STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 647 By: Silk

COMMITTEE SUBSTITUTE

An Act relating to cities and town; amending 11 O.S. 2011, Sections 39-102, 39-103, 39-104, 39-105, 39-106, 39-107, 39-108, 39-109, 39-110, 39-111, 39-112 and 39-116, which relate to improvement districts; modifying certain definition; adding term; modifying certain designated entity within improvement districts; adding certain services to list of certain authorized improvements; clarifying entity eligible for certain determination; clarifying area subject to certain assessment; modifying certain condition of petition; providing additional method for creation of certain districts; providing procedures; clarifying requirements of certain notice; clarifying requirements of certain hearing; adding certain statutory reference; providing for certain non-applicability; modifying certain authorization for objections; adding reference to certain plan; providing for certain non-applicability; modifying time component for collection of assessments; making gender neutral; and declaring an emergency.

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

SECTION 1. AMENDATORY 11 O.S. 2011, Section 39-102, is amended to read as follows:

Section 39-102. As used in the Improvement District Act, the singular includes the plural and:

1. "Acquired" means the acquisition of property or interests in property by purchase, gift, condemnation or other lawful means;

2. "City" means any city or town incorporated pursuant to the laws of Oklahoma;

3. "Engineer" means a city engineer, city official, employee or other person competent to advise and assist the governing body in planning and making an improvement;

4. "Cost" means any cost necessarily or reasonably incurred in making the improvement, including but not limited to cost of:

a. preparation of preliminary reports,

b. preparation of plans and specifications,

c. preparation and publication of notices of hearings, resolutions, ordinances and other proceedings,

d. fees and expenses for engineers, attorneys, laborers and other personal services,

e. rights-of-way, materials and other lawful expenses incurred in making any improvement, and

f. capitalized interest, funding of reserves, premiums for reserve surety bonds, and obtaining bond insurance, letters of credit or other credit enhancements or liquidity instruments;

5. "District" means an area designated by the governing body to be benefited by an improvement and subjected to payment of special assessments for all or a portion of the cost of the improvement;

6. "Governing body" means the city council, city commission or board of trustees of an incorporated city or town;

7. "Improve" means to construct, reconstruct, maintain, restore, replace, renew, repair, install, equip, extend, purchase, alter or otherwise perform any work which provides a new facility, or enhances, extends or restores the value or usefulness of an existing facility;

8. "Improvement" means any type of improvement made or service provided by authority of this Improvement District Act and includes reimprovement of any prior improvement made pursuant to any other act;

9. "Mail" means by first-class mail;

10. "Trustee" means a city acting pursuant to this act;

11. "Street" means any highway, street, alley, boulevard, avenue, right-of-way, public ground, or other public facility, or any part thereof; ~~and~~

12. "Publish" or "publication" means printing in a newspaper which maintains an office in the city or town and is of general circulation within the city or town, or, if there is no newspaper which maintains an office in the city or town, a newspaper of general circulation within the city or town and in two (2) separate issues thereof, at least seven (7) days apart; and

13. "Business" means any enterprise operating within the jurisdiction of the governing body which is licensed to conduct business.

SECTION 2. AMENDATORY 11 O.S. 2011, Section 39-103, is amended to read as follows:

Section 39-103. The governing body of any city may create one or more districts for the purpose of making or causing to be made any improvement or combination of improvements that confer special benefit upon property or businesses within the district. Such improvement or combination of improvements may include the following, without limitation because of enumeration:

1. Acquisition of property or interest in property when necessary for any of the purposes authorized by the Improvement District Act;

2. Opening, creating, widening and extending or altering of streets to improve paving, and surfacing, constructing and reconstructing gutters, curbs, sidewalks, crosswalks, driveway entrances and structures, drainage facilities, and service connections from sewers, water, gas, electricity and other utility mains, conduits or pipes;

3. Constructing or improving main and lateral storm water drains and sanitary sewer systems and facilities;

4. Installation or improvement of street lights and street lighting systems;

5. Construction or improvement of water mains and waterworks systems;

6. Improvement of parks, playgrounds and recreational facilities;

7. Improvement of any street, parking or other facility by landscaping, or planting of trees, shrubs and other plants;

8. Constructing or improving dikes, levees and other flood control works, gates, lift stations, bridges and streets appurtenant thereto;

9. Constructing or improving vehicle and pedestrian bridges, overpasses and tunnels;

10. Constructing or improving retaining walls and area walls on public ways or land abutting thereon;

11. Constructing or improving property for off-street parking facilities, including construction and equipment of buildings thereon;

12. Constructing or improving pedestrian malls; ~~or~~

13. Constructing or improving offsite facilities or infrastructure serving all or a portion of land within a district; notwithstanding that, such facilities or infrastructure may also serve areas outside a district, but subject to cost apportionment requirements of subsection A of Section 39-110 of this title; or

14. Services of marketing, promoting or branding of the governing jurisdiction or any improvements or business with the governing jurisdiction.

SECTION 3. AMENDATORY 11 O.S. 2011, Section 39-104, is amended to read as follows:

Section 39-104. Any district may include one or more streets or areas which need not be contiguous and may include two (2) or more types of improvements. Such improvements may be included in one (1) proceeding and constructed and financed as one improvement. The district shall include, for the purpose of assessment, all the property or businesses which the governing body determines is benefited by the improvement or improvements, including property utilized for public, governmental, burial, or charitable purposes, except property of any religious organization used primarily for religious purposes, or of the United States, or any agency, instrumentality or corporation thereof, in the absence of consent of Congress. The board of county commissioners, the governing body of a city, town, school district or any agency or institution of state government is authorized to pay the amount assessed against property under its ownership or control.

SECTION 4. AMENDATORY 11 O.S. 2011, Section 39-105, is amended to read as follows:

Section 39-105. A. Whenever the boundary of a city is upon or along any street which at that point lies wholly within, partly

within or partly without or wholly outside of its boundary, but contiguous to the boundary of the city, the governing body of such city may include the street in the district, improve that portion of such street and assess a part of the cost thereof against the abutting property or businesses lying on both sides of such street. Provided, however, if such street is wholly or partly within the boundary of another city, the governing body of such other city shall, by resolution, consent to the improvement and give its consent to assessment of the benefited property or businesses.

B. If, within thirty (30) days after the adoption of the ordinance levying the assessment by the city creating the district, the governing body of the city in which the property or business is situated does not, by resolution, consent or ratify the assessments, the governing body of the city creating the district may:

1. Modify the boundary of the district to exclude the property or businesses from the district;

2. Assume the cost of the improvement assessed against the property or businesses lying beyond the boundary of the city; or

3. Nullify the proceedings, including any contract, relating to the district. Any failure on the part of the governing body of the other city to ratify the assessments levied by the city creating the improvement district shall not affect the validity of the assessments which have been levied against any property or

businesses lying within the limits of the city creating the improvement district.

C. The owner, or his designated agent, of any property or business lying outside the boundary of the city creating the district and in the district, including the county and any affected subdivision outside the city, shall have the same rights granted to owners of property or business lying within the boundary of the city creating the district.

D. Whenever a part of the boundary of two or more cities is upon or along any street or is along the edge of any street and the governing bodies of the cities determine the necessity for making an improvement upon any portion of the street, the governing bodies of the cities may contract, upon such terms as are to them mutually agreeable, to make the improvement. The contract shall:

1. Authorize one of the cities to create the district pursuant to the Improvement District Act; and

2. Prescribe the apportionment of the costs, if any, among the cities and the manner and payment of such cost. The payment of such costs by the cities party to the contract is lawful whether the improvement is wholly within, partly within and partly without or wholly outside its limits.

SECTION 5. AMENDATORY 11 O.S. 2011, Section 39-106, is amended to read as follows:

Section 39-106. A. For area within the boundary of a city, a petition shall be filed with the city clerk. The petition shall state in bold, capitalized letters at the top of the page that the cost of the proposed improvements shall be assessed against the property <u>or businesses</u> benefited by the improvements. In addition, the petition shall be in a format which:

1. Sets forth:

    a. the general nature of the improvements to be made,

    b. the estimated or probable cost of the proposal,

    c. the area of the proposed district to be assessed,

    d. the proposed method of assessment, and

    e. the proposed apportionment of cost, if any, between the district and the city at large; and

2. Is signed by:

    a. a majority of the resident owners of record of property liable for assessment under the proposal, or

    b. the resident owners of record of more than one-half (1/2) of the area liable for assessment under the proposal, or

    c. the owners of record of more than one-half (1/2) of the area liable to be assessed under the proposal<u>, or</u>

    <u>d. in the case of assessments levied against businesses, businesses which are estimated to pay one-half (1/2)</u>

of the total assessment to be paid in the district's initial year.

B. For area outside the boundary of a city, a petition shall be filed with the city clerk which:

1. Sets forth:

a. the general nature of the improvements to be made,

b. the estimated or probable cost of the proposal,

c. the area of the proposed district to be assessed,

d. the proposed method of assessment,

e. the proposed apportionment of cost, if any, between the district and the city at large; and

2. Is signed by:

a. a majority of the resident owners of record of property liable for assessment under the proposal, and

b. the owners of record of more than one-half (1/2) of the area liable for assessment under the proposal; and

3. States the area is contiguous to, but not within, the boundary of the city.

C. ~~Whenever~~ Except as provided in subsection F of this section, whenever the governing body, either upon its own initiative or in response to a petition, determines that the creation of ~~the~~ a district is necessary, it may by resolution direct the engineer to prepare preliminary plans and an estimate of cost for the proposed district. The resolution shall:

1. Describe in general terms the property to be included in the district;

2. Require the engineer to prepare:

a. an assessment plat showing the area to be included in the improvement district, and

b. an addendum to the assessment plat showing the amount of maximum benefit estimated to be assessed against each tract or parcel in the district on a front-foot, zone, area or other equitable basis, which basis shall be set forth in the resolution; and

3. Require the engineer to prepare preliminary plans for one or more types of improvement showing:

a. for each type of curb, gutter, sidewalk and street, a typical section of the contemplated improvement, the type of material to be used and the approximate thickness and width of the material,

b. for each type of storm sewer or drain, sanitary sewer or water line, the type of material and approximate diameter or diameters of any trunk lines, mains, laterals or house connections, or

c. for each other type of improvement or other major component of the foregoing types of improvements, a general description.

D. The engineer shall include in the total cost estimate for the district all expenses including but not limited to advertising, legal, appraising, engineering and printing expenses which the engineer deems necessary to pay the complete cost of the improvement.

E. The engineer shall submit to the city clerk the:

1. Assessment plat;

2. Preliminary plans of the type of construction; and

3. Estimate of costs for the improvement.

F. Wherever the governing body, either upon its own initiative or in response to a petition determines that the creation of a district providing services pursuant to paragraph 14 of Section 39-103 of this title is necessary, the following procedures and rules shall apply in lieu of subsections C, D and E of this section.

The engineer's report referred to throughout this act shall not be required for the districts. Such districts shall be supported by a management plan which contains:

1. A map of the district's exterior boundaries in sufficient detail to allow a business owner to reasonably determine whether a business is located within the district boundaries;

2. A description of the kinds of businesses to be included in the district and a list of the businesses to be assessed upon the district's creation including the address of each business;

3. A description of the assessment methodology including but not limited to collection and enforcement provisions;

4. The specific number of years for which the assessment will be levied including the start and end date;

5. A designation of the initial service provider; and

6. Any other rules and regulations to be applicable to the district.

G. After the governing body examines the assessment plat, preliminary plans, and estimates of cost of improvements or service for the district, the governing body may adopt a resolution which:

1. Proposes that the district be created and the improvement to be constructed or provided; and

2. Instructs the city clerk or engineer to give notice of a hearing on the proposed district.

SECTION 6. AMENDATORY 11 O.S. 2011, Section 39-107, is amended to read as follows:

Section 39-107. A. The notice as to creating an improvement district shall:

1. Contain the time and place when the governing body shall hold a hearing on the resolution to create the district;

2. Describe the improvement to be constructed or provided and the general location thereof; and

3. State that any interested person may ascertain in the office of the municipal clerk:

a. a description of the property or businesses to be assessed, and

b. the maximum amount of benefit estimated to be conferred on each tract or parcel of land or business.

B. Not more than thirty (30) days nor less than ten (10) days before the day of the hearing, the city clerk, his or her deputy or the engineer shall mail the notice of the hearing on the proposed district to the owner of the tract or parcel of land or owner of the businesses to be assessed the cost of the improvement at ~~his~~ the last-known address. The name and address of the owner of each tract of land shall be obtained from the records of the county treasurer, and the name and address of the owner of each business shall be obtained from the records of the city. The notice shall contain a preliminary basis for estimating the assessment. Proof of the mailing is to be made by affidavit of the city clerk, his or her deputy, or the engineer, which shall be filed in the office of the city clerk. Failure of the owner to receive any notice shall not invalidate any of the proceedings authorized in the Improvement District Act.

C. Notice of the hearing shall also be published. The last publication shall be at least seven (7) days prior to the day of the hearing. Such service by publication shall be verified by an affidavit of the publisher which is to be filed in the office of the city clerk.

SECTION 7. AMENDATORY 11 O.S. 2011, Section 39-108, is amended to read as follows:

Section 39-108. A. At the hearing of the governing body on the proposed resolution creating a district, any interested person or owner of property or businesses to be assessed for the improvement may file a written protest or objection questioning the:

1. Propriety and advisability of constructing or providing the improvement;

2. Estimated cost of the improvement;

3. Manner of paying for the improvement; and

4. Amount to be assessed against the individual tract or parcel of land or business.

B. The governing body may recess the hearing from time to time so that all protestants may be heard.

C. At the hearing, the governing body may:

1. Correct any mistake or irregularity in any proceeding relating to the improvement;

2. Correct an assessment made against any tract or parcel of land or business;

3. In case of any invalidity, reassess the cost of the improvement against an abutting tract or parcel of land or business;

4. Delete any tract or parcel of land or business, protested by the owner, from the district; and

5. Recess the hearing from time to time.

D. Within thirty (30) days after the governing body has concluded the hearing; determined the advisability of providing or constructing the improvement and the type and character of the improvement; and created the improvement district, any person who, during the hearing, filed a written protest with the governing body protesting the construction or provision of the improvement may commence an action in district court to correct or set aside the determination of the governing body. After the lapse of thirty (30) days succeeding the determination of the governing body, any action attacking the validity of the proceedings and the amount of benefit to be derived from the improvement is perpetually barred. Provided, however, if the owners of fifty percent (50%) or more in area of the tracts or parcels within the district or a majority of the owners of record of property in the assessment area or businesses which pay more than one-half (1/2) of the estimated annual assessment protest, in writing, the creation of the district, the district shall not be created.

SECTION 8. AMENDATORY 11 O.S. 2011, Section 39-109, is amended to read as follows:

Section 39-109. After the governing body creates a district, the governing body may proceed, either to make the improvement by force accounting, or call for sealed bids on the proposed improvement, or where the district comprises land owned by a single party, developer, or other legal entity that has petitioned for the

creation of the district, contract with that single party, developer or other legal entity to make the improvement for future dedication or other conveyance to the city; provided, however, in the case of the districts created pursuant to Section 39-103.1 or paragraph 14 of Section 39-103 of this title and except as otherwise provided in this section, the governing body may contract for said services without calling for sealed bids or force accounting. The notice shall state the manner of payment to the contractor and whether the contractor will be paid in money, in bonds or in a proportion of money and bonds for making the improvement. The governing body may to the extent that funds are available authorize payments to the contractor during the construction of the improvement provided that the payments do not exceed the amount of work completed and that ten percent (10%) of such payments shall be retained by the city pending final acceptance by the city of the improvement. The term "improvement" as used in this section and Sections 101 through 136 of Title 61 of the Oklahoma Statutes shall not include any services or maintenance authorized and provided pursuant to Section 39-103.1 or paragraph 14 of Section 39-103 of this title.

SECTION 9. AMENDATORY 11 O.S. 2011, Section 39-110, is amended to read as follows:

Section 39-110. A. Following a hearing held pursuant to Section 39-108 of this title, the governing body shall determine the maximum portion of the total estimated cost of the improvement that

shall be assessed against benefited tracts or parcels of land or, if a contract for construction or acquisition of improvements has already been awarded, the portion of the total actual cost of the improvement to be assessed against such tracts or parcels. The maximum annual assessment may include the estimated costs of the administration and collection of assessments and the administration of associated bonds or other related funds. The governing body may use funds from any source, public or private, to pay for all or a portion of the assessment or the cost of the improvement. The assessment, including the cost of the improvement at an intersection, shall not exceed the estimated benefit to the tract or parcel of land assessed. Provided, however, the cost per front foot to be assessed against the benefiting property for paving a street, for paving alone, shall not exceed the cost per front foot assessed for paving a street that does not exceed thirty-six (36) feet in width.

B. With the assistance of the engineer, the governing body shall prepare and cause to be filed in the office of the city clerk an assessment roll containing, among other things:

1. The name and address of the last-known owner of each tract or parcel of land to be assessed, or if the name of the owner is unknown, state "unknown". The name and address of the owner of each tract of land shall be obtained from the records of the county treasurer;

2. A description of the tract or parcel of land to be assessed; and

3. The amount of the assessment against each tract or parcel of land.

C. After the filing of the assessment roll, the governing body shall, by resolution, set a time and place for the assessment hearing when an owner may object to the amount of the assessment.

D. With regard to a district providing services pursuant to paragraph 14 of Section 39-103 of this title, subsections A, B, and C of Section 39-110 of this title shall not apply and the governing body shall provide notices to each business of the assessment methodology.

E. Not more than thirty (30) days nor less than ten (10) days before the day of the hearing, the city clerk, the city clerk's deputy or the engineer shall mail the notice of the hearing ~~on the assessment roll~~ to ~~the~~ each business or owner of the tract or parcel of land being assessed the cost of the improvement. Proof of the mailing is to be made by affidavit of the city clerk, the city clerk's deputy or the engineer, which shall be filed in the office of the city clerk. Failure of the owner to receive any notice shall not invalidate any of the proceedings authorized in the Improvement District Act. Notice of the hearing shall also be published. The last publication shall be at least seven (7) days prior to the day of the hearing. Such service by publication shall be verified by an

affidavit of the publisher which is to be filed in the office of the city clerk.

~~E.~~ F. Any property which shall be owned by the city, town or county, or any board of education or school district, shall be treated and considered the same as the property of other owners, and such city, town, county, school district or board of education within such district to be assessed may pay the total assessment against its property without interest within thirty (30) days from the date of the publication of the ordinance levying the assessment, or, in the event the same is not paid in full without interest within ~~said~~ the thirty-day period, such city, town, county, school district or board of education shall annually provide by the levy of taxes a sufficient sum to pay the maturing installments of assessments and interest thereon.

SECTION 10. AMENDATORY 11 O.S. 2011, Section 39-111, is amended to read as follows:

Section 39-111. A. Not later than three (3) days before the date of the hearing on the assessment roll, any owner of a business listed in the management plan of the district or a tract or parcel of land which is listed on the assessment roll may file his or her specific objections to the amount of the assessment in writing with the city clerk. Unless presented as required in this subsection, any objection is deemed waived as to the regularity, validity and correctness of:

1. The proceedings;

2. The assessment roll;

3. Each assessment contained on the assessment roll; or

4. The amount of the assessment levied against each business or tract or parcel of land.

B. At the hearing, the governing body shall hear all objections which have been filed as provided in this section and may recess the hearing from time to time and, by resolution, revise, correct, confirm or set aside any assessment and order another assessment be made de novo.

C. The governing body by ordinance shall by reference to such assessment roll, or assessment roll as modified, if modified, and as confirmed by resolution, levy the assessments contained in the assessment roll or management plan. The decision, resolution and ordinance of the governing body shall be:

1. A final determination of the regularity, validity and correctness of the proceedings, the assessment roll or management plan, each assessment contained on the assessment roll, the amount of the assessment levied against each business or tract or parcel of land; and

2. Conclusive upon the owners of the business or tract or parcel of land assessed.

D. Within fifteen (15) days after the publication or posting of the ordinance, any owner who has filed an objection as provided in

this section may commence an action in district court to correct or set aside the determination of the governing body. After the lapse of fifteen (15) days after the publication or posting of the ordinance, all actions, which include the defense of confiscation or attack the regularity, validity and correctness of the proceedings, the assessment roll, each assessment contained on the assessment roll, and the amount of the assessment levied against each business or tract or parcel of land, are perpetually barred.

SECTION 11. AMENDATORY 11 O.S. 2011, Section 39-112, is amended to read as follows:

Section 39-112. A. The governing body may by ordinance:

1. Establish the time and terms of paying the assessment or an installment on the assessment;

2. Set a rate of interest not exceeding ten percent (10%) per annum upon deferred payments of the assessment which shall commence from the date of publication of the ordinance ratifying the assessment;

3. Set interest rates not exceeding ten percent (10%) per annum upon the outstanding principal amount of bonds issued by a district pursuant to Section 39-115 of this title; and

4. Fix penalties to be charged for delinquent payment of an installment on an assessment.

B. After the publication of the ordinance ratifying an assessment levied as provided in Section 39-111 of this title, the

assessment with any interest or penalty accruing on such assessment shall constitute a lien upon the business or tract or parcel of land so assessed. Such lien shall be coequal with the lien for ad valorem taxes and the lien of other improvement districts, and be superior to all other liens, claims and titles. Unmatured installments are not deemed to be within the terms of any general covenant or warranty. All purchasers, mortgagees or encumbrancers of a tract or parcel of land so assessed shall acquire the tract or parcel of land subject to the lien so created.

C. Within sixty (60) days after the publication of the ordinance ratifying an assessment roll, the city clerk shall prepare, sign, attest with the municipal seal and record in the office of the county clerk a claim of lien for any unpaid amount due and assessed against a tract or parcel of land.

D. Any tract or parcel so assessed shall not be relieved from the assessment or lien by the sale of the tract or parcel of land for taxes or any other assessment, subject to the provisions of Section 39-119 of this title. The statute of limitations shall not begin to run against an assessment until after the last installment of the assessment becomes due.

E. The fact that an improvement is omitted in front of any tract or parcel of land does not invalidate a lien or assessment made against any other tract or parcel of land.

F. A delinquent installment of an assessment shall be foreclosed and the tract or parcel of land concerned be sold in the manner provided by law for foreclosure of mortgages on land. If, at the sale, there is no better bidder for the tract or parcel of land the municipality shall bid in the tract or parcel of land for the amount due on the assessment plus any interest, penalties or costs which have accrued against the assessment. Any real estate sold under any order, judgment or decree of court to satisfy the lien may be redeemed by the owner or his or her assignee at any time within one (1) year of the date of sale by paying to the purchaser thereof or assignee the amount paid with interest from the date of purchase at the rate of twelve percent (12%) per annum.

G. With regard to a district providing services pursuant to paragraph 14 of Section 39-103, subsections A through F of this section shall not be applicable and the governing body shall provide as part of the management plan procedures related to the collection and enforcement of the assessment.

SECTION 12. AMENDATORY 11 O.S. 2011, Section 39-116, is amended to read as follows:

Section 39-116. A. Whenever a district has been created and bonds have been issued to finance the improvement, a city shall either itself, or acting through a third party administrator:

1. Collect the assessments ~~annually or semiannually~~ periodically;

2. Act as trustee for the benefit of the holders of the bonds; provided that, the city may contract with a bank with trust powers to act as trustees;

3. Annually prepare a statement which shall:

a. be available for inspection in the office of the city treasurer,

b. reflect the financial condition of the district,

c. list all the delinquencies existing at that time, and

d. institute proceedings to foreclose the assessment lien against any tract or parcel of land which is delinquent in the payment of the assessment or installment of an assessment for a period of more than one (1) year. In lieu of the foreclosure of a lien against any tract or parcel of land which is delinquent in the payment of an assessment or installment of an assessment for a period of more than one (1) year, a city may accept a deed to the property subject to the lien if the owner of the property tenders the deed to the municipality.

B. If more than one district is created, the money from assessments in each district shall be kept in a separate fund and used for the payment of principal and interest of the bonds outstanding against that district. Nothing herein shall prevent the appointment and compensation by the district of a registrar,

transfer, authenticating, paying or other agents to effect the transfer of ownership, change of payee of any bond issued by the district and to maintain books and records relating thereto.

C. Neither any member of the governing body of a city creating a district nor any person acting on behalf of the city or district, while acting within the scope of his or her authority, shall be subject to any personal liability for any action taken or omitted within that scope of authority.

SECTION 13. 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.

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