
ENGROSSED HOUSE BILL 2777

State of Washington

65th Legislature

2018 Regular Session

By Representative Jenkins

Read first time 01/16/18. Referred to Committee on Finance.

1 AN ACT Relating to improving and updating administrative
2 provisions related to the board of tax appeals; amending RCW
3 82.03.020, 82.03.030, 82.03.040, 82.03.050, 82.03.060, 82.03.070,
4 82.03.080, 82.03.090, 82.03.100, 82.03.110, 82.03.120, 82.03.140,
5 82.03.150, 82.03.160, 82.03.170, 34.05.518, and 34.05.522; adding new
6 sections to chapter 82.03 RCW; and creating a new section.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 **Sec. 1.** RCW 82.03.020 and 1967 ex.s. c 26 s 31 are each amended
9 to read as follows:

10 (1) The board of tax appeals, hereinafter (~~(in chapter 26, Laws~~
11 ~~of 1967 ex. sess.)~~) referred to as the board, (~~(shall)~~) must consist
12 of three members qualified by experience and training in the field of
13 state and local taxation, appointed by the governor with the advice
14 and consent of the senate, and no more than two of whom at the time
15 of appointment or during their terms (~~(shall)~~) may be members of the
16 same political party.

17 (2) Beginning with appointments made after the effective date of
18 this section, at least two members of the board must be attorneys
19 licensed to practice law in the state of Washington with substantial
20 knowledge of Washington tax law. At least one attorney member must
21 have substantial experience in making a record suitable for judicial

1 review. Any nonattorney member must have substantial experience in
2 the fields of residential and commercial property appraisal.

3 (3) Each member of the board must attend at least twenty hours of
4 judicial training deemed by the board to be appropriate for
5 instructing members in Washington law, evidentiary procedures, and
6 judicial practice and ethics.

7 **Sec. 2.** RCW 82.03.030 and 1967 ex.s. c 26 s 32 are each amended
8 to read as follows:

9 Members of the board (~~shall~~) must be appointed for a term of
10 six years and until their successors are appointed and have
11 qualified. (~~In case of a vacancy, it shall~~) Vacancies must be
12 filled by appointment by the governor, in accordance with section 1
13 of this act, for the unexpired portion of the term in which (~~said~~)
14 the vacancy occurs(~~:- PROVIDED, That the terms of the first three~~
15 ~~members of the board shall be staggered so that one member shall be~~
16 ~~appointed to serve until March 1, 1969, one member until March 1,~~
17 ~~1971, and one member until March 1, 1973)).~~

18 **Sec. 3.** RCW 82.03.040 and 1967 ex.s. c 26 s 33 are each amended
19 to read as follows:

20 Any member of the board may be removed for inefficiency,
21 malfeasance or misfeasance in office, upon specific written charges
22 filed by the governor, who (~~shall~~) must transmit such written
23 charges to the member accused and to the chief justice of the supreme
24 court. The chief justice (~~shall~~) must thereupon designate a
25 tribunal composed of three judges of the superior court to hear and
26 adjudicate the charges. Such tribunal (~~shall~~) must fix the time of
27 the hearing, which (~~shall~~) must be public, and the procedure for
28 the hearing, and the decision of such tribunal (~~shall be~~) are final
29 and not subject to review by the supreme court. Removal of any member
30 of the board by the tribunal (~~shall disqualify such~~) disqualifies
31 that member (~~for~~) from reappointment.

32 **Sec. 4.** RCW 82.03.050 and 2013 c 23 s 311 are each amended to
33 read as follows:

34 (1) The board (~~shall~~) must operate on (~~either a part-time or~~)
35 a full-time basis(~~, as determined by the governor. If it is~~
36 ~~determined that the board shall operate on a full-time basis, each~~
37 ~~member of the board shall receive an annual salary to be determined~~

1 by the governor. If it is determined that the board shall operate on
2 a part-time basis, each member of the board shall receive
3 compensation on the basis of seventy-five dollars for each day spent
4 in performance of his or her duties, but such compensation shall not
5 exceed ten thousand dollars in a fiscal year)). Each member of the
6 board must devote his or her full time and efforts to the efficient
7 discharge of the duties of the board.

8 (2) Board members must receive an annual salary in the same range
9 as that established for equivalent members of class four boards under
10 RCW 43.03.250.

11 (3) Each board member ((shall)) must receive reimbursement for
12 travel expenses incurred in the discharge of his or her duties in
13 accordance with RCW 43.03.050 and 43.03.060 as now existing or
14 hereafter amended.

15 **Sec. 5.** RCW 82.03.060 and 2013 c 23 s 312 are each amended to
16 read as follows:

17 ~~((Each member of the board of tax appeals:~~

18 ~~(1) Shall not)) (1) No member of the board may be a candidate for
19 ~~((nor)) or hold any other public office or trust, and ((shall)) may~~
20 ~~not engage in any occupation or business interfering with or~~
21 ~~inconsistent with his or her duty as a member of the board, ((nor~~
22 ~~shall he or she)) or serve on or under any committee of any political~~
23 ~~party; and~~~~

24 ~~(2) ((Shall not)) No member of the board may, for a period of one~~
25 ~~year after the termination of his or her membership on the board, act~~
26 ~~in a representative capacity before the board on any matter.~~

27 **Sec. 6.** RCW 82.03.070 and 1988 c 222 s 2 are each amended to
28 read as follows:

29 (1) The board ((may)) must appoint, discharge and fix the
30 compensation of an executive director, tax referees, ((a)) law
31 clerks, and such other clerical, professional and technical
32 assistants as may be necessary to properly discharge the obligations
33 of this chapter.

34 (2) The board may delegate administrative powers to the executive
35 director as the board deems appropriate and desirable for the
36 efficient discharge of its duties and obligations.

37 (3) A tax referee must be competent to perform the duties of the
38 office and have substantial experience relevant to his or her

1 responsibilities as a tax referee. Tax referees (~~shall~~) are not
2 (~~be~~) subject to chapter 41.06 RCW.

3 **Sec. 7.** RCW 82.03.080 and 2013 c 23 s 313 are each amended to
4 read as follows:

5 (~~The board shall as soon as practicable after the initial~~
6 ~~appointment of the members thereof,~~) (1) The board must meet and
7 elect from among its members a chair(~~,~~ ~~and shall~~) at least
8 biennially (~~thereafter meet and elect such a chair~~).

9 (2) A majority of the board constitutes a quorum when transacting
10 official business of the agency. The board may act when one board
11 position is vacant.

12 **Sec. 8.** RCW 82.03.090 and 1967 ex.s. c 26 s 38 are each amended
13 to read as follows:

14 (1) The principal office of the board (~~shall~~) must be at the
15 state capital, but it may sit or hold hearings at any other place in
16 the state. (~~A majority of the board shall constitute a quorum for~~
17 ~~making orders or decisions, promulgating rules and regulations~~
18 ~~necessary for the conduct of its powers and duties, or transacting~~
19 ~~other official business, and may act though one position on the board~~
20 ~~be vacant.~~) The board must provide for regular hearings in the most
21 populous county west of the crest of the Cascade mountains and east
22 of the crest of the Cascade mountains for the conduct of informal
23 proceedings.

24 (2) One or more members may hold hearings and take testimony to
25 be reported for action by the board when authorized by rule or order
26 of the board. (~~The board shall perform all the powers and duties~~
27 ~~specified in this chapter or as otherwise provided by law.~~)

28 NEW SECTION. **Sec. 9.** On or before November 1, 2018, and in
29 compliance with RCW 43.01.036, the board must provide the governor
30 and the appropriate committees of the legislature with a detailed
31 report on the following:

32 (1) The current number of pending appeals, categorized by the
33 year in which each such appeal was filed;

34 (2) The number of appeals closed, since the effective date of
35 this section, categorized by the year in which each such appeal was
36 filed;

1 (3) The number of appeals filed since the effective date of this
2 section; and

3 (4) A detailed plan, to be executed by the board, to address
4 pending appeals.

5 **Sec. 10.** RCW 82.03.100 and 1967 ex.s. c 26 s 39 are each amended
6 to read as follows:

7 The board (~~shall~~) must make findings of fact and prepare a
8 written decision in each case decided by it, and such findings and
9 decision (~~shall be~~) are effective upon being signed by two or more
10 members of the board and upon being filed at the board's principal
11 office, and (~~shall be~~) are open to public inspection at all
12 reasonable times.

13 **Sec. 11.** RCW 82.03.110 and 1967 ex.s. c 26 s 40 are each amended
14 to read as follows:

15 The board (~~shall either publish at its expense or make~~
16 ~~arrangements with a publishing firm for the publication of those of~~
17 ~~its findings and decisions which are of general public interest~~)
18 must publish those of its orders and decisions issued after the
19 effective date of this section which are of precedential value, in
20 such form as to assure (~~reasonable distribution thereof~~) such
21 decisions are available for online research, including through a
22 publicly available web site. The board may, in addition, identify,
23 publish, and make available online orders and decisions issued prior
24 to the effective date of this section that are of precedential value.

25 **Sec. 12.** RCW 82.03.120 and 1988 c 222 s 3 are each amended to
26 read as follows:

27 The board (~~shall~~) must maintain at its principal office a copy
28 (~~of its final findings and decisions. The findings and decisions~~
29 ~~shall be available for public inspection at the principal office of~~
30 ~~the board at all reasonable times~~), electronic or otherwise, of all
31 final orders and decisions until transferred to the state archives in
32 accordance with state agency retention policies and chapter 40.14
33 RCW. The orders and decisions maintained at the principal office of
34 the board must be available for public inspection at all reasonable
35 times; however, this provision may be satisfied by making the orders
36 and decisions available via a publicly available web site.

1 **Sec. 13.** RCW 82.03.140 and 2000 c 103 s 1 are each amended to
2 read as follows:

3 (~~In all appeals over which the board has jurisdiction under RCW~~
4 ~~82.03.130, a party taking an appeal may elect either a formal or an~~
5 ~~informal hearing, such election to be made according to rules of~~
6 ~~practice and procedure to be promulgated by the board:~~) (1) A party
7 filing an appeal with the board must elect either a formal or an
8 informal proceeding, according to rules of practice and procedure
9 adopted by the board. If no such election is made, the appeal must be
10 treated as an election for an informal proceeding: PROVIDED, That
11 nothing (~~shall~~) prevents the assessor or taxpayer, as a party to an
12 appeal pursuant to RCW 84.08.130, within twenty days from the date of
13 the receipt of the notice of appeal, from filing with the clerk of
14 the board notice of intention that the hearing be a formal one:
15 PROVIDED, HOWEVER, That nothing herein (~~shall~~) may be construed to
16 modify the provisions of RCW 82.03.190: AND PROVIDED FURTHER, That
17 upon an appeal under RCW 82.03.130(1)(e), the director of revenue
18 may, within ten days from the date of its receipt of the notice of
19 appeal, file with the clerk of the board notice of its intention that
20 the hearing be held pursuant to chapter 34.05 RCW.

21 (2) A responding party may file a cross appeal. In the event that
22 appeals are taken (~~from the same decision, order, or determination,~~
23 ~~as the case may be, by different parties and only one of such parties~~
24 ~~elects a formal hearing, a formal hearing shall be granted~~) by
25 different parties from the same decision, order, or determination,
26 and only one party elects a formal proceeding, the appeal must be
27 conducted as a formal proceeding.

28 **Sec. 14.** RCW 82.03.150 and 2000 c 103 s 2 are each amended to
29 read as follows:

30 In all appeals involving an informal hearing before the board or
31 any of its members or tax referees, the board (~~or its~~), any member
32 of the board, and the board's tax referees (~~shall~~) have all powers
33 relating to administration of oaths, issuance of subpoenas, and
34 taking of depositions as are granted to agencies by chapter 34.05
35 RCW. The board, (~~or its~~) any member of the board, and the board's
36 tax referees(~~, shall~~) also have all powers granted the department
37 of revenue pursuant to RCW 82.32.110. In the case of appeals within
38 the scope of RCW 82.03.130(1)(b) the board or any member thereof may
39 obtain such assistance, including the making of field investigations,

1 from the staff of the director of revenue as the board or any member
2 thereof may deem necessary or appropriate.

3 **Sec. 15.** RCW 82.03.160 and 2000 c 103 s 3 are each amended to
4 read as follows:

5 In all appeals involving a formal hearing before the board or any
6 of its members or tax referees, the board (~~((or its))~~), any member of
7 the board, and the board's tax referees (~~((shall))~~) have all powers
8 relating to administration of oaths, issuance of subpoenas, and
9 taking of depositions as are granted to agencies in chapter 34.05
10 RCW; and the board, and each member thereof, or its tax referees,
11 (~~((shall be))~~) are subject to all duties imposed upon, and (~~((shall))~~)
12 have all powers granted to, an agency by those provisions of chapter
13 34.05 RCW relating to adjudicative proceedings. The board, (~~((or its))~~)
14 any member of the board, and the board's tax referees(~~((, shall))~~) also
15 have all powers granted the department of revenue pursuant to RCW
16 82.32.110. In the case of appeals within the scope of RCW
17 82.03.130(1)(b), the board, or any member thereof, may obtain such
18 assistance, including the making of field investigations, from the
19 staff of the director of revenue as the board, or any member thereof,
20 may deem necessary or appropriate: PROVIDED, HOWEVER, That any
21 communication, oral or written, from the staff of the director to the
22 board or its tax referees (~~((shall))~~) may be presented only in open
23 hearing.

24 **Sec. 16.** RCW 82.03.170 and 1988 c 222 s 7 are each amended to
25 read as follows:

26 All proceedings, including both formal and informal hearings,
27 before the board or any of its members or tax referees (~~((shall))~~) must
28 be conducted in accordance with such rules of practice and procedure
29 as the board may prescribe. The board (~~((shall))~~) must publish such
30 rules and arrange for (~~((the reasonable distribution thereof))~~) public
31 access to the rules, including through a publicly available web site.

32 NEW SECTION. **Sec. 17.** A new section is added to chapter 82.03
33 RCW to read as follows:

34 (1) The board may require parties to attend a mandatory
35 settlement conference at any time before or after the appeal has been
36 heard.

1 (2)(a) The board must provide an informal voluntary and
2 confidential mediation process. The purpose of the mediation is to
3 help the parties reach an agreement that settles the dispute. The
4 board must adopt rules for the conduct of mediation, including
5 appropriate fees, consistent with the purpose of the mediation.

6 (b) Any person appointed as a neutral mediator must have
7 substantial experience in Washington tax law or in residential and
8 commercial property appraisals. The mediator's role is to assist the
9 parties to work together to reach a mutually agreeable dispute
10 resolution. The mediator will not issue a decision in the matter. An
11 agreement reached by the parties during the mediation must be
12 memorialized in writing and signed by the parties before the board
13 may enter an order closing the appeal.

14 (c) All mediation discussions, statements of parties, and
15 materials provided as part of the mediation are confidential, must be
16 destroyed or returned to the parties after mediation is complete, and
17 may not be used for any other purpose or in any other proceeding.

18 **Sec. 18.** RCW 34.05.518 and 2010 c 211 s 15 are each amended to
19 read as follows:

20 (1) The final decision of an administrative agency in an
21 adjudicative proceeding under this chapter may(~~(, except as otherwise~~
22 ~~provided in chapter 43.21L RCW,)~~) be directly reviewed by the court
23 of appeals (~~(either)~~):

24 (a) Upon certification by the superior court pursuant to this
25 section (~~(a)~~);

26 (b) If the final decision is from an environmental board as
27 defined in subsection (~~(3)~~) (4) of this section, upon acceptance by
28 the court of appeals after a certificate of appealability has been
29 filed by the environmental board that rendered the final decision; or

30 (c) If the final decision is from the board of tax appeals, upon
31 acceptance by the court of appeals after a certificate of
32 appealability has been filed by the board of tax appeals.

33 (2) For direct review upon certification by the superior court,
34 an application for direct review must be filed with the superior
35 court within thirty days of the filing of the petition for review in
36 superior court. The superior court may certify a case for direct
37 review only if the judicial review is limited to the record of the
38 agency proceeding and the court finds that:

1 (a) Fundamental and urgent issues affecting the future
2 administrative process or the public interest are involved which
3 require a prompt determination;

4 (b) Delay in obtaining a final and prompt determination of such
5 issues would be detrimental to any party or the public interest;

6 (c) An appeal to the court of appeals would be likely regardless
7 of the determination in superior court; and

8 (d) The appellate court's determination in the proceeding would
9 have significant precedential value.

10 (3) Procedures for certification ((shall)) under this section
11 must be established by court rule.

12 ~~((+3))~~ (4)(a) For the purposes of direct review of final
13 decisions of environmental boards, environmental boards include those
14 boards identified in RCW 43.21B.005 and the growth management
15 hearings board as identified in RCW 36.70A.250.

16 (b) An environmental board may issue a certificate of
17 appealability if it finds that delay in obtaining a final and prompt
18 determination of the issues would be detrimental to any party or the
19 public interest and either:

20 (i) Fundamental and urgent statewide or regional issues are
21 raised; or

22 (ii) The proceeding is likely to have significant precedential
23 value.

24 ~~((+4))~~ (5) The environmental board ~~((shall))~~ must state in the
25 certificate of appealability which criteria it applied, explain how
26 that criteria was met, and file with the certificate a copy of the
27 final decision.

28 ~~((+5))~~ (6) For purposes of direct review of final decisions of
29 the board of tax appeals, the board of tax appeals must issue a
30 certificate of appealability, unless it finds that:

31 (a) The proceeding is unlikely to have significant precedential
32 value; or

33 (b) Direct review by the court of appeals would be detrimental to
34 any party or the public interest.

35 (7) If the board of tax appeals denies a request for a
36 certificate of appealability, it must state in its denial which
37 criteria it applied and explain how that criteria supported its
38 decision to deny the request.

39 (8) For an appellate court to accept direct review of a final
40 decision of an environmental board, it ((shall)) must consider the

1 same criteria outlined in subsection (~~(3)~~) (4) of this section(~~(7~~
2 ~~except as otherwise provided in chapter 43.21L RCW)~~).

3 (~~(6)~~) (9) For an appellate court to accept direct review of a
4 final decision of the board of tax appeals, it must consider the same
5 criteria outlined in subsection (6) of this section.

6 (10) The procedures for direct review of final decisions of
7 environmental boards or the board of tax appeals include:

8 (a) Within thirty days after filing the petition for review with
9 the superior court, a party may file an application for direct review
10 with the superior court and serve the board of tax appeals or the
11 appropriate environmental board and all parties of record. The
12 application (~~(shall)~~) must request the board of tax appeals or the
13 environmental board to file a certificate of appealability.

14 (b) If an issue on review is the jurisdiction of the
15 environmental board or the board of tax appeals, the board with
16 jurisdiction may file an application for direct review on that issue.

17 (c) The environmental board (~~(shall have)~~) or the board of tax
18 appeals has thirty days to grant or deny the request for a
19 certificate of appealability and its decision (~~(shall)~~) must be filed
20 with the superior court and served on all parties of record.

21 (d) If a certificate of appealability is issued, the parties
22 (~~(shall)~~) have fifteen days from the date of service to file a notice
23 of discretionary review in the superior court, and the notice
24 (~~(shall)~~) must include a copy of the certificate of appealability and
25 a copy of the final decision.

26 (e) If the appellate court accepts review, the certificate of
27 appealability (~~(shall)~~) must be transmitted to the court of appeals
28 as part of the certified record.

29 (f) If a certificate of appealability is denied, review (~~(shall)~~)
30 must be by the superior court. The superior court's decision may be
31 appealed to the court of appeals.

32 **Sec. 19.** RCW 34.05.522 and 1995 c 382 s 6 are each amended to
33 read as follows:

34 The court of appeals may refuse to accept direct review of a case
35 pursuant to RCW 34.05.518 if it finds that the case does not meet the
36 applicable standard in RCW 34.05.518 (2) (~~(or (5))~~), (4), or (6).
37 Rules of Appellate Procedure 2.3 do not apply in this instance. The
38 refusal to accept such review is not subject to further appellate

1 review, notwithstanding anything in Rule 13.3 of the Rules of
2 Appellate Procedure to the contrary.

3 NEW SECTION. **Sec. 20.** A new section is added to chapter 82.03
4 RCW to read as follows:

5 (1) The board, by its order, may direct the department of revenue
6 to hold in abeyance the collection of tax from any taxpayer or any
7 group of taxpayers when a question bearing on their liability for tax
8 hereunder is pending before the board. The board may impose such
9 conditions as may be deemed just and equitable and shall require the
10 payment of interest at the rate of three-quarters of one percent of
11 the amount of the tax for each thirty days or portion thereof from
12 the date upon which such tax became due until the date of payment.

13 (2) Interest imposed under this section shall be computed on a
14 daily basis at the rate as computed under RCW 82.32.050(2). The rate
15 so computed shall be adjusted on the first day of January of each
16 year.

17 (3) The department of revenue must not impose a late payment
18 penalty if the taxpayer pays the assessment within thirty days of:

19 (a) The denial of a stay of collections by the board; or

20 (b) The expiration of an order staying the collection of such
21 assessment.

22 NEW SECTION. **Sec. 21.** A new section is added to chapter 82.03
23 RCW to read as follows:

24 (1) When any assessment or additional assessment has been made,
25 the taxpayer may obtain a stay of collection, under such
26 circumstances and for such periods as the board may by general
27 regulation provide, of the whole or any part thereof, by filing with
28 the board a bond in an amount, not exceeding twice the amount on
29 which stay is desired, and with sureties as the department deems
30 necessary, conditioned for the payment of the amount of the
31 assessments, collection of which is stayed by the bond, together with
32 the interest thereon at the rate of one percent of the amount of such
33 assessment for each thirty days or portion thereof from the date the
34 bond is filed until the date of payment.

35 (2) Interest imposed under this section shall be computed on a
36 daily basis on the amount of tax at the rate as computed under RCW
37 82.32.050(2). The rate so computed shall be adjusted on the first day
38 of January of each year.

1 NEW SECTION. **Sec. 22.** A new section is added to chapter 82.03
2 RCW to read as follows:

3 (1) Except as otherwise specifically provided by statute, the
4 board must award a qualified party that prevails in a formal hearing
5 fees and other expenses, including reasonable attorneys' fees, unless
6 the court finds that the department of revenue's or the board of
7 equalization's action was substantially justified or that
8 circumstances make an award unjust. A qualified party shall be
9 considered to have prevailed if the qualified party obtained relief
10 on a significant issue that achieves some benefit that the qualified
11 party sought.

12 (2) The amount awarded a qualified party under subsection (1) of
13 this section shall not exceed twenty-five thousand dollars. The
14 board, in its discretion, may reduce the amount to be awarded
15 pursuant to subsection (1) of this section, or deny any award, to the
16 extent that a qualified party during the course of the proceedings
17 engaged in conduct that unduly or unreasonably protracted the final
18 resolution of the matter in controversy.

19 (3) Fees and other expenses awarded under this section must be
20 paid by the board over which the party prevails from operating funds
21 appropriated to the agency within sixty days. The board shall report
22 all payments to the office of financial management within five days
23 of paying the fees and other expenses. Fees and other expenses
24 awarded by the board shall be subject to the provisions of chapter
25 39.76 RCW and shall be deemed payable on the date the board announces
26 the award.

27 (4) The following definitions apply to this section unless the
28 context clearly indicates otherwise.

29 (a) "Fees and other expenses" includes the reasonable expenses of
30 expert witnesses, the reasonable cost of a study, analysis,
31 engineering report, test, or project that is found by the court to be
32 necessary for the preparation of the party's case, and reasonable
33 attorneys' fees. Reasonable attorneys' fees shall be based on the
34 prevailing market rates for the kind and quality of services
35 furnished, except that (i) no expert witness shall be compensated at
36 a rate in excess of the highest rates of compensation for expert
37 witnesses paid by the state of Washington, and (ii) attorneys' fees
38 shall not be awarded in excess of one hundred fifty dollars per hour
39 unless the court determines that an increase in the cost of living or

1 a special factor, such as the limited availability of qualified
2 attorneys for the proceedings involved, justifies a higher fee.

3 (b) "Qualified party" means (i) an individual whose net worth did
4 not exceed one million dollars at the time the initial appeal
5 petition was filed or (ii) a sole owner of an unincorporated
6 business, or a partnership, corporation, association, or organization
7 whose net worth did not exceed five million dollars at the time the
8 initial appeal petition was filed, except that an organization
9 described in section 501(c)(3) of the federal internal revenue code
10 of 1954 as exempt from taxation under section 501(a) of the code and
11 a cooperative association as defined in section 15(a) of the
12 agricultural marketing act (12 U.S.C. 1141J(a)), may be a party
13 regardless of the net worth of such organization or cooperative
14 association.

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