

HB1291_L.004

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Transportation & Energy.

HB18-1291 be amended as follows:

1 Amend printed bill, page 2, after line 1 insert:

2 "SECTION 1. In Colorado Revised Statutes, 12-61-702, **add** (6.5)
3 as follows:

4 **12-61-702. Definitions.** As used in this part 7, unless the context
5 otherwise requires:

6 (6.5) "DEPARTMENT" MEANS THE DEPARTMENT OF REGULATORY
7 AGENCIES.

8 **SECTION 2.** In Colorado Revised Statutes, 12-61-724, **amend** (1)
9 introductory portion, (1)(b), (2) introductory portion, (2)(e), (3), (6), (7)
10 introductory portion, (8), (9), (10), (11), and (13) as follows:

11 **12-61-724. Certification of conservation easement holders -
12 rules - definition - repeal.** (1) The ~~division~~ DEPARTMENT shall, in
13 consultation with the commission created in section 12-61-725, establish
14 and administer a certification program for qualified organizations under
15 section 170 (h) of the federal "Internal Revenue Code of 1986", as
16 amended, that hold conservation easements for which a tax credit is
17 claimed pursuant to section 39-22-522. ~~C.R.S.~~ The purposes of the
18 program are to:

19 (b) Identify fraudulent or unqualified applicants, as determined
20 under the rules of the ~~division~~ DEPARTMENT, to prevent them from
21 becoming certified by the program.

22 (2) The ~~division~~ DEPARTMENT shall establish and accept
23 applications for certification. The ~~division~~ DEPARTMENT shall conduct a
24 review of each application and consider the recommendations of the
25 commission before making a final determination to grant or deny
26 certification. In reviewing an application and in granting certification, the
27 division and the commission may consider:

28 (e) Any other information deemed relevant by the ~~division~~
29 DEPARTMENT or the commission; and

30 (3) At the time of submission of an application, and each year the
31 entity is certified pursuant to this section, the applicant shall pay the
32 ~~division~~ DEPARTMENT a fee, as prescribed by the ~~division~~ DEPARTMENT,
33 to cover the costs of the ~~division~~ DEPARTMENT and the commission in
34 administering the certification program for entities that hold conservation
35 easements for which tax credits are claimed pursuant to section
36 39-22-522. The ~~division~~ DEPARTMENT shall have the authority to accept
37 and expend gifts, grants, and donations for the purposes of this section.
38 The state treasurer shall credit fees, gifts, grants, and donations collected
39 pursuant to this subsection (3) to the ~~division of real estate~~ DEPARTMENT

1 OF REGULATORY AGENCIES CONSERVATION EASEMENT CERTIFICATION
2 cash fund created in section 12-61-111.5. On or before each January 1,
3 the division shall certify to the general assembly the amount of the fee
4 prescribed by the ~~division~~ DEPARTMENT pursuant to this subsection (3).

5 (6) The commission shall meet at least quarterly and make
6 recommendations to the division regarding the certification program. The
7 ~~division~~ DEPARTMENT is authorized to determine whether an applicant for
8 certification possesses the necessary qualifications for certification
9 required by the rules adopted by the ~~division~~ DEPARTMENT. If the ~~division~~
10 DEPARTMENT determines that an applicant does not possess the applicable
11 qualifications for certification or that the applicant has violated any
12 provision of this part 7, the rules promulgated by the ~~division~~
13 DEPARTMENT, or any ~~division~~ DEPARTMENT order, the ~~division~~
14 DEPARTMENT may deny the applicant a certification or deny the renewal
15 of a certification, and, in such instance, the ~~division~~ DEPARTMENT shall
16 provide the applicant with a statement in writing setting forth the basis of
17 the ~~division's~~ DEPARTMENT'S determination. The applicant may request a
18 hearing on the determination as provided in section 24-4-104 (9). ~~C.R.S.~~
19 The ~~division~~ DEPARTMENT shall notify successful applicants in writing.
20 An applicant that is not certified may reapply for certification in
21 accordance with procedures established by the ~~division~~ DEPARTMENT.

22 (7) The ~~division~~ DEPARTMENT shall implement the certification
23 program in a manner that either commences accepting applications for
24 certification:

25 (8) A conservation easement tax credit certificate application may
26 be submitted pursuant to section 12-61-727 only if the entity has been
27 certified in accordance with this section at the time the donation of the
28 easement is made. The ~~division~~ DEPARTMENT shall make information
29 available to the public concerning the date that it commences accepting
30 applications for entities that hold conservation easements and the
31 requirements of this subsection (8).

32 (9) The ~~division~~ DEPARTMENT shall maintain and update an online
33 list, accessible to the public, of the organizations that have applied for
34 certification and whether each has been certified, rejected for
35 certification, or had its certification revoked or suspended in accordance
36 with this section.

37 (10) The ~~division~~ DEPARTMENT may investigate the activities of
38 any entity that is required to be certified pursuant to this section and to
39 impose discipline for noncompliance, including the suspension or
40 revocation of a certification or the imposition of fines. The ~~division~~
41 DEPARTMENT may promulgate rules in accordance with article 4 of title
42 24 ~~C.R.S.~~, for the certification program and discipline authorized by this
43 section.

1 (11) The ~~division~~ DEPARTMENT may subpoena persons and
2 documents, which subpoenas may be enforced by a court of competent
3 jurisdiction if not obeyed, for purposes of conducting investigations
4 pursuant to subsection (10) of this section.

5 (13) This section is repealed, effective ~~July 1, 2018~~ SEPTEMBER
6 1, 2025. Prior to the repeal, the department of ~~regulatory agencies~~ shall
7 review the certification requirement as provided for in section 24-34-104.
8 ~~€R.S.~~".

9 Renumber succeeding sections accordingly.

10 Page 2, line 3, strike "(8)" and substitute "(1) introductory portion, (3)(a),
11 (4), (6), and (8)".

12 Page 2, strike lines 5 through 8 and substitute "**created - repeal.**
13 (1) There is hereby created in the ~~division~~ DEPARTMENT a conservation
14 easement oversight commission. The commission shall exercise its
15 powers and perform its duties and functions under the ~~division~~
16 DEPARTMENT as if transferred thereto by a **type 2** transfer, as defined in
17 the "Administrative Organization Act of 1968", article 1 of title 24.
18 ~~€R.S.~~ The commission consists of nine members as follows:

19 (3) (a) At the request of the ~~division~~ DEPARTMENT or the
20 department of revenue, the commission shall advise the ~~division~~
21 DEPARTMENT and the department of revenue regarding conservation
22 easements for which a state income tax credit is claimed pursuant to
23 section 39-22-522. ~~€R.S.~~

24 (4) The commission shall meet not less than once each quarter.
25 The ~~division~~ DEPARTMENT shall convene the meetings of the commission
26 and provide staff support as requested by the commission. A majority of
27 the members of the commission constitutes a quorum for the transaction
28 of all business, and actions of the commission require a vote of a majority
29 of the members present in favor of the action taken. The commission may
30 delegate to the EXECUTIVE director OF THE DEPARTMENT OR HIS OR HER
31 DESIGNEE the authority to act on behalf of the commission on occasions
32 and in circumstances that the commission deems necessary for the
33 efficient and effective administration and execution of the commission's
34 responsibilities under this part 7.

35 (6) (a) The commission shall advise and make recommendations
36 to the EXECUTIVE director OF THE DEPARTMENT OR HIS OR HER DESIGNEE
37 regarding the certification of conservation easement holders in
38 accordance with section 12-61-724. The ~~division~~ DEPARTMENT may
39 determine whether an applicant for certification possesses the necessary
40 qualifications for certification required by the rules adopted by the

1 ~~division~~ DEPARTMENT.

2 (b) If the ~~division~~ DEPARTMENT determines that an applicant does
3 not possess the applicable qualifications for certification or that the
4 applicant has violated any provision of this part 7, the rules promulgated
5 by the ~~division~~ DEPARTMENT, or any ~~division~~ DEPARTMENT order, the
6 ~~division~~ DEPARTMENT may deny the applicant a certification or deny the
7 renewal of a certification. In such instance, the ~~division~~ DEPARTMENT
8 shall provide the applicant with a statement in writing setting forth the
9 basis of the ~~division's~~ DEPARTMENT'S determination. The applicant may
10 request a hearing on the determination as provided in section 24-4-104
11 (9). ~~C.R.S.~~

12 (c) The ~~division~~ DEPARTMENT shall notify successful applicants
13 in writing.

14 (d) An applicant that is not certified may reapply for certification
15 in accordance with the procedure established by the ~~division~~
16 DEPARTMENT.

17 (8) This section is repealed, effective ~~July 1, 2018~~ SEPTEMBER 1,
18 2025. Prior to the repeal, the department of ~~regulatory agencies~~ shall
19 review the commission as provided in section 24-34-104. ~~C.R.S.~~

20 Page 2, line 12, strike "DIVISION" and substitute "DEPARTMENT".

21 Page 2, line 15, strike "DIVISION" and substitute "DEPARTMENT".

22 Page 4, after line 5 insert:

23 "SECTION 5. In Colorado Revised Statutes, 12-61-726, amend
24 (1) introductory portion, (2), and (3) as follows:

25 **12-61-726. Conservation easement tax credit certificates -**
26 **rules.** (1) The ~~division~~ DEPARTMENT shall receive tax credit certificate
27 applications from and issue certificates to landowners for income tax
28 credits for conservation easements donated on or after January 1, 2011,
29 in accordance with section 39-22-522 (2.5) ~~C.R.S.~~, and this part 7.
30 Nothing in this section restricts or limits the authority of the ~~division~~
31 DEPARTMENT to enforce this part 7. The ~~division~~ DEPARTMENT may
32 promulgate rules in accordance with article 4 of title 24 ~~C.R.S.~~, for the
33 issuance of the certificates. In promulgating rules, the ~~division~~
34 DEPARTMENT may include provisions governing:

35 (2) The ~~division~~ DEPARTMENT shall apply the amount claimed in
36 a completed tax credit certificate application against the annual tax credit
37 limit in the order that completed applications are received. The ~~division~~
38 DEPARTMENT shall apply claimed tax credit amounts that exceed the
39 annual limit in any year against the limit for the next available year and

1 issue tax credit certificates for use in the year in which the amount was
2 applied to the annual limit.

3 (3) The ~~division~~ DEPARTMENT shall not issue tax credit certificates
4 that in aggregate exceed the limit set forth in section 39-22-522 (2.5)
5 ~~C.R.S.~~, during a particular calendar year.

6 **SECTION 6.** In Colorado Revised Statutes, 12-61-727, **amend**
7 (1)(e), (2)(a) introductory portion, (3)(a), (4), (5) introductory portion, (6),
8 (7)(a), (8)(c), (10), (11), (12)(b), (12)(c), (12)(d), (13)(a) introductory
9 portion, (13)(b), (14)(a), (14)(b), (14)(d), (15), and (16); and **add** (18) as
10 follows:

11 **12-61-727. Conservation easement tax credit certificate**
12 **application process - definitions - rules.** (1) For purposes of this
13 section:

14 (e) "Director" means the EXECUTIVE director of the ~~division of real~~
15 ~~estate~~ DEPARTMENT or his or her designee.

16 (2) (a) The ~~division~~ DEPARTMENT shall establish and administer
17 a process by which a landowner seeking to claim an income tax credit for
18 any conservation easement donation made on or after January 1, 2014,
19 must apply for a tax credit certificate as required by section 39-22-522
20 (2.5) and (2.7). ~~C.R.S.~~ The purpose of the application process is to
21 determine whether a conservation easement donation for which a tax
22 credit will be claimed:

23 (3) For the purpose of reviewing applications and making
24 determinations regarding the issuance of tax credit certificates, including
25 the dollar amount of the tax credit certificate to be issued:

26 (a) ~~Division~~ DEPARTMENT staff shall review each application and
27 advise and make recommendations to the director and the commission
28 regarding the application;

29 (4) The department of revenue is not authorized to disallow a
30 conservation easement tax credit based on any requirements that are
31 under the jurisdiction of the ~~division~~ DEPARTMENT, the director, or the
32 commission pursuant to this section.

33 (5) A complete tax credit certificate application must be made by
34 the landowner to the ~~division~~ DEPARTMENT and must include:

35 (6) A landowner submitting an application for a tax credit
36 certificate pursuant to this section or an application for an optional
37 preliminary advisory opinion pursuant to subsection (14) of this section
38 shall pay the ~~division~~ DEPARTMENT a fee as prescribed by the ~~division~~
39 DEPARTMENT. The application fee for an optional preliminary advisory
40 opinion may be a different dollar amount than the application fee for a tax
41 credit certificate. The fees must cover the costs of the ~~division~~
42 DEPARTMENT and the commission in administering the requirements of
43 this section. The state treasurer shall credit the fees collected pursuant to

1 this subsection (6) to the ~~division of real estate~~ DEPARTMENT OF
2 REGULATORY AGENCIES CONSERVATION EASEMENT CERTIFICATION cash
3 fund created in ~~section 12-61-111.5~~ SUBSECTION (18) OF THIS SECTION.
4 On or before January 1, 2014, and on or before each January 1 thereafter,
5 the ~~division~~ DEPARTMENT shall certify to the general assembly the amount
6 of any fees prescribed by the ~~division~~ DEPARTMENT pursuant to this
7 subsection (6).

8 (7) (a) If, during the review of an application for a tax credit
9 certificate, the director or the commission identifies any potential
10 deficiencies, the director or commission shall document the potential
11 deficiencies in a letter sent to the landowner by first class mail. The
12 ~~division~~ DEPARTMENT shall send letters documenting potential
13 deficiencies to landowners in a timely manner so that the average number
14 of days between the date a completed application is received by the
15 ~~division~~ DEPARTMENT and the mailing date of the ~~division's~~
16 DEPARTMENT'S letter to the landowner does not exceed one hundred
17 twenty days.

18 (8) The director or the commission may deny an application if the
19 landowner:

20 (c) Fails to timely respond to any written request or notice from
21 the ~~division~~ DEPARTMENT, the director, or the commission.

22 (10) If the director and the commission do not identify any
23 potential deficiencies with an application, the director and the
24 commission shall approve the application, and the ~~division~~ DEPARTMENT
25 shall issue a tax credit certificate to the landowner pursuant to section
26 12-61-726 in a timely manner so that the average number of days between
27 the date a completed application is received by the ~~division~~ DEPARTMENT
28 and the date the tax credit certificate is issued does not exceed one
29 hundred twenty days. Once a tax credit certificate is issued, the landowner
30 may claim and use the tax credit subject to any other applicable
31 procedures and requirements under title 39. ~~C.R.S.~~

32 (11) (a) If all potential deficiencies that have been identified are
33 subsequently addressed to the satisfaction of the director and the
34 commission, the director and the commission shall approve the
35 application, and the ~~division~~ DEPARTMENT shall issue a tax credit
36 certificate to the landowner pursuant to section 12-61-726. Once a tax
37 credit certificate is issued, the landowner may claim and use the tax credit
38 subject to any other applicable procedures and requirements under title
39 39. ~~C.R.S.~~

40 (b) If any potential deficiencies that have been identified are not
41 subsequently addressed to the satisfaction of the director and the
42 commission, the ~~division~~ DEPARTMENT shall issue a written denial of the
43 application to the landowner documenting those deficiencies that were the

1 specific basis for the denial. The ~~division~~ DEPARTMENT shall date the
2 written denial and send it by first class mail to the landowner at the
3 address provided by the landowner on the application. The ~~director~~
4 DEPARTMENT may act on behalf of the commission for purposes of
5 administering the process for issuing approvals and denials of
6 applications and for administering subsection (12) of this section.

7 (12) (b) If the landowner fails to appeal the denial of an
8 application within thirty days after the issuance of the denial, the denial
9 becomes final, and the ~~division~~ DEPARTMENT shall not issue a tax credit
10 certificate to the landowner.

11 (c) Administrative hearings must be conducted in accordance with
12 section 24-4-105. ~~C.R.S.~~ At the discretion of the director, hearings may
13 be conducted by an authorized representative of the director or the
14 commission or an administrative law judge from the office of
15 administrative courts in the department of personnel. All hearings must
16 be held in the county where the ~~division~~ DEPARTMENT is located unless
17 the director designates otherwise. The decision of the director or the
18 commission is subject to judicial review by the court of appeals and is
19 subject to the provisions of section 24-4-106. ~~C.R.S.~~

20 (d) In conducting settlement discussions with a landowner, the
21 director and the commission may compromise on any of the deficiencies
22 identified in the application and supporting documentation, including the
23 dollar amount of the tax credit certificate to be issued. The director shall
24 place on file in the ~~division~~ DEPARTMENT a record of any compromise and
25 the reasons for the compromise.

26 (13) (a) Commencing with the 2014 calendar year, and for each
27 calendar year thereafter, the ~~division~~ DEPARTMENT shall create a report,
28 which shall be made available to the public, containing the following
29 aggregate information:

30 (b) The ~~division~~ DEPARTMENT may include additional
31 easement-specific information in the public report that, notwithstanding
32 the provisions of this part 7 or any other law to the contrary, would
33 otherwise be publicly available.

34 (14) (a) In addition to the tax credit certificate application process
35 set forth in this section, a landowner may submit a proposed conservation
36 easement donation to the ~~division~~ DEPARTMENT to obtain an optional
37 preliminary advisory opinion regarding the transaction. The opinion may
38 address the proposed deed of conservation easement, appraisal,
39 conservation purpose, or other relevant aspect of the transaction.

40 (b) The ~~division~~ DEPARTMENT, the director, and the commission
41 shall review the information and documentation provided in a manner
42 consistent with the scope of their authority and responsibilities for
43 reviewing tax credit certificate applications as outlined in subsection (3)

1 of this section and issue either a favorable opinion or a nonfavorable
2 opinion.

3 (d) A nonfavorable opinion shall set forth any potential
4 deficiencies identified by the director or the commission and that fall
5 within the scope of the director's and the commission's review of the
6 conservation easement transaction. The preliminary opinion is advisory
7 only and is not binding for any purpose upon the ~~division~~ DEPARTMENT,
8 the director, the commission, or the department of revenue.

9 (15) The ~~division~~ DEPARTMENT may promulgate rules to
10 effectuate the purpose, implementation, and administration of this section
11 pursuant to article 4 of title 24, ~~C.R.S.~~ The authority to promulgate rules
12 includes the authority to define further in rule the administrative
13 processes and requirements, including application processing and review
14 time frames, for obtaining and issuing an optional preliminary advisory
15 opinion pursuant to subsection (14) of this section. THE AUTHORITY TO
16 PROMULGATE RULES FURTHER INCLUDES THE AUTHORITY TO ESTABLISH,
17 AFTER CONSULTATION WITH THE COMMISSION, MONTHLY CAPS ON THE
18 NUMBER OF APPLICATIONS FOR TAX CREDIT CERTIFICATES AND
19 PRELIMINARY ADVISORY OPINIONS ACCEPTED BY THE DEPARTMENT.

20 (16) Notwithstanding ~~the provisions of~~ the "Colorado Open
21 Records Act", part 2 of article 72 of title 24, ~~C.R.S.~~, the ~~division~~
22 DEPARTMENT, the director, and the commission shall deny the right of
23 public inspection of any documentation or other record related to
24 information obtained as part of an individual landowner's application for
25 a tax credit certificate or an optional preliminary advisory opinion
26 pursuant to the requirements of this section, including documentation or
27 other records related to administrative hearings and settlement discussions
28 held pursuant to subsection (12) of this section. The ~~division~~
29 DEPARTMENT, the director, and the commission may share documentation
30 or other records related to information obtained pursuant to this section
31 with the department of revenue.

32 (18) ALL FEES AND OTHER MONEY COLLECTED BY THE
33 DEPARTMENT PURSUANT TO THIS SECTION AND SECTION 12-61-724 SHALL
34 BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE
35 SAME TO THE DEPARTMENT OF REGULATORY AGENCIES CONSERVATION
36 EASEMENT CERTIFICATION CASH FUND, WHICH FUND IS HEREBY CREATED.
37 ALL MONEY CREDITED TO THE FUND SHALL BE USED AS PROVIDED IN THIS
38 SECTION OR IN SECTION 12-61-724 AND SHALL NOT BE DEPOSITED IN OR
39 TRANSFERRED TO THE GENERAL FUND OF THE STATE OR ANY OTHER
40 FUND."

41 Renumber succeeding sections accordingly.

1 Page 4, after line 17 insert:

2 "SECTION 8. In Colorado Revised Statutes, 39-22-522, amend
3 (2.5), (2.7), (3.5)(b), and (3.6)(b) as follows:

4 **39-22-522. Credit against tax - conservation easements.**

5 (2.5) Notwithstanding any other provision of this section and the
6 requirements of section 12-61-727, ~~C.R.S.~~, for income tax years
7 commencing on or after January 1, 2011, a taxpayer conveying a
8 conservation easement and claiming a credit pursuant to this section shall,
9 in addition to any other requirements of this section and the requirements
10 of section 12-61-727, ~~C.R.S.~~, submit a claim for the credit to the ~~division~~
11 ~~of real estate in the~~ department of regulatory agencies. The ~~division~~
12 DEPARTMENT shall issue a certificate for the claims received in the order
13 submitted. After certificates have been issued for credits that exceed an
14 aggregate of twenty-two million dollars for all taxpayers for the 2011 and
15 2012 calendar years, thirty-four million dollars for the 2013 calendar year,
16 and forty-five million dollars for each calendar year thereafter, any claims
17 that exceed the amount allowed for a specified calendar year shall be
18 placed on a wait list in the order submitted and a certificate shall be
19 issued for use of the credit in the next year for which the ~~division~~
20 DEPARTMENT has not issued credit certificates in excess of the amounts
21 specified in this subsection (2.5); except that no more than fifteen million
22 dollars in claims shall be placed on the wait list in any given calendar
23 year. The ~~division~~ DEPARTMENT shall not issue credit certificates that
24 exceed twenty-two million dollars in each of the 2011 and 2012 calendar
25 years, thirty-four million dollars for the 2013 calendar year, and forty-five
26 million dollars for each calendar year thereafter. No claim for a credit is
27 allowed for any income tax year commencing on or after January 1, 2011,
28 unless a certificate has been issued by the ~~division~~ DEPARTMENT. If all
29 other requirements under section 12-61-727 ~~C.R.S.~~, and this section are
30 met, the right to claim the credit is vested in the taxpayer at the time a
31 credit certificate is issued.

32 (2.7) Notwithstanding any other provision, for income tax years
33 commencing on or after January 1, 2014, no claim for a credit shall be
34 allowed unless a tax credit certificate is issued by the ~~division of real~~
35 ~~estate~~ DEPARTMENT OF REGULATORY AGENCIES in accordance with
36 sections 12-61-726 and 12-61-727 ~~C.R.S.~~, and the taxpayer files the tax
37 credit certificate with the income tax return filed with the department of
38 revenue.

39 (3.5) (b) For conservation easements donated on or after January
40 1, 2014, and subject to the restrictions of section 12-61-727 (4), ~~C.R.S.~~,
41 the executive director shall have the authority, pursuant to subsection (8)
42 of this section, to require additional information from the taxpayer or

1 transferee regarding the amount of the credit and the validity of the credit.
2 In resolving disputes regarding the validity or the amount of a credit
3 allowed pursuant to subsection (2) of this section, the executive director
4 shall have the authority, for good cause shown, to review and accept or
5 reject, in whole or in part, the amount of the credit and the validity of the
6 credit based upon the internal revenue code and federal regulations in
7 effect at the time of the donation, except those requirements for which
8 authority is granted to the ~~division of real estate~~ DEPARTMENT OF
9 REGULATORY AGENCIES, the EXECUTIVE director of the ~~division of real~~
10 ~~estate~~ DEPARTMENT OF REGULATORY AGENCIES, or the conservation
11 easement oversight commission pursuant to section 12-61-727. ~~C.R.S.~~

12 (3.6) For conservation easements donated on or after January 1,
13 2014, in order for any taxpayer to qualify for the credit provided for in
14 subsection (2) of this section, the taxpayer must submit the following in
15 a form, approved by the executive director, to the department of revenue
16 at the same time as the taxpayer files a return for the taxable year in
17 which the credit is claimed:

18 (b) Notwithstanding any other provisions of law, the executive
19 director retains the authority to administer all issues related to the claim
20 or use of a tax credit for the donation of a conservation easement that are
21 not granted to the EXECUTIVE director of the ~~division of real estate~~
22 DEPARTMENT OF REGULATORY AGENCIES or the conservation easement
23 oversight commission under section 12-61-727. ~~C.R.S.~~

24 Renumber succeeding sections accordingly.

25 Page 4, line 19, strike "section 2" and substitute "section 4".

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