

LAC

Regulation of the Profession of Forestry



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summary

Members of the General Assembly requested that the Legislative Audit Council review the Board of Registration for Foresters to determine how the profession of forestry should be regulated by the state. State law (§40-1-10) requires that a profession should be regulated only when regulation is clearly necessary to preserve the health, safety, and welfare of the public.

We could not identify a connection between the regulation of the practice of forestry and the protection of the public. The board has done little to ensure that landowners consult registered foresters or to enforce the law requiring registration. Existing civil and criminal penalties for timber theft and fraud address the potential harm from incompetent practice. The South Carolina Forestry Commission has provided assistance to landowners and increased its enforcement activities to protect the public from timber theft and fraud.

A majority of states do not regulate foresters. Only 16 states have some form of forester credentialing, and 6 of these do not regulate the practice of forestry, but provide certification of qualified foresters. Also, professional and occupational associations provide another avenue for the public to identify competent practitioners and become aware of forestry issues.

We recommend that the state should not continue to restrict the practice of forestry. The General Assembly should consider a less restrictive type of regulation, such as certification. Alternatively, the General Assembly could discontinue regulation of the forestry profession.

Background

The profession of forestry has been regulated by the state of South Carolina since 1962 when Act 367 created the Board of Registration for Foresters. As stated in S.C. Code §48-27-10(2), forestry or the practice of forestry is broadly defined as "...any professional service relating to forestry, such as consultation, investigation, evaluation, planning or responsible supervision of forest management, protection, silviculture, measurements, utilization, economics, education, or other forestry activities in connection with any public or private lands." The law restricts the use of the title of forester and limits the practice of forestry to those individuals licensed by the board with some exceptions. The following individuals are not required to be registered in order to practice forestry:

- # Landowners engaging in forestry on their own land.
- # Persons permanently employed by landowners to work on their land.
- # Foresters who work for industry.
- # Persons working under the supervision of a registered forester.

Also, employees of public agricultural agencies, such as Clemson University, may provide forestry information, education, demonstration, and conservation planning, as long as they don't represent themselves as registered foresters.

Foresters qualify for licensure in one of two ways:

- # Graduation from an approved four-year forestry curriculum, two years experience, and passage of an examination.
- # Six years experience in the practice of forestry and passage of an examination.

The board offers reciprocity to foresters licensed in other states with requirements similar to S.C.'s. The annual licensure fee is \$65. Registered foresters must complete ten continuing forestry education units annually.

The board is composed of five registered foresters and two nonforester members. Board members are appointed by the Governor for five-year terms. After many years of operating as an independent agency, in February 1994 the Board of Registration for Foresters came under the jurisdiction of the newly created Department of Labor, Licensing and Regulation (LLR). While the board retained its authority as a professional licensing entity, LLR has responsibility for administration of the agency.

The board may investigate incompetence or misconduct and suspend or revoke registrants' licenses. It may also seek injunctive relief against violators of the act, and a court may impose fines and order restitution.

Regulation of the Profession of Forestry

Members of the General Assembly requested that the Legislative Audit Council review the Board of Registration for Foresters and recommend the type of regulation needed for the forestry profession. We did not find evidence that the current laws restricting the practice of forestry have protected the public from the unauthorized or incompetent practice of forestry. We recommend that the state change the type of regulation from licensure to certification; the practice of forestry should not be limited to those who are licensed. Alternatively, the regulation of forestry and foresters could be discontinued.

Types of Regulation

S.C. Code §40-1-10 *et seq.*, enacted in 1996, concerns state regulation of occupations and provides for the administrative structure of regulatory boards under the Department of Labor, Licensing and Regulation. These statutes assert the rights of individuals to practice the profession, trade, or occupation of their choice and require that no profession can be regulated except when it is necessary to protect the public interest. The law recognizes four degrees of regulation:

1. Civil action or criminal penalties — statutory or common law penalties are in place to address existing harm or prevent future harm.
2. Registration — names of persons desiring to be listed as practitioners are maintained.
3. Certification — a state board regulates those persons who meet predetermined qualifications and only those persons are permitted to use the title; it does not limit the practice of the profession.
4. Licensure — a board grants permission to persons meeting predetermined qualifications to have exclusive use of a title and to engage in an occupation to the exclusion of unlicensed persons.

The law requires the General Assembly to consider each type of regulation in order. For example, if strengthening existing civil and criminal penalties is not sufficient to protect the public, a system of registration would be considered. Licensure is the most restrictive form of regulation and should be considered as a last resort. Although the current laws regulating foresters provide for “registrants,” this term is misleading because the law is a licensure law. Only registered foresters are allowed to practice the profession.

In order to establish the proper level of regulation, S.C. Code §40-1-10(D) lists ten factors to be considered by the General Assembly. We reviewed these factors and used them as criteria in evaluating the level of regulation appropriate for foresters. Several of these factors are discussed below.

Possible Harm to the Public

Economic losses constitute the greatest potential harm from the unauthorized or incompetent practice of forestry. A 1985 evaluation of the Georgia Rural Forestry Assistance program found that landowners assisted by professional foresters received as much as 87% more for their timber than those not assisted. If an incompetent forester or a nonforester values timber below actual market value, the economic harm occurs to the landowners. Also, the public may realize an environmental benefit through well-managed forests. However, the Board of Registration for Foresters has done very little to promote good forest management practices.

The board has taken few steps to ensure that landowners consult registered foresters. The board publishes a roster of registered foresters but does not identify the types of services provided by those foresters. Most of the information published by the board is for foresters already registered or those seeking to become registered. The board’s policies require that a newsletter be published twice a year. However, the last newsletter was published in Fall 1999. The board did provide a list of registered foresters to the South Carolina Forestry Commission (SCFC), which maintains a list of consulting foresters.

While the board has not acted to prevent harm to the public, the South Carolina Forestry Commission does provide assistance to landowners. According to a 1993 U.S. Forest Service Survey, there are 12.4 million acres of commercial forestland in S.C. Farmers and non-industrial private owners own 72% of this land. Forest industry owns approximately 19% with 9% in public ownership. SCFC employs professional foresters to provide forest management advice and assistance to landowners. For FY 00-01, 2,709 management plans were prepared for 167,240 acres. SCFC also referred 320 cases to consulting foresters and 44 to industrial foresters to assist in carrying out the plans.

Enforcement of Existing Laws

The law defines the practice of forestry broadly. Anyone giving advice to a landowner about trees could be considered to be practicing forestry, which is restricted by law to registered foresters. For example, if a landowner hires a tree cutter to remove a dead tree and the cutter notices another dead tree on the property and advises the landowner to cut that tree down, the cutter may be practicing forestry in violation of the law. However, the board has done little to enforce the law.

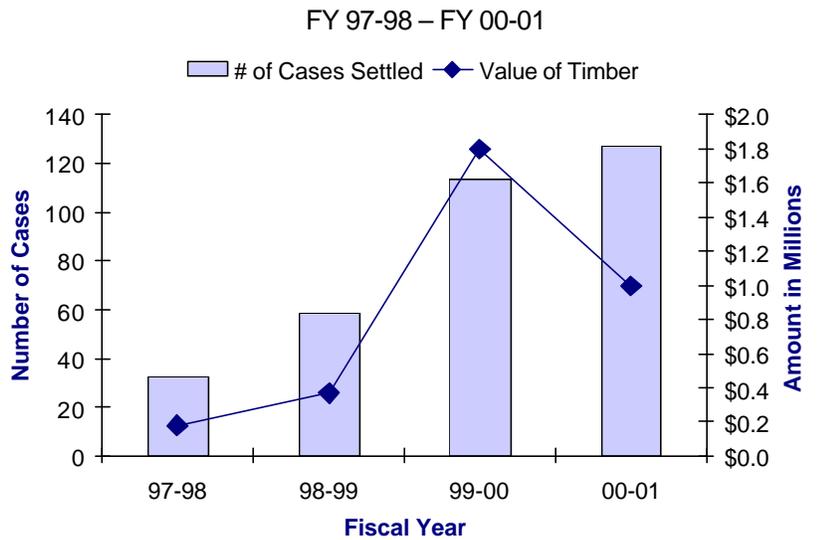
From FY 98-99 through FY 00-01, the board received eight complaints. Five of the cases concerned individuals who were practicing forestry without a license. The board issued cease and desist letters in those cases. Only three cases concerned registered foresters and two of these were dismissed. With 817 registered foresters as of October 2001, there were complaints filed against less than 1% of foresters. The only actions taken by the board were to issue cease and desist letters and one letter requiring a forester to take a continuing education class. The board did not pursue criminal or civil penalties against any person.

In contrast, the South Carolina Forestry Commission has increased its enforcement activities to protect the public from timber theft and fraud. SCFC has a law enforcement unit that investigates timber theft and timber fraud. Timber theft occurs when trees are cut down and sold without the owner's permission. Timber fraud happens when someone intentionally misrepresents the value or condition of the trees and pays the landowner less than the actual value of the trees.

- # From FY 97-98 through FY 00-01, the SCFC had an increase in cleared theft and fraud cases from 33 to 127.
- # In FY 00-01, SCFC settled 127 cases worth \$1,096,344 and had 34 cases pending worth \$324,134.
- # SCFC also sponsored 26 timber theft awareness and prevention programs to landowners.

The board has not reviewed the SCFC's timber theft and fraud cases to determine whether violations of the licensing law occurred.

S.C. FORESTRY COMMISSION TIMBER THEFT CASES SETTLED



Source: South Carolina Forestry Commission.

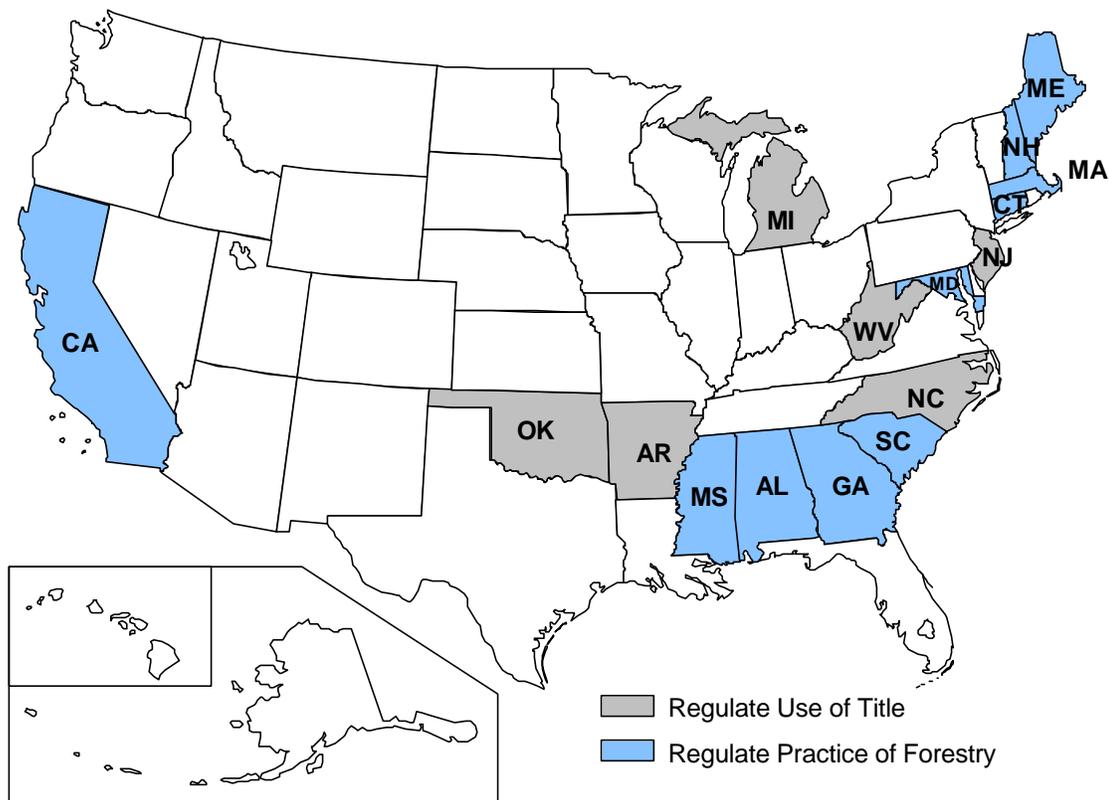
In 2001, the SCFC sponsored two 6-week radio campaigns to alert S.C. landowners and the public to the potential for timber theft and to advise those who might be concerned to contact SCFC law enforcement. SCFC also produced a handout providing information on detecting and avoiding timber theft/fraud. The brochure provides the telephone number of the SCFC law enforcement division that members of the public can call to report suspected fraud or theft.

Other States' Regulation of Foresters

A majority of states do not regulate foresters. The Society of American Foresters chartered a task force in June 2000 to evaluate its role in supporting forester licensing and registration initiatives. This report noted that only 16 states currently have some form of forester credentialing. Florida did regulate foresters but allowed the law to expire because there were not enough consumer complaints to justify retaining it.

Six of the states that credential (regulate) foresters do not regulate the practice of forestry, only the use of the title. The state issues credentials to those individuals who meet the stated requirements and only those individuals can identify themselves as foresters. By using individuals who are credentialed by the state, the public is assured that the forester meets certain standards.

STATES THAT REGULATE THE FORESTRY PROFESSION



Source: Society of American Foresters.

Professional and Occupational Associations

Professional and occupational associations provide another avenue for the public to identify competent practitioners and become aware of forestry issues. The Society for American Foresters (SAF) is a national organization representing the forestry profession. The SAF operates a certified forester program to help the public identify qualified foresters. To become a certified forester, the requirements are:

- # Accredited degree or equivalent.
- # Five years of professional experience.
- # Continuing education.

The SAF is in the process of developing a written exam to test professional core competence in forestry that will be mandatory to become a certified forester. Currently 23 foresters in S.C. are listed as certified foresters. This certification is more stringent than the state's requirements to become a registered forester. SAF certification requires a college degree and more experience, five years instead of two.

The S.C. law allows individuals without formal education in forestry to become registered with six years' experience and passage of an exam. Concerns have been expressed about S.C.'s licensure of foresters without an accredited degree in forestry. An alternative certification program that requires a degree would address those concerns.

The South Carolina Forestry Association (SCFA) is a private association of individuals, including foresters, and companies concerned with forest conservation and sustainable use of natural resources. The SCFA has county landowner groups and sponsors workshops on forestry issues. They also raise public awareness through media campaigns and education.

Previous LAC Audits

As part of the sunset review process, the LAC previously audited the Board of Registration for Foresters in 1984 and 1990. In these audits, we recommended that the General Assembly consider terminating the board, or, in the 1990 audit, enact a less restrictive form of regulation, such as certification. The LAC could not identify a link between the board and good forestry practices. We also could not attribute a lack of unscrupulous or incompetent individuals practicing forestry to the activities of the board.

The availability of the South Carolina Forestry Commission to assist landowners was also cited as another reason that the board was not needed. Although the type of regulation has not been changed, we found no change in circumstances that would justify the continued regulation of the practice of forestry. In fact, as discussed above, the Forestry Commission has increased its enforcement activities and services to the public since 1990. Also, the law establishing the criteria for regulation of professions was enacted in 1996 with stricter standards than the previous sunset law. When applying this stricter criteria to the findings in the previous audits, the conclusions concerning the appropriate regulation of foresters only become stronger.

Conclusion

S.C. Code §40-1-10(A) states that “[t]he State cannot abridge [the right of a person to engage in a lawful profession] except as a reasonable exercise of its police powers when it is clearly found that abridgement is necessary for the preservation of the health, safety, and welfare of the public.” We could identify little risk to the health, safety and welfare of the public if the practice of forestry were not regulated by the state. The existing criminal and civil penalties for timber theft and fraud address the potential harm from incompetent practice. Additionally, the current laws restricting the practice of forestry, as implemented by the board, have not protected the public from unauthorized practice, as evidenced by the low number of complaints and lack of public information disseminated by the board.

The South Carolina Forestry Commission has provided increased law enforcement and public awareness about timber theft and fraud. The Society for American Foresters also offers a certification program with requirements similar to South Carolina’s.

Recommendation

The General Assembly should consider adopting a certification law for foresters by striking S.C. Code §48-27-120(2) to allow only those who meet the qualifications to call themselves registered foresters. Alternatively, the General Assembly should consider terminating the Board of Registration for Foresters.

Audit Objective, Scope and Methodology

As requested by members of the General Assembly, we reviewed the Board of Registration for Foresters to determine how the profession of forestry should be regulated by the state.

We did not consider the operations of the Board of Registration for Foresters except for activities related to this audit objective. We interviewed board members, officials of the Department of Labor, Licensing and Regulation, registered foresters and landowners, and officials with other state agencies and private organizations associated with forestry. We reviewed board records relating to enforcement of the law. We also reviewed the board’s meeting minutes and publications. Other sources of evidence included records and publications of the South Carolina Forestry Commission, prior LAC reports, and reports and articles concerning the regulation of forestry in other states. The criteria for whether a profession should be regulated by the state and what type of regulation is appropriate are established in the South Carolina Code of Laws (§40-1-10).

This audit was conducted in accordance with generally accepted government auditing standards.

South Carolina Board of Registration for Foresters Response

The mission of the Board of Registration for Foresters (BRF) is to preserve and protect the health, safety and welfare of the public. The BRF does this by registering only those qualified by education and experience to practice forestry. The practice of forestry includes any professional service relating to forestry, such as consultation, investigation, evaluation, planning or responsible supervision of forest management, protection, silviculture, measurements, utilization, economics, education or other forestry activities in connection with any public or private lands.

The report infers that harm caused by the incompetent practice of forestry applies only to landowners and has no effect on the general population of our state. This is not true. While forest landowners are an important component of the state's citizenry numbering over 109,000, the story does not stop there. South Carolina's forests affect everyone. The forest products industry employs 55,000 people, and forest products are our state's leading cash crop, contributing \$6.9 billion to the state's economy each year. Two out of every three acres in South Carolina is forestland, 72% of which is owned by individuals and non-forestry corporations. Energy savings, clean air, carbon dioxide/oxygen exchange, clean water, erosion control, enhanced wildlife habitat and opportunities for outdoor recreation are extremely important results of sound forestry. South Carolina's environment, its citizens and forests are unalterably linked.

The report states that the BRF has taken few steps to ensure that landowners consult registered foresters or promote good forest management practices. We disagree. The BRF provides a website which contains a program called Licensee Lookup that allows the general public and landowners to check if someone is a registered forester and the status of his/her license. A hard copy of the roster can be provided if requested. The BRF website also includes information on how to apply for registration, links to board publications, board meeting schedules and minutes, the code of laws pertaining to the Registration of Foresters, along with information on how to file a complaint against a registered forester. The BRF website has links to the South Carolina Forestry Commission (SCFC) website which contains information about forest management and reporting theft and fraud involving timber. The above is being done, although its mission does not direct that the BRF insure that landowners consult registered foresters or promote good forest management practices. Other agencies have been charged with those responsibilities. The BRF is the only agency charged with regulating and communicating with forestry practitioners to see that they possess the skills and knowledge that is required of a registered forester. Practicing forestry is a complicated process that encompasses decades. An incorrect forest prescription today can have a devastating impact on the forest, the forest investment, the environment and people's health well into the future.

The SCFC's timber theft and fraud program in no way replaces the mission of the BRF; the BRF regulates the practice of forestry whereas the SCFC's program targets criminal activities. (See SCFC letter dated March 11, 2002.) The BRF licenses qualified and experienced individuals and sanctions misconduct through disciplinary proceedings. If the BRF finds that a licensee has committed fraud, deceit, gross negligence, incompetence or other misconduct in connection with any forestry practice, the BRF may sanction the licensee, require additional professional training, and/or impose restraints upon practice by the licensee. A criminal proceeding can only be prosecuted on behalf of the BRF in the circuit solicitor's office. The solicitor's office exercises sole discretion in the prosecution of these cases. The BRF may institute civil action in the Administrative Law Judge Division only for injunctive relief against any person violating the BRF's practice act, regulations or orders. Relying on the courts to prosecute offenders inadequately addresses problems after the fact. The mission of the BRF is to stop the incompetent practice of forestry before it occurs through proper licensure of qualified individuals to practice forestry.

In an effort to further protect the public, the BRF requires that each registered forester obtain ten continuing forestry education credits annually. The BRF website contains additional information as to continuing education requirements. The BRF and statute also require a registered forester to deposit money received from a forestry transaction into a separate trust or escrow account in a banking institution. The funds must remain in this account until the transaction is completed, at which time the registered forester must make a full accounting.

South Carolina's BRF has been more effective than its counterpart in some neighboring states in enforcement efforts over the last few years. For example Georgia, with twice the forested acres and 449 more registered foresters, had an almost equal number of complaints as South Carolina (9-GA, 8-SC). The data indicates, in both Georgia and South Carolina, that registration of foresters is a deterrent, which is far superior to after-the-fact criminal/civil action. This low number (8) demonstrates that the BRF is licensing qualified, competent and experienced foresters against whom few complaints are made.

Southern states that regulate the practice of forestry have many similarities. Georgia, Alabama, Mississippi and South Carolina have almost three-quarters of their forestland in private, non-industrial ownership. Large-scale private non-industrial ownership of land coupled with a rather low education ranking and vulnerable population groups, make these southern states particularly susceptible to timber theft, fraud and unsound forest management practices. According to SCFC, the elderly, widows, absentee landowners and minorities are most at risk. (See SCFC letter dated March 11, 2002.)

Board of Registration for Foresters Response (continued)

The BRF is necessary for the practice of sound forestry in South Carolina. The BRF is more important in our state today than when LAC reports were commissioned in 1984 and 1990 as land ownership is more fragmented, the elderly control more property, and the value of trees in our state continues to increase. The BRF is addressing its mission by protecting the public from unsound, detrimental forest practices and financial loss.

If the practice of forestry were unrestricted, as recommended in the LAC report, all forest landowners would be required to have forestry knowledge in order to know whether appropriate forest management practices were being prescribed. This would be inefficient, prohibitively expensive and, for all practical purposes, impossible.

The Board of Registration for Foresters is committed to ensuring that the health, safety and welfare of the public is preserved and protected.

Conclusion

Adopting a certification law while at the same time allowing anyone to practice forestry, both recommended by the LAC report, is nothing more than title protection for those who have attained a four-year degree from a school of forestry. This is far different from the current protect the public law now in effect. The result of changing the current law to a certification law would be that knowledgeable forest landowners would no doubt seek advice from competent foresters (certified foresters), but many others would fall prey to incompetent, and possibly unscrupulous individuals newly freed to practice forestry. Only by licensing the "practice of forestry", as the current Board of Registration for Foresters law does, can a landowner be assured that the forester they retain meets the standards set by the General Assembly and administered by the Board of Registration for Foresters.

Response of the South Carolina Forestry Commission by Mr. William O. Boykin, Deputy State Forester

The Legislative Audit Council's use of the Forestry Commission's data from our accountability reports and their comments on our timber theft and fraud investigations were most complimentary.

However, there are three points from the LAC's draft report, Regulation of the Profession of Forestry, on which I offer comments:

1. The report states, "The Board has not reviewed the S. C. Forestry Commission's timber theft and fraud cases to determine whether violations of the licensing law occurred."

It has not been an expectation of the Forestry Commission, nor our investigators, that the Board of Registration should have to review our timber theft and fraud cases for such information. Our investigators understand that they are to inform the Board of probable violations of the licensing law as they become aware of them. I should point out that since our timber theft/fraud investigation efforts have become more visible, our investigators very rarely find evidence of licensing violations.

2. The LAC concludes that ".....existing criminal and civil penalties for timber theft and fraud {adequately} address the potential harm from incompetent practice" {of forestry}.

If existing penalties were adequate, the Forestry Commission currently would not be working with the S. C. Forestry Association and the Timber Producer's Association to develop a bill to increase penalties and provide for other actions to deter timber theft/fraud; existing penalties ARE NOT adequate.

3. The LAC recommends adopting a certification law and allowing the unrestricted practice of forestry.

The primary victims of timber theft/fraud are the elderly, widows, minorities and absentee landowners. The Forestry Commission's challenge, not the Board's, is to reach these groups with appropriate information and encourage them to seek the assistance of a professional forester. These landowners need to have the facts on their timber's value, condition, and management options before making forest management decisions. **If existing law is changed to a certification law and the practice of forestry is unrestricted, we will be aiding unscrupulous individuals by allowing them to present themselves as knowledgeable in forestry matters, to the detriment of our most vulnerable landowner groups.** The incidence of timber theft/fraud cases in our state is already more than our investigators can handle in a timely manner, we cannot support an action that will serve to increase this crime.

The Board of Registration for Foresters is an integral element in ensuring that the landowners of our state are able to receive reliable, professional assistance in the management of our forest resources.

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