

SHORT TITLE: Schools; modifying powers and duties of State Board of Education and district boards of education; authorizing hiring of teachers who are not certified; effective date; emergency.

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

SENATE BILL NO. 138

By: Wright of the Senate

and

Ferguson of the House

AS INTRODUCED

An Act relating to schools; amending 70 O.S. 1991, Sections 3-104, as last amended by Section 1, Chapter 378, O.S.L. 1994, 5-117, as last amended by Section 4, Chapter 362, O.S.L. 1994, and 6-101, as amended by Section 28, Chapter 239, O.S.L. 1993 (70 O.S. Supp. 1994, Sections 3-104, 5-117 and 6-101), which relate to the State Board of Education, district boards of education and teachers; modifying powers and duties of the State Board of Education; modifying powers of district boards of education; allowing for employment of noncertified teachers; removing certain penalty; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 70 O.S. 1991, Section 3-104, as last amended by Section 1, Chapter 378, O.S.L. 1994 (70 O.S. Supp. 1994, Section 3-104), is amended to read as follows:

Section 3-104. The control of the State Department of Education and the supervision of the public school system of Oklahoma shall be vested in the State Board of Education and, subject to limitations otherwise provided by law, the State Board of Education shall:

1. Establish and prescribe the duties of an executive officer who shall be the State Superintendent of Public Instruction and whose duties shall include the responsibility to give advice and make recommendations to the Board on all matters pertaining to the policies and administration of the State Department of Education and the public school system;

2. Adopt policies and make rules for the operation of the State Department of Education and the public school system of the state;

3. Organize and have control of the administrative and supervisory agencies, divisions, personnel and their appointment and salaries and other operations necessary to carry out the powers, duties and functions of the Board and its executive officer;

4. Have authority to require the coordination of all divisions of the State Department of Education through its executive officer, delegate general supervision of all employees to its executive officer, require all recommendations to be presented through its executive officer, require its executive officer to be responsible for interpretation of the Board's policy, require any employee of the Board to present any specific matter directly to the Board;

5. Appoint, prescribe the duties and fix the compensation of a secretary, an attorney and all other personnel necessary for the proper performance of the functions of the State Board of Education. The secretary shall not be a member of the Board;

6. Submit to the Governor a departmental budget based upon major functions of the Department supported by detailed data on needs and proposed operations as partially determined by the budgetary needs of local school districts filed with the State Board of Education for the ensuing fiscal year. Appropriations therefor shall be made in lump-sum form for each major item in the budget as follows:

a. state aid to schools,

- b. the supervision of all other functions of general and special education including general control, free textbooks, school lunch, Indian education and all other functions of the Board and an amount sufficient to adequately staff and administer these services, and
- c. the Board shall determine the details by which the budget and the appropriations are administered. Annually, the Board shall make preparations to consolidate all of the functions of the Department in such a way that the budget can be based on two items, administration and aid to schools. A maximum amount for administration shall be designated as a part of the total appropriation;

7. On the first day of December preceding each regular session of the Legislature, prepare and deliver to the Governor and the Legislature a report for the year ending June 30 immediately preceding said regular session of the Legislature. Said report shall contain:

- a. detailed statistical and other information concerning enrollment, attendance, expenditures including State Aid, and other pertinent data for all public schools in this state,
- b. reports from each and every division, department, institution or other agency under the supervision of the Board,
- c. recommendations for the improvement of the public school system of the state,
- d. a statement of the receipts and expenditures of the State Board of Education for the past year, and
- e. a statement of plans and recommendations for the management and improvement of public schools and such other information relating to the educational

interests of the state as may be deemed necessary and desirable;

8. Provide for the formulation and adoption of curricula, courses of study and other instructional aids necessary for the adequate instruction of pupils in the public schools;

9. ~~Have~~ Except as otherwise provided by Section 2 of this act, have full and exclusive authority in all matters pertaining to standards of qualifications and the certification of persons for instructional, supervisory and administrative positions and services in the public schools of the state, and shall formulate rules governing the issuance and revocation of certificates for superintendents of schools, principals, supervisors, librarians, clerical employees, school nurses, school bus drivers, visiting teachers, classroom teachers and for other personnel performing instructional, administrative and supervisory services, but not including members of boards of education and other employees who do not work directly with pupils, and may charge and collect reasonable fees for the issuance of such certificates. All funds collected by the State Department of Education for the issuance of certificates to instructional, supervisory and administrative personnel in the public schools of the state shall be deposited in the "Teachers' Certificate Fund" in the State Treasury and may be expended by the State Board of Education to reimburse the activities of the Educational Professional Standards Board for actual and necessary travel expenses as provided in the State Travel Reimbursement Act in attending meetings of the Board, its committees and subcommittees, for consultative services, publication costs, actual and necessary travel expenses as provided in the State Travel Reimbursement Act incurred by persons performing research work, and other expenses found necessary by the State Board of Education for the improvement of the preparation and certification of teachers in Oklahoma. Provided, that the requirements for a certificate for superintendent

of schools and principal shall include not less than a standard master's degree, such other professional education and requirements as may be fixed by the State Board of Education and a minimum of two (2) years' successful teaching, supervisory or administrative experience in public schools. Provided, further, that certificates may be revoked by the State Board of Education for willful violation of any rule of the State Board of Education or of any federal or state law or other proper cause but only after sufficient hearing has been given before the State Board of Education, provided that teaching in a Head Start program or programs shall be used for renewal of a standard teaching certificate;

10. Promulgate rules governing the classification, inspection, supervision and accrediting of all public nursery, kindergarten, elementary and secondary schools and on-site educational services provided by public school districts or state-accredited private schools in partial hospitalization programs, day treatment programs, and day hospital programs as defined in this act for persons between the ages of three (3) and twenty-one (21) years of age in the state. However, no school shall be denied accreditation solely on the basis of average daily attendance.

Any school district which maintains an elementary school and faces the necessity of relocating its school facilities because of construction of a lake, either by state or federal authority, which will inundate the school facilities, shall be entitled to receive probationary accreditation from the State Board of Education for a period of five (5) years after the effective date of this act and any school district, otherwise qualified, shall be entitled to receive probationary accreditation from the State Board of Education for a period of two (2) consecutive years to attain the minimum average daily attendance. The Head Start and public nurseries or kindergartens operated from Community Action Program funds shall not be subjected to the accrediting rules of the State Board of

Education. Neither will the State Board of Education make rules affecting the operation of the public nurseries and kindergartens operated from federal funds secured through Community Action Programs even though they may be operating in the public schools of the state. However, any of the Head Start or public nurseries or kindergartens operated under federal regulations may make application for accrediting from the State Board of Education but will be accredited only if application for the approval of the programs is made. The status of no school district shall be changed which will reduce it to a lower classification until due notice has been given to the proper authorities thereof and an opportunity given to correct the conditions which otherwise would be the cause of such reduction.

Private and parochial schools may be accredited and classified in like manner as public schools, if application is made to the State Board of Education for such accrediting. No private, parochial or other nonpublic school may be accredited unless the members of the faculty hold state certificates as required of teachers in public schools and unless the standards of said schools comply in every respect with those prescribed for public schools;

11. Be the legal agent of the State of Oklahoma to accept, in its discretion, the provisions of any Act of Congress appropriating or apportioning funds which are now, or may hereafter be, provided for use in connection with any phase of the system of public education in Oklahoma. It shall prescribe such rules as it finds necessary to provide for the proper distribution of such funds in accordance with the state and federal laws;

12. Be and is specifically hereby designated as the agency of this state to cooperate and deal with any officer, board or authority of the United States Government under any law of the United States which may require or recommend cooperation with any

state board having charge of the administration of public schools unless otherwise provided by law;

13. Be and is hereby designated as the "State Educational Agency" referred to in Public Law 396 of the 79th Congress of the United States, which law states that said act may be cited as the "National School Lunch Act", and said State Board of Education is hereby authorized and directed to accept the terms and provisions of ~~said~~ the act and to enter into such agreements, not in conflict with the Constitution of Oklahoma or the Constitution and Statutes of the United States, as may be necessary or appropriate to secure for the State of Oklahoma the benefits of the school lunch program established and referred to in ~~said~~ the act;

14. Have authority to secure and administer the benefits of the National School Lunch Act, Public Law 396 of the 79th Congress of the United States, in the State of Oklahoma and is hereby authorized to employ or appoint and fix the compensation of such additional officers or employees and to incur such expenses as may be necessary for the accomplishment of the above purpose, administer the distribution of any state funds appropriated by the Legislature required as federal matching to reimburse on children's meals;

15. Accept and provide for the administration of any land, money, buildings, gifts, donation or other things of value which may be offered or bequeathed to the schools under the supervision or control of ~~said~~ the Board;

16. Have authority to require persons having administrative control of all school districts in Oklahoma to make such regular and special reports regarding the activities of the schools in ~~said~~ the districts as the Board may deem needful for the proper exercise of its duties and functions. Such authority shall include the right of the State Board of Education to withhold all state funds under its control, to withhold official recognition, including accrediting, until such required reports have been filed and accepted in the

office of ~~said~~ the Board and to revoke the certificates of persons failing or refusing to make such reports;

17. Have general supervision of the school lunch program. The State Board of Education may sponsor workshops for personnel and participants in the school lunch program and may develop, print and distribute free of charge or sell any materials, books and bulletins to be used in ~~such~~ the school lunch programs. There is hereby created in the State Treasury a revolving fund for the Board, to be designated the School Lunch Workshop Revolving Fund. The fund shall consist of all fees derived from or on behalf of any participant in any such workshop sponsored by the State Board of Education, or from the sale of any materials, books and bulletins, and ~~such~~ the funds shall be disbursed for expenses of ~~such~~ the workshops and for developing, printing and distributing of ~~such~~ materials, books and bulletins relating to the school lunch program. The fund shall be administered in accordance with the Revolving Fund Procedures Act;

18. Prescribe all forms for school district and county officers to report to the State Board of Education where required. The State Board of Education shall also prescribe a list of appropriation accounts by which the funds of school districts shall be budgeted, accounted for and expended; and it shall be the duty of the State Auditor and Inspector in prescribing all budgeting, accounting and reporting forms for school funds to conform to such lists;

19. Provide for the establishment of a uniform system of pupil and personnel accounting, records and reports;

20. Have authority to provide for the health and safety of school children and school personnel while under the jurisdiction of school authorities;

21. Provide for the supervision of the transportation of pupils;

22. Have authority, upon request of the local school board, to act in behalf of the public schools of the state in the purchase of transportation equipment;

23. Have authority and is hereby required to perform all duties necessary to the administration of the public school system in Oklahoma as specified in the Oklahoma School Code; and, in addition thereto, those duties not specifically mentioned herein if not delegated by law to any other agency or official;

24. Administer the State Public Common School Building Equalization Fund established by Section 32 of Article X of the Oklahoma Constitution. Any royalties, bonuses, rentals or other monies derived from oil and gas and all other mineral leases on lands that have been or may be granted by the United States to the state for the use and benefit of the common schools, or lands that are or may be held by the Commissioners of the Land Office for the use and benefit of the common schools, the proceeds of the sale of easements, improvements and sand and gravel on any such lands, the proceeds of all property that shall fall to the state by escheat, penalties for unlawful holding of real estate by corporations, and capital gains on assets of the permanent school funds, shall be deposited in such State Public Common School Building Equalization Fund, which shall be used to aid school districts in acquiring buildings under rules prescribed by the State Board of Education, as the administering agency, subject to the limitations fixed by Section 32 of Article X of the Oklahoma Constitution. The State Board of Education shall prescribe rules for making grants of aid from, and for otherwise administering, such fund, and may employ and fix the duties and compensation of technicians, aides, clerks, stenographers, attorneys and other personnel deemed necessary to perform its duties; and the cost of administering such fund shall be paid from funds currently available for the operation of the State Department of Education. It shall be the duty of the State Board of

Education, the Commissioners of the Land Office and all other public agencies, officers and employees to observe and comply with the provisions of this paragraph, in all respects; and they shall not be held liable for any amount, penalty or punishment for having done so, unless and until they are directed to do otherwise by a court of competent jurisdiction;

25. Recognize that the Director of the Oklahoma Department of Corrections shall be the administrative authority for the schools which are maintained in the state reformatories and shall appoint the principals and teachers in such schools. Provided, that rules of the State Board of Education for the classification, inspection and accreditation of public schools shall be applicable to such schools; and such schools shall comply with standards set by the State Board of Education;

26. Have authority to administer a revolving fund which is hereby created in the State Treasury, to be designated the Statistical Services Revolving Fund. The fund shall consist of all monies received from the various school districts of the state, the United States Government, and other sources for the purpose of furnishing or financing statistical services and for any other purpose as designated by the Legislature. The State Board of Education is hereby authorized to enter into agreements with school districts, municipalities, the United States Government, foundations and other agencies or individuals for services, programs or research projects. The Statistical Services Revolving Fund shall be administered in accordance with the Revolving Fund Procedures Act, Section 155 et seq. of Title 62 of the Oklahoma Statutes; and

27. Have authority to review preliminary plans for new construction and major alteration of public school buildings where structural changes are proposed. No bids shall be let for the construction or major alteration of any public school building until preliminary plans and specifications for such construction or

alteration have been submitted to and reviewed by the State Department of Education. The period of time during which such review is conducted by the State Department of Education shall not exceed thirty (30) days. The State Department of Education shall advise each local school district regarding said review of preliminary plans and specifications. Provided, nothing in this subsection shall be construed as repealing any ordinance or building code of any city, town or county.

SECTION 2. AMENDATORY 70 O.S. 1991, Section 5-117, as last amended by Section 4, Chapter 362, O.S.L. 1994 (70 O.S. Supp. 1994, Section 5-117), is amended to read as follows:

Section 5-117. A. The board of education of each school district shall have power to:

1. Elect its own officers;
2. Make rules, not inconsistent with the law or rules of the State Board of Education, governing the board and the school system of the district;
3. Maintain and operate a complete public school system of such character as the board of education shall deem best suited to the needs of the school district;
4. Designate the schools to be attended by the children of the district;
5. Provide and operate, when deemed advisable, cafeterias or other eating accommodations, thrift banks or other facilities for the teaching and practice of thrift and economy, bookstores, print shops, and vocational and other shops;
6. Provide informational material concerning school bond elections and millage elections, including but not limited to all pertinent financial information relative to the bond issue, a statement of revenue sources necessary to retire proposed bonds, a statement of current bonded indebtedness of the school district, and a statement of proposed use of funds to be generated by the proposed

bond issue. The informational material shall not contain the words "vote yes" or "vote no" or any similar words or statement any place on such informational material;

7. Purchase, construct or rent, and operate and maintain, classrooms, libraries, auditoriums, gymnasiums, stadiums, recreation places and playgrounds, teacherages, school bus garages, laboratories, administration buildings, and other schoolhouses and school buildings, and acquire sites and equipment therefor;

8. Have school district property insured;

9. Acquire property by condemnation proceedings in the same manner as land is condemned for railroad purposes. School district funds may be used to erect buildings on leased land on which other buildings have been erected prior to April 3, 1969, or on land which is leased from a governmental entity;

10. Lease real or personal property to the state or any political subdivision thereof for nominal cash consideration for so long as the use of the property by the lessee substantially benefits, in whole or in part, the same public served by the school district;

11. Dispose of personal or real property no longer needed by the district by sale, exchange, lease, lease-purchase, sale and partial lease back, or otherwise. Real property shall be conveyed pursuant to a public sale, public bid, or private sale, provided however, unless otherwise prohibited by law, the board of education of a consolidated or annexed school district may convey real property to a local political subdivision without consideration. Prior to the sale of any real property, the board of education shall have the real property appraised. The appraisal shall be confidential until the real property is sold. When the real property is sold the board of education shall make the appraisal available for public inspection. Prior to the conveyance of any real property by private sale, the board of education shall have

offered the real property for sale by public sale or public bid. Any conveyance of real property by private sale to a nonprofit organization, association, or corporation to be used for public purposes, unless for exchange, shall contain a reversionary clause which returns the real property to the board of education upon the cessation of the use without profit or for public purposes by the purchaser or the assigns of the purchaser;

12. Purchase necessary property, equipment, furniture, and supplies necessary to maintain and operate an adequate school system;

13. Incur all expenses, within the limitations provided for by law, necessary to perform all powers granted by the provisions of this section;

14. Contract with and fix the duties and compensation of physicians, dentists, optometrists, nurses, attorneys, superintendents, principals, teachers, bus drivers, janitors, and other necessary employees of the district and pay their necessary itemized and documented travel expenses, and pay necessary itemized and documented travel expenses of members of the board of education;

15. Pay necessary itemized and documented travel expenses and other related expenses of prospective employees for sponsored visits to the school district;

16. Provide for employees' leaves of absence without pay;

17. Exercise sole control over all the schools and property of the district, subject to other provisions of the Oklahoma School Code;

18. Allow district-owned school buses to be used for transportation of students from other districts or educational institutions while within the district on educational tours. This shall not restrict the authority of the board to authorize any other use of such buses which may now be permitted by law or rule of the State Board of Education; ~~and~~

19. Enter into contractual agreements with the board of trustees of a multicounty library system, as defined in Section 4-103 of Title 65 of the Oklahoma Statutes, or a city-county library commission, as defined in Section 152 of Title 65 of the Oklahoma Statutes, on such terms as may be mutually agreed, except no district board of education may enter into any agreement under which the library services for the school would be provided at any site other than the school site or which would result in library services that do not meet accreditation standards as required by law or rule; and

20. Enter into a written contract and authorize payment of the salary of a teacher who does not hold a valid certificate issued or recognized by the State Board of Education authorizing said teacher to teach the grades or subject matter for which the teacher is employed. School districts which contract with noncertified teachers shall not be penalized or have accreditation denied or withdrawn.

B. The board of education of any school district may rent, on a monthly basis, equipment and furniture, if such items are necessary for the operation of the school, and pay the rental charges for ~~said~~ the usage during any fiscal year, or portion thereof, out of appropriations made and approved for current expense purposes during ~~said~~ the fiscal year. Any ~~such~~ rental contract extending beyond June 30 of ~~such~~ the fiscal year shall be void unless it contains provisions for mutual ratification of renewal pursuant to the conditions provided for in this subsection. It is the intent of this subsection to authorize boards of education to enter into lease contracts but not to incur any obligation against the school district in excess of the income and revenue provided for such purposes for the fiscal year in which ~~such~~ the lease contract is operative. Any lease agreement entered into by any board of education shall state the purchase price of equipment or furniture

so leased. The lease shall not be extended so as to cause payment of more than the original purchase price of ~~said~~ the equipment or furniture, plus interest not to exceed the legal rate. When ~~said~~ the purchase price plus interest has been paid, the property shall belong to the lessee and the lessor shall deliver a deed or bill of sale to ~~said~~ the property to the lessee. When any equipment or furniture has been leased or rented during any fiscal year pursuant to the provisions of any contract which permits continuance of ~~such~~ the rental for the remainder of ~~such~~ the fiscal year, the renting or leasing thereof must be continued for the remainder of ~~said~~ the fiscal year unless the board of education renting or leasing the same certifies by proper resolution entered in the minutes of ~~said~~ the board of education that the continuance of ~~such~~ the rental is unnecessary and contrary to the public interest.

C. The boards of education of two or more school districts may enter into cooperative agreements and maintain joint programs including but not limited to, courses of instruction for handicapped children, courses of instruction in music and other subjects, practical instruction for trades and vocations, practical instruction in driver training courses, and health programs including visual care by persons legally licensed for such purpose, without favoritism as to either profession. The revenues necessary to operate a joint program approved in cooperative agreements, whether from federal, state or local sources, including the individual contributions of participating school districts, shall be deposited into a fund separate from all other appropriated funds. The beginning fund balance each year, combined with all actual revenues, including collected and estimated revenues, must be appropriated before being expended. Purchase orders shall be issued against available appropriations and, once goods or services have been received, either payable or nonpayable warrants shall be issued in payment of all purchase orders. The fund shall be reported as a

separate appropriated fund in all the financial reports of the school district which is chosen by the other school districts to keep the accounting records of the joint program.

D. Any school district may operate or maintain a school or schools on any military reservation which is within the boundaries of the school district or which is adjacent to the school district, and provide the instruction in the school or schools to children of personnel on the military reservation and, in doing so, shall conform to all federal laws and requirements.

E. The board of education of each school district shall adopt and maintain on file in the office of the superintendent of schools appropriate personnel policy and sick leave guide. The guide shall be made available to the public.

SECTION 3. AMENDATORY 70 O.S. 1991, Section 6-101, as amended by Section 28, Chapter 239, O.S.L. 1993 (70 O.S. Supp. 1994, Section 6-101), is amended to read as follows:

Section 6-101. A. Except as provided in subsection ~~E~~ D of this section, no person shall be permitted to teach in any school district of the state without a written contract, except as provided herein for substitute teachers and except teachers of classes in adult education. The board of education of each school district, wherein school is expected to be conducted for the ensuing year, shall employ and contract in writing with qualified teachers for and in the name of the district. One copy of the contract shall be filed with the clerk of the board of education and one copy shall be retained by the teacher.

B. ~~Except as otherwise provided by law, no board of education shall have authority to enter into any written contract with a teacher who does not hold a valid certificate issued or recognized by the State Board of Education authorizing said teacher to teach the grades or subject matter for which the teacher is employed. Any board of education paying or authorizing the payment of the salary~~

~~of any teacher not holding a certificate, as required herein, shall be adjudged to be guilty of a fraudulent expenditure of public funds and members voting for such payment shall be held jointly responsible for the return of the amount of any public monies thus expended, upon suit brought by the district attorney or by any interested citizen in the district where such funds have been expended.~~

~~C.~~ It shall be the duty of the superintendent of schools under whose supervision teachers have been contracted to teach to certify to the treasurer of the contracting district the names of the teachers holding valid certificates with whom contracts have been made and the names of substitute teachers employed in accordance with law. ~~Said~~ The treasurer shall not register any warrant issued in payment of salary to any teacher whose name is not included in such list and shall be liable on ~~his~~ the treasurer's official bond for the amount of any warrant registered in violation of the provisions of this section.

~~D.~~ C. Whenever any person shall enter into a contract with any school district in Oklahoma to teach in ~~such~~ the school district the contract shall be binding on the teacher and on the board of education until the teacher legally has been discharged from ~~his~~ the teaching position or released by the board of education from ~~his~~ the teacher's contract. Until such teacher has been thus discharged or released, the teacher shall not have authority to enter into a contract with any other board of education in Oklahoma for the same time covered by ~~his~~ the teacher's original contract. If upon written complaint by the board of education in a district any teacher is reported to have failed to obey the terms of the contract previously made and to have entered into a contract with another board of education without having been released from the former contract, the teacher, upon being found guilty of ~~said~~ the charge at a hearing held before the State Board of Education, shall have such

teacher's certificate suspended for the remainder of the term for which ~~said~~ the contract was made.

~~E.~~ D. A board of education shall have authority to enter into written contracts with teachers for the ensuing fiscal year prior to the beginning of such year. If, prior to April 10, a board of education has not entered into a written contract with a regularly employed teacher or notified the teacher in writing by registered or certified mail that a recommendation has been made not to reemploy the teacher for the ensuing fiscal year, and if, by April 25, such teacher has not notified the board of education in writing by registered or certified mail that such teacher does not desire to be reemployed in such school district for the ensuing year, such teacher shall be considered as employed on a continuing contract basis and on the same salary schedule used for other teachers in the school district for the ensuing fiscal year, and such employment and continuing contract shall be binding on the teacher and on the school district.

~~F.~~ E. No school district or any member of the board of education of a district shall be liable for the payment of compensation to a teacher or administrator under the provisions of any contract for the ensuing year, if it becomes necessary to close the school because of insufficient attendance, disorganization, annexation, consolidation, or by dispensing with the school according to law, provided, such cause is known or action is taken prior to July 1 of such ensuing year.

~~G.~~ F. No school district or any member of a board of education shall be liable for the payment of compensation to any teacher or administrator for the unexpired term of any contract if the school building to which the teacher or administrator has been assigned is destroyed by accident, storm, fire, or otherwise and it becomes necessary to close the school because of inability to secure a suitable building or buildings for continuation of school. Teachers

and administrators shall be entitled to pay for any time lost when school is closed on account of epidemics or otherwise when an order for such closing has been issued by a health officer authorized by law to issue the order.

SECTION 4. This act shall become effective July 1, 1995.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

45-1-0246

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