The problem with the Department of Agriculture's final-form regulation.

Essentially, § 137b.84 of the Department's final-form regulation will require an owner of preferentially assessed land who has performed a split-off in a manner that is not authorized under section 6(a.1)(1)(i) of the Act[2] to continue to keep all remaining land in preferential assessment, even though the split-off may have triggered roll-back taxes on the entire portion of land originally enrolled in preferential assessment.[3] § 137b.52(d) of the Department's final-form regulation will require an owner of preferentially assessed land who has used a portion of his or her land in a manner that triggers roll-back taxes on all of his or her preferentially assessed land to continue to keep remaining land in preferential assessment, notwithstanding the fact that roll-back taxes have been triggered for the entire portion of his or her preferentially assessed land.[4]

Both of these regulations will require remaining land to be perpetually enrolled in preferential assessment and will subject the landowner to an endless stream of roll-back assessments until such unauthorized split-offs or changes in use have occurred throughout the property so that the property no longer meet the minimum requirements for

---

[2] A "split-off" is defined in the Clean and Green Act as a division, by conveyance or other action of the owner, of land preferentially assessed under the Act into two or more tracts of land, one of which no longer meets the minimum requirements for eligibility for preferential assessment. Split-offs that are not authorized under section 6(a.1)(1)(i) of the Act include split-offs of greater than 2 acres per year and split-offs resulting in a total area of preferentially assessed land that has been divided through split-off to exceed 10 acres or 10% of the acreage originally enrolled for preferential assessment, whichever threshold is less.

[3] "Roll-back taxes" equal the difference in taxes that the landowner actually paid as a result of enrollment of land in preferential assessment and the taxes that the landowner would have paid if the land were subject to tax assessment under fair market value. To state it more plainly, it equals the real property tax savings the landowner experiences as a result of enrollment in preferential assessment. If an owner of a 100-acre tract of land enrolled in preferential assessment performs an unauthorized split-off of his or property, roll-back taxes are assessed on the entire 100-acre area. In addition to roll-back taxes, the landowner is assessed an interest penalty.

[4] The Clean and Green Act requires (with some specified exceptions) the entire portion of land enrolled in preferential assessment to be continuously used for agricultural, open space or forest purposes. A change in use of any portion of preferentially assessed land to one not authorized under the Act triggers roll-back taxes on the entire portion of land enrolled. For example, an owner of a 100-acre tract of land enrolled in preferential assessment who uses any portion in a manner not authorized under the Act will (unless an exception applies) trigger roll-back taxes on the entire 100-acre area. Similarly, a use of preferentially assessed land even for a temporary period in a manner not authorized under the Act will trigger roll-back taxes on the entire portion of land enrolled. *See, Godshall v. Montgomery County Board of Assessment Appeals*, 42 Pa. D. & C.3d 191 (1985), which upheld the assessment of roll-back taxes on preferentially assessed land that was temporarily used for five days each year as the site of a folk festival.

eligibility under the Act.[5] As will be discussed below, the requirement for perpetual continuation of preferential assessment proposed under § 137b.84 and § 137b.52(d) is contrary to the intent of the Act, is inconsistent with administrative interpretations historically taken with respect to roll-back-tax-triggering events, and will have a seriously detrimental effect on future participation in the program.

§§ 137b.84 and 137b.52(d) are contrary to the Clean and Green Act's statutory intent.

At the outset, it is important to note that the rules governing statutory construction require that statutes providing for relief from taxation are to be narrowly construed against the taxpayer:

> "All provisions of a statute of the classes hereafter enumerated shall be strictly construed:
> . . .
> (5) Provisions exempting persons and property from taxation."

1 Pa.C.S. § 1928(b).

Section 4(b) of the Clean and Green Act[6] establishes the criteria for the length of term that lands enrolled under the Act are to remain in preferential assessment. Section 4(b) specifically provides:

> "Preferential assessment shall continue under the initial application, or an application amended under subsection (f), **until land use change takes place.**"

Note the language contained in the highlighted portion of this provision. It states that preferential assessment of land enrolled in an application continues until any "land use change" takes place on preferentially assessed land. The language in this provision does not suggest, nor does any other provision of the Act state or suggest, that a change in use must take place in each particular area of preferentially assessed land in order for that area to lose preferential assessment. The language of Section 4(b) suggests quite the contrary – any land use change on any portion of preferentially assessed land will terminate preferential assessment of all land enrolled under an initial or amended application.

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[5] For properties enrolled under Clean and Green as "agricultural use", preferential assessment would not end until the area being used for agricultural purposes is less than 10 acres and that area would not generate at least $2,000 gross annual income from agricultural production.

[6] 72 P.S. § 5490.4(b).

Other provisions of the Clean and Green Act reinforce the intent of the legislature that actions performed by a landowner that trigger roll-back taxes on the entire portion of the owner's preferentially assessed land terminates continuation of preferential assessment on all of the landowner's land subject to roll-back taxes. Section 6(a.1) of the Act[7] prescribes the statutory rules governing split-offs of preferentially assessed land. Paragraph (3) of section 6(a.1)[8] specifically provides and limits the types of split-offs for which preferential assessment may continue after split-off has occurred:

> "**The split-off of land meeting the requirements of paragraph (1)** shall not invalidate the preferential assessment on any land retained by the landowner which continues to meet the provisions of section 3."

Paragraph (3) clearly implies that preferential assessment does **not** continue for any land retained by a landowner from a split-off that does **not** meet the requirements of paragraph (1). More specifically, paragraph (3) clearly implies that preferential assessment does not continue for any land retained by a landowner from a split-off that the landowner fails to meet the requirements of section 6(a.1)(1)(i).[9]

The provisions of section 6(a.1)(3) and section 4(b), together with the statutory requirement of narrow construction of statutory provisions for tax relief, clearly lead to the conclusion that the Clean and Green Act is intended to be interpreted in a manner that will terminate preferential assessment on the entire portion of the owner's land that the owner has triggered assessment of roll-back taxes. Proposed § 137b.84 of the Department's regulations, which attempts to require continuation of preferential assessment of retained land after a split-off that does not meet the requirements of 6(a.1)(1)(i), is contrary to the Clean and Green Act's clear legislative intent.

The same reasoning that supports the conclusion that proposed § 137b.84 of the Department's regulations is contrary to the Clean and Green Act's legislative intent also applies in support of the conclusion that proposed § 137b.52(d) (which will require continuation of preferential assessment of "remaining" land after a change in use triggering roll-back taxes on the entire portion of preferentially assessed land occurs) is contrary to the Act's legislative intent. Section 5.1 of the Act[10], which addresses

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[7] 72 P.S. § 5490.6(a.1).

[8] 72 P.S. § 5490.6(a.1)(3).

[9] 72 P.S. § 5490.6(a.1)(1)(i). This provision prescribes the requirements that must be met for in order for a split-off (other than one occurring through condemnation) not to trigger roll-back taxes on the entire portion of the landowner's preferentially assessed land. Proposed § 137b.84 of the Department's proposed regulations attempts to prescribe the effects of split-offs that do not meet the requirements of section 6(a.1)(1)(i).

[10] 72 P.S. § 5490.5a.

unauthorized "changes in use" of preferentially assessed land, provides:

> "If a landowner changes the use of any tract of land subject to preferential assessment under this act to one which is inconsistent with the provisions of section 3 or for any other reason the land is removed from a land use category under section 3, except for a condemnation of the land, the land so removed and the entire tract of which it was a part shall be subject to roll-back taxes plus interest on each year's roll-back tax at the rate of six percent (6%) per annum. After the first seven years of preferential assessment, the roll-back tax shall apply to the seven most recent tax years."

The Act defines "tract" as "A lot, **piece** or parcel of land. **The term does not refer to any precise dimension of land.**" Clearly, section 5.1 reflects the statutory intent to impose upon the owner of preferentially assessed land the highest degree of consequence that the Act allows for changes in use of any "piece" of preferentially assessed land – i.e., assessment of roll-back taxes on the entire portion of land enrolled in preferential assessment. When read together with section 4(b)'s provision prescribing the effective term of preferential assessment, section 5.1 suggests that the owner of preferentially assessed land should suffer highest degree of consequence for an unauthorized change in use of any portion of his or her land – termination of preferential assessment on the entire portion of the owner's land subject to roll-back taxes because of the owner's change in use.

There is no logical reason for the legislature to require termination of preferential assessment of the entire portion of the owner's land for unauthorized split-offs of portions of his or her land yet not require termination of preferential assessment of the entire portion of the owner's land for unauthorized changes in use of portions of his or her land. Such an inconsistent interpretation would lead to an absurd result – a result that the rules of construction do not allow in interpretation of statutes.[11] In interpreting the intended scope of section 4(b)'s termination of preferential assessment, the Commission may, and should, look to section 6(a.1)(3)'s provisions for unauthorized split-offs and apply an interpretation for unauthorized changes in use that is consistent with unauthorized split-offs. Applying a consistent interpretation must lead the Commission that proposed § 137b.52(d) is likewise inconsistent with the statutory intent of the Clean and Green Act.

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[11] "In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used:

> (1) That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable."

1 Pa.C.S. § 1922.

§§ 137b.84 and 137b.52(d) are inconsistent with other provisions of the Department's proposed final-form regulations.

The provisions of §§ 137b.84 and 137b.52(d) are not consistent with other provisions contained in the Department's final form regulations. Proposed § 137b.52(e) prescribes the maximum area that a county may terminate preferential assessment upon the occurrence of specified acts performed by the owner. Paragraphs (2) and (3) of § 137b.52(e) prescribe the maximum area in which a county may terminate preferential assessment upon the occurrence of unauthorized split-offs and unauthorized changes in use of preferentially assessed land – the identical subjects addressed in §§ 137b.84 and 137b.52(d). Both paragraphs (2) and (3) recognize that for either unauthorized act the county may terminate preferential assessment of not only the area directly affected by the unauthorized act but also the remainder of land that was preferentially assessed prior to the act:

> (e) *Termination of preferential assessment by county.* The maximum area with respect to which **a county may terminate** preferential assessment may not exceed:
>
> . . .
>
> (2) In the case of a **split-off** that is not a condemnation and **that does not meet** the maximum size, use and aggregate acreage requirements of **section 6(a.1)(1)(i) of the act, all land enrolled under the application for preferential assessment.**
>
> (3) In the case when the owner of enrolled land **changes the use** of the land so that it no longer meets the requirements of section 3 of the act, **all land enrolled under the application for preferential assessment**."

§§ 137b.84 and 137b.52(d) are inconsistent with interpretations of the Clean and Green Act traditionally made by counties in their administration of the Act.

It has been the common practice and understanding among counties administering the Clean and Green Act within their jurisdictions to apply a strict interpretation of the Act in the assessment of roll-back taxes and termination of preferential assessment of land. Counties have traditionally applied an interpretation of the Act that an unauthorized split-off and unauthorized changes in use by the owner on any portion of the owner's land will not only trigger roll-back taxes on the entire portion of the owner's land preferentially assessed but will also terminate preferential assessment on the entire area of land in which roll-back tax penalties have been imposed.

The General Assembly made numerous amendments to the Clean and Green Act in its recent enactment of Act 156 of 1998. Yet none of Act 156 amendments attempted to modify counties' common interpretation of area of land whose preferential assessment

is terminated upon an unauthorized split-off or change in use. The fact that the General Assembly made no attempt to expressly change counties' common interpretation is another reflection of the legislature's belief that counties' interpretation is correct and the interpretation attempted in proposed §§ 137b.84 and 137b.52(d) is erroneous and not authorized.

§§ 137b.84 and 137b.52(d) will cause serious administrative and recordkeeping problems for counties.

We believe the requirement for counties administer a program of perpetual continuation of remaining land in preferential assessment will create huge recordkeeping headaches for counties. Counties will need to keep a seemingly endless stream of records to forever track every action performed on every Clean and Green tract in order to determine the amount of roll-back taxes a landowner is required to pay. Counties will forever be required to keep tabs on each split-off, each separation, and each roll-back tax event occurring on every parcel of Clean and Green land in determining whether roll-back taxes are triggered by a current event and the specific amount of roll-back taxes that are due.

An interpretation of the Act that terminates preferential assessment on the entire area of the owner's preferentially assessed land which is subject to roll-back taxes has allowed and will free counties from maintaining endless records. Full termination will allow the county to close the records with respect to parcels that have been fully terminated. If a landowner decides to reapply, the county will be able to start a new record, rather than having to continue the old record. The old record could be discarded. The old record could not be discarded if proposed §§ 137b.84 and 137b.52(d) are adopted as final regulations.

§§ 137b.84 and 137b.52(d) will cause silly gamesmanship by landowners in support of claims that there has been a "change in use" of the entire property and will proliferate legal disputes between landowners and counties over the issue of whether the landowner's actions constitute a"change in use".

We can easily see the practical result of §§ 137b.84 and 137b.52(d)'s requirement for perpetual continuation of preferential assessment to be a silly exercise of legal gamesmanship by owners who have been assessed roll-back tax penalties and who no longer wish to continue in Clean and Green. Landowners burdened with roll-back taxes who want to get out of Clean and Green will attempt, in the year when the roll-back tax penalty is imposed, to perform and document pointless acts of "changes in use" throughout their land in order expel their land from the program. Keep in mind that for purposes of the Clean and Green Act, a "change in use" does not have to be permanent

one.[12] Counties who are vigilant in upholding §§ 137b.84 and 137b.52(d)'s requirement for perpetual continuation of preferential assessment will challenge the sufficiency of the landowner's claim of "change in use", which will likely lead to legal disputes and litigation between landowners and counties. All of this can be avoided by elimination of of §§ 137b.84 and 137b.52(d)'s directives for perpetual continuation of preferential assessment of lands subject to roll-back tax.

§§ 137b.84 and 137b.52(d) will likely have a chilling effect on the future success of the Clean and Green program.

Proposed §§ 137b.84 and 137b.52(d) will likely discourage farmers and other landowners from enrolling in the Clean and Green program in the future. Few farmers will be encouraged to enroll in a program which will eventually cause them to pay, through an endless series of roll-back taxes, all, or a great portion, of what they would have paid in property taxes if they had not enrolled. The depressed effects that §§ 137b.84 and 137b.52(d) will have in future Clean and Green enrollment will likely cause more lands to be developed and sold for development under tax pressure than what would be developed and sold for development under the interpretation traditionally made. The Department's interpretation will likely have the practical effect of defeating the very purpose for which the Clean and Green Act was enacted – to encourage continuation of land in agriculture, open space and forest use.

Is there a real cause for concern in missing the statutory deadline for promulgation of final regulations?

The Department has expressed concerns about meeting the deadline of April 1 for final promulgation of these regulations, which has been statutorily prescribed in Act 156. While we appreciate the need for due diligence in finalizing these regulations, we do not believe the Department's quest for meeting a deadline justifies blind approval of regulatory provisions that are contrary to statute or are unreasonable or impractical. What legal risks is the Department really exposing itself to if final promulgation were delayed by a month or two? We believe that any reasonable court would be sympathetic to a duly diligent process which caused a slight delay in the finalization of regulations for the purpose of correcting regulatory provisions that are legally erroneous, impractical or unreasonable, even though the actual day of statutory deadline was not specifically met .

---

[12] See, *Godshall v. Montgomery County Board of Assessment Appeals*, 42 Pa. D. & C.3d 191 (1985), which upheld the assessment of roll-back taxes on preferentially assessed land that was temporarily used for five days each year as the site of a folk festival.

Conclusion.

While we recognize the diligence and hard work the Department has performed in the formulation of these proposed regulations, we believe adoption of a body of regulations that includes the proposed provisions of §§ 137b.84 and 137b.52(d) will have serious and negative consequences for landowners and counties in the future administration of this program and will jeopardize the program's future success. For the reasons stated above, Farm Bureau would urge the Commission to disapprove the Department's proposed final-form regulations.

Sincerely,

John J. Bell
Counsel, Governmental Affairs

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