

# COMMITTEE REPORT

## SENATE

3/15/76

5/18/76 Date

Mr. President:

The Committee on Finance has had CSHB 646 (Finlan  
selection of architects, engineers and surveyors for state projects  
under consideration. A majority of the members of the Committee

recommends it do pass

recommends it do not pass

recommends it do pass with attached amendment(s)

recommends it be replaced with <sup>S</sup>CS for CS HR 646 and that

<sup>without Recommendation</sup>  
CS for CS HR 646 do pass

(and) recommends it be referred to the \_\_\_\_\_  
committee

reports it back without recommendation

AND attaches a report of its intent

(other) \_\_\_\_\_

### MEMBERS SIGNING THE MAJORITY REPORT:

Bill Kay No Pass  
Steve Chance "  
\_\_\_\_\_  
\_\_\_\_\_

### MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

Tom Broun recommends: No Rec  
John Leland recommends: " "  
Ken Toland recommends: No Rec

Bill Kay  
Chairman

SENATE CS FOR CS FOR HOUSE BILL NO. 646

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to selection of architects, engineers, and surveyors for state projects; and providing for an effective date."

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

House Bill 646 creates an independent board to monitor the process by which professional firms are selected for project-related architectural, engineering or land surveying services.

The Board's duties will include:

(a) The establishment of formal criteria on which selections will be based;

(b) The monitoring of the selection process to ensure that State agencies conform with established practice when awarding contracts.

The Bill was drafted in consultation with the professional societies involved and has been endorsed by American Institute of Architects, Alaska Society of Professional Engineers, and Professional Engineers in Private Practice. It is based on model legislation proposed by the National Institute of Architecture to correct various informalities and irregularities historically evident in the selection process.

The model legislation differed from HB 646 in one important respect, i.e. the model legislation proposed a Selection Board while HB 646 proposes a Review Board.

This variation was adopted for two reasons:

(a) The professionals and the State agreed that the normal business of contracting services should rest with the civil servants in the contracting agencies and their superiors, not with an outside entity.

(b) Since there are few, if any, firms in Alaska who do not rely on public work, it would be virtually impossible to find appointees for a selection board who could afford to disqualify themselves for the period of appointment. On the other hand, it was not considered necessary to require appointees to disqualify themselves from accepting State work when their function is not to select firms, but to monitor the process.

## SECTIONAL ANALYSIS

### Section 1.

Sec. 35.30.010 creates the Board which is composed of seven members as outlined, and provides that the Board shall be administratively supported by the Department of Public Works. It was originally to be supported by the Department of Commerce. However, the Commissioner of Commerce pointed out that since Public Works would be the prime user of the Board, and since the Board's functions would be of a technical nature, then Department of Public Works should provide the administrative and fiscal support.

Sec. 35.30.020, page 2, is self-explanatory.

Sec. 35.30.030, page 2, lays out the powers and duties of the Board.

Sec. 35.30.040, page 3, is self-explanatory.

Sec. 35.30.050, page 3, is self-explanatory.

Sec. 35.30.060 (a), (b), (c), (d), (e), (f), and (g), pages 4 and 5, set up the mechanics by which firms shall be selected. Each contracting agency shall appoint a three-member selection committee. For projects involving user agencies as well as contracting agencies, the committee shall have one member appointed by the Department head of the user Agency. The Committee will publicly announce proposed projects in detail, shall examine and evaluate all applications, shall apply the criteria outlined in the bill, as well as additional criteria promigated by the Review Board, and shall select for each project from three of the most highly qualified firms considered to be capable of performing the required services. The Committee shall prepare public reports for submission to the Review Board outlining its actions.

Sec. 35.30.070, page 6. The contracting agency shall conduct negotiations with and award contracts to firms recommended by its committee and shall report to the Board the results of its negotiations with all necessary documentation.

Sec. 35.30.080, page 6. The Review Board shall review design and contracts and issue an annual report summarizing contracts awarded during the year. The report shall include details of grievances processed.

Sec. 35.30.090, page 7, provides for a prohibition against contingent fees.

Sec. 35.30.100, page 7, delineates the administrative support to be provided for the Board by the Department of Public Works.

Sec. 35.30.110, page 7, provides that contracts less than \$20,000 shall be exempt from the requirements of this Chapter. The amount contained in this section was determined by the various State agencies and the professional societies. A fee of \$20,000 would normally provide for the design of a construction contract of approximately \$300,000. Such small contracts will not usually be subject to informal influence. It was therefore felt that no purpose would be served by including them within the provisions of this Chapter. Additionally, since there are dozens of these small contracts awarded annually, the inclusion of contracts for less than \$20,000 within the provision of the Chapter would magnify the work load far beyond any useful benefit. This section also provides that emergency projects may be exempted by the Board.

Sec. 35.30.120, page 8, is self-explanatory.

Original Sponsor: Rules Committee by  
request of the Governor

Offered: 5/15/76  
Referred: Finance

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 646

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

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6 For an Act entitled: "An Act relating to selection of architects, engineers,  
7 and surveyors for state projects; and providing for  
8 an effective date."

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

10 \* Section 1. AS 35 is amended by adding a new chapter to read:

11 CHAPTER 30. STATE SELECTION OF ARCHITECTS,  
12 ENGINEERS, AND SURVEYORS.

13 Sec. 35.30.010. SELECTION REVIEW BOARD. (a) There is in the  
14 Department of Public Works an Architects, Engineers, and Land Surveyors  
15 Selection Review Board.

16 (b) The board is composed of seven members, appointed by the  
17 governor and subject to confirmation by the legislature in joint session  
18 Members shall be appointed as follows:

19 (1) two members must be registered architects appointed by  
20 the governor from a list of at least four names submitted by the Alaska  
21 chapter of the American Institute of Architects;

22 (2) two members must be registered engineers appointed by the  
23 governor from a list of at least four names submitted by the Alaska  
24 Society of Professional Engineers;

25 (3) two members shall be appointed by the governor from the  
26 general public, neither of whom may be an architect or an engineer or a  
27 land surveyor; the public members must possess, due to their education,  
28 experience, or vocation, an understanding of and sensitivity to project  
29 design or construction;

1 (4) one member must be a registered land surveyor appointed  
2 by the governor from names submitted by the Alaska chapter of the  
3 American Society of Professional Land Surveyors.

4 (c) The term of office of board members is two years. Initial  
5 appointments within each classification in (b)(1)-(3) of this section  
6 shall specify one-year and two-year terms so as to assure the staggering  
7 of terms within each classification. If a vacancy occurs on the board,  
8 the governor shall appoint a person qualified under the applicable  
9 provision in (b) of this section to serve the unexpired term.

10 (d) No member of the board or of a firm or joint venture with  
11 which he is associated, or in which he has a financial interest, may be  
12 barred, because of his board membership, from contracting to serve as an  
13 architect, engineer, or land surveyor for a project or from otherwise  
14 participating as a consultant or employee on a project.

15 (e) No member of the board may vote on a grievance matter brought  
16 by or against him or by or against a firm or joint venture with which he  
17 is associated or in which he has a financial interest.

18 Sec. 35.30.020. ORGANIZATION AND MEETINGS OF BOARD. At the first  
19 meeting of the members of the board, the board shall elect a chairman.  
20 The board shall also elect other officers it considers necessary for the  
21 conduct of its affairs. It shall adopt rules governing its operations  
22 and the conduct of its meetings. The rules shall provide for the term  
23 of the chairman and other officers if any. The board shall meet at  
24 least once every six months. In addition, in accordance with AS 44.62.-  
25 310 - 44.62.312 the board may take official action by mail votes or  
26 votes during conference telephone calls on reasonable notice to the  
27 public and to all members. Four members constitute a quorum.

28 Sec. 35.30.030. DUTIES AND POWERS OF THE BOARD. The board shall

29 (1) adopt regulations under the Administrative Procedure Act

1 (AS 44.62) that it finds appropriate to supplement the procedure estab-  
2 lished by this chapter for architect, engineer, and land surveyor  
3 selection;

4 (2) review all selection procedures on a periodic basis;

5 (3) review any grievance related to the selection process  
6 and recommend appropriate action to the governor; the board's recom-  
7 mendations on grievances are public information;

8 (4) prepare an annual report on architect, engineer, and land  
9 surveyor selection and selection grievances.

10 Sec. 35.30.040. COMPENSATION, PER DIEM, AND EXPENSES. Members of  
11 the board are entitled to per diem, reimbursement for travel and other  
12 expenses authorized by law for other boards.

13 Sec. 35.30.050. REQUIREMENTS FOR PROFESSIONAL SERVICES. (a) Each  
14 agency shall make public on at least an annual basis its known present  
15 and future construction and planning programs, and its anticipated  
16 requirements for professional services for at least the following 12-  
17 month period.

18 (b) When professional services are required for a specific pro-  
19 ject, the chief executive officer of the contracting agency shall submit  
20 a written notice to the board. The notice shall include a description  
21 of the proposed project, its location, the scope of services required,  
22 the proposed completion date, and a description of any special require-  
23 ments or unique features of the proposed project.

24 Sec. 35.30.060. QUALIFICATION OF ARCHITECTURAL, ENGINEERING, AND  
25 SURVEYING FIRMS; SELECTION COMMITTEES. (a) The Department of Public  
26 Works shall encourage firms engaged in the lawful practice of archi-  
27 tecture, engineering, or land surveying to submit at least annually a  
28 statement of qualifications. The department shall maintain an up-to-  
29 date listing of qualified firms and shall make it available to selection

1 committees formed under this section. The department shall maintain a  
2 complete file of all qualified firms who have submitted a statement  
3 within the previous two years.

4 (b) When an agency of the state expects to enter into a contract  
5 for architectural, engineering, or land surveying services, the chief  
6 executive officer of that contracting agency shall appoint two persons  
7 from that agency to a three-member selection committee. The chief  
8 executive officer of the user agency for the proposed project shall  
9 appoint a person from the user agency as the third member of the com-  
10 mittee. If it is anticipated that there will be more than one user  
11 agency, then the third committee member shall be appointed by the  
12 commissioner of administration. Committee members appointed from the  
13 Department of Public Works must be employees in the classified service  
14 under AS 39.25. The members shall elect a chairman.

15 (c) The committee, upon its appointment, shall make a public  
16 announcement of the proposed project which includes a description of the  
17 proposed project, its location, the scope of service required, the  
18 proposed completion date, and a description of any special requirements  
19 or unique features. The announcement shall invite firms to submit to  
20 the committee an application to perform services for the project which  
21 may include supplemental descriptions of their firms and statements of  
22 qualifications with supporting data as it relates to the proposed pro-  
23 ject.

24 (d) The committee shall examine all applications from interested  
25 firms and certify those firms qualified to perform the services for the  
26 project under consideration. Among the factors to be considered in  
27 making this finding are the capability, adequacy of personnel, past  
28 record, and experience of the firm.

29 (e) In evaluating the firms certified under (d) of this section,

1 the committee shall apply the following criteria, along with other  
2 criteria established by administrative regulations of the department if  
3 any:

4 (1) specialized experience and design and technical compe-  
5 tence of the firm, including a joint venture or association, regarding  
6 the type of service required;

7 (2) capability of the firm to perform the work, including any  
8 specialized services, within the time limitations;

9 (3) past record of performance on contracts with government  
10 agencies and private industry with respect to such factors as control of  
11 costs, quality of work, and ability to meet schedules;

12 (4) proximity to and familiarity with the area in which the  
13 project is located; and

14 (5) the desirability of selecting the most highly qualified  
15 firm; however, the volume of work previously awarded to the firm by the  
16 state shall also be considered, with the object of effecting an equi-  
17 table distribution of contracts among qualified firms and of assuring  
18 that the interest of the public in having available a substantial number  
19 of qualified firms is protected.

20 (f) After making this review and technical evaluation, the com-  
21 mittee shall hold discussions with not less than three of the most  
22 highly qualified firms regarding their capability and methods of ap-  
23 proach for furnishing the required services. Professional compensation  
24 may not be considered in these discussions.

25 (g) The committee shall prepare a public report for submission to  
26 the board, recommending, in order of highest qualification, no less than  
27 three firms that are considered most highly qualified to perform the  
28 required services. This report shall include a statement of the extent  
29 of the evaluation and review and the considerations upon which the

1 recommendations were based. If the committee has found under (d) of  
2 this section that less than three firms are qualified to perform the  
3 services, it shall include in its report the reasons for qualifying less  
4 than three. The report shall be made within 45 days after the committee  
5 is appointed.

6 Sec. 35.30.070. NEGOTIATIONS. (a) The contracting agency shall  
7 conduct negotiations on scope of work and professional compensation  
8 initially with the highest ranked firm. If a mutually satisfactory  
9 contract cannot be negotiated with that firm, the agency head shall  
10 formally terminate the negotiations and notify the firm. Negotiations  
11 then shall be initiated with the second-ranked firm and this procedure  
12 shall be continued until a mutually satisfactory contract has been  
13 negotiated. If negotiations fail with the listed firms, the names of  
14 additional firms shall be selected and ranked by the committee and  
15 negotiations shall continue in the manner described in this subsection.

16 (b) Upon successfully negotiating a contract with a firm, the  
17 agency shall promptly report to the board the results of its negotia-  
18 tions, with documentation of the factors affecting any unsuccessful  
19 negotiations with higher ranked firms.

20 Sec. 35.30.080. PUBLIC REPORTS. The selection committee estab-  
21 lished under sec. 60 of this chapter shall select the firm to design  
22 each proposed project, shall make a public announcement of the selected  
23 firm and shall provide prompt notification to each selected firm. The  
24 board shall review each design contract awarded under this section and  
25 shall issue an annual report summarizing the projects processed during  
26 the year and the firms selected to design them. The annual report also  
27 shall list each grievance received, give the board's recommendation on  
28 the grievance, and state what action was taken in response to the  
29 board's recommendation.

1           Sec. 35.30.090. PROHIBITION AGAINST CONTINGENT FEES; MISDEMEANOR.

2           (a) Each contract entered into by an agency for professional services  
3 shall contain a prohibition against contingent fees as follows: "The  
4 contractor providing professional services warrants that he has not  
5 employed or retained any person whose fee, commission, percentage, gift,  
6 or any other consideration is contingent upon or results from the award  
7 or making of this agreement." For a violation of this provision, the  
8 agency may terminate the agreement without liability and, in its dis-  
9 cretion, may deduct from the contract price, or otherwise recover, the  
10 full amount of the fee, commission, percentage, gift or consideration.

11           (b) A public official or other person who offers, agrees, or  
12 contracts to solicit or secure a state agency contract for professional  
13 services for any other person for a fee, commission, percentage, gift or  
14 other consideration contingent upon or resulting from, the award or the  
15 making of a contract for professional services, is guilty of a misde-  
16 meanor.

17           (c) An architect, engineer, land surveyor, or other person who  
18 offers or pays or otherwise furnishes any consideration prohibited in  
19 (b) of this section is guilty of a misdemeanor.

20           Sec. 35.30.100. OFFICE, STAFF, AND RECORDS. The Department of  
21 Public Works shall provide the board a suitable place to hold meetings  
22 and keep records. The commissioner of public works shall designate an  
23 employee of the department to serve as executive secretary to the board  
24 who shall devote the time necessary to promote the expeditious conduct  
25 of the board's duties and responsibilities.

26           Sec. 35.30.110. EXEMPTIONS. (a) Contracts where compensation to  
27 be paid under the contract is less than \$20,000 are exempt from the  
28 requirements of this chapter.

29           (b) The board may, on a case-by-case basis, exempt emergency

1 projects from the selection process. A brief statement of the emergency  
2 that caused the exemption of any project shall be included in the  
3 board's annual report made under sec. 80 of this chapter.

4 Sec. 35.30.120. DEFINITIONS. In this chapter, unless the context  
5 requires otherwise,

6 (1) "agency" means all officials, departments, and agencies  
7 of the state government, including the University of Alaska and the  
8 Alaska State Housing Authority;

9 (2) "architect, engineer, or land surveyor" means an archi-  
10 tect, engineer, or land surveyor registered to practice under AS 08.48;

11 (3) "board" means the Architects, Engineers, and Land Sur-  
12 veyors Selection Review Board;

13 (4) "contracting agency" means the agency administering a  
14 contract for architectural, engineering, or land surveying services;

15 (5) "committee" means a selection committee established under  
16 sec. 60 of this chapter;

17 (6) "firm" means an architect, engineer, or land surveyor, or  
18 a partnership, association, or corporation comprised primarily of  
19 architects or engineers or land surveyors registered to practice under  
20 AS 08.48;

21 (7) "professional service" means architectural, engineering,  
22 or land surveying service;

23 (8) "project" means a construction project using professional  
24 services associated with design and construction, alteration, or repair  
25 of real property, as well as services incidental to it, including but  
26 not limited to studies, investigations, surveys, evaluations, land  
27 appraisals, consultations, planning, programming, conceptual designs,  
28 plans and specifications, cost estimates, inspections, shop drawing  
29 reviews, sample recommendations, preparation of operating and mainte-

1 nance manuals, and other related service;

2 (9) "user agency" means the agency which will occupy or use  
3 the product of the professional service.

4 \* Sec. 2. AS 39.50.200(9) is amended by adding a new subparagraph to read:

5 (LL) Architects, Engineers and Land Surveyors Selection  
6 Review Board.

7 \* Sec. 3. Nothing in this Act affects the validity or effect of any  
8 contract in existence on January 1, 1977.

9 \* Sec. 4. AS 35.30.030(2), (3), and (4), 35.30.050, and 35.30.060 -  
10 35.30.080, enacted in sec. 1 of this Act, take effect January 1, 1977. All  
11 other provisions of this Act take effect immediately in accordance with  
12 AS 01.10.070(c).

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148646

January 23, 1976

The Honorable Mike Bradner  
Speaker of the House  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Mr. Speaker:

In accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill relating to selection of architects, engineers and surveyors for state projects.

The purpose of the bill is to assure a fair and open procedure for securing the contract services of these professionals when they are needed for construction projects. By an attachment to this transmittal letter, the objectives of the bill are summarized.

The bill provides for a selection review board composed of two architects, two engineers, one land surveyor and two public members, with appointments of members to be made by the Governor, subject to legislative confirmation. The professional members are to be selected from persons nominated by the affected professional societies.

By the terms of the bill the board would oversee the selection process by:

(1) adopting regulations to supplement selection procedures set out in the bill;

(2) reviewing selection procedures periodically;

(3) reviewing and making a public recommendation to the Governor on any grievance in the selection process; and;

(4) making an annual report covering (a) the professional selections made, and (b) any grievances processed, with recommendations made as to those grievances and a statement of the action taken on the recommendations.

The bill requires that the need for professional services be advertised. It also establishes procedures for qualifying firms that apply, selecting the best qualified, and reporting on the entire process to the selection review board which then would make a public announcement of the selection and notify the competing firms.

Both offering and accepting a fee contingent upon successfully securing a professional-services contract are made misdemeanors.

By regulation, the board may eliminate small contracts from the selection procedure. Emergency projects also may be exempted from the selection procedure, but a report on the exemption must be included in the board's annual report.

Sincerely,

Jay S. Hammond  
Governor

OBJECTIVES OF A/E SELECTION PROCEDURE

STATE AGENCIES

1. Obtain qualified & competent A/E services
2. Establish uniform, unbiased selection procedure
3. Establish procedure not subject to political or outside pressure
4. Establish procedure convenient and adequate for agency to use

GENERAL PUBLIC.

1. Selection to consider all interested and qualified firms
2. Procedure to insure against favoritism or political pressure
3. Procedure to insure competent firm is selected at a fair fee

A/E FIRMS

1. Insure that all interested firms are considered in the selection procedure.
2. Selection based on uniform applications of procedure to evaluate qualifications and competency
3. Provide for investigation and review of alleged irregularities
4. Provide an uncomplicated, easy, adaptable procedure that will not discourage agencies from utilizing an A/E contract

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Assumptions and Calculations *	Amount
<b>Personal Services **</b>	
1. Board member's salaries (not covered in bill).	-0-
2. Salaries of committee members, 2 committee members, ½ year per member @ range 21.	\$19,036
3. Executive secretary ½ year, range 19.	\$ 8,215.
4. 6 mo. permanent part time Clerk Typist III.	<u>\$ 6,814</u>
Total	<u>\$34,065</u>

**Travel & Per Diem**

1. Board members - 7 members plus executive secretary - assume 3 meetings per year (one in Juneau, one in Anchorage, one in Fairbanks) with 6 travelers per meeting = 18 tickets @ \$160.00 per ticket. Per diem = (6 people) (3 trips) (5 days) = 90 days.	\$ 2,880 \$ 4,500
2. Committee members - initial evaluation. Assume 1 out of the three members will have to travel on at least half of the number of projects per year (100 projects). Plane tickets 50 x \$160.00 Per diem 50 x 3 days = 150 days @ \$50.00	\$ 8,000 \$ 7,500
3. Committee members - discussions with the three selected firms. Assume one selected firm out of town for each project, two projects discussed at one travel period. (3 people) (50 projects) = 150 tickets @ \$160.00. Per diem (3 people) (3 days) (50 projects) = 450 days @ \$50.00.	\$24,000 <u>\$22,500</u>
Total	<u>\$69,380</u>

**Contractual Services**

Telephone \$200.00 per month	\$ 2,400
Postage and transportation of things \$100.00 per mo.	\$ 1,200
Advertising, public notices (\$30.00) (100 projects)	\$ 3,000
Printing and distribution of annual report.	<u>\$ 1,000</u>
Total	<u>\$ 7,600</u>

**Commodities**

Paper and office supplies \$150.00 per mo.	\$ 1,800
Total	<u>\$ 1,800</u>

**Equipment for typist**

Typewriter, desk, chair, file cabinet.	\$ 1,475
Total	<u>\$ 1,475</u>

\* All calculations based on 100 projects per year.

\*\* Salaries include benefits.

THE LEGISLATURE OF THE STATE OF ILLINOIS  
FISCAL NOTE

Second Session - Ninth Legislature

REVISED: 2/24/76

I. REQUEST

HB Bill No. 646

Title: An act relating the selection of architects, engineers, & surveyors for State projects

Requested by: Francis Ulmer, Governor's Office Date: January 26, 1976

Return Date Requested: As soon as possible.

Agency: Public Works Program: Buildings

II. FISCAL DETAIL

Budget Request Unit(s) Affected: All agencies

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100 PERSONAL SERVICES	8.5	25.5	34.1	37.5	41.2	45.3
200 TRAVEL	17.3	52.0	69.4	76.3	84.0	92.3
300 CONTRACTUAL	1.9	5.7	7.6	8.4	9.2	10.1
400 COMMODITIES	.5	1.4	1.8	2.0	2.2	2.4
500 EQUIPMENT	1.5	-0-				
600 LAND & STRUCTURES	-0-	-0-	-0-			
700 GRANTS, CLAIMS, ETC.	-0-	-0-	-0-			
TOTAL	29.7	84.6	112.8	124.2	136.6	150.1

B. FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER CIP	29.7	84.6	112.8	124.2	136.6	150.1

\* C. POSITIONS:

PERMANENT/TEMPORARY	4 /	4 /	4 /	4 /	4 /	4 /
MAN MONTHS (P./T.)	4 /	11 /	15 /	15 /	15 /	15 /

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III.)

See attached one page

\* Positions indicated are part time permanent positions and could possibly be combined with existing positions.

IV. ATTACHMENTS

Original Sponsor: Rules Committee by  
request of the Governor

Offered: 3/11/76  
Referred: Rules

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 646 (Finance) am  
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23 (3) two members shall be appointed by the governor from the  
24 general public, neither of whom may be an architect or an engineer or a  
25 land surveyor; the public members must possess, due to their education,  
26 experience, or vocation, an understanding of and sensitivity to project  
27 design or construction;

28 (4) one member must be a registered land surveyor appointed  
29 by the governor.

1 (c) The term of office of board members is two years. Initial  
2 appointments within each classification in (b)(1)-(3) of this section  
3 shall specify one-year and two-year terms so as to assure the staggering  
4 of terms within each classification. If a vacancy occurs on the board,  
5 the governor shall appoint a person qualified under the applicable  
6 provision in (b) of this section to serve the unexpired term.

7 (d) No member of the board or of a firm or joint venture with  
8 which he is associated, or in which he has a financial interest, may be  
9 barred, because of his board membership, from contracting to serve as an  
10 architect, engineer, or land surveyor for a project or from otherwise  
11 participating as a consultant or employee on a project.

12 (e) No member of the board may vote on a grievance matter brought  
13 by or against him or by or against a firm or joint venture with which he  
14 is associated or in which he has a financial interest.

15 Sec. 35.30.020. ORGANIZATION AND MEETINGS OF BOARD. At the first  
16 meeting of the members of the board, the board shall elect a chairman.  
17 The board shall also elect other officers it considers necessary for the  
18 conduct of its affairs. It shall adopt rules governing its operations  
19 and the conduct of its meetings. The rules shall provide for the term  
20 of the chairman and other officers if any. The board shall meet at  
21 least once every six months. In addition, the board may take official  
22 action by mail votes or votes during conference telephone calls on  
23 reasonable notice to all members. Four members constitute a quorum.

24 Sec. 35.30.030. DUTIES AND POWERS OF THE BOARD. The board shall

25 (1) adopt regulations under the Administrative Procedure Act  
26 (AS 44.02) that it finds appropriate to supplement the procedure  
27 established by this chapter for architect, engineer, and land surveyor  
28 selection;

29 (2) review all selection procedures on a periodic basis;

1 (3) review any grievance related to the selection process  
2 and recommend appropriate action to the governor; the board's recom-  
3 mendations on grievances are public information;

4 (4) prepare an annual report on architect, engineer, and land  
5 surveyor selection and selection grievances.

6 Sec. 35.30.040. COMPENSATION, PER DIEM, AND EXPENSES. Members of  
7 the board are entitled to per diem, reimbursement for travel and other  
8 expenses authorized by law for other boards.

9 Sec. 35.30.050. REQUIREMENTS FOR PROFESSIONAL SERVICES. (a) Each  
10 agency shall make public on at least an annual basis its known present  
11 and future construction and planning programs, and its anticipated  
12 requirements for professional services for at least the following 12-  
13 month period.

14 (b) When professional services are required for a specific pro-  
15 ject, the chief executive officer of the contracting agency shall submit  
16 a written notice to the board. The notice shall include a description  
17 of the proposed project, its location, the scope of services required,  
18 the proposed completion date, and a description of any special require-  
19 ments or unique features of the proposed project.

20 Sec. 35.30.060. QUALIFICATION OF ARCHITECTURAL, ENGINEERING, AND  
21 SURVEYING FIRMS; SELECTION COMMITTEES. (a) The Department of Public  
22 Works shall encourage firms engaged in the lawful practice of archi-  
23 tecture, engineering, or land surveying to submit at least annually a  
24 statement of qualifications. The department shall maintain an up-to-  
25 date listing of qualified firms and shall make it available to selection  
26 committees formed under this section. The department shall maintain a  
27 complete file of all qualified firms who have submitted a statement  
28 within the previous two years.

29 (b) When an agency of the state expects to enter into a contract

1 for architectural, engineering, or land surveying services, the chief  
2 executive officer of that contracting agency shall appoint two persons  
3 from that agency to a three-member selection committee. The chief  
4 executive officer of the user agency for the proposed project shall  
5 appoint a person from the user agency as the third member of the com-  
6 mittee. If it is anticipated that there will be more than one user  
7 agency, then the third committee member shall be appointed by the  
8 commissioner of administration. Committee members appointed from the  
9 Department of Public Works must be employees in the classified service  
10 under AS 39.25. The members shall elect a chairman.

11 (c) The committee, upon its appointment, shall make a public  
12 announcement of the proposed project which includes a description of the  
13 proposed project, its location, the scope of service required, the  
14 proposed completion date, and a description of any special requirements  
15 or unique features. The announcement shall invite firms to submit to  
16 the committee an application to perform services for the project which  
17 may include supplemental descriptions of their firms and statements of  
18 qualifications with supporting data as it relates to the proposed pro-  
19 ject.

20 (d) The committee shall examine all applications from interested  
21 firms and certify those firms qualified to perform the services for the  
22 project under consideration. Among the factors to be considered in  
23 making this finding are the capability, adequacy of personnel, past  
24 record, and experience of the firm.

25 (e) In evaluating the firms certified under (d) of this section,  
26 the committee shall apply the following criteria, along with other  
27 criteria established by administrative regulations of the department if  
28 any:

29 (1) specialized experience and design and technical compe-

1 tence of the firm, including a joint venture or association, regarding  
2 the type of service required;

3 (2) capability of the firm to perform the work, including any  
4 specialized services, within the time limitations;

5 (3) past record of performance on contracts with government  
6 agencies and private industry with respect to such factors as control of  
7 costs, quality of work and ability to meet schedules;

8 (4) proximity to and familiarity with the area in which the  
9 project is located; and

10 (5) the desirability of selecting the most highly qualified  
11 firm; however, the volume of work previously awarded to the firm by the  
12 state shall also be considered, with the object of effecting an equi-  
13 table distribution of contracts among qualified firms and of assuring  
14 that the interest of the public in having available a substantial number  
15 of qualified firms is protected

16 (f) After making this review and technical evaluation, the com-  
17 mittee shall hold discussions with not less than three of the most  
18 highly qualified firms regarding their capability and methods of ap-  
19 proach for furnishing the required services. Professional compensation  
20 may not be considered in these discussions.

21 (g) The committee shall prepare a public report for submission to  
22 the board, recommending, in order of highest qualification, no less than  
23 three firms that are considered most highly qualified to perform the  
24 required services. This report shall include a statement of the extent  
25 of the evaluation and review and the considerations upon which the  
26 recommendations were based. If the committee has found under (d) of  
27 this section that less than three firms are qualified to perform the  
28 services, it shall include in its report the reasons for qualifying less  
29 than three. The report shall be made within 45 days after the committee

1 is appointed.

2 Sec. 35.30.070. NEGOTIATIONS. (a) The contracting agency shall  
3 conduct negotiations on scope of work and professional compensation  
4 initially with the highest ranked firm. If a mutually satisfactory  
5 contract cannot be negotiated with that firm, the agency head shall  
6 formally terminate the negotiations and notify the firm. Negotiations  
7 then shall be initiated with the second-ranked firm and this procedure  
8 shall be continued until a mutually satisfactory contract has been  
9 negotiated. If negotiations fail with the listed firms, the names of  
10 additional firms shall be selected and ranked by the committee and  
11 negotiations shall continue in the manner described in this subsection.

12 (b) Upon successfully negotiating a contract with a firm, the  
13 agency shall promptly report to the board the results of its negotia-  
14 tions, with documentation of the factors affecting any unsuccessful  
15 negotiations with higher ranked firms.

16 Sec. 35.30.080. PUBLIC REPORTS. The board shall make a public  
17 announcement of the firm selected for each proposed project and shall  
18 provide prompt notification to each recommended firm. The board shall  
19 issue an annual report summarizing the projects processed during the  
20 year and the firms selected to design them. The annual report also  
21 shall list each grievance received, give the board's recommendation on  
22 the grievance, and state what action was taken in response to the  
23 board's recommendation.

24 Sec. 35.30.090. PROHIBITION AGAINST CONTINGENT FEES; MISDEMEANOR.  
25 (a) Each contract entered into by an agency for professional services  
26 shall contain a prohibition against contingent fees as follows: "The  
27 contractor providing professional services warrants that he has not  
28 employed or retained any person whose fee, commission, percentage, gift,  
29 or any other consideration is contingent upon or results from the

1 award or making of this agreement." For a violation of this provision,  
2 the agency may terminate the agreement without liability and, in its  
3 discretion, may deduct from the contract price, or otherwise recover,  
4 the full amount of the fee, commission, percentage, gift or considera-  
5 tion.

6 (b) A public official or other person who offers, agrees, or  
7 contracts to solicit or secure a state agency contract for professional  
8 services for any other person for a fee, commission, percentage, gift or  
9 other consideration contingent upon or resulting from, the award or the  
10 making of a contract for professional services, is guilty of a misde-  
11 meanor.

12 (c) An architect, engineer, land surveyor, or other person who  
13 offers or pays or otherwise furnishes any consideration prohibited in  
14 (b) of this section is guilty of a misdemeanor.

15 Sec. 35.30.100. OFFICE, STAFF, AND RECORDS. The Department of  
16 Public Works shall provide the board a suitable place to hold meetings  
17 and keep records. The commissioner of public works shall designate an  
18 employee of the department to serve as executive secretary to the  
19 board who shall devote the time necessary to promote the expeditious  
20 conduct of the board's duties and responsibilities.

21 Sec. 35.30.110. EXEMPTIONS. (a) Contracts where compensation to  
22 be paid under the contract is less than \$20,000 are exempt from the  
23 requirements of this chapter.

24 (b) The board may, on a case-by-case basis, exempt emergency  
25 projects from the selection process. A brief statement of the emergency  
26 that caused the exemption of any project shall be included in the  
27 board's annual report made under sec. 80 of this chapter.

28 Sec. 35.30.120. DEFINITIONS. In this chapter, unless the context  
29 requires otherwise,

1 (1) "agency" means all officials, departments, and agencies  
2 of the state government, including the University of Alaska and the  
3 Alaska State Housing Authority;

4 (2) "architect, engineer, or land surveyor" means an archi-  
5 tect, engineer, or land surveyor registered to practice under AS 08.48;

6 (3) "board" means the Architects, Engineers, and Land Sur-  
7 veyors Selection Review Board;

8 (4) "contracting agency" means the agency administering a  
9 contract for architectural, engineering, or land surveying services;

10 (5) "committee" means a selection committee established under  
11 sec. 60 of this chapter;

12 (6) "firm" means an architect, engineer, or land surveyor, or  
13 a partnership, association, or corporation comprised primarily of  
14 architects or engineers or land surveyors registered to practice under  
15 AS 08.48;

16 (7) "professional service" means architectural, engineering,  
17 or land surveying service;

18 (8) "project" means a construction project using professional  
19 services associated with design and construction, alteration, or repair  
20 of real property, as well as services incidental to it, including but  
21 not limited to studies, investigations, surveys, evaluations, land  
22 appraisals, consultations, planning, programming, conceptual designs,  
23 plans and specifications, cost estimates, inspections, shop drawing  
24 reviews, sample recommendations, preparation of operating and mainte-  
25 nance manuals, and other related service;

26 (9) "user agency" means the agency which will occupy or use  
27 the product of the professional service.

28 \* Sec. 2. Nothing in this Act affects the validity or effect of any  
29 contract in existence on January 1, 1977.

1 \* Sec. 3. AS 35.30.030(2), (3), and (4), 35.30.050, and 35.30.060 -  
2 35.30.080, enacted in sec. 1 of this Act, take effect January 1, 1977. All  
3 other provisions of this Act take effect immediately in accordance with  
4 AS 01.10.070(c).

5 \* Sec. 4. AS 39.50.200(9)(LL) Architects, Engineers and Land Surveyors  
6 Selection Review Board.

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Introduced: 1/23/76  
Referred: State Affairs

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 646

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to selection of architects, engineers  
7 and surveyors for state projects; and providing for  
8 an effective date."

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

10 \* Section 1. AS 35 is amended by adding a new chapter to read:

11 CHAPTER 30. STATE SELECTION OF ARCHITECTS,  
12 ENGINEERS, AND SURVEYORS.

13 Sec. 35.30.010. SELECTION REVIEW BOARD. (a) There is in the  
14 Department of Public Works an Architects, Engineers, and Land Surveyors  
15 Selection Review Board.

16 (b) The board is composed of seven members, appointed by the  
17 governor and subject to confirmation by the legislature in joint  
18 session. Members shall be appointed as follows:

19 (1) two members must be registered architects appointed by  
20 the governor from names submitted by the Alaska chapter of the American  
21 Institute of Architects;

22 (2) two members must be registered engineers appointed by  
23 the governor from names submitted by the Alaska chapter of the National  
24 Society of Professional Engineers;

25 (3) two members shall be appointed by the governor from  
26 the general public, neither of whom may be an architect or an engineer  
27 or a land surveyor; the public members must possess, due to their  
28 education, experience, or vocation, an understanding of and sensitivity  
29 to project design or construction;

1 (4) one member must be a land surveyor appointed by the  
2 governor from names submitted by the Alaska chapter of the American  
3 Society of Professional Land Surveyors.

4 (c) The term of office of board members is two years. Initial  
5 appointments within each classification in (b)(1)--(3) of this section  
6 shall specify one-year and two-year terms so as to assure the stagger-  
7 ing of terms within each classification. If a vacancy occurs on the  
8 board, the governor shall appoint a person qualified under the appli-  
9 cable provision in (b) of this section to serve the unexpired term.

10 (d) No member of the board or of a firm or joint venture with  
11 which he is associated, or in which he has a financial interest, may  
12 be barred, because of his board membership, from contracting to serve  
13 as an architect, engineer, or land surveyor for a project or from  
14 otherwise participating as a consultant or employee on a project.

15 (e) No member of the board may vote on a grievance matter brought  
16 by or against him or by or against a firm or joint venture with which  
17 he is associated or in which he has a financial interest.

18 Sec. 35.30.020. ORGANIZATION AND MEETINGS OF BOARD. At the  
19 first meeting of the members of the board, the board shall elect a  
20 chairman. The board shall also elect other officers it considers  
21 necessary for the conduct of its affairs. It shall adopt rules  
22 governing its operations and the conduct of its meetings. The rules  
23 shall provide for the term of the chairman and other officers if any.  
24 The board shall meet at least once every six months. In addition, the  
25 board may take official action by mail votes or votes during confer-  
26 ence telephone calls on reasonable notice to all members. Four members  
27 constitute a quorum.

28 Sec. 35.30.030. DUTIES AND POWERS OF THE BOARD. The board shall

29 (1) adopt regulations under the Administrative Procedure

1 Act (AS 44.62) that it finds appropriate to supplement the procedure  
2 established by this chapter for architect, engineer, and land surveyor  
3 selection;

4 (2) review all selection procedures on a periodic basis;

5 (3) review any grievance related to the selection process  
6 and recommend appropriate action to the governor; the board's recom-  
7 mendations on grievances are public information;

8 (4) prepare an annual report on architect, engineer, and  
9 land surveyor selection and selection grievances.

10 Sec. 35.30.040. REQUIREMENTS FOR PROFESSIONAL SERVICES. (a)

11 Each agency shall make public on at least an annual basis its known  
12 present and future construction and planning programs, and its antici-  
13 pated requirements for professional services for at least the follow-  
14 ing 12-month period.

15 (b) When professional services are required for a specific  
16 project, the chief executive officer of the contracting agency shall  
17 submit a written notice to the board. The notice shall include a  
18 description of the proposed project, its location, the scope of  
19 services required, the proposed completion date, and a description of  
20 any special requirements or unique features of the proposed project.

21 Sec. 35.30.050. QUALIFICATION OF ARCHITECTURAL, ENGINEERING, AND

22 SURVEYING FIRMS; SELECTION COMMITTEES. (a) The Department of Public  
23 Works shall encourage firms engaged in the lawful practice of archi-  
24 tecture, engineering, or land surveying to submit at least annually a  
25 statement of qualifications. The department shall maintain an up-to-  
26 date listing of qualified firms and shall make it available to selec-  
27 tion committees formed under this section. The department shall  
28 maintain a complete file of all qualified firms who have submitted a  
29 statement within the previous two years.

1 (b) When an agency of the state expects to enter into a contract  
2 for architectural, engineering, or land surveying services, the chief  
3 executive officer of that contracting agency shall appoint two persons  
4 from that agency to a three-member selection committee. The chief  
5 executive officer of the user agency for the proposed project shall  
6 appoint a person from the user agency as the third member of the  
7 committee. If it is anticipated that there will be more than one user  
8 agency, then the third committee member shall be appointed by the  
9 commissioner of administration. Committee members appointed from the  
10 Department of Public Works must be employees in the classified service  
11 under AS 39.25. The members shall elect a chairman.

12 (c) The committee, upon its appointment, shall make a public  
13 announcement of the proposed project which includes a description of  
14 the proposed project, its location, the scope of service required, the  
15 proposed completion date, and a description of any special require-  
16 ments or unique features. The announcement shall invite firms to  
17 submit to the committee an application to perform services for the  
18 project which may include supplemental descriptions of their firms and  
19 statements of qualifications with supporting data as it relates to the  
20 proposed project.

21 (d) The committee shall examine all applications from interested  
22 firms and certify those firms qualified to perform the services for  
23 the project under consideration. Among the factors to be considered  
24 in making this finding are the capability, adequacy of personnel, past  
25 record, and experience of the firm.

26 (e) In evaluating the firms certified under (d) of this section,  
27 the committee shall apply the following criteria, along with other  
28 criteria established by administrative regulations of the department  
29 if any:

1 (1) specialized experience and design and technical compe-  
2 tence of the firm, including a joint venture or association, regarding  
3 the type of service required;

4 (2) capability of the firm to perform the work, including  
5 any specialized services, within the time limitations.

6 (3) past record of performance on contracts with government  
7 agencies and private industry with respect to such factors as control  
8 of costs, quality of work, and ability to meet schedules;

9 (4) proximity to and familiarity with the area in which the  
10 project is located; and

11 (5) the desirability of selecting the most highly qualified  
12 firm; however, the volume of work previously awarded to the firm by  
13 the state shall also be considered, with the object of effecting an  
14 equitable distribution of contracts among qualified firms and of  
15 assuring that the interest of the public in having available a sub-  
16 stantial number of qualified firms is protected.

17 (f) After making this review and technical evaluation, the  
18 committee shall hold discussions with not less than three of the most  
19 highly qualified firms regarding their capability and methods of  
20 approach for furnishing the required services. Professional compensa-  
21 tion may not be considered in these discussions.

22 (g) The committee shall prepare a public report for submission  
23 to the board, recommending, in order of highest qualification, no less  
24 than three firms that are considered most highly qualified to perform  
25 the required services. This report shall include a statement of the  
26 extent of the evaluation and review and the considerations upon which  
27 the recommendations were based. If the committee has found under (d)  
28 of this section that less than three firms are qualified to perform  
29 the services, it shall include in its report the reasons for qualifying

1 less than three. The report shall be made within 45 days after the  
2 committee is appointed.

3 Sec. 35.30.060. NEGOTIATIONS. (a) The contracting agency shall  
4 conduct negotiations on scope of work and professional compensation  
5 initially with the highest ranked firm. If a mutually satisfactory  
6 contract cannot be negotiated with that firm, the agency head shall  
7 formally terminate the negotiations and notify the firm. Negotiations  
8 then shall be initiated with the second-ranked firm and this procedure  
9 shall be continued until a mutually satisfactory contract has been  
10 negotiated. If negotiations fail with the listed firms, the names of  
11 additional firms shall be selected and ranked by the committee and  
12 negotiations shall continue in the manner described in this subsection.

13 (b) Upon successfully negotiating a contract with a firm, the  
14 agency shall promptly report to the board the results of its negotia-  
15 tions, with documentation of the factors affecting any unsuccessful  
16 negotiations with higher ranked firms.

17 Sec. 35.30.070. PUBLIC REPORTS. The board shall make a public  
18 announcement of the firm selected for each proposed project and shall  
19 provide prompt notification to each recommended firm. The board shall  
20 issue an annual report summarizing the projects processed during the  
21 year and the firms selected to design them. The annual report also  
22 shall list each grievance received, give the board's recommendation on  
23 the grievance, and state what action was taken in response to the  
24 board's recommendation.

25 Sec. 35.30.080. PROHIBITION AGAINST CONTINGENT FEES; MISDEMEANOR.  
26 (a) Each contract entered into by an agency for professional services  
27 shall contain a prohibition against contingent fees as follows: "The  
28 contractor providing professional services warrants that he has not  
29 employed or retained any person other than a bona fide employee work-

1 ing solely for the contractor to solicit or secure this agreement, and  
2 that he has not paid or agreed to pay any person, other than a bona  
3 fide employee working solely for the contractor, any fee, commission,  
4 percentage, gift, or any other consideration contingent upon or result-  
5 ing from the award or making of this agreement." For a violation of  
6 this provision, the agency may terminate the agreement without lia-  
7 bility and, in its discretion, may deduct from the contract price, or  
8 otherwise recover, the full amount of the fee, commission, percentage,  
9 gift or consideration.

10 (b) A public official or other person who offers, agrees, or  
11 contracts to solicit or secure a state agency contract for professional  
12 services for any other person for a fee, commission, percentage, gift  
13 or other consideration contingent upon or resulting from, the award or  
14 the making of a contract for professional services, is guilty of a  
15 misdemeanor.

16 (c) An architect, engineer, land surveyor, or other person who  
17 offers or pays or otherwise furnishes any consideration prohibited in  
18 (b) of this section is guilty of a misdemeanor.

19 Sec. 35.30.090. OFFICE, STAFF, AND RECORDS. The Department of  
20 Public Works shall provide the board a suitable place to hold meetings  
21 and keep records. The commissioner of public works shall designate  
22 an employee of the department to serve as executive secretary to the  
23 board. He shall devote the time necessary to promote the expeditious  
24 conduct of the board's duties and responsibilities.

25 Sec. 35.30.100. EXEMPTIONS. (a) The board may adopt regulations  
26 exempting contracts from requirements of this chapter where compensa-  
27 tion to be paid under the contract is less than a specified amount to  
28 be determined by the board.

29 (b) The board may, on a case-by-case basis, exempt emergency

1 projects from the selection process. A brief statement of the emer-  
2 gency that caused the exemption of any project shall be included in  
3 the board's annual report made under sec. 70 of this chapter.

4 Sec. 35.30.110. DEFINITIONS. In this chapter, unless the context  
5 requires otherwise

6 (1) "agency" means all officials, departments, and agencies  
7 of the state government, including the University of Alaska and the  
8 Alaska State Housing Authority;

9 (2) "architect, engineer, or land surveyor" means an archi-  
10 tect, engineer, or land surveyor registered to practice under AS  
11 08.48;

12 (3) "board" means the Architects, Engineers, and Land  
13 Surveyors Selection Review Board;

14 (4) "contracting agency" means the agency administering a  
15 contract for architectural, engineering, or land surveying services;

16 (5) "committee" means a selection committee established  
17 under sec. 50 of this chapter;

18 (6) "firm" means an architect, engineer, or land surveyor,  
19 or a partnership, association, or corporation comprised primarily of  
20 architects or engineers or land surveyors registered to practice under  
21 AS 08.48;

22 (7) "professional service" means architectural, engineer-  
23 ing, or land surveying service;

24 (8) "project" means a construction project using professional  
25 services associated with design and construction, alteration, or  
26 repair of real property, as well as services incidental to it, in-  
27 cluding but not limited to studies, investigations, surveys, evalua-  
28 tions, land appraisals, consultations, planning, programming, con-  
29 ceptual designs, plans and specifications, cost estimates, inspections,

1 shop drawing reviews, sample recommendations, preparation of operating  
2 and maintenance manuals, and other related service;

3 (9) "user agency" means the agency which will occupy or use  
4 the product of the professional service.

5 \* Sec. 2. Nothing in this Act affects the validity or effect of any  
6 contract in existence on January 1, 1977.

7 \* Sec. 3. AS 35.30.030(2), (3), and (4), 35.30.040, and 35.30.050--  
8 35.30.070, enacted in sec. 1 of this Act, take effect January 1, 1977. All  
9 other provisions of this Act take effect immediately in accordance with AS  
10 01.10.070(c).

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