

SHB 1544 - H AMD 119

By Representative Maycumber

NOT CONSIDERED 12/23/2019

1 On page 2, after line 2, insert the following:

2 "NEW SECTION. **Sec. 2.** A new section is added to chapter 43.10
3 RCW to read as follows:

4 (1) The position of growth management act ombuds is created in
5 the consumer protection division of the office of the attorney
6 general. The ombuds will be considered an advocate for owners of
7 property impacted by restrictions arising from the growth management
8 act, chapter 36.70A RCW; local government's comprehensive plans,
9 development regulations, or actions implementing the growth
10 management act; and appellate court decisions interpreting the
11 growth management act or local governments' comprehensive plans or
12 development regulations. The ombuds must be a member in good
13 standing of the Washington state bar association.

14 (2) The attorney general is directed to assemble an advisory
15 panel and obtain the advisory panel's approval prior to hiring a
16 specific person to the position of growth management act ombuds. The
17 advisory panel must include:

18 (a) At least two members of the legislature of differing
19 political affiliations that serve on a policy committee with
20 jurisdiction over the office of the attorney general;

21 (b) A Washington state licensed attorney in private practice
22 with extensive knowledge of land use and constitutional takings
23 jurisprudence that resides to the east of the crest of the Cascade
24 mountain range; and

25 (c) A Washington state licensed attorney in private practice
26 with extensive knowledge of land use and constitutional takings

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1 jurisprudence that resides to the west of the crest of the Cascade
2 mountain range.

3 (3)(a) The growth management act ombuds is to administer the
4 payments from the growth management act victims and response
5 account. The money in the account is to be used for the purpose of
6 ensuring that the implementation of the growth management act does
7 not violate constitutional protections and respond to claims arising
8 from court decisions interpreting the growth management act that
9 started as petitions for review before the growth management
10 hearings board and meet the requirements in (b) and (c) of this
11 subsection.

12 (b) The person requesting the growth management act ombuds'
13 review of a claim must:

14 (i) Pay a review fee of one hundred dollars to be retained by
15 the office of the attorney general. The office of the attorney
16 general may waive the review fee for a person whose income is at or
17 below fifty percent of median income, adjusted for household size,
18 for the county where the property is located;

19 (ii) Identify the growth management hearings board decision or
20 court case opinion and how it impacts the person's property; and

21 (iii) Present substantiated claims that satisfy the legal
22 requirements for inverse condemnation; deprivation of economically
23 viable use of property; extractions or government requirements that
24 do not meet the requirements of nexus and proportionality;
25 violations of the fifth amendment of the United States Constitution;
26 violations of Article I, section 16 of the Washington state
27 Constitution; or claims arising when counties have required property
28 owners to do the county's duty to find legal availability of water
29 by having the property owners establish legal availability of water
30 for a permit exempt well as authorized in RCW 90.44.050.

31 (c) If the ombuds determines the person's claim satisfies the
32 legal and factual requirements for inverse condemnation; deprivation
33 of economically viable use of property; extractions or government
34 requirements that do not meet the requirements of nexus and

1 proportionality; violations of the fifth amendment of the United
2 States Constitution; violations of Article I, section 16 of the
3 Washington state Constitution; or a county has shifted its legal
4 duty onto the property owner seeking to rely on a permit exempt well
5 pursuant to RCW 90.44.050 for a building permit, the ombuds must
6 take at least one if not more of the following actions:

7 (i) Advocate on the person's behalf to the local government for
8 correction of the violation;

9 (ii) Participate in court actions seeking relief for the claims;

10 (iii) Provide the claimant with the ombuds' legal recommendation
11 of the presented claim; or

12 (iv) Pay amounts from the growth management act victims and
13 response account at the discretion of the ombuds in a manner to
14 facilitate the resolution of claims set forth in this subsection. No
15 payment may exceed five thousand dollars and may not be made to
16 corporations, companies, businesses, organizations, associations,
17 government agencies, or any legal entity that is not a natural person.

18 (d) The attorney general must create a form for claimants to use
19 to seek the growth management act ombuds' review. The form must
20 identify the current legal requirements that would be needed to
21 satisfy the claims identified in (b) of this subsection if filed in
22 a Washington state court of law.

23 (e) The attorney general may limit the intake of the amount of
24 claims for review to no more than thirty per month to be addressed
25 by the ombuds.

26 (f) The attorney general and ombuds shall not obligate or
27 disperse amounts that are not available in the growth management act
28 victims and response account.

29

30 **Sec. 3.** RCW 36.70A.290 and 2011 c 277 s 1 are each amended to
31 read as follows:

32 (1) All requests for review to the growth management hearings
33 board shall be initiated by filing a petition that includes a
34 detailed statement of issues presented for resolution by the board.

1 The board shall collect an assessment of two hundred fifty dollars
2 from the requester of the review to be remitted to the state
3 treasurer and placed in the growth management act victims and
4 response account. The board shall render written decisions
5 articulating the basis for its holdings. The board shall not issue
6 advisory opinions on issues not presented to the board in the
7 statement of issues, as modified by any prehearing order.

8 (2) All petitions relating to whether or not an adopted
9 comprehensive plan, development regulation, or permanent amendment
10 thereto, is in compliance with the goals and requirements of this
11 chapter or chapter 90.58 or 43.21C RCW must be filed within sixty
12 days after publication as provided in (a) through (c) of this
13 subsection.

14 (a) Except as provided in (c) of this subsection, the date of
15 publication for a city shall be the date the city publishes the
16 ordinance, or summary of the ordinance, adopting the comprehensive
17 plan or development regulations, or amendment thereto, as is
18 required to be published.

19 (b) Promptly after adoption, a county shall publish a notice
20 that it has adopted the comprehensive plan or development
21 regulations, or amendment thereto.

22 Except as provided in (c) of this subsection, for purposes of
23 this section the date of publication for a county shall be the date
24 the county publishes the notice that it has adopted the
25 comprehensive plan or development regulations, or amendment thereto.

26 (c) For local governments planning under RCW 36.70A.040,
27 promptly after approval or disapproval of a local government's
28 shoreline master program or amendment thereto by the department of
29 ecology as provided in RCW 90.58.090, the department of ecology
30 shall publish a notice that the shoreline master program or
31 amendment thereto has been approved or disapproved. For purposes of
32 this section, the date of publication for the adoption or amendment
33 of a shoreline master program is the date the department of ecology
34

1 publishes notice that the shoreline master program or amendment
2 thereto has been approved or disapproved.

3 (3) Unless the board dismisses the petition as frivolous or
4 finds that the person filing the petition lacks standing, or the
5 parties have filed an agreement to have the case heard in superior
6 court as provided in RCW 36.70A.295, the board shall, within ten
7 days of receipt of the petition, set a time for hearing the matter.

8 (4) The board shall base its decision on the record developed by
9 the city, county, or the state and supplemented with additional
10 evidence if the board determines that such additional evidence would
11 be necessary or of substantial assistance to the board in reaching
12 its decision.

13 (5) The board, shall consolidate, when appropriate, all
14 petitions involving the review of the same comprehensive plan or the
15 same development regulation or regulations.

16
17 NEW SECTION. **Sec. 4.** The growth management act victims and
18 response account is created in the custody of the state treasury.
19 All receipts from the assessment in RCW 36.70A.290 must be deposited
20 into the account. Only the attorney general or the growth management
21 act ombuds may authorize expenditures from the account. Expenditures
22 from the account must be used only for the purposes identified in
23 section 1 of this act. The account is subject to allotment
24 procedures under chapter 43.88 RCW, but an appropriation is not
25 required for expenditures. The account is subject to audit by the
26 state auditor.

27
28 **Sec. 5.** RCW 43.79A.040 and 2018 c 260 s 28, 2018 c 258 s 4, and
29 2018 c 127 s 6 are each reenacted and amended to read as follows:

30 (1) Money in the treasurer's trust fund may be deposited,
31 invested, and reinvested by the state treasurer in accordance with
32 RCW 43.84.080 in the same manner and to the same extent as if the
33 money were in the state treasury, and may be commingled with moneys
34 in the state treasury for cash management and cash balance purposes.

1 (2) All income received from investment of the treasurer's trust
2 fund must be set aside in an account in the treasury trust fund to
3 be known as the investment income account.

4 (3) The investment income account may be utilized for the
5 payment of purchased banking services on behalf of treasurer's trust
6 funds including, but not limited to, depository, safekeeping, and
7 disbursement functions for the state treasurer or affected state
8 agencies. The investment income account is subject in all respects
9 to chapter 43.88 RCW, but no appropriation is required for payments
10 to financial institutions. Payments must occur prior to distribution
11 of earnings set forth in subsection (4) of this section.

12 (4)(a) Monthly, the state treasurer must distribute the earnings
13 credited to the investment income account to the state general fund
14 except under (b), (c), and (d) of this subsection.

15 (b) The following accounts and funds must receive their
16 proportionate share of earnings based upon each account's or fund's
17 average daily balance for the period: The 24/7 sobriety account, the
18 Washington promise scholarship account, the Gina Grant Bull memorial
19 legislative page scholarship account, the Washington advanced
20 college tuition payment program account, the Washington college
21 savings program account, the accessible communities account, the
22 Washington achieving a better life experience program account, the
23 community and technical college innovation account, the agricultural
24 local fund, the American Indian scholarship endowment fund, the
25 foster care scholarship endowment fund, the foster care endowed
26 scholarship trust fund, the contract harvesting revolving account,
27 the Washington state combined fund drive account, the commemorative
28 works account, the county enhanced 911 excise tax account, the toll
29 collection account, the developmental disabilities endowment trust
30 fund, the energy account, the fair fund, the family and medical
31 leave insurance account, the fish and wildlife federal lands
32 revolving account, the natural resources federal lands revolving
33 account, the food animal veterinarian conditional scholarship
34 account, the forest health revolving account, the fruit and

1 vegetable inspection account, the future teachers conditional
2 scholarship account, the game farm alternative account, the GET
3 ready for math and science scholarship account, the Washington
4 global health technologies and product development account, the
5 grain inspection revolving fund, the growth management act victims
6 and response account, the Washington history day account, the
7 industrial insurance rainy day fund, the juvenile accountability
8 incentive account, the law enforcement officers' and firefighters'
9 plan 2 expense fund, the local tourism promotion account, the
10 low-income home rehabilitation revolving loan program account, the
11 multiagency permitting team account, the northeast Washington
12 wolf-livestock management account, the pilotage account, the produce
13 railcar pool account, the regional transportation investment
14 district account, the rural rehabilitation account, the Washington
15 sexual assault kit account, the stadium and exhibition center
16 account, the youth athletic facility account, the self-insurance
17 revolving fund, the children's trust fund, the Washington horse
18 racing commission Washington bred owners' bonus fund and breeder
19 awards account, the Washington horse racing commission class C purse
20 fund account, the individual development account program account,
21 the Washington horse racing commission operating account, the life
22 sciences discovery fund, the Washington state heritage center
23 account, the reduced cigarette ignition propensity account, the
24 center for childhood deafness and hearing loss account, the school
25 for the blind account, the Millersylvania park trust fund, the
26 public employees' and retirees' insurance reserve fund, the school
27 employees' benefits board insurance reserve fund, (~~(the)~~) the
28 public employees' and retirees' insurance account, (~~(the)~~) the
29 school employees' insurance account, and the radiation perpetual
30 maintenance fund.

31 (c) The following accounts and funds must receive eighty percent
32 of their proportionate share of earnings based upon each account's
33 or fund's average daily balance for the period: The advanced
34 right-of-way revolving fund, the advanced environmental mitigation

1 revolving account, the federal narcotics asset forfeitures account,
2 the high occupancy vehicle account, the local rail service
3 assistance account, and the miscellaneous transportation programs
4 account.

5 (d) Any state agency that has independent authority over
6 accounts or funds not statutorily required to be held in the custody
7 of the state treasurer that deposits funds into a fund or account in
8 the custody of the state treasurer pursuant to an agreement with the
9 office of the state treasurer shall receive its proportionate share
10 of earnings based upon each account's or fund's average daily
11 balance for the period.

12 (5) In conformance with Article II, section 37 of the state
13 Constitution, no trust accounts or funds shall be allocated earnings
14 without the specific affirmative directive of this section.

15
16 **Sec. 6.** RCW 42.56.240 and 2018 c 285 s 1 and 2018 c 171 s 7 are
17 each reenacted and amended to read as follows:

18 The following investigative, law enforcement, and crime victim
19 information is exempt from public inspection and copying under this
20 chapter:

21 (1) Specific intelligence information and specific investigative
22 records compiled by investigative, law enforcement, and penology
23 agencies, and state agencies vested with the responsibility to
24 discipline members of any profession, the nondisclosure of which is
25 essential to effective law enforcement or for the protection of any
26 person's right to privacy;

27 (2) Information revealing the identity of persons who are
28 witnesses to or victims of crime or who file complaints with
29 investigative, law enforcement, or penology agencies, other than the
30 commission, if disclosure would endanger any person's life, physical
31 safety, or property. If at the time a complaint is filed the
32 complainant, victim, or witness indicates a desire for disclosure or
33 nondisclosure, such desire shall govern. However, all complaints
34 filed with the commission about any elected official or candidate

1 for public office must be made in writing and signed by the
2 complainant under oath;

3 (3) Any records of investigative reports prepared by any state,
4 county, municipal, or other law enforcement agency pertaining to sex
5 offenses contained in chapter 9A.44 RCW or sexually violent offenses
6 as defined in RCW 71.09.020, which have been transferred to the
7 Washington association of sheriffs and police chiefs for permanent
8 electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

9 (4) License applications under RCW 9.41.070; copies of license
10 applications or information on the applications may be released to
11 law enforcement or corrections agencies;

12 (5) Information revealing the identity of child victims of
13 sexual assault who are under age eighteen. Identifying information
14 means the child victim's name, address, location, photograph, and in
15 cases in which the child victim is a relative or stepchild of the
16 alleged perpetrator, identification of the relationship between the
17 child and the alleged perpetrator;

18 (6) Information contained in a local or regionally maintained
19 gang database as well as the statewide gang database referenced in
20 RCW 43.43.762;

21 (7) Data from the electronic sales tracking system established
22 in RCW 69.43.165;

23 (8) Information submitted to the statewide unified sex offender
24 notification and registration program under RCW 36.28A.040(6) by a
25 person for the purpose of receiving notification regarding a
26 registered sex offender, including the person's name, residential
27 address, and email address;

28 (9) Personally identifying information collected by law
29 enforcement agencies pursuant to local security alarm system
30 programs and vacation crime watch programs. Nothing in this
31 subsection shall be interpreted so as to prohibit the legal owner of
32 a residence or business from accessing information regarding his or
33 her residence or business;

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1 (10) The felony firearm offense conviction database of felony
2 firearm offenders established in RCW 43.43.822;

3 (11) The identity of a state employee or officer who has in good
4 faith filed a complaint with an ethics board, as provided in RCW
5 42.52.410, or who has in good faith reported improper governmental
6 action, as defined in RCW 42.40.020, to the auditor or other public
7 official, as defined in RCW 42.40.020;

8 (12) The following security threat group information collected
9 and maintained by the department of corrections pursuant to RCW
10 72.09.745: (a) Information that could lead to the identification of
11 a person's security threat group status, affiliation, or activities;
12 (b) information that reveals specific security threats associated
13 with the operation and activities of security threat groups; and (c)
14 information that identifies the number of security threat group
15 members, affiliates, or associates;

16 (13) The global positioning system data that would indicate the
17 location of the residence of an employee or worker of a criminal
18 justice agency as defined in RCW 10.97.030;

19 (14) Body worn camera recordings to the extent nondisclosure is
20 essential for the protection of any person's right to privacy as
21 described in RCW 42.56.050, including, but not limited to, the
22 circumstances enumerated in (a) of this subsection. A law
23 enforcement or corrections agency shall not disclose a body worn
24 camera recording to the extent the recording is exempt under this
25 subsection.

26 (a) Disclosure of a body worn camera recording is presumed to be
27 highly offensive to a reasonable person under RCW 42.56.050 to the
28 extent it depicts:

29 (i)(A) Any areas of a medical facility, counseling, or
30 therapeutic program office where:

31 (I) A patient is registered to receive treatment, receiving
32 treatment, waiting for treatment, or being transported in the course
33 of treatment; or

34

1 (II) Health care information is shared with patients, their
2 families, or among the care team; or

3 (B) Information that meets the definition of protected health
4 information for purposes of the health insurance portability and
5 accountability act of 1996 or health care information for purposes
6 of chapter 70.02 RCW;

7 (ii) The interior of a place of residence where a person has a
8 reasonable expectation of privacy;

9 (iii) An intimate image;

10 (iv) A minor;

11 (v) The body of a deceased person;

12 (vi) The identity of or communications from a victim or witness
13 of an incident involving domestic violence as defined in RCW
14 10.99.020 or sexual assault as defined in RCW 70.125.030, or
15 disclosure of intimate images as defined in RCW 9A.86.010. If at the
16 time of recording the victim or witness indicates a desire for
17 disclosure or nondisclosure of the recorded identity or
18 communications, such desire shall govern; or

19 (vii) The identifiable location information of a community-based
20 domestic violence program as defined in RCW 70.123.020, or emergency
21 shelter as defined in RCW 70.123.020.

22 (b) The presumptions set out in (a) of this subsection may be
23 rebutted by specific evidence in individual cases.

24 (c) In a court action seeking the right to inspect or copy a
25 body worn camera recording, a person who prevails against a law
26 enforcement or corrections agency that withholds or discloses all or
27 part of a body worn camera recording pursuant to (a) of this
28 subsection is not entitled to fees, costs, or awards pursuant to RCW
29 42.56.550 unless it is shown that the law enforcement or corrections
30 agency acted in bad faith or with gross negligence.

31 (d) A request for body worn camera recordings must:

32 (i) Specifically identify a name of a person or persons involved
33 in the incident;

34 (ii) Provide the incident or case number;

1 (iii) Provide the date, time, and location of the incident or
2 incidents; or

3 (iv) Identify a law enforcement or corrections officer involved
4 in the incident or incidents.

5 (e)(i) A person directly involved in an incident recorded by the
6 requested body worn camera recording, an attorney representing a
7 person directly involved in an incident recorded by the requested
8 body worn camera recording, a person or his or her attorney who
9 requests a body worn camera recording relevant to a criminal case
10 involving that person, or the executive director from either the
11 Washington state commission on African-American affairs, Asian
12 Pacific American affairs, or Hispanic affairs, has the right to
13 obtain the body worn camera recording, subject to any exemption
14 under this chapter or any applicable law. In addition, an attorney
15 who represents a person regarding a potential or existing civil
16 cause of action involving the denial of civil rights under the
17 federal or state Constitution, or a violation of a United States
18 department of justice settlement agreement, has the right to obtain
19 the body worn camera recording if relevant to the cause of action,
20 subject to any exemption under this chapter or any applicable law.
21 The attorney must explain the relevancy of the requested body worn
22 camera recording to the cause of action and specify that he or she
23 is seeking relief from redaction costs under this subsection (14)(e).

24 (ii) A law enforcement or corrections agency responding to
25 requests under this subsection (14)(e) may not require the
26 requesting individual to pay costs of any redacting, altering,
27 distorting, pixelating, suppressing, or otherwise obscuring any
28 portion of a body worn camera recording.

29 (iii) A law enforcement or corrections agency may require any
30 person requesting a body worn camera recording pursuant to this
31 subsection (14)(e) to identify himself or herself to ensure he or
32 she is a person entitled to obtain the body worn camera recording
33 under this subsection (14)(e).

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1 (f)(i) A law enforcement or corrections agency responding to a
2 request to disclose body worn camera recordings may require any
3 requester not listed in (e) of this subsection to pay the reasonable
4 costs of redacting, altering, distorting, pixelating, suppressing,
5 or otherwise obscuring any portion of the body worn camera recording
6 prior to disclosure only to the extent necessary to comply with the
7 exemptions in this chapter or any applicable law.

8 (ii) An agency that charges redaction costs under this
9 subsection (14)(f) must use redaction technology that provides the
10 least costly commercially available method of redacting body worn
11 camera recordings, to the extent possible and reasonable.

12 (iii) In any case where an agency charges a requestor for the
13 costs of redacting a body worn camera recording under this
14 subsection (14)(f), the time spent on redaction of the recording
15 shall not count towards the agency's allocation of, or limitation
16 on, time or costs spent responding to public records requests under
17 this chapter, as established pursuant to local ordinance, policy,
18 procedure, or state law.

19 (g) For purposes of this subsection (14):

20 (i) "Body worn camera recording" means a video and/or sound
21 recording that is made by a body worn camera attached to the uniform
22 or eyewear of a law enforcement or corrections officer while in the
23 course of his or her official duties; and

24 (ii) "Intimate image" means an individual or individuals engaged
25 in sexual activity, including sexual intercourse as defined in RCW
26 9A.44.010 and masturbation, or an individual's intimate body parts,
27 whether nude or visible through less than opaque clothing, including
28 the genitals, pubic area, anus, or postpubescent female nipple.

29 (h) Nothing in this subsection shall be construed to restrict
30 access to body worn camera recordings as otherwise permitted by law
31 for official or recognized civilian and accountability bodies or
32 pursuant to any court order.

33 (i) Nothing in this section is intended to modify the
34 obligations of prosecuting attorneys and law enforcement under *Brady*

1 *v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963),
2 *Kyles v. Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490
3 (1995), and the relevant Washington court criminal rules and statutes.

4 (j) A law enforcement or corrections agency must retain body
5 worn camera recordings for at least sixty days and thereafter may
6 destroy the records in accordance with the applicable records
7 retention schedule;

8 (15) Any records and information contained within the statewide
9 sexual assault kit tracking system established in RCW 43.43.545;

10 (16)(a) Survivor communications with, and survivor records
11 maintained by, campus-affiliated advocates.

12 (b) Nothing in this subsection shall be construed to restrict
13 access to records maintained by a campus-affiliated advocate in the
14 event that:

15 (i) The survivor consents to inspection or copying;

16 (ii) There is a clear, imminent risk of serious physical injury
17 or death of the survivor or another person;

18 (iii) Inspection or copying is required by federal law; or

19 (iv) A court of competent jurisdiction mandates that the record
20 be available for inspection or copying.

21 (c) "Campus-affiliated advocate" and "survivor" have the
22 definitions in RCW 28B.112.030;

23 (17) Information and records prepared, owned, used, or retained
24 by the Washington association of sheriffs and police chiefs and
25 information and records prepared, owned, used, or retained by the
26 Washington state patrol pursuant to chapter 261, Laws of 2017; (~~and~~)

27 (18) Any and all audio or video recordings of child forensic
28 interviews as defined in chapter 26.44 RCW. Such recordings are
29 confidential and may only be disclosed pursuant to a court order
30 entered upon a showing of good cause and with advance notice to the
31 child's parent, guardian, or legal custodian. However, if the child
32 is an emancipated minor or has attained the age of majority as
33 defined in RCW 26.28.010, advance notice must be to the child.

34 Failure to disclose an audio or video recording of a child forensic

1 interview as defined in chapter 26.44 RCW is not grounds for
2 penalties or other sanctions available under this chapter; and
3 (19) All records submitted to the attorney general's office for review
4 by the growth management act ombuds as part of a claim under section
5 1(3) of this act, and any records created by the department of
6 commerce related to the claim; except that information detailing
7 activity in the growth management act victims and response account
8 must be disclosed, including the name of any person receiving a
9 payment from the account, the amount of the payment, the determination
10 made by the ombuds justifying and authorizing the payment, and any
11 settlement or agreement connected to a payment from the account."

12

Correct the title.

EFFECT: Creates the position of Growth Management Act (GMA) ombuds within the Consumer Protection Division of the Office of the Attorney General (AGO) for the purpose of administering payments from the Growth Management Act Victims and Response Account in response to claims that arise from court decisions interpreting the GMA. Creates the Growth Management Act Victims and Response Account within the Office of the State Treasurer. Requires the Growth Management Hearings Board (GMHB) to collect an assessment of \$250 from the requester of a review of an action under the GMA before the GMHB, to be placed in the Growth Management Act Victims and Response Account. Exempts from disclosure under the Public Records Act certain records submitted to the GMA ombuds under the act and certain records created by the Department of Commerce in response to claims made under the act.

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