STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 1385

By: Ferguson, Hilliard and Tyler of the House

and

Milacek of the Senate

COMMITTEE SUBSTITUTE

A Joint Resolution relating to revenue and taxation; ordering a legislative referendum pursuant to the Oklahoma Constitution; amending 68 O.S. 2001, Sections 500.4, 500.6, as amended by Section 4, Chapter 458, O.S.L. 2002, 500.7 and 603 (68 O.S. Supp. 2002, Section 500.6), which relate to motor fuel taxes; stating intent; providing for noncodification; increasing rate of taxation on gasoline and diesel fuel; specifying amount of increase; providing for apportionment of revenues; deleting obsolete language; providing for noncodification; providing an effective date; providing ballot title; and directing filing.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE 1ST SESSION OF THE 49TH OKLAHOMA LEGISLATURE:

SECTION 1. Pursuant to Section 3 of Article V of the Oklahoma Constitution, there is hereby ordered the following legislative referendum which shall be filed with the Secretary of State and addressed to the Governor of the state, who shall submit the same to the people for their approval or rejection at the next statewide general election.

SECTION 2. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

It is the intent of the people of the State of Oklahoma, through passage of this legislative referendum, to increase gasoline and diesel fuel taxes with the express purpose of providing additional

funds for transportation. It is the further intent of the people of the State of Oklahoma that the amount of state funding for transportation from sources other than the increased gasoline and diesel fuel tax revenues as provided herein be maintained or increased, and that such additional revenues shall not be used as a substitute or replacement for other sources of state funding.

SECTION 3. AMENDATORY 68 O.S. 2001, Section 500.4, is amended to read as follows:

Section 500.4 A. A tax is imposed on all gasoline and all diesel fuel used or consumed in this state as follows:

1. Gasoline:

   a. from the effective date of this act through June 30, 2005, eighteen cents ($0.18) per gallon,

   b. from July 1, 2005, through June 30, 2006, twenty cents ($0.20) per gallon,

   c. from July 1, 2006, through June 30, 2030, twenty-one cents ($0.21) per gallon, and

   d. beginning July 1, 2030, sixteen cents ($0.16) per gallon; and

2. Diesel fuel:

   a. from the effective date of this act through June 30, 2005, fifteen cents ($0.15) per gallon,

   b. from July 1, 2005, through June 30, 2006, seventeen cents ($0.17) per gallon,

   c. from July 1, 2006, through June 30, 2007, nineteen cents ($0.19) per gallon,

   d. from July 1, 2007, through June 30, 2030, twenty-one cents ($0.21) per gallon, and

   e. beginning July 1, 2030, thirteen cents ($0.13) per gallon.

B. A tax is imposed on all gasoline, diesel fuel and kerosene used or consumed in this state for use as fuel to generate power in

aircraft engines or for training, testing or research on aircraft engines in the amount of eight one-hundredths of one cent ($0.0008) per gallon. All gasoline, diesel fuel and kerosene sold for use under this subsection shall not be subject to the excise tax levied in subsection A of this section.

C. Notwithstanding any exemption provided in Section 500.1 et seq. of this title, all gasoline used or consumed in this state for use as fuel for farm tractors or stationary engines and used exclusively for agricultural purposes shall be subject to a tax in the amount of two and eight one-hundredths cents ($0.0208) per gallon. All gasoline sold for use pursuant to this subsection shall not be subject to the excise tax levied in subsection A of this section. The term "farm tractor", as used herein, shall include all tractor-type, motorized farm implements and equipment but shall not include motor vehicles of the truck-type, pickup truck-type, automobiles and other motor vehicles required to be registered and licensed each year under the Oklahoma Vehicle License and Registration Act.

D. It is the intent of this section to amend, revise, incorporate and recodify the tax imposed on motor fuel and that the tax shall be conclusively presumed to be a direct tax and shall be a direct tax on the retail or ultimate consumer precollected for the purpose of convenience and facility to the consumer. The levy and assessment on other persons as specified in ~~this act~~ the Motor Fuel Tax Code shall be as agents of the state for the precollection of the tax. The provisions of this section shall in no way affect the method of collecting the tax as provided in ~~this act~~ the Motor Fuel Tax Code. The tax imposed by this section shall be collected and paid at those times, in the manner, and by those persons specified in ~~this act~~ the Motor Fuel Tax Code.

SECTION 4. AMENDATORY 68 O.S. 2001, Section 500.6, as amended by Section 4, Chapter 458, O.S.L. 2002 (68 O.S. Supp. 2002, Section 500.6), is amended to read as follows:

Section 500.6 A. ~~The~~ Sixteen cents ($0.16) per gallon of gasoline of the tax ~~of sixteen cents ($0.16) per gallon of gasoline~~ that is levied by paragraph 1 of subsection A of Section 500.4 of this title, and the tax of two and eight one-hundredths cents ($0.0208) per gallon of gasoline that is levied by subsection C of Section 500.4 of this title, and penalties and interest thereon, collected by the Oklahoma Tax Commission under the levy shall be apportioned and distributed monthly as follows:

1. The first Two Hundred Fifty Thousand Dollars ($250,000.00) of the levy collected each month shall be deposited in the State Treasury to the credit of the State Transportation Fund;

2. One and six hundred twenty-five one-thousandths percent (1.625%) of the levy shall be remitted to the State Treasurer to the credit of the General Revenue Fund of the State Treasury;

3. Sixty-three and seventy-five one-hundredths percent (63.75%) of the levy shall be deposited in the State Treasury to the credit of the State Transportation Fund to be apportioned as follows:

a. the first Eight Hundred Fifty Thousand Dollars ($850,000.00) collected each fiscal year shall be deposited into the Public Transit Revolving Fund, created in Section 4031 of Title 69 of the Oklahoma Statutes,

b. the second Eight Hundred Fifty Thousand Dollars ($850,000.00) collected each fiscal year shall be deposited into the Oklahoma Tourism and Passenger Rail Revolving Fund and shall be used by the Department of Transportation:

(1) to contract railroad passenger services, including but not limited to a route linking

stations in Oklahoma and Tulsa Counties with other primary points in the national railroad passenger system and passenger rail service within the state, and a route beginning at a station in Oklahoma County and extending north to the Kansas state line in Kay County, and

(2) to provide necessary facility, signaling, and track improvements for those contracted services,

c. forty-one and two-tenths percent (41.2%) of the monies apportioned to the State Transportation Fund shall be used for any purpose provided for in Section 1502 of Title 69 of the Oklahoma Statutes,

d. nine and eight-tenths percent (9.8%) of the monies apportioned to the State Transportation Fund shall be used to provide funds for the construction and maintenance of farm-to-market roads on the state highway system, and other rural farm-to-market roads and bridges, and

e. any remaining amount of the apportionment shall be deposited into the State Transportation Fund;

4. Twenty-seven percent (27%) of the levy shall be transmitted by the Tax Commission to the various counties of the state, to be apportioned and used as follows:

a. sixty-five and three-tenths percent (65.3%) of the monies apportioned under this paragraph shall be used on the following basis:

(1) forty percent (40%) of such sum shall be distributed to the various counties in the proportion which the county road mileage of each county bears to the entire state road mileage as certified by the Transportation Commission, and

(2) the remaining sixty percent (60%) of such sum shall be distributed to the various counties on the basis which the population and area of each county bears to the total population and area of the state. The population shall be as shown by the last Federal Decennial Census or the most recent annual estimate provided by the U.S. Bureau of the Census,

b. twenty-three and one-tenth percent (23.1%) of the monies apportioned under this paragraph shall be distributed to the counties in the following manner: One-third (1/3) on area; one-third (1/3) on rural population, defined as including the population of all municipalities with a population of less than five thousand (5,000) according to the latest Federal Decennial Census; and one-third (1/3) on county road mileage, as last certified by the Department of Transportation, as each county bears to the entire area, rural population and road mileage of the state, and

c. eleven and six-tenths percent (11.6%) of the monies apportioned under this paragraph shall be distributed to the various counties of the state based on a formula developed by the Department of Transportation and approved by the Department of Transportation County Advisory Board created pursuant to Section 302.1 of Title 69 of the Oklahoma Statutes. The formula shall be similar to the formula currently used for the distribution of monies in the County Bridge Program funds, but shall also take into consideration the effect of the terrain and traffic volume as related to county road improvement and maintenance

costs. Any county may, by resolution of the board of county commissioners, direct the Tax Commission to deposit the funds apportioned pursuant to this subparagraph directly into the County Bridge and Road Improvement Fund to be used for the purposes set forth in the County Bridge and Road Improvement Act;

5. Three and one hundred twenty-five one-thousandths percent (3.125%) of the levy shall be distributed to the various counties of the state based on a formula developed by the Department of Transportation and approved by the Department of Transportation County Advisory Board created pursuant to Section 302.1 of Title 69 of the Oklahoma Statutes. The formula shall be similar to the formula currently used for the distribution of monies in the County Bridge Program funds, but shall also take into consideration the effect of the terrain and traffic volume as related to county road improvement and maintenance costs. Any county may, by resolution approved by a majority of the board of county commissioners and filed with the Tax Commission, direct the Tax Commission to deposit the funds apportioned pursuant to this paragraph directly into the County Bridge and Road Improvement Fund to be used for the purposes set forth in the County Bridge and Road Improvement Act;

6. Two and six hundred twenty-five one-thousandths percent (2.625%) of the levy shall be deposited in the County Bridge and Road Improvement Fund of the State Treasury to be used for the purposes set forth in the County Bridge and Road Improvement Act; and

7. One and eight hundred seventy-five one-thousandths percent (1.875%) of the levy shall be transmitted by the Tax Commission to the treasurers of the various incorporated cities and towns of the state in the percentage which the population, as shown by the last Federal Decennial Census or the most recent annual estimate provided by the U.S. Bureau of the Census, bears to the total population of

all the incorporated cities and towns in this state. The funds shall be expended for the construction, repair and maintenance of the streets and alleys of the incorporated cities and towns of this state.

Provided, for the fiscal year beginning July 1, 2002, the first Two Hundred Thousand Dollars ($200,000.00) of such revenues shall be apportioned to the Education Reform Revolving Fund.

B. The amount of the tax that is levied by paragraph 1 of subsection A of Section 500.4 of this title in excess of sixteen cents ($0.16) per gallon of gasoline, and penalties and interest thereon, collected by the Tax Commission under the levy shall be apportioned and distributed monthly as follows:

1. Twenty percent (20%) of the levy shall be divided into three equal parts, as follows:

a. one part to be deposited into the Oklahoma Aeronautics Commission Revolving Fund created in Section 91 of Title 3 of the Oklahoma Statutes,

b. one part to be deposited into the Public Transit Revolving Fund created in Section 4031 of Title 69 of the Oklahoma Statutes, and

c. one part to be deposited into the Oklahoma Tourism and Passenger Rail Revolving Fund and shall be used by the Department of Transportation for the purposes set forth in subparagraph b of paragraph 3 of subsection A of this section;

2. Twenty percent (20%) of the levy shall be divided into three equal parts, as follows:

a. one part to be transmitted by the Tax Commission to the various counties of the state in the manner prescribed in paragraph 4 of subsection A of this section,

b. one part to be transmitted by the Tax Commission to the treasurers of the various incorporated cities and towns of the state in the manner prescribed in paragraph 7 of subsection A of this section, and

c. one part shall be divided equally as follows:

(1) one-half (1/2) shall be deposited to the Oklahoma Railroad Maintenance Revolving Fund to be used exclusively for highway railroad grade separation projects, relocation of rail sidings and other public benefit projects, and

(2) one-half (1/2) shall be deposited to the State Highway Construction and Maintenance Fund to be used exclusively for the construction and maintenance of roads, highways, bridges and rail access located within ten (10) miles of a port providing access to the McClellan-Kerr Arkansas River Navigation System and which provide direct access to such port. Any road accepted by the Federal Highway Administration as a National Highway System connector route to an intermodal port shall be eligible for funding pursuant to the provisions of this division. The Oklahoma Waterways Advisory Board shall make recommendations to the State Department of Transportation for projects to be approved for funding pursuant to the provisions of this division; and

3. Sixty percent (60%) of the levy shall be deposited into the State Highway Construction and Maintenance Fund.

C. 1. The funds apportioned or transmitted pursuant to subparagraphs a, b, and c of paragraph 4 of subsection A of this section, subparagraph a of paragraph 2 of subsection B of this

section, subsection ~~B~~ C of Section 500.7 of this title, subsection B of Section 704 of this title, Section 706 of this title, and paragraph 2 of subsection D of Section 707.3 of this title shall be sent to the respective county treasurers and deposited in the county highway fund to be used by the county commissioners for the purpose of constructing and maintaining county highways and bridges.

2. The funds received by any county shall not be diverted to any other county of the state, and shall only be expended under the direction and control of the board of county commissioners in the county to which the funds are appropriated. If any part of the funds is diverted for any other purpose, the county commissioners shall be liable on their bond for double the amount of the money so diverted. This paragraph shall not prohibit counties from entering into cooperative agreements pertaining to the maintenance and construction of roads and bridges.

3. Where any county highway has been laid out over a road already constructed in any county by the use of money raised from county bond issues for that purpose, either alone or by the use of federal or state aid, or both, the county commissioners may set aside out of the funds apportioned to that county, as provided in this section, an amount of money equal to the value of any part thereof, of the interest of such county in such highway or bridge, which amount of money shall be considered by the excise board in reducing the levy for the purpose of retiring the bonded indebtedness and interest thereon of the county, and shall be used for investment or deposit in the same manner as provided by law for the disposition of other sinking fund money.

4. In all counties where the county excise board may find it necessary, because of insufficient revenue, to maintain county government out of the general fund, after a levy of ten (10) mills has been made for any fiscal year, the county excise board may appropriate out of any such funds apportioned to the county an

amount sufficient to pay the salaries of the county commissioners of the county for the fiscal year.

5. Counties may use funds deposited in the county highway fund for the purpose of matching federal or state funds, provided such funds are available, as necessary to secure assistance in the construction or improvement of the county road system.

~~C.~~ D. With ~~regards~~ regard to the apportionment of the levy as set forth in paragraph 5 of subsection A of this section, paragraph 5 of subsection A of Section 500.7 of this title, and subsection C of Section 707.2 of this title:

1. If any county has an accrued balance of funds which were appropriated to or otherwise accrued in a restricted road maintenance fund, such funds shall be deposited directly to the county highway fund of the county;

2. If any county has an accrued balance of funds which were appropriated to or otherwise accrued in the County Road Improvement Fund, or the County Bridge Improvement Fund, as such funds existed prior to July 1, 1997, such funds shall, by resolution approved by a majority of the board of county commissioners and filed with the Department of Transportation, be deposited in the county highway fund of the county or shall be deposited to the County Bridge and Road Improvement Fund to be used for the purposes set forth in the County Bridge and Road Improvement Act; and

3. If any county has an advanced funding agreement with the Department of Transportation, the Department of Transportation shall notify the Tax Commission as to the amount the county is obligated to pay according to the terms of the advanced funding agreement. The obligated amount shall be transferred each month by the Tax Commission to the Department of Transportation to the credit of the County Bridge and Road Improvement Fund from the funds apportioned to the county pursuant to paragraph 5 of subsection A of this section. A county may elect to increase the monthly amount to be

repaid pursuant to the advanced funding agreement from the funds apportioned to the county, but a county shall not be permitted to reduce the amount agreed to pursuant to the advanced funding agreement.

~~D.~~ E. The tax levied on gasoline pursuant to Section 500.4A of this title, and the penalties and interest thereon, collected by the Tax Commission under the levy shall be apportioned and distributed on a monthly basis to the State Highway Construction and Maintenance Fund for the purposes authorized by Section 1502 of Title 69 of the Oklahoma Statutes.

SECTION 5. AMENDATORY 68 O.S. 2001, Section 500.7, is amended to read as follows:

Section 500.7 A. ~~The~~ Thirteen cents ($0.13) per gallon of diesel fuel of the tax ~~of thirteen cents ($0.13) per gallon of diesel fuel~~ that is levied by paragraph 2 of subsection A of Section 500.4 of this title, and all penalties and interest thereon, collected by the Oklahoma Tax Commission under the levy shall be apportioned and distributed monthly as follows:

1. The first Eighty-three Thousand Three Hundred Thirty-three Dollars and thirty-three cents ($83,333.33) of the levy collected each month shall be deposited in the State Treasury to the credit of the State Transportation Fund;

2. One and thirty-nine one-hundredths percent (1.39%) of the levy shall be paid by the Tax Commission to the State Treasurer to the credit of the General Revenue Fund of the State Treasury;

3. Sixty-four and thirty-four one-hundredths percent (64.34%) of the levy shall be deposited in the State Treasury to the credit of the State Transportation Fund;

4. Twenty-six and fifty-eight one-hundredths percent (26.58%) of the levy shall be transmitted by the Tax Commission to various counties of the state, to be apportioned as follows:

a. forty-two and one-tenth percent (42.1%) of the monies apportioned under this paragraph shall be transmitted to the various counties in the percentage which the population and area of each county bears to the population and area of the entire state. The population shall be as shown by the last Federal Decennial Census or the most recent annual estimate provided by the U.S. Bureau of the Census,

b. fourteen and five-tenths percent (14.5%) of the monies apportioned under this paragraph shall be distributed as follows:

Forty percent (40%) of such sum shall be distributed to the various counties in that proportion which the county road mileage of each county bears to the entire state road mileage as certified by the Transportation Commission, and the remaining sixty percent (60%) of such sum shall be distributed to the various counties on the basis which the population and area of each county bears to the total population and area of the state. The population shall be as shown by the last Federal Decennial Census or the most recent annual estimate provided by the U.S. Bureau of the Census,

c. twenty-eight and nine-tenths percent (28.9%) of the monies apportioned under this paragraph shall be distributed to the several counties in the following manner: one-third (1/3) on area, one-third (1/3) on rural population (defined as including the population of all municipalities with a population of less than five thousand (5,000) according to the latest Federal Decennial Census), and one-third (1/3) on county road mileage, as last certified by the Oklahoma Department of Transportation, as each county bears to the entire

area, rural population and road mileage of the state, and

d. fourteen and five-tenths percent (14.5%) of the monies apportioned under this paragraph shall be distributed to the various counties of the state based on a formula developed by the Oklahoma Department of Transportation and approved by the Department of Transportation County Advisory Board created pursuant to Section 302.1 of Title 69 of the Oklahoma Statutes. The formula shall be similar to the formula currently used for the distribution of the County Bridge Program funds, but shall also take into consideration the effect of the terrain and traffic volume as related to the county road improvement and maintenance costs. Any county may, by resolution approved by a majority of the board of county commissioners and filed with the ~~Oklahoma~~ Tax Commission, direct the ~~Oklahoma~~ Tax Commission to deposit the funds so apportioned by this subparagraph directly into the County Bridge and Road Improvement Fund to be used for the purposes set forth in the County Bridge and Road Improvement Act;

5. Three and eighty-five one-hundredths percent (3.85%) of the levy shall be distributed based on a formula developed by the Oklahoma Department of Transportation and approved by the Department of Transportation County Advisory Board created pursuant to Section 302.1 of Title 69 of the Oklahoma Statutes. The formula shall be similar to the formula currently used for the distribution of the County Bridge Program funds, but shall also take into consideration the effect of the terrain and traffic volume as related to the county road improvement and maintenance costs. Any county may, by resolution approved by a majority of the board of county commissioners and filed with the ~~Oklahoma~~ Tax Commission, direct the

~~Oklahoma~~ Tax Commission to deposit the funds so apportioned by this paragraph directly into the County Bridge and Road Improvement Fund to be used for the purposes set forth in the County Bridge and Road Improvement Act. The apportionment of the levy as set forth in this paragraph shall be subject to the provisions of subsection ~~C~~ D of Section 500.6 of this title; and

6. Three and eighty-four one-hundredths percent (3.84%) of the levy shall be deposited in the County Bridge and Road Improvement Fund of the State Treasury to be used for the purposes set forth in the County Bridge and Road Improvement Act.

B. The amount of the tax that is levied by paragraph 2 of subsection A of Section 500.4 of this title in excess of thirteen cents ($0.13) per gallon of diesel fuel, and penalties and interest thereon, collected by the Tax Commission under the levy shall be apportioned and distributed monthly as follows:

1. Twenty-five percent (25%) shall be deposited into the State Highway Construction and Maintenance Fund to be used exclusively for maintenance of highways that are part of the interstate highway system as specified by federal law; and

2. Seventy-five percent (75%) of the levy shall be deposited into the State Highway Construction and Maintenance Fund.

C. The funds apportioned or transmitted pursuant to the provisions of subparagraphs a, b, and c of paragraph 4 of subsection A of this section shall be used in accordance with and subject to the provisions of subsection ~~B~~ C of Section 500.6 of this title.

~~C.~~ D. The tax levied on diesel fuel pursuant to Section 500.4A of this title, and all penalties and interest thereon, collected by the Tax Commission under the levy shall be apportioned and distributed on a monthly basis to the State Highway Construction and Maintenance Fund for the purposes authorized by Section 1502 of Title 69 of the Oklahoma Statutes.

SECTION 6. AMENDATORY 68 O.S. 2001, Section 603, is amended to read as follows:

Section 603. A. In consideration of the use of the highways of this state, and in addition to all other taxes levied for such purposes, all persons who import gasoline and diesel fuel into this state in the fuel supply tank or tanks of motor vehicles or in any other containers for use in propelling such vehicles on the highways for commercial purposes, shall report and pay to the Oklahoma Tax Commission a tax for such use of the highways as provided in this section. The tax shall be levied and imposed as follows:

1. Gasoline, ~~sixteen cents ($0.16)~~ an amount per gallon equivalent to the amount specified in paragraph 1 of subsection A of Section 500.4 of this title; and

2. Diesel fuel, ~~thirteen cents ($0.13)~~ an amount per gallon equivalent to the amount specified in paragraph 2 of subsection A of Section 500.4 of this title.

The tax levied and imposed shall be measured and determined by the number of gallons of gasoline and diesel fuel so imported and actually used on the highways of this state. No gasoline or diesel fuel on which the tax levied by the Motor Fuel Tax Code has been paid to this state shall be used in computing the tax imposed by this section. In the event the tax levied by this section can be more accurately determined on a mileage basis, that is, by determining and using the total number of miles traveled in Oklahoma, or in case it is practicable to so determine the tax, the Tax Commission is authorized to accept and approve such basis.

B. Each person licensed pursuant to Section 607 of this title who properly remits the tax pursuant to ~~this act~~ Section 601 et seq. of this title shall be entitled to retain one and twenty-five one-hundredths percent (1.25%) of the tax imposed on gasoline by this section and remitted by that licensee and one and fifty-four one-hundredths percent (1.54%) of the tax imposed on diesel fuel by this

section and remitted by the licensee to cover the costs of administration imposed by ~~this act~~ Section 601 et seq. of this title including record keeping, report filing, and remitting of the tax. The retention of a percentage of the tax permitted by this section shall not be allowed by a licensee if any report or the tax remittance is delinquent.

SECTION 7. This act shall become effective thirty (30) days after certification of election returns favoring passage of this act by the people.

SECTION 8. The Ballot Title for the proposed act shall be in the following form:

BALLOT TITLE

Legislative Referendum No. ____ State Question No. ____

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

This measure will increase motor fuel taxes. Gasoline taxes will increase by two cents per gallon per year until a total increase of five cents per gallon is reached. Diesel fuel taxes will increase by two cents per gallon per year until a total increase of eight cents per gallon is reached. The increases will be in effect until July 1, 2030. The intent of the people is stated that passage of this measure not act to decrease other funding for transportation. Revenues from the new taxes will be used for various transportation needs. Revenues must be used by the Oklahoma Aeronautics Commission, for public transit, for railroads, for roads and bridges near waterways, and for counties and municipalities for roads. The remainder of the revenues will be deposited to the State Highway Construction and Maintenance Fund. A portion of the revenues from diesel fuel taxes must be used for maintenance of interstate highways.

SHALL THIS ACT BE APPROVED BY THE PEOPLE?

☐ YES, FOR THE ACT

☐ NO, AGAINST THE ACT

SECTION 9. The President Pro Tempore of the Senate shall, immediately after the passage of this order for legislative referendum, prepare and file in accordance with Section 3 of Article V of the Oklahoma Constitution, one copy of this order for legislative referendum, including the Ballot Title set forth in SECTION 8, with the Secretary of State and one copy with the Attorney General.

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