

the Courthouse Journal

W A C O U N T I E S . O R G

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*Washington Association of County Officials
Washington State Association of Counties*

County Treasurers Stir Things up in Olympia

The Washington State Association of County Treasurers (WSACT) met last week for their 2009 Legislation Conference. With a focus on tax fairness and clean up legislation, treasurers found themselves elbow deep attempting to fix other legislation already introduced.

HB 1208, Concerning Property Tax Administration, is a WACO Priority bill that seeks to reconcile changes made to property tax receipt dates in 2007, and removes antiquated language regarding the use of stamps to verify receipt of payment. County treasurer representatives met with stakeholders including title companies, real estate agents and escrow agents to review the legislation and seek common ground. All involved are optimistic that common ground is within reach and look forward to seeing the legislation move forward.

Collection of property taxes upon the sale of a property is another WACO Priority issue brought forth by the Treasurers. This draft requires that all property taxes are paid current through the full year when a Real Estate Excise Tax affidavit is processed. Treasurers met with stakeholders (title companies, real estate agents, banks and escrow agents) to review the legislation, and were unable to find enough common ground to move forward with the legislation. Treasurers have agreed to drop the issue for the 2009 session and will revisit the issue at the 2009 legislative conference discussion. While in town, Treasurers weighed in on legislation regarding public utility district practices related to writing checks instead of warrants, interest rates and penalties relating to the current use program, foreclosure rescue fraud, annual property tax revaluations, and holding public funds at credit unions. Between the committee hearings, stakeholder meetings and WSACT meetings, Treasurers took the opportunity to have lunch with newly elected State Treasurer Jim McIntire and breakfast with longtime State Auditor Brian Sonntag.

County Auditor Legislation Moves Forward

County Auditors had reason this week to rejoice in the passage of **HB 1019** eliminating the requirement that auditors send a ballot or an application to receive a ballot to inactive voters, from the House State Government & Tribal Affairs Committee. The committee held **HB 1018**, modifying when a special election can be held, for further consideration, and WACO is actively working with the bill sponsor and committee chair to move the bill forward.

Companion bills to **HB 1018** and **HB 1019** came before the Senate Committee on Government Operations & Elections this week. The committee heard and passed both

Job announcements & links to County Employment pages at:

<http://wacounties.org/>

the Courthouse Journal

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We welcome your suggestions and contributions. The weekly / bi-weekly deadline is noon Wednesdays. Direct inquiries and correspondence to - *The Courthouse Journal*, 206 Tenth Av SE, Olympia, WA 98501

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bills - **SB 5016**, modifying when a special election can be held, and **SB 5017** eliminating the requirement that auditors send a ballot or an application to receive a ballot to inactive voters. The bills now move to the Senate Rules Committee.

Counties and other Local Government Associations' Meet with Attorney General McKenna on Taping Executive Sessions

At the request of the Attorney General McKenna and the State Auditor Sonntag, Representative Kessler has introduced **HB 1676** - Changing open public meetings act provisions.

WSAC, in conjunction with representative of cities, schools, ports, libraries and others, met with Attorney General McKenna and other representatives of the AG's office and State Auditor's Office to continue to work on a compromise bill that WSAC and other local governments can support. The Attorney General and the State Auditor continue to be very supportive in working with WSAC and others on finding common solutions that will work for both local government and their respective offices.

The current bill has a series of elements including the permission to tape executive sessions, the requirement to tape executive sessions if a legislative authority intentionally violates the open public meeting act, an advisory committee to provide advice on model rules, required training, and the development and deployment of training materials. Please see **HB 1676** for more information.

Burden of Proof /Preponderance of Evidence/Clear Cogent and Convincing

It appears that the arguments are being made ever more forcefully that the standard for Board of Equalization appeals should be reduced to a simple "preponderance of evidence." Those that promote this have felt that it would make it easier for the residential taxpayer to appeal their property value. The problem is, in states where this standard has been changed, it has been predominantly the business and industrial community that has benefited from the change.

The memo below was sent to WACO by Jim Richmond, a local attorney in the Olympia area. Richmond has done extensive research in this area and we submit his memo to you with his permission.

Presumption of Correctness - Burden of Proof – RCW 84.40.0301, February 8, 2008

Question Presented: Last week it was reported that a witness testified before the legislature that the burden of proof in challenging property tax assessments was by a preponderance of the evidence prior to 1971. That is an inaccurate statement of the law. This paper addresses the burden of proof under

Legislative Committee Schedules and Agendas:

<http://www.leg.wa.gov/wsladm/calendar.cfm>

Bill Information: www.leg.wa.gov

Washington law for property tax challenges. As a result of a 1995 case, some challenges to an assessment are already governed by a preponderance standard.

Discussion: Until 1971, the courts applied a judicially crafted standard to property tax challenges that incorporated a presumption of due performance by the assessor that could only be overcome by clear and convincing evidence. When making or equalizing assessments, the assessor acts in quasi-judicial capacity, and the law presumes that he has performed his duty in proper manner. This presumption will be liberally indulged and will not be overturned except by evidence that it is clear and convincing. Ozette Ry.Co. v. Grays Harbor County, 16 Wash.2d 459, 113 P.2d 983 (1943). Ozette concerned whether the right of way cost of construction could be included in the valuation. There the court stated that the valuation needed to be so excessive that it constituted constructive fraud by the assessor.

In Ozette, the court cited eleven appellate court cases in Washington, going back to 1901, that imposed a constructive fraud and clear and convincing burden. The Ozette court then went on to say:

The mere fact that the assessing officers have proceeded on a fundamentally wrong basis or that the assessment is excessive is not of itself alone sufficient to justify the intervention of the courts at the instance of the taxpayer. Before a court of equity will grant relief against the acts of such officers, it must clearly appear that the assessment is so palpably exorbitant and excessive as to amount to constructive fraud or to violate some constitutional principle.

This judicially created standard was replaced by a legislative standard in 1971. RCW 84.40.0301. The 1971 legislation preserved the presumption of correctness and clarified the burden of proof by requiring clear, cogent and convincing evidence:

Upon review by any court, or appellate body, of a determination of the valuation of property for purposes of taxation, it shall be presumed that the determination of the public official charged with the duty of establishing such value is correct but this presumption shall not be a defense against any correction indicated by clear, cogent and convincing evidence.

The clear, cogent and convincing evidence standard “denotes a quantum of proof less than ‘beyond a reasonable doubt’ but greater than ‘a mere preponderance of the evidence.’” Davis v. Dep’t of Labor & Indus., 94 Wn.2d 119, 126, 615 P.2d 1279 (1980) (quoting Bland v. Mentor, 63 Wn.2d 150, 155, 385 P.2d 727 (1963)). The standard has been equated to that of “highly probable.” Id. at 126.

After enactment of that statute, the first case to discuss the presumption of correctness in any depth was Xerox Corp. v. King County, 94 W.2d 284 (1980). When Xerox was decided, a taxpayer had to prove constructive fraud on the part of the assessor by one of two possible methods: 1) prove that the assessor's value was constructively fraudulent because it was "palpably exorbitant or excessive"; or 2) prove that the assessor's value was constructively fraudulent because the assessor proceeded on a fundamentally wrong basis.

A 1983 utility violation case interpreting RCW 84.40.0301 said a taxpayer who challenges a property valuation for tax purposes must show by clear, cogent and convincing evidence that there has been an overvaluation, and that the overvaluation was either grossly inequitable and palpably excessive or made on a fundamentally wrong basis. Northwest Natural Gas Co. v. Clark County, 98 Wash.2d 739, 658 P.2d 669 (1983).

The next significant case to address the presumption of correctness and burden of proof incorporated into RCW 84.49.0301 arose in 1995. In that case the court noted that in some circumstances the burden of proof is a preponderance of the evidence. The case concerned the value of a pulp mill and deductions for pollution-control equipment. Weyerhaeuser Co. v. Easter, 126 Wn.2d 370, 381, 894 P.2d 1290 (1995).

In Weyerhaeuser the Washington Supreme Court interpreted RCW 84.40.0301 by distinguishing between the correctness of a specific value within an assessment and the correctness of an overall appraisal method or technique, as follows:

We adopt the following test to determine the appropriate standard of proof: (1) if a taxpayer overcomes the presumption of correctness on a specific value, the standard of proof shifts to preponderance of the evidence for all contested issues related to that value; and (2) if a taxpayer overcomes the presumption on the assessor's overall approach or technique, *i.e.*, invalidates the technique, the standard of proof shifts to a preponderance of the evidence for all issues. The taxpayer retains the burden of persuasion at all times.

The court in Weyerhaeuser explained the first part of the test in more detail:

The first part of the test covers particular values within an assessment. Most appraisals of commercial properties involve several separate judgments on the value of complex assets. An assessor's error on one decision does not necessarily invalidate the entire assessment, nor should it eliminate the presumption of correctness for unrelated judgments.

Id.

Under the second part of the Weyerhaeuser test, if the methodology of the entire assessment is found incorrect by clear, cogent and convincing evidence, the presumption is overcome as to the overall assessment value, but the burden of proof remains on the taxpayer by a preponderance of the evidence.

The presumption of correctness applies only to an assessor's original valuation. It does not apply to the value placed on property by a county Board of Equalization. When an assessor recommends a different value for a new appraisal before the Board or Court than the value originally assigned, the burden becomes a preponderance of the evidence.

If taxpayer challenging property tax assessment overcomes presumption of correctness on assessor's overall approach or technique, standard of proof shifts to preponderance of evidence for all issues.

Weyerhaeuser recognized the importance of the presumption of correctness. By adopting presumption of correctness to assessor's original determination of value for property tax purposes, the legislature sought to end confusion and create clear burden of proof for taxpayers.

Conclusion: The burden of proof in challenging property tax assessments since 1995 has incorporated the preponderance of the evidence standard for many purposes. The courts have retained and enforced the presumption of correctness. Prior to 1995 the courts enforced a standard that retained the presumption of correctness and a clear and convincing standard for burden of proof. The proposed House bill appears to remove the presumption of correctness and changes the burden for all purposes to a preponderance of the evidence.

Submitted by James P. Richmond, Richmond Law Group, PLLC, 525 Columbia Street NW, Suite 202, Olympia, WA 98501, (360) 754-1581.

Courts, Public Safety, Law & Justice

Clerks' Bills Gaining

SB 5013, the county clerk's fee bill, appears to be ready to move out of Senate Judiciary soon. Several questions came up after the Committee Hearing but thanks to the Chair, Senator Adam Kline, resolution of four problem areas has been reached. A compromise has been reached on three fees and the Senators appear to have had their questions on collection of court-ordered legal financial obligations answered satisfactorily. A copy of the amended bill will be sent to county clerks when it is available.

HB 1003, publication of notices, is getting a lot of attention from County Clerk's Leg Chair Betty Gould who is working diligently with the Attorney General's Office and the Department of Social and Health Services to secure a revised fiscal note on the cost of publishing notices in dependency cases. The Clerks are attempting to give the duty to the State.

HB 1090 Human Remains

Kitsap County Coroner Greg Sandstrom and Thurston County Coroner Gary Warnock came to a work session on skeletal human remains January 30 to find that the prime sponsor Representative John McCoy had stripped the bill and provided a substitute in an attempt to do away with a hefty fiscal note. The bill now simply gives the Office of Archaeology and Historic Preservation the authority to adopt administrative rules (WACs). **HB 1090** should move out of the House State Government and Tribal Affairs Committee soon.

Forensic Investigations Council

SB 5588, a bill to suspend the operation of over 100 boards and commissions until July 2011 in a cost-cutting measure, will likely not include the Forensic Investigations Council. The prime sponsor Senator Craig Pridemore appears to be looking at those funded by the State General Fund rather than those like the Council which if funded by dedicated funds. There is not much to be saved by suspending or eliminating the Council which has a biennial budget of less than \$30,000.

Elections, Licensing & Recordings

Local Government Archives Account

HB 1374, a WACO Bill to restore monies and spending authority to the Local Government Archives Account, will be heard next Tuesday, February 3, at 3:30 p.m. in the House Capital Budget Committee. In the waning hours of the 2008 Legislative Session, the same committee took \$4 million from the account and transferred it to the Heritage Center Account and gave the Heritage Center Committee the authority to tap the Archives Account whenever they experience a shortfall. A \$2.00 surcharge on documents recorded in the county auditors' offices already provides 62% of the funding for the Heritage Center and an additional 3% (the \$4 mil) would put the Local Government Archives programs, the Grants Program and the Digital Archives in jeopardy.

General Government Issues

PDC Reminder

County office holders must file a Personal Financial Affairs Statement (F-1) with the Washington State Public Disclosure Commission by April 15. The F-1 can be filed electronically or by mail any time between now and April 15. Forms and the e-filing application are found under Filer Resources at www.pdc.wa.gov. Contact the PDC staff for assistance with filing: pdc@pdc.wa.gov, (360) 664-2737, or toll-free 1-877-602-2828.

NACo Deferred Compensation Program Provider Tops in Study

Recent headlines and the current economic climate highlight the importance of making sure personal and retirement investments are with a financially strong company. As part of its oversight of its Deferred Compensation Program, NACo hires an independent consultant to evaluate several different program aspects. These include the creditworthiness of Nationwide Financial, the parent company to our program administrator, Nationwide Retirement Solutions, and assurance that the fixed annuity investment option offers a competitive return to our program participants.

In their analysis of the creditworthiness of Nationwide, the consultants concluded that it is a strong, stable insurer that continues to strengthen its foundation. This analysis provides assurance that participants' funds are being managed by a financially sound organization.

The NACo deferred compensation program, also known as a 457 program, is a voluntary program that gives county employees the opportunity to save regularly for their retirement on a pre-tax basis. One of the investment options available to participants is a fixed annuity that offers county employees the opportunity to earn an investment return at a fixed rate that is established quarterly by Nationwide. In addition, on an annual basis, Nationwide sets an investment rate minimum (or floor) for the year.

NACo's deferred compensation program continues in its number one slot on the return it provides to county employees who are invested in the program's fixed annuity option.

According to the study, the 2007 return on this investment option placed highest among its competitors. The report was released at the November 14, 2008 meeting of NACo's Deferred Compensation Advisory Committee, held in Riverside County, California. This study has been conducted every year since 1989, and the NACo program has always come out on top. "Our 28-year partnership with NRS continues to deliver a quality program that helps county employees save for a more comfortable retirement – this is more important than ever in today's economy," said Larry Naake, NACo executive director.

The competitive interest rate test concluded that Nationwide met its contractual requirement to equal or exceed the top one-third of its competitors. This study reviewed the fixed annuity option offered by Nationwide and its nine largest competitors.

The consultants' analyses are only one feature of NACo's deferred compensation program that distinguishes it from others. As a result of NACo's Deferred Compensation Advisory Committee, the NACo program is the only one in the country that receives oversight and is advised by county participants. It also benefits from the oversight and endorsement of 41 state associations of counties.

(For further information on NACo's Deferred Compensation program, please contact Lisa Cole at NACo at 202/942-4270 or lcole@naco.org or NRS at 877/677-3678 or www.nrsforu.com.)

Transportation & Public Works

County Ferry Systems Report now Available

The County Road Administration Board (CRAB) has recently completed the "County Ferry Systems Report." With all of the attention on the state ferry system it is important to highlight that the same financial and policy issues are impacting the four counties operating car-ferries (Pierce, Skagit, Wahkiakum, and Whatcom). The report contains a summary of historical, operational, and financial information for each of the four county ferry systems. It also contains comparative information about the four county systems as well as reference information about other ferries operating in the State of Washington.

An executive summary version of the county ferry report will be included within CRAB's 2008 annual report being completed at this time. The ferry report is intended to be the first of many highlighted topics included in their annual report, supplementing the core informational content, with each year having a new highlighted topic. Both the complete county ferry report and the 2008 annual report will be available through the CRAB website (www.crab.wa.gov). Copies can also be obtained by contacting Jeff Monsen at jeff@crab.wa.gov.

Boards & Commissions

Statewide Board and Commission Seats Need County Representation

WSAC is seeking interested members, and others where indicated, to submit their names for consideration for one or more of the following positions. Deadline for submitting an online interest form is **February 6**; apply at: <http://www.wacounties.org/wsac/boards.asp>.

County Road Administration Board

Must be filled by a County Commissioner or Councilmember from a County with population between 20,000 and 125,000; this is to fill an unexpired term which ends in June, 2010.

<http://www.crab.wa.gov/newabout.asp>

Emergency Management Council

One county representative seat; indeterminate term
<http://www.governor.wa.gov/boards/profiles/059.asp>

Farmland Preservation Task Force

One Westside county representative seat; fulfilling a term that ends 1/1/11
<http://www.governor.wa.gov/boards/profiles/059.asp>

Oil Spill Advisory Council

One representatives of county government from counties bordering Puget Sound, the Columbia river/Pacific Ocean, and the Strait of Juan de Fuca/San Juan Islands
<http://www.governor.wa.gov/boards/profiles/241.asp>

Shorelines Hearings Board

http://www.eho.wa.gov/Boards_SHB.aspx

Snowmobile Advisory Committee

<http://www.parks.wa.gov/winter/snomobilecom.asp>

State Building Code Council

One each Western and Eastern seats (2) available; three year terms; must be filled by a County Commissioner, Councilmember or Executive.
<http://www.governor.wa.gov/boards/profiles/019.asp>
<http://www.sbcc.wa.gov/sbccindx.html>

Winter Recreation (Sno-Park) Advisory Committee

<http://www.parks.wa.gov/winter/snoparkcom.asp>

One position for unfilled terms is open due to WSAC members who needed to step down for other commitments: *Sex Offender Policy Board*

http://www.sgc.wa.gov/SOPB_Information/Sex_Offender_Policy_Board.htm

Training & Upcoming Events

Washington Counties – [wacounties.org/Calendar of Events](http://wacounties.org/Calendar_of_Events)

County Training Institute – www.countytraininginstitute.org

WSAC Seeks Nominations for 2009 NACo County Leadership Institute

An opportunity is again available to nominate a Washington representative to NACo's annual intensive County Leadership Institute. If you, or a WSAC member you know, meet the criteria below and are interested and available to participate in the May 26-30, 2009 event in New York City please submit an online interest form **by Friday, February 6** at: <http://www.wacounties.org/wsac/boards.asp>.

The WSAC Board of Directors established the following criteria for nomination at its March 2008 meeting:

- Member must have served at least one term and have been reelected to office.
- Member must be in an active WSAC leadership capacity, e.g., Board Member, District Officer, LSC Member, etc.
- Member must be willing to continue serve in a leadership position.
- Member will report to the WSAC membership following completion of the program.

Candidates must be elected county officials in NACo member counties, and only one candidate will be enrolled from a given state. Preference is given to candidates with two to six years experience with a demonstrated interest and potential for improving the quality of life in their counties through collaboration with state and national organizations.

The WSAC Board of Directors approved that WSAC will cover the registration cost of \$1,500 while the costs of tuition, hotel, receptions, breakfasts and lunches is supported by NACo and Institute sponsors. The selected participant is responsible for travel to and from New York City, some meals, ground transportation, and incidentals.

The WSAC Executive Committee will select and forward nominee(s) to NACo and the member chosen will be asked to fill out an application form. NACo will announce the class of 2009 by April 1. If you wish to learn more about the program from previous participants, please contact: 2008 - Paul Pearce, Skamania; 2007 - Mark Richard, Spokane; 2006 - Lynda Ring Erickson, Mason; and 2005 - Jan Angel, Kitsap (currently a Washington State Representative)

About the Program:

2009 County Leadership Institute, May 26-30, 2009

in partnership with

New York University/Robert F. Wagner Graduate School of Public Service, New York City

The County Leadership Institute is an intensive 3 ½ day residential program offered annually by invitation to up to 30 emerging county leaders across the country. Designed to tap into the passion for making a difference, the Institute enhances the capacity of county officials to identify and implement solutions that engage a broad network of interests, crossing boundaries of traditionally separate sectors and jurisdictions.

What graduates say about CLI:

“We came together from great diversity – small, large, rural, urban, part-time and full-time, of differing gender, race, and political party, to discover how much, in fact, we had in common. The friendships I made will benefit me in professional and personal ways for many years in the future.”

“CLI provided a powerful, action-packed educational forum that would benefit any commissioner in any area. The techniques I learned have already helped me personally, professionally and politically.”

“I returned from CLI invigorated by the challenging thinking, recommitted to seeing beyond the obvious in decision making and problem solving. I find the philosophies I learned there filtering through everything I do, both personally and professionally. What a tremendous opportunity to learn from the best!”

“As an elected official I have been to a number of courses on ‘leadership.’ This is the first time I have taken away a set of practical skills to solve real problems in my community. Thank you!”

Homeland Defense Journal Training Workshops (TM)

CBRNE - Grants - Emergency Preparedness for Facilities - Suicide Bombers - Regional Evacuation - Dealing with Media - Special Needs - Workplace Violence (and more)

Each course is designed to provide attendees with high value, practical, tools (checklists, implementation process, lessons-learned) that can be immediately applied to your operational needs.

February - October | 2009 **For details on all training, go to www.HomelandDefenseJournal.net**

Good Things

Pend Oreille Second County Selected for Leadership Pilot

Congratulations to the leadership team in Pend Oreille County, which was recently selected as the second group to be accepted into the County Training Institute's Leadership Pilot Program! Their team will receive individual and group coaching and facilitation to assist in leadership development.

Executive coaching and program delivery is being provided by Chris Scaffidi and Tammy Redmon of The Pacific Institute.

For more information about the Pilot Project, and how to apply, contact Michelle Nelson at WSAC, mnelson@wacounties.org or (360) 586-4219 ext. 112.

Almost Time for Washington Counties Scholarship Application Period!!

County elected officials and employees who have students in their families take note! The Washington Counties' Scholarship Fund is offering five \$3,000 awards to dependent children of county employees who will be enrolled full-time during the 2009-2010 school year in a baccalaureate program, associate degree program or vocational/technical certification program. On Monday, February 16, the complete information and application packet will be mailed to every county



Nationwide[®]
*On Your Side*SM



Get ready now. Be ready later.

Your high school senior could be awarded \$2,000 for college...



It's a difficult time to be saving for your retirement. 2008 was a tough year for the financial industry. But now more than ever, it's important for Americans to take responsibility for investing in their retirement. Nationwide and the National Association of Counties want high school seniors to look into the future and consider what actions are needed, now more than ever to be ready for retirement.

Nationwide/NACo 2009 College Scholarship

Nationwide will give four NACo college scholarships—each worth \$2,000 to four high school seniors whose parent or grandparent participates in NACo's 457 Deferred Compensation Plan. Throughout their 29-year partnership, Nationwide and NACo have been committed to helping you plan for your retirement as well as your family's future!

Here's how your student can apply:

[Complete application on line](https://www.surveymonkey.com/s.aspx?sm=Daa7WMs8xV_2bWsY4A8rFMiO_3d_3d) (If you are unable to select the link, copy and paste the entire url https://www.surveymonkey.com/s.aspx?sm=Daa7WMs8xV_2bWsY4A8rFMiO_3d_3d into your browser and press enter).

Go to www.naco.org/retirementscholarship or www.nrsforu.com and click the "Scholarship" link.

Eligibility requirements:

- Graduating high school seniors who are legal U.S. residents are eligible to apply
- Applicant's parent or grandparent must be enrolled in and contribute to the NACo 457 Deferred Compensation Plan
- Applicants must enroll in a full-time undergraduate course of study no later than the fall term of the 2009-2010 school year at an accredited two- or four-year college
- Immediate family members of NACo employees, or members of the NACo Deferred Compensation Advisory Committee, or its governing board of directors, or Nationwide employees are not eligible to apply; this program is not offered outside the United States
- Application and entry must be submitted on line no later than March 15, 2009

Judging criteria:

- Scholarship entries will be reviewed by a committee of associates from both Nationwide and NACo; scholarship recipients will be chosen based on the content of their entry
- All entries submitted will become property of Nationwide and may be used for educational and/or marketing purposes; the original author will be credited

How will scholarship recipients be notified?

- Scholarship recipients will be notified by April 15, 2009
- Scholarship recipients will be mailed a check in mid-August 2009, payable to the institution and mailed to the student's home address
- The winner must enroll in an accredited institution by the fall term of the 2009-2010 school year

Nationwide Retirement Solutions (Nationwide) partners with the National Association of Counties (NACo) to provide counties and their employees with a competitive deferred compensation program. As part of this partnership, Nationwide pays a fee to NACo in exchange for NACo's exclusive endorsement, marketing support, and program oversight of Nationwide products made available under the program. For more information, including fees paid, Nationwide encourages you to visit NRSforu.com.

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