

**BOARD GOVERNANCE OF PUBLIC UNIVERSITY SYSTEMS:  
Stresses and Needs  
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**ABSTRACT**

Modes of board-level governance for public universities and especially public university systems should be re-examined in view of growing major forces that create both challenges and opportunities that are enormous for public higher education. To sustain the public mission and rise to the challenges and opportunities, there is a growing need to enhance funding from a variety of different sources, many of them private, and to map them onto new initiatives, partnerships, and directions of change. Boards of public universities need to develop new dimensions, including several of the characteristics of private-university boards that have been honed over many years. Promising alternatives to consider, alone or in combination, are public boards with mixed public-private membership, delegation of some responsibilities of university-system boards to subsidiary boards for individual campuses, more serious consideration of outsourcing components of public higher education to private universities, and possibly in some cases even conversion of public universities or components of them to private status. Several of the important considerations associated with the establishment of individual campus boards under a main system board are explored in more depth.

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**A TIME OF CHANGE**

As the Morrill Act of 1862 has reached its sesquicentennial year, public universities in the United States are in a time of intense financial stress, large opportunities relating primarily to advances in technology, and consequently difficult but necessary change. The most visible and immediate of these changes comes from diminishing support from state governments, which in the United States are the bodies to which the public universities belong. But there are other major forces as well. Patterns of immigration, historical disadvantage, and diversification create needs to do a still better job of providing higher education to all peoples, so as to provide a vital route for upward mobility and to enable the best and the brightest from all areas of society to accomplish what they are inherently capable of doing. That has been the primary mission of the public university systems. High-speed and broadband communications provide ease of collaboration and partnership across borders and in real time. Because of broadband communication and for other reasons, there has been an immense movement toward in what is loosely called globalization, which has been most notable in the world of business. The forces of globalization have also struck universities and will do so all the more as time goes on. There is also a large potential for internet-based instruction, which is a complex arena that is being explored by nearly all universities and many persons within them in a wide variety of ways.

***Stringencies in Public Funding.***

The reasons why public support for higher education has shrunk in the United States are complex and differ somewhat from state to state. But a common theme is the severe pressure on state budgets from other sources, such as health care, public pension obligations that must now be met, and in my own state of California public obligations that have been mandated through the ballot initiative process. These pressures couple with a reluctance to increase taxation for revenue, such that the results are stark state funding scenarios for public universities. Underlying these phenomena is a largely unspoken debate as to whether higher education is a public good (i. e., to be financed by government) or a private good (i. e., financed by the individual). The Morrill Act directly recognized the public good, opening higher education to the best and the brightest among the entire populace.

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As a result of these financial stringencies, state funds have dropped steadily as a fraction of the revenues of public universities. When I came to the University of California half a century ago, the fraction of support from state funds was well over 50%. When I was Provost for the university in the late 1990s and early 2000s that figure was around 22%. Today it is 11%.<sup>2</sup> This story is in no way unique to California; Virginia and Michigan have the dubious distinction of having led the way in reduced state funding years before.

Some of the recent decline in the abilities of the states to fund public higher education results from the economic recession of 2008-09. It is therefore logical to ask whether the state financial situation for public universities may reverse over time. Some gain is possible, but it is not likely that any gains can offset the longer-term fundamental forces affecting state budgets for higher education. States and public higher education have to adapt to a permanent situation where the revenue for public universities is a much smaller fraction of total state revenue and needs. Yet the need for the public mission in higher education remains as vital as ever. Increased funds from other sources must be found to support the public mission, and to the extent that this increase is insufficient the quality and/or quantity of public higher education will decrease accordingly.

### *Coping with the Financial Situation*

Different public universities are in different situations and of necessity will cope with this situation in different ways. Gaining greater operating efficiency must be a substantial part of accommodating to the situation. For a number of quite fundamental reasons, however, universities have more difficulty doing selective pruning than across-the-board cuts. Several major universities have mounted large programs to seek and gain more selective and effective ways of making budgetary cuts in administrative areas, one of them being the Operational Excellence project at the University of California, Berkeley campus.

In addition public universities face a need to develop additional sources of revenue. The methods used can and should be case-specific, but there are several general approaches, including the following.

- **Tuition and fees.** Raising tuition amounts to shifting costs from the state to the individual, or most often to the individual's family. The extent by which tuition can be raised for various classes of students is ultimately a market situation for the individual campus, although public policy and political considerations often set lower limits. To keep to the public mission, a substantial portion of the revenue raised through tuition increases should be put back into need-based financial aid. In Australia, New Zealand and the United Kingdom massive government income-contingent loan programs have been created to cover sharp tuition increases and/or what would otherwise be tuition or tuition increases, thereby shifting the cost from the family of the student to the future earning power of the student (Harman, 2009; Browne, *et al.*, 2010). Harman, *loc. cit.*, points out that this approach has increased enrollments of students from low-income families.
- **Non-resident students.** Distinguished public university campuses can draw students from other states and other countries, even at the higher tuitions charged to non-resident students. Statements from some major public universities have implied that drawing about two out-of-state students covers costs for one in-state student. Of course there must be the requisite capacity to accommodate the non-resident students while still meeting in-state enrollment targets.
- **Private fund-raising.** Starting around the early 1980s many of the major public universities have undertaken large programs of private development, or fund-raising. Aims are both to cover some current expenditures and to build endowments in the manner that is done by major private universities. Within university systems, fund-raising is nearly always done campus by campus, rather than at the system level. Private giving is nearly always for specified purposes that are campus-specific.
- **Research ventures and partnerships.** Research ventures and partnerships can be substantial sources of income, not necessarily directly in view of federal limits on administrative overhead, but certainly indirectly by drawing private support, positioning the institution for future research ventures, recruitment of outstanding faculty, and deriving licensing income in the case of successful inventions. Research ventures are specific to the faculty members involved, and hence are usually specific to campuses within university systems.
- **Education partnerships.** Regional partnerships among educational institutions of different types can be cost-effective by enabling each institution to provide to the partnership what it does best. There may also be partnerships made among institutions of like nature so as to gain efficiencies of scale and/or complementarity of faculty expertise. International partnerships can make use of the capabilities of information technology, provide multi-national experiences for students, and provide opportunities for education-hungry countries, while also generating revenue for the providers. Opportunities in this category tend to be campus-specific within university systems.

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<sup>2</sup> The lowering of the percentage is attributable to increases in capacity and total budget as well as reductions in state funding.

- **Entrepreneurial activities.** Campuses, and particularly individual units within them, are increasingly looking at various money-making ventures as ways of preserving their budget situations. Many of these serve needs of continuing education in some form, and many are on-line ventures, but there are also many other varieties of entrepreneurship. Executive education, long established in the world of business, is spreading to other academic fields. Within university systems, these efforts too are specific to campuses.

Several of these avenues toward additional revenue work better for research universities than for other forms of higher education.

### ***High-speed, High-bandwidth Communication and Globalization***

There are many ventures into global and/or on-line higher education, such as branch campuses overseas, on-line courses, and entire degree programs. Massive open online courses (MOOC) have arisen as an important new phenomenon. These activities bear risk and are at stages that are too early for good judgments or generalizations to be made as to which are more successful and sustainable, academically and financially. What is needed is experimentation and experience with various forms of partnership, global instruction, and uses of on-line instruction, along with how they will serve and create markets. These need to be coupled with sound and knowledgeable judgment, including business expertise and foresight.

Strong feelings and tensions surround these opportunities and risks. The profile is high, and the financial uncertainties are substantial, but so are the potential financial and academic gains. There are clearly associated issues of board-level governance which are complex and require both varied expertise and deep understanding of universities, as was illustrated vividly during the governance crisis at the University of Virginia in June 2012, where the driving force was concern that the university was not moving fast enough or imaginatively enough in the arena of on-line instruction.

Most opportunities in globalization partnerships and on-line instruction are at the campus level, although there are certainly possibilities for university systems as well.

### **EXISTING BOARD ORGANIZATION AND GOVERNANCE STRUCTURES FOR UNIVERSITY SYSTEMS**

The main objective of this paper is to look at the changes that would be desirable in board-level governance of university systems in light that these changing circumstances of public higher education. With that in mind, we can start with a brief review of current governance systems for universities in the United States.

For public university systems in the United States, governance resides typically in a Board of Regents or Trustees (Education Commission of the States, 2012), members of which are usually appointed by the governor of the state, subject to confirmation by a state legislative body. Appointments to such public boards are commonly made through a variety of criteria that do not prominently include in-depth knowledge of the university system at hand or even of higher education. For example, the criteria for Regents of the University of California state that Regents “shall be able persons broadly reflective of the economic, cultural, and social diversity of the state, including ethnic minorities and women” (Bylaws of the Regents of the University of California, 2012). Appointments may also have elements of political payback. More often than not, members of such boards are not themselves graduates or long-time supporters of the institution. Public boards meet in public settings, with media attention, public-comment periods, an inherently political environment, and often much public coverage and interest.

The situation for public university and system boards stands in substantial contrast with that for the boards of most private universities, whose members tend more to be dedicated alumni and/or long-term supporters and who are often chosen to provide a balance of relevant expertise. Many are close friends of the institution who have been munificent to it financially and who serve as effective ambassadors to other donors or prospective partners. These boards meet in private, rather than public, sessions. Private university boards differ considerably in size. The corporations of Harvard and Yale have 11 and 19 members, respectively, whereas Carnegie Mellon, Cornell, and M.I.T. have 62, 64, and 74, members, respectively.<sup>3</sup> Such large boards may then have an executive committee. The main reason for the sizes of the larger boards is a belief that more direct and formalized governance relationships help gain greater and more dedicated involvement, support, and ambassadorial activity from the individuals involved.

### **NEEDED DIMENSIONS FOR PUBLIC BOARDS**

A paramount need is to maintain the vital public missions of our state universities, including access for the most capable and deserving students without regard to family resources, while enabling funding of that mission to come from a variety of sources, many of them private, beyond the diminished state component. This need must be reflected in governance as well as practice.

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<sup>3</sup> Determined by consulting the web sites of the individual institutions.

Logically, the various major constituents of a university should be among those participating in governance. As already noted, constituents will become more involved with, understanding of, and supportive of the university if they are part of governance in meaningful ways. Given the complex array of functions, constituents, revenue sources, needs, and opportunities for public universities, it becomes more and more important that boards in public university systems have a deep understanding of the individual campuses within a that system. As well, various types of expertise are needed on boards, including, *inter alia*, academic, finance, investment, personnel, business, social, facilities management, and public affairs. As tuition and fees rise, students merit meaningful roles in governance, particularly if their costs of education take the form of a personal loan. Boards of public universities and systems also need to be more flexible and nimble. As has been abundantly evident in recent international and online ventures, as well as in competitions such as that for a new research university campus in New York City, the current agility of private universities is much greater than that of the public institutions. The reasons for this situation lie to a substantial extent in board-level governance.

Viewed in another way, the board governance of public universities needs to gain several of the elements found in board governance of private universities, without forsaking the public trust, the public mission, or access. These needs include varied and pertinent expertise among board members, deeper knowledge of the specific campuses, flexibility and agility, and an inherently helpful approach without undue political influence. In a recent book, James Garland has noted the same sorts of needs (Garland, 2009). These needs do not contradict the well established concept that executive action lies with the President or Chancellor. Boards set up in appropriate ways can be supportive and helpful without increasing independent initiative or executive roles. On the executive side, the appropriate role of the board is selection, recruitment, and review of the President or Chancellor.

#### HOW BEST TO ACHIEVE THE ADDITIONAL DIMENSIONS?

For public-university systems, there are a number of different approaches that can be considered alone or in combination for moving toward these goals, including the following:

1. **Modifying or augmenting the composition of the system board; mixed public-private appointment processes.** Public university and university-system boards operate in the public arena, subject to public-meeting and disclosure laws and typically with a process and criteria for appointments that are embedded into law and give appointment powers to the governor of the state with confirmation by the legislature. It is worth noting, however, that in some states -- Delaware, Vermont, South Carolina, and Pennsylvania -- there are public universities with boards that have mixed public/private compositions. These board structures result from the particular histories of these institutions.<sup>4</sup> The successor "private" members are appointed by the board itself or by the sub-set of the board composed of "private" members, rather than by a state-government process. An extreme case of this sort of mixed public/private structure occurs for Cornell University, which has a board of 64 members, heavily tilted toward private, successor members<sup>5</sup> but including public members in recognition of the incorporation of Statutory Colleges and a Statutory School (see #6, below) within Cornell, making it a private land-grant university. If a fully public board were to be converted to a board of mixed composition, it would presumably be done by retaining open-meeting laws and policies and requiring financial disclosure by all members, so as not to reduce the public trust by "hiding" governance.
2. **Creation of individual campus boards under the main system board.** The concept here is to create boards for individual campuses that would take on some governance roles that would be delegated by the main system board. This approach should provide greater knowledge of the campus by the campus board, along with the ability of the campus board to be more agile in meeting needs and opportunities and also in addressing issues that are more campus-specific. Governance becomes closer to the front line, and thereby more visible and understandable to the campus community. The states of North Carolina, Florida, and Utah have board structures of this sort, with the boards

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<sup>4</sup> The University of Delaware board consists of 8 trustees appointed by the governor with the consent of the state senate, and 20 other members who are appointed by a vote of the majority of the entire board. The University of Vermont Board has 25 members of whom 9 are appointed by the legislature, 3 are appointed by the Governor, 9 are self-perpetuating, two are students, and the other two are the Governor and the President of the university. Clemson University has a 13-member board of which 6 are political appointees and 7 are self-perpetuating, as situation that reflects the will of Thomas Clemson. Of the 32 members of the Pennsylvania State University board, 6 are selected by the rest of the board (Kiley, 2012), typically for business expertise.

<sup>5</sup> The sixty-four members of the Cornell Board include 43 members at large elected by the Board, eight alumni members elected by the alumni, two faculty members elected by the faculty, two student members elected by the students, and one staff member elected by the staff (56 in all), the eldest lineal descendant of Ezra Cornell, the president of the university, and 6 public members -- the Governor, the Temporary President of the Senate, the Speaker of the assembly, and three trustees appointed by the Governor subject to confirmation by the Senate. (Bylaws of Cornell University, <https://trustees.cornell.edu/docs/052612-cu-bylaws.pdf>).

at both levels being fully public. The state of Ohio also has a Board of Regents at the state level and public boards at campus levels, but the state Board of Regents is only advisory. The higher boards for North Carolina and Florida are university-system boards, while that in Utah is a state board. Garland (2009) specifically recommends the creation of campus boards by the Board of Regents of the University of California. The two-tier structure probably does create a burden of greater board interaction responsibilities for a campus, but hopefully largely in ways that are positive for the campus. There can of course also be worries about added and/or excessive intrusiveness from a campus board into campus matters. Numerous issues pertain as to the way in which members of campus boards would be appointed, what would and would not be delegated, and other matters. These are considered in more detail in a subsequent section. The two-layer board structure can also be combined with the “mixed” board concept (#1), with the “mixed” board concept probably being more palatable politically for the campus-specific boards than for the main system-level board.

3. **Creation of “private” boards with strong advisory roles but no direct governance roles.** Advisory boards to public universities are usually not subject to open meeting laws, financial disclosure, and other requirements that pertain to public boards. University leaders who seek involvement of persons whom they believe would be reluctant to serve in a public setting have occasionally created or contemplated boards that have no actual decision authority and thereby would not be subject to public meeting laws. A further step sometimes contemplated is to say that the advice from a non-public advisory board is intended to be taken very seriously by the main, public board; e. g., that the main board is expected to accept the advice of the advisory board most or nearly all of the time. This concept leads to a grey area between advice and decision which would probably not stand public scrutiny, and possibly not legal scrutiny either. Aside from the question of the wisdom and ethics of avoiding public disclosure, experience has shown that the absence of actual decision authority means that advisory boards draw less involvement and support from members.
4. **Accomplishing the desired changes through administrative delegation rather than modification of the governing board structure, i. e., by delegation from the board to the system president or chancellor, and/or delegation from the system head to the campus administrations.** Administrative delegation can engender more administrative latitude and agility as well as decisions closer to the front line, but the desired changes with regard to board-level roles and actions cannot be accomplished in this way.
5. **Conversion of public university systems or component universities or campuses to private status.** This change would remove the university(ies) from public oversight and would probably be a very difficult matter politically and legally. In addition to concerns about loss or alteration of the public mission, it would generate complex legal and political issues, such as the worth and obligations associated with the conversion of the retirement system if it is within a state system and how to handle financially the portion of the physical plant that had been built with state funds. A second factor is that the major private universities rely financially to a very substantial extent upon the yield of an already built endowment. Public universities tend to have far lower endowments, all the lower on a per-student basis. For example, reported 2011 endowments for Stanford, Cornell and Columbia are \$16.5, \$5.1 and \$7.8 billion respectively, while the endowments of Berkeley, UCLA and the entire University of Illinois system are \$1.1, \$1.5, and \$1.6 billion respectively (Wikipedia, 2012). Except for extremely large and singular gifts, a university cannot build a large endowment in a short number of years.
6. **Creation of public portions of private universities.** The state of New York has long had Statutory Colleges and Schools, which are publicly funded portions of private universities. They can also be viewed as subject-specific public colleges and schools placed under the aegis of a private university, i. e., “outsourced” public colleges and schools. Cornell has four Statutory Colleges (Agriculture and Life Sciences, Human Ecology, Industrial and Labor Relations, and Veterinary Medicine) and one Statutory School (Hotel Management). Alfred University has one Statutory College (Ceramics). These units receive their funding through the state budget of the State University of New York (SUNY) system. This is an interesting and potentially very useful approach, and it certainly does succeed in putting public higher education under governance that has substantial elements of a private board. However, it seems unlikely to be useful on a wholesale basis, except in a situation such as the collapse of a public university with this approach then being used to save some of the parts while retaining the public mission for them. There is also a potential combination of #5 and #6, whereby an entire, or most of a, private or privatized university is commissioned by agreement with the state to fulfill a specified public mission. This approach would presumably require a public board.
7. **Dissolution of the system.** Another way of going from a single system board to individual campus or university boards is, of course, dissolution of the state public system into separate universities, each with their own governance. The trend over the years has been to create public systems rather than taking them apart. There are good reasons

why that has been the case, notably to reduce the number of competing hungry mouths that are dealing separately and competitively with the state government and also to gain the benefits of planning across the entire system as well as efficiencies of scale.

Which one or combination of these approaches would be most appropriate and workable will doubtless depend upon specific circumstances.

There are several broader criteria that can be used to assess the relative desirability and workability of the various approaches.

- **Sustaining the public mission: access without regard to ability to pay.** In principle and with appropriate safeguards, the public mission and access can be preserved under any of these alternatives, but they are most vulnerable under Alternative #5.
- **Keeping the public trust.** The trust of the public in a public university or university system will best be maintained to the extent that there is complete openness and oversight by a public board. Similarly, the public trust is best maintained by adherence to open-meeting and disclosure laws for all boards in a system with multi-tiered boards. There would be a vulnerability associated with the version of Alternative #3 that involves the public board being expected in most situations to follow the advice of the private advisory board. Especially given present-day mistrust of government, there would probably be less vulnerability associated with methods of appointment to public boards that are other than gubernatorial appointment or movement in the direction of the “mixed” boards described in Alternative #1.
- **Effectiveness of Governance.** From the standpoint of bringing in the needed additional elements of governance described above, Alternatives #1 and #2 seem most effective, along with Alternatives #5 and #6 for the situations where they would make sense.
- **Achievability.** Taking into account a variety of political and perception matters, Alternatives #1 and #2, singly or in combination, seem most feasible, along with Alternative #6 for situations where it may be applicable.

In a separate and previous paper (Birgeneau, et al, 2012), we have addressed the specific needs of the University of California as a system, and have recommended Alternative #2, with appointment of members of campus boards by The Regents, with recommendations being received from the campus boards. Individual campus boards under the main Board of Regents are also desirable given the very large size of the University of California.

#### **MORE DETAILED ISSUES RELATING TO CAMPUS BOARDS WITHIN SYSTEMS**

In connection with Alternative #2, the creation of campus boards under a master system-level board, there are a number of issues that come up and warrant discussion.

- **Nature and appointment of campus board members.** The membership of campus boards within a system could be mixed public and private (i. e., combining Alternatives #1 and #2), while meetings are still public and financial disclosure laws apply. Public members could be appointed by the main system board, thereby presumably lessening influences from the political process. Alternatively, private members for the initial campus board could be appointed in that way, with continuing and successor appointments then made by the campus board itself. This approach should address the needed additional dimensions of board-level governance well.
- **Are system-wide Regents also on campus boards?** An interesting question is whether members of the main system board should also be on one of more campus boards. Reasons for doing this would be to provide liaison among the boards and to give the system-board Regents greater familiarity with at least one campus. Reasons against this approach could include the larger workload for the individual Regents and the fact that dual-board membership would provide a route to the main board that does not go through the Chancellor or President of the system. This choice is probably best left to the individuals concerned in specific instances.

*What functions could or should be delegated to individual campus boards?*

It should be noted that the specific delegations to campus boards for the University of North Carolina are available on the Internet<sup>6</sup>.

- **Budgets.** The state budget for a system should be a single budget, submitted by the main board (see discussion of Alternative #7). Components of this budget could be recommended by the campus boards, to be taken into account as the chancellor or president of the system prepares the budget that is recommended to the Regents. The rest of the campus budgets, beyond the state portion, should be the purview of the campus boards, because of the closer relationship to the sources of those non-state funds.
- **Setting of Tuition.** Tuition is, of course, a very sensitive issue politically. In many states tuition is set by the state government, rather than at the system or university level. In those situations the question of delegating control of tuition from a system board to campus boards is moot. In states, such as California, where the control of tuition lies with the University of California Board of Regents, delegation of tuition setting by the main board to campus boards would be an issue for consideration. It would be a sensitive matter to delegate further the setting of tuition for undergraduates who are residents of the state, but it may be more feasible to delegate setting of tuition for graduate and professional students and/or non-residents. That is done in Florida.
- **Enrollment and capacities.** In states where there is a stated or implied commitment for a public university system to accommodate a certain enrollment across the system, that responsibility lies with the system board and system head, and cannot logically be delegated other than by assigning enrollment targets to each campus. Such commitments are typically for enrollment of in-state undergraduate students. It could be reasonable to delegate enrollments of non-resident, graduate and professional students to campus boards, thereby delegating the establishment of total campus enrollment capacity as well.
- **Appointments of senior officers.** A key question is whether presidents or chancellors of campuses would be appointed by the campus board, by the system board, or by the system board subject to the recommendation of the campus board. Established corporate practice is that a board appoints its own CEO; however that would remove the usual role of the system CEO in campus CEO appointments. It would, in any event, make sense to delegate the appointment of the next line of senior officers on a campus, i. e., vice presidents or vice chancellors.
- **Construction and renovation projects.** Major projects are best managed close to the scene. For state-funded projects, it may be necessary to deal with approval mechanisms within the state government, in which case that function should probably be a responsibility of the system board and office, while actual oversight of the projects is delegated to the campuses. For privately funded projects it will make more sense to put them entirely at the level of the campus board and campus administration.
- **Endowment and investment.** In view of the public trust, state funds and tuition or fee money should probably be invested at the system level, under the auspices of the main system board. Private endowment, if given at the campus level, most logically should be managed at the campus level, so as to reflect campus objectives, needs and circumstances. Campuses would be subject to audit to assure financial responsibility and prudence.
- **Audit.** Given the overall fiduciary responsibility that usually lies with the main system board, primary audit responsibility should logically lie there, with delegation of some campus-specific responsibilities to the campuses.

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#### Personal Note:

The author has experience at both the campus and system levels of the University of California, having been with that university for 50 years and having served as Dean of the College of Chemistry (1981-86), Provost – Professional Schools and Colleges (1987-94), and Director, Center for Studies in Higher Education (2004-present) on the Berkeley campus, as well Vice Provost for Research (1994-95) and Provost and Senior Vice President – Academic Affairs (1995-2004) at the University of California (system) level.

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<sup>6</sup> <http://unc.edu/depts/trustees/delegat.html>.

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