## CERTIFICATION OF ENROLLMENT

## ENGROSSED SUBSTITUTE SENATE BILL 5323

Chapter 138, Laws of 2020

66th Legislature 2020 Regular Session

PLASTIC BAGS--RETAIL ESTABLISHMENTS

EFFECTIVE DATE: June 11, 2020—Except for section 11, which becomes effective June 30, 2021.

CERTIFICATE  I, Brad Hendrickson, Secretary of
the Senate of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE SENATE BILL 5323 as
passed by the Senate and the House of Representatives on the dates hereon set forth.
BRAD HENDRICKSON
Secretary
FILED
March 26, 2020
Secretary of State State of Washington

### ENGROSSED SUBSTITUTE SENATE BILL 5323

### AS AMENDED BY THE HOUSE

Passed Legislature - 2020 Regular Session

# State of Washington 66th Legislature 2019 Regular Session

By Senate Environment, Energy & Technology (originally sponsored by Senators Das, Carlyle, Kuderer, Palumbo, Hunt, Rolfes, Frockt, Keiser, Pedersen, and Saldaña)

READ FIRST TIME 02/01/19.

- AN ACT Relating to reducing pollution from plastic bags by establishing minimum state standards for the use of bags at retail establishments; reenacting and amending RCW 43.21B.110 and 43.21B.110; adding a new section to chapter 82.04 RCW; adding a new chapter to Title 70 RCW; creating a new section; prescribing penalties; providing an effective date; and providing expiration dates.
- 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:
- 9 <u>NEW SECTION.</u> **Sec. 1.** (1) State policy has long placed waste 10 reduction as the highest priority in the collection, handling, and 11 management of solid waste. Reducing plastic bag waste holds 12 particular importance among state waste reduction efforts for a 13 number of reasons:
- 14 (a) Single-use plastic carryout bags are made of nonrenewable 15 resources and never biodegrade; instead, over time, they break down 16 into tiny particles. Single-use plastic carryout bags, and the 17 particles they break into, are carried into rivers, lakes, Puget 18 Sound, and the world's oceans, posing a threat to animal life and the 19 food chain;
- 20 (b) Plastic bags are one of the most commonly found items that 21 litter state roads, beaches, and other public spaces; and

(c) Even when plastic bags avoid the common fate of becoming litter, they are a drain on public resources and a burden on environment and resource conservation goals. For example, if plastic bags are disposed of in commingled recycling systems rather than as garbage or in retailer drop-off programs, they clog processing and sorting machinery, resulting in missorted materials and costly inefficiencies that are ultimately borne by utility ratepayers. Likewise, when green or brown-tinted plastic bags confuse consumers into attempting to dispose of them as compost, the resultant plastic contamination undercuts the ability to use the compost in gardens, farms, landscaping, and surface water and transportation projects.

- (2) Alternatives to single-use plastic carryout bags are convenient, functional, widely available, and measure as superior across most environmental performance metrics. Alternatives to single-use plastic carryout bags feature especially superior environmental performance with respect to litter and marine debris, since plastic bags do not biodegrade.
- (3) As of 2020, many local governments in Washington have shown leadership in regulating the use of single-use plastic carryout bags. This local leadership has shown the value of establishing state standards that will streamline regulatory inconsistency and reduce burdens on covered retailers caused by a patchwork of inconsistent local requirements across the state.
- (4) Data provided from grocery retailers has shown that requests for paper bags have skyrocketed where plastic bag bans have been implemented. To accommodate the anticipated consequences of a statewide plastic bag ban, it is rational to expect additional capacity will be needed in Washington state for manufacturing paper bags. The legislature intends to provide that capacity by prioritizing and expediting siting and permitting of expansions or reconfiguring for paper manufacturing.
- (5) Therefore, in order to reduce waste, litter, and marine pollution, conserve resources, and protect fish and wildlife, it is the intent of the legislature to:
  - (a) Prohibit the use of single-use plastic carryout bags;
- (b) Require a pass-through charge on recycled content paper carryout bags and reusable carryout bags made of film plastic, to encourage shoppers to bring their own reusable carryout bags;
- 39 (c) Require that bags provided by a retail establishment contain 40 recycled content; and

- 1 (d) Encourage the provision of reusable and recycled content 2 paper carryout bags by retail establishments.
- NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.
  - (1) "Carryout bag" means any bag that is provided by a retail establishment at home delivery, the check stand, cash register, point of sale, or other point of departure to a customer for use to transport or carry away purchases.
    - (2) "Department" means the department of ecology.

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- (3) "Pass-through charge" means a charge to be collected and retained by retail establishments from their customers when providing recycled content paper carryout bags and reusable carryout bags made of film plastic.
  - (4) "Recycled content paper carryout bag" means a paper carryout bag provided by a retail establishment to a customer that meets the requirements in section 3(6)(a) of this act.
- 18 (5) "Retail establishment" means any person, corporation, 19 partnership, business, facility, vendor, organization, or individual 20 that sells or provides food, merchandise, goods, or materials 21 directly to a customer including home delivery, temporary stores, or 22 vendors at farmers markets, street fairs, and festivals.
  - (6) "Reusable carryout bag" means a carryout bag made of cloth or other durable material with handles that is specifically designed and manufactured for long-term multiple reuse and meets the requirements of section 3(6)(b) of this act.
- (7) "Single-use plastic carryout bag" means any carryout bag that is made from plastic that is designed and suitable only to be used once and disposed.
- NEW SECTION. Sec. 3. (1) Beginning January 1, 2021, except as provided in this section and section 4 of this act, a retail establishment may not provide to a customer or a person at an event:
  - (a) A single-use plastic carryout bag;
- 34 (b) A paper carryout bag or reusable carryout bag made of film 35 plastic that does not meet recycled content requirements; or
- 36 (c) Beginning January 1, 2026, a reusable carryout bag made of 37 film plastic with a thickness of less than four mils, in the event 38 that the 2025 legislature does not amend this section to reflect the

- recommendations to the legislature made consistent with section 7 of this act.
  - (2) (a) A retail establishment may provide a reusable carryout bag or a recycled content paper carryout bag of any size to a customer at the point of sale. A retail establishment may make reusable carryout bags available to customers through sale.
  - (b)(i) Until December 31, 2025, a retail establishment must collect a pass-through charge of eight cents for every recycled content paper carryout bag with a manufacturer's stated capacity of one-eighth barrel (eight hundred eighty-two cubic inches) or greater or reusable carryout bag made of film plastic it provides, except as provided in subsection (5) of this section and section 4 of this act.
  - (ii) Beginning January 1, 2026, a retail establishment must collect a pass-through charge of twelve cents for reusable carryout bags made of film plastic and eight cents for recycled content paper carryout bags, in the event that the 2025 legislature does not amend this section to reflect the recommendations to the legislature made consistent with section 7 of this act. It is the intent of the legislature for the 2025 legislature to reassess the amount of the pass-through charge authorized under this subsection (2)(b), taking into consideration the content of the report to the legislature under section 7 of this act.
- (c) A retail establishment must keep all revenue from passthrough charges. The pass-through charge is a taxable retail sale. A retail establishment must show all pass-through charges on a receipt provided to the customer.
- 27 (3) Carryout bags provided by a retail establishment do not 28 include:
  - (a) Bags used by consumers inside stores to:
- 30 (i) Package bulk items, such as fruit, vegetables, nuts, grains, 31 candy, greeting cards, or small hardware items such as nails, bolts, 32 or screws;
- 33 (ii) Contain or wrap items where dampness or sanitation might be 34 a problem including, but not limited to:
- 35 (A) Frozen foods;
- 36 (B) Meat;

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- 37 (C) Fish;
- 38 (D) Flowers; and
- 39 (E) Potted plants;
- 40 (iii) Contain unwrapped prepared foods or bakery goods;

(iv) Contain prescription drugs; or

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- (v) Protect a purchased item from damaging or contaminating other purchased items when placed in a recycled content paper carryout bag or reusable carryout bag; or
- 5 (b) Newspaper bags, mailing pouches, sealed envelopes, door 6 hanger bags, laundry/dry cleaning bags, or bags sold in packages 7 containing multiple bags for uses such as food storage, garbage, or 8 pet waste.
- 9 (4)(a) Any compostable film bag that a retail establishment 10 provides to customers for products, including for products bagged in 11 stores prior to checkout, must meet the requirements for compostable 12 products and film bags in chapter 70.360 RCW.
  - (b) A retail establishment may not use or provide polyethylene or other noncompostable plastic bags for bagging of customer products in stores, as carryout bags, or for home delivery that do not meet the requirements for noncompostable products and film bags in chapter 70.360 RCW.
  - (5) Except as provided by local regulations enacted as of April 1, 2020, a retail establishment may provide a bag restricted under subsection (1) of this section from existing inventory until one year after the effective date of this section. The retail establishment, upon request by the department, must provide purchase invoices, distribution receipts, or other information documenting that the bag was acquired prior to the effective date of this section.
    - (6) For the purposes of this section:
    - (a) A recycled content paper carryout bag must:
  - (i) Contain a minimum of forty percent postconsumer recycled materials;
    - (ii) Be capable of composting, consistent with the timeline and specifications of the entire American society of testing materials D6868 and associated test methods that must be met, as it existed as of January 1, 2020; and
- 33 (iii) Display in print on the exterior of the paper bag the 34 minimum percentage of postconsumer content.
  - (b) A reusable carryout bag must:
- (i) Have a minimum lifetime of one hundred twenty-five uses, which for purposes of this subsection means the capacity to carry a minimum of twenty-two pounds one hundred twenty-five times over a distance of at least one hundred seventy-five feet;

- 1 (ii) Be machine washable or made from a durable material that may 2 be cleaned or disinfected; and
  - (iii) If made of film plastic:

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- (A) Be made from a minimum of twenty percent postconsumer recycled content until July 1, 2022, and thereafter must be made from a minimum of forty percent postconsumer recycled content;
- (B) Display in print on the exterior of the plastic bag the minimum percentage of postconsumer recycled content, the mil thickness, and that the bag is reusable; and
- 10 (C) Have a minimum thickness of no less than 2.25 mils until 11 December 31, 2025, and beginning January 1, 2026, must have a minimum 12 thickness of four mils.
- 13 (c) Except for the purposes of subsection (4) of this section, 14 food banks and other food assistance programs are not retail 15 establishments, but are encouraged to take actions to reduce the use 16 of single-use plastic carryout bags.
- NEW SECTION. Sec. 4. It is a violation of section 3 of this act 17 for any retail establishment to pay or otherwise reimburse a customer 18 for any portion of the pass-through charge; provided that retail 19 establishments may not collect a pass-through charge from anyone 20 using a voucher or electronic benefits card issued under the women, 21 infants, and children (WIC) or temporary assistance for needy 22 23 families (TANF) support programs, or the federal supplemental 24 nutrition assistance program (SNAP, also known as basic food), or the 25 Washington state food assistance program (FAP).
- NEW SECTION. Sec. 5. (1) Until June 1, 2025, the department shall prioritize the expedited processing of applications for permits related to the expansion or reconfiguration of an existing pulp and paper mill for the purpose of manufacturing paper bags or raw materials used to manufacture paper bags.
  - (2) The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter.
  - (3) The enforcement of this chapter must be based primarily on complaints filed with the department and local governments. The department must establish a forum for the filing of complaints. Local governments and any person may file complaints with the department using the forum and local governments may review complaints filed with the department via the forum for purposes of the local

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government carrying out education and outreach to retail establishments. The forum established by the department may include a complaint form on the department's web site, a telephone hotline, or a public outreach strategy relying upon electronic social media to receive complaints that allege violations. The department, in collaboration with the local governments, must provide education and outreach activities to inform retail establishments, consumers, and other interested individuals about the requirements of this chapter.

- (4) The department or local government shall work with retail establishments, retail associations, unions, and other organizations to create educational elements regarding the ban and the benefits of reusable carryout bags. Educational elements may include signage at store locations, informational literature, and employee training by October 1, 2020.
- (5) Retail establishments are encouraged to educate their staff to promote reusable bags as the best option for carryout bags and to post signs encouraging customers to use reusable carryout bags.
- (6) A violation of this chapter is subject to a civil penalty of up to two hundred fifty dollars. Each calendar day of operation or activity in violation of this chapter comprises a new violation. Penalties issued under this section are appealable to the pollution control hearings board established in chapter 43.21B RCW.
- (7) If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by July 1, 2020, from the waste reduction, recycling, and litter control account for purposes of implementing the education and outreach activities required under this section, then this act is null and void.
- NEW SECTION. Sec. 6. (1) Except as provided in subsection (2) of this section, a city, town, county, or municipal corporation may not implement a local carryout bag ordinance. Except as provided in subsection (2) of this section, any carryout bag ordinance that was enacted as of April 1, 2020, is preempted by this chapter.
  - (2)(a) A city, town, county, or municipal corporation carryout bag ordinance enacted as of April 1, 2020, that has established a pass-through charge of ten cents is not preempted with respect to the amount of the pass-through charge until January 1, 2026.
- 37 (b) A city, town, county, or municipal corporation ordinance not 38 specified in (a) of this subsection and enacted as of April 1 2020, 39 is not preempted until January 1, 2021.

- NEW SECTION. Sec. 7. (1) By December 1, 2024, the department of commerce, in consultation with the department, must submit a report to the appropriate committees of the legislature in order to allow an opportunity for the legislature to amend the mil thickness requirements for reusable carryout bags made of film plastic, the amount of the pass-through charges for bags, or to make other needed revisions to this chapter during the 2025 legislative session. The report required under this section must include:
- 9 (a) An assessment of the effectiveness of the pass-through charge 10 for reducing the total volume of bags purchased and encouraging the 11 use of reusable carryout bags;
  - (b) An assessment of the sufficiency of the amount of the pass-through charge allowed under chapter 70.--- RCW (the new chapter created in section 13 of this act) relative to the cost of the authorized bags to retail establishments and an assessment of the pricing and availability of various types of carryout bags. For purposes of conducting this assessment, the department and the department of commerce may request, but not require, retail establishments and bag distributors to furnish information regarding the cost of various types of paper and plastic carryout bags provided to retail establishments; and
- (c) Recommendations for revisions to chapter 70.--- RCW (the new chapter created in section 13 of this act), if needed.
  - (2) This section expires July 1, 2027.

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- NEW SECTION. Sec. 8. A new section is added to chapter 82.04 RCW to read as follows:
- In computing the tax due under this chapter, there may be deducted any amounts derived from the pass-through charge collected by a taxpayer pursuant to chapter 70.--- RCW (the new chapter created in section 13 of this act).
- 31 <u>NEW SECTION.</u> **Sec. 9.** RCW 82.32.805 and 82.32.808 do not apply 32 to this act.
- 33 **Sec. 10.** RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10, 34 and 2019 c 290 s 12 are each reenacted and amended to read as follows:
- 36 (1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the

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- 1 director, local conservation districts, the air pollution control
- 2 boards or authorities as established pursuant to chapter 70.94 RCW,
- 3 local health departments, the department of natural resources, the
- 4 department of fish and wildlife, the parks and recreation commission,
- 5 and authorized public entities described in chapter 79.100 RCW:
- 6 (a) Civil penalties imposed pursuant to RCW 18.104.155,
- 7 70.94.431, 70.105.080, 70.107.050, section 5 of this act, 70.365.070,
- 8 70.375.060, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600,
- 9 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.
- 10 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
- 11 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.365.070, 86.16.020,
- 12 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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- 13 (c) A final decision by the department or director made under 14 chapter 183, Laws of 2009.
  - (d) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.
- 23 (e) Decisions of local health departments regarding the grant or 24 denial of solid waste permits pursuant to chapter 70.95 RCW.
  - (f) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.
    - (g) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.
    - (h) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.
- 38 (i) Any other decision by the department or an air authority 39 which pursuant to law must be decided as an adjudicative proceeding 40 under chapter 34.05 RCW.

- (j) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).
  - (k) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

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- (1) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW, to issue a stop work order, to issue a notice to comply, to issue a civil penalty, or to issue a notice of intent to disapprove applications.
- 13 (m) Decisions of the department of natural resources that are 14 reviewable under RCW 78.44.270.
- 15 (n) Decisions of an authorized public entity under RCW 79.100.010 16 to take temporary possession or custody of a vessel or to contest the 17 amount of reimbursement owed that are reviewable by the hearings 18 board under RCW 79.100.120.
- 19 (2) The following hearings shall not be conducted by the hearings 20 board:
- 21 (a) Hearings required by law to be conducted by the shorelines 22 hearings board pursuant to chapter 90.58 RCW.
- 23 (b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.
- 26 (c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.
- 28 (d) Hearings conducted by the department to adopt, modify, or 29 repeal rules.
- 30 (3) Review of rules and regulations adopted by the hearings board 31 shall be subject to review in accordance with the provisions of the 32 administrative procedure act, chapter 34.05 RCW.
- 33 **Sec. 11.** RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10, and 2019 c 290 s 12 are each reenacted and amended to read as follows:
- 36 (1) The hearings board shall only have jurisdiction to hear and 37 decide appeals from the following decisions of the department, the 38 director, local conservation districts, the air pollution control 39 boards or authorities as established pursuant to chapter 70.94 RCW,

- local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:
- 4 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, section 5 of this act, 70.365.070, 70.375.060, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.
- 8 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 9 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.365.070, 86.16.020, 10 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

- (c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.
- 19 (d) Decisions of local health departments regarding the grant or 20 denial of solid waste permits pursuant to chapter 70.95 RCW.
  - (e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.
    - (f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.
    - (g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.
  - (h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.
  - (i) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural

- 1 resources' appeals of county, city, or town objections under RCW 76.09.050(7).
- 3 (j) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.
- 5 (k) Decisions of the department of fish and wildlife to issue, 6 deny, condition, or modify a hydraulic project approval permit under 7 chapter 77.55 RCW, to issue a stop work order, to issue a notice to 8 comply, to issue a civil penalty, or to issue a notice of intent to 9 disapprove applications.
- 10 (1) Decisions of the department of natural resources that are 11 reviewable under RCW 78.44.270.
- (m) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.
- 16 (2) The following hearings shall not be conducted by the hearings 17 board:
- 18 (a) Hearings required by law to be conducted by the shorelines 19 hearings board pursuant to chapter 90.58 RCW.
- 20 (b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.
- 23 (c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.
- 25 (d) Hearings conducted by the department to adopt, modify, or 26 repeal rules.
- 27 (3) Review of rules and regulations adopted by the hearings board 28 shall be subject to review in accordance with the provisions of the 29 administrative procedure act, chapter 34.05 RCW.
- NEW SECTION. Sec. 12. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.
- 34 <u>NEW SECTION.</u> **Sec. 13.** Sections 1 through 7 of this act 35 constitute a new chapter in Title 70 RCW.
- NEW SECTION. Sec. 14. Section 10 of this act expires June 30, 37 2021.

NEW SECTION. Sec. 15. Section 11 of this act takes effect June 30, 2021.

Passed by the Senate March 9, 2020.
Passed by the House March 7, 2020.
Approved by the Governor March 25, 2020.
Filed in Office of Secretary of State March 26, 2020.

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