



# Fulton County Industrial Development Agency PILOT Program

Report of Examination

Period Covered:

January 1, 2012 — April 30, 2014

2014M-291



Thomas P. DiNapoli

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# State of New York Office of the State Comptroller

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## **Division of Local Government and School Accountability**

May 2015

Dear Agency Officials:

A top priority of the Office of the State Comptroller is to help local officials manage government resources efficiently and effectively and, by so doing, provide accountability for public dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments and certain other public entities statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard governmental assets.

Following is a report of our audit of the Fulton County Industrial Development Agency, entitled PILOT Program. This audit was conducted pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Article 3 of the New York State General Municipal Law.

This audit's results and recommendations are resources for agency officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller  
Division of Local Government  
and School Accountability*

# Introduction

## Background

An Industrial Development Agency (IDA) is an independent public benefit corporation whose overall goal is to advance the job opportunities, health, general prosperity and economic welfare for the people of the State. General Municipal Law (GML) provides that certain types of projects are eligible for IDA financial assistance to promote, develop and assist industrial, manufacturing, warehousing, commercial, research and recreation facilities.

The Fulton County Industrial Development Agency (FCIDA) was created in 1970 to further economic development in Fulton County. Its goals are to attract, retain and expand businesses and employment in Fulton County by providing financing and tax incentives as authorized by GML. FCIDA is governed by a Board of seven members appointed by the Fulton County Board of Supervisors. The FCIDA Board (Board) is responsible for the general management and control of FCIDA's financial and operational affairs. The executive director and chief financial officer manage FCIDA's day-to-day operations.

Since its establishment, FCIDA has purchased properties which were developed into two industrial parks and one business park. Additionally, in 2012 FCIDA obtained the title to another parcel of land which it plans to develop into an industrial park. The properties located in the industrial and business parks are sold or leased by FCIDA to private businesses for the purpose of constructing and operating facilities. FCIDA may also provide benefits to properties acquired by businesses outside of its industrial and business parks. FCIDA generally retains or assumes the title of the real property initially owned by the businesses that are involved in approved projects, thereby allowing FCIDA to offer benefits to these businesses (i.e., sales and use tax exemptions, mortgage recording tax exemptions and real property tax exemptions). FCIDA is not required to pay taxes or assessments on any property it acquires or which is under its jurisdiction, control or supervision. Instead, it enters into a payment in lieu of taxes (PILOT)<sup>1</sup> agreement for approved projects. These PILOT agreements are governed by FCIDA's Uniform Tax Exemption Policy. During the 2012 calendar year, FCIDA reported 11 active projects.

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<sup>1</sup> PILOTs are payments equal to all or part of the amount of taxes which would have been levied by or on behalf of "an affected tax jurisdiction" if the IDA project was not tax exempt by reason of the IDA's involvement. An "affected tax jurisdiction" is a municipality or school district in which the IDA project is located which will fail to receive tax payments that would be otherwise due, except for the tax exempt status of the IDA project (GML Section 854[16],[17]).

**Objective**

The objective of our audit was to evaluate FCIDA's project monitoring practices. Our audit addressed the following related question:

- Did the Board properly monitor and manage the FCIDA PILOT program?

**Scope and Methodology**

We examined internal controls over project monitoring from January 1, 2012 through April 30, 2014.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix B of this report.

**Comments of Agency Officials and Corrective Action**

The results of our audit and recommendations have been discussed with Agency officials and their comments, which appear in Appendix A, have been considered in preparing this report. FCIDA officials generally agreed with our recommendations and indicated they planned to initiate corrective action.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of GML. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Secretary's office.

# PILOT Program

The Board is responsible for monitoring and evaluating the performance of approved projects receiving financial assistance from FCIDA and determining whether the projects are meeting the goals established in their project applications. Effective monitoring helps to identify and address performance shortfalls and to ensure that the community receives expected benefits. In agreements with participating businesses, FCIDA should have specific provisions regarding expectations of the benefits those businesses are to provide to the community – typically, jobs – and reporting requirements, along with formal policies and procedures to hold businesses accountable if the expectations are not met. Furthermore, FCIDA is responsible for monitoring PILOT payments made by businesses to affected taxing jurisdictions<sup>2</sup> and for taking appropriate action when businesses fail to make those payments.

We found that, although FCIDA has a process in place to monitor the businesses' employment goals, as stated in their applications for FCIDA benefits, it does not have a process for effectively holding businesses accountable when they do not meet specific employment goals. Seven businesses receiving FCIDA benefits during our audit period have not met their employment goals, and only one PILOT agreement allows for the recapture (recovery) of benefits that were provided to the business.

In addition, FCIDA did not adequately monitor the PILOT payment process. For one project, the business has not made complete PILOT payments in the last four years and, as of April 30, 2014, owed the affected taxing jurisdictions approximately \$400,000. As a result, taxpayers may not be receiving expected benefits and affected municipalities have not received all the PILOTs they are entitled to.

## PILOT Agreements

The overall goal of an IDA is to advance job opportunities, health, general prosperity and economic welfare of the people of the State. Typically, projects that receive IDA benefits involve the acquisition, construction or major renovation of buildings or other structures and generate short- and long-term employment in construction and operations-related jobs. Real property owned by an IDA, or under the IDA's jurisdiction, control or supervision, is entitled to an exemption from real property taxes. These exemptions, in effect, are

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<sup>2</sup> An "affected tax jurisdiction" is a municipality or school district in which the IDA project is located which will fail to receive tax payments that would be otherwise due, except for the tax-exempt status of the IDA project (GML Section 854[16],[17]).

passed through to assisted businesses and shift taxes to the owners of taxable property within the affected taxing jurisdictions. In most cases, amounts equal to a portion of the real property taxes that would otherwise have been paid are recaptured through PILOT payments made by recipients of IDA benefits to affected taxing jurisdictions in accordance with the applicable PILOT agreements. The IDA may place provisions in project contracts that allow it to recapture, or recover, economic benefits provided to businesses if they do not meet their project goals (primarily job creation). For example, a recapture provision could require a business to return all or part of the amount of property tax that would have been paid if the property had been taxable.

Since its establishment, FCIDA has entered into PILOT agreements primarily with one not-for-profit entity, the Crossroads Incubator Corporation (CIC), which then constructed facilities on the leased properties and subleased the facilities to businesses wishing to establish operations in Fulton County. CIC was established in 1988 in Fulton County. FCIDA officials told us CIC was established for the purpose of developing properties located in one of the industrial parks owned by FCIDA.

FCIDA contracted with and provided financial assistance to CIC rather than entering into agreements directly with the businesses. Further, the businesses themselves did not submit applications to FCIDA; rather, CIC generally submitted project applications with economic development and job creation information on behalf of the businesses to which it planned to sublease the properties. These arrangements relied on CIC to pass through FCIDA's tax benefits to the businesses that FCIDA wished to attract and retain in the County (i.e., the businesses occupying the properties leased by the not-for-profit).

FCIDA officials stated that, because they were not involved in the arrangements between the not-for-profit and the businesses, they could not be certain that such financial benefits were in fact passed on to the businesses. Furthermore, FCIDA's practice of contracting with and entering into PILOT agreements with CIC – rather than dealing directly with the businesses – impeded FCIDA's ability to impose penalties when businesses failed to meet their goals.

We reviewed all eight PILOT agreements that were active during our audit period, seven of which were between FCIDA and CIC.<sup>3</sup> None of these seven agreements contained a recapture clause in the event the businesses did not meet their projected goals. FCIDA officials told us

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<sup>3</sup> However, four of those seven leases were transferred to other businesses.

it would be difficult to hold the not-for-profit responsible for failure to create the number of jobs outlined in a project application because the not-for-profit does not directly create the jobs. Nonetheless, by having approved applications with stated projected goals, which were submitted by CIC on behalf of the businesses, FCIDA has at least an implied responsibility to take steps to ensure that the provisions of the agreements between CIC with the businesses are monitored and enforced and that businesses are making concerted efforts to achieve the goals stated in their applications. Similarly, FCIDA's arrangement with CIC does not justify the lack of recapture clauses in the agreements between CIC and the businesses.

The remaining and most recent PILOT agreement was between FCIDA and the contracted business itself,<sup>4</sup> rather than with CIC, and included a recapture clause. As with CIC and other businesses receiving benefits, FCIDA sends this company a form each year requesting current employment numbers to use in FCIDA's annual report and to monitor project performance. Nonetheless, the failure to include a recapture clause in prior PILOT agreements resulted in businesses not being penalized for failure to achieve their projected goals, such as the shortfall in job creation. Therefore, some businesses received tax breaks but did not provide all the expected economic benefits.

FCIDA has ceased its practice of entering into PILOT and lease agreements with CIC and is instead entering into agreements directly with the businesses.

## **Job Creation and Retention Performance**

An overall goal of an IDA is to advance job opportunities. The IDA is responsible for establishing a process to monitor and, when appropriate, enforce agreed-upon job expectations. The process should include procedures to determine whether reporting requirements are met, employment data is reliable and businesses demonstrate that they have met employment goals or adequately explained why such goals have not been met.

Figure 1 summarizes the job creation and retention performance of the businesses that received FCIDA benefits in fiscal years 2012 and 2013.<sup>5</sup>

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<sup>4</sup> A water bottling business

<sup>5</sup> Project names are as listed in the FCIDA PILOT agreements.

**Figure 1: Job Creation and Retention Performance**

Project	Jobs Before FCIDA Involvement	Total Jobs Reported as of 12/31/12	Total Jobs Reported as of 12/31/13	Total Job Creation and Retention Goal	Jobs vs. Job Creation and Retention Goals as of 12/31/12	Jobs vs. Job Creation and Retention Goals as of 12/31/13
STAG <sup>a</sup>	97	Unknown	106	185	Unknown	(79)
STAG	32	0	0	52	(52)	(52)
CIC	0	0	11	120	(120)	(109)
CIC <sup>a</sup>	0	Unknown	78	35	Unknown	43
Swany	0	15	14	90	(75)	(76)
STAG <sup>b</sup>	38	103	N/A	54	49	N/A
CIC <sup>b</sup>	0	14	N/A	78	(64)	N/A
CG Roxane <sup>c</sup>	0	N/A	15	51	N/A	(36)

<sup>a</sup> These two projects did not report 2012 employment figures to FCIDA.

<sup>b</sup> These two projects were terminated or expired in 2013.

<sup>c</sup> This project began in 2013.

Annually, FCIDA sends a form to each business it provides benefits to, requesting current employment numbers to use in its annual report and to monitor project performance. However, FCIDA does not have an effective process in place to recapture IDA benefits received by businesses when they do not meet their employment goals. We examined the annual reporting forms for the seven projects receiving benefits in 2012 and found that:

- One business met its employment goal.
- Two businesses did not report employment levels to FCIDA for 2012.
- Two project facilities were vacant and the businesses that had operated in those facilities were no longer in operation. These businesses employed 32 people prior to entering into a PILOT agreement with FCIDA and had agreed to create an additional 140 jobs.
- Two businesses did not meet the employment goals set forth in their applications for assistance through FCIDA. In total, the businesses reported 29 jobs, which were 139 fewer jobs than the agreed-upon level.

We also examined the annual reporting forms for the six projects receiving benefits in 2013 and found that:

- One business<sup>6</sup> met its employment goal.

<sup>6</sup> One of the two businesses that did not report employment data to FCIDA in 2012

- One project facility remained vacant and the business was not in operation.<sup>7</sup> This business employed 32 people prior to CIC entering into an agreement with FCIDA and had a goal of creating and retaining an additional 20 jobs.
- Four businesses (including one that did not meet its goals the previous year) did not meet the employment goals they agreed to in their application for assistance through FCIDA. In total, the businesses reported 146 jobs, which was 300 jobs fewer than the agreed-upon goal.

Without creating and retaining jobs as set forth in their applications, project applicants received financial assistance, and the impacted local governments and their property owners did not receive the expected benefits.

## **PILOT Payments**

Real property owned by or under the jurisdiction, control or supervision of an IDA is entitled to an exemption from real property taxes. These exemptions, in effect, are passed through to assisted businesses. In most cases, amounts equal to a portion of the property taxes that would otherwise have been paid is recaptured via PILOTs from recipients of IDA benefits. To ensure that these benefits are properly administered, it is crucial for the IDA to have a process for monitoring the PILOTs and to take action in a timely manner, consistent with GML provisions and PILOT agreement terms and conditions, when businesses fail to make accurate PILOT payments when due. FCIDA's PILOT agreements hold the businesses responsible for remitting PILOT payments directly to the affected taxing jurisdiction. While FCIDA collects information on billing from the taxing jurisdictions and PILOT payments from the businesses, it does not have a process for taking action when businesses fail to make PILOT payments.

We reviewed the PILOT agreement terms for the eight projects that were ongoing during our audit period. Seven agreements, all with CIC, had terms of 20 or more years but required CIC to pay an amount equal to 100 percent of what the tax liability would have been if the project were taxable, after the tenth year. The remaining PILOT agreement provided for tax exemptions for 10 years and allowed for the termination of that agreement, and placement of the project property back on the tax rolls, after the tenth year. Because the seven projects with the not-for-profit were more than 10 years old, the not-for-profit was obligated to pay to the affected taxing jurisdictions in 2012 and 2013 an amount equal to 100 percent of what the tax liabilities associated with those properties would have been.

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<sup>7</sup> This facility was also vacant in 2012.

We reviewed the last 11 years<sup>8</sup> of payments for all eight projects and found payments were generally accurate. However, for one of its properties, CIC did not make complete payments to the appropriate taxing jurisdictions in the four years 2010 through 2013. The PILOT agreement term for this property was 20 years<sup>9</sup> (from 1995 to 2016), but provisions requiring PILOT payments to be less than 100 percent of the amount of taxes expired in 2006. From 2007 to 2016, the business was required to make PILOT payments equivalent to the full amount of property taxes that would have otherwise been due. As of April 30, 2014, CIC owed approximately \$400,000 to the affected taxing jurisdictions. Furthermore, the property associated with this project,<sup>10</sup> which did not meet the employment goals stated in the application, was vacant as of December 31, 2012 because CIC was unable to sublease the property. During 2013, CIC subleased the property to a business which reported 11 jobs created as of December 31, 2013, but appropriate PILOT payments still had not been made.

As of the end of our fieldwork in June 2014, the PILOT agreement with CIC had not yet expired, even though the 10-year benefit period ended in 2006. Had the agreement terminated in 2006, this property could have been placed back on the tax rolls before 2010, and any unpaid taxes would have been subject to tax enforcement procedures. While FCIDA's most recent PILOT agreement includes a term of only 10 years, by entering into PILOT agreements with terms longer than necessary, FCIDA exposed the affected taxing jurisdictions to an increased risk of non-payment of PILOTs and a related loss of financial benefits.

## Recommendations

The Board should:

1. Put a process in place to monitor job creation and/or retention from the businesses receiving FCIDA benefits.
2. Ensure that new project agreements contain a recapture clause allowing FCIDA to recover financial benefits, as appropriate, if a business receiving FCIDA benefits does not meet job creation and/or retention expectations or other terms of the agreement are not met.
3. Ensure that PILOT agreements do not have unreasonably long terms that prevent IDA project property from being returned to the tax rolls when a project is complete and the benefit period has expired.

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<sup>8</sup> From 2004 to 2014

<sup>9</sup> The same as the term of the lease

<sup>10</sup> Listed third in Figure 1

4. Establish and implement policies and procedures to ensure that PILOT payments are timely and accurate, and take action when payments are not made.

**APPENDIX A**  
**RESPONSE FROM AGENCY OFFICIALS**

The Agency officials' response to this audit can be found on the following pages.

**FULTON COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY**

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**FITZGERALD, MORRIS, BAKER, FIRTH, P.C., COUNSEL**

April 23, 2015

Office of the State Comptroller  
Division of Local Government and School Accountability  
PSU-CAP Submission  
110 State Street, 12<sup>th</sup> Floor  
Albany, NY 12236

Re: Fulton County Industrial Development Agency  
Report of Examination: 2014M-291  
Audit Response/Corrective Action Plan (CAP)

Dear Sir or Madam:

The Fulton County Industrial Development Agency (IDA) Board of Directors has received, reviewed and discussed the NYS Comptroller Office's Draft Report of Examination titled "Fulton County Industrial Development Agency: PILOT Program: 2014M-291." The Board appreciates the input received from the Comptroller's Office on how the IDA can improve its monitoring of PILOT Agreements. This letter shall serve both as the IDA's Audit Response and Corrective Action Plan (CAP).

In response to the comments and recommendations included in this Draft Report, the Board offers the following responses:

1. The Draft Report cites the lack of Recapture provisions as a weakness in the IDA's oversight of PILOT's. All of the PILOT's, except for one (1), the Comptroller's Office reviewed were 15+ years old. These PILOT's were entered into during an era and time when the concept of "Recapture" was barely known. The table below shows the dates when the PILOT's reviewed by the State Comptroller's Office were entered into:

LESSEE	ADDRESS	LEASE/PILOT TERM
Swany	115 Corporate Dr.	5/1/94 – 4/30/15
CIC	178 Corporate Dr.	11/1/94 – 6/30/15
CIC	160 Enterprise	7/1/95 – 6/30/16
Euphrates	230 Enterprise	12/1/97 – 1/31/18
STAG	200 Union Avenue	11/1/99 – 10/31/21
STAG	141 Sal Landrio Dr.	8/1/00 – 7/31/22
STAG	199 Enterprise	9/1/00 – 8/31/22
CG Roxane	1 Old Sweet Road	11/7/12 – 11/6/22

PILOT's entered into during that era did not include Recapture provisions. In August 2012, the IDA Board amended its Uniform Tax Exemption Policy (UTEP) to include a Recapture provision. As stated and recognized in the Draft Report, the most recent PILOT entered into by the IDA does include a Recapture provision in accordance with the IDA's revised UTEP. The IDA Board expects to include a Recapture provision in future PILOT's.

2. The Draft Report correctly indicates that all of the PILOT's, except one (1), reviewed were ones between the IDA and CIC. This was done because of how Fulton County's economic development program was structured during that era. The Crossroads Incubator Corporation (CIC) was the real estate development arm of Fulton County's economic development program. The CIC developed buildings on behalf of businesses. Businesses preferred having the CIC arrange for and finance the cost of developing projects. Business preferred having the CIC own and maintain buildings so the businesses could just lease the space and not have the duties and responsibilities of property ownership. This structure resulted in the IDA having to execute PILOT's with the CIC because the CIC owned the property.

It is important to note that Fulton County has implemented a fundamental change in the structure of its economic development program. The Fulton County Center for Regional Growth (FCCRG) was created in 2012 to serve as Fulton County's primary economic development agency. The previous agencies, the Economic Development Corporation (EDC) and CIC are in the process of being disbanded. The FCCRG will focus primarily on marketing and will not be involved in developing and managing real estate. As such, future PILOT's the IDA will enter into should be directly with a business. This is evidenced by the most recent PILOT Agreement the IDA executed. It was directly with the business and not the CIC. This will strengthen the IDA's ability to enforce employment goals.

3. It is important to recognize the employment projections identified in Applications that come to the IDA are just that: Projections. Companies provide their best guess employment projections based on a business plan. In many instances, the company meets or exceeds its projections. In some instances, they do not. If a company does not reach a goal, does that mean all benefits afforded the company should be recaptured? There are times when circumstances either not anticipated or outside the control of a company that directly resulted in a company not achieving employment goals. Sometimes it takes an additional year or two (2) to achieve the goal. The point is that employment goals need to be evaluated not in the absolute but within the context of broader measures when assessing whether to pursue recapturing benefits received.
4. With respect to the recommendations offered in the draft Audit, the IDA offers the following responses:

**Recommendation 1:** Put a process in place to monitor job creation and/or retention from the businesses receiving FCIDA benefits.

**Response 1:** The IDA Board will look to strengthen and improve the process it currently has in place to monitor job creation/retention from businesses receiving IDA benefits. The IDA commenced that process in 2012 by amending its Uniform Tax Exemption Policy to include a Recapture Policy. The IDA's most recent PILOT included a Recapture provision.

**Recommendation 2:** Ensure that new project agreements contain a recapture clause allowing FCIDA to recover financial benefits, as appropriate, if a business receiving FCIDA benefits does not meet job creation and/or retention expectations or other terms of the agreement are not met.

**Response 2:** See Response #1.

**Recommendation 3:** Ensure that PILOT agreements do not have unreasonably long terms that prevent IDA project property from being returned to the tax rolls when a project is complete and the benefit period has expired.

**Response 3:** The IDA Board shall endeavor to enter into shorter term leases with companies receiving IDA benefits. The IDA has already demonstrated its intent to do so given the 10-year term of the most recent Lease/PILOT Agreement it entered into with a company. The structural change to Fulton County's economic development program will also help the IDA to achieve this objective.

**Recommendation 4:** Establish and implement policies and procedures to ensure the PILOT payments are timely and accurate, and take action when payments are not made.

**Response 4:** The IDA shall commence a review of current policies regarding PILOT payments and identify and implement changes deemed necessary and appropriate to ensure PILOT payments are made in a timely manner to all taxing jurisdictions.

On behalf of the Fulton County Board of Directors, we appreciate the assistance offered by the NYS Comptroller's office to strengthen and improve the IDA's PILOT Program.

If you have any questions, please contact me.

Sincerely,

Todd Rulison  
Chairman

TR/cme

Cc: [REDACTED] Comptroller's Office  
IDA Members  
James E. Mraz, Executive Director

## APPENDIX B

### AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to review the approving and monitoring of projects sponsored by FCIDA that were active for the years ending December 31, 2012 and December 31, 2013. To achieve our audit objective and obtain valid audit evidence, we performed the following audit procedures:

- We reviewed minutes of the Board's processing and interviewed FCIDA officials to gain an understanding of FCIDA's processes surrounding project approval and monitoring.
- We reviewed all policies and procedures related to the project application process and to project approval, monitoring and evaluation.
- We reviewed project records and annual reports and interviewed officials to identify FCIDA-sponsored projects since the start of our audit period. We obtained all information for these projects, including project files, PILOT agreements and lease agreements.
- We reviewed project documents to identify job creation/retention goals and reviewed annual reports from participating businesses to determine whether they met those goals.
- We reviewed PILOT agreements and inquired of FCIDA officials as to whether they had considered recapturing benefits from business owners who fell short of their performance goals.
- We obtained and reviewed PILOT payment data maintained by FCIDA. We also obtained payment data from the affected taxing jurisdictions to verify whether PILOT payments were made accurately for all projects with agreements that were ongoing during our audit period.

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## APPENDIX C

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