2022 -- H 7985

LC005481

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

AN ACT

RELATING TO STATE AFFAIRS AND GOVERNMENT -- REBUILD RHODE ISLAND TAX CREDIT

<u>Introduced By:</u> Representatives Potter, Alzate, Slater, Diaz, Bennett, J Lombardi, Amore, Henries, Morales, and O'Brien

Date Introduced: March 16, 2022

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 42-64.20-5 of the General Laws in Chapter 42-64.20 entitled

"Rebuild Rhode Island Tax Credit" is hereby amended to read as follows:

42-64.20-5. Tax credits.

- 4 (a) An applicant meeting the requirements of this chapter may be allowed a credit as set 5 forth hereinafter against taxes imposed upon such person under applicable provisions of title 44 of
- 6 the general laws for a qualified development project.
- 7 (b) To be eligible as a qualified development project entitled to tax credits, an applicant's
- 8 chief executive officer or equivalent officer shall demonstrate to the commerce corporation, at the
- 9 time of application, that:

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- 10 (1) The applicant has committed a capital investment or owner equity of not less than
- twenty percent (20%) of the total project cost;
- 12 (2) There is a project financing gap in which after taking into account all available private
- and public funding sources, the project is not likely to be accomplished by private enterprise
- without the tax credits described in this chapter; and
- 15 (3) The project fulfills the state's policy and planning objectives and priorities in that:
- 16 (i) The applicant will, at the discretion of the commerce corporation, obtain a tax
- stabilization agreement from the municipality in which the real estate project is located on such
- terms as the commerce corporation deems acceptable;

1	(ii) It (A) Is a commercial development consisting of at least 25,000 square feet occupied
2	by at least one business employing at least 25 full-time employees after construction or such
3	additional full-time employees as the commerce corporation may determine; (B) Is a multi-family
4	residential development in a new, adaptive reuse, certified historic structure, or recognized
5	historical structure consisting of at least 20,000 square feet and having at least 20 residential units
6	in a hope community; or (C) Is a mixed-use development in a new, adaptive reuse, certified historic
7	structure, or recognized historical structure consisting of at least 25,000 square feet occupied by at
8	least one business, subject to further definition through rules and regulations promulgated by the
9	commerce corporation; and
10	(iii) Involves a total project cost of not less than \$ 5,000,000, except for a qualified
11	development project located in a hope community or redevelopment area designated under § 45-
12	32-4 in which event the commerce corporation shall have the discretion to modify the minimum
13	project cost requirement-; and
14	(iv) All construction workers shall be paid in accordance with the wages and benefits
15	required pursuant to chapter 13 of title 37 with all contractors and subcontractors be required to file
16	certified payrolls on a monthly basis with the tax administrator of the division of taxation. Failure
17	to follow the requirements pursuant to chapter 13 of title 37 shall constitute a material violation
18	and a material breach of the agreement with the state and the commerce corporation, in consultation
19	with the tax administrator, shall have the discretion to revoke the tax credits.
20	(4) The commerce corporation, in consultation with the tax administrator, shall promulgate
21	such rules and regulations as are necessary to implement the enforcement of this section.
22	(c) The commerce corporation shall develop separate, streamlined application processes
23	for the issuance of rebuild RI tax credits for each of the following:
24	(1) Qualified development projects that involve certified historic structures;
25	(2) Qualified development projects that involve recognized historical structures;
26	(3) Qualified development projects that involve at least one manufacturer; and
27	(4) Qualified development projects that include affordable housing or workforce housing.
28	(d) Applications made for a historic structure or recognized historic structure tax credit
29	under chapter 33.6 of title 44 shall be considered for tax credits under this chapter. The division of
30	taxation, at the expense of the commerce corporation, shall provide communications from the
31	commerce corporation to those who have applied for and are in the queue awaiting the offer of tax
32	credits pursuant to chapter 33.6 of title 44 regarding their potential eligibility for the rebuild RI tax
33	credit program.
34	(e) Applicants (1) Who have received the notice referenced in subsection (d) above and

- 1 who may be eligible for a tax credit pursuant to chapter 33.6 of title 44, (2) Whose application
- 2 involves a certified historic structure or recognized historical structure, or (3) Whose project is
- 3 occupied by at least one manufacturer shall be exempt from the requirements of subsections
- 4 (b)(3)(ii) and (b)(3)(iii). The following procedure shall apply to such applicants:
 - (i) The division of taxation shall remain responsible for determining the eligibility of an applicant for tax credits awarded under chapter 33.6 of title 44;
 - (ii) The commerce corporation shall retain sole authority for determining the eligibility of an applicant for tax credits awarded under this chapter; and
 - (iii) The commerce corporation shall not award in excess of fifteen percent (15%) of the annual amount authorized in any fiscal year to applicants seeking tax credits pursuant to this subsection (e).
 - (f) Maximum project credit.

- (1) For qualified development projects, the maximum tax credit allowed under this chapter shall be the lesser of (i) Thirty percent (30%) of the total project cost; or (ii) The amount needed to close a project financing gap (after taking into account all other private and public funding sources available to the project), as determined by the commerce corporation.
- (2) The credit allowed pursuant to this chapter, inclusive of any sales and use tax exemptions allowed pursuant to this chapter, shall not exceed fifteen million dollars (\$15,000,000) for any qualified development project under this chapter; except as provided in subsection (f)(3) of this section; provided however, any qualified development project that exceeds the project cap upon passage of this act shall be deemed not to exceed the cap, shall not be reduced, nor shall it be further increased. No building or qualified development project to be completed in phases or in multiple projects shall exceed the maximum project credit of fifteen million dollars (\$15,000,000) for all phases or projects involved in the rehabilitation of the building. Provided, however, that for purposes of this subsection and no more than once in a given fiscal year, the commerce corporation may consider the development of land and buildings by a developer on the "I-195 land" as defined in § 42-64.24-3(6) as a separate, qualified development project from a qualified development project by a tenant or owner of a commercial condominium or similar legal interest including leasehold improvement, fit out, and capital investment. Such qualified development project by a tenant or owner of a commercial condominium or similar legal interest on the I-195 land may be exempted from subsection (f)(1)(i) of this section.
- (3) The credit allowed pursuant to this chapter, inclusive of any sales and use tax exemptions allowed pursuant to this chapter, shall not exceed twenty-five million dollars (\$25,000,000) for the project for which the I-195 redevelopment district was authorized to enter

- into a purchase and sale agreement for parcels 42 and P4 on December 19, 2018, provided that project is approved for credits pursuant to this chapter by the commerce corporation.
- 3 (g) Credits available under this chapter shall not exceed twenty percent (20%) of the project 4 cost, provided, however, that the applicant shall be eligible for additional tax credits of not more 5 than ten percent (10%) of the project cost, if the qualified development project meets any of the following criteria or other additional criteria determined by the commerce corporation from time 6 to time in response to evolving economic or market conditions:
- (1) The project includes adaptive reuse or development of a recognized historical structure; 8
- 9 (2) The project is undertaken by or for a targeted industry;

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- (3) The project is located in a transit-oriented development area;
- (4) The project includes residential development of which at least twenty percent (20%) of the residential units are designated as affordable housing or workforce housing;
- (5) The project includes the adaptive reuse of property subject to the requirements of the industrial property remediation and reuse act, § 23-19.14-1 et seq.; or
 - (6) The project includes commercial facilities constructed in accordance with the minimum environmental and sustainability standards, as certified by the commerce corporation pursuant to Leadership in Energy and Environmental Design or other equivalent standards.
 - (h) Maximum aggregate credits. The aggregate sum authorized pursuant to this chapter, inclusive of any sales and use tax exemptions allowed pursuant to this chapter, shall not exceed two hundred ten million dollars (\$210,000,000), excluding any tax credits allowed pursuant to subsection (f)(3) of this section.
 - (i) Tax credits shall not be allowed under this chapter prior to the taxable year in which the project is placed in service.
 - (j) The amount of a tax credit allowed under this chapter shall be allowable to the taxpayer in up to five, annual increments; no more than thirty percent (30%) and no less than fifteen percent (15%) of the total credits allowed to a taxpayer under this chapter may be allowable for any taxable year.
 - (k) If the portion of the tax credit allowed under this chapter exceeds the taxpayer's total tax liability for the year in which the relevant portion of the credit is allowed, the amount that exceeds the taxpayer's tax liability may be carried forward for credit against the taxes imposed for the succeeding four (4) years, or until the full credit is used, whichever occurs first. Credits allowed to a partnership, a limited-liability company taxed as a partnership, or multiple owners of property shall be passed through to the persons designated as partners, members, or owners respectively pro rata or pursuant to an executed agreement among persons designated as partners, members, or

owners documenting an alternate distribution method without regard to their sharing of other tax or economic attributes of such entity.

- (1) The commerce corporation, in consultation with the division of taxation, shall establish,
 by regulation, the process for the assignment, transfer, or conveyance of tax credits.
 - (m) For purposes of this chapter, any assignment or sales proceeds received by the taxpayer for its assignment or sale of the tax credits allowed pursuant to this section shall be exempt from taxation under title 44. If a tax credit is subsequently revoked or adjusted, the seller's tax calculation for the year of revocation or adjustment shall be increased by the total amount of the sales proceeds, without proration, as a modification under chapter 30 of title 44. In the event that the seller is not a natural person, the seller's tax calculation under chapter 11, 13, 14, or 17 of title 44, as applicable, for the year of revocation, or adjustment, shall be increased by including the total amount of the sales proceeds without proration.
 - (n) The tax credit allowed under this chapter may be used as a credit against corporate income taxes imposed under chapter 11, 13, 14, or 17, of title 44, or may be used as a credit against personal income taxes imposed under chapter 30 of title 44 for owners of pass-through entities such as a partnership, a limited-liability company taxed as a partnership, or multiple owners of property.
 - (o) In the case of a corporation, this credit is only allowed against the tax of a corporation included in a consolidated return that qualifies for the credit and not against the tax of other corporations that may join in the filing of a consolidated tax return.
 - (p) Upon request of a taxpayer and subject to annual appropriation, the state shall redeem this credit, in whole or in part, for ninety percent (90%) of the value of the tax credit. The division of taxation, in consultation with the commerce corporation, shall establish by regulation a redemption process for tax credits.
 - (q) Projects eligible to receive a tax credit under this chapter may, at the discretion of the commerce corporation, be exempt from sales and use taxes imposed on the purchase of the following classes of personal property only to the extent utilized directly and exclusively in the project: (1) Furniture, fixtures, and equipment, except automobiles, trucks, or other motor vehicles; or (2) Other materials, including construction materials and supplies, that are depreciable and have a useful life of one year or more and are essential to the project.
 - (r) The commerce corporation shall promulgate rules and regulations for the administration and certification of additional tax credit under subsection (e), including criteria for the eligibility, evaluation, prioritization, and approval of projects that qualify for such additional tax credit.
 - (s) The commerce corporation shall not have any obligation to make any award or grant any benefits under this chapter.

1	SECTION 2. Section 44-31.2-5 of the General Laws in Chapter 44-31.2 entitled "Motion
2	Picture Production Tax Credits" is hereby amended to read as follows:
3	44-31.2-5. Motion picture production company tax credit.
4	(a) A motion picture production company shall be allowed a credit to be computed as
5	provided in this chapter against a tax imposed by chapters 11, 14, 17, and 30 of this title. The
6	amount of the credit shall be thirty percent (30%) of the state-certified production costs incurred
7	directly attributable to activity within the state, provided:
8	(1) That the primary locations are within the state of Rhode Island and the total production
9	budget as defined herein is a minimum of one hundred thousand dollars (\$100,000); or
10	(2) The motion picture production incurs and pays a minimum of ten million dollars
11	(\$10,000,000) in state-certified production costs within a twelve-month (12) period.
12	The credit shall be earned in the taxable year in which production in Rhode Island is
13	completed, as determined by the film office in final certification pursuant to § 44-31.2-6(c).
14	(b) For the purposes of this section: "total production budget" means and includes the
15	motion picture production company's pre-production, production, and post-production costs
16	incurred for the production activities of the motion picture production company in Rhode Island in
17	connection with the production of a state-certified production. The budget shall not include costs
18	associated with the promotion or marketing of the film, video, or television product.
19	(c) Notwithstanding subsection (a) of this section, the credit shall not exceed seven million
20	dollars (\$7,000,000) and shall be allowed against the tax for the taxable period in which the credit
21	is earned and can be carried forward for not more than three (3) succeeding tax years. Pursuant to
22	rules promulgated by the tax administrator, the administrator may issue a waiver of the seven
23	million dollars (\$7,000,000) tax credit cap for any feature-length film or television series up to the
24	remaining funds available pursuant to section (e) of this section.
25	(d) Credits allowed to a motion picture production company, which is a subchapter S
26	corporation, partnership, or a limited-liability company that is taxed as a partnership, shall be
27	passed through respectively to persons designated as partners, members, or owners on a pro rata
28	basis or pursuant to an executed agreement among such persons designated as subchapter S
29	corporation shareholders, partners, or members documenting an alternate distribution method
30	without regard to their sharing of other tax or economic attributes of such entity.
31	(e) No more than fifteen million dollars (\$15,000,000) in total may be issued for any tax
32	year beginning after December 31, 2007, for motion picture tax credits pursuant to this chapter
33	and/or musical and theatrical production tax credits pursuant to chapter 31.3 of this title. After
21	December 21, 2010, no more than twenty million dellars (\$20,000,000) in total may be issued for

1	any tax year for motion picture tax credits pursuant to this chapter and/or musical and theater
2	production tax credits pursuant to chapter 31.3 of this title. Said credits shall be equally available
3	to motion picture productions and musical and theatrical productions. No specific amount shall be
4	set aside for either type of production.
5	(f) Exclusively for tax year 2022, the total amount of motion picture tax credits issued
6	pursuant to this section and/or musical and theatrical production tax credits pursuant to chapter 31.3
7	of this title shall not exceed thirty million dollars (\$30,000,000).
8	(g) All construction workers shall be paid in accordance with the wages and benefits
9	required pursuant to chapter 13 of title 37 and all contractors and subcontractors shall file certified
10	payrolls on a monthly basis with the tax administrator of the division of taxation. Failure to follow
11	the requirements pursuant to chapter 13 of title 37 shall constitute a material violation and a material
12	breach of the agreement with the state and the tax administrator shall have the discretion to revoke
13	the tax credits.
14	(h) The tax administrator of the division of taxation shall promulgate such rules and
15	regulations as are necessary to implement the enforcement of this section.
16	SECTION 3. Section 44-33.6-3 of the General Laws in Chapter 44-33.6 entitled "Historic
17	Preservation Tax Credits 2013" is hereby amended to read as follows:
18	44-33.6-3. Tax credit.
19	(a) Subject to the maximum credit provisions set forth in subsections (c) and (d) below,
20	any person, firm, partnership, trust, estate, limited liability company, corporation (whether for
21	profit or nonprofit) or other business entity that incurs qualified rehabilitation expenditures for the
22	substantial rehabilitation of a certified historic structure, provided the rehabilitation meets standards
23	consistent with the standards of the Secretary of the United States Department of the Interior for
24	rehabilitation as certified by the commission and said person, firm, partnership, trust, estate, limited
25	liability company, corporation or other business entity is not a social club as defined in § 44-33.6-
26	2(15) of this chapter, shall be entitled to a credit against the taxes imposed on such person or entity
27	and the state of t
20	pursuant to chapter 11, 12, 13, 14, 17 or 30 of this title in an amount equal to the following:
28	(1) Twenty percent (20%) of the qualified rehabilitation expenditures; or
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	(1) Twenty percent (20%) of the qualified rehabilitation expenditures; or
29	(1) Twenty percent (20%) of the qualified rehabilitation expenditures; or(2) Twenty-five percent (25%) of the qualified rehabilitation expenditures provided that
29 30	(1) Twenty percent (20%) of the qualified rehabilitation expenditures; or (2) Twenty-five percent (25%) of the qualified rehabilitation expenditures provided that either:
29 30 31	 (1) Twenty percent (20%) of the qualified rehabilitation expenditures; or (2) Twenty-five percent (25%) of the qualified rehabilitation expenditures provided that either: (i) At least twenty-five percent (25%) of the total rentable area of the certified historic

(b) Tax credits allowed pursuant to this chapter shall be allowed for the taxable year in which such certified historic structure or an identifiable portion of the structure is placed in service provided that the substantial rehabilitation test is met for such year.

- (c) Maximum project credit. The credit allowed pursuant to this chapter shall not exceed five million dollars (\$5,000,000) for any certified rehabilitation project under this chapter. No building to be completed in phases or in multiple projects shall exceed the maximum project credit of five million dollars (\$5,000,000) for all phases or projects involved in the rehabilitation of such building.
- (d) Maximum aggregate credits. The aggregate credits authorized to be reserved pursuant to this chapter shall not exceed sums estimated to be available in the historic preservation tax credit trust fund pursuant to this chapter.
- (e) Subject to the exception provided in subsection (g) of this section, if the amount of the tax credit exceeds the taxpayer's total tax liability for the year in which the substantially rehabilitated property is placed in service, the amount that exceeds the taxpayer's tax liability may be carried forward for credit against the taxes imposed for the succeeding ten (10) years, or until the full credit is used, whichever occurs first for the tax credits. Credits allowed to a partnership, a limited liability company taxed as a partnership or multiple owners of property shall be passed through to the persons designated as partners, members or owners respectively pro rata or pursuant to an executed agreement among such persons designated as partners, members or owners documenting an alternate distribution method without regard to their sharing of other tax or economic attributes of such entity. Credits may be allocated to partners, members or owners that are exempt from taxation under section 501(c)(3), section (c)(4) or section 501(c)(6) of the U.S. Code and these partners, members or owners must be treated as taxpayers for purposes of this section.
- (f) If the taxpayer has not claimed the tax credits in whole or part, taxpayers eligible for the tax credits may assign, transfer or convey the credits, in whole or in part, by sale or otherwise to any individual or entity, including, but not limited to, condominium owners in the event the certified historic structure is converted into condominiums and assignees of the credits that have not claimed the tax credits in whole or part may assign, transfer or convey the credits, in whole or in part, by sale or otherwise to any individual or entity. The assignee of the tax credits may use acquired credits to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed pursuant to chapter 11, 12, 13, (other than the tax imposed under § 44-13-13), 14, 17 or 30 of this title. The assignee may apply the tax credit against taxes imposed on the assignee until the end of the tenth calendar year after the year in which the substantially rehabilitated property is placed in

service or until the full credit assigned is used, whichever occurs first. Fiscal year assignees may claim the credit until the expiration of the fiscal year that ends within the tenth year after the year in which the substantially rehabilitated property is placed in service. The assignor shall perfect the transfer by notifying the state of Rhode Island division of taxation, in writing, within thirty (30) calendar days following the effective date of the transfer and shall provide any information as may be required by the division of taxation to administer and carry out the provisions of this section.

For purposes of this chapter, any assignment or sales proceeds received by the taxpayer for its assignment or sale of the tax credits allowed pursuant to this section shall be exempt from this title. If a tax credit is subsequently recaptured under this chapter, revoked or adjusted, the seller's tax calculation for the year of revocation, recapture, or adjustment shall be increased by the total amount of the sales proceeds, without proration, as a modification under chapter 30 of this title. In the event that the seller is not a natural person, the seller's tax calculation under chapters 11, 12, 13 (other than with respect to the tax imposed under § 44-13-13), 14, 17, or 30 of this title, as applicable, for the year of revocation, recapture, or adjustment, shall be increased by including the total amount of the sales proceeds without proration.

- (g) Credits allowed to partners, members or owners that are exempt from taxation under section 501(c)(3), section (c)(4) or section 501(c)(6) of the U.S. Code, and only said credits, shall be fully refundable.
 - (h) Substantial rehabilitation of property that either:
- (1) Is exempt from real property tax;
- 21 (2) Is a social club; or

- (3) Consists of a single family home or a property that contains less than three (3) residential apartments or condominiums shall be ineligible for the tax credits authorized under this chapter; provided, however, a scattered site development with five (5) or more residential units in the aggregate (which may include single family homes) shall be eligible for tax credit. In the event a certified historic structure undergoes a substantial rehabilitation pursuant to this chapter and within twenty-four (24) months after issuance of a certificate of completed work the property becomes exempt from real property tax, the taxpayer's tax for the year shall be increased by the total amount of credit actually used against the tax.
- (i) In the case of a corporation, this credit is only allowed against the tax of a corporation included in a consolidated return that qualifies for the credit and not against the tax of other corporations that may join in the filing of a consolidated tax return.
- (j) All construction workers shall be paid in accordance with the wages and benefits required pursuant to chapter 13 of title 37 and all contractors and subcontractors shall file certified

1	payrolls on a monthly basis with the tax administrator of the division of taxation. Failure to follow
2	the requirements pursuant to chapter 13 of title 37 shall constitute a material violation and a material
3	breach of the agreement with the state and the tax administrator shall have the discretion to revoke
4	the tax credits.
5	(k) The tax administrator of the division of taxation shall promulgate such rules and
6	regulations as are necessary to implement the enforcement of this section.
7	SECTION 4. Section 44-48.3-6 of the General Laws in Chapter 44-48.3 entitled "Rhode
8	Island New Qualified Jobs Incentive Act 2015" is hereby amended to read as follows:
9	44-48.3-6. Total amount of tax credit for eligible business.
10	(a) The base amount of the tax credit for an eligible business for each new full-time job
11	shall be up to two thousand five hundred dollars (\$2,500) annually.
12	(b) The total tax credit amount shall be calculated and credited to the business annually for
13	each year of the eligibility period after the commerce corporation, in consultation with the division
14	of taxation, has verified that the jobs covered by the tax credit have generated sufficient personal
15	income taxes to comply with subsection (e) of this section.
16	(c) In addition to the base amount of the tax credit, the amount of the tax credit to be
17	awarded for each new full-time job may be increased, pursuant to the provisions of subsection (d)
18	of this section, if the business meets any of the following criteria or such other additional criteria
19	determined by the commerce corporation from time to time in response to evolving economic or
20	market conditions:
21	(1) For a business located within a hope community;
22	(2) For a targeted industry;
23	(3) For a business located within a transit oriented development area; and
24	(4) For an out-of-state business that relocates a business unit or units or creates a significant
25	number of new full-time jobs during the commitment period.
26	(d) For any application made to the commerce corporation the tax credit for an eligible
27	business for each new full-time job shall not exceed seven thousand five hundred dollars (\$7,500)
28	annually.
29	(e) Notwithstanding the provisions of subsections (a) through (d) of this section, for each
30	application approved by the commerce corporation prior to July 1, 2019, the amount of tax credits
31	available to be obtained by the business annually shall not exceed the reasonable W-2 withholding
32	received by the state for each new full-time job created by a business for applications received by
33	the commerce corporation. For each application approved by the commerce corporation after July
34	1. 2019, the amount of tax credits available to be obtained by the business annually shall not exceed

1	seventy-five percent (75%) of the reasonable W-2 withholding received by the state for each new
2	full-time job created by a business for applications received by the commerce corporation.
3	(f) The commerce corporation shall establish regulations regarding the conditions under
4	which a business may submit more than one application for tax credits over time. The commerce
5	corporation may place limits on repeat applications.
6	(g) All construction workers shall be paid in accordance with the wages and benefits
7	required pursuant to chapter 13 of title 37 and all contractors and subcontractors shall file certified
8	payrolls on a monthly basis with the tax administrator of the division of taxation. Failure to follow
9	the requirements pursuant to chapter 13 of title 37 shall constitute a material violation and a material
10	breach of the agreement with the state and the commerce corporation, in consultation with the tax
11	administrator, shall have the discretion to revoke the tax credits.
12	(h) The commerce corporation, in consultation with the tax administrator, shall promulgate
13	such rules and regulations as are necessary to implement the enforcement of this section.
14	SECTION 5. This act shall take effect upon passage.
	LC005481

EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

AN ACT

RELATING TO STATE AFFAIRS AND GOVERNMENT -- REBUILD RHODE ISLAND TAX CREDIT

This act would require that all entities receiving tax credits from the state pay their workers
the prevailing wage or other payments pursuant to chapter 13 of title 37. This act would also allow
the revocation of the tax credits for violation of this requirement.

This act would take effect upon passage.

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