COMMITTEE ON LEGISLATIVE RESEARCH OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.:4476-01Bill No.:HB 1402Subject:Law Enforcement Officers and Agencies; Public Records, Public MeetingsType:OriginalDate:February 24, 2004

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND						
FUND AFFECTED	FY 2005	FY 2006	FY 2007			
General Revenue*	(\$276,253 to Unknown)	(\$331,504 to Unknown)	(\$331,504 to Unknown)			
Total Estimated Net Effect on General Revenue	(\$276,253 to	(\$331,504 to	(\$331,504 to Unknown)			
General Revenue Fund*	(\$276,253 to Unknown)	(\$331,504 to Unknown)				

*Unknown losses could exceed (\$100,000) in any given fiscal year.

Numbers within parentheses: () indicate costs or losses. This fiscal note contains 17 pages.

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ESTIMATED NET EFFECT ON OTHER STATE FUNDS						
FUND AFFECTED	FY 2005	FY 2006	FY 2007			
Highway*	(Unknown)	(Unknown)	(Unknown)			
Department of Revenue Information Fund	(Up to \$391,820)	(Up to \$395,738)	(Up to \$399,695)			
Document Services	(\$30,000)	(\$28,000)	(\$24,000)			
Childrens Trust	(\$345,317)	(\$414,380)	(\$414,380)			
Cemetery Endowment	(\$69,062)	(\$82,875)	(\$82,875)			
State Legal Expense	(Unknown)	(Unknown)	(Unknown)			
Total Estimated Net Effect on <u>Other</u> State Funds*	(More than \$836,199)	(More than \$920,993)	(More than \$920,950)			

*Unknown losses could exceed (\$100,000) in any given fiscal year.

ESTIMATED NET EFFECT ON FEDERAL FUNDS						
FUND AFFECTED	FY 2005	FY 2006	FY 2007			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0			

ESTIMATED NET EFFECT ON LOCAL FUNDS					
FUND AFFECTED FY 2005 FY 2006 FY 2007					
Local Government	(\$2,231,588 to Unknown)	(\$2,677,905 to Unknown)	(\$2,677,905 to Unknown)		

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FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the Governor**, **Office of Administration – Division of Design and** Construction, Department of Mental Health, Department of Public Safety – Division of Fire Safety, – State Emergency Management Agency, – Division of Alcohol and Tobacco Control, – Missouri Gaming Commission, – Capitol Police, Department of Insurance, Missouri House of Representatives, Lieutenant Governor's Office, Missouri State Employee's Retirement System, State Auditor's Office, Office of the Secretary of State, Office of the State Public Defender, State Treasurer's Office, State Tax Commission, Linn State Technical College, and Truman State University assume the proposal would have no fiscal impact on their agencies.

Officials from the **Coordinating Board for Higher Education (CBH)** assume section 610.026.1(1) limits the copying fees from actual costs to ten cents per page, limits the hourly fee for search time, and provides the first half hour of search time without charge. These limitations may result in costs to the CBH that exceed the allowable charges for copies and search time, especially as they relate to computer staff search time. Therefore, the proposal could result in a negative fiscal impact.

Officials from the **Office of Administration** – **General Services Division** assume the proposed legislation would increase the maximum penalty for a negligent violation of the Sunshine Law by a public governmental body or a member of a governmental body and law enforcement officers and agencies from \$500 to \$1,000. A purposely violation penalty would be \$1,000 to \$5,000 including court costs and attorney fees. This is potential cost to the State Legal Expense Fund that cannot be determined at this time. The Office of the Attorney General currently reports no Legal Expense Fund payments involving violation of th sunshine Laws. However, lowering the standard of the violation from purposely to negligently could increase the likelihood of claims against the State Legal Expense Fund.

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ASSUMPTION (continued)

Officials from the **Office of Administration – Commissioner's Office (COA)** assume the current fee structure for public record duplication in COA covers costs of duplication of public records. This proposal would decrease revenue to General Revenue by setting the cost at ten cents per page for copying public records, with an hourly fee for search time. The first half your is free; further time cost is limited to the average hourly rate of pay for clerical staff in COA. COA's present policy allows a recovery cost of fifty cents per page for the original, and ten cents per page for subsequent copies. Present policy allows \$15 per hour for professional research time, and \$8 per hour for clerical research time. COA estimates the decrease in receipts to be \$150 per year. Since data on research time is unknown, the decrease in receipts may be greater than \$150 per year.

Officials from the **Office of Administration – Administrative Hearing Commission (AHC)** assume the proposal would result in \$1,194 less General Revenue each year.

Officials from the **Office of Administration – Division of Budget and Planning** assume the copy charge in Section 610.026 could have a minimal impact on total state revenue.

Officials from the **Office of Administration – Division of Purchasing and Materials Management (DPMM)** assume the proposal would allow any internal memorandum or letter received by or prepared on behalf of DPMM consisting of advice, opinions, and recommendations in connection with the deliberative decision-making process of DPMM to now be a public record. Currently, documentation related to the procurement of services and goods by DPMM is an open record and available on DPMM's website. DPMM would have to make available all records for the procurement of security systems. At this time, DPMM is unable to determine the long-range implications of the proposed language.

Officials from the **Office of Administration** – **Missouri Ethics Commission** assume the proposed legislation would reduce revenue. The Ethics Commission would have to change their current copy charge from \$.25 per page.

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would revise various provisions relating to public records, with monetary penalties for violations. The legislation would also provide that any governmental body developing an electronic record keeping system must do so in a common format that is not an impediment to public access. While CTS cannot provide a specific dollar amount to cover the cost of converting all judicial records into a common format, the amount would easily surpass \$100,000.

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ASSUMPTION (continued)

Officials from the **Department of Elementary and Secondary Education (DESE)** assume the proposed legislation would have no fiscal impact on their agency. DESE assumes the proposal eliminates a provision in the definition of public record found at Section 610.010(6) which limits access to internal communications prepared on behalf of a public governmental body in connection with the deliberative decision making process of the governmental body, unless such records are retained by the public governmental body or presented at a public meeting. Deletion of this language may require disclosure of draft recommendations or findings prior to presentation to the governing body. This may require DESE to change agency work practices, the fiscal impact of which is unknown. DESE also assumes school boards and all other governing bodies of political subdivisions would be subject to a civil penalty for "negligently" violating the open meeting laws. Current language refers to a civil fine for "purposely" violating the open meeting laws. Additionally, some additional administrative consideration would likely be given to the passage of this proposal and its ramifications to the public meeting laws which boards must comply with. The administrative impact is not expected to be significant.

Officials from the **Department of Transportation (MoDOT)** assume the total fiscal impact for this legislation would be \$8,494 (\$4,876 search fees + \$3,618 copy reduction amount). MoDOT would also likely incur some increased costs due to the limit on the amount that can be charged for information, but those additional costs would be paid out of MoDOT's current appropriations. However, any loss of reimbursement costs will result in less money being available to spend on highway maintenance or construction.

Officials from the **Highway and Transportation Employees' and Highway Patrol Retirement System** assume the legislation will probably have some fiscal impact on the highway/patrol retirement system. Although a true fiscal impact cannot be determined, they feel the cost will be minimal.

Officials from the **Department of Natural Resources (DNR)** assume, for purposes of this fiscal note, they make approximately 300,000 copies per year for the public. Currently, it is DNR's policy to charge \$.10 per copy and in certain instances research time for standard copy machine copies. This proposal would limit the reimbursement per copy to \$.10 and the hourly fee for search time, not to exceed the average hourly pay for clerical staff. The fiscal impact from the proposed changes in charging staff time to research for copies is unknown. However, DNR would expect the fiscal impact to be minimal.

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ASSUMPTION (continued)

Officials from the **Department of Labor and Industrial Relations (DOL)** assume they would experience a small fiscal impact due to the loss in general revenue due to not charging for the first half hour of retrieval time. In addition, the DOL assumes they could experience a loss in revenue due to the provision that limits the hourly fee for search time to the average rate of pay for clerical staff. The DOL estimates the impact to be Unknown, but less than \$2,500 per year.

Officials from the **Department of Revenue (DOR)** assume all systems within the Division of Motor Vehicle and Drivers Licensing, Driver and Vehicle Services Bureau calculate fees for copies of records <u>based on a per record</u> fee. This proposal requires the department to change these systems to actually count the number of pages per record. This will require <u>significant</u> <u>programming</u> changes to the following systems:

Missouri Driver License System (MODL) – driver records, Field Automated System for Titling and Registrations (FASTR) – motor vehicle records, the department's billing system (PEACHTREE Accounting System), and the DARS accounting system.

This will also require additional time for employees to *manually* count pages of the search for billing purposes. This is will slow customer service turnaround time and require additional hours to be spent counting pages that could be used in more productive ways.

This proposed legislation will have <u>a significant unknown negative fiscal impact</u> on the Driver and Vehicle Services Bureau (DVSB).

To implement this legislation, the DOR will require additional funds. In the past, the programs included in this legislation have been paid for with highway funds. <u>See Mo. Const. Article IV</u>, Section 30(b) and Section 226.200.2, RSMo 2000. This year, however, highway funds may not be available for this purpose as a result of legislation enacted by the General Assembly in 2000 that limits the use of highway funds. This limitation is found in Section 226.200.3, RSMo. It places a cap on the highway funding available to state departments other than the Department of Transportation. The total amount of highway funds appropriated to these other state departments (including the Department of Revenue) cannot exceed the total amount of their fiscal year 2001 highway appropriations. This cap limits the highway funds are not available, then another source of funding must be identified to pay for the cost of implementing this legislation.

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ASSUMPTION (continued)

The DOR also assumes a loss in revenue. In fiscal year 2003, there were approximately 428,320 non-electronic transactions and 734,781 electronic transactions. This proposal requires that copies for non-electronic transactions would be \$.10 per page. The DOR charges documents based on a record which may include more than one page. For purposes of this fiscal note the department has projected non-electronic transactions would have an average of two pages per document.

	Transactions	# of Pages	Total # of Pages	Charge per	Total Revenue	Current Revenue	Revenue Gain/Loss
		0	0	page			
Non Electronic	428,320	2	856,639	\$0.10	\$85,664	\$555,848	(\$470,184)
Total Revenue	Impact						(\$470,184)

*The current charge is \$1.25 per record for non-electronic. The new legislation would only allow \$0.10.

The DOR estimates the total revenue loss due to the proposal to be 391,820 ($470,184/12 \times 10$ months) in FY 05.

DVSB estimated a 1% increase in record sales for FY 06 and FY 07. Therefore, the estimated loss would be \$395,738 in FY 06 and \$399,695 in FY 07.

The fees collected for electronic and non-electronic record sales are deposited into the Department of Revenue Information Fund. This fund is utilized strictly for the sale of records. Any excess fund balance on an annual basis is transferred from the Information Fund to the State Highways and Transportation Department Fund. Any decrease in fees would ultimately affect the amount of money that is transferred to the State Highways and Transportation Department Fund.

Officials from the **Department of Social Services** – **Division of Legal Services** assume the proposal would result in an unknown loss of revenue due to the limit on the copying cost that would be collected for Sunshine Law requests, as the number and size of requests cannot be determined.

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ASSUMPTION (continued)

Officials from the **Department of Social Services** – **Division of Human Resources (DHR)** assume there would be some lost revenue from the decrease in the amounts that can be charged to the requestor. Often professional staff members are responsible for reviewing and preparing information requests. Because the cost is calculated based on the average clerical salary, this would result in lost revenue. Additionally, the legislation would lower the standard of proof for imposition of fines from "purposely" to " grossly negligently," which would increase the agency's liability. The fine amount would change from "up to \$500" to \$25 to \$1,000 and attorney fees. It is not possible at this time to estimate the actual cost.

Officials from the **Department of Social Services** – **Division of Family Support** assume they would comply with the policy changes in this legislation regarding the Sunshine Law at no cost to the State.

Officials from the **Department of Public Safety** – **Veterans Commission** assume the proposal would have an unknown effect on their agency.

Officials from the **Department of Public Safety** – **Director's Office** assume the proposal would result in a negative impact to their agency because they currently charge \$.20 per page plus personnel costs for copies. The legislation would reduce the personnel costs and the amount per page to \$.10. They do not always have clerical staff make the copies for requests. Therefore, they cannot make a determination as to how much of a negative impact the proposal would cause.

Officials from the **Department of Conservation** assume the proposed legislation would appear to have a minimal impact on their department.

Officials from the **Office of Prosecution Services** assume prosecutors could absorb the costs of the proposed legislation within existing resources.

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ASSUMPTION (continued)

Officials from the **Board of Police Commissioners for the Kansas City Police Department** (KCBOPC) state they receive 69,000 requests for public records per year. KCBOPC estimates it costs approximately \$430,000 annually to fulfill the 69,000 requests for public records. The average cost is over \$6 per request, whether the reproduced items consist of one page or up to twenty pages. If Section 610.026 of this proposal were enacted, KCBOPC would have to start charging five cents per page instead of a flat rate per request. The amount of five cents per page would not cover costs to provide this service to the public, and the KCBOPC estimates that it will lose approximately \$388,000 in revenue annually and have to lay off at least three employees.

In response to a similar proposal, officials from the **Department of Health and Senior Services (DOH)** assumed the proposal would result in losses in revenues to the General Revenue, Document Services, Childrens Trust, and Cemetery Endowment Funds. The DOH also assumed the proposal would result in losses of local funds.

The DOH based its loss of income from the sale of data requests on FY 03's income of \$36,470. The DOH receives 500 data requests per year that require writing a computer program. Analyst time spent writing the programs is charged out to the system users. The money collected is deposited in the Document Services Fund to pay the analyst salary incurred in writing the computer programs. If such charges will no longer be allowed, the service will have to be discontinued. Requests for data have been declining; therefore, the projected decrease in revenues reflect corresponding decreases.

In FY03, local public health agencies issued 297,545 certificates, totaling income of \$2,975,450. If they were only allowed to charge 5 cents per copy, the annual net loss would total \$2,960,573 for those agencies.

In FY03, there were 83,713 certificates issued from the DOH. This generates income to the state of \$837,130. Of this amount, \$334,852 goes to General Revenue, \$418,565 goes to the Childrens Trust Fund, and \$83,713 goes to the Cemetery Endowment Fund. If the state were only allowed to charge 5 cents per copy, there would be an annual net loss of \$333,178 to the General Revenue Fund, \$416,472 annual net loss to the Childrens Trust Fund, and \$83,294 annual net loss to the Cemetery Endowment Fund.

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ASSUMPTION (continued)

Oversight assumes the proposal would allow a charge of 10 cents per copy for certificates, resulting in an annual net loss of \$2,677,905. Oversight also assumes the charge of 10 cents per copy would result in an annual net loss of \$331,504 to the General Revenue Fund, \$414,380 annual net loss to the Childrens Trust Fund, and \$82,875 annual net loss to the Cemetery Endowment Fund.

Oversight assumes state agencies and political subdivisions could experience losses due to the limitations on the amount that could be charged for reproducing records. Oversight has reflected this amount as an Unknown amount that could exceed \$100,000 in any given fiscal year.

FISCAL IMPACT - State Government	FY 2005 (10 Mo.)	FY 2006	FY 2007
GENERAL REVENUE FUND	()		
Losses – Various Agencies Record Reproduction Fees*	(Unknown)	(Unknown)	(Unknown)
<u>Losses</u> – Department of Health and Senior Services Record reproduction fees	<u>(\$276,253)</u>	<u>(\$331,504)</u>	<u>(\$331,504)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND*	<u>(\$276,253 to</u> <u>Unknown)</u>	<u>(\$331,504 to</u> <u>Unknown)</u>	<u>(\$331,504 to</u> <u>Unknown)</u>

*Unknown losses could exceed (\$100,000) in any given fiscal year.

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HIGHWAY FUND

Losses – Department of Revenue Decreased transfers from Department of Revenue Information Fund*	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON HIGHWAY FUND*	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
*Losses could exceed (\$100,000) in any given	fiscal year.		
DEPARTMENT OF REVENUE INFORMATION FUND			
<u>Savings</u> – Department of Revenue Reduced Transfers to Highway Fund*	Unknown	Unknown	Unknown
<u>Losses</u> – Department of Revenue Record Reproduction Fees	<u>(\$391,820)</u>	<u>(\$395,738)</u>	<u>(\$399,695)</u>
ESTIMATED NET EFFECT ON DEPARTMENT OF REVENUE INFORMATION FUND	<u>(Up to</u> <u>\$391,820)</u>	<u>(Up to</u> <u>\$395,738)</u>	<u>(Up to</u> <u>\$399,695)</u>
*Savings could exceed \$100,000 in any given	fiscal year.		
DOCUMENT SERVICES FUND			
Losses – Department of Health and Senior Services Limits on research fees	<u>(\$30,000)</u>	<u>(\$28,000)</u>	<u>(\$24,000)</u>
ESTIMATED NET EFFECT ON DOCUMENT SERVICES FUND	<u>(\$30,000)</u>	<u>(\$28,000)</u>	<u>(\$24,000)</u>

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CHILDRENS TRUST FUND

<u>Losses</u> – Department of Health and Senior Services			
Record reproduction fees	<u>(\$345,317)</u>	<u>(\$414,380)</u>	<u>(\$414,380)</u>
ESTIMATED NET EFFECT ON CHILDRENS TRUST FUND	<u>(\$345,317)</u>	<u>(\$414,380)</u>	<u>(\$414,380)</u>
CEMETERY ENDOWMENT FUND			
<u>Losses</u> – Department of Health and Senior Services			
Record reproduction fees	<u>(\$69,062)</u>	<u>(\$82,875)</u>	<u>(\$82,875)</u>
ESTIMATED NET EFFECT ON CEMETERY ENDOWMENT FUND	<u>(\$69,062)</u>	<u>(\$82,875)</u>	<u>(\$82,875)</u>
STATE LEGAL EXPENSE FUND			
<u>Costs</u> – Office of Administration Penalties for violations of sunshine law	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON STATE LEGAL EXPENSE FUND	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

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FISCAL IMPACT - Local Government	FY 2005 (10 Mo.)	FY 2006	FY 2007
LOCAL GOVERNMENTAL ENTITIES			
Losses – Local Public Health Agencies Record reproduction fees	(\$2,231,588)	(\$2,677,905)	(\$2,677,905)
<u>Losses</u> – Local Political Subdivisions Record reproduction fees	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON LOCAL GOVERNMENTAL ENTITIES	<u>(\$2,231,588 to</u> <u>Unknown)</u>	<u>(\$2,677,905 to</u> <u>Unknown)</u>	<u>(\$2,677,905 to</u> <u>Unknown)</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

The proposed legislation would make changes to the Open Records Law. In its main provisions, the proposal would:

(1) Include the curators of the University of Missouri in the definition of "public governmental body;"

(2) Include bi-state development agencies in the definition of "quasi-public governmental body;"

(3) Require that a journal or minutes of closed meetings be taken and retained by public governmental bodies;

(4) Authorize public governmental bodies to close meetings, records, and votes relating to:

(a) Imminent causes of action or litigation involving the public governmental body. Currently, public governmental bodies are authorized to close meetings, records, and votes relating to all causes of action;

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DESCRIPTION (continued)

(b) Operational guidelines and policies adopted and maintained by public agencies responsible for law enforcement and public safety for use in responding to or preventing terrorist incidents, when the agencies state in writing that disclosure would impair the agencies' protection duties and public interest in nondisclosure outweighs public interest in disclosure. Information regarding expenditures and contracts made by agencies in implementing these policies would not be exempt. This exception would sunset on December 31, 2006;

(5) Require that the amount and source of private donations to the salary of a chancellor or president of the University of Missouri system be disclosed;

(6) Require that the names of the final slate of candidates for chief executive officers of public governmental bodies be disclosed;

(7) Require that all final audit reports by the auditor of a public governmental body be considered open public records;

(8) Allow a member of a public governmental body to record an objection in the minutes to closing a meeting or vote. The objecting member then could stay for the meeting or vote, and the record objection would be an absolute defense to any claim pursuant to Section 610.027, RSMo, providing for actions against public governmental bodies and their members and the imposition of monetary penalties;

(9) Change the fee for furnishing copies of public records from the actual cost of document search and duplication to 10 cents per page for paper copies plus the hourly rate of pay for clerical staff, with the first half-hour at no charge;

(10) Prohibit the custodian of public records that are the subject of a civil action to enforce the laws from transferring custody, altering, destroying, or otherwise disposing of the records;

(11) Change the civil fine of up to \$500 and order of payment of the successful party's costs and reasonable attorney fees to a civil penalty of \$1,000 to \$5,000 and payment of the successful party's costs and reasonable attorney fees upon a finding of a purposeful violation of the law by a public governmental body or its members or a law enforcement agency;

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DESCRIPTION (continued)

(12) Require a court, upon a finding of a negligent violation of the law by a public governmental body or its members or a law enforcement agency, to impose a civil penalty of \$25 to \$1,000 and give the court discretion to order payment of the successful party's costs and reasonable attorney fees;

(13) Provide that, in determining the amount of the penalty for either a negligent or purposeful violation of the law by a public governmental body or its members or a law enforcement agency, the court would consider the size of the jurisdiction, the seriousness of the offense, and whether the public governmental body or its members has previously violated the laws;

(14) Require a public governmental body, when developing an electronic record-keeping system, to do so in a common format that is not an impediment to public access; and

(15) Delete the provision prohibiting law enforcement agencies from releasing accident or incident reports for 60 days to any person who is not an interested party.

The proposal has a sunset date of December 31, 2006, for Section 610.021(18), which excludes from the Open Records Law, law enforcement or public safety agencies' operational guidelines and policies for responding to or preventing terrorist activities.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

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SOURCES OF INFORMATION

Office of the Governor Coordinating Board for Higher Education Office of Administration Office of State Courts Administrator Department of Elementary and Secondary Education Department of Transportation Department of Mental Health Department of Natural Resources Department of Labor and Industrial Relations Department of Revenue Department of Social Services Department of Public Safety Department of Insurance Department of Conservation Missouri House of Representatives Lieutenant Governor's Office Missouri State Employee's Retirement System Office of Prosecution Services State Auditor's Office Office of the Secretary of State Office of the State Public Defender State Treasurer's Office State Tax Commission Linn State Technical College Truman State University Board of Police Commissioners for the Police Department of Kansas City

Mickey Wilen

Mickey Wilson, CPA Director February 24, 2004

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