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SENATE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO STATE RETIREMENT FUNDS; CHANGING THE COMPOSITION
AND AMENDING POWERS AND DUTIES OF THE PUBLIC EMPLOYEES
RETIREMENT BOARD AND THE EDUCATIONAL RETIREMENT BOARD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 10-11-130 NMSA 1978 (being Laws 1987,
Chapter 253, Section 130, as amended) is amended to read:

"10-11-130. RETIREMENT BOARD--AUTHORITY--MEMBERSHIP.--

A. The "retirement board" is created and is the
trustee of the association and the funds created by the state
retirement system acts and has all the powers necessary or
convenient to carry out and effectuate the purposes and
provisions of the state retirement system acts, including, in
addition to any specific powers provided for in the Public
Employees Retirement Act but without limiting the generality of

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1 the foregoing, the power to:

2 (1) administer the state retirement system
3 acts, including the management of the association and making
4 effective the provisions of those acts, as well as to
5 administer and manage any other employee benefit acts as
6 provided by law;

7 (2) in addition to utilizing services of the
8 attorney general and notwithstanding any other provision of
9 law, employ or contract with and compensate competent legal
10 counsel to handle the legal matters and litigation of the
11 retirement board and the association and to give advice and
12 counsel in regard to any matter connected with the duties of
13 the retirement board;

14 (3) administer oaths;

15 (4) adopt and use a seal for authentication of
16 records, processes and proceedings;

17 (5) create and maintain records relating to
18 all members, affiliated public employers and all activities and
19 duties required of the retirement board;

20 (6) issue subpoenas and compel the production
21 of evidence and attendance of witnesses in connection with any
22 hearings or proceedings of the retirement board;

23 (7) make and execute contracts;

24 (8) make purchases, sales, exchanges,
25 investments and reinvestments of all funds and employ

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1 contractors, advisors or investment management services;

2 ~~[(8)]~~ (9) purchase, acquire or hold land
3 adjacent to the state capitol grounds or other suitable
4 location and build thereon a building to house the association
5 and its employees and, in the event additional office space is
6 available in the building after the retirement board and its
7 employees have been housed, to rent or lease the additional
8 space to any public agency or private person; provided that
9 first priority for the rental or leasing shall be to public
10 agencies and further provided that for the purpose of
11 purchasing, acquiring or holding the land and the building
12 thereon, the retirement board may use funds from the income
13 fund and any other funds controlled by the retirement board the
14 use of which for such purposes is not prohibited by law;

15 ~~[(9)]~~ (10) after the sale of the land and
16 building acquired pursuant to Paragraph ~~[(8)]~~ (9) of this
17 subsection, acquire land and build thereon a new building to
18 house the association and its employees and hold the building
19 and land in fee simple in the name of the association. In
20 order to acquire the land and plan, design and construct the
21 building, the retirement board may expend the proceeds of the
22 sale of the land and building acquired pursuant to Paragraph
23 ~~[(8)]~~ (9) of this subsection or any funds controlled by the
24 board, the use of which for such purposes is not otherwise
25 prohibited by law;

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1 [~~(10)~~] (11) make and adopt such reasonable
2 rules as may be necessary or convenient to carry out the duties
3 of the retirement board and activities of the association,
4 including any rules necessary to preserve the status of the
5 association as a qualified pension plan under the provisions of
6 the Internal Revenue Code of 1986, as amended, or under
7 successor or related provisions of law; [~~and~~

8 ~~(11)~~] (12) designate committees and designate
9 committee members, including individuals who may not be members
10 of the association; and

11 (13) select and contract for the services of
12 one or more custodian banks for all funds under the retirement
13 board's management. For the purpose of this paragraph,
14 "custodian bank" means a financial institution with the general
15 fiduciary duties to manage, control and collect the assets of
16 an investment fund, including receiving all deposits and paying
17 all disbursements as directed by staff, safekeeping of assets,
18 coordination of asset transfers, timely settlement of
19 securities transactions and accurate and timely reporting of
20 the assets by individual account and in total.

21 B. The retirement board consists of:

22 (1) [~~the secretary of state~~] one member who
23 shall be qualified by competence and no fewer than ten years'
24 experience in the field of investment or finance, appointed by
25 the majority of the other eleven members;

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- 1 (2) the state treasurer;
- 2 (3) four members under a state coverage plan
- 3 to be elected by the members under state coverage plans;
- 4 (4) four members under a municipal coverage
- 5 plan to be elected by the members under municipal coverage
- 6 plans, provided one member shall be a municipal member employed
- 7 by a county; and
- 8 (5) two retired members to be elected by the
- 9 retired members of the association.

10 C. The results of elections of elected members of

11 the retirement board shall be certified at the annual meeting

12 of the association. Elections shall be conducted according to

13 rules the retirement board adopts from time to time.

14 D. The regular term of office of the elected and

15 appointed members of the retirement board is four years. The

16 term of one retirement board member under a state coverage plan

17 expires annually on December 31. The terms of retirement board

18 members under a municipal coverage plan expire on December 31

19 of noncoinciding years in the pattern set by the retirement

20 board. Members of the retirement board serve until their

21 successors have qualified.

22 E. A member elected or appointed to the retirement

23 board who fails to attend four consecutively scheduled meetings

24 of the retirement board, unless in each case excused for cause

25 by the retirement board members in attendance, is considered to

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1 have resigned from the retirement board, and the retirement
2 board shall by resolution declare the office vacated as of the
3 date of adoption of the resolution. A vacancy occurring on the
4 retirement board, except in the case of an elected official,
5 shall be filled by the remaining retirement board members,
6 without requirement that a quorum be present. The member
7 appointed to fill the vacancy serves for the remainder of the
8 vacated term.

9 F. Members of the retirement board serve without
10 salary for their services as retirement board members, but they
11 shall receive those amounts authorized under the Per Diem and
12 Mileage Act.

13 G. The retirement board shall hold four regular
14 meetings each year and shall designate in advance the time and
15 place of the meetings. Special meetings and emergency meetings
16 of the retirement board may be held upon call of the [~~chairman~~]
17 chair or any three members of the retirement board. Written
18 notice of special meetings shall be sent to each member of the
19 retirement board at least seventy-two hours in advance of the
20 special meeting. Verbal notice of emergency meetings shall be
21 given to as many members as is feasible at least eight hours
22 before the emergency meeting, and the meeting shall commence
23 with a statement of the nature of the emergency. The
24 retirement board shall adopt its own rules of procedure and
25 shall keep a record of its proceedings. All meetings of the

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1 retirement board shall comply with the Open Meetings Act. A
2 majority of retirement board members shall constitute a quorum.
3 Each attending member of the retirement board is entitled to
4 one vote on each question before the retirement board, and at
5 least a majority of a quorum shall be necessary for a decision
6 by the retirement board.

7 H. The retirement board shall provide an
8 opportunity for public comment at meetings. Advance notice of
9 meetings shall be published on the association's web site and
10 in a newspaper of general circulation at least ten days in
11 advance of the meeting.

12 [~~H.~~] I. Annual meetings of the members of the
13 association shall be held in Santa Fe at such time and place as
14 the retirement board shall from time to time determine.
15 Special meetings of the members of the association shall be
16 held in Santa Fe upon call of any seven retirement board
17 members. The retirement board shall send a written notice to
18 the last known residence address of each member currently
19 employed by an affiliated public employer at least ten days
20 prior to any meeting of the members of the association. The
21 notice shall contain the call of the meeting and the principal
22 purpose of the meeting. All meetings of the association shall
23 be public and shall be conducted according to procedures the
24 retirement board shall from time to time adopt. The retirement
25 board shall keep a record of the proceedings of each meeting of

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1 the association.

2 [~~F.~~] J. Neither the retirement board nor the
3 association shall allow public inspection of, or disclosure of,
4 information from any member or retiree file unless a prior
5 release and consent, in the form prescribed by the association,
6 has been executed by the member or retiree; except that
7 applicable coverage plans, amounts of retirement plan
8 contributions made by members and affiliated public employers,
9 pension amounts paid and the names and addresses of public
10 employees retirement association members or retirees requested
11 for election purposes by candidates for election to the
12 retirement board may be produced or disclosed without release
13 or consent."

14 SECTION 2. Section 10-11-132 NMSA 1978 (being Laws 1987,
15 Chapter 253, Section 132, as amended) is amended to read:

16 "10-11-132. INVESTMENT OF FUNDS--PRUDENT INVESTOR
17 STANDARD--INDEMNIFICATION OF BOARD MEMBERS.--

18 A. The funds created by the state retirement system
19 acts are trust funds of which the retirement board is trustee.
20 Members of the retirement board jointly and individually shall
21 be indemnified by the state from the funds administered by the
22 retirement board from all claims, demands, suits, actions,
23 damages, judgments, costs, charges and expenses, including
24 court costs and attorney fees, and against all liability losses
25 and damages of any nature that members shall or may sustain by

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1 reason of any decision made in the performance of their duties
2 pursuant to the state retirement system acts. The retirement
3 board shall invest and reinvest the funds in accordance with
4 the Uniform Prudent Investor Act.

5 B. The retirement board and any person providing
6 investment advice to the retirement board for a fee or other
7 compensation and all persons exercising discretionary authority
8 or control of funds under the management of the retirement
9 board are fiduciaries."

10 SECTION 3. Section 10-11-133 NMSA 1978 (being Laws 1987,
11 Chapter 253, Section 133, as amended) is amended to read:

12 "10-11-133. INVESTMENT OF FUNDS--PRUDENT INVESTOR
13 STANDARD--CONDITIONS.--

14 A. Commissions paid for the purchase and sale of
15 any security shall not exceed brokerage rates prescribed and
16 approved by stock exchanges that have been approved by or are
17 under the control of the United States securities and exchange
18 commission or by industry practice.

19 B. The retirement board shall invest and manage the
20 funds administered by the retirement board in accordance with
21 the Uniform Prudent Investor Act.

22 C. The retirement board shall provide quarterly
23 reports disclosing all contractor arrangements and detailing
24 investment, reinvestment, purchase, sale and exchange
25 transactions and fees paid for each transaction and performance

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1 ~~[reports]~~ of the funds to the legislative finance committee and
2 the department of finance and administration. The reports
3 shall be published on the web sites of the association, the
4 legislature and the department of finance and administration.

5 Annually, the retirement board shall ratify and provide its
6 written investment policy, including any amendments, to the
7 legislative finance committee and the department of finance and
8 administration. The policies shall be published on the web
9 sites of the association, the legislature and the department of
10 finance and administration.

11 D. Securities purchased with money from or held for
12 any fund administered by the retirement board and for which the
13 retirement board is trustee shall be in the custody of the
14 state treasurer who shall, at the direction of the retirement
15 board, deposit with a bank or trust company the securities for
16 safekeeping or servicing.

17 E. The retirement board may consult with the state
18 investment council or state investment officer and request
19 information or advice with respect to the retirement board's
20 overall investment plan, may utilize the services of the state
21 investment council and state investment officer and may act on
22 their advice concerning the plan. The state investment council
23 and state investment officer shall render investment services
24 to the retirement board without expense to the retirement
25 board. The retirement board may also employ the investment

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1 management services and related management services of a trust
2 company or national bank exercising trust powers or of an
3 investment counseling firm or brokers for the purchase and sale
4 of securities, commission recapture and transitioning services
5 and may pay reasonable compensation for such services from
6 funds administered by the retirement board. The terms of any
7 such investment management services contract shall incorporate
8 the statutory requirements for investment of funds under the
9 retirement board's jurisdiction.

10 F. The retirement board shall annually provide for
11 its members no less than eight hours of training in pension
12 fund investing, fiduciary obligations or ethics. A member
13 elected to the retirement board who fails to attend the
14 training for two consecutive years shall be deemed to have
15 resigned from the retirement board.

16 G. Except as provided in the Public Employees
17 Retirement Act, a member of the retirement board, employee of
18 the retirement board or any person connected with the
19 retirement board in any manner shall not:

20 (1) have any direct or indirect interest in
21 the gains or profits of any investment made by the retirement
22 board;

23 (2) receive any direct or indirect pay or
24 emolument for services provided to the retirement board or the
25 association;

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1 (3) directly or indirectly, for the member,
2 employee or person, for themselves or as agent or partner of
3 others, borrow any of the funds or deposits of the association
4 or in any manner use them except to make current and necessary
5 payments authorized by the retirement board; or

6 (4) become an endorser or surety or become in
7 any manner an obligor for money of the retirement board loaned
8 or borrowed."

9 SECTION 4. Section 22-11-3 NMSA 1978 (being Laws 1967,
10 Chapter 16, Section 127, as amended) is amended to read:

11 "22-11-3. EDUCATIONAL RETIREMENT BOARD--MEMBERS--TERMS--
12 VACANCIES.--

13 A. The "educational retirement board" is created.

14 B. The board shall be composed of seven members,
15 consisting of the following:

16 (1) the [~~superintendent~~] secretary of public
17 [~~instruction~~] education;

18 (2) the state treasurer;

19 (3) one member to be elected for a term of
20 four years by members of the New Mexico association of
21 educational retirees;

22 (4) one member to be elected for a term of
23 four years by the members of the [~~New Mexico~~] national
24 education association of New Mexico;

25 (5) one member to be elected for a term of

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1 four years by the New Mexico members of the American
2 association of university professors; ~~and]~~

3 (6) ~~[two members]~~ one member to be appointed
4 by the governor for terms of four years each; and

5 (7) one member who shall be qualified by
6 competence and no fewer than ten years' experience in the field
7 of investment or finance, appointed by the majority of the
8 other six members.

9 C. In the initial composition of the board, the
10 member elected by the members of the American association of
11 university professors shall serve for a term of three years;
12 one member appointed by the governor shall serve for a term of
13 two years; and the other member appointed by the governor shall
14 serve for a term of one year.

15 D. Except for ex-officio members, a member of the
16 board who fails to attend three consecutively scheduled
17 meetings, unless in each case excused for cause by the board
18 members in attendance, is considered to have resigned from the
19 board, and the board shall by resolution declare the office
20 vacated as of the date of adoption of the resolution.

21 ~~[D-]~~ E. Vacancies occurring in the ~~[term]~~ terms of
22 office of those members appointed by the governor or elected by
23 an association shall be filled either by the governor
24 appointing, or by the association electing, a new member to
25 fill the unexpired term."

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1 SECTION 5. Section 22-11-4 NMSA 1978 (being Laws 1967,
2 Chapter 16, Section 128, as amended) is amended to read:

3 "22-11-4. BOARD--REGULAR AND SPECIAL MEETINGS.--

4 A. The board shall hold regular meetings four times
5 each year and may, by its bylaws, provide for additional
6 regular meetings. Prior to each regular meeting, written
7 notice shall be given to each member of the board specifying
8 the time and place of the regular meeting.

9 B. Special meetings of the board may be called by
10 the [~~chairman~~] chair or by any three members of the board.
11 Written notice of the special meeting shall be sent to each
12 member of the board at least three days in advance of the
13 special meeting.

14 C. If not in violation of Subsection A or B of this
15 section, the rules of the board or the Open Meetings Act, the
16 [~~chairman~~] chair or any of three members of the board may
17 cancel or reschedule a meeting.

18 D. The board shall provide an opportunity for
19 public comment at meetings of the board. Advance notice of
20 meetings shall be published on the board's web site and in a
21 newspaper of general circulation at least ten days in advance
22 of the meeting."

23 SECTION 6. Section 22-11-5.1 NMSA 1978 (being Laws 1999,
24 Chapter 153, Section 2) is amended to read:

25 "22-11-5.1. RESTRICTIONS ON RECEIPT OF GIFTS--RESTRICTION

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1 ON CAMPAIGN CONTRIBUTIONS--REQUIRED REPORTING.--

2 A. Except for gifts of food or beverage given in a
3 place of public accommodation, consumed at the time of receipt,
4 not exceeding fifty dollars (\$50.00) for a single gift and the
5 aggregate value of which gifts may not exceed one hundred fifty
6 dollars (\$150) in a calendar year, neither a board member nor
7 an employee of the board shall receive or accept anything of
8 value directly or indirectly from a person who:

9 (1) has a current contract with the
10 [~~retirement~~] board [~~or association~~];

11 (2) is a potential bidder, offeror or
12 contractor for the provision of services or personal property
13 to the [~~retirement~~] board [~~or association~~];

14 (3) is authorized to invest public funds
15 pursuant to state or federal law or is an employee or agent of
16 such a person; or

17 (4) is an organization, association or other
18 entity having a membership that includes persons described in
19 Paragraphs (1) through (3) of this subsection.

20 B. No person who is a candidate in a primary or
21 general election for a position that qualifies the person for
22 ex-officio membership on the board, no member serving ex
23 officio on the board and no person who is a nominee for board
24 membership by election by the members of an association shall
25 accept anything of a value of more than twenty-five dollars

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1 (\$25.00) as a contribution to an ex-officio member's statewide
2 campaign in a primary or general election or as a contribution
3 to the campaign of a nominee for membership on the board as a
4 member elected by an association from a person who:

5 (1) has a current contract with the board;

6 (2) is a potential bidder, offeror or
7 contractor for the provision of services or personal property
8 to the board;

9 (3) is authorized to invest public funds
10 pursuant to state or federal law or is an employee or agent of
11 such a person; or

12 (4) is an organization, association or other
13 entity having a membership that includes persons described in
14 Paragraphs (1) through (3) of this subsection.

15 C. Within ten days after an election in which one
16 or more board members are elected by an association, all
17 persons who were candidates for board membership in that
18 election shall file with the board a report disclosing all
19 contributions to their respective campaigns whether made
20 directly to the candidate, to a political action committee or
21 to some other entity supporting the candidate's election. The
22 contributions shall be reported by amount and specific source.
23 Within sixty days after the election, the board shall publish
24 the reports required by this subsection."

25 SECTION 7. Section 22-11-13 NMSA 1978 (being Laws 1967,

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1 Chapter 16, Section 137, as amended) is amended to read:

2 "22-11-13. BOARD AUTHORITY TO INVEST THE FUND--PRUDENT
3 INVESTOR STANDARD--INDEMNIFICATION OF BOARD.--

4 A. The board is authorized to invest or reinvest
5 the fund in accordance with the Uniform Prudent Investor Act
6 and may employ contractors, advisors or investment management
7 services in any investment or reinvestment.

8 B. The board shall provide quarterly reports
9 disclosing all contractor arrangements and detailing
10 investment, reinvestment, purchase, sale and exchange
11 transactions and fees paid for each transaction and performance
12 [reports] of the fund to the legislative finance committee and
13 the department of finance and administration. The reports
14 shall be published on the web sites of the board, the
15 legislature and the department of finance and administration.

16 Annually, the board shall ratify and provide its written
17 investment policy, including any amendments, to the legislative
18 finance committee and the department of finance and
19 administration. The policies shall be published on the web
20 sites of the board, the legislature and the department of
21 finance and administration.

22 C. The board or its designated agent may enter into
23 contracts for the temporary exchange of securities for the use
24 by broker-dealers, banks or other recognized institutional
25 investors, for periods not to exceed one year, for a specified

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1 fee or consideration. Such a contract shall not be entered
2 into unless the contract is fully secured by a collateralized,
3 irrevocable letter of credit running to the board, cash or
4 equivalent collateral of at least one hundred two percent of
5 the market value of the securities plus accrued interest
6 temporarily exchanged. This collateral shall be delivered to
7 the state fiscal agent or its designee contemporaneously with
8 the transfer of funds or delivery of the securities. Such
9 contract may authorize the board to invest cash collateral in
10 instruments or securities that are authorized fund investments
11 and may authorize payment of a fee from the fund or from income
12 generated by the investment of cash collateral to the borrower
13 of securities providing cash as collateral. The board may
14 apportion income derived from the investment of cash collateral
15 to pay its agent in securities lending transactions.

16 D. Commissions paid for the purchase or sale of any
17 securities pursuant to the provisions of the Educational
18 Retirement Act shall not exceed brokerage rates prescribed and
19 approved by national stock exchanges or by industry practice.

20 E. Securities purchased for the fund shall be held
21 in the custody of the state treasurer. At the direction of the
22 board, the state treasurer shall deposit with a bank or trust
23 company the securities for safekeeping or servicing.

24 F. The board may consult with the state investment
25 council or the state investment officer; may request from the

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1 state investment council or the state investment officer any
2 information, advice or recommendations with respect to
3 investment of the fund; may utilize the services of the state
4 investment council or the state investment officer; and may act
5 upon any advice or recommendations of the state investment
6 council or the state investment officer. The state investment
7 council or the state investment officer shall render investment
8 advisory services to the board upon request and without expense
9 to the board. The board may also employ the investment
10 management services and related management services of a trust
11 company or national bank exercising trust powers or of an
12 investment counseling firm or brokers for the purchase and sale
13 of securities, commission recapture and transitioning services
14 and may pay reasonable compensation for those services from
15 funds administered by the board.

16 G. The board shall annually provide for its members
17 no less than eight hours of training in pension fund investing,
18 fiduciary obligations or ethics. A member elected or appointed
19 to the board who fails to attend the training for two
20 consecutive years shall be deemed to have resigned from the
21 board.

22 H. Members of the board, jointly and individually,
23 shall be indemnified from the fund by the state from all
24 claims, demands, suits, actions, damages, judgments, costs,
25 charges and expenses, including court costs and attorney fees,

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1 and against all liability, losses and damages of any nature
2 whatsoever that members shall or may at any time sustain by
3 reason of any decision made in the performance of their duties
4 pursuant to this section."

5 SECTION 8. TEMPORARY PROVISIONS--TRANSITION MEMBERSHIP
6 OF THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION BOARD OF
7 DIRECTORS.--

8 A. On the effective date of this act:

9 (1) the secretary of state is no longer a
10 member of the public employees retirement association board of
11 directors; and

12 (2) the member of the educational retirement
13 board appointed pursuant to Paragraph (6) of Subsection B of
14 Section 22-11-3 NMSA 1978 with the shortest remaining term is
15 no longer a member of the educational retirement board.

16 B. Within thirty days of the effective date of this
17 act:

18 (1) a member shall be appointed to the public
19 employees retirement association board of directors pursuant to
20 Paragraph (1) of Subsection B of Section 10-11-130 NMSA 1978;
21 and

22 (2) a member shall be appointed to the
23 educational retirement board pursuant to Paragraph (7) of
24 Subsection B of Section 22-11-3 NMSA 1978.

25 SECTION 9. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2011.

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