

AN ACT

RELATING TO VOTING SYSTEMS; UPDATING STATUTES CONCERNING VOTING SYSTEMS; PROVIDING STANDARDS FOR CERTAIN VOTING SYSTEMS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 1-9-1 NMSA 1978 (being Laws 1969, Chapter 240, Section 184, as amended) is amended to read:

"1-9-1. SECRETARY OF STATE--DUTIES.--

A. The secretary of state shall study, examine and approve all voting systems used in elections for public office in New Mexico. Any type of voting systems not approved by the secretary of state shall not be used in any election for public office in New Mexico.

B. As used in Chapter 1, Article 9 NMSA 1978, "voting system" means a combination of mechanical, electromechanical or electronic equipment, including the software and firmware required to program and control the equipment, that is used to cast and count votes; equipment that is not an integral part of a voting system, but that can be used as an adjunct to it, is considered to be a component of the system."

Section 2. Section 1-9-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 185, as amended) is amended to read:

"1-9-2. SECRETARY OF STATE--MANNER OF APPROVAL. --

A. All voting systems approved for use in New Mexico shall meet federal election commission standards and conform to state information technology rules, standards and practices and be tested by an independent authority.

B. Any person desiring to have a type of voting system approved for use in New Mexico may apply to the secretary of state to have the system examined and approved. At the time application is made, the applicant shall direct the independent testing authority to submit its report on the system to the secretary of state.

C. Upon receipt of the report from the independent testing authority, the secretary of state shall examine and study the system. As part of the examination, the secretary of state shall require the system to be independently inspected by two voting system experts and shall require from each of them a written report on the results of their inspection.

D. Upon completion of his examination, the secretary of state shall make a written report on the result of his examination and findings and shall file such report, together with the inspection reports of the two voting system experts, in the office of the secretary of state. Such reports and findings are public records.

E. The secretary of state shall inform the applicant in writing of the findings. If the findings show that the voting system type is adequate for the election needs of New Mexico, it shall be deemed approved for use at elections in this state."

Section 3. Section 1-9-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 188, as amended) is amended to read:

"1-9-5. REQUIREMENT TO PURCHASE AND USE VOTING SYSTEMS. --

A. Voting systems shall be used in all precincts in all statewide elections.

B. The county clerk of each county shall provide one voting system in each precinct for use in the general and primary elections when the total number of registered voters in that precinct amounted to fewer than six hundred at the close of registration.

C. At least one additional voting system shall be provided in such precinct for every six hundred registered voters in that precinct.

D. When authorized by the state board of finance, the board of county commissioners may acquire new or previously owned voting or electronic vote tabulating systems, as tested and approved by the secretary of state pursuant to the provisions of Section 1-9-14 NMSA 1978, which systems may be used in any election for public office. The

acquisition of these systems may be in excess of the number provided in this section.

E. Except for intercounty acquisitions of equipment approved by the secretary of state, a previously owned voting or electronic vote tabulating system shall have a warranty equal to the warranty required of a new voting or electronic vote tabulating system."

Section 4. Section 1-9-6 NMSA 1978 (being Laws 1975, Chapter 255, Section 116, as amended) is amended to read:

"1-9-6. VOTING SYSTEMS--USE IN OTHER ELECTIONS.--

A. The county clerk may provide for the use of voting systems in other elections or for educational purposes; provided, however, that the county clerk shall make available:

(1) to the school district for use in the school district election, a sufficient number of voting systems necessary to conduct the election in those polling places located within that county; and

(2) to a municipality located in the county, a sufficient number of voting systems to conduct the municipal election.

B. The county clerk shall schedule the use of the voting systems."

Section 5. Section 1-9-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 190, as amended) is amended to read:

**"1-9-7. VOTING SYSTEMS--ACQUISITION.--**

A. Ninety days prior to each primary and general election, the board of county commissioners of each county shall make application to the state board of finance for those additional voting systems required by the Election Code.

B. The additional voting systems shall be of a type approved by the secretary of state. They shall be purchased by the state board of finance. The cost of the voting systems, including all transportation costs, shall be paid out of the electronic voting system revolving fund. The state board of finance shall cause to be delivered to each county clerk the additional voting systems."

Section 6. Section 1-9-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 191, as amended) is amended to read:

**"1-9-8. BOARD OF FINANCE--LEASE-PURCHASE CONTRACT--TERMS.--**

A. The state board of finance shall execute a lease-purchase contract with the county for purchase of additional voting systems upon receipt of the application of the board of county commissioners.

B. The lease-purchase contract shall include, but not be limited to, the following terms:

(1) the county agrees to purchase from the state board of finance the specified number of voting

systems;

(2) the county will pay therefor the cost of the voting systems, including reimbursement for costs of transportation;

(3) the term of the lease-purchase contract shall not exceed twenty years;

(4) the care, custody and maintenance of the voting systems is the responsibility of the county; and

(5) upon good cause shown, the terms of the lease-purchase contract may, at any time, be renegotiated."

Section 7. Section 1-9-12 NMSA 1978 (being Laws 1975, Chapter 255, Section 120, as amended) is amended to read:

"1-9-12. CARE AND CUSTODY OF SYSTEMS--CARE AND CUSTODY OF KEYS AND SEALS--RESPONSIBILITY FOR TRANSPORTATION--REPAIR AND PROGRAMMING--CHARGE FOR SUCH USE, TRANSPORTATION OR PROGRAMMING. --

A. The county clerk shall have custody of all voting systems, shall keep them in good repair and shall be responsible for their transportation to and from polling places.

B. The county clerk shall have care and custody of and be responsible for the keys and seals for the voting systems and shall be responsible for the programming of the systems. All keys for the voting systems shall be kept in a secure place in the county clerk's office until such time as

supplies are available to program or maintain the voting systems. When voting systems are being programmed for any election or maintained after an election, the county clerk or the county clerk's assigned deputy who is knowledgeable in the procedure of programming voting systems shall have custody of the keys and shall assure the security of the keys at all times during the period the voting systems are being programmed or maintained. In any event, all keys shall be returned to the office of the county clerk at the end of each day for safekeeping; providing that if the deputy is programming the voting systems outside of the county seat and it is impractical for the deputy to return the keys at the end of the day, the county clerk may give written authorization in advance to the deputy to retain the keys for as long as is needed to program the voting systems outside of the county seat, and a copy of the authorization with the deputy named therein shall be kept on file in the county clerk's office subject to public inspection. The county clerk shall submit an affidavit to the secretary of state describing the method to be used in keeping the voting system keys secure. This affidavit shall be submitted to the secretary of state in January of each even-numbered year for the secretary of state's approval or disapproval. The security method approved by the secretary of state shall be the only method of safekeeping the voting system keys until a

new affidavit is submitted and approved. Failure of the county clerk to assure the security of voting system keys in his custody shall constitute a neglect to discharge the duties of his office.

C. A reasonable fee may be charged by the county for the use, transportation and programming of the voting systems, but in no case shall such fee exceed the actual cost to the county."

Section 8. Section 1-9-13 NMSA 1978 (being Laws 1975, Chapter 255, Section 121, as amended) is amended to read:

"1-9-13. VOTING SYSTEM TECHNICIANS--APPROVAL OF CONTRACTS. --

A. The secretary of state shall approve all contracts, employment or otherwise, between a county and a voting system technician. Approval shall be based on the following:

(1) adequacy of the training and expertise of the voting system technician; and

(2) reasonableness of the compensation for the contracted services, based upon the type of election and the number of systems to be used.

B. Voting system technicians shall be certified by the secretary of state as to their adequacy of training and expertise on electronic voting systems.

C. For purposes of this section, "voting system

technician" means any person who programs, clears, inspects and repairs electronic voting systems for compensation.

D. The secretary of state shall adopt rules governing the use, maintenance and repair of electronic voting systems."

Section 9. Section 1-9-14 NMSA 1978 (being Laws 1983, Chapter 226, Section 1, as amended) is amended to read:

"1-9-14. COMPUTER VOTING DEVICES--AUTHORITY OF THE SECRETARY OF STATE TO TEST.--

A. Notwithstanding any other provision of the Election Code, the secretary of state shall provide for the testing and evaluation of internal computers designed for the purpose of recording and tabulating votes within polling places in New Mexico. Any person who has an internal computer which is designed for the purpose of recording and tabulating votes within a polling place may apply on or before June 1 of any odd-numbered year to the secretary of state to have his equipment examined and tested. At the time application is made, the applicant shall pay for testing each system in an amount that reflects the actual cost of such test. Upon receipt of the application, the secretary of state shall examine and study the computer voting system. As part of the examination, the secretary of state shall require the system to be independently inspected by persons or testing laboratories technically qualified to evaluate and

test the operation and component parts of an internal computer for recording and tabulating votes and shall require a written report on the results of such testing. The secretary of state may authorize field testing of the equipment in one or more precincts in any state or local government election, provided that such field tests shall be conducted at no cost to the state or any local government. These tests and inspections shall be completed within six months of the date of application.

B. Upon completion of all tests and examination of all written test reports, the secretary of state shall make a written report of the result of the findings and shall submit that report for consideration by a committee consisting of the secretary of state, the state chief information officer and a county clerk who is appointed by and serves at the pleasure of the governor and who is appointed with regard to political party affiliation so that no more than two members of the committee are from one political party. The committee shall make recommendations regarding the suitability and reliability of the use of such equipment in the conduct of elections under the Election Code. Such report shall be a public record.

C. If the committee recommends that the internal computer for recording and tabulating votes is suitable for use in polling places for the conduct of elections in New

Mexico, such equipment shall be deemed approved for use in elections in this state no later than January 1 of the succeeding year.

D. In the event the committee approves the use of internal computers for use in polling places for the conduct of elections in New Mexico, then the secretary of state shall prescribe by rule promulgated under the provisions of the State Rules Act specifications for internal computers designed for the purpose of providing for a system of recording and tabulating votes within polling places. The prescribed specifications shall have as their purpose securing the secrecy of the ballot, protecting against fraud in the voting process, preserving in all respects the purity of elections, facilitating voting by the voters of this state and carrying out the provisions of the Election Code with respect to the administration of the conduct of elections in New Mexico. "

Section 10. Section 1-9-15 NMSA 1978 (being Laws 1985, Chapter 207, Section 14, as amended) is amended to read:

"1-9-15. ELECTRONIC VOTING SYSTEMS--RECORDING AND TABULATING VOTING SYSTEMS--STANDARDS. --

A. Electronic recording and tabulating voting systems, as tested and approved by the secretary of state pursuant to the provisions of Section 1-9-14 NMSA 1978, may be used in any election for public office in New Mexico.

B. The electronic recording and tabulating voting systems shall meet the following standards:

(1) the system shall be an electronic computer-controlled voting system which provides for direct electronic recording and tabulating of votes cast;

(2) the operating system software, firmware, of the system shall be stored in nonvolatile memory and shall include internal quality checks such as parity or error detection and correction codes. The firmware shall include comprehensive diagnostics to ensure that failures do not go undetected;

(3) the system shall have a battery back-up system that will, as a minimum, retain voter information and be capable of retaining and restoring processor operating parameters in the event of power failures;

(4) the system shall have, as a standard or as an option, software and hardware provisions for remote transmission of election results to a central location;

(5) subsistence, such as printer, power sources, microprocessor, switch and indicator matrices, shall be modular and pluggable. Electronic components shall be mounted on printed circuit boards;

(6) the system shall be supplied with a dust- and moisture-proof cover for transportation and storage purposes;

(7) the system shall be able to operate in a temperature range of fifty degrees Fahrenheit to ninety degrees Fahrenheit;

(8) the system shall have a temperature range for storage of zero degrees Fahrenheit to one hundred twenty degrees Fahrenheit;

(9) the system shall have an operating and storage humidity range of thirty percent to eighty percent noncondensing;

(10) the system shall be able to accept line voltage of 115 VAC +- 15 percent, 60 HZ;

(11) the system shall be able to record and document the total time polls are open at a precinct location;

(12) the system shall prevent any voter from selecting more than the allowable number of candidates for any office and shall preclude overvoting;

(13) the system shall be capable of operating continuously for a minimum time period of sixteen hours without external power (115 VAC);

(14) the tabulation of votes on the system shall be stored, ballot by ballot, in three or more memory locations on separate integrated circuit chips and shall be electronically compared throughout the election. Any differences between votes tabulated and votes stored in

multiple storage locations shall be detected immediately and generate an error message defining required maintenance on the electronic voting system before it can continue to be used in the election;

(15) the system shall contain the entire ballot which shall be placed on the face of the machine and shall be visible to the voter on a single page;

(16) the system shall have a privacy booth in which the voter casts his vote, and the privacy booth shall be an integral part of the system; and

(17) the system shall be designed to meet the needs of physically disabled voters with or without adjustment of the unit by poll workers.

C. In determining compliance with the standards set forth in Subsection B of this section, the qualification test report made pursuant to the performance and test standards of the federal election commission shall be considered in so far as it is applicable."

Section 11. Section 1-9-16 NMSA 1978 (being Laws 1985, Chapter 207, Section 15, as amended) is amended to read:

"1-9-16. ELECTRONIC VOTING SYSTEMS-- VOTE TABULATING SYSTEMS-- STANDARDS. --

A. Electronic vote tabulating systems, as tested and approved by the secretary of state pursuant to the provisions of Section 1-9-14 NMSA 1978, may be used in any

election for public office in New Mexico for the purpose of tabulating ballots.

B. The electronic vote tabulating systems shall meet the following standards:

(1) the machine shall be an electronic computer-controlled voting system which provides for the direct electronic tabulation of votes cast;

(2) the operating software of the vote tabulating system shall be stored in a nonvolatile memory (firmware) and shall include internal quality checks such as purity or error detection and correction codes. The firmware shall include comprehensive diagnostics to ensure that failures do not go undetected;

(3) the system shall have a battery back-up that will, as a minimum, retain voter information and be capable of retaining and restoring processor operating parameters in the event of power failures;

(4) the system shall provide alphanumeric printouts of the vote totals by legislative district at the closing of the polls;

(5) the system shall have, as a standard or as an option, software and hardware provisions for remote transmission of election results to a central location;

(6) subsistence, such as printer, power sources, microprocessor, switch and indicator matrices, shall

be modular and pluggable. Electronic components shall be mounted on printed circuit boards;

(7) the system shall be supplied with a dust- and moisture-proof cover for transportation and storage purposes;

(8) the system shall be able to operate in a temperature range of fifty degrees Fahrenheit to ninety degrees Fahrenheit;

(9) the system shall have a temperature range for storage of zero degrees Fahrenheit to one hundred twenty degrees Fahrenheit;

(10) the system shall have an operating and storage humidity of thirty percent to eighty percent noncondensing;

(11) the system shall accept a line voltage of 115 VAC +- 15 percent, 60 HZ;

(12) the system memory pack shall be able to accept over one thousand five hundred voting positions and tabulate over sixty-five thousand votes for each position;

(13) the system shall accept a ballot inserted in any orientation and one which is a minimum six inches wide and a maximum twenty-four inches long, in dual columns and printed on both sides. The ballot should be able to hold a maximum of five hundred twenty candidate positions;

(14) the system shall recognize all errors

and be able to reject or return the errant ballot. The tabulator shall automatically be able to detect an overvoted ballot;

(15) the system shall contain an RS-232 data communications capability to transmit totals;

(16) the system shall contain a public display counter to record the number of ballots processed; and

(17) the system should be programmable with control cards.

C. In determining compliance with the standards set forth in Subsection B of this section, the qualification test report made pursuant to the performance and test standards of the federal election commission shall be considered in so far as it is applicable."

Section 12. Section 1-9-17 NMSA 1978 (being Laws 1985, Chapter 207, Section 16, as amended) is amended to read:

"1-9-17. ELECTRONIC VOTING SYSTEMS--BOARD OF FINANCE--LEASE-PURCHASE CONTRACT--TERMS.--

A. The state board of finance shall execute a lease-purchase contract with the county for purchase of electronic voting systems and the necessary support equipment upon receipt of the application of the board of county commissioners.

B. The lease-purchase contract shall include, but

not be limited to, the following terms:

(1) the county agrees to purchase from the state board of finance the specified number of electronic voting systems and the necessary support equipment;

(2) the county will pay for the cost of such systems and support equipment, including reimbursement for costs of transportation;

(3) the term of the lease-purchase contract shall not exceed twenty years;

(4) the care, custody and maintenance of the systems and support equipment is the responsibility of the county clerk; and

(5) upon good cause shown, the terms of the lease-purchase contract may, at any time, be renegotiated."

Section 13. Section 1-9-18 NMSA 1978 (being Laws 1985, Chapter 207, Section 17) is amended to read:

"1-9-18. ELECTRONIC VOTING SYSTEMS--METHOD OF PAYMENT BY COUNTIES.--

A. The department of finance and administration and the board of county commissioners shall budget annually for as many years as may be necessary from county funds in each county acquiring electronic voting systems and support equipment an amount sufficient to enable the county to pay to the state board of finance installment payments required to be paid under the terms of the lease-purchase contract.

B. The board of county commissioners of each county having a lease-purchase contract with the state board of finance shall pay such payments, at the times and in the amounts as provided by the terms of the lease-purchase contract. The state board of finance shall deposit the payments into the severance tax bonding fund if the electronic voting systems and support equipment were originally purchased with severance tax bond proceeds. The state board of finance shall deposit the payments into the electronic voting system revolving fund if the electronic voting systems were originally purchased with money from the electronic voting system revolving fund. "

Section 14. Section 1-9-19 NMSA 1978 (being Laws 1985, Chapter 207, Section 18) is amended to read:

"1-9-19. ELECTRONIC VOTING SYSTEM REVOLVING FUND. --The "electronic voting system revolving fund" is created. The electronic voting system revolving fund may be used to finance, by contract, the purchase of electronic voting systems and necessary support equipment under the conditions stated in Section 1-9-17 NMSA 1978. The electronic voting system revolving fund may be expended upon vouchers signed by the secretary of finance and administration. If at the end of the fiscal year the electronic voting system revolving fund exceeds four million dollars (\$4,000,000), the amount in excess of four million dollars (\$4,000,000) shall revert to

the general fund. "

Section 15. A new section of the Election Code is enacted to read:

**"TOUCH-SCREEN DIRECT RECORDING ELECTRONIC VOTING SYSTEMS--STANDARDS.--**

A. A touch-screen direct recording electronic voting system, as approved by the secretary of state, may be used in any election for public office in New Mexico. As used in this section, "system" means touch-screen direct recording electronic voting system.

B. The system shall:

(1) meet performance and test standards of the federal election commission;

(2) be an electronic computer-controlled voting system that provides for direct recording and tabulating of votes cast;

(3) have internal operating system software, firmware, that:

(a) is specifically designed and engineered for the election application;

(b) is contained within each touch-screen voting device;

(c) is stored in a nonvolatile memory within each terminal;

(d) includes internal quality checks

such as purity or error detection and correction codes; and

(e) shall include comprehensive diagnostics to ensure that failures do not go undetected;

(4) have a battery back-up system that will, at a minimum, allow voting to continue uninterrupted for two hours without external power;

(5) have an internal audit trail system such that all pre-election, election day and post-election events, including all random ballot images system anomalies, shall be stored, recorded and recovered in an easy to read printed form and be retained within at least three independent memories that do not require any type of external alternating current or direct current battery power for memory retention;

(6) along with any and all activating and vote recording devices and components, have a unique embedded internal serial number for audit purposes;

(7) be a stand-alone, non-networked election system such that all pre-election, election day and post-election events and activities, including any and all entered votes, are directly entered, recorded and retained in each device in multiple memory locations within the device;

(8) for security purposes, along with each associated activating and recording device and component, employ a unique, electronically implanted election specific internal security code such that the absence of such code

prevents substitution of any unauthorized system or related component;

(9) be designed to accept challenged or fail-safe ballots and allow voters to choose their ballot language directly on the system;

(10) be designed to accommodate the maximum number of ballot styles or ballot variations encountered in the largest New Mexico election jurisdiction;

(11) employ scalable technology allowing easy enhancements that meet federal election commission standards and can take advantage of new election technology such as larger touch-screens, optional touch-screen types, expandable memory, modem transmission of election results, ballot activation from automated voter registration systems and internet communication capabilities;

(12) have electronic components mounted on printed circuit boards and subsistence, such as printer, power sources, microprocessor, switch and indicator matrices modular and pluggable;

(13) have a realtime clock capable of recording and documenting the total time polls are open in a precinct and capable of documenting the opening and closing of polls;

(14) prevent any voter from selecting more than the allowable number of candidates for any office to

prevent overvoting, be able to alert the voter on a message screen if the voter attempts to overvote and inform the voter of any necessary corrective action;

(15) present the entire ballot to the voter in a series of sequential pages that include methods to ensure the voter sees all ballot options on all pages before completing his vote and allow the voter to review all ballot choices before casting his ballot;

(16) have as an integral part of the system a privacy curtain within which the voter casts his vote;

(17) have a color touch-screen that is at least fifteen inches in diagonal measure; and

(18) be able to accommodate a wheelchair voter without intervention of the poll worker other than a minor adjustment such as the angle of the display, and the voter must be able to vote in a face-first position so that privacy is maintained with the ballot surface adjusted to a vertical position.

C. If the net weight of the system, or aggregate of voting device parts, is over twenty pounds, the system shall have self-contained wheels so that the system can be easily rolled by one person on rough pavement and can roll through a standard thirty-inch door frame.

D. The device that is used by the poll worker to activate the system for each individual voter shall be a

credit-card size "smart card" type of device. The poll worker shall be able to activate the card at the poll table with an activation device and hand the card to the voter to use on any open voting system. The card shall be rendered unusable by the voting system after the voter has cast a ballot. The system must be compatible with the voter registration system, so that the precinct and party information for a specific voter can be transferred to the system automatically and transferred to the smart card without poll-worker data entry. There shall be a manual solution available in the event the smart card activation device, or the smart card reading unit on the machine, fails.

E. Each system shall be able to print an alphanumeric printout of the contest, candidates, position numbers and vote totals when the polls are open so that the poll workers can verify that the counters for each candidate are on zero. At the close of the polls, the system shall be able to print out in the same format the results of the election. These printouts shall contain the system serial number, the public counter total and the protective counter number. The poll worker must be able to request as many copies as necessary by state law. The system shall include an optional feature to allow reports to be sent to a printer, to the screen or to a file.

F. The system central processing unit must be

designed so that no executable code can be launched from random access memory. If the operating system is open or widely used, it must be an embedded system.

G. The system shall have a mandatory pre-election testing of the ballot control logic and accuracy. The logic and accuracy test results must be stored into the memory of the main processor (central processing unit) and into the same programmable memory device that is used on election day for future reference. This should be stored by vote total summaries and by each individual ballot image randomly. The system must be capable of printing a zero-results printout prior to these tests and a results printout after the test.

H. The system shall provide an electronic, redundant storage of both the vote totals and the randomized individual ballot images.

I. The system shall allow a comparison of the multiple locations of totals and ballot images to detect any errors or discrepancies. In the event of a data discrepancy, an appropriate error message shall be displayed in a text format, in order to either correct the data error or prohibit voting from continuing.

J. The system shall have a programmable memory device that plugs into the system. This programmable memory device shall contain the ballot control information, the summary vote totals, maintenance log, operator log and the

randomized ballot images.

K. The system shall maintain all vote totals, public counter totals, audit trail ballot images, protective counter totals and the internal clock time in both the main memory and the removable programmable memory devices in the event the main power and battery back-up power fail.

L. The system shall have a self-contained, internal back-up battery that powers all components of the system that are powered by alternating current power. In the event of a power outage in the precinct the self-contained, internal back-up battery power shall engage with no disruption of operation or loss of data. The system shall maintain all vote totals, public counter totals, audit trail ballot images, protective counter totals and the internal clock time in both the main memory and the removable programmable memory devices in the event the main power and battery back-up power fail.

M The system software shall be able to:

- (1) run in a networked or stand-alone environment;
- (2) support absentee in-person voting;
- (3) collect and keep separate the absentee in-person vote totals by day collected, by machine, by legislative district and by site; and

- (4) collect statistical data such as turnout

so that it is available by date and site.”

Section 16. REPEAL. -- Sections 1-9-3, 1-9-4 and 1-9-10  
NMSA 1978 (being Laws 1969, Chapter 240, Sections 186, 187  
and 193, as amended) are repealed. \_\_\_\_\_

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