

2022 -- H 7950

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO TOWNS AND CITIES -- LOW AND MODERATE INCOME HOUSING

Introduced By: Representatives Speakman, Shekarchi, Donovan, Fogarty, Hull,
Casimiro, and Alzate

Date Introduced: March 07, 2022

Referred To: House Municipal Government & Housing

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 45-53-3 and 45-53-4 of the General Laws in Chapter 45-53 entitled

2 "Low and Moderate Income Housing" are hereby amended to read as follows:

3 **45-53-3. Definitions.**

4 The following words, wherever used in this chapter, unless a different meaning clearly
5 appears from the context, have the following meanings:

6 (1) "Affordable housing plan" means a component of a housing element, as defined in §
7 45-22.2-4(1), to meet housing needs in a city or town that is prepared in accordance with guidelines
8 adopted by the state planning council, and/or to meet the provisions of § 45-53-4(b)(1) and (c).

9 (2) "Approved affordable housing plan" means an affordable housing plan that has been
10 approved by the director of administration as meeting the guidelines for the local comprehensive
11 plan as promulgated by the state planning council; provided, however, that state review and
12 approval, for plans submitted by December 31, 2004, shall not be contingent on the city or town
13 having completed, adopted, or amended its comprehensive plan as provided for in § 45-22.2-8, §
14 45-22.2-9, or § 45-22.2-12.

15 (3) "Comprehensive plan" means a comprehensive plan adopted and approved by a city or
16 town pursuant to chapters 22.2 and 22.3 of this title.

17 (4) "Consistent with local needs" means reasonable in view of the state need for low and
18 moderate income housing, considered with the number of low income persons in the city or town
19 affected and the need to protect the health and safety of the occupants of the proposed housing or

1 of the residence of the city or town, to promote better site and building design in relation to the
2 surroundings, or to preserve open spaces, and if the local zoning or land use ordinances,
3 requirements, and regulations are applied as equally as possible to both subsidized and
4 unsubsidized housing. Local zoning and land use ordinances, requirements, or regulations are
5 consistent with local needs when imposed by a city or town council after a comprehensive hearing
6 in a city or town where:

7 (i) Low or moderate income housing exists which is: (A) in the case of an urban city or
8 town which has at least 5,000 occupied year-round rental units and the units, as reported in the
9 latest decennial census of the city or town, comprise twenty-five percent (25%) or more of the year-
10 round housing units, and is in excess of fifteen percent (15%) of the total occupied year-round
11 rental units; or (B) in the case of all other cities or towns, is in excess of ten percent (10%) of the
12 year-round housing units reported in the census.

13 (ii) The city or town has promulgated zoning or land use ordinances, requirements, and
14 regulations to implement a comprehensive plan which has been adopted and approved pursuant to
15 chapters 22.2 and 22.3 of this title, and the housing element of the comprehensive plan provides
16 for low and moderate income housing in excess of either ten percent (10%) of the year-round
17 housing units or fifteen percent (15%) of the occupied year-round rental housing units as provided
18 in subdivision (4)(i).

19 (5) "Infeasible" means any condition brought about by any single factor or combination of
20 factors, as a result of limitations imposed on the development by conditions attached to the approval
21 of the comprehensive permit, to the extent that it makes it impossible for a public agency, nonprofit
22 organization, or limited equity housing cooperative to proceed in building or operating low or
23 moderate income housing without financial loss, within the limitations set by the subsidizing
24 agency of government, on the size or character of the development, on the amount or nature of the
25 subsidy, or on the tenants, rentals, and income permissible, and without substantially changing the
26 rent levels and unit sizes proposed by the public agency, nonprofit organization, or limited equity
27 housing cooperative.

28 (6) "Letter of eligibility" means a letter issued by the Rhode Island housing and mortgage
29 finance corporation in accordance with § 42-55-5.3(a).

30 (7) "Local board" means any town or city official, zoning board of review, planning board
31 or commission, board of appeal or zoning enforcement officer, local conservation commission,
32 historic district commission, or other municipal board having supervision of the construction of
33 buildings or the power of enforcing land use regulations, such as subdivision, or zoning laws.

34 (8) "Local review board" means the planning board as defined by § 45-22.2-4(20), or if

1 designated by ordinance as the board to act on comprehensive permits for the town, the zoning
2 board of review established pursuant to § 45-24-56.

3 (9) "Low or moderate income housing" means any housing whether built or operated by
4 any public agency or any nonprofit organization or by any limited equity housing cooperative or
5 any private developer, that is subsidized by a federal, state, or municipal government subsidy under
6 any program to assist the construction or rehabilitation of housing affordable to low or moderate
7 income households, as defined in the applicable federal or state statute, or local ordinance and that
8 will remain affordable through a land lease and/or deed restriction for ninety-nine (99) years or
9 such other period that is either agreed to by the applicant and town or prescribed by the federal,
10 state, or municipal government subsidy program but that is not less than thirty (30) years from
11 initial occupancy.

12 (10) "Meeting housing needs" means adoption of the implementation program of an
13 approved affordable housing plan and the absence of unreasonable denial of applications that are
14 made pursuant to an approved affordable housing plan in order to accomplish the purposes and
15 expectations of the approved affordable housing plan.

16 [\(11\) "Monitoring agents" means those monitoring agents appointed by the Rhode Island](#)
17 [housing resources commission pursuant to § 45-53-3.1 and to provide the monitoring and oversight](#)
18 [set forth in this chapter, including, but not limited to, §§ 45-53-3.1 and 45-53-4.](#)

19 ~~(11)~~(12) "Municipal government subsidy" means assistance that is made available through
20 a city or town program sufficient to make housing affordable, as affordable housing is defined in §
21 42-128-8.1(d)(1); such assistance may include, but is not limited to, direct financial support,
22 abatement of taxes, waiver of fees and charges, and approval of density bonuses and/or internal
23 subsidies, and any combination of forms of assistance.

24 **45-53-4. Procedure for approval of construction of low or moderate income housing.**

25 (a) Any applicant proposing to build low or moderate income housing may submit to the
26 local review board a single application for a comprehensive permit to build that housing in lieu of
27 separate applications to the applicable local boards. This procedure is only available for proposals
28 in which at least twenty-five percent (25%) of the housing is low or moderate income housing. The
29 application and review process for a comprehensive permit shall be as follows:

- 30 (1) Submission requirements. Applications for a comprehensive permit shall include:
- 31 (i) A letter of eligibility issued by the Rhode Island housing mortgage finance corporation,
32 or in the case of projects primarily funded by the U.S. Department of Housing and Urban
33 Development or other state or federal agencies, an award letter indicating the subsidy, or
34 application in such form as may be prescribed for a municipal government subsidy; and

1 (ii) A written request to the local review board to submit a single application to build or
2 rehabilitate low or moderate income housing in lieu of separate applications to the applicable local
3 boards. The written request shall identify the specific sections and provisions of applicable local
4 ordinances and regulations from which the applicant is seeking relief; and

5 (iii) A proposed timetable for the commencement of construction and completion of the
6 project; and

7 (iv) A sample land lease or deed restriction with affordability liens that will restrict use as
8 low and moderate income housing in conformance with the guidelines of the agency providing the
9 subsidy for the low and moderate income housing, but for a period of not less than thirty (30) years;
10 and

11 (v) Identification of an approved entity that will monitor the long-term affordability of the
12 low and moderate income units provided, on and after July 1, 2022, this entity shall include the
13 Rhode Island housing resources commission established pursuant to chapter 128 of title 42 and
14 acting through its monitoring agents, and these agents shall monitor the long-term affordability of
15 the low and moderate income units; and

16 (vi) A financial pro-forma for the proposed development; and

17 (vii) For comprehensive permit applications: (A) not involving major land developments
18 or major subdivisions including, but not limited to, applications seeking relief from specific
19 provisions of a local zoning ordinance, or involving administrative subdivisions, minor land
20 developments or minor subdivisions, or other local ordinances and regulations: those items required
21 by local regulations promulgated pursuant to applicable state law, with the exception of evidence
22 of state or federal permits; and for comprehensive permit applications; and (B) involving major
23 land developments and major subdivisions, unless otherwise agreed to by the applicant and the
24 town; those items included in the checklist for the master plan in the local regulations promulgated
25 pursuant to § 45-23-40. Subsequent to master plan approval, the applicant must submit those items
26 included in the checklist for a preliminary plan for a major land development or major subdivision
27 project in the local regulations promulgated pursuant to § 45-23-41, with the exception of evidence
28 of state or federal permits. All required state and federal permits must be obtained prior to the final
29 plan approval or the issuance of a building permit; and

30 (viii) Municipalities may impose fees on comprehensive permit applications that are
31 consistent with but do not exceed fees that would otherwise be assessed for a project of the same
32 scope and type but not proceeding under this chapter, provided, however, that the imposition of
33 such fees shall not preclude a showing by a non-profit applicant that the fees make the project
34 financially infeasible; and

1 (xi) Notwithstanding the submission requirements set forth above, the local review board
2 may request additional, reasonable documentation throughout the public hearing, including, but not
3 limited to, opinions of experts, credible evidence of application for necessary federal and/or state
4 permits, statements and advice from other local boards and officials.

5 (2) Certification of completeness. The application must be certified complete or incomplete
6 by the administrative officer according to the provisions of § 45-23-36; provided, however, that for
7 a major land development or major subdivision, the certificate for a master plan shall be granted
8 within thirty (30) days and for a preliminary plan shall be granted within forty-five (45) days. The
9 running of the time period set forth herein will be deemed stopped upon the issuance of a certificate
10 of incompleteness of the application by the administrative officer and will recommence upon the
11 resubmission of a corrected application by the applicant. However, in no event will the
12 administrative officer be required to certify a corrected submission as complete or incomplete less
13 than fourteen (14) days after its resubmission. If the administrative officer certifies the application
14 as incomplete, the officer shall set forth in writing with specificity the missing or incomplete items.

15 (3) Pre-application conference. Where the comprehensive permit application proposal is a
16 major land development project or a major subdivision pursuant to chapter 23 of this title a
17 municipality may require an applicant proposing a project under this chapter to first schedule a pre-
18 application conference with the local review board, the technical review committee established
19 pursuant to § 45-23-56, or with the administrative officer for the local review board and other local
20 officials, as appropriate. To request a pre-application conference, the applicant shall submit a short
21 description of the project in writing including the number of units, type of housing, as well as a
22 location map. The purpose of the pre-application conference shall be to review a concept plan of
23 the proposed development. Upon receipt of a request by an applicant for a pre-application
24 conference, the municipality has thirty (30) days to schedule and hold the pre-application
25 conference. If thirty (30) days has elapsed from the filing of the pre-application submission and no
26 pre-application conference has taken place, nothing shall be deemed to preclude an applicant from
27 thereafter filing and proceeding with an application for a comprehensive permit.

28 (4) Review of applications. An application filed in accordance with this chapter shall be
29 reviewed by the local review board at a public hearing in accordance with the following provisions:

30 (i) Notification. Upon issuance of a certificate of completeness for a comprehensive permit,
31 the local review board shall immediately notify each local board, as applicable, of the filing of the
32 application, by sending a copy to the local boards and to other parties entitled to notice of hearings
33 on applications under the zoning ordinance and/or land development and subdivision regulations
34 as applicable.

1 (ii) Public Notice. Public notice for all public hearings will be the same notice required
2 under local regulations for a public hearing for a preliminary plan promulgated in accordance with
3 § 45-23-42. The cost of notice shall be paid by the applicant.

4 (iii) Review of minor projects. The review of a comprehensive permit application involving
5 only minor land developments or minor subdivisions or requesting zoning ordinance relief or relief
6 from other local regulations or ordinances not otherwise addressed in this subsection, shall be
7 conducted following the procedures in the applicable local regulations, with the exception that all
8 minor land developments or minor subdivisions under this section are required to hold a public
9 hearing on the application, and within ninety-five (95) days of issuance of the certificate of
10 completeness, or within such further time as is agreed to by the applicant and the local review
11 board, render a decision.

12 (iv) Review of major projects. In the review of a comprehensive permit application
13 involving a major land development and/or major subdivision, the local review board shall hold a
14 public hearing on the master plan and shall, within one hundred and twenty (120) days of issuance
15 of the certification of completeness, or within such further amount of time as may be agreed to by
16 the local review board and the applicant, render a decision. Preliminary and final plan review shall
17 be conducted according to local regulations promulgated pursuant to chapter 23 of this title except
18 as otherwise specified in this section.

19 (v) Required findings. In approving on an application, the local review board shall make
20 positive findings, supported by legally competent evidence on the record which discloses the nature
21 and character of the observations upon which the fact finders acted, on each of the following
22 standard provisions, where applicable:

23 (A) The proposed development is consistent with local needs as identified in the local
24 comprehensive community plan with particular emphasis on the community's affordable housing
25 plan and/or has satisfactorily addressed the issues where there may be inconsistencies.

26 (B) The proposed development is in compliance with the standards and provisions of the
27 municipality's zoning ordinance and subdivision regulations, and/or where expressly varied or
28 waived local concerns that have been affected by the relief granted do not outweigh the state and
29 local need for low and moderate income housing.

30 (C) All low and moderate income housing units proposed are integrated throughout the
31 development; are compatible in scale and architectural style to the market rate units within the
32 project; and will be built and occupied prior to, or simultaneous with the construction and
33 occupancy of any market rate units.

34 (D) There will be no significant negative environmental impacts from the proposed

1 development as shown on the final plan, with all required conditions for approval.

2 (E) There will be no significant negative impacts on the health and safety of current or
3 future residents of the community, in areas including, but not limited to, safe circulation of
4 pedestrian and vehicular traffic, provision of emergency services, sewerage disposal, availability
5 of potable water, adequate surface water run-off, and the preservation of natural, historical or
6 cultural features that contribute to the attractiveness of the community.

7 (F) All proposed land developments and all subdivisions lots will have adequate and
8 permanent physical access to a public street in accordance with the requirements of § 45-23-60(5).

9 (G) The proposed development will not result in the creation of individual lots with any
10 physical constraints to development that building on those lots according to pertinent regulations
11 and building standards would be impracticable, unless created only as permanent open space or
12 permanently reserved for a public purpose on the approved, recorded plans.

13 (vi) The local review board has the same power to issue permits or approvals that any local
14 board or official who would otherwise act with respect to the application, including, but not limited
15 to, the power to attach to the permit or approval, conditions, and requirements with respect to
16 height, site plan, size, or shape, or building materials, as are consistent with the terms of this section.

17 (vii) In reviewing the comprehensive permit request, the local review board may deny the
18 request for any of the following reasons: (A) if city or town has an approved affordable housing
19 plan and is meeting housing needs, and the proposal is inconsistent with the affordable housing
20 plan; (B) the proposal is not consistent with local needs, including, but not limited to, the needs
21 identified in an approved comprehensive plan, and/or local zoning ordinances and procedures
22 promulgated in conformance with the comprehensive plan; (C) the proposal is not in conformance
23 with the comprehensive plan; (D) the community has met or has plans to meet the goal of ten
24 percent (10%) of the year-round units or, in the case of an urban town or city, fifteen percent (15%)
25 of the occupied rental housing units as defined in § 45-53-3(2)(i) being low and moderate income
26 housing; or (E) concerns for the environment and the health and safety of current residents have
27 not been adequately addressed.

28 (viii) All local review board decisions on comprehensive permits shall be by majority vote
29 of the membership of the board and may be appealed by the applicant to the state housing appeals
30 board.

31 (ix) If the public hearing is not convened or a decision is not rendered within the time
32 allowed in subsection (a)(4)(iii) and (iv), the application is deemed to have been allowed and the
33 relevant approval shall issue immediately; provided, however, that this provision shall not apply to
34 any application remanded for hearing in any town where more than one application has been

1 remanded for hearing provided for in § 45-53-6(f)(2).

2 (x) Any person aggrieved by the issuance of an approval may appeal to the superior court
3 within twenty (20) days of the issuance of approval.

4 (xi) A comprehensive permit shall expire unless construction is started within twelve (12)
5 months and completed within sixty (60) months of final plan approval unless a longer and/or phased
6 period for development is agreed to by the local review board and the applicant. Low and moderate
7 income housing units shall be built and occupied prior to, or simultaneous with the construction
8 and occupancy of market rate units.

9 (xii) A town with an approved affordable housing plan and that is meeting local housing
10 needs may by council action limit the annual total number of dwelling units in comprehensive
11 permit applications from for-profit developers to an aggregate of one percent (1%) of the total
12 number of year-round housing units in the town, as recognized in the affordable housing plan and
13 notwithstanding the timetables set forth elsewhere in this section, the local review board shall have
14 the authority to consider comprehensive permit applications from for-profit developers, which are
15 made pursuant to this paragraph, sequentially in the order in which they are submitted.

16 (xiii) The local review board of a town with an approved affordable housing plan shall
17 report the status of implementation to the housing resources commission, including the disposition
18 of any applications made under the plan, as of June 30, 2006, by September 1, 2006 and for each
19 June 30 thereafter by September 1 through 2010. The housing resources commission shall prepare
20 by October 15 and adopt by December 31, a report on the status of implementation, which shall be
21 submitted to the governor, the speaker, the president of the senate and the chairperson of the state
22 housing appeals board, and shall find which towns are not in compliance with implementation
23 requirements.

24 (xiv) Notwithstanding the provisions of § 45-53-4 in effect on February 13, 2004, to
25 commence hearings within thirty (30) days of receiving an application remanded by the state
26 housing appeals board pursuant to § 45-53-6(f)(2) shall be heard as herein provided; in any town
27 with more than one remanded application, applications may be scheduled for hearing in the order
28 in which they were received, and may be taken up sequentially, with the thirty (30) day requirement
29 for the initiation of hearings, commencing upon the decision of the earlier filed application.

30 (b)(1) The general assembly finds and declares that in January 2004 towns throughout
31 Rhode Island have been confronted by an unprecedented volume and complexity of development
32 applications as a result of private for-profit developers using the provisions of this chapter and that
33 in order to protect the public health and welfare in communities and to provide sufficient time to
34 establish a reasonable and orderly process for the consideration of applications made under the

1 provisions of this chapter, and to have communities prepare plans to meet low and moderate income
2 housing goals, that it is necessary to impose a moratorium on the use of comprehensive permit
3 applications as herein provided by private for-profit developers; a moratorium is hereby imposed
4 on the use of the provisions of this chapter by private for-profit developers, which moratorium shall
5 be effective on passage and shall expire on January 31, 2005 and may be revisited prior to expiration
6 and extended to such other date as may be established by law. Notwithstanding the provisions of
7 subsection (a) of this section, private for-profit developers may not utilize the procedure of this
8 chapter until the expiration of the moratorium.

9 (2) No for-profit developer shall submit a new application for comprehensive permits until
10 July 1, 2005, except by mutual agreement with the local review board.

11 (3) Notwithstanding the provisions of subdivision (b)(2) of this section, a local review
12 board in a town which has submitted a plan in accordance with subsection (c) of this section, shall
13 not be required to accept an application for a new comprehensive permit from a for-profit developer
14 until October 1, 2005.

15 (c) Towns and cities that are not in conformity with the provisions of § 45-53-3(2)(i) shall
16 prepare by December 31, 2004, a comprehensive plan housing element for low and moderate
17 income housing as specified by § 45-53-3(2)(ii), consistent with applicable law and regulation.
18 That the secretary of the planning board or commission of each city or town subject to the
19 requirements of this paragraph shall report in writing the status of the preparation of the housing
20 element for low and moderate income housing on or before June 30, 2004, and on or before
21 December 31, 2004, to the secretary of the state planning council, to the chair of the house
22 committee on corporations and to the chair of the senate committee on commerce, housing and
23 municipal government. The state housing appeals board shall use said plan elements in making
24 determinations provided for in § 45-53-6(b)(2).

25 (d) If any provision of this section or the application thereof shall for any reason be judged
26 invalid, such judgment shall not affect, impair, or invalidate the remainder of this section or of any
27 other provision of this chapter, but shall be confined in its effect to the provision or application
28 directly involved in the controversy giving rise to the judgment, and a moratorium on the
29 applications of for-profit developers pursuant to this chapter shall remain and continue to be in
30 effect for the period commencing on the day this section becomes law [February 13, 2004] and
31 continue until it shall expire on January 31, 2005, or until amended further.

32 (e) In planning for, awarding and otherwise administering programs and funds for housing
33 and for community development, state departments, agencies, boards and commissions, public
34 corporations, as defined in chapter 18 of title 35, shall among the towns subject to the provision of

1 § 45-53-3(ii) give priority to the maximum extent allowable by law, to towns with an approved
2 affordable housing plan. The director of administration shall adopt not later than January 31, 2005,
3 regulations to implement the provisions of this section.

4 SECTION 2. Chapter 45-53 of the General Laws entitled "Low and Moderate Income
5 Housing" is hereby amended by adding thereto the following section:

6 **45-53-3.1. Approved monitoring agent program.**

7 (a) There is hereby established an approved monitoring agent program (the "program").
8 Effective July 1, 2022, the Rhode Island housing resources commission (the "commission")
9 established pursuant to chapter 128 of title 42 shall appoint and oversee approved monitoring agents
10 as part of this program.

11 (b) On or before July 1, 2023, the commission shall promulgate rules and regulations
12 pursuant to chapter 35 of title 42 ("administrative procedures") for the implementation of the
13 program, which shall include a process for the selection and approval of monitoring agents. These
14 rules and regulations shall be prepared to ensure the selection and appointment of individuals who
15 shall be capable of monitoring and ensuring that municipally subsidized housing developments
16 remain affordable, and that income eligible buyers and tenants are occupying these units. The
17 commission shall appoint these monitoring agents, who shall serve for terms of not more than ten
18 (10) consecutive years; provided that, the term of an approved monitoring agent may be renewed
19 by the commission.

20 (c) As used in this section, the term "LMI" means low and moderate income housing and
21 includes area median income levels as established by the U.S. Department of Housing and Urban
22 Development ("HUD").

23 (d) Specific duties of approved monitoring agents shall include, but not be limited to, the
24 following:

25 (1) To oversee, monitor, and ensure that tenants in affordable rental units meet income
26 limits and the project has been maintained in a safe and sanitary condition consistent with the low
27 and moderate income guidelines and the recorded deed restrictions, or for homeownership units,
28 that LMI units continue to serve as owners' principal residences; and that any LMI units that have
29 been resold during the prior two (2) years have been resold in compliance with LMI income
30 requirements;

31 (2) The monitoring agent shall monitor LMI-approved accessory apartments on a biennial
32 basis to verify their continued affordability and compliance with all income and occupancy
33 restrictions contained in the affordable housing restriction. An "accessory apartment" is an
34 apartment that has been approved as an LMI housing unit through the comprehensive permit

1 process provided by § 45-53-4, are subject to recorded use restrictions in a form approved by the
2 commission that has a term of not less than ten (10) years, and otherwise meet the requirements of
3 this chapter. Forms to obtain approval by the commission shall be made available on the
4 commission's website;

5 (3) That in the case of the resale of affordable housing units at any time during the period
6 of a deed restriction or in any other situation occurring outside the time period of a deed restriction
7 where there is an intent on the buyer and seller to maintain the property as affordable housing, that
8 such sale be conducted pursuant to such terms and conditions as may be required by law for such
9 sale, including, but not limited to, any rules and regulations established by the commission, the
10 Rhode Island housing corporation established pursuant to chapter 55 of title 42, or HUD; and

11 (4) Such other duties as the commission sets forth in its rules and regulations for the
12 monitoring agents.

13 (e) The commission shall also promulgate rules and regulations providing for the terms of
14 employment of the approved monitoring agents, standards for approval and recertification of the
15 approved monitoring agents, and establish reporting requirements for the approved monitoring
16 agents to the commission.

17 (f) Commencing on or before January 1, 2023, and on or before January 1 thereafter, the
18 commission shall prepare a report on the approved monitoring agent program to the governor, the
19 speaker of the house, the president of the senate, and the secretary of commerce for housing.

20 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO TOWNS AND CITIES -- LOW AND MODERATE INCOME HOUSING

1 This act would provide that the Rhode Island housing resources commission would
2 promulgate rules and regulations for the selection and appointment of approved monitoring agents.

3 This act would also set forth the duties of these approved monitoring agents, which would include
4 oversight of affordable housing units.

5 This act would take effect upon passage.

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