

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

March 9, 2004

1:30 p.m.

TAPE(S) 04-21

MEMBERS PRESENT

Senator Con Bunde, Chair
Senator Ralph Seekins, Vice Chair
Senator Gary Stevens
Senator Bettye Davis
Senator Hollis French

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 357

"An Act relating to the regulation of insurance, insurance licenses, qualifications of insurance producers, surplus lines, fraud investigations, electronic transactions, and compliance with federal law and national standards; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 350

"An Act relating to the four dam pool joint action agency; and providing for an effective date."

MOVED CSSB 350(L&C) OUT OF COMMITTEE

SENATE BILL NO. 323

"An Act relating to a project owner's liability for workers' compensation and the exclusiveness of liability for workers' compensation."

MOVED SB 323 OUT OF COMMITTEE

HOUSE BILL NO. 340

"An Act relating to damages in an action for a defect in the design, construction, and remodeling of certain dwellings; and providing for an effective date."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 357

SHORT TITLE: INSURANCE

SPONSOR(s): LABOR & COMMERCE

03/01/04 (S) READ THE FIRST TIME - REFERRALS
03/01/04 (S) L&C, FIN
03/09/04 (S) L&C AT 1:30 PM BELTZ 211

BILL: SB 350

SHORT TITLE: 4 DAM POOL JOINT ACTION AGENCY

SPONSOR(s): SENATOR(s) STEVENS G

02/16/04 (S) READ THE FIRST TIME - REFERRALS
02/16/04 (S) L&C, FIN
03/09/04 (S) L&C AT 1:30 PM BELTZ 211

BILL: SB 323

SHORT TITLE: WORKERS COMPENSATION AND CONTRACTORS

SPONSOR(s): SENATOR(s) SEEKINS

02/13/04 (S) READ THE FIRST TIME - REFERRALS
02/13/04 (S) L&C, JUD
03/04/04 (S) L&C AT 1:30 PM BELTZ 211
03/04/04 (S) Heard & Held
03/04/04 (S) MINUTE(L&C)
03/09/04 (S) L&C AT 1:30 PM BELTZ 211

WITNESS REGISTER

Ms. Linda Hall, Director
Division of Insurance
Department of Community & Economic Development
PO Box 110800
Juneau, AK 99811-0800

POSITION STATEMENT: Supports SB 357.

Mr. Thomas Lovas, Chief Executive Officer
Four-Dam Pool Power Agency
Department of Revenue
PO Box 110400
Juneau, AK 99811-0400

POSITION STATEMENT: Supports SB 350.

Mr. Bob LeResche, Financial Advisor
Four-Dam Pool Power Agency
703 W. Tudor, Suite 102
Anchorage AK 99503
POSITION STATEMENT: Commented on SB 350.

Mr. Phil Eide
Counsel to the State Chamber of Commerce
217 Second St., Ste. 201
Juneau AK 99801
POSITION STATEMENT: Commented on SB 323.

Mr. Jack Miller
Counsel to the State Chamber of Commerce
217 Second St., Ste. 201
Juneau AK 99801
POSITION STATEMENT: Commented on SB 323.

Ms. Mary Shields, General Manager
Northwest Technical Services
Anchorage AK
POSITION STATEMENT: Supports SB 323.

ACTION NARRATIVE

TAPE 04-21, SIDE A

^#SB357

SB 357-INSURANCE

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at 1:30 p.m. Present were Senators Gary Stevens, Ralph Seekins, Hollis French and Chair Con Bunde. Senator Bettye Davis arrived at 1:40. The first order of business to come before the committee was SB 357.

CHAIR BUNDE explained that SB 357 is the insurance omnibus bill that ensures state consistency with federal law and the National Association of Insurance Commissioners (NAIC) and contains reforms to standards and guidelines. It updates procedures and transactions within the Division of Insurance. He generally summarized that it would:

Provide an electronic communications opportunity between the Division of Insurance, the public, the industry and other regulators with the goal of promoting efficiencies. It has provisions and changes

for reinsurance, contains recommendations on licensing revisions that have been suggested by an NAIC accreditation team. It changes the liability for civil damages when filing reports concerning fraudulent acts to a person involved in the prevention and detection of fraudulent insurance acts. It contains provisions that clarify that a Guaranty Fund deposit is required for title insurance companies and it provides changes to tax and late payments to make penalties more consistent with the Department of Revenue's statutes. It includes penalties for surplus line brokers who submit late payments on taxes. In general, these changes to Title 21 will promote consistency between Alaska and other states, promote more efficient operations and provide better public protection.

MS. LINDA HALL, Director, Division of Insurance, Department of Community & Economic Development (DCED), said SB 357 deals with changes to Title 21.

The changes that we have proposed in this bill are, we feel, necessary to keep Alaska statutes consistent with some federal law. There were a number of changes to licensing several years ago to meet the requirements of the Gramm-Leach-Bliley Act and with model acts and standards of the National Association of Insurance Commissioners (NAIC)... Some of the changes are a result of the accreditation process. We are accredited by the NAIC. Some are the result of an industry task force and others are just reflective of what we think are good business practices....

I have categorized what I think are the most significant changes into six categories. [Indisc.] We thought that was appropriate. We did, however, on the other end in each of those sections include a \$10,000 penalty for willful violation of these statutes. [Indisc.]

MS. HALL explained that reinsurance is basically insurance for insurance companies and if a non-admitted [to Alaska] insurer takes over the insurance of a domestic insurer, the division needs to be involved in that. That situation typically occurs when the state has an insolvent insurer. Further, she explained that there were changes for domestic seeding of insurers requiring them to be licensed in the state where they are domiciled.

SENATOR BETTYE DAVIS arrived at 1:40 p.m.

MS. HALL stated that sections 12 and 13 deal with the licensing of a reinsurer and use language taken from the NAIC model regulation. She explained that a number of years ago, a pool of life insurers, Unicover, provided reinsurance for workers' compensation coverage, called a carve-out. It eventually unraveled and became insolvent. Out of this situation, probably the most important activity that really came to light for regulators is when they realized life insurance companies were reinsuring workers' compensation and weren't licensed to do that.

Section 12 sought to provide some assurances that the state of domicile is aware that the reinsurer is writing the workers' compensation line of business and does not object.

MS. HALL explained that the financial statements and analyses of life insurance companies are significantly different from the financial statements and analyses of property casualty insurers. NAIC is the regulatory joint body of regulators from each state. They recently recognized this difference in financial analyses by requiring an additional supplemental financial form that could be done with just a letter. We're looking to make sure the state of domicile of domestic companies in Alaska who currently reinsure portions of their workers' compensation book of business is aware of that.

We're certainly not looking to make a statute change that puts our domestic companies at a disadvantage.... When the workers' compensation is a property casualty line, we want to make sure they are aware so they do the additional analysis that's required of a property casualty carrier.

MS. HALL explained further that:

The other two reinsurance sections, sections 47 and 48, require a filing approval by the director of the reinsurance agreements. We have had several inquiries about this item and it is my intent to work with industry in changing the language. We would make the requirement to file with the director. We would not necessarily think we would have to approve the company insurance agreement and ... to make the reinsurance

agreements confidential. They are proprietary; they are the financial terms on which an insurance company purchases their insurance and we do think that's appropriate.

In some past financial examinations, there have been difficulties [in] obtaining signed reinsurance agreements. We are willing to make the changes necessary to address the concerns of industry, but we also need to meet the needs of our financial examiners. So, we would like to make sure that we do have the authority to obtain signed copies of the reinsurance agreements. The reinsurance is part of the financial examination to determine the level of risk an insurance company can afford. So, I would anticipate bringing some changes in language for your consideration.

CHAIR BUNDE asked when he could anticipate those changes.

MS. HALL replied that she had the language today. She would bring it to him for review. She continued her explanation:

The fourth section that has major changes is licensing. Over the years, we have tried to make Alaska licensing consistent with the rest of the country. There are some federal regulations that require us to make certain provisions so that we are reciprocal with other states. We have attempted to do that - [it] allows our resident licensees to be able to obtain licenses in other areas as well as allows non-residents to do business here.

Changes briefly - we will add crop insurance, not that we have a lot of that, and surety licenses that currently are not licensed sections. They are just included in the property casualty licenses. We are proposing to eliminate trainee licenses so that we are consistent with national regulations. There are very few trainee licenses today and we feel it's better for someone to study to become licensed before they start dealing with the public.

We have removed some language that could impose some barriers for what we call limited lines license, bail bonds and - I'm drawing a total blank. Then we have statutory language that said they must. Their sole

purpose is to be appointed by an insurance company. It's a burden that we don't think is appropriate today.

We have some sections that delete additional experience requirements that are inconsistent with federal regulations that would put some of our licensees at a disadvantage with other states and we are also requiring that surplus lines brokers be licensed as producers before they can become a surplus lines broker. These changes, again, are basically consistent with the National Producer Model Licensing Act and to bring Alaska into compliance with that.

This section is surplus lines. In the summer of 2003, we had an industry task force that met three times with the Division of Insurance staff to look at our statutes and our regulations. That's the practice of surplus lines business. Surplus lines business - we have two kinds of insurance placements. One is called admitted insurance companies. We regulate them; we have to approve their rates. We approve their forms; they jump through all the hoops to be considered admitted insurers. We have another group of insurance companies who for various reasons choose to do business on a non-admitted basis in not only our state, but in many states. These are called surplus lines companies. It doesn't mean that they are of less value or of less financial stability; it just means they have chosen to operate differently.

Because the business of insurance is so protected for our consumers, there are special statutes and regulations that tell how that business must be conducted. There are particular disclosures that are given; the business just operates somewhat differently than the traditional insurance market that most people are aware of.

The producer group that met this summer with division staff evaluated how Alaska works and this included not only Alaskan surplus lines brokers, we also had people come to these meetings from Seattle where a lot of Alaska business is written. So, we had a fairly broad, I felt, representation of industry to look at how we do business, how efficiently we work.

The changes that I would highlight for you in this particular section - one would allow that for the placement of health insurance in the surplus lines arena, if we had a health insurance crisis. The criteria, and there are some fairly strict stipulations in that section, but the basic criteria [is] we have to find it in the public interest. This was done at the suggestion of the Washington Surplus Lines Brokers. A number of years ago, there was a lot of publicity when Washington literally had [indisc.] surplus lines markets lines for coverage. If you can't find coverage in the traditional market, you go to the surplus lines market. They suggested we make this statutory provision that should we ever get into a crisis situation, it would allow us some flexibility.

CHAIR BUNDE asked her how she would define a health insurance crisis.

MS. HALL answered:

We don't define it in statute, but we talk about in the public's interest. If we had no insurance companies that were willing to write health insurance here... It can't be done for competitive reasons, it can't be done for pricing reasons; it truly would be when we found a real need in our market. Typically, surplus lines placements are done after there's a diligent search. In the traditional market, coverage is not available or at least not on the same terms. That's the only way that coverage can be placed in a surplus lines market.

CHAIR BUNDE inserted, "There is very likely a premium for those premiums."

MS. HALL affirmed:

Yes, there is. They typically are more expensive.... Basically - the health insurance example - if there were no or maybe one health insurer left in the state, and I would hate to think we'd get there, but we don't know what will happen going forward. If there were no insurance companies or maybe one that refused to take your business, we still have the ACHIA [Alaska Comprehensive Health Insurance Association] high-risk pool. But, it would allow the Division of Insurance to

make provisions for a company that did not today have a certificate of authority to do business in our state, but that was a stable company, that we had their financial statements that we reviewed their rates. We could allow them to do business in that circumstance.

SENATOR FRENCH asked if it was the lack of a certificate of authority that classified them as a surplus line.

MS. HALL replied that is correct. She continued her explanation:

Section 32 requires some changes in the documents that are provided. Today, in our statutory language, we have requirements to produce documents from the surplus lines of a broker to the insured that are practically impossible to meet. It asks for everything that would be in the policy from every exclusion to every condition; and it's very difficult to do that in any effective way. We do feel that the insured is entitled to a document that outlines all the material parts of an insurance policy it needs and we do specify in the proposed statute the pieces that would have to be there. When we name the subject of insurance, the insurance company, the premium and material exclusions coverage limitations, we think the insured certainly have a right to have that information prior to purchase of the insurance policy.

There is also a provision currently in statute that a policy is not binding and does not have to be paid for until the insured gets the notices that are required under the surplus lines statute and notices of what those coverages are.

The other section I would like to point out is section 33, which places responsibility on a producing broker as well as the surplus lines broker for notice to the consumer of a surplus lines placement. There is statutory language that requires the insured to be notified of the fact and we've all become familiar with... solvencies and the Guaranty Fund. It has a much different meaning today. There is a requirement on any surplus lines policy that there is a stamp and type 10 print. So it's a particular size that's on every policy and notice is to be given to every insured that surplus lines policies are not subject to the Guaranty

Fund. So, that is another difference, Senator French, with the surplus lines coverages. They do not have the protection of the Guaranty Association. So, this notice requirement requires the producer, as well as the surplus lines broker, to give that notice to the consumer.

CHAIR BUNDE asked her to differentiate between surplus lines and reinsurance. "In essence, wouldn't my company basically go to surplus lines to reinsure?"

MS. HALL replied:

No, reinsurance companies actually can be admitted insurance companies in their state of domicile with a certificate of authority. Some of them are from countries other than the United States. Those are called aliens - in case we wanted to know that. We are the domestic company if they are in your state. A company that is domiciled in another state is called a foreign insurer and if they are in another country, they are an alien insurer. Many of the reinsurance companies are domiciled in European countries. So, the reinsurance is the insurance companies' insurance. They write your \$1,000 policy. They retain - I'm using really general figures - they retain \$100 of that risk and they reinsure the other \$900. That reinsurance counts as part of the financial [indisc.].

CHAIR BUNDE said that the committee looked forward to working on a CS that would incorporate the changes she wants in about two weeks.

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^#SB350

SB 350-4 DAM POOL JOINT ACTION AGENCY

CHAIR CON BUNDE announced SB 350 to be up for consideration.

SENATOR GARY STEVENS, sponsor, moved to adopt CSSB 350(L&C), version \D, for discussion purposes. There were no objections and it was so ordered.

SENATOR GARY STEVENS explained that CSSB 350(L&C) allows the Four-Dam Pool Power Agency to refinance a substantial loan that they have owed to AIDEA [Alaska Industrial Development and Export Authority] returning about \$73 million to the state,

which the Legislature could use or redirect AIDEA to use. It also provides several technical corrections in support of this financing that have been requested by bond counsel. It supports refunding money to consumers by lowering their interest rates and also enhances the options available to the Four-Dam Power Agency concerning Interties and other activities.

MR. THOMAS LOVAS, Chief Executive Officer, Four-Dam Pool Power Agency, said SB 350 is supported by the five communities that participate in it - the City of Kodiak and its environs, the Valdez Copper Valley Basin area and the Cities of Ketchikan, Petersburg and Wrangell.

These communities all banded together, as you recall, in the year 2000 and formed the Four-Dam Pool Power Agency with the intent that it would be a priority provided by the Legislature to acquire the four hydroelectric projects previously owned by the State of Alaska. The financing of that particular transaction was with the loan from the State of Alaska through the auspices of the Alaska Industrial Development and Export Authority. It provided for a multiple year's financing vehicle for the acquisition. The funds were a cash transaction from AIDEA, which was transferred ultimately over into the Power Cost Equalization Program. At this point in time, the utilities and the agency representing the utilities have paid down a portion of that debt; the interest rate is at about 6.5 percent. What we have found in the past year of operation is that the history of our organization and our structure is such that we can now consider alternative forms of financing including the ability to actually form a bond sale of the tax-exempt note [indisc.] to offset that high cost note with AIDEA. We understand that the structure of the agency was established as a tax-exempt authority for its purposes in providing public power for the communities and the members and we would like to move forward on the process.

The technical corrections we have requested to the enabling legislation in the formation of the pool do a couple of things. It provides a technical correction to ensure our ability to issue tax-exempt debt on behalf of these communities and their citizens; it also includes a clarification of our ability to use the project as an effective security for a mortgage

note or any other vehicle that we would ultimately come up with under a refinancing alternative. It also insures that the projects will remain in the service of the communities when they are assigned as security for this debt.

As Senator Stevens indicated, the legislation does provide a potential significant savings to the communities on a lower interest rate as well as bringing in a significant amount of money into the hands of AIDEA in the refinancing of that particular note.

I might mention, also, that the Four-Dam Pool Power Agency passed a resolution in its December meeting supporting the concept of refinancing using these types of tax-exempt bonds and we appreciate your consideration of the technical amendments to help that promise come true. That clarifies, I hope, the intent of the legislation. I believe it's a very beneficial piece of legislation that works for the benefit of all residents of the State of Alaska, as well as providing for the needs of the Four-Dam Pool Power Agency. Thank you very much.

CHAIR BUNDE commented that refinancing costs money, in his experience, and asked him why this method of financing wasn't chosen initially.

MR. LOVAS replied that he became employed by the agency about a year and a half ago, but his understanding is that various mechanisms were looked at then, but the agency didn't have any history and the most expedient form of acquiring financing was the note through AIDEA.

MR. BOB LERESCHE, Financial Advisor, Four-Dam Pool Power Agency, agreed and said the agency had no credit when it was first formed and these bonds have been very costly, if not impossible, to issue. He pointed out that when AIDEA did this financing, the interest rate of 6.5 percent was good for credit of this quality. "Times have changed and the agency can get a better deal for their ratepayers and at the same time return \$73 million cash to AIDEA."

CHAIR BUNDE asked when the Four-Dam Pool communities issue debt, will the full faith and credit of the State of Alaska still be the ultimate backer of those bonds.

MR. LERESCHE replied, "No, there will be no state credit backing, whatsoever, of these bonds."

SENATOR HOLLIS FRENCH asked what the likely new interest rate would be on financing of this nature.

MR. LOVAS replied that interest rates could potentially go as low as 5 percent, maybe less. Two things would be necessary, one would be to obtain an appropriate credit rating from a registrar of a grading agency of credit and the other would be to look at potentially insuring the bonds with a relatively modest fee.

We believe in the range of 4.8 or 5.0 percent is a reasonable expectation for us, if we can move forward immediately and act in the markets within a very short period of time.

SENATOR FRENCH asked if this would be a mortgage or a bond.

MR. LERESCHE replied, "It's a bond, but it might well include a mortgage as part of the credit."

SENATOR FRENCH speculated that was the hitch - that ownership of the pool could fall into hands outside the state, if it couldn't meet its obligations.

MR. LERESCHE replied:

I guess theoretically so. However, when you issue a bond in the open market as the agency is intending to do, nobody wants to own the project. It's just mostly really a psychological crutch to make them think they really have control over these people if they don't pay them. I might point out as well that the current AIDEA loan includes a mortgage just as we contemplate attaching to the new bond.

SENATOR FRENCH queried:

If you were to refinance the total amount at 5 percent, what would that do for the debt service? How much would it go down and what do you expect that would do, if you've calculated it to the average homeowner's electric bill?

MR. LOVAS replied:

We've estimated as much as an annual savings of between \$800,000 to \$1,500,000 depending on certain implications of the use of the tax-exempt debt. There are some complications having to do with securities laws on how the tax-exempt debt could ultimately be applied among the municipalities versus the cooperatives and it affects the total net savings we're likely to see. In any case, it's going to be at least that minimum sum then.

I haven't quite measured it all the way down to the ratepayer, frankly, because I'm looking at it from the agencies' point of view - a wholesale power sale. We don't sell retail. We sell as wholesale at the G&T for power delivered to the utilities for resale to their ultimate customers. The impact can vary depending on what the retail rate of each of my members is. But, in any case, that reduces the debt service cost rather significantly by about upwards of \$1.5 million and it would have a multiple percentage reduction in our wholesale power rate.

SENATOR FRENCH asked what current debt service costs per annum.

MR. LOVAS replied that the debt service now is about \$6.5 million per year.

CHAIR BUNDE thanked them for their testimony and said there were no further comments to come before the committee on SB 350 today and that he would hold it for a time.

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2:15 - 2:20 - at ease

^#SB323

SB 323-WORKERS COMPENSATION AND CONTRACTORS

CHAIR CON BUNDE announced SB 323 to be up for consideration.

SENATOR RALPH SEEKINS, sponsor, said he felt the same way about a contractor's responsibility now as he did when he first had the bill drafted. When a homeowner hires a professional to perform work, they shouldn't have to rise to the same level of professional responsibility as a project owner. A contractor in the business of building homes, who hires subcontractors to do framing, plumbing and electrical work, should bear that level of

responsibility because of their professional capabilities. That is why homeowners are deliberately left out of the bill.

MR. PHIL EIDE, Counsel to the State Chamber of Commerce, offered to answer questions on the bill along with his colleague, Jack Miller, both from the firm of Eide, Miller & Pate.

CHAIR BUNDE pointed out that E-mail from Mr. Jack Miller discussed how the chain of responsibility from project owner through subcontractor would occur.

As I read this, it expands the obligation for workers' compensation up to the project owner and the people below them that may or may not have workers' compensation, but the buck stops at the top. That's if I understand it correctly.

MR. JACK MILLER, Counsel to the State Chamber of Commerce, said that is a correct interpretation and this bill does not affect the state statute that requires companies to get workers' compensation insurance.

TAPE 04-21, SIDE B

MR. MILLER said that is a moot point in relation to this legislation.

MS. MARY SHIELDS, General Manager, Northwest Technical Services, said that she supports SB 323. She stated:

Workers' compensation, as we all know, was established to cover workplace injuries without the need of an employee to file in court for just medical and wage compensation occurred at the job site. This has enabled employees and employers to be assured that if the employee was injured on the job, the employee would not be abandoned and we would not end up with court cases. However, the increased use of contract employees in the workplace has left an opening for additional recoveries, which I believe is inappropriate except in the most egregious circumstances.

Northwest Technical Services is a provider of personnel to a large variety of companies in the State of Alaska. It is our responsibility to assure appropriate workers' compensation coverage is in

place. It should not also be our responsibility to cover tort liability lawsuits in the event an employee should seek action against a client based on a workplace injury, as workers' compensation coverage should extend up the line to the client company, as well.

While there may rest a need in this law to establish an exception for deliberate negligence action or inaction in maintaining a safe workplace environment by a company, this is a necessary bill and needs to move forward. I thank you, Mr. Chairman, and the members of the committee for your time.

CHAIR BUNDE asked if anyone else in Juneau wanted to testify on SB 323. There was no response and he asked the will of the committee.

SENATOR SEEKINS moved to pass SB 323 from committee with individual recommendations and attached fiscal note.

SENATOR FRENCH objected and said that he thought the last comment from Mr. Miller pointed out that this bill would do nothing to increase the amount of workers' compensation coverage or expand the obligation to procure it and it takes away a workers' right to sue a project owner for unsafe conditions. "I think that's a bad exchange and for that reason I'm opposed to that idea."

SENATOR SEEKINS countered:

It doesn't change anything that is there now, but if you look at the last part, if they fail to do so... and a contractor or subcontractor does not have the required insurance, a claim would be covered under the project owner's policy - extending the obligation for paying workers' compensation benefits for an extended worker to the project owner, contractors and his subcontractors. That's the intent of the bill and I think it gives significant benefit to those people who are on the job.

CHAIR BUNDE asked for a roll call vote. Senators Gary Stevens, Ralph Seekins and Chair Con Bunde voted yea; Senator Bettye Davis and Hollis French voted nay; and SB 323 passed from committee.

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^#SB350

SB 350-4 DAM POOL JOINT ACTION AGENCY

CHAIR CON BUNDE announced SB 350 to be back before the committee.

SENATOR RALPH SEEKINS moved to pass CSSB 350(L&C), version D, from committee with individual recommendations and attached fiscal note.

SENATOR HOLLIS FRENCH asked if it had another committee of referral.

CHAIR BUNDE confirmed that it went to Finance. He asked for a roll call vote. Senators Hollis French, Bettye Davis, Gary Stevens, Ralph Seekins and Chair Con Bunde voted yea; and CSSB 350(L&C) moved from committee. There being no further business to come before the committee, Chair Bunde adjourned the meeting at 2:30 p.m.

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