

2019 HOUSE POLITICAL SUBDIVISIONS

HB 1436

2019 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

HB 1436
2/7/2019
Job # 32410

- Subcommittee
 Conference Committee

Committee Clerk Signature	Carmen Hickle
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Explanation or reason for introduction of bill/resolution:

Relating to the removal of obstructions and traffic safety hazards on the section line

Minutes:

1,2,3

Chairman J. Dockter: Opened the hearing on HB 1436.

Rep. Ertelt: (Handout #1) Introduced the bill. This is a practice that takes place in townships and those landowners and residents who are providing that service free of charge and not damaging the roads and they are currently liable for any liability outside the damage of those roads.

Rep. Adams: Could you explain permanent obstruction and what type of item that would be?

Rep. Ertelt: This section of the Century Code that deals with both permanent and non-permanent obstructions. Permanent obstructions, there are situations where section lines might actually be encumbered by a fence. So that is not allowed unless there is expressed permission given by the township board. This is dealing with all obstructions.

Rep K. Koppelman: What gave rise to the bill?

Rep. Ertelt: I am aware in my district and others where the individual landowner will remove the snow and ice from the roadway without damaging the roadway. They do it free of charge and it is done in a timely manner and at less cost to the township. Many farmers do it out of goodwill. The problem is that liability exits for those doing the removing of snow and ice.

Rep K. Koppelman: This is a liability protection bill, has there been a problem that people doing this have run into liability issues or are being sued? Or preemptive?

Rep. Ertelt: Yes, it is preemptive as far as I know. Those who are performing this wants to have some protection.

Arvid Winkler: (Handout #2). Read from his testimony and handouts. I asked Mark Burke, the representative for North Dakota Insurance Reserve Fund, do I have permission to remove

snow from the road after a snowstorm? He replied, no, because of liability. If the township orders snow removal they carry the liability. If I start moving it, some say you move it, you own it. My goal for this is water issues. I would like the opportunity to repair small holes until they get deeper and wider. Section lines are public road for public purposes.

Rep. Adams: What you are saying you go and remove snow on the section lines?

Mr. Winkler: Pointed out from the attached map the areas that he removes snow from.

Rep. Adams: This bill would take any liability from you plowing that road?

Mr. Winkler: Yes.

Rep K. Koppelman: The township official told you, you were not to do snow removal because of liability? The township official was probably worried about the liability of the township. The bill should not only give you as a landowner liability relief but also liability protection for the township as well.

Mr. Winkler: I asked Mark Burke with North Dakota Insurance Reserve Fund. He said I do not have automatically liability insurance for removing the snow. But if the township hires me then I would be covered.

Rep K. Koppelman: Or if they allow you to do it, they might incur some liability as well.

Mr. Winkler: The township should authorize everyone on the list whoever is doing this.

Rep. Ertelt: In your testimony you stated you were a civil engineer and worked for the Federal Highway Administration, how long was you a civil engineer?

Mr. Winkler: I worked for the Federal Highway Administration for 9 years. After learning what I did water on the roadway because the lack of maintenance bothers me.

Larry Syverson: North Dakota Township Association. (Handout #3). Read his testimony.

Rep K. Koppelman: The volunteer status you are talking about sounds like it needs some formal authorization. How does that work, if you have a farmer or rancher living in a township and it snows and haven't made any previous arrangement but there is a need to plow snow? What is the status of those folks?

Mr. Syverson: The formalization could be as simple or extravagant as the township and the person doing the work would be the best one to formalizing that.

Rep K. Koppelman: In an emergency situation would they be protected?

Mr. Syverson: They are covered under their own policy in farm liability.

Rep. Hatlestad: We could have a good Samaritan law; would that make that person covered?

Mr. Syverson: Our concern is there is liability coverage available, if you give a blanket immunity from liability someone could get hurt and there would be no recourse.

Rep. Ertelt: Do you know how many townships are not members of NDIRF?

Mr. Syverson: No, we do not have a figure for that. There was very few.

Rep. Ertelt: You raised concern about liability or someone getting injured, can you give an example of someone removing snow and causing a situation that would endanger someone?

Mr. Syverson: You could have a collision with another vehicle, someone could get entangled in the moving parts.

Terry Traynor: Association of the Counties. Counties are responsible for a lot of section line roads. We have protection if they are volunteers if they are known to the road authority that they are out there doing that. You don't remove liability you just reassign it. If you give a blanket release of liability for individuals, it will come back to the county or the township. That is why it is important that the road authorities know who is doing it and then the coverage will be there. We don't think the bill is necessary as there are other solutions.

Donna Magrum: I am an insurance agent. But without the state, county or township knowing you are a volunteer on their charts there wouldn't be liability coverage. As an independent farmer or landowner and cause damage I think there might be an issue with your homeowner's insurance. It will come down to who is the adjuster and how they see it. Someone has to be responsible or someone will sue.

Rep. Fegley: I have a rider on my insurance that says I can do custom applications. I think that aspect on my farm liability would also cover snow removal.

Ms. Magrum: Customized what? Spraying, farm work, customized snow removal? I would call my underwriter and ask.

Rep. Hatlestad: You would recommend a written form signed by county or township and the individual who is going to volunteer? And then clear it through your insurance agent?

Ms. Magrum: Yes. I would not put myself in that position if I was not covered. Same with Insurance Reserve, they would want to know if a person was listed and had authorization.

Chairman J. Dockter: Closed the hearing on HB 1436.

2019 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

HB 1436
2/14/2019
Job #32800

- Subcommittee
 Conference Committee

Committee Clerk Signature	Carmen Hickle
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Explanation or reason for introduction of bill/resolution:

Relating to the removal of obstructions and traffic safety hazards on a section line

Minutes:

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Chairman J. Dockter: Opens for committee work. I talked with NDIRF and as long as someone volunteer for the township they would be covered in insurance. I don't think there is a reason we need to have this bill.

Vice Chairman Pyle: Made a do not pass motion.

Rep. Adams: Second the motion.

Rep. Ertelt: I know there was testimony offered in that regard. Although the policy that NDIRF operates under is not state law and that policy is subject to change. The individual that was here testifying in favor of the bill actually didn't get that question answered until recently. I think the better thing is to actually look at the language, volunteers working on behalf of a township that is a member of NDIRF not be subject to the liability. That puts what they have in policy into statute.

Rep. Simons: What Rep. Ertelt said was a relative point. This is just putting it in Century Code.

Chairman J. Dockter: In testimony looking at the language, not subject to liability, that is pretty open ended. With insurance policies if it is open ended you can have attorneys on the other side as well.

Vice Chairman Pyle: They are covered as long a township officers are informed of the snow removal from the road.

Rep. Guggisberg: I think if we were to adopt the amendments that Rep. Ertelt recommends and pass the bill to the Senate we can get final clarification and then they can kill the bill over there if they need to. The person who testified would feel much better if he has clarification.

Rep. Longmuir: I have been contacted by a few of the counties encouraging a no vote.

Rep K. Koppelman: Does that require a signed agreement?

Chairman J. Dockter: Yes.

Rep K. Koppelman: In rural North Dakota where a lot of this comes from it snows and people go out and clean the roads. So there is no time to sign an agreement and if they were in a situation where they might be occurring some liability, that would be my concern.

Chairman J. Dockter: Mr. Quintus said anyone who volunteers for the township would be covered.

Rep. Ertelt: If we pass the do not pass that the NDRIF contact all township officers so they share the information and the procedure. Because it does take approval and if there is a form that is necessary they make an effort to reach out to all township officers so they share that information to anyone who is volunteering and know they are covered.

Chairman J. Dockter: Larry Syverson and Terry Traynor both agreed to share the information as they were both present during the committee work.

Rep K. Koppelman: The concern on the part of the political subdivisions is that if this occurs and the individual does damage there has to be some responsibility for that. Also if the liability is removed from them and does it fall back on the township or county?

Rep. Ertelt: We are in the heart of snow clearing season so if every effort can be made that communication happens as soon as possible that would be great.

Vote yes 8, no 5, absent 1.

Rep. Longmuir: Will carry the bill.

Date: 2-14-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1436

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep Pyle Seconded By Rep. Adams

Representatives	Yes	No	Representatives	Yes	No
Chairman J. Dockter:	/				
Vice Chairman Pyle:	/				
Rep. Ertelt:		/			
Rep. Fegley:	/				
Rep. Hatlestad:	/				
Rep. Johnson	/	/			
Rep K. Koppelman:	/				
Rep. Longmuir	/				
Rep. Magrum:		/			
Rep. Simons:		/			
Rep. Toman:		/			
Rep. Strinden:	/				
Rep. Adams:	/				
Rep. Guggisberg		/			

Total (Yes) 8 No 5

Absent 1

Floor Assignment Rep. Longmuir

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1436: Political Subdivisions Committee (Rep. Dockter, Chairman) recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1436 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

HB 1436

#1
2-7-19

Testimony in Support of House Bill 1436
Rep. Sebastian Ertelt
ND District 26

Chairman Dockter and Fellow Members of the House Political Subdivisions Committee,

For the record, I am Representative Sebastian Ertelt representing North Dakota District 26, a primarily rural district which includes all of Sargent County, the eastern half of Dickey County, the southern half of Ransom County, and the western half of Richland County. House Bill 1436 would codify a practice used by townships to keep the cost of snow removal in check – that being the removal of snow or ice from section lines by township residents at no charge – and to provide liability protection for this generous act. The bill does require that the snow or ice must be removed without causing damage or further obstruction to the section line in order to avoid liability. I believe that this self-sufficiency ought to be commended and protected. I would also offer that as an aid in timely removal of other obstructions referenced by subsections 1 and 2 of Section 24-06-29 of the North Dakota Century Code, that you would consider amending the bill to include other obstructions along with snow and ice in the new language of the bill.

Chairman Dockter and Members of the Committee, I thank you for your time today and urge a unanimous DO PASS recommendation on House Bill 1436.

24-06-01
24-07-03
24-06-28

#2

Testimony

HB 1436

66th Legislative Assembly

Feb 7, 2019

House Political Subdivisions Committee

Arvid Winkler

Valley City, ND

#2

HB1436

2-7-19

My name is Arvid Winkler. I reside in Cuba Township of Barnes County. I am educated as a civil engineer and have worked for the Federal Highway Administration.

I am in support of HB 1436 because it seeks to limit liability issues for those residents who do local snow removal, in the public interest, in order that local residents, school buses, and mail carriers might reasonably travel on rural roadways following Act of God winter weather activities in that time period before regular governmental units have the opportunity to open the roads.

I have had the unfortunate opportunity to be opening roads at 6:30 am in the morning at minus 30 degree temperatures in order that the school bus could make the regularly scheduled route to pick up the neighbors elementary aged children . I really do not need to incur added liability in that situation.

Subject: REGARDING TOWNSHIP-PUBLIC ROADS

Dwight, Arvid would like to have an addition to 24-06-28 similar to his draft, that I have inserted below. There are currently 5 subsections under 24-06-28.

Verbiage containing something similar to his draft that I have inserted below, containing the same intent, could possibly be added as subsection 6. His intention, I believe, is to avoid liability for immediate removal of the safety hazard.

24-06-28

(on a public road pursuant to 24-07-03)

Water in a liquid state, or in a frozen state (snow), constitutes a traffic safety hazard from a lack of maintenance or an act of God. The immediate removal of such traffic safety hazard in an effort to facilitate travel on the public road is permitted without incurring any additional liability as long as the character of the roadway is maintained or improved.

24-06-01. Board of township supervisors has supervision over township roads. The board of township supervisors of any township in the state has general supervision over the roads, highways, and bridges throughout the township.

2

2-7-19

#2
HB 1436

interest

Ten years

24-07-03. Section lines considered public roads open for public travel - Closing same under certain conditions. In all townships in this state, outside the limits of incorporated cities, and outside platted townsites, additions, or subdivisions recorded pursuant to sections 40-50.1-01 through 40-50.1-17 or recorded prior to July 1, 1987, under former chapter 40-50, the congressional section lines are considered public roads open for public travel to the width of thirty-three feet [10.06 meters] on each side of the section lines. The board of county commissioners, if petitioned by a person having an interest in the adjoining land or a portion thereof, after public hearing and a finding by the commissioners of public benefit, may close section lines or portions thereof which are not used for ten years, are not traveled due to natural obstacles or difficulty of terrain, are not required due to readily accessible alternate routes of travel, or are intersected by interstate highways causing the section line to be a deadend, providing the closing of the dead-end section line does not deprive adjacent landowners access to the landowners' property. After the section lines are closed, they may be used to the benefit of the adjacent landowners. * However, survey or property reference monuments may not be disturbed, removed, or destroyed. If drainage is interfered with due to the farming operations, alternate means of drainage must be provided for by the landowners or tenants farming the lands.

24-07-03.1. Improvement of section line by landowner. A person having a surface interest in a parcel of land connected by a section line to another parcel of land in which that person has a surface interest or to a highway may petition the board of county commissioners in an unorganized township or the board of township supervisors in an organized township to authorize the petitioner to improve the section line or a portion of the section line for the purpose of travel for agricultural purposes. The petition may be approved if the section line cannot be traveled due to natural obstacles or difficulty of terrain and if the petitioner does not have a readily accessible alternative route of travel to the parcel of land. The petitioner must improve the section line or a portion of the section line at the petitioner's expense.

24-06-28. Obstruction of section lines prohibited - Exception - Certain fences not considered obstructions - Obstructions and traffic safety hazards - Penalty.

sect line
written permission

been closed

cattle guards

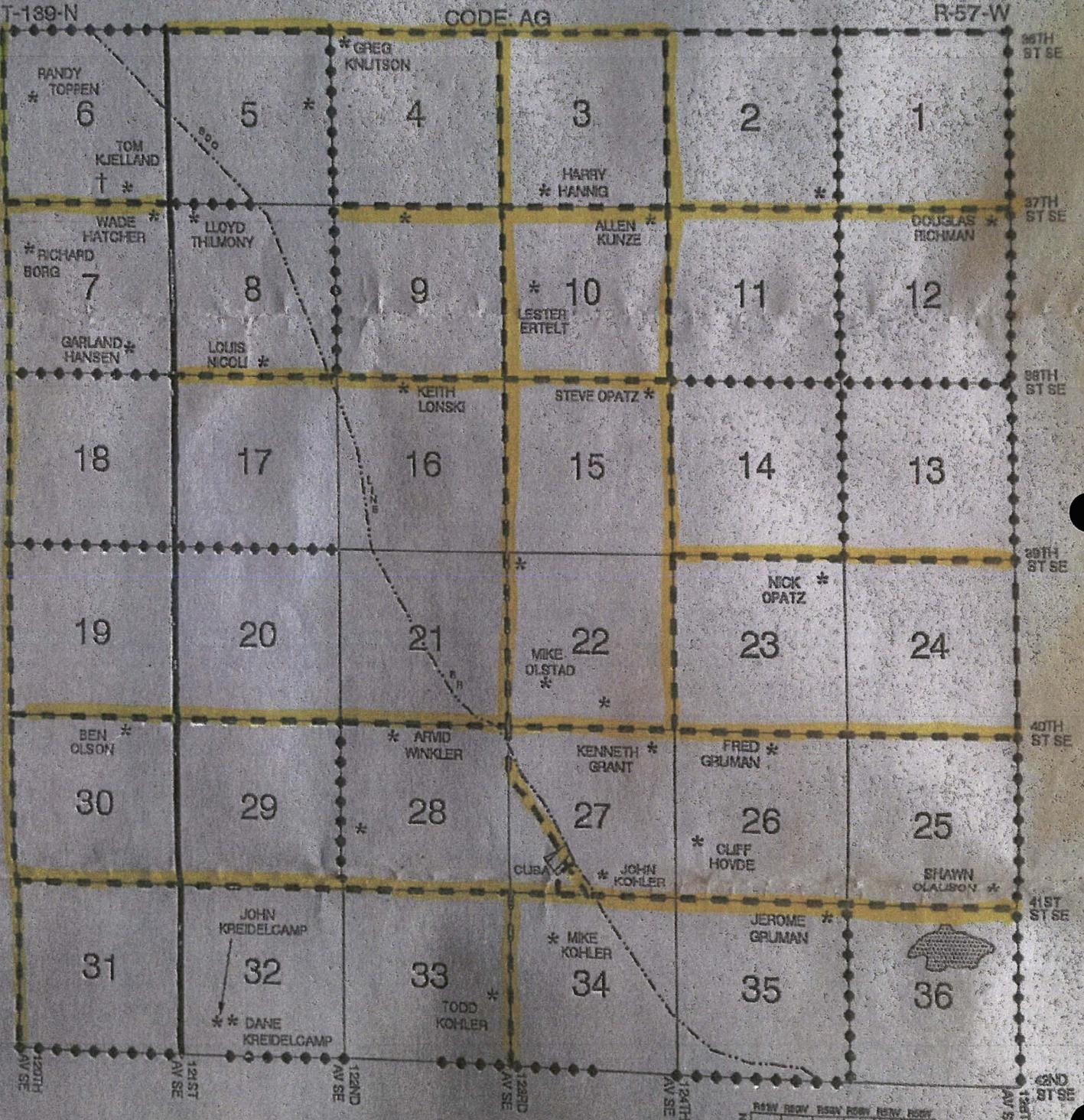
1. A person may not place or cause to be placed any permanent obstruction within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway, unless written permission is first secured from the board of county commissioners or the board of township supervisors, as appropriate. The permission must be granted where the section line has been closed pursuant to section 24-07-03 or where the topography of the land along the section line is such that in the opinion of the board of county commissioners or board of township supervisors, as the case may be, the construction of a road on the section line is impracticable.
2. A person may not place or cause to be placed any obstruction or traffic safety hazard within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway, unless written permission is first secured from the board of county commissioners or board of township supervisors, as appropriate.
3. Subsection 1 may not be construed to prohibit construction of fences:
 - a. Along or across section lines which have been closed pursuant to section 24-07-03 or which have not been opened because construction of a road is impracticable due to the topography of the land along the section line, but such fences are subject to removal as provided in section 24-06-30.
 - b. Across section lines which have not been closed pursuant to section 24-07-03 if cattle guards are provided in accordance with chapter 24-10 where fences cross the section lines.
4. The construction of fences pursuant to subsection 3 may not be considered an obstruction of section lines and any person who damages any fence or who opens and fails to close any gate constructed under subsection 3 is guilty of an infraction.

5. Subsection 2 does not apply to a railroad company performing maintenance and repair work of railroad track, crossings, or other railroad facilities.

#2
 HB 1436
 2-7-19

CUBA DIRECTORY

CODE AG



ROW	ROW	ROW	ROW	ROW	ROW
BB	AR	AN	BG	AD	AK
BN	AJ	BE	AG	AM	AV
AP	AB	BK	AL	AZ	BP
AI	BO	AO	BD	AA	BA
AS	AP	AK	AT	AG	BJ
AL	BL	BN	AK	AV	AK



2 - 7 - 19 #3

North Dakota Township Officers Association

Promoting basic Grassroots Government!

Larry A Syverson, Executive Secretary
465-150th Ave NE
Mayville ND 58257-9011
(701)430-1735
larry.ndtoa@gmail.com

NDTOA opposes HB 1436

Chairman Dockter and members of the House Political Subdivisions Committee, thank you for this opportunity to express our concerns about HB 1436.

We are opposing HB 1436 because we think you will agree we have a better solution.

I have discussed this situation with Mr. Brennan Quintus the CEO of the North Dakota Insurance Reserve Fund. Mr. Quintus has assured me that volunteers working on the behalf of townships that are members of NDIRF are covered by NDIRF.

This coverage already exists for member townships; such activity is figured into the risk assessment for townships in their basic policy.

The requirement is that it is non-compensated volunteer work; a paid individual would be an independent contractor and would need their own liability insurance.

One of the shortcomings of HB1436 is that it specifies snow and ice removal; there could be any number of services that volunteers would be willing to perform for the township. Very likely just having the section line or road more useable for their own purpose would be their goal and reward. If the work is something the township agrees to it is covered.

The volunteer concerned about his liability, and/or the township that wishes to maintain control over activities within the right-of-way may want to formalize the arrangement to some degree; we can give them guidance on how to do that.

The other problem with HB1436 is the last phrase "is not subject to liability" this is some very broad and troubling language that could excuse some very reckless actions that result in serious injury or death, leaving the victims without recourse.

I do not believe it is necessary to add this language to 24-06-29. The coverage is available and it is not difficult to qualify for it.

Chairman Dockter and members of the House Political Subdivisions Committee, please give HB 1436 a do not pass recommendation.

Mr. Quintus is here today; he may have his own comments on HB1436 and can answer the more technical questions about the insurance coverage.

That concludes my prepared statement; I will try to answer any questions you might have.

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