

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH & GAME

Call to Order: By Bob Williams, on April 11, 1991, at 3:21 P.M.

ROLL CALL

Members Present:

Bob Williams, Chairman (D)
Don Bianchi, Vice Chairman (D)
John Anderson Jr. (R)
Eve Franklin (D)
Lorents Grosfield (R)
Greg Jergeson (D)
Dick Pinsoneault (D)
David Rye (R)
Paul Svrcek (D)
Bernie Swift (R)

Members Excused: None

Staff Present: Doug Sternberg (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

Roll taken and noted.

HEARING ON HB 1002

Presentation and Opening Statement by Sponsor:

Representative Ellison, House Dist. No. 81, explained that this legislation would revise the laws relating to outfitters and guides; establish master guide as a licensed profession; and provide for hiring of an executive director for the Board of Outfitters. He also offered an amendment to the bill. See Exhibit No. 1.

Proponents' Testimony:

Ron Curtiss, Chairman of Montana Board of Outfitters, supports HB 1002. See Exhibit No. 2.

Larry Fasbender, lobbyist for Fishing Outfitters of Montana (FOAM), supports HB 1002. The fishing outfitters of Montana, as a group, support the bill. They are in favor of the amendment presented by Rep. Ellison.

Jo Brunner, lobbyist for Montana Outfitters and Guides Assn. (MOGA), supports HB 1002 and feels it is necessary for the Board to improve the regulations. A member of the MOGA board participated in the formation of this legislation and other groups also participated.

Jim Kembel, Administrator of Public Safety Division, Dept. of Commerce, is present to answer questions on the financial portion of the bill.

Pat Graham, Deputy Director of Fish, Wildlife, and Parks (FWP), believes that the Board of Outfitters has made significant progress in the control and regulation of the outfitting industry. See Exhibit No. 3.

Charles Brooks, Executive Vice President of the Montana Retail Assn., supports HB 1002. The Association feels this legislation is necessary, not to impede this free-enterprise effort, but to help regulate it so that it might encourage further industry in the State.

Opponents' Testimony:

Allan W. Gadoury, owner of 6X Outfitters, Bozeman, Mt., has been an outfitter for 12 years. Since there was only one complaint last year to the Board of Outfitters, he feels this legislation is not necessary. See Exhibit No. 4.

Michael Sherwood, represents MTLA, is concerned with language in the bill that shifts the assumption of risk for livestock, boats, and vehicular transportation to the client/customer, which is inconsistent with any other practice. This problem was discussed in HB 364, which addressed the fact that a 10-year-old boy who gets hurt assumes all the risk of being on a horse, even if he doesn't know anything about horses. He recommends striking lines 6-9, page 27.

Allen Schallenberger, rancher, and fishing, hunting and recreational outfitter from Sheridan, Mt., advised that the House did not give them the courtesy of a hearing. He does not want a lot of regulations and feels it is not conducive to good business. He is concerned about the out-of-state guides and outfitters who have control of large amounts of public land within the State. In order to get access to these areas, you must buy the outfitting license. The out-of-state outfitters jack the price so high on equipment, horses, tents, etc., it is impossible for a resident to afford to purchase this license. See Exhibit No. 5.

Dennis Kavanaugh, an outfitter from Bozeman, Mt., agrees wholeheartedly with people who have opposed this bill. He is concerned about language in the bill that seems to favor fishing outfitters over hunting outfitters. The independent outfitters are afraid of persons getting on the Board who will give preferential treatment to a chosen few to outfit on popular rivers and hunting areas. They want to see language put back into the legislation that will give the authority back to the FWP to limit access to overworked rivers and public lands. The independents are reluctant to pay an additional \$100 a year for the license in order to pay for an executive director on the Board of Outfitters. There is \$133,000 in the account and he feels this money should be used for the executive director.

Chuck Tuchscht, outfitter from Bozeman, Mt., opposes HB 1002. His biggest concern is language in the bill that deals with the rulemaking procedures to limit outfitter use. There needs to be checks and balances on the part of FWP to limit outfitter and public use of overworked areas. The FWP has done this forever. They have monitored the health and viability of this resource and they know what's going on. They should be the ones making a recommendation to the Board. He does not like the amendment that FOAM has suggested. Who determines what another person's "quality experience" is? If a state or federal agency were to be used for a check and balance, he would support the bill. See Exhibit No. 6.

Robin Cunningham, Avon Outfitters, Bozeman, Mt., feels that this legislation would allow the possibility of abuse in the rule-making process. He recommends that this bill be tabled and held for another session until the outfitters can provide more input. See Exhibit No. 7.

Richard C. Parks, owner of a sporting goods store and a licensed fishing outfitter, Gardiner, Mt., sent a fax of his testimony. Because of bad weather, he could not appear in person. See Exhibit No. 8.

Bill Saunders, representing himself who enjoys fly fishing and an outfitter, disagrees with language of bill that is vague concerning "consideration", and feels this legislation is being pushed through very rapidly for the benefit of a few of the overall constituents. He recommends legislation that is for the majority and not the minority.

Richard Smith, owner of High Country Angler, Bozeman, Mt., opposes this bill primarily because it eliminates any checks and balances in the system by allowing the Board of Outfitters what appears to be unbridled authority. It appears this is an effort to monopolize the business for the sake of a few.

David Corcoran, outfitter from Bozeman, Mt., opposes the bill for the same reasons already put forth. There is a lot of division within the outfitting industry between the way a hunting business

is operated and the way a fishing business is operated. Because of these major differences, he recommends that two separate boards or divisions be established to address each industry. He does not agree that upgrading the master guide is the way to go. It is stated that the Board of Outfitters is already overworked and needs an executive director. The development, administration, and implementation of the exams for a master guide would only add to the workload.

Questions From Committee Members:

Senator Pinsoneault asked Allen Schallenberger if he had printed advertising that he sent out to prospective clients and if he listed what he charged per day? Mr. Schallenberger said he had a small brochure and had a separate handout of the charges. Senator Pinsoneault asked how much he grossed in 1990 and if that was his only business. Mr. Schallenberger advised he was a cattle rancher, wildlife biologist, wildlife researcher, and native Montanan.

Senator Pinsoneault asked if anyone did outfitting exclusively for a livelihood? Allan Gadoury said he only had an outfitting business and grossed \$40,000.

Senator Svrcek asked Allan Gadoury why he was opposed to the suggested amendment. Mr. Gadoury expressed his concern that the language was very vague and as it is written, would mean the FWP could impose use restrictions only on the Smith River.

Senator Svrcek asked Dennis Kavanaugh why he opposed the bill? Mr. Kavanaugh did not like language that referred to a survey. He felt that it should state who would be doing the survey, preferably the FWP. If it was done by anyone else, the results reported could be biased toward a chosen few.

Senator Svrcek asked Pat Graham to compare or contrast the language stricken on line 15-16, page 17 and the language that is in the amendment proposed by Rep. Ellison. Senator Svrcek questioned Mr. Graham on the statement made by Allan Gadoury that the FWP would have killed the bill if the original language had been kept. Mr. Graham advised that the FWP does support the amendment and from a fishing point of view, must step back and look at the difference between hunting and fishing. All hunting is pretty much regulated in most areas, while fishing is essentially unregulated. The Smith River is a unique situation, which may get to a point where the FWP will be regulating all public use as the river moves into its next stage. To regulate public use on any other river would be virtually impossible for the FWP to do cost-wise.

Senator Swift asked Rep. Ellison who he had in mind to do the study and if he intended the outfitters to do the use study. Representative Ellison asked to have Larry Fasbender respond. Mr. Fasbender advised that the amendment does requires a survey

to be done. It will be up to the Board of Outfitters to determine how that survey will be done and by whom.

Senator Swift questioned why they wanted language in the bill to cut out any designation for a private person who owns land to be an outfitter. They should be able to get a license the same as anyone else. Ron Curtiss explained that he could operate as an outfitter on his own land without a license. Senator Swift asked what would happen if the landowner wanted to bring someone to hunt on his neighbor's land and why they would want to cut that out, as it is now provided in the statutes. Mr. Curtiss said that nothing has been changed from the statutes; the only thing that has been changed is they added "natural persons" which was to do away with businesses operating as outfitters.

Rep. Ellison explained that if you guide a person on your own land, you are not considered an outfitter. You don't have to have a license; however, if you want to take him on somebody else's property you must be licensed as an outfitter, which is protection for the client.

Senator Anderson asked Ron Curtiss how the Board of Outfitters is made up. Mr. Curtiss stated there is one member from FWP, one member from the general public, and five outfitters from the five fish and game commission districts from around the State. Those outfitter members are nominated by fellow outfitters; two people are nominated whose names go to the Governor and he chooses one of them.

Senator Anderson asked Allen Schallenberger if he would be in violation of this legislation if he helped bring in game that someone else had killed on his land? Mr. Schallenberger stated that if he was on his own ranch, no problem; but if he was on his neighbor's place, he would probably be in violation. The wording of "outfitter" is very loosely worded.

Senator Grosfield asked Pat Graham who or what is going to be hurt if this bill doesn't pass until next session? Mr. Graham stated the problem he could see would be the Fish and Game Commission could not implement the next scheduled planning program on the Smith River.

Senator Franklin asked Larry Fasbender if he had a problem with striking the liability clause that has caused Mr. Sherwood so much concern? Mr. Fasbender stated he would have no problem with the committee deleting that language.

Senator Rye asked Mr. Sherwood if he would be able to live with the language if it was changed to "adult participants"? Mr. Sherwood stated he would still have problems because the liability in this bill is not fully explained. If there is to be an assumption of risk, those risks need to be explained.

Senator Rye asked Charles Brooks why he is in favor of more government regulation? Mr. Brooks explained that there should be some regulation in order to make sure the public, as well as the free-enterprise entrepreneur, is protected.

Senator Bianchi asked Doug Sternberg, Council, regarding the moratorium on the Madison or Big Hole. Mr. Sternberg explained that this section was no longer effective. The contingency or coordination section references House Bill 149, making permanent the rulemaking authority of the Board of Outfitters, which has been approved by the Governor.

Senator Bianchi asked Ron Curtiss to define "quality of experience" for persons using the resource. Mr. Curtiss explained there is too much use on the Big Horn and Madison, and some people believe there may be too much use on the Smith River. Where we stand right now, the Board must license anybody that can pass the test and qualifies to be licensed. That is addressing the quality of use. This is hurting the experience people are having on these crowded rivers.

Closing by Sponsor:

Representative Ellison advised even though he was not an outfitter or a guide, the outfitters are going to have to do something to limit their use or the pressure will be put on the legislature to do it in a fashion they will not like. If enough sportsmen put too much pressure on these rivers, the Legislature will take away everyone's license and no outfitting will be allowed on these rivers. If they want to preserve their business, they had better do something.

EXECUTIVE ACTION ON HB 1002

Motion:

Senator Rye made the motion to table HB 1002 because of the myriad of reasons raised by opponents to this legislation and because no solutions were suggested to their concerns.

Discussion:

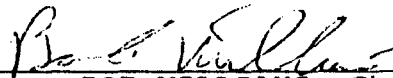
Senator Svrcek supports Senator Rye's motion and charged everyone in attendance to get together and come to a compromise, as they have been fighting for years. In the long run it will be the resource that will suffer, not the outfitters. He advised them to come back in 2 years with a bill that everyone can support.

Recommendation and Vote:


Vote was unanimous to table HB 1002.

ADJOURNMENT

Adjournment At: 4:29 P.M.



BOB WILLIAMS, Chairman



JULIA LEVENS, Secretary

BW/jl

Amendments to House Bill No. 1002
Second Reading (Yellow) Copy

Requested by Rep. Ellison
For the Committee on F&G

Prepared by Doug Sternberg
April 11, 1991

1. Page 7, line 16.

Following: "river"

Strike: "i"

Insert: ". Rules adopted under this subsection (d) must be based on a factual finding by the board, derived from empirical studies and surveys, that a hunting or fishing resource will suffer damage or the quality of the experience for persons using the resource will be detrimentally affected by additional outfitter use."

HB1002

By Ron Curtiss, Chairman
Montana Board of Outfitters

HB1002 is a housekeeping measure written by the Board of Outfitters and the outfitting industry to clarify the existing law and to make some needed changes. The following are some specific points that might require your attention.

The master guide defined in 37-47-101 (4) does not mandate change in the way the outfitters operate. It simply creates an additional class of guide that would be qualified by the Board of Outfitters through a testing procedure and experience requirement, with an annually renewable license. Currently, all guides do not renew licenses, but must reapply through their employing outfitter each year. The master guide would create a pool of qualified and licensed guides available to outfitters.

Page 7, lines 12-15 would give the Board rule making authority to limit additional outfitter use by area or river. Although most sportsmen, outfitters and outfitter organizations support this section, there are some individuals who believe outfitters and outfitted use should not be limited or regulated in any way and they will oppose this section; in fact, they will oppose the entire bill in order to defeat this section.

Page 23, lines 2-6 give the Board authority to assess administrative penalties. Currently, the Board's options are to suspend or revoke licenses or do nothing for infractions of laws and rules. Administrative penalties are an alternative to taking away an outfitter's livelihood for minor infractions.

On page 28 starting with line 22, the bill authorizes the Department of Commerce to hire an administrative director to help with the duties of the Board. This is badly needed because of the work load of the Board in licensing 2400 outfitters and guides, processing 80 complaints a year, testing 75 new applicants, licensing 40 new outfitters and coordinating the Board's enforcement personnel. The Board currently has only one part time administrative assistant to handle it's business affairs. The cost of this administrative director, and all the expenses of the Board, are paid for entirely by fees charged by the Board to outfitters and guides.

We hope you will support this legislation.

SENATE FISH AND WILDLIFE
EXHIBIT NO. 3
DATE 4/11/91
BILL NO. HB1002

HB 1002
April 11, 1991

Testimony presented by Pat Graham, Dept. of Fish, Wildlife & Parks
to Senate Fish and Game Committee

We believe that the Board of Outfitters has made significant progress in the control and regulation of the outfitting industry since it was created in 1987. HB 1002 will provide the board the authority needed to maintain quality and stability in the outfitting industry. Of particular importance is the proposed change on page 7, lines 12 through 14, which would give the board the authority to adopt rules and procedures to determine areas where additional outfitter use should be limited. We believe this authority is in the best interest of the recreational public and is consistent with the public's desire that the board begin to limit the numbers of outfitters in some areas.

In summary, it is our belief that the public looks to, and indeed expects, the Board of Outfitters to take the lead in regulating the outfitting industry. The creation of an executive director for the board is a positive step in the responsible administration of the outfitting industry. This position will be particularly important in coordinating the enforcement investigations authorized by the board.


We support HB 1002.

EXHIBIT NO. 4

DATE 4/11/91

BILL NO. HB 1002

'Spring Creeks Our Specialty'
Armstrong • DePuy's • Nelson


Al Gadoury's
6X Outfitters

P.O. Box 6045 • Bozeman, MT 59715

(406) 586-3806

March 11, 1991

House Bill 1002 Hearing Senate Fish and Game

Fishing and hunting outfitters have had no time to review this hurried legislation.

The concept of a master guide is a waste of time. If guide standards need to be upgraded it should apply to all guides. Because there was only one complaint last year to the board of outfitters concerning fishing guides I don't think we have a problem.

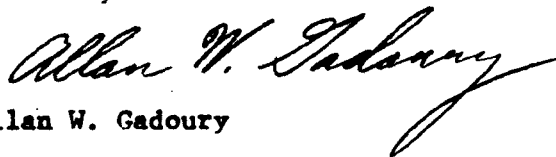
In section 3 there is a Madison River and Big Hole River moratorium that removes all outfitters not licensed before 1980.

This bill gives the Board of Outfitters the power to limit outfitting state-wide with no limits on this power. Checks and balances must be in this bill.

Section 3 (5) (d) should be amended to read: when a state or federal agency limits or proposes to limit use of an area or river.

This bill should be tabled until the next session.

Sincerely



Allan W. Gadoury

This bill has been hastily introduced with little opportunity for review by fishing and hunting outfitters and guides, dude ranchers, recreation outfitters and others closely involved with outfitting in the state of Montana. It has not been developed by grass roots efforts and knowledge so it is of lower quality than necessary for governing the outfitting and guiding business which generates \$115 million annually in Montana. We estimate that less than one per cent of the people affected saw a copy of this bill before it was passed by the House Fish and Game Committee. Opponents such as myself had no opportunity to present information to that hearing. The bill was not available for review until late on March 22. According to the legislative information service the hearing before the House Fish and Game Committee was scheduled for 3:00 pm on March 23. I arrived at 2:40 pm and found the hearing already over and the bill passed by the committee. The hearing time was changed to 2:00 pm without any notice to the opponents. The information desk still had it listed for 3:00 pm after the hearing.

Problems with the bill are as follows:

1. The terms outfitter, master guide, professional guide and guide are not clearly defined.
2. No procedures or reviews are listed for adopting rules and policy to regulate outfitters, guides and their clients. No mention is made that the Board of Outfitters(hereafter called Board), the proposed executive director and other employees of the Board must operate in an honest, unbiased and equitable manner. No mention is made that a major purpose of the Board is to aid clients in obtaining the best possible services and outfitters and guides in providing those services. There is no mention of the need for baseline research to be conducted on perceived problems before decisions are made which adversely affect or impact the various segments of the industry. There is no mention that quality research must be carried out in an unbiased manner by educated and experienced researchers. The original bill provided that proof of resource damage by a state or federal agency was needed before an outfitter was summarily removed by the Board from an area or river. An amendment in the committee gave the Board sole right to remove outfitters including persons competing directly with Board members. Basically the Board and executive director were given dictatorial powers.
3. There is no mention at all in the bill of current or future covert operations by the Board. My understanding is that there are currently five covert law enforcers and more planned if this bill passes as written. There are no legislative guidelines for the covert operations: What will be investigated by the covert operators? What will happen to the size of the covert buracracy in the future? Who will these covert cops be used against before and after the perceived illegal outfitting is controlled or reduced to acceptable levels? The Board apparently does not have in place long range goals or an intelligent, well researched vision for the future of the Montana outfitting and guiding industry.
4. Imagine for a moment what could happen to Montana outfitting if a land shark captured control of the board. Not generally known is that a major thrust of the board has been to limit numbers of outfitters and their area of operation so that outfitting permits become more valuable

SENATE FISH AND GAME
EXHIBIT NO. 6
DATE 4/11/91
BILL NO. HB 1002

April 3, 1991

Chuck Tuchschiidt
322 1/2 Lindley Pl.
Bozeman, MT 59715
(406) 586-3157

Dear Sen. Eck,

I'm writing to voice my strong opposition to HB 1002. I request that you vote to kill this bill for this legislative session.

The troubling part of this bill is Section 3, 37-47-201 which would empower the Board of Outfitters to determine where additional outfitter use should or should not be approved.

I feel strongly that the Board of Outfitters is the wrong body to be making that decision. There are members of the outfitting profession who have already done a significant amount of politicking in an attempt to try and monopolize a particular river by limiting outfitter use. Most of the arguments for limiting outfitter use have been based on the so-called "problem" of overcrowding. Certainly crowds are one thing; but to define them as a problem is quite another, especially when those calling it a problem are the ones who have the most to gain from restricting other outfitters on a particularly popular river. I would like to add that in a recent poll conducted by MSU 90% of the public did not think Montana rivers were crowded.

I think it would be a mistake for a group tied to commercial interests, i.e. the Board of Outfitters, to try and regulate commercial use based on aesthetic judgments.

Our rivers are a public resource and historically the fishing and boating on those rivers has been well monitored and managed by the Montana FWP. The decision to restrict use on a public resource should be made on the basis on whether that specific use is a threat to the continued viability of that resource, not because some outfitter or a member of the public happens to think there are too many people on the river to suit him even though they have the same right to be there as he does. I think no one is in a better position to make that determination, about the health and viability of a river, than FWP.

When we talk of restricting outfitter use we also talk of restricting a persons right to make a living after that person has met the standards which the state required for licensure, after paying for his or her license and after investing many hours and dollars into building up a business - this is no light matter.

When the state of Montana issued those licenses it authorized the licensee to work statewide.

I think that giving the Board of Outfitters the power to restrict outfitter use without some sort of check and balance is like letting the fox watch the chicken coop.

I have also heard rumblings from outfitters that they would pursue legal action if this bill were to pass as is. I think that would be a shame. I like to think that the legislative process is one of measured analysis which promotes the avoidance of such reactions.

There was a line in the bill which stated, when a state or federal agency limits or proposes to limit use of an area or river. This line sounds like a very reasonable approach but it has been deleted. If that line were re-installed I think I could support this bill but without, no way. Again, I strongly request that you vote down this bill.

Sincerely,

Chuck Tuchschiidt

ROBIN CUNNINGHAM

AVON OUTFITTERS

BOZEMAN, MT

SENATE FISH AND GAME

EXHIBIT NO. 7

DATE 4/11/91

BILL NO. HB 1002

House Bill 1002, with its Master Guide qualifications, administrative penalties, and establishment of an Executive Director, furnishes the Board of Outfitters with arguably necessary powers.

However, as covered in currently amended Section 3, 37-47-201 MCA, House Bill 1002 would mistakenly grant authority for the Board of Outfitters to adopt "Rules to develop a procedure for determining areas where additional outfitter use should or should not be approved by the Board." Why is this a mistake?

First, the term "additional outfitter use" should be more clearly defined. Is current outfitter use to be grandfathered as a baseline beyond which any use is defined as additional? Could current use levels be restricted or replaced with new guidelines defining some arbitrary number of client days as additional? Lacking more concrete wording, this section is incomplete.

Second, just how open is this rule-making process? Can outfitters participate in the process, or must they simply await announcements from the Board? Past Board of Outfitter meetings have not been adequately publicized, and Outfitters affected by this process should have direct access to the Board through a referendum vote, rather than be lumped with the general public in the general rule-making process. A definite process for outfitter rebuttal or concurrence must be included for this procedure to be equitable.

Third, because no general outfitter discussion or vote is mandated, there exists the possibility of abuse in the rule-making process. Individual Board of Outfitter members could persuade the Board to adopt rules and create a procedure by which any location, drainage, or district would become a protected area, unusable by other competing outfitters, with obvious benefits for local outfitters and flyshop owners.

Worse, the lack of checks and balances in this determination process allows covert regionalism that, in the guise of protecting a fishery like the Big Horn, or of safeguarding the quality of a fishing experience on the Missouri, can lead to procedures barring "additional outfitter use" and create a competition-free zone. Certainly, this violates the purpose of the Board of Outfitters chartered to protect the public from just such abuse.

If the term "additional outfitter use" was clearly defined and the possibility of abuse checked through a concretely outlined give-and-take, referendum-style rule-making procedure, then this newly-reamended section could stand as an essential component of this bill.

If an amendment to this end can still be introduced, House Bill 1002 would make sense. Otherwise, it should be tabled until such a reasonable amendment can be included.

To: D.Kavanaugh, >FAX 406-5860724

Dear Senator Williams

I am unable to attend the hearing this afternoon on HB-1002 because of the weather. I am mailing a copy of my testimony but sending this to you for inclusion in the record via the FAX. It is important that this bill be amended as I indicate. It is an effort of a few to monopolize the outfitting business which is not the interests of our clients. It is in my interest because as an established operation I would stand to have a "blue sky" value created for it which I could sell. In spite of that I think it is a bad idea.

April 11, 1991 Box 196 Gardiner, MT 59030

Testimony requesting amendment of HB-1002

Senate Fish & Game Committee

Mr. Chairman, members of the committee, my name is Richard Parks. I own and operate a sporting goods store and am a licenced fishing outfitter. I have two concerns to express about this bill.

1. When members of the Board of Outfitters presented this proposal to our annual meeting some weeks ago they left me with the impression that the new personnel required would be paid for with an existing operating surplus. While I appreciate the error in the fiscal note that failed to account for the income derived from guide licenses it is still clear that it is now anticipated that an increase in the price of an outfitter's license will be required. I remain unconvinced that the additional services are required.

2. My biggest concern with the bill is the expansion of the power of the Board. In particular the proposal found on page 7, starting at line 13 (section 3, part 5 sub "d") concerns me. Several years ago a small clique of mostly hunting outfitters decided that the way to improve business was to make it as difficult as possible for new outfitters to get started. This proposal, as currently written, is the culminating move in that plan. It gives the Board broad authority to limit entry into our business. It does so, not on the basis of competence, but on the basis of whether the Board thinks it is OK. I request this committee to amend the bill to restore the language struck out on lines 15 and 16 by adding "when a state or federal agency limits or proposes to limit use of an area or river".

Thank you.

Richard C. Parks

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