

Original sponsor: Judiciary Committee by request

Offered: 4/23/70  
Referred: Labor and  
Management, Judiciary  
and Finance

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 796

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to a Public Employment Labor Relations  
7 Act."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 23.40 is amended by adding new sections to read:

10 ARTICLE 2. PUBLIC EMPLOYMENT LABOR RELATIONS ACT.

11 Sec. 23.40.070. DECLARATION OF POLICY. The public policy of the  
12 state regarding labor relations and collective bargaining in public  
13 employment is as follows:

14 (1) There are three major interests involved: that of the  
15 public, the public employee and the public employer. These interests'  
16 are to a considerable extent interrelated, and therefore it is the  
17 policy of this state to protect and promote each of these interests with  
18 due regard to the situation and to the rights of the others.

19 (2) Orderly and constructive employment relations for public  
20 employees and the efficient administration of government in the state  
21 serve to promote these interests. They are largely dependent upon the  
22 maintenance of fair, friendly and mutually satisfactory employee-  
23 management relations in public employment, and the availability of suit-  
24 able machinery for fair and peaceful adjustment of whatever controversie  
25 may arise. It is recognized that whatever may be the rights of dispu-  
26 tants with respect to each other in a controversy regarding public  
27 employment relations, neither party has the right to engage in acts or  
28 practices which jeopardize the public safety and interest and interfere  
29 with the effective conduct of public business.

1 (3) Where permitted by secs. 70 - 280 of this chapter,  
2 negotiations of terms and conditions of public employment should result  
3 from voluntary agreement between the public employer and its agents,  
4 as an employer, and its employees. For that purpose a public employee  
5 has the right, if he desires, to associate with others in organizing  
6 and in bargaining collectively through representation of his own  
7 choosing, without intimidation or coercion from any source.

8 (4) It is the policy of this state, in order to preserve and  
9 promote the interests of the public, the public employee and the public  
10 employer, to encourage the practices and procedure of collective bar-  
11 gaining in public employment subject to the public employee and related  
12 laws, regulations and policies governing public employment, by estab-  
13 lishing standards of fair conduct in public employment relations.

14 Sec. 23.40.080. RIGHTS OF PUBLIC EMPLOYEES. Public employees  
15 have, and shall be protected in the exercise of, the right of self-  
16 organization and the right to form, join or assist any labor or employee  
17 organization, to bargain collectively through representatives of their  
18 own choosing, and to engage in lawful, concerted activities for the  
19 purpose of collective bargaining or other mutual aid or protection.

20 Sec. 23.40.090. COLLECTIVE BARGAINING UNIT. (a) The department  
21 may determine, in order to insure a clear and identifiable community of  
22 interest among employees affected, an appropriate bargaining unit and  
23 whether the employees employed in a single or several departments,  
24 divisions, institutions, crafts, professions, or occupational groupings,  
25 constitute an appropriate collective bargaining unit. No collective  
26 bargaining unit may include both professional and nonprofessional  
27 employees unless a majority of the professional employees and a majority  
28 of the nonprofessional employees vote for inclusion in the unit. No  
29 unit may include employees whose positions are in one of the classes in

1 sec. 260 of this chapter with employees whose positions are in another  
2 one of the classes under the same section. The department may determine  
3 a collective bargaining unit with or without providing the employees  
4 involved an opportunity to determine for themselves whether they desire  
5 to establish themselves as an appropriate collective bargaining unit.

6 (b) When the department permits employees to determine for them-  
7 selves whether they will constitute a separate bargaining unit, the  
8 determination shall be by secret ballot, and the department shall pro-  
9 vide, by regulation, for voting procedure to be employed in making the  
10 determination.

11 (c) In determining, modifying or combining collective bargaining  
12 units, the department shall consider the duties, skills and working  
13 conditions of the public employees, the history of collective bargaining  
14 by the public employees and their bargaining representatives, the ex-  
15 tent of organization among the employees, and the desire of the public  
16 employees.

17 Sec. 23.40.100. REPRESENTATIVES AND ELECTIONS. (a) Representa-  
18 tives chosen for the purposes of collective bargaining by a majority of  
19 the public employees voting in a collective bargaining unit shall be  
20 the exclusive representative of all the employees in the unit for the  
21 purposes of collective bargaining. An individual employee, or a  
22 minority group of employees in a collective bargaining unit, may present  
23 grievances to the public employer in person, or through representatives  
24 of their own choosing, and the public employer shall confer with the  
25 employee regarding the grievances if the majority representative has  
26 been afforded the opportunity to be present in the conference; an  
27 adjustment resulting from the conference may not be inconsistent with  
28 the conditions of employment established by the majority representative  
29 and the public employer.

1 (b) When a question arises concerning the representation of  
2 public employees in a collective bargaining unit, the department shall  
3 determine the representative of the unit by taking a secret ballot of  
4 the employees and certifying in writing the results of the election  
5 to the interested parties and to the public employer. There shall be  
6 included on a ballot for the election of representatives the names of  
7 all persons, having an interest in representing public employees, sub-  
8 mitted by a public employee or group of public employees participating  
9 in the election, except that the department may exclude from the ballot  
10 one who, at the time of the election, stands deprived of his rights  
11 under secs. 70 - 280 of this chapter by reason of a prior adjudication  
12 of his having engaged in a prohibited practice. The ballot shall be  
13 prepared to permit a vote against representation by anyone named on  
14 the ballot. The department's certification of the results of an  
15 election is conclusive.

16 (c) When an election has been conducted under (b) of this section,  
17 in which the name of more than one proposed representative appears on  
18 the ballot and results in no conclusion, the department may if requested  
19 by any party to the proceeding within 30 days from the date of the  
20 certification of the results of the election, conduct a runoff election.  
21 In the runoff election, the department may drop from the ballot the  
22 name of the representative that received the least number of votes at  
23 the original election, or the department shall drop from the ballot  
24 the privilege of voting against any representative when the least number  
25 of votes cast at the first election was against representation by any  
26 named representative.

27 (d) Questions concerning the determination of collective bargain-  
28 ing units or representation of public employees may be raised by the  
29 public employer, or by a petition signed by 30 per cent of the public

1 employees in the bargaining unit, or by the representative of either of  
2 them. When it appears by the petition that an emergency exists requir-  
3 ing prompt action, the department shall act on the petition immediately  
4 and hold the election requested within a time that will meet the  
5 requirements of the emergency presented. The fact that one election  
6 has been held within the preceding year does not prevent the holding of  
7 another election among the same group of public employees, if it  
8 appears to the department that sufficient reason exists.

9 Sec. 23.40.110. PROHIBITED PRACTICES. (a) It is a prohibited  
10 practice for a public employer individually or in concert with others  
11 to:

12 (1) interfere with, restrain or coerce public employees in  
13 the exercise of their rights guaranteed in sec. 80 of this chapter;

14 (2) initiate, create, dominate or interfere with the  
15 formation or administration of a labor or employee organization or  
16 contribute financial support to it, but the public employer is not  
17 prohibited from reimbursing public employees at their prevailing wage  
18 rate for the time spent conferring with its officers or agents; it is  
19 not a prohibited practice for an officer or supervisor of the public  
20 employer to remain or become a member of the same labor or employee  
21 organization of which its employees are members, when they perform the  
22 same work or are engaged in the same profession; however, a supervisor  
23 may not participate as an active member or officer of the organization;

24 (3) encourage or discourage membership in a labor or employee  
25 organization, employee agency, committee, association or representation  
26 plan by discrimination in regard to hiring, tenure or other terms or  
27 conditions of employment;

28 (4) refuse to bargain collectively on those matters provided  
29 for in sec. 250 of this chapter with the representative of a majority

1 of its employees in an appropriate collective bargaining unit; however,  
2 when the public employer files with the department a petition requesting  
3 a determination as to majority representation, it may not be considered  
4 to have refused to bargain until an election has been held and the  
5 result has been certified to it by the department; a refusal to bargain  
6 includes, but is not limited to, the refusal to execute a collective  
7 bargaining agreement previously agreed upon;

8 (5) violate the provisions of a written agreement concerning  
9 terms and conditions of employment affecting public employees, including  
10 an agreement to arbitrate, or to accept the terms of an arbitration  
11 award, when previously the parties agreed to accept an arbitration award  
12 as final and binding upon them;

13 (6) deduct labor or employee organization dues or assessments  
14 from a public employee's earnings, unless the public employer has been  
15 presented with an individual order for the deduction, signed by the  
16 public employee, and terminable at the end of any year of its life by  
17 the public employee giving at least 30 days' written notice of the  
18 termination to the public employer and to the representative organiza-  
19 tion.

20 (b) It is an unfair labor practice for a public employee  
21 individually or in concert with others to:

22 (1) coerce or intimidate a public employee in the exercise  
23 of his legal rights, including those guaranteed in sec. 80 of this  
24 chapter;

25 (2) coerce, intimidate or induce an officer or agent of the  
26 public employer to interfere with any of its employees in the exercise  
27 of their legal rights, including those guaranteed in sec. 80 of this  
28 chapter, or to engage in a practice with regard to its employees which  
29 would be a prohibited practice if undertaken by him on his own

1 initiative;

2 (3) refuse to bargain collectively on those matters provided  
3 for in sec. 250 of this chapter with the authorized officer or agent of  
4 the public employer, if he is the recognized or certified exclusive  
5 collective bargaining representative of employees in an appropriate  
6 collective bargaining unit; a refusal to bargain includes, but is not  
7 limited to, the refusal to execute a collective bargaining agreement  
8 previously agreed upon;

9 (4) violate the provisions of a written agreement concerning  
10 terms and conditions of employment affecting public employees, includ-  
11 ing an agreement to arbitrate or to accept the terms of an arbitration  
12 award, where previously the parties agreed to accept an arbitration  
13 award as final and binding upon them;

14 (5) coerce or intimidate a supervisory employee, officer  
15 or agent of the public employer, working at the same trade or profession  
16 as its employees, to induce him to become a member of or act in concert  
17 with the labor organization of which they are members.

18 (c) It is a prohibited practice for a labor or employee organiza-  
19 tion or any other person to do or cause to be done in the interest of  
20 public employers or public employees, or in connection with a contro-  
21 versy over employment relations, any act prohibited by (a) and (b) of  
22 this section.

23 Sec. 23.40.120. INVESTIGATION AND CONCILIATION OF COMPLAINTS. If  
24 a verified written complaint is filed by or for a person claiming to  
25 be aggrieved by a prohibited practice, or a written accusation that a  
26 person subject to secs. 70 - 280 of this chapter has engaged in a  
27 prohibited practice is filed with the department, the department shall  
28 investigate the complaint or accusation. If it determines after the  
29 preliminary investigation that probable cause exists in support of the

1 complaint or accusation, it shall try to eliminate the prohibited  
2 practice by informal methods of conference, conciliation, and persuasion.  
3 Nothing said or done during this endeavor may be used as evidence in  
4 a subsequent proceeding.

5 Sec. 23.40.130. COMPLAINT AND ACCUSATION. If the department fails  
6 to eliminate the prohibited practice by conciliation and to obtain  
7 voluntary compliance with secs. 70 - 280 of this chapter, or if, before  
8 it attempts conciliation, it considers that the circumstances warrant,  
9 it shall serve a copy of the complaint or accusation upon the respondent.  
10 The complaint or accusation and the subsequent procedures shall be  
11 handled in accordance with the Administrative Procedure Act (AS 44.62).

12 Sec. 23.40.140. ORDERS AND DECISIONS. If the department finds  
13 that a person named in the written complaint or accusation has engaged  
14 in a prohibited practice, the department shall issue and serve on the  
15 person an order or decision requiring him to cease and desist from the  
16 prohibited practice and to take affirmative action which will carry out  
17 the policies of secs. 70 - 280 of this chapter. If the department  
18 finds that no person named in the complaint or accusation has engaged  
19 or is engaging in a prohibited practice, the department shall state its  
20 findings of fact and issue an order dismissing the complaint or accusa-  
21 tion.

22 Sec. 23.40.150. ENFORCEMENT BY INJUNCTION. The department may  
23 apply to the superior court in the judicial district in which the pro-  
24 hibited practice occurred for an order enjoining the prohibited acts  
25 specified in the order or decision of the department. Upon a showing  
26 by the department that the person has engaged or is about to engage  
27 in the practices, an injunction, restraining order, or other order  
28 which may be appropriate shall be granted by the court without bond.

29 Sec. 23.40.160. POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a)

1 For the purpose of the investigations, proceedings, or hearings which  
2 the department considers necessary for the enforcement of secs. 70 -  
3 280 of this chapter, the department may issue subpoenas requiring the  
4 attendance and testimony of witnesses and the production of relevant  
5 evidence.

6 (b) The department may administer oaths, examine witnesses, and  
7 receive evidence.

8 (c) The attendance of witnesses and the production of evidence  
9 may be required from any place in the state at any designated place of  
10 hearing.

11 (d) If a person refuses to obey a subpoena issued under secs.  
12 70 - 280 of this chapter, the superior court in the district in which  
13 the contumacious person resides or is found may, upon application by  
14 the department, issue an order requiring him to comply with the sub-  
15 poena.

16 Sec. 23.40.170. REGULATIONS. The department may adopt, amend,  
17 or repeal regulations under the Administrative Procedure Act (AS 44.62)  
18 to carry out the provisions of secs. 70 - 280 of this chapter.

19 Sec. 23.40.180. PENALTY FOR VIOLATION OF ORDER OR DECISION. A  
20 person who violates a provision of an order or decision of the depart-  
21 ment is guilty of a misdemeanor and is punishable by a fine of not more  
22 than \$500.

23 Sec. 23.40.190. PENALTY FOR OBSTRUCTING ENFORCEMENT. A person  
24 who forcibly obstructs, intimidates, or interferes with an authorized  
25 representative of the department while the representative performs  
26 duties under secs. 70 - 280 of this chapter or because the representa-  
27 tive performs those duties, is punishable by a fine of not more than  
28 \$500, or by imprisonment for not more than one year, or by both.

29 Sec. 23.40.200. ARBITRATION. (a) Parties to a labor dispute

1 arising from the interpretation or application of a collective bargain-  
2 ing agreement affecting terms and conditions of public employment may  
3 agree in writing to have the department name arbitrators in all or any  
4 part of the dispute. The department shall appoint as arbitrators only  
5 competent, impartial and disinterested persons. Proceedings in arbi-  
6 tration shall be conducted in accordance with the Uniform Arbitration  
7 Act (AS 09.43) where applicable.

8 (b) The parties to a collective bargaining agreement may provide  
9 in the agreement a contract for arbitration to be conducted solely  
10 according to the Uniform Arbitration Act (AS 09.43) if the Act is  
11 incorporated into the agreement or contract by reference.

12 Sec. 23.40.210. MEDIATION. The department may appoint a compe-  
13 tent, impartial, disinterested person to act as mediator in any labor  
14 dispute either on its own initiative or on the request of one of the  
15 parties to the dispute; or the parties may select a mediator by agree-  
16 ment or mutual consent. It is the function of the mediator to bring  
17 the parties together voluntarily under such favorable auspices as will  
18 tend to effectuate settlement of the dispute, but neither the mediator  
19 nor the department have any power of compulsion in mediation proceedings.

20 Sec. 23.40.220. FACT FINDING. (a) If, after a reasonable period  
21 of negotiation over the terms of a collective bargaining agreement, a  
22 deadlock exists between a public employer and a labor or employee  
23 organization, either party or the parties jointly may request the  
24 department in writing to initiate fact finding in order to make recom-  
25 mendations to resolve the existing deadlock.

26 (b) Upon receipt of a request to initiate fact finding, the  
27 department shall make an investigation, either informally or by a  
28 formal hearing, to determine whether the parties are, after a reason-  
29 able period of negotiations, deadlocked with respect to a dispute.

1 After its investigation the department shall certify the results of the  
2 investigation. If the certification requires that fact finding be  
3 initiated, the department shall appoint from a list established by the  
4 department a qualified disinterested person or three-member panel, when  
5 jointly requested by the parties, to function as a fact finder.

6 (c) The fact finder shall establish times and place of hearings  
7 and shall conduct the hearings under regulations established by the  
8 department. Upon request, the department shall issue subpoenas for  
9 hearings conducted by the fact finder. The fact finder may administer  
10 oaths. Upon completion of the hearing, the fact finder shall make  
11 written findings of fact and recommendations for solution of the dis-  
12 pute and submit them to the parties and to the department. In making  
13 his findings and recommendations, the fact finder shall take into con-  
14 sideration among other pertinent factors the logical and traditional  
15 concept of public personnel and merit system administration concepts  
16 and principles vital to the public interest in efficient and economical  
17 governmental administration. Cost of fact finding proceedings shall be  
18 divided equally between the parties.

19 (d) Nothing in this section prohibits a fact finder from mediating  
20 the dispute, in which he is involved, at any time before the issuance  
21 of his recommendations.

22 (e) Within 30 days of the receipt of the fact finder's recommen-  
23 dations or within a time period agreed upon by the parties, both  
24 parties shall advise each other, in writing, as to their acceptance or  
25 rejection, in whole or in part, of the fact finder's recommendations  
26 and, at the same time, send a copy of the notification to the depart-  
27 ment. Failure to comply with the requirements of this section by the  
28 employer or employee representative is a violation of sec. 110(a)(4)  
29 and (b)(3) of this chapter.

1           Sec. 23.40.230. AGREEMENTS. Upon the completion of negotiations  
2 between a labor or employee organization representing a majority of  
3 employees in a collective bargaining unit and a public employer, if a  
4 settlement is reached, the employer shall reduce it to writing in the  
5 form of an agreement. The agreement may include a term for which it  
6 will remain in effect, not to exceed three years. Either party to the  
7 agreement has a right of action to enforce the agreement by petition  
8 to the department.

9           Sec. 23.40.240. MANAGEMENT RIGHTS. (a) Nothing in secs. 70 -  
10 280 of this chapter interferes with the right of the public employer,  
11 in accordance with applicable law and regulations to

12           (1) carry out the statutory mandate and goals assigned to  
13 the department or agency utilizing personnel, methods and means in the  
14 most appropriate and efficient manner possible;

15           (2) manage the employees of the department or agency; and  
16 hire, promote, transfer, assign or retain employees in positions within  
17 the department or agency and in that regard to establish reasonable  
18 work rules;

19           (3) suspend, demote, discharge or take other appropriate  
20 disciplinary action against an employee for cause, or to lay off em-  
21 ployees in the event of lack of work or funds or under conditions where  
22 continuation of work would be inefficient and nonproductive.

23           Sec. 23.40.250. SUBJECTS OF COLLECTIVE BARGAINING. (a) Matters  
24 subject to collective bargaining are the following conditions of  
25 employment:

26           (1) grievance procedures;

27           (2) application of seniority rights as affecting the  
28 matters contained herein;

29           (3) work schedules relating to assigned hours and days of

1 the week and shift assignments;

2 (4) scheduling of vacations and other time off;

3 (5) use of sick leave;

4 (6) application and interpretation of established work rules;

5 (7) health and safety practices;

6 (8) intradepartmental transfers; and

7 (9) other matters consistent with this section and the  
8 statutes, rules and regulations of the public employer.

9 (b) Nothing in this section shall require the employer to bargain  
10 in regard to prerogatives of promotion, layoff, position classification,  
11 compensation and fringe benefits, examinations, discipline, merit salary  
12 determination policy and other actions provided for by statutes,  
13 ordinances or regulations.

14 Sec. 23.40.260. STRIKES. (a) For purposes of this section,  
15 public employees are employed to perform services in one of the three  
16 following classes:

17 (1) those services which may not be given up for even the  
18 shortest period of time;

19 (2) those services which may be interrupted for a limited  
20 period but not for an indefinite period of time; and

21 (3) those services in which work stoppages may be sustained  
22 for extended periods without serious effects on the public.

23 (b) Class (1) includes police and fire protection employees and  
24 jail, prison and other correctional institution employees. Strikes by  
25 employees in this class are prohibited. Upon a showing by a public  
26 employer or the department that employees in this class are engaging or  
27 about to engage in a strike, an injunction, restraining order, or other  
28 order which may be appropriate shall be granted by the superior court  
29 in the judicial district in which the strike is occurring or is about

1 to occur. If an impasse or deadlock is reached in collective bargaining  
2 between the public employer and employees in this class, and mediation  
3 and fact-finding have been utilized without resolving the deadlock,  
4 the parties shall submit to arbitration to be carried out under the  
5 provisions of the Uniform Arbitration Act (AS 09.43).

6 (c) Class (2) includes hospital, public utility, snow removal,  
7 sanitation and public school and other educational institution employees.  
8 Employees in this class may engage in a strike after mediation and fact-  
9 finding, subject to the voting requirement of (d) of this section, for  
10 a limited time. The limit is determined by the interests of the health,  
11 safety or welfare of the public. The public employer or the department  
12 may apply to the superior court in the judicial district in which the  
13 strike is occurring for an order enjoining the strike. A strike may not  
14 be enjoined unless it can be shown that it has begun to threaten the  
15 health, safety or welfare of the public. A court, in deciding whether  
16 or not to enjoin the strike, shall consider the total equities in the  
17 particular case. "Total equities" includes not only the impact of a  
18 strike on the public but also the extent to which employee organizations  
19 and public employers have met their statutory obligations. If an impasse  
20 or deadlock still exists after the issuance of an injunction, the parties  
21 shall submit to arbitration to be carried out under the provisions of  
22 the Uniform Arbitration Act (AS 09.43).

23 (d) Class (3) includes all other public employees who are not  
24 included in classes (1) or (2). Employees in this class may engage in  
25 a strike if a majority of the employees in a collective bargaining unit  
26 vote by secret ballot to do so.

27 Sec. 23.40.270. DEFINITIONS. In secs. 70 - 280 of this chapter,  
28 unless the context otherwise requires,

29 (1) "collective bargaining" means the negotiating by the

1 public employer, by its officers and agents, and a majority of its  
2 employees, by their representatives in an appropriate collective bar-  
3 gaining unit, concerning terms and conditions of employment of all  
4 employees in the unit in a mutual effort to reach an agreement with  
5 reference to the subject under negotiation;

6 (2) "department" means the Department of Labor;

7 (3) "election" means a proceeding conducted by the depart-  
8 ment in which the employees in a collective bargaining unit cast a  
9 secret ballot for collective bargaining representatives, or for any  
10 other purpose specified in secs. 70 - 280 of this chapter;

11 (4) "professional employee" means

12 (A) an employee engaged in work:

13 (i) predominantly intellectual and varied in  
14 character as opposed to routine mental, manual, mechanical or  
15 physical work;

16 (ii) involving the consistent exercise of discre-  
17 tion and judgment in its performance;

18 (iii) of such a character that the output produced  
19 or the result accomplished cannot be standardized in relation to  
20 a given period of time;

21 (iv) requiring knowledge of an advanced type in a  
22 field of science or learning customarily acquired by a prolonged  
23 course of specialized intellectual instruction and study in an  
24 institution of higher learning or a hospital, as distinguished  
25 from a general academic education or from an apprenticeship or  
26 from training in the performance of routine mental, manual or  
27 physical processes; or

28 (B) an employee who:

29 (i) has completed the courses of specialized

1 intellectual instruction and study described in (4)(A)(iv) of this  
2 section; and

3 (ii) is performing related work under the super-  
4 vision of a professional person to qualify himself to become a  
5 professional employee as defined in (4)(A) of this section;

6 (5) "public employee" means an employee of a public employer,  
7 except a person elected by popular vote, appointed to office by the  
8 governor; or a member of a board or commission, or a person who is  
9 employed by the public employer for less than 20 hours a week;

10 (6) "public employer" means:

11 (A) the State of Alaska;

12 (B) an organized borough;

13 (C) a city of any class, whether home rule or otherwise;

14 (7) "supervisor" means any individual having authority, in  
15 the interest of the public employer, to hire, transfer, suspend, lay  
16 off, recall, promote, discharge, assign, reward or discipline other  
17 employees, or to adjust their grievances, or effectively to recommend  
18 such action, if in connection with the exercise of the foregoing the  
19 exercise of the authority is not of a merely routine or clerical nature  
20 but requires the use of independent judgment.

21 Sec. 23.40.280. SHORT TITLE. Secs. 70 - 280 of this chapter may  
22 be cited as the Public Employment Labor Relations Act.

23 \* Sec. 2. AS 23.40.010 and 23.40.040 are repealed.  
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