

Date of Hearing: August 13, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 361 (Padilla) – As Amended: August 6, 2013

SENATE VOTE: (vote not relevant)

SUBJECT: Elections: voter registration.

SUMMARY: Requires the Secretary of State (SOS) to jointly establish automated voter registration systems with the Department of Motor Vehicles (DMV), California community colleges (CCC) and California State Universities (CSU), as specified, and voter registration agencies designated by National Voter Registration Act of 1993 (NVRA), as specified. Specifically, this bill:

- 1) Requires the SOS to provide on his or her Internet Web site the capability for a voter to, and maintain a toll-free telephone number by which a voter may, do all of the following:
 - a) Check the status of his or her voter registration and review his or her voter registration information that is included in the SOS's electronic voter registration system;
 - b) Find the location of his or her polling place, not less than thirty days before an election, if available, or the location of the polling place for any residential address in the state;
 - c) Determine, upon completion of the official canvass for an election, whether his or her vote by mail (VBM) ballot was counted and if not, the reason the ballot was rejected;
 - d) Determine, upon completion of the official canvass for an election, whether his or her provisional ballot was counted and if not, the reason the ballot was rejected; and,
 - e) Opt out of receiving his or her voter pamphlet by mail and instead receive it by email.
- 2) Requires the online system established by this bill to be accessible to persons with disabilities and available in all languages in which a ballot or ballot materials are required to be made available in this state pursuant to Section 203 (42 U.S.C. Sec. 1973aa-1a) or Section 4(f)(4) (42 U.S.C. Sec. 1973b(f)(4)) of the federal Voting Rights Act of 1965. Requires the SOS to adopt regulations to ensure the security and privacy of any personal voter registration information conveyed by the online system.
- 3) Authorizes the SOS, notwithstanding other laws and for the purposes of maintaining accurate voter registration records, to enter into agreements with other states to share and receive information or data pertaining to voters who have permanently moved to other states in accordance with existing law. Requires the SOS, before entering into an agreement, to establish standards and procedures to safeguard the privacy of the state's residents and the integrity and security of the information or data shared and received. Prohibits the SOS from sharing a voter's information if that information is deemed confidential by existing law, as specified.

- 4) Establishes Paperless Voter Registration and requires the SOS and the DMV, by January 1, 2017, to jointly establish a system in which voter registration information is collected by the DMV, as specified, and electronically transmitted to the SOS, in a format prescribed by the SOS, for the purpose of registering a person to vote or updating a voter's registration information.
- 5) Requires the DMV, with each in-person or online application for the issuance or renewal of a driver's license or state identification card, and with each in-person or online submission of a change of address form, to offer the person the opportunity to register to vote in accordance with the NVRA. Requires the DMV to notify the applicant of all of the following:
 - a) The eligibility requirements to register to vote in this state, using notice language approved by the SOS;
 - b) That the applicant has an opportunity to register to vote or update his or her voter registration information;
 - c) That voter registration is voluntary and, if the applicant declines to register to vote, the fact that he or she declined to register shall only be used for voter registration purposes and shall not otherwise affect the services or assistance provided by the DMV;
 - d) That if the applicant chooses to register to vote or update his or her voter registration information, that his or her voter registration information shall be made available to the SOS for voter registration purposes.
- 6) Requires the DMV, after providing the required notices to the applicant as stated above, to ask the applicant whether he or she would like to register to vote or update his or her voter registration information and whether he or she consents to the use of his or her DMV records for voter registration purposes. Requires the DMV, for each applicant who indicates that he or she would like to register to vote or update his or her voter registration information, and consents to the use of his or her motor vehicle records for voter registration purposes, to provide the applicant with a supplemental voter registration form, as specified.
- 7) Requires each CCC or CSU campus that operates an automated class registration system on or after January 1, 2014, to jointly establish a system in which voter registration information is collected by the college or university, as specified, and electronically transmitted to the SOS, in a format prescribed by the SOS, for the purpose of registering a person to vote or updating a voter's registration information. Requires the SOS to work with each CCC and CSU campus that operates an automated class registration system to ensure that the system conforms to the Paperless Voter Registration requirements, as specified in the bill.
- 8) Requires the CCC or CSU campus, each time a student registers for classes, to offer the student the opportunity to register to vote, and to notify the student of all of the following:
 - a) The eligibility requirements to register to vote in this state, using notice language approved by the SOS;
 - b) That the student has an opportunity to register to vote or update his or her voter registration information;

- c) That voter registration is voluntary and, if the student declines to register to vote, the fact that he or she declined to register shall only be used for voter registration purposes and shall not affect his or her class registration; and,
 - d) That if the student chooses to register to vote or update his or her voter registration information, that his or her voter registration information shall be made available to the SOS for voter registration purposes.
- 9) Requires CCC or CSU, after providing the required notices to the student as stated above, to ask the student whether he or she would like to register to vote or update his or her voter registration information and whether he or she consents to the use of his or her student records for voter registration purposes. Requires CCC or CSU, for each student who indicates that he or she would like to register to vote or update his or her voter registration information, and consents to the use of his or her student records for voter registration purposes, to provide the student with a supplemental voter registration form, as defined.
- 10) Requires the SOS and each NVRA voter registration agency, as specified, that allows a person to apply online for service or assistance, or to submit a recertification, renewal, or change of address form relating to the service or assistance online, to jointly establish a system under which voter registration information is collected by the agency and electronically transmitted, in a format prescribed by the SOS, to the SOS for the purpose of registering a person to vote or updating a voter's registration information.
- 11) Provides that with each online application for service or assistance or submission of a recertification, renewal, or change of address form relating to the service or assistance online, immediately prior to providing an electronic voter preference form, the voter registration agency shall notify the applicant of all of the following:
- a) The eligibility requirement to register to vote in this state;
 - b) That the applicant has an opportunity to register to vote or update his or her voter registration information; and,
 - c) That voter registration is voluntary and, if the applicant declines to register to vote, the fact that he or she has declined to register shall only be used for voter registration purposes and shall not otherwise affect the services or assistance provided by the agency.
- 12) Provides that if an applicant indicates on his or her electronic voter preference form that he or she would like to register to vote by completing a supplemental voter registration form, the voter registration agency shall do both of the following:
- a) Notify the applicant that, if he or she chooses to register to vote or update his or her voter registration by completing the form, he or she consents to the agency and the SOS using information contained in his or her agency records for voter registration purposes; and,
 - b) Provide the applicant with a supplemental voter registration form, as specified.
- 13) Requires the DMV, the college or university, or the voter registration agency, not later than one business day after receipt of a completed supplemental voter registration form, to

electronically transmit to the SOS both of the following:

- a) The information collected on the supplemental voter registration form; and,
 - b) Any other information in the applicant's records that is necessary to register the applicant to vote or update the applicant's voter registration, as applicable.
- 14) Provides that an applicant's voter registration shall be deemed submitted on the date upon which the DMV, the college or university, or the voter registration agency received the applicant's completed supplemental voter registration form.
- 15) Requires the DMV, the college or university, or the voter registration agency to only transmit information to the SOS that is necessary to register a person to vote or update a voter's registration. Provides that if an applicant declines to register to vote, the fact that he or she has declined to register shall be confidential and that information shall not be transmitted to the SOS.
- 16) Requires the DMV, the college or university, and voter registration agency, notwithstanding any other provision of law and immediately after transmitting an applicant's voter registration information to the SOS, to destroy the applicant's completed supplemental voter registration form and any materials containing information specific to the applicant's voter registration that is not otherwise collected by the DMV, the college or university, or voter registration agency for other purposes.
- 17) Requires the DMV, each college or university, and each voter registration agency to prepare and submit to the SOS for approval a supplemental voter registration form. Requires the supplemental voter registration form to request voter registration information necessary to register a person to vote or update the person's voter registration. Prohibits the form from requiring any information to be provided that duplicates information previously provided to the department, college or university, or voter registration agency and available in the records for the voter.
- 18) Requires the supplemental voter registration form to do all of the following:
- a) State the eligibility requirements to register to vote;
 - b) Contain an attestation that the registrant meets each eligibility requirement; and,
 - c) Request all of the following information from the registrant, if the information is not otherwise available in the records for the registrant:
 - i) The registrant's home telephone number;
 - ii) The registrant's email address;
 - iii) The registrant's California driver's license (DL) number or state-issued identification number;

- iv) The last four digits of the registrant's social security number (SSN), if available;
 - v) If the registrant was previously registered to vote, his or her name, address, and county of residence for the previous registration;
 - vi) The language in which the registrant would like to receive election-related materials;
 - vii) The registrant's political party preference, if any;
 - viii) The registrant's ethnicity or race, or both, provided that the registrant may not be denied the ability to register because he or she declines to state his or her ethnicity or race;
 - ix) Whether the registrant would like to receive a VBM ballot in all elections; and,
 - x) Whether the registrant would like to be a poll worker.
- (d) Request any other information required by state or federal law for voter registration.
- 19) Requires the registrant to certify the content of the form as to its truth and correctness, under penalty of perjury, with his or her signature and the date of signing. Provides that if the registrant is unable to write, he or she shall sign with a mark or cross.
- 20) Prohibits a registrant from being denied the ability to register to vote because he or she declines to provide any of the information that is not required in order for a person to register to vote.
- 21) Requires a paperless voter registration system established in accordance with this bill to be designed to ensure the secure electronic storage of information by, and the secure electronic transmission of information between, the SOS and the DMV, college or university, or voter registration agency.
- 22) Requires the SOS to ensure that a person is not registered to vote, or does not have his or her voter registration updated pursuant to this chapter, unless the person has consented to registering or updating his or her voter registration. Provides that if the SOS receives information indicating that a person did not consent to registering to vote or updating his or her voter registration before the registration or the update to the registration is processed by the SOS, the person shall not be registered to vote or have his or her voter registration updated. Prohibits a person included in the statewide voter registration database from having his or her name removed from the database solely because the SOS receives information indicating that he or she may not have consented to registering or updating his or her voter registration.
- 23) Prohibits the name of the department, college or university, or voter registration agency from which voter registration information is electronically transmitted to the SOS, from being included in the statewide voter registration database.

- 24) Prohibits a person from using, sharing, or providing access to the statewide voter registration database for any purpose other than voter registration, election administration, or the enforcement of election laws.
- 25) Provides that the fact that a person is not included in the statewide voter registration database, or has declined to supply information for voter registration purposes pursuant to this bill, shall not be disclosed to the public or used for any purpose other than voter registration, election administration, or the enforcement of election laws.
- 26) Provides a person's declination to register to vote or to update his or her voter registration shall not affect the amount, type, or quality of service or assistance provided by the DMV, a college or university, or a voter registration agency, as applicable, except with regard to voter registration.
- 27) Prohibits a person from using voter registration information collected under this bill for commercial purposes, including for comparison with a commercial list or database.
- 28) Requires the SOS to adopt regulations as necessary to implement this bill, including, but not limited to, all of the following:
 - a) Procedures to ensure the reliable electronic transmission and validation of voter registration information;
 - b) Procedures relating to receipt of duplicate or multiple transmissions of voter registration information pertaining to the same person;
 - c) Procedures to ensure the security and privacy of voter registration information transmitted pursuant to this chapter; and,
 - d) Procedures to ensure that the name of the department, college or university, or voter registration agency that electronically transmitted a voter's registration information to the SOS is not included in the statewide voter registration database.
- 29) Requires an entity that electronically transmits voter registration information to the SOS in accordance with this bill to comply with all applicable regulations and guidelines adopted by the SOS. Permits an entity to adopt or establish additional security measures to protect the privacy and security of voter registration information transmitted to the SOS.
- 30) Permits the DMV, a college or university, or a voter registration agency to contract with a third party to assist in the transmission of voter registration information to the SOS, provided that the transmission complies with all requirements of the provisions of this bill.
- 31) Requires the SOS, on or before January 1 of each year, to submit a report to the Legislature on the effectiveness of this bill. Requires the report to include all of the following information:
 - a) The number of electronic transmissions of voter registration information made from each entity;

- b) The number of voters registered pursuant to this bill, by entity; and,
 - c) The number of voters in the statewide voter registration database whose voter registration information was updated pursuant to this bill, by entity.
- 32) Requires this bill to become operative only if the SOS certifies that the state has a statewide voter registration database that complies with the requirements of the federal Help America Vote Act of 2002 (HAVA).
- 33) Makes corresponding and technical changes.

EXISTING LAW:

- 1) Requires each state to offer voter registration services at motor vehicle agency offices, offices that provide public assistance, offices that provide state-funded programs primarily engaged in providing services to persons with disabilities, Armed Forces recruitment offices, and other state and local offices within the state designated as NVRA voter registration agencies.
- 2) Requires the DMV to provide the opportunity to register to vote to individuals who apply for, renew, or change an address for, a driver's license or personal identification card issued by the DMV.
- 3) Requires a driver's license or identification card application to be used as an application for voter registration, unless the applicant fails to sign the application.
- 4) Requires change of address information received by the DMV to be used for the purpose of updating voter registration records, unless the registrant chooses otherwise.
- 5) Requires all NVRA designated voter registration agencies to provide the opportunity to register to vote to persons applying for the agency's assistance or services, seeking recertification or renewal of those services, and changing address for the assistance or services.
- 6) Requires NVRA designated voter registration agencies to distribute voter registration forms and NVRA voter preference forms, assist in filling out the voter registration form, accept and transmit completed voter registration forms to county elections officials, and accept and retain completed preference forms on file for two years.

FISCAL EFFECT: Unknown. State-mandated local program: contains reimbursement direction.

COMMENTS:

- 1) Purpose of the Bill: According to the author:

California has fallen behind other states in the adoption of election information technology that can expand voter participation and ensure every vote is counted.

In 2010, California had 23.5 million eligible voters, of these:

- 17.2 million were registered to vote.
- And only 10.5 million voted, which means almost 13 million potential voters chose not to participate.
- More people did not vote in California, than the total number of voters in Texas and New York combined.

Of those that did vote:

- Over a million reported voter registration problems
- 546,000 voted using provisional ballots – which is more than the total number of voters in either Delaware or Vermont or Hawaii.

How does this compare to other states?

In February of this year, the Pew Center on the States released the Election Performance Index which measures 17 indicators of effective election administration.

California ranks 48th, right below West Virginia and just above Alabama and Mississippi.

Specifically, the report noted that in 2010 California had:

- The highest rate of provisional ballots cast in the nation
- The highest rate of absentee ballots rejected in the nation
- And a high rate of nonvoting due to registration or absentee ballot problems

Access to election information can help voters solve problems with their registration.

However, California voters have a more difficult time accessing election information compared to other states. In 18 states voters are able to go to their state website and check their:

- registration status
- location of their polling place
- specific ballot information
- and the status of their absentee and provisional ballots.

39 states offer at least 2 of these tools, California offers none of them. We have the opportunity to change that. The vendor for VoteCal, the future statewide voter registration database, is required to allow these tools to be possible, but that does not guarantee they will be used. SB 361 will create a central site on the Secretary of State's website where voters can access these important information tools.

California can also increase the accuracy and efficiency of voter registration at Motor Voter agencies by implementing paperless voter registration. SB 361 would create a paperless gathering and transfer of voter registration information from voter to the Motor Voter agency to the Secretary of State and to the counties. A paperless system that allows for the electronic transmission of voter registration applications to election officials and to the statewide registration database reduces both data entry costs and the costs associated with clerical errors. Paperless registration in Arizona has reduced voter registration costs to three cents per application from 83 cents for paper applications.

SB 361 will increase voter registration and maintain more accurate records by allowing California to share public voter registration information with other states. Every year, nearly 900,000 citizens move in and out of California to and from other states. SB 361

authorizes the Secretary of State to share voter registration information that is public, with other Secretaries of State in order to identify voters who have left California or who have moved in. Colorado, Delaware, Maryland, Nevada, Utah, Virginia, and Washington already share voter registration information with each other through the Election Registration Information Center, known as ERIC.

SB 361 will increase voter registration, create efficiencies, and improve the accuracy of voter records by implementing modern technologies and processes that have been successfully put to use in other states.

- 2) Paperless Voter Registration Requirements and Other States: This bill requires the SOS to jointly establish paperless voter registration systems with the DMV, community colleges and CSUs, as specified, and NVRA voter registration agencies, as specified, under which voter registration information is collected and electronically transmitted to the SOS for the purpose of registering a person to vote or updating a voter's registration information.

According to the Brennan Center's 2010 report entitled, "Voter Registration in a Digital Age," seven states – Arizona, Delaware, Florida, Kansas, Pennsylvania, Rhode Island, and Washington – currently have fully automated or paperless voter registration systems with their motor vehicle agencies. The report defines automated voter registration as one in which the government offices, including DMV or social service offices, collect and transfer voter registrations to elections officials without using separate paper forms. According to the report, these offices enter registration data into their computers and transfer them electronically in a format that the elections official can securely review and upload directly into their voter registration database systems.

Additionally, the report states that at least ten states – Arkansas, California, Georgia, Kentucky, Michigan, New Jersey, North Carolina, South Carolina, South Dakota and Texas – have DMV registrations that are partially automated. And officials transmit at least some information electronically, but have not completely eliminated separate forms or local data entry.

According to the report, others states with paperless voter registration systems have had some positive results which include a more cost-effective voter registration process, potential costs savings due to more accurate and reliable voter registration information, and increased voter registration rates.

- 3) National Voter Registration Act: The NVRA was enacted by Congress in 1993 and took effect in 1995. Also known as the "Motor Voter Act," the enactment of the NVRA was intended to enhance and increase voting opportunities for eligible voters to register to vote and maintain their registration. In addition to other methods of voter registration states offer, the NVRA requires states to provide the opportunity to apply to register to vote for federal elections through various methods. Section 5 of the NVRA requires states to offer voter registration opportunities at motor vehicle agencies. Section 6 of the NVRA requires states to provide voter registration opportunities by mail-in application. Finally, Section 7 of the NVRA requires states to offer voter registration opportunities at all offices that provide public assistance or state-funded programs primarily engaged in providing services to persons with disabilities. Armed Forces recruitment offices must also provide voter registration services. Moreover, Section 7 of the NVRA requires a state to designate other

offices within the state as voter registration agencies. According to the US Department of Justice (DOJ) NVRA guidelines, a state is free to determine which other agencies or offices should be designated, according to its needs and preferences, but it must make additional designations. In California, the following state and local offices are NVRA voter registration agencies:

- DMV
- Public assistance agencies (including County Human Service Agencies)
 - County offices which accept applications and administer benefits for CalFresh, formerly known as Food Stamps, and the California Work Opportunity and Responsibility to Kids (CalWORKS);
 - County offices which accept applications and administer benefits for the Medi-Cal program; and,
 - Community-based nonprofit organizations under contract with the Department of Public Health to administer the Women, Infants, and Children (WIC) program;
- State-funded agencies primarily serving persons with disabilities
 - Department of Rehabilitation offices offering vocational rehabilitation services;
 - Independent Living Centers;
 - Department of Developmental Services Regional Centers;
 - Offices under contract with the Department of Social Services, Office of Deaf Access to provide services to the deaf; and,
 - State and county mental health providers;
- Armed Forces Recruitment offices
- Other agencies designated by the state under the NVRA
 - Franchise Tax Board offices offering forms, instruction, and assistance to the public for income tax and the Homeowners and Renters Assistance program; and,
 - Board of Equalization offices serving the public.

As mentioned above, this bill requires designated NVRA voter registration agencies that allow a person to apply online for services or assistance to establish a system in which voter registration is collected by the agency and electronically transmitted to the SOS.

This bill makes substantial changes by requiring certain NVRA agencies to interface directly with the SOS and electronically transmit voter registration information. This requirement will be significant as there are over 600 NVRA designated agencies that could be required to transmit voter registration information electronically to the SOS if they offer online services or assistance.

- 4) Voter Access to Registration Information: According to the author's statement, one of the goals of this bill is to increase a voter's access to their voter registration so they have the ability to update their information and resolve any issues regarding their registration. In doing so, this bill requires the SOS to provide tools on his or her Internet Web site that allow a voter to check the status of his or her registration information, find the location of his or her polling place, determine whether his or her VBM or provisional ballot was counted and if

not, the reason the ballot was rejected, and opt out of receiving a statewide voter pamphlet by mail. In addition, this bill requires this information to be accessible to persons with disabilities and available in all languages required by federal law. Furthermore, this bill requires the SOS to adopt regulations to ensure the security and privacy of the information provided. As mentioned in the author's statement, these are all features that will be included in VoteCal, the new statewide voter registration database. VoteCal is currently in procurement and is expected to be fully deployed in 2016. The provisions of this bill are contingent upon the implementation of VoteCal.

- 5) Election Registration Information Center (ERIC): The Electronic Registration Information Center, also known as ERIC, is a non-profit organization with the sole mission of assisting states to improve the accuracy of America's voter rolls and increase access to voter registration for all eligible citizens. ERIC is governed by states who choose to join, and was formed in 2013 with the assistance of The PEW Charitable Trust. According to representatives of PEW, there are seven states (Colorado, Delaware, Maryland, Nevada, Utah, Virginia, and Washington) that are participating in ERIC.

According to background information, the ERIC data center allows states to securely and safely compare voter data, thereby improving the accuracy of the voter rolls. States that choose to participate in ERIC are able to compare information on eligible voters from official data sources submitted by the states. Materials further state that ERIC has safeguards in place that anonymizes sensitive identifying data by converting it into indecipherable characters that is unreadable and unusable to potential hackers, such as "one-way hashing." According to a representative of PEW, these records go through a data-matching exchange that cross checks the information with other data sources such as the National Change of Address data from the Postal Service, as well as other existing government databases, such as death records from the Social Security Administration. ERIC then reports back to the states where there is a highly confident match indicating a voter moved or died, or the existence of a duplicate record. States can then begin the process under federal and state law to clean up the voter rolls. Participating states also receive information on unregistered individuals who are potentially eligible to vote. This information will allow them to reach out to those citizens to encourage them to register to vote.

This bill permits the SOS to enter into agreements with other states to share and receive information or data pertaining to voters who have permanently moved to other states. In addition, the bill prohibits the SOS from sharing voter information if that voter information is deemed to be confidential. These provisions of the bill are not limited to participation in ERIC. Consequently, irrespective of any security protections that have been put into in place at ERIC, this bill would allow the SOS to share voter registration information even absent those protections. In addition, this bill gives the SOS the sole discretion to decide if the state of California should enter into agreements with other states and share information and data pertaining to voters who have permanently moved to other states. The committee may wish to consider whether designating this discretion to an independently elected constitutional officer is prudent.

The bill can be interpreted to give the SOS sole discretion to decide whether or not to share the information that has been previously considered confidential, including voters' DL and SSN numbers.

According to ERIC's bylaws, a state participating in ERIC is required to share their voter registration files and their DMV records. In addition, the bylaws state that voter registration and motor vehicle data fields to be submitted to ERIC by each participating jurisdiction include the following if available: all name fields, all address fields, DL or state identification number, last four digits of SSN, date of birth, affirmative documentation of citizenship, the title/type of affirmative documentation of citizenship presented, phone number, and email addresses or other electronic contact method. The majority of California's DMV records contain information that is expressly prohibited from being disclosed, such as an individual's DL number and SSN. According to a representative from PEW, in order to participate, ERIC would require California to share personal identifying information such as a voter's DL, SSN, and DOB, two of which are currently prohibited by law from being disclosed.

Furthermore, the bill does not contain any requirements for the SOS to inform a voter that their personal voter registration information is being shared, nor does the bill require a voter to consent to their information being shared. The committee may wish to consider whether this policy change will set a new precedent that allows a voter's personal information to be shared without their consent.

- 6) Related Legislation: SB 589 (Hill), which is pending on the Assembly Floor, requires county elections officials to establish a free access system that allows a VBM voter to find out whether his or her ballot was counted, and if not, the reason why it was not counted. SB 589 (Hill) passed out of this committee on a 6-0 vote.

AB 1122 (Levine), would have required the DMV, in coordination with the SOS, to the extent the State's Plan for implementation of the NVRA is inconsistent with the NVRA, to take additional steps to fully implement and further comply with the NVRA. AB 1122 was held on the Assembly Appropriations Committee's suspense file.

- 7) Previous Legislation: SB 35 (Padilla), Chapter 505, Statutes of 2012, added the California Health Benefit Exchange to the list of public assistance agencies required by the NVRA to provide voter registration opportunities and codified various other provisions of the NVRA.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union (if amended)
California Common Cause
CALPIRG
California State Council of the Service Employees International Union
National Association of Latino Elected and Appointed Officials Educational Fund
National Council of Jewish Women Los Angeles
PowerPAC.Org
Rock the Vote

Opposition

None on file.

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