



# **Building Public Trust: Your Guide to Bagley Keene**

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# Agenda

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- Meetings
- Types of Meetings
- Notice and Other Requirements
- Closed Sessions
- Teleconference Meetings
- Deliberations and Voting
- Miscellaneous Provisions



# **BAGLEY-KEENE OPEN MEETING ACT**

Applies to California State agencies, boards, and commissions.

Govt Code §§ 11120-11133

Brown Act solely applies to California city and county government agencies, boards, and councils.

Govt Code §§ 54950 – 54963.

# **RALPH M. BROWN ACT**

# Purpose of the Bagley Keene Open Meeting Act



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- Intent of the Law:

“...actions of state agencies be taken openly and that their deliberations be conducted openly.”

- Duties Under the Act

- Provide adequate notice of meeting by the body
- Conduct meetings openly, unless authorized to conduct a closed session
- Provide opportunity for public comment

# Who Does the Act Cover?

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## **General Rule:**

Every multimember body created by statute or required by law to conduct official meetings and every commission created by Executive Order

## **Advisory bodies:**

Created by Legislature

Created by a formal action of another body and having 3 or more members

## **Delegated body:**

Multimember Committee that exercises some power delegated to it by another body subject to the Act

# Who Does the Act Cover?

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## Non-State Bodies:

Member of a state body serves as a representative on another body in an official capacity and the body is funded in whole or in part by the representative's state body, regardless of whether private or public

## Members to Be of State Bodies:

Applies beginning at the time of appointment

# What Is A Meeting?

“Any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains”

A majority of the members of any state body may not hear, discuss, deliberate or act in **any way** on any subject outside of a noticed meeting.

If the members of a board do so, it can result in litigation, attorney’s fees, reversal of the board’s action and judicial oversight of the Board.

## Why Is This Important?

# What Is “NOT” Considered A Meeting?

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- ❑ Communications and contacts between a board member and another member of the public.
- ❑ Attendance by a majority of board members at a conference or other event open to the public where issues of general interest are discussed.
- ❑ Attendance by a majority of board members at an open and noticed meeting of another state body, legislative body, or local agency.
- ❑ Attendance by a majority of members at a purely social or ceremonial occasion.
- ❑ **NOTE:** Board members must conduct themselves in a manner appropriate to these exceptions and not act in a way to suggest that they have communicated about board business. (*\*If board members will all be present at the same event, it is advisable to post a notice of the event and the board members attending. (e.g., a trade convention, conference)*)



## Members of a Body may NOT engage in the following types of communication outside of a Noticed Meeting:

- ☐ Serial communication – e.g., contacting other board members on a one-to-one basis prior to the meeting
- ☐ Serial meetings (also known as “pre-meetings”)
- ☐ Conference calls with multiple members outside of Noticed Meeting
- ☐ Emails between members discussing Body business or issues
- ☐ Text messages between members discussing Body business or issues – on any device including personal cell phones

## Prohibited Communications by Board Members

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# Examples / Scenarios



The Board has 7 members and an agenda item awarding grant funds to ten out of twenty projects that submitted timely grant applications.

- » Member A calls Member B to talk about how great one of the grant applications was that didn't get recommended for funding, and that it should be considered more carefully.
- » Member B calls Member C on the same topic.
- » Member C calls member D on the same topic.

## *Permissible communication?*

Staff communicates individually with each agency board member in advance of a regularly noticed/agendized meeting.

The chair of a 5-member board directs 2 members to attend a site visit and report back to the full Board at its next meeting.



# Types of Meetings

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Regularly Scheduled Meetings

Special Meetings

Emergency Meetings

# Regularly Scheduled Meetings



## NOTICE REQUIREMENT: 10 calendar days

The Notice must include a designated contact person for providing additional information and must be posted on the Internet.

People may request notice of meetings, and the board, subcommittee, or task force must comply with the requestor's choice for receiving it to the best of their ability. (e.g., mail, email)

The Notice must be provided in alternative formats for any person with a disability. It must additionally provide information that would enable a person with a disability to request auxiliary aids and services during the meeting.

# Regular Meeting Notice Requirements

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- The Notice must include an agenda that includes all items to be acted upon and discussed. (10 words or less)
- The Notice must describe all items with sufficient specificity to enable the public to understand them. General agenda descriptions cannot be used to circumvent this requirement.
- No item can be added after the issuance of the Notice, unless an Amended Notice can be issued and posted on the internet at least 10 calendar days before the meeting.
- Board members cannot discuss items that are not on the agenda even if no action is taken.

**NOTE:** Please include agenda items that permit the public, staff, and board members to raise issues for possible discussion as an agenda item at future board meetings.

**NOTE:** There are additional requirements for closed session agenda items.

# Special Meetings

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A board, committee, subcommittee, or task force may conduct a special meeting.

A special meeting may be conducted on less than 10 days notice if the notice requirement would impose substantial hardship or where immediate action is required to protect the public interest.

## Purposes for Special Meetings:

- pending litigation
- proposed legislation
- the issuance of a legal opinion
- disciplinary action
- provision of an interim executive officer upon the death, incapacity, or vacancy of the position

**NOTE:** There must be a specific factual reason why these items cannot be considered at a regularly scheduled meeting with 10-day notice.

# Special Meeting Notice Requirements

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- It must specify the time and place of the special meeting and the business to be transacted.
- It must be sent out to board members, newspapers of general circulation and radio and TV stations **at least 48 hours** in advance of the meeting.
- No business other than that described in the Notice may be discussed.
- At the commencement of the meeting, 2/3 of the members of the body must find in open session that providing 10-day notice would either pose a substantial hardship or that immediate action was required to protect the public.

**NOTE:** there must be a roll call vote,  
with all votes subsequently recorded in the minutes.

# Emergency Meetings

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A board, committee, subcommittee or task force may call an emergency meeting.

An emergency meeting may only be held in the event of an emergency situation or crippling disaster that impairs public health or safety.

## AFTER AN EMERGENCY MEETING:

Newspapers of general circulation, and TV and radio stations must be notified as soon as possible of the meeting, its purpose, and any action taken.

The body must post in a public place and on the internet, 1) the minutes of the meeting, 2) a list of persons notified or attempted to be notified, 3) any action taken, and 4) the roll call vote upon the action.



# Emergency Meeting Notice Requirements

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The Notice may be provided without complying with the 10-day notice requirement for a regular meeting or the 48-hour requirement for a special meeting, but it must be **at least one hour** before the meeting

**NOTE:** There must be a specific factual basis for the limited amount of time in which notice is provided.

The Notice must be provided to newspapers of general circulation, TV and radio stations.

The Notice must be posted on the Internet as a soon as is practicable after the decision to call the meeting has been made.

Statutorily Allowed Reasons  
for Closed Session:

*Personnel Matters*

*Pending Litigation*

*Response to Confidential Draft Audit  
Report*

*Threat of Criminal or Terrorist Activity*

*Consideration of an ALJ Decision*

*Examination or Individual Privacy for  
bodies that administer business or  
professional licenses*



**Closed Sessions**

**Outlined in  
Govt Code 11126**

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# **Personnel Matters**

## **Govt Code 11126(a)**

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- Appointment, employment, evaluation of performance, or dismissal of a public employee OR to hear complaints or charges brought against a public employee.
- Employee must be given notice of their right to have a public hearing instead or any action taken in closed session is void.
- If a public hearing is held, the body may convene in closed session to deliberate on the decision to be reached.

# Pending Litigation

## Govt Code 11126(e)(2)

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- To confer or receive advice regarding pending litigation:
  - Formally initiated
  - Belief based on existing fact that there is significant legal exposure to litigation
  - Body has decided or is deciding to initiate litigation
- Memo must be submitted no later than one week after the closed session.

## **Response to Confidential Audit Report Govt Code 11126.2**

Only allowed while report is  
confidential.

Once Audit report is released  
to the public, there is no  
authorization for Closed  
Sessions.

Must be during a regular or  
special meeting and  
authorized by two-thirds  
vote of the members  
present at the meeting

## **Threat of Criminal or Terrorist Activity Govt Code 11126(c)(18)**

# **For Bodies that Administer Business or Professional Licenses**

## **Govt Code 11126 (c)**

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### Examination:

- Preparation, approval, grading, or administering exams
- Does not apply to logistics, but rather content
- Extends to appeals or re-review of examinations

### Individual Privacy:

- Discussions that would constitute an unwarranted invasion of the licensee's privacy
- Qualification for licensure or disciplinary action

# Consideration of an Administrative Law Judge Decision

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- Discussions to deliberate on a decision in an administrative proceeding under the Administrative Procedures Act
- Can include:
  - Decision to adopt a proposed decision
  - Review a transcript of a hearing
  - Render its own decision
  - Deliberate upon evidence the state agency received
  - Consider a stipulation
- Does not apply to:
  - Assigning who will hear the case
  - Reviewing investigation files or complaints, unless another exception applies

# Notice Requirements for Closed Sessions

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Must be listed in the agenda per notice requirements and a general announcement during the open meeting citing the statutory authority for the closed session.

Litigation matters are specifically identified unless it would jeopardize the ability to effectuate service of process.

Exception to notice in the agenda for litigation items.



# Other Requirements for Closed Sessions

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## Reporting After a Closed Session:

Must reconvene in open session after a closed session.

Must report any action taken.

Any roll call vote to appoint or dismiss a public employee must also be reported.

## Other Requirements:

A designated board member must record topics discussed and decisions made. These notes are not subject to public inspection and must be kept confidential. (§11126.1)

Members cannot disclose information received and discussions held in closed session with outside parties.

| Type of Body   | Notice Requirements  |
|--|--|
| <b>Board Meetings:</b><br>Commonly known meeting where a quorum of Board members are present to discuss, deliberate, and take action upon matters within the Board's jurisdiction                                | Must be noticed and open to the public.  |
| <b>Committee Meetings:</b><br>A group of at least three people appointed by the Board to study and report to the Board on a particular subject.<br><i>*Includes Delegated Authority Committees (two or more)</i> | Must be noticed and open to the public.  |
| <b>Subcommittee Meetings:</b><br>A smaller group of Board members, responsible for studying a particular subject and reporting back to a committee or the Board.   | Must be noticed and open to the public, unless it consists of less than three people and does not exercise any delegated authority |

# Bodies & Notice Requirements

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| Type of Body   | Notice Requirements                                 |
|--|---|
| <b>Task Force:</b><br>One or two Board members plus members of the public appointed by the Board Chair to study and report on an issue to the Board.<br><i>*Typically involves Board members and members of the public</i> | Must be noticed and open to the public.             |
| <b>Ad Hoc Committee:</b><br>One or two Board Members appointed by Board Chair to study and report on an issue to the Board   | Not subject to Bagley Keene Act Notice requirements |



# **Bodies & Notice Requirements**

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# Specific Issues for Subcommittees and Task Forces

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If other board members attend a noticed, publicly accessible committee or subcommittee meeting, they should **not** participate as if they are part of the committee. They may only observe and should not ask questions or make statements during the course of the meeting. Ideally, they should not attend at all.

The same rules apply for noticed, publicly accessible task force meetings.

Other board members should not attend any meeting, such as an ad hoc committee meeting, that has not been noticed and made open to the public.

# Delegated Bodies



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A multi-member body of two or more people with authority delegated to it by a larger state body, such as a board or commission.

## How is a delegated body created?

Created by a larger state body with a majority vote of at least a minimum quorum.

## How do Bagley-Keene rules apply to delegated bodies?

Delegated bodies are subject to the same Open Meeting requirements as the full state body.

## What authority can be delegated to the delegated body?

This should be determined on a per-board basis and depends on the originating statute of the larger state body. Not all delegated bodies can act with the full power of the larger body. Some delegated bodies may be limited to advisory or administrative functions only and cannot take actions that require exercising discretion or judgment. Please consult with legal counsel to verify what powers may be delegated to a smaller body.

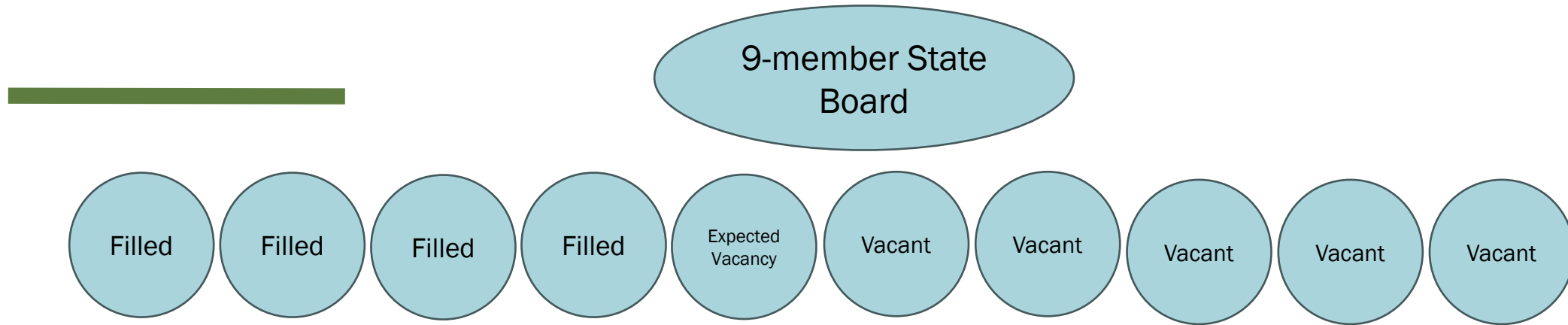
# Delegated Bodies When Total Membership Falls Below Quorum

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Creating a delegated body can be an effective tool to keep business running smoothly, even when total board membership falls below quorum.

- ***Creation.*** Must be created by majority vote at last meeting with full body minimum quorum. The delegated body should be immediately repealed when membership increases back to basic full body quorum.
- ***Voting.*** Delegated body voting uses simple majority vote. The new quorum is based on the delegated body total membership. Business may proceed with majority vote of the new delegated body quorum.
- ***Authority.*** If the delegated body is created because total membership falls below basic quorum, the state body may delegate its full authority to the delegated body. *Note: please consult with legal counsel to verify delegated authority level for your particular board or commission.*

# Example of a Delegated Body When Membership Falls Below Quorum



Nine-member board. Minimum quorum is five members. This board has five total members with four vacancies.

One member plans to retire soon, leaving only four members.

The five members should create a delegated body by majority vote for the remaining four members to act with the full authority of the board until membership returns to minimum full body quorum.

When minimum full body quorum is restored, the delegated body should be repealed immediately.

For the purposes of the Bagley-Keene Act, a teleconference is a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video means.

This includes telephone conference calls, webinars, webcasts, Skype, Zoom, Microsoft Teams or other audio/video teleconference programs.

Focus is on provisions effective as of May 2025.



# **Teleconference Meetings**

**Govt Code 11123.2 and 11123.5**

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# Definitions

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|---------------------------|---|
| “Teleconference”          | Meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or video or both. |
| “Teleconference Location” | A physical location that is accessible to the public and from which members of the public may participate remotely                              |
| “Remote Location”         | A location from which a member of the state body participates in a meeting other than a teleconference location                                 |
| “Participate Remotely”    | Participation by a member of the body in a meeting at a remote location other than a teleconference location designated in the meeting notice   |

# Teleconference Requirements

## Govt Code 11123.2 and 11123.5

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- If any member is participating remotely, the same access must be provided to the public
- Members of the state body participating remotely shall VISIBLY APPEAR on camera during open portion of meetings
- If a member participating remotely does not appear on camera because of internet connectivity challenges, the member shall announce the reason for their nonappearance
- If a body discovers that the remote access link has failed, it shall end or adjourn the meeting

# **Teleconference Requirements – Boards and Commissions**

**Govt Code 11123.2**

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Teleconference meeting location must be identified in the Notice and Agenda and be open to the public.

- Open Session must be visible and audible to the public at teleconference locations specified in Notice
- Agenda must be posted
- All printed materials must be available to public
- Must be accessible to the public
- Public must have opportunity to provide comments
- Recommend a staff member is present at all teleconference locations

# Teleconference Requirements – Boards and Commissions

## Govt Code 11123.2

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At least a quorum of the members of the Board or Commission must attend the meeting at a teleconference location. (11123.2(j)(1))

- If any Board members participate remotely, all votes must be taken by roll call. Board members in excess of the quorum may participate remotely. Remote locations do not need to be disclosed.

A member participating remotely may count towards quorum if: member has a need related to a physical or mental disability AND member notifies state body of the need ASAP, including at the start of a meeting.

- Member must provide a general description of the circumstances (20 words or less). Board must vote to approve the exception.

If a member participates remotely, they must identify anyone over 18 and their relationship to them, if they are in the same room.

# **Teleconference Requirements - Advisory Bodies**

## **Govt Code 11123.5**

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- If member plans to participate remotely it must be identified in the Agenda if known when the Agenda is posted
- If it is discovered after the Agenda has been posted and is at least 24 hours prior to the start of the meeting, notice of remote participation must be posted online and emailed to the distribution list
- All members participating remotely must be reflected in the minutes
- At least one staff person must be present at the teleconference location
- Posting of agenda not required at a remote location
- If a member participates remotely, the body shall provide a means for the public to participate remotely; the teleconference phone # or the internet website indicating how public can access remotely shall be in the 24-hour notice

## Keep in mind the touchstone of the Open Meeting Law:

**State bodies should discuss, deliberate, and take action at publicly accessible meetings.**

- ✓ With the exception of closed sessions, all discussions, deliberations, and actions must take place in public.
- ✓ With the exception of closed sessions, if the body takes action, it must do so by means of a public vote (in other words, no secret ballots).
- ✓ Members may not vote by proxy.
- ✓ All votes must be reflected in the minutes of the meeting, with a record of how each member voted.

## **Deliberations and Voting**

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# Use of Electronic Devices During Meetings

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- ❖ Members of a body may not text or email each other during an Open Meeting on any matter under consideration. It is best practice to prohibit any such communication regardless of content during an Open Meeting.
- ❖ If laptops or smart phones are used by members, they may only be used to access board meeting materials in an electronic format. Members should not be doing “research” on issues before the Body on their laptop or smart phones during meetings.
- ❖ Example language: “You may notice board members accessing their laptops during the meeting. They are using the laptops solely to access the board meeting materials, which are in electronic format.”

# Miscellaneous Provisions

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- A copy of the Bagley-Keene Act must be provided to each member upon appointment.
- Conditions on Public Attendance
  - Cannot require a sign-in or any other condition to attend the meeting
  - Any sign-in sheet must clearly state that signing in is voluntary and not required
  - Meeting cannot be held in a facility that prohibits entrance based on race, religious creed, color, national origin, ancestry or sex
  - Meetings must be accessible to the disabled
  - Cannot require a fee to attend the meeting
  - Cannot require member of public to identify themselves before making a public comment.



# Miscellaneous Provisions

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- Recording of Meetings
  - If a body makes a recording, it is a public record subject to disclosure
  - Public may record the meeting so long as it is not disruptive
  - Meeting may be broadcast so long as it is not disruptive
  - As meetings are allowed to be recorded, transcription of teleconference meetings is also allowed, whether by recording or AI transcription services.
- Moving Agenda Items
  - Body can move agenda items around so long as the purpose is not to frustrate public input
  - Agenda/Notice should include a disclaimer that the order of business is subject to change

# Miscellaneous Provisions

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- Public Comment
  - An opportunity for public comment must be provided on each agenda item before or during consideration or deliberation of item.
  - Can only limit the time on public discussion by adopting a policy
    - Can limit public comment to one (1), three (3), five (5) or other time amounts based on number of comments, public present, etc. Must be announced at the outset of the meeting – cannot change halfway through meeting.
  - Cannot prohibit criticism of the Body by members of the public
  - Members of the public should only address the Body and not other members of the public. It's not appropriate for members of public to debate one another.



# Thank you!

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Please reach out  
if you have any questions

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