
SUBSTITUTE SENATE BILL 5984

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Economic Development (originally sponsored by Senators Shin, Prentice, T. Sheldon, Franklin, Rasmussen and Winsley)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to providing a source of funding for customized
2 work force training; adding a new section to chapter 82.32 RCW; and
3 adding a new chapter to Title 28C RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that a critical key to
6 attracting and retaining business is the availability of a trained work
7 force. Furthermore, training not only helps business, it also improves
8 the quality of life for workers and communities. Because of the
9 statewide public benefit to be gained from instituting a customized
10 training program, the legislature intends to create a new program to
11 fund work force training through the sale of bonds. The bonds
12 themselves will be paid by the earmarking of the state business and
13 occupation tax and public utility tax that is imposed on participating
14 employers.

15 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
16 section apply throughout this chapter unless the context clearly
17 requires otherwise.

1 (1) "Authority" means the employment training finance authority
2 created under section 4 of this act or any board, body, commission,
3 department, or officer succeeding to the principal functions of the
4 authority or to whom the powers conferred upon the authority shall be
5 given by law.

6 (2) "Board" means the state board for community and technical
7 colleges.

8 (3) "Bond resolution" means any resolution of the authority,
9 adopted under this chapter, authorizing the issuance and sale of bonds.

10 (4) "Bonds" means bonds, notes, commercial paper, certificates of
11 indebtedness, or other evidences of indebtedness of the authority
12 issued under this chapter.

13 (5) "Community college" has the definition in RCW 28B.50.030.

14 (6) "Costs of training" means the direct payments made under a
15 contract with a community college for formal technical or skill
16 training, including basic skills. "Costs of training" includes amounts
17 in the contract for costs of instruction, materials, equipment, rental
18 of class space, marketing, and overhead. "Costs of training" does not
19 include employee tuition reimbursements unless the tuition
20 reimbursement is specifically included in a contract.

21 (7) "Participant" means a community college or technical college
22 that, under this chapter, undertakes a training program with a private
23 employer.

24 (8) "Technical college" has the definition in RCW 28B.50.030.

25 (9) "Training program" means a program funded under this chapter at
26 a community college or a technical college.

27 (10) "Trust indenture" means any agreement, trust indenture, or
28 other similar instrument by and between the authority and one or more
29 corporate trustees.

30 NEW SECTION. **Sec. 3.** (1) The Washington customized employment
31 work force training program is hereby created to allow companies
32 considering locating or expanding in the state to receive training
33 assistance to provide training for employees.

34 (2)(a) Application to receive funding under this program shall be
35 made to the board in a form and manner as specified by the board.
36 Persons who have been approved as eligible shall be provided with a
37 training grant to be used to pay for quality costs of training. A

1 person may not receive credit for amounts over five thousand dollars in
2 annual training costs per employee and is not eligible to receive total
3 grants over five hundred thousand dollars per calendar year.

4 (b) Approval shall be granted for applicants who meet the following
5 criteria:

6 (i) The business must have entered into an agreement with a
7 community college or a technical college to engage in customized
8 training and the business must agree to contribute money in an amount
9 equal to the amount of the training grant;

10 (ii) The business must be engaged in activities subject to tax
11 under chapter 82.04 or 82.16 RCW and must report, or expect to report,
12 such tax over a ten-year period in an annual amount of at least one-
13 tenth of the amount of the grant. In the alternative, the business
14 must document that the community college or technical college with
15 which it has a training contract has applied for and has received a job
16 skills program grant under RCW 28C.04.420 to match the grant under the
17 program under this section. In order to qualify under this subsection,
18 the grant under RCW 28C.04.420 must provide for a ten-year payback of
19 the match;

20 (iii) The training grant may not be used to train workers who have
21 been hired as a result of a strike or lockout.

22 (c) Training grants are available on a first-come first-served
23 basis, with priority based on the date and time the application is
24 received by the board.

25 (3) Community colleges and technical colleges may enter into
26 agreements with four-year institutions of higher education as defined
27 in RCW 28B.10.016 in accordance with the interlocal cooperation act,
28 chapter 39.34 RCW.

29 (4) The board may adopt rules to implement this section.

30 NEW SECTION. **Sec. 4.** EMPLOYMENT TRAINING FINANCE AUTHORITY. (1)
31 The employment training finance authority is hereby established as a
32 public body corporate and politic, with perpetual corporate succession,
33 constituting an agency of the state of Washington exercising essential
34 governmental functions. The authority is a "public body" within the
35 meaning of RCW 39.53.010.

36 (2) The authority shall consist of seven members as follows: The
37 governor, the lieutenant governor, the executive director of the board,

1 the executive director of the work force training and education
2 coordinating board, and three public members. The public members shall
3 be residents of the state and appointed by the governor, subject to
4 confirmation by the senate, on the basis of their interest or expertise
5 in the provision of work force training, higher education, and the
6 financing of work force training and higher education. The public
7 members of the authority shall serve for terms of four years. The
8 initial terms of the public members shall be staggered in a manner
9 determined by the governor. In the event of a vacancy on the authority
10 due to death, resignation, or removal of one of the public members, and
11 upon the expiration of the term of any public member, the governor
12 shall appoint a successor for a term expiring on the fourth anniversary
13 of the successor's date of the appointment. If any of the state
14 offices are abolished, the resulting vacancy on the authority shall be
15 filled by the state officer who shall succeed substantially to the
16 power and duties of the abolished office. Any public member of the
17 authority may be removed by the governor for misfeasance, malfeasance,
18 willful neglect of duty, or any other cause after notice and a public
19 hearing, unless such notice and hearing shall be expressly waived in
20 writing.

21 (3) The governor shall serve as chairperson of the authority. The
22 authority shall elect annually one of its members as secretary. If the
23 governor is absent from a meeting of the authority, the secretary shall
24 preside. However, the governor may designate an employee of the
25 governor's office to act on the governor's behalf in all other respects
26 during the absence of the governor at any meeting of the authority. If
27 the designation is in writing and is presented to the person presiding
28 at the meetings of the authority who is included in the designation,
29 the vote of the designee has the same effect as if cast by the
30 governor.

31 (4) Any person designated by resolution of the authority shall keep
32 a record of the proceedings of the authority and shall be the custodian
33 of all books, documents, and papers filed with the authority, the
34 minute book or a journal of the authority, and the authority's official
35 seal, if any. The person may cause copies to be made of all minutes
36 and other records and documents of the authority, and may give
37 certificates to the effect that such copies are true copies. All
38 persons dealing with the authority may rely upon the certificates.

1 (5) Four members of the authority constitute a quorum. The
2 authority may act on the basis of a motion except when authorizing the
3 issuance and sale of bonds, in which case the authority shall act by
4 resolution. Bond resolutions and other resolutions shall be adopted
5 upon the affirmative vote of four members of the authority, and shall
6 be signed by those members voting yes. Motions shall be adopted upon
7 the affirmative vote of a majority of a quorum of members present at
8 any meeting of the authority. All actions taken by the authority shall
9 take effect immediately without need for publication or other public
10 notice. A vacancy in the membership of the authority does not impair
11 the power of the authority to act under this chapter.

12 (6) The members of the authority shall be compensated in accordance
13 with RCW 43.03.240 and shall be entitled to reimbursement, solely from
14 the funds of the authority, for travel expenses as determined by the
15 authority incurred in the discharge of their duties under this chapter.

16 NEW SECTION. **Sec. 5.** POWERS AND DUTIES. The authority is
17 authorized and empowered to do the following, on such terms, with such
18 security and undertakings, subject to such conditions, and in return
19 for such consideration, as the authority shall determine in its
20 discretion to be necessary, useful, or convenient in accomplishing the
21 purposes of this chapter:

22 (1) To adopt rules in accordance with chapter 34.05 RCW;

23 (2) To adopt an official seal and to alter the same at pleasure;

24 (3) To maintain an office at any place or places as the authority
25 may designate;

26 (4) To sue and be sued in its own name, and to plead and be
27 impleaded;

28 (5) To make and execute agreements with participants and others and
29 all other instruments necessary, useful, or convenient for the
30 accomplishment of the purposes of this chapter;

31 (6) To provide long-term or short-term financing or refinancing to
32 participants for costs of training, by way of loan or other financing
33 or security device or any such combination;

34 (7) To accept and receive funds, grants, gifts, pledges,
35 guarantees, mortgages, trust deeds, other security instruments, and
36 property from the federal government or the state or other public body,

1 entity, or agency and from any public or private institution,
2 association, corporation, or organization, including participants;

3 (8) To open and maintain a bank account or accounts in one or more
4 qualified public depositories in this state and to deposit all or any
5 part of authority funds therein;

6 (9) To charge to and equitably apportion among participants the
7 administrative costs and expenses incurred in the exercise of the
8 powers and duties conferred by this chapter;

9 (10) To consult with the board to determine program priorities
10 under the purposes of this chapter; and

11 (11) To do all other things necessary, useful, or convenient to
12 carry out the purposes of this chapter.

13 In the exercise of any of these powers, the authority shall incur
14 no expense or liability that is an obligation, either general or
15 special, of the state, or a general obligation of the authority, and
16 shall pay no expense or liability from funds other than funds of the
17 authority. Funds of the state shall not be used for such purpose.

18 NEW SECTION. **Sec. 6.** SPECIAL OBLIGATION BONDS--ISSUANCE. (1) The
19 authority may, from time to time, issue its special obligation bonds in
20 order to carry out the purposes of this chapter and to enable the
21 authority to exercise any of the powers granted to it in this chapter.
22 The bonds shall be issued pursuant to a bond resolution or trust
23 indenture and shall be payable solely out of the employment training
24 finance authority account created in section 17 of this act. The
25 employment training finance authority account shall be funded in whole
26 or in part from moneys paid by one or more participants for whose
27 benefit such bonds were issued and from the sources, if any, described
28 in section 5(7) of this act, section 17 of this act, or from the
29 proceeds of bonds issued by the authority for the purpose of refunding
30 any outstanding bonds of the authority.

31 (2) The bonds may be secured by:

32 (a) A first lien against any unexpended proceeds of the bonds;

33 (b) A first lien against moneys in the employment training finance
34 authority account created in section 17 of this act;

35 (c) A first or subordinate lien against the revenue and receipts of
36 the participant or participants, which revenue is derived in whole or
37 in part from the training program financed by the authority;

1 (d) A first or subordinate security interest against any real or
2 personal property, tangible or intangible, of the participant or
3 participants, including, but not limited to, the training program
4 financed by the authority;

5 (e) Any other real or personal property, tangible or intangible; or

6 (f) Any combination of (a) through (e) of this subsection.

7 Any security interest created against the unexpended bond proceeds
8 and against the employment training finance authority account shall be
9 immediately valid and binding against the moneys and any securities in
10 which the moneys may be invested without authority or trustee
11 possession, and the security interest shall be prior to any party
12 having any competing claim against the moneys or securities, without
13 filing or recording under Article 9A of the Uniform Commercial Code,
14 Title 62A RCW, and regardless of whether the party has notice of the
15 security interest.

16 (3) The bonds may be issued as serial bonds or as term bonds or any
17 such combination. The bonds shall bear such date or dates; mature at
18 such time or times; bear interest at such rate or rates, either fixed
19 or variable; be payable at such time or times; be in such
20 denominations; be in such form, either coupon or registered, or both;
21 carry such registration privileges; be made transferable, exchangeable,
22 and interchangeable; be payable in lawful money of the United States of
23 America at such place or places; be subject to such terms of
24 redemption; and be sold at public or private sale, in such manner, at
25 such time, and at such price as the authority shall determine. The
26 bonds shall be executed by the manual or facsimile signatures of the
27 chairperson and the authority's duly-elected secretary or its executive
28 director, and by the trustee if the authority determines to use a
29 trustee. At least one signature shall be manually subscribed. Coupon
30 bonds shall have attached interest coupons bearing the facsimile
31 signatures of the chairperson and the secretary or the executive
32 director.

33 (4) Any bond resolution, trust indenture, or agreement with a
34 participant relating to bonds issued by the authority or the financing
35 or refinancing made available by this act may contain provisions, which
36 may be made a part of the contract with the holders or owners of the
37 bonds to be issued, pertaining to the following, among other matters:

1 (a) The security interests granted by the participant to secure
2 repayment of any amounts financed and the performance by the
3 participant of its other obligations in the financing;

4 (b) The security interests granted to the holders or owners of the
5 bonds to secure repayment of the bonds;

6 (c) Rentals, fees, and other amounts to be charged, and the sums to
7 be raised in each year through such charges, and the use, investment,
8 and disposition of the sums;

9 (d) The segregation of reserves or sinking funds, and the
10 regulation, investment, and disposition thereof;

11 (e) Limitations on the uses of the project;

12 (f) Limitations on the purposes to which, or the investments in
13 which, the proceeds of the sale of any issue of bonds may be applied;

14 (g) Terms pertaining to the issuance of additional parity bonds;

15 (h) Terms pertaining to the incurrence of parity debt;

16 (i) The refunding of outstanding bonds;

17 (j) Procedures, if any, by which the terms of any contract with
18 bondholders may be amended or abrogated;

19 (k) Acts or failures to act that constitute a default by the
20 participant or the authority in their respective obligations and the
21 rights and remedies in the event of a default;

22 (l) Terms governing performance by the trustee of its obligation;
23 or

24 (m) Such other additional covenants, agreements, and provisions as
25 are deemed necessary, useful, or convenient by the authority for the
26 security of the holders of the bonds.

27 (5) Bonds may be issued by the authority to refund other
28 outstanding authority bonds, at or before the maturity thereof, and to
29 pay any redemption premium with respect thereto. Bonds issued for such
30 refunding purposes may be combined with bonds issued for the financing
31 or refinancing of new training programs. Pending the application of
32 the proceeds of the refunding bonds to the redemption of the bonds to
33 be redeemed, the authority may enter into an agreement or agreements
34 with a corporate trustee under section 9 of this act with respect to
35 the interim investment of the proceeds and the application of the
36 proceeds and the earnings on the proceeds to the payment of the
37 principal of and interest on, and the redemption of the bonds to be
38 redeemed.

1 (6) All bonds and any interest coupons appertaining to the bonds
2 are negotiable instruments under Title 62A RCW.

3 (7) Neither the members of the authority, nor its employees or
4 agents, nor any person executing the bonds is liable personally on the
5 bonds or subject to any personal liability or accountability by reason
6 of the issuance of the bonds.

7 (8) The authority may purchase its bonds with any of its funds
8 available for the purchase. The authority may hold, pledge, cancel, or
9 resell the bonds subject to and in accordance with agreements with
10 bondholders.

11 (9) The total outstanding bonded indebtedness of the authority
12 shall not exceed fifty million dollars.

13 NEW SECTION. **Sec. 7.** SPECIAL OBLIGATION BONDS--PAYMENT--
14 SEGREGATION OF PROCEEDS AND MONEYS. Bonds issued under this chapter
15 shall not be deemed to constitute obligations, either general or
16 special, of the state or of any political subdivision of the state, or
17 a pledge of the faith and credit of the state or of any political
18 subdivision, or a general obligation of the authority. The bonds shall
19 be special obligations of the authority and shall be payable solely
20 from the employment training finance authority account created in
21 section 17 of this act. Except for any initial appropriations which
22 may be made after the biennium ending June 30, 2003, the fund or funds
23 shall be funded in whole or in part from moneys paid by one or more
24 participants for whose benefit the bonds were issued, from the sources,
25 if any, under section 5(7) of this act, section 17 of this act, or from
26 the proceeds of bonds issued by the authority for the purpose of
27 refunding any outstanding bonds of the authority. The issuance of
28 bonds under this chapter shall not obligate, directly, indirectly, or
29 contingently, the state or any political subdivision of the state to
30 levy any taxes or appropriate or expend any funds for the payment of
31 the principal or the interest on the bonds.

32 Neither the proceeds of bonds issued under this chapter, any moneys
33 used or to be used to pay the principal of or interest on the bonds,
34 nor any moneys received by the authority to defray its administrative
35 costs shall constitute public money or property. All of such moneys
36 shall be kept segregated and set apart from funds of the state and any

1 political subdivision of the state and shall not be subject to
2 appropriation or allotment by the state or subject to the provisions of
3 chapter 43.88 RCW.

4 NEW SECTION. **Sec. 8.** AGREEMENTS WITH PARTICIPANTS--PAYMENT OF
5 COSTS AND EXPENSES. In connection with any bonds issued by the
6 authority, the authority shall enter into agreements with participants
7 which shall provide for the payment by each participant of amounts
8 which shall be sufficient, together with other revenues available to
9 the authority, if any, to: (1) Pay the participant's share of the
10 administrative costs and expenses of the authority; (2) pay the costs
11 of conducting the training program financed by the authority, to the
12 extent that the payment of the costs has not otherwise been adequately
13 provided for; (3) pay the principal of, premium, if any, and interest
14 on outstanding bonds of the authority issued in respect of such program
15 or programs as the same shall become due and payable; and (4) create
16 and maintain reserves required or provided for in any bond resolution
17 or trust indenture authorizing the issuance of such bonds of the
18 authority. The payments shall not be subject to supervision or
19 regulation by any department, committee, board, body, bureau, or agency
20 of the state other than the authority.

21 NEW SECTION. **Sec. 9.** MONEYS DEEMED TRUST FUNDS--AGREEMENT OR
22 TRUST INDENTURE WITH BANK OR TRUST COMPANY. All moneys received by or
23 on behalf of the authority under this chapter, whether as proceeds from
24 the sale of bonds or from participants or from other sources shall be
25 deemed to be trust funds to be held and applied solely as provided in
26 this chapter. The authority, in lieu of receiving and applying the
27 moneys itself, may enter into an agreement or trust indenture with one
28 or more banks or trust companies having the power and authority to
29 conduct trust business in the state to:

30 (1) Perform all of any part of the obligations of the authority
31 with respect to: (a) Bonds issued by it; (b) the receipt, investment,
32 and application of the proceeds of the bonds and moneys paid by a
33 participant or available from other sources for the payment of the
34 bonds; (c) the enforcement of the obligations of a participant in
35 connection with the financing or refinancing of any project; and (d)

1 other matters relating to the exercise of the authority's powers under
2 this chapter;

3 (2) Receive, hold, preserve, and enforce any security interest or
4 evidence of security interest granted by a participant for purposes of
5 securing the payment of the bonds; and

6 (3) Act on behalf of the authority or the holders or owners of
7 bonds of the authority for purposes of assuring or enforcing the
8 payment of the bonds, when due.

9 NEW SECTION. **Sec. 10.** HOLDERS OR OWNERS OF BONDS--TRUSTEES--
10 ENFORCEMENT OF RIGHTS. Any holder or owner of bonds of the authority
11 issued under this chapter or any holder of the coupons appertaining to
12 the bonds, and the trustee or trustees under any trust indenture,
13 except to the extent the rights given are restricted by the authority
14 in any bond resolution or trust indenture authorizing the bonds, may,
15 either at law or in equity, by suit, action, mandamus, or other
16 proceedings, protect and enforce any of their respective rights.

17 NEW SECTION. **Sec. 11.** BONDS AS SECURITIES--LEGAL INVESTMENTS.
18 The bonds of the authority are securities in which all public officers
19 and bodies of this state and all counties, cities, municipal
20 corporations, and political subdivisions, all banks, bankers, trust
21 companies, savings banks and institutions, building and loan
22 associations, savings and loan associations, investment companies,
23 insurance companies and associations, and all executors,
24 administrators, guardians, trustees, and other fiduciaries may legally
25 invest any sinking funds, moneys, or other funds belonging to them or
26 within their control.

27 NEW SECTION. **Sec. 12.** BOND COUNSEL. (1) The authority shall
28 adopt written policies to provide for the selection of bond counsel.
29 The policies shall provide for the creation and maintenance of a roster
30 of attorneys whom the authority believes possess the requisite special
31 expertise and professional standing to provide bond counsel opinions
32 that would be accepted by the underwriters, bondholders, and other
33 members of the financial community, and that would be in furtherance of
34 the public interest in obtaining the lowest possible interest rates on
35 the bonds issued by the authority. Any attorney may apply to have his

1 or her name placed on the roster, but may not be placed on the roster
2 unless the attorney demonstrates to the authority's satisfaction that
3 the attorney would issue the kind of opinions required by this section.

4 (2) Before selecting an attorney or attorneys to provide bond
5 counsel services, the authority shall provide all attorneys on the
6 roster with a notice of its intentions to select bond counsel and shall
7 invite each of them to submit to the authority his or her fee schedule
8 for providing bond counsel services. The authority shall have wide
9 discretion in selecting the attorney or attorneys it considers to be
10 most appropriate to provide the services, but in the exercise of this
11 discretion the authority shall consider all submitted fee schedules and
12 the public interest in achieving issuance of bonds on terms most
13 favorable to the authority. At least once every two calendar years,
14 the authority shall select an attorney or attorneys to serve as bond
15 counsel. However, the authority may retain an attorney for longer than
16 two years when necessary to complete work on a particular bond issue.
17 An attorney previously retained may be selected again but only after
18 the authority has provided other attorneys on the roster with an
19 opportunity to be selected and has made the fee schedule review
20 required under this subsection. As an alternative to retaining counsel
21 for a period of time, the authority may appoint an attorney to serve as
22 counsel in respect to only a particular bond issue or issues.

23 NEW SECTION. **Sec. 13.** UNDERWRITERS. (1) The authority shall
24 adopt written policies to provide for the selection of underwriters.
25 The policies shall provide for the creation of a roster of underwriters
26 whom the authority believes possess the requisite special expertise and
27 professional standing to provide bond marketing services that would be
28 accepted by bondholders and other members of the financial community,
29 and that would be in furtherance of the public interest in marketing
30 the authority's bonds at the lowest possible costs. Any underwriter
31 may apply to have its name placed on the roster, but may not be placed
32 on the roster unless it demonstrates to the authority's satisfaction
33 that it meets the requirements of this section.

34 (2) Whenever the authority decides that it needs the services of an
35 underwriter, it shall provide all underwriters on the roster with a
36 notice of its intentions and shall invite each of them to submit to the
37 authority an itemization of its fees and other charges for providing

1 underwriting services on the issue. The itemization shall be by
2 categories designed by the authority. The authority shall have wide
3 discretion in selecting the underwriter it considers to be most
4 appropriate to provide the services, but in the exercise of this
5 discretion the authority shall consider the underwriter's fees and
6 other charges and the public interest in achieving issuance of bonds on
7 terms most favorable to the authority.

8 NEW SECTION. **Sec. 14.** CHAPTER SUPPLEMENTAL--APPLICATION OF OTHER
9 LAWS. This chapter provides a complete, additional, and alternative
10 method for accomplishing the purposes of this chapter and shall be
11 regarded as supplemental and additional to powers conferred by other
12 laws. The issuance of bonds and refunding bonds under this chapter
13 need not comply with the requirements of any other law applicable to
14 the issuance of bonds.

15 NEW SECTION. **Sec. 15.** CONSTRUCTION. This chapter, being
16 necessary for the welfare of the state and its inhabitants, shall be
17 liberally construed to effect its purposes. Insofar as the provisions
18 of this chapter are inconsistent with the provisions of any general or
19 special law, or parts thereof, the provisions of this chapter shall be
20 controlling.

21 NEW SECTION. **Sec. 16.** CAPTIONS NOT LAW. Captions used in this
22 chapter are not any part of the law.

23 NEW SECTION. **Sec. 17.** A new section is added to chapter 82.32 RCW
24 to read as follows:

25 The business and occupation tax and public utility tax received
26 from a person who is an employer participating under section 3 of this
27 act shall be deposited into the employment training finance authority
28 account, which is hereby created in the custody of the state treasurer.
29 Only the employment training finance authority may authorize
30 expenditures from the account. The account is subject to allotment
31 procedures under chapter 43.88 RCW, but no appropriation is required
32 for expenditures. The money in the account must be used for the
33 purposes of bond resolution or trust indenture under which the bonds
34 are issued under chapter 28C.-- RCW (sections 1 through 16 of this

1 act). The deposit of revenue under this section from a person shall
2 cease if that person is no longer participating in the program under
3 section 3 of this act.

4 NEW SECTION. **Sec. 18.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 19.** Sections 1 through 16 of this act
9 constitute a new chapter in Title 28C RCW.

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