

D R A F T

SUMMARY

Provides that local government may not become stockholder in or loan credit to or in aid of municipal bank.

Provides that municipal bank is not required to obtain deposit insurance from Federal Deposit Insurance Corporation under certain conditions.

Provides that municipal bank may act as depository or custodian of public funds under certain conditions.

A BILL FOR AN ACT

Relating to public banks; creating new provisions; amending ORS 295.001, 295.012, 295.015, 295.101, 706.008, 707.140 and 708A.405.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 706.008 is amended to read:

706.008. As used in the Bank Act:

(1) “Bank” means:

(a) A company, other than an extranational institution, that accepts deposits that the Bank Insurance Fund insures to any extent under the provisions of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811, et seq.; **or**

(b) A municipal bank.

(2) “Bank holding company” means a company that is a bank holding company under the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. 1841, et seq.

(3) “Bank service corporation” means a corporation or a limited liability company that is organized to perform services authorized by ORS 708A.145, all of the capital stock or membership interests of which one or more bank-

ing institutions or national banks own.

(4) “Banking institution” means an Oregon commercial bank, an Oregon trust company or an Oregon savings bank.

(5) “Company” means an entity that is a company under the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. 1841, et seq.

(6) “Extranational institution” means a corporation, unincorporated company, partnership or association of two or more persons organized under the laws of a nation other than the United States, or other than a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, that engages directly in banking business.

(7) “Federal bank” means a national bank or another bank organized under the laws of the United States.

(8) “Financial holding company” means a company that engages in activities described for a financial holding company in section 103 of the federal Gramm-Leach-Bliley Act (P.L. 106-102).

(9) “Financial institution” means an insured institution, an extranational institution, a credit union as defined in ORS 723.006, an out-of-state credit union under ORS 723.042 or a federal credit union.

(10) “Institution” means an Oregon commercial bank or an Oregon trust company.

(11) “Insured institution” means a company, the deposits of which are insured under the provisions of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811, et seq.

(12) “Municipal bank” has the meaning given that term in section 2 of this 2021 Act.

~~[(12)]~~ (13) “National bank” means a bank that was organized under the provisions of the National Bank Act, as amended, 12 U.S.C. 21, et seq.

~~[(13)]~~ (14) “Non-Oregon institution” means:

(a) An out-of-state state bank that engages in banking business in Oregon;

(b) An out-of-state trust company that transacts trust business in Oregon;

or

(c) An extranational institution that engages in banking business in Oregon.

~~[(14)]~~ **(15)** “Nonstock bank” means a bank that does not issue capital stock.

~~[(15)]~~ **(16)** “Oregon bank” means an Oregon stock bank or Oregon non-stock bank.

~~[(16)]~~ **(17)** “Oregon commercial bank” means an Oregon stock bank that was chartered under ORS chapter 707 as a bank other than a stock savings bank.

~~[(17)]~~ **(18)** “Oregon nonstock bank” means a nonstock bank or savings bank, the home state of which is Oregon.

~~[(18)]~~ **(19)** “Oregon operating institution” means:

(a) A bank that engages in banking business in this state;

(b) An extranational institution that engages in banking business in this state; or

(c) A trust company that transacts trust business in this state.

~~[(19)]~~ **(20)** “Oregon savings bank” or “savings bank” means an Oregon stock savings bank or an Oregon nonstock savings bank.

~~[(20)]~~ **(21)** “Oregon stock bank” means a stock bank, the home state of which is Oregon.

~~[(21)]~~ **(22)** “Oregon stock savings bank” means an Oregon stock bank that was initially chartered as or was converted to a stock savings bank under the Bank Act.

~~[(22)]~~ **(23)** “Oregon trust company” means a trust company that was organized under the provisions of ORS chapter 707.

~~[(23)]~~ **(24)** “Out-of-state bank” means an out-of-state state bank or an out-of-state federal bank.

~~[(24)]~~ **(25)** “Out-of-state bank holding company” means a bank holding company, the home state of which is not Oregon, and that is not the bank holding company of an Oregon stock bank or an in-state federal stock bank.

~~[(25)]~~ **(26)** “Out-of-state federal bank” means a federal bank, the home

state of which is not Oregon.

[(26)] (27) “Out-of-state financial holding company” means a financial holding company, the home state of which is not Oregon, and that is not the financial holding company of an Oregon stock bank or an in-state federal stock bank.

[(27)] (28) “Out-of-state state bank” means a state bank, the home state of which is not Oregon.

[(28)] (29) “Out-of-state trust company” means a trust company that was organized under the laws of another state.

[(29)] (30) “State bank” means a bank that was organized under the laws of a state.

[(30)] (31) “Stock bank” means a bank that issues capital stock.

[(31)] (32)(a) “Trust company” means a company that is authorized under the provisions of ORS chapter 709 to transact trust business, including the trust department of a bank.

(b) “Trust company” does not include a corporation that a United States Bankruptcy Court appoints to serve as a bankruptcy trustee under Title 11, United States Code, during a time in which the corporation is acting as a bankruptcy trustee.

SECTION 2. (1) As used in this section, “municipal bank” means an entity:

(a) Organized to conduct banking business in this state; and

(b) Whose organization was directed by ordinance or resolution of a local government as defined in ORS 174.116.

(2) To the extent prohibited by Article XI, section 9, of the Oregon Constitution, a local government may not become a stockholder in or loan its credit to or in aid of a municipal bank.

SECTION 3. ORS 707.140 is amended to read:

707.140. (1) When subscriptions totaling not less than the amount of the initial paid-in capital have been received, the incorporators shall submit for filing with the Director of the Department of Consumer and Business Ser-

vices:

(a) A list of stockholders, showing name, address, number of shares and amount paid, certified by the president or cashier.

(b) A certificate of any escrow agent holding moneys in escrow as payment for subscriptions to stock of the institution or Oregon stock savings bank showing the amount held.

(c) A list of the directors and senior officers elected.

(d) A copy of its bylaws certified to by its president or cashier.

(e) Evidence of approval by the Federal Deposit Insurance Corporation of the Oregon commercial bank's or Oregon stock savings bank's application for deposit insurance.

(2) Upon receiving the items referred to in subsection (1) of this section, the director shall examine the condition of the institution or Oregon stock savings bank. If, upon examination, the director determines that the institution or Oregon stock savings bank has complied with the requirements of the Bank Act and that the amount of the institution's or Oregon stock savings bank's initial paid-in capital has been paid or is held in escrow for release upon issuance of a charter, the director shall issue to the institution or Oregon stock savings bank a charter, which, depending on the form of the application and the approval of the director, shall be to do a banking business either as an Oregon commercial bank or as an Oregon stock savings bank, or to do a trust business, or to do both a banking and trust business.

(3)(a) Notwithstanding subsection (1)(e) of this section, the incorporators of a municipal bank need not submit evidence of approval by the Federal Deposit Insurance Corporation of the bank's application for deposit insurance.

(b) A municipal bank may not seek or accept retail deposits directly from consumers unless the incorporators of the municipal bank, at the time of the filing described in this section:

(A) Notify the director of an intention to do so; and

(B) Submit evidence of approval by the Federal Deposit Insurance

Corporation of the bank's application for deposit insurance.

SECTION 4. ORS 708A.405 is amended to read:

708A.405. (1) Oregon commercial banks shall secure insurance for their deposits from the Federal Deposit Insurance Corporation or a similar organization organized under the laws of the United States.

(2) This section does not apply to a municipal bank that does not seek or accept retail deposits directly from consumers.

SECTION 5. ORS 295.001 is amended to read:

295.001. As used in ORS 295.001 to 295.108, unless the context requires otherwise:

(1) "Adequately capitalized" means a qualified depository that is classified as adequately capitalized by the depository's primary federal regulatory authority, **or, if the depository is not federally regulated, by a state regulatory authority.**

(2) "Bank" means an insured institution or trust company.

(3) "Business day" means a day other than a federal or State of Oregon legal holiday or a day other than a day on which offices of the State of Oregon are otherwise authorized by law to remain closed.

(4) "Closed depository" means a qualified depository that is subject to a loss.

(5) "Collateral" means securities, or a letter of credit or similar instrument intended to ensure payment, that is approved by the State Treasurer to be used as security to ensure the obligations of a qualified depository under this chapter.

(6) "Collateral agreement" means an agreement entered into between a qualified depository and the State Treasurer under which the qualified depository agrees to provide collateral to secure its deposits of public funds and to comply with the provisions of this chapter and such other provisions as the State Treasurer determines are required to adequately protect public funds from loss.

(7) "Credit union" means a credit union as defined in ORS 723.006 or a

1 federal credit union if the shares and deposits of the credit union or federal
2 credit union are insured by the National Credit Union Administration.

3 (8) "Custodian" means a financial institution that meets the requirements
4 of ORS 295.007.

5 (9) "Custodian's receipt" or "receipt" means a document issued by a
6 custodian that describes the securities that a qualified depository deposited
7 with the custodian to secure public fund deposits.

8 (10) "Depository" means a bank, **a municipal bank** or a credit union that
9 is headquartered or has a branch office located in Oregon.

10 **(11) "Financial institution" includes a municipal bank.**

11 [(11)] (12) "Financial institution outside this state" means a financial in-
12 stitution, as defined in ORS 706.008, that is not an extranational institution,
13 as defined in ORS 706.008, and is not a depository, as defined in this section.

14 [(12)] (13) "Insured institution" means an insured institution as defined
15 in ORS 706.008.

16 [(13)] (14) "Loss" means the issuance of an order by a regulatory or su-
17 pervisory authority or a court of competent jurisdiction that:

18 (a) Restrains a qualified depository from making payments of deposit li-
19 abilities; or

20 (b) Appoints a receiver for a qualified depository.

21 [(14)] (15) "Maximum liability" means a sum equal to 10 percent of the
22 greater of:

23 (a) All uninsured public funds deposits held by a qualified depository, as
24 shown on the date of the depository's most recent treasurer report; or

25 (b) The average of the balances of uninsured public funds deposits on the
26 last two immediately preceding treasurer reports.

27 [(15)] (16) "Minimum collateral requirement" for a qualified depository
28 on any given date means a sum equal to:

29 (a) For a well capitalized qualified depository that the State Treasurer
30 has not required to increase the qualified depository's collateral pursuant to
31 ORS 295.018, 10 percent of the greatest of:

1 (A) All uninsured public funds held by the qualified depository, as shown
2 on the most recent treasurer report;

3 (B) The average of the balances of uninsured public funds held by the
4 qualified depository, as shown on the last two immediately preceding treas-
5 urer reports; or

6 (C) An amount otherwise prescribed in ORS 295.001 to 295.108.

7 (b) For a well capitalized qualified depository that the State Treasurer
8 required to increase the depository's collateral pursuant to ORS 295.018, the
9 percentage the State Treasurer required pursuant to ORS 295.018 multiplied
10 by the greatest of:

11 (A) All uninsured public funds held by the qualified depository, as shown
12 on the most recent treasurer report;

13 (B) The average of the balances of uninsured public funds held by the
14 qualified depository, as shown on the last two immediately preceding treas-
15 urer reports; or

16 (C) An amount otherwise prescribed in ORS 295.001 to 295.108.

17 (c) For an adequately capitalized qualified depository or an undercapital-
18 ized qualified depository, 110 percent of the greater of:

19 (A) All uninsured public funds held by the qualified depository; or

20 (B) The average of the balances of uninsured public funds held by the
21 qualified depository, as shown on the last two immediately preceding treas-
22 urer reports.

23 **(17) "Municipal bank" has the meaning given that term in section**
24 **2 of this 2021 Act.**

25 [(16)] (18) "Net worth" means a qualified depository's total risk-based
26 capital, as shown on the immediately preceding report of condition and in-
27 come, and may include capital notes and debentures that are subordinate to
28 the interests of depositors.

29 [(17)] (19) "Pledge agreement" means a written agreement among a qual-
30 ified depository, the State Treasurer and a custodian that pledges the secu-
31 rities the depository deposits with the custodian to secure deposits of

uninsured public funds that the depository holds. The board of directors or loan committee of the depository must approve the agreement and must continuously maintain the agreement as a written record of the depository.

[(18)] (20) "Public body" has the meaning given that term in ORS 174.109.

[(19)] (21) "Public funds" or "funds" means funds that a public official has custody of or has control of by virtue of the exclusive legal right of a public body conferred through contract or by law to direct the collection, use or transfer of moneys payable to, belonging to or collected for the public body, while held by a third party such that the failure of the financial institution in which such moneys are deposited would constitute a loss of the public body's money.

[(20)] (22) "Public official" means an officer or employee of a public body.

[(21)] (23) "Qualified depository" means a depository that meets the requirements of ORS 295.008.

[(22)] (24) "Report of condition and income" means the quarterly report a qualified depository submits to the depository's primary federal regulatory authority.

[(23)] (25) "Security" or "securities" means:

(a) Obligations of the United States, including those of agencies and instrumentalities of the United States, and of government sponsored enterprises;

(b) Obligations of the International Bank for Reconstruction and Development;

(c) Bonds of a state of the United States that:

(A) Are rated in one of the four highest grades by a recognized investment service organization that has engaged regularly and continuously for a period of not less than 10 years in rating state and municipal bonds; or

(B) Having once been rated in accordance with subparagraph (A) of this paragraph, are ruled to be eligible securities for the purposes of ORS 295.001 to 295.108, notwithstanding the loss of the rating;

(d) Bonds of a county, city, school district, port district or other public

body in the United States that are payable from or secured by ad valorem taxes and that meet the rating requirement or are ruled to be eligible securities as provided in paragraph (c) of this subsection;

(e) Bonds of a county, city, school district, port district or other public body that are issued pursuant to the Constitution or statutes of the State of Oregon or the charter or ordinances of a county or city within the State of Oregon, if the bonds meet the rating requirement or are ruled to be eligible securities as provided in paragraph (c) of this subsection;

(f) With the permission of the State Treasurer and in accordance with rules the State Treasurer adopts, loans made to a county, city, school district, port district or other public body in the State of Oregon, if the borrower has not defaulted with respect to the payment of principal or interest on any of the borrower's loans within the preceding 10 years or during the period of the borrower's existence if the borrower has existed for less than 10 years;

(g) With the permission of the State Treasurer and in accordance with rules the State Treasurer adopts, bond anticipation notes that an authority issues, sells or assumes under ORS 441.560;

(h) Bonds, notes, letters of credit issued not as assurance of payment or performance but as an investment or other securities or evidence of indebtedness constituting the direct and general obligation of a federal home loan bank or Federal Reserve bank;

(i) Debt obligations of domestic corporations that are rated in one of the three highest grades by a recognized investment service organization that has engaged regularly and continuously for a period of not less than 10 years in rating corporate debt obligations; and

(j) Collateralized mortgage obligations and real estate mortgage investment conduits that are rated in one of the two highest grades by a recognized investment service organization that has engaged regularly and continuously for a period of not less than 10 years in rating corporate debt obligations.

[(24)] **(26)** "State agency" means any officer, board, commission, depart-

ment, division or institution of state government as that term is defined in ORS 174.111.

[(25)] (27) "Treasurer report" means a written report that an officer of a qualified depository that holds uninsured public funds deposits has signed or authenticated and that sets forth as of the close of business on a specified date:

(a) The total amount of uninsured public funds on deposit with the qualified depository;

(b) The total amount of public funds on deposit with the qualified depository;

(c) The net worth of the qualified depository;

(d) The amount and nature of collateral provided; and

(e) The identity of the qualified depository's custodian, if applicable.

[(26)] (28) "Treasurer report due date" means a date not less than 10 business days after the date a qualified depository's report of condition and income is due to be submitted.

[(27)] (29) "Trust company" means a trust company as defined in ORS 706.008.

[(28)] (30) "Undercapitalized" means a qualified depository that is classified as undercapitalized, significantly undercapitalized or critically undercapitalized by the qualified depository's primary federal regulatory authority, **or, if the depository is not federally regulated, by a state regulatory authority.**

[(29)] (31)(a) "Uninsured public funds" or "uninsured public funds deposits" means public funds deposited in a depository that exceed the amounts insured or guaranteed as described in ORS 295.002 (1)(b).

(b) "Uninsured public funds" or "uninsured public funds deposits" does not include public funds deposited in a certificate of deposit, time deposit or insured deposit account under ORS 295.004.

[(30)] (32) "Value" means the current market value of securities.

[(31)] (33) "Well capitalized" means a qualified depository that is classi-

1 fied as well capitalized by the qualified depository's primary federal regula-
 2 tory authority, **or, if the depository is not federally regulated, by a state**
 3 **regulatory authority.**

4 **SECTION 6.** ORS 295.015 is amended to read:

5 295.015. Except as provided in ORS 295.018:

6 (1)(a) Throughout the period that a qualified depository possesses
 7 uninsured public funds deposits, the depository shall maintain collateral, at
 8 the depository's own expense, that has a value at least equal to the
 9 depository's minimum collateral requirement and as otherwise prescribed in
 10 ORS 295.001 to 295.108. If the collateral consists of securities, the depository
 11 shall deposit the securities with the depository's custodian. The depository
 12 and custodian shall identify the securities in their respective records as se-
 13 curity for public funds deposited in accordance with ORS 295.001 to 295.108.

14 (b) For purposes of this section, when pledged as collateral for public
 15 funds deposits, loans described in ORS 295.001 [(23)(f)] **(25)(f)** must be dis-
 16 counted to 75 percent of the unpaid principal balance owing on the loan from
 17 time to time, or to a lower value that the State Treasurer determines from
 18 time to time.

19 (c) A bond anticipation note that is pledged as collateral for public funds
 20 deposits and for which there is no readily determinable market value must
 21 be discounted to 75 percent of the unpaid principal balance owing on the
 22 note from time to time, or to a lower value that the State Treasurer deter-
 23 mines from time to time.

24 (2) A qualified depository may deposit other eligible securities with the
 25 depository's custodian and release from deposit securities that the depository
 26 pledged to secure deposits of public funds if the remaining securities have
 27 a value not less than the depository's minimum collateral requirement. The
 28 State Treasurer shall execute releases and surrender custodian's receipts that
 29 are appropriate to effect pledges and releases of matured and excess pledged
 30 securities.

31 (3) If a qualified depository's minimum collateral requirement increases

because the depository ceases to be a well capitalized depository as reflected in the depository's last treasurer report, call report or other public filing, or if the depository receives notice from the State Treasurer that its minimum collateral requirement is increased, the depository shall:

(a) Within three business days after the date on which the qualified depository's minimum collateral requirement increases, the depository shall notify the depository's custodian and the State Treasurer in writing that the depository's minimum collateral requirement has increased, setting forth the depository's new minimum collateral requirement and the depository's plan for increasing the depository's pledged collateral to the minimum collateral requirement; and

(b) Within five business days after the date on which the qualified depository's minimum collateral requirement increases, or within a longer period approved by the State Treasurer in coordination with the Department of Consumer and Business Services, the depository shall, in accordance with the plan approved by the State Treasurer, provide additional collateral sufficient to increase the total value of the depository's securities pledged as collateral for public funds deposits to the depository's new minimum collateral requirement.

(4) If a qualified depository's minimum collateral requirement decreases because the depository becomes well capitalized, or because the State Treasurer no longer requires the depository to pledge additional collateral under ORS 295.018, the depository may:

(a) Notify the qualified depository's custodian, if any, and the State Treasurer in writing that the depository's minimum collateral requirement has decreased, setting forth the depository's new minimum collateral requirement; and

(b) With the written approval of the State Treasurer, reduce the value of the qualified depository's collateral including a release from the depository's custodian of those securities that exceed the depository's new minimum collateral requirement.

(5) The State Treasurer shall act upon requests for releases of securities under subsections (2) and (4)(b) of this section within three business days after receiving each request.

SECTION 7. ORS 295.101 is amended to read:

295.101. (1) The following public funds are not subject to the provisions of ORS 295.001 to 295.108:

(a) Funds that are deposited for the purpose of paying principal, interest or premium, if any, on bonds, as defined in ORS 286A.001 and 287A.001, and related costs or securing a borrowing related to an agreement for exchange of interest rates entered into under ORS 286A.110 or 287A.335.

(b) Funds that are invested in authorized investments under provisions of law other than ORS 295.001 to 295.108. Funds invested under ORS 293.701 to 293.857 are invested in authorized investments for purposes of this subsection from the time the funds are transferred by the State Treasurer to a third party under the terms of a contract for investment or administration of the funds that requires such a transfer until the time the funds are returned to the treasurer or paid to another party under the terms of the contract.

(c) Negotiable certificates of deposit purchased by the State Treasurer under ORS 293.736 or by an investment manager under ORS 293.741.

(d) Funds that are held by a public official as required by federal law, a judicial or regulatory order, settlement agreement, consent decree or similar arrangement. To the extent allowed by such federal law, order, agreement, decree or arrangement, the public official shall require the funds to be protected in a manner consistent with the provisions of this chapter.

(e) Funds that are held pursuant to a contract with provisions that require the funds to be collateralized at 100 percent, if the funds are deposited into an account that is separate from other accounts of the holder of the funds and the public official and the financial institution in which the funds are deposited have entered into a written agreement that provides a perfected security interest to the public official in collateral valued at an amount at

least equal to the amount of funds in the account, in a manner substantially similar to a pledge agreement described in ORS 295.001 [(17)].

(f) Funds that are held by a trustee or escrow agent, whether commingled with other moneys or in a segregated account, if the trust or escrow agreement provides for collateral or other methods that may be used to secure the moneys that comply with rules or policies adopted by the State Treasurer to protect the funds from loss by the financial institution in which they are deposited.

(g) Funds collected through third party vendors for payment for electric vehicle charging services.

(2) Notwithstanding subsection (1) of this section, funds deposited by a custodial officer under ORS 294.035 (3)(d) are subject to the provisions of ORS 295.001 to 295.108.

SECTION 8. ORS 295.101, as amended by section 2, chapter 503, Oregon Laws 2019, is amended to read:

295.101. (1) The following public funds are not subject to the provisions of ORS 295.001 to 295.108:

(a) Funds that are deposited for the purpose of paying principal, interest or premium, if any, on bonds, as defined in ORS 286A.001 and 287A.001, and related costs or securing a borrowing related to an agreement for exchange of interest rates entered into under ORS 286A.110 or 287A.335.

(b) Funds that are invested in authorized investments under provisions of law other than ORS 295.001 to 295.108. Funds invested under ORS 293.701 to 293.857 are invested in authorized investments for purposes of this subsection from the time the funds are transferred by the State Treasurer to a third party under the terms of a contract for investment or administration of the funds that requires such a transfer until the time the funds are returned to the treasurer or paid to another party under the terms of the contract.

(c) Negotiable certificates of deposit purchased by the State Treasurer under ORS 293.736 or by an investment manager under ORS 293.741.

(d) Funds that are held by a public official as required by federal law, a judicial or regulatory order, settlement agreement, consent decree or similar arrangement. To the extent allowed by such federal law, order, agreement, decree or arrangement, the public official shall require the funds to be protected in a manner consistent with the provisions of this chapter.

(e) Funds that are held pursuant to a contract with provisions that require the funds to be collateralized at 100 percent, if the funds are deposited into an account that is separate from other accounts of the holder of the funds and the public official and the financial institution in which the funds are deposited have entered into a written agreement that provides a perfected security interest to the public official in collateral valued at an amount at least equal to the amount of funds in the account, in a manner substantially similar to a pledge agreement described in ORS 295.001 [(17)].

(f) Funds that are held by a trustee or escrow agent, whether commingled with other moneys or in a segregated account, if the trust or escrow agreement provides for collateral or other methods that may be used to secure the moneys that comply with rules or policies adopted by the State Treasurer to protect the funds from loss by the financial institution in which they are deposited.

(2) Notwithstanding subsection (1) of this section, funds deposited by a custodial officer under ORS 294.035 (3)(d) are subject to the provisions of ORS 295.001 to 295.108.

SECTION 9. ORS 295.012 is amended to read:

295.012. For any period of time during which fewer than 10 credit unions are qualified depositories, the State Treasurer, notwithstanding ORS 295.001 [(14)] **(15)**, by rule may set the maximum liability for a credit union that holds uninsured public funds at 20 percent of the greater of:

(1) All uninsured public funds deposits the credit union holds, as shown on the date of the credit union's most recent treasurer's report; or

(2) The average of the balances of all uninsured public funds deposits the credit union holds, as shown on the credit union's last two immediately

1 preceding treasurer reports.

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