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4

A Bill

HOUSE BILL 2028

5 By: Representative Perry
6

For An Act To Be Entitled

8 AN ACT TO ESTABLISH CONSISTENCY IN THE LAWS
9 CONCERNING ENGINEERS; AND FOR OTHER PURPOSES.
10

Subtitle

11 TO ESTABLISH CONSISTENCY IN THE LAWS
12 CONCERNING ENGINEERS.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code § 17-30-101 is amended to read as follows:
20 17-30-101. ~~Definition~~ Definitions.

21 As used in this chapter:

22 (1) "Consulting engineer" means a professional engineer whose
23 principal occupation is the independent practice of engineering, whose
24 livelihood is obtained by offering engineering services to the public, who
25 serves clients as an independent fiduciary, who is devoid of public,
26 commercial, and product affiliation that might tend to infer a conflict of
27 interest, and who is ~~recognizant~~ aware of his or her public and legal
28 responsibilities, and is capable of discharging them;

29 (2) "Engineer-intern" means a person who under this chapter has:
30 (A) ~~qualified~~ Qualified for ~~taken, and has passed~~ an
31 examination authorized by the board in ~~the~~ fundamental engineering subjects
32 ~~as provided in this chapter; and~~

33 (B) Passed the examination;

34 (3)(A) "Firm" means ~~any~~ a form of business entity that offers
35 professional engineering services of its licensed personnel to the public.

36 (B) "Firm" does not include an individual licensee



1 operating under his or her name;

2 (4)(A) "Practice of engineering" means ~~any~~ a service or creative
 3 work, the adequate performance of which requires engineering education,
 4 training, and experience in the application of special knowledge in the
 5 mathematical, physical, and engineering sciences to services or creative work
 6 such as consultation, investigation, evaluation, planning, and design of
 7 engineering works and systems relating to the use of air, land, water,
 8 municipal and regional planning, forensic services, engineering teaching of
 9 advanced engineering subjects or ~~courses related thereto~~ related courses,
 10 engineering surveys, and the inspection of construction ~~for the purpose of~~
 11 ~~assuring~~ to assure compliance with drawings and specifications, ~~any of which~~
 12 ~~embraces~~ that are related to public or private service or work, ~~either public~~
 13 ~~or private, in connection with~~ concerning any utilities, structures,
 14 buildings, machines, equipment, processes, work systems, or projects
 15 including ~~such~~ architectural work ~~as~~ that is incidental to the practice of
 16 engineering.

17 (B) A person practices or offers to practice engineering,
 18 within the meaning ~~and intent~~ of this chapter, who:

19 (i) Practices ~~any~~ a branch of the profession of
 20 engineering;

21 (ii) By verbal claim, sign advertisement,
 22 letterhead, card, or in any other way represents himself or herself to be an
 23 engineer;

24 (iii) Through the use of some other title implies
 25 that he or she is an engineer or that he or she is licensed under this
 26 chapter; or

27 (iv) Holds himself or herself out as able to perform
 28 or does perform ~~any~~ an engineering service or work or any other service
 29 designated by the practitioner that is recognized as engineering.

30 (C) ~~The term "practice~~ "Practice of engineering" does not
 31 include:

32 (i) ~~persons~~ Persons who ~~merely~~ operate or maintain
 33 machinery or equipment; ~~or~~

34 (ii) The act of measuring land, drawing plans,
 35 reading plans, or doing other work normally performed by a mechanic,
 36 technician, professional surveyor, or draftsman;

1 ~~(D) The practice of engineering does not include the act~~
 2 ~~of measuring land or drawing or reading plans or other work normally done by~~
 3 ~~mechanics, technicians, professional surveyors, or draftsmen;~~

4 (5) "Professional engineer" means a person who has been ~~duly~~
 5 licensed as a professional engineer by the State Board of Licensure for
 6 Professional Engineers and Professional Surveyors; and

7 (6) "Responsible charge" means direct control of, supervision
 8 of, and legal responsibility for all engineering work performed.

9
 10 SECTION 2. Arkansas Code § 17-30-203 is amended to read as follows:
 11 17-30-203. Powers, duties, and proceedings.

12 (a) The State Board of Licensure for Professional Engineers and
 13 Professional Surveyors shall:

14 (1) Meet ~~not less than~~ at least two (2) times a each year;

15 (2) Have a seal, ~~which among other things must~~ that shall be
 16 affixed to ~~every~~ each certificate of licensure; and

17 (3) Require that ~~all~~ plans, specifications, plats, and reports
 18 issued by ~~an engineer shall be~~ a professional engineer are stamped with a
 19 board-authorized design seal ~~of a design authorized by the board.~~

20 (b) ~~Within the limits prescribed by this chapter, the~~ The board:

21 (1) May determine the persons entitled to be licensed and those
 22 whose licenses shall be suspended or revoked;

23 (2) Shall fix the fees and renewal fees;

24 (3) Shall hold examinations for applicants for licensure not
 25 less than two (2) times a year; and

26 (4) May do any other things necessary to its duties, including
 27 the adoption of rules ~~and regulations~~ not inconsistent with this chapter, ~~or~~
 28 the Arkansas Constitution, and other laws.

29 (c)(1) The board may subpoena witnesses and compel their attendance
 30 and also may require the production of books, papers, and documents.

31 (2) ~~Any~~ A member of the board may administer oaths or
 32 affirmations to witnesses before the board.

33 (d) ~~All~~ The expenses incurred by the board for the administration of
 34 this chapter may be paid by the board.

35
 36 SECTION 3. Arkansas Code § 17-30-303(a)(1), concerning requirements to

1 practice engineering, is amended to read as follows:

2 (a)(1) The practice or offer to practice for others, as defined in §
3 17-30-101, by individuals licensed under this chapter through a firm is
4 permitted, ~~subject to this chapter~~ if:

5 ~~(A) One (1) or more of the officers, agents, employees,~~
6 ~~partners, members, or managers of the firm designated as being responsible~~
7 ~~for the engineering activities and decisions is a professional engineer under~~
8 ~~this chapter or under the engineering licensure law of another state,~~
9 ~~territory, or possession of the United States or the District of Columbia;~~

10 ~~(B)(A) All personnel~~ The professional engineers of the
11 firm ~~who act in its behalf as professional engineers~~ are licensed under this
12 chapter or are ~~persons lawfully~~ practicing under § 17-30-105; and

13 ~~(C)(B)~~ The firm has been issued a certificate of
14 authorization by the State Board of Licensure for Professional Engineers and
15 Professional Surveyors as hereinafter provided under this subchapter.

16
17 SECTION 4. Arkansas Code § 17-30-303(f), concerning requirements to
18 practice engineering, is amended to read as follows:

19 (f) An engineer who ~~renders~~ gives occasional, part-time, or consulting
20 engineering services to or for a firm ~~may not, for the purpose of this~~
21 ~~section,~~ shall not be designated as being responsible for the professional
22 activities of the firm unless the engineer is an officer or owner of the
23 firm.

24
25 SECTION 5. Arkansas Code § 17-30-304(f), concerning reinstatement of a
26 license, is amended to read as follows:

27 (f) A professional engineer or engineer-intern whose license ~~has not~~
28 ~~been~~ is not renewed may have it reinstated by meeting ~~all the~~ the requirements of
29 the board ~~including~~ depending on the time of nonrenewal under the rules of
30 the board. The requirements the board may consider are:

- 31 (1) ~~Paying all~~ Payment of applicable fees and penalties;
32 (2) ~~Demonstrating~~ Demonstration of continuing professional
33 competency; and
34 (3) Reexamination.

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36

1 SECTION 6. Arkansas Code § 17-30-305 is amended to read as follows:

2 17-30-305. ~~Suspension or revocation~~ Administrative violations and
3 penalties.

4 (a) The State Board of Licensure for Professional Engineers and
5 Professional Surveyors may suspend, ~~or~~ revoke, or refuse to issue, restore,
6 or renew a certificate of licensure of, or place on probation, ~~or~~ fine, or
7 reprimand, ~~or any combination of these, any~~ a professional engineer who is:

8 (1) Found guilty of:

9 (A) ~~The practice of fraud~~ Fraud or deceit in obtaining, ~~or~~
10 attempting to obtain, ~~or renew~~ renewing a certificate of licensure or
11 certificate of authorization;

12 (B) Negligence, incompetency, or misconduct in the
13 practice of engineering;

14 (C) Failure to comply with this chapter, ~~or any of the~~
15 rules or regulations pertaining to this chapter of the board, or an order of
16 the board;

17 (D) Discipline by another state, territory, the District
18 of Columbia, a foreign country, the United States Government, or any other
19 governmental agency, if at least one (1) of the grounds for discipline is the
20 same or substantially equivalent to those contained in this section;

21 (E) Failure within thirty (30) days to provide information
22 requested by the board as a result of a formal or informal complaint to the
23 board that would indicate a violation of this chapter;

24 (F) Knowingly making false statements or signing false
25 statements, certificates, or affidavits to induce payment;

26 (G) Aiding or assisting another person in violating this
27 chapter or the rules ~~or regulations pertaining to this chapter~~ of the board;

28 (H) Violating ~~any terms~~ a term of probation imposed by the
29 board; ~~or~~

30 ~~(I) using~~ Using a seal or practicing engineering while the
31 professional engineer's license is suspended, revoked, ~~nonrenewed~~ non-
32 renewed, or inactive;

33 ~~(I)(J)~~ (J) Signing, affixing the professional engineer's seal,
34 or permitting the professional engineer's seal or signature to be affixed to
35 ~~any specifications, reports, drawings, plans, design information,~~
36 ~~construction documents, or calculations, or revisions thereof that have not~~

1 ~~been prepared~~ an instrument of practice that has not been prepared or
 2 completely checked by the professional engineer or under the professional
 3 engineer's direct supervision or control;

4 ~~(J)(K)~~ (K) Engaging in dishonorable, unethical, or
 5 unprofessional conduct of a character likely to deceive, defraud, or harm the
 6 public;

7 ~~(K)(L)~~ (L) Providing false testimony or information to the
 8 board; or

9 ~~(L)(M)~~ (M) Habitual intoxication or addiction to the use of
 10 drugs or alcohol; or

11 (2) ~~Convicted~~ Found guilty of or enters a plea of guilty or nolo
 12 contendere to:

13 (A) A felony;

14 (B) A crime of which an essential element is dishonesty;

15 or

16 (C) A crime that is directly related to the practice of
 17 engineering.

18 (b) In addition to any other penalty provided in this section, a
 19 person who violates this chapter or ~~any a rule or regulation~~ of the board
 20 shall pay to the board a civil penalty in an amount determined by the board
 21 of not more than five thousand dollars (\$5,000) for each offense.

22 (c)(1) The board shall adopt rules of professional conduct under § 17-
 23 30-203 that shall be ~~made known~~ published in writing to ~~every~~ an applicant
 24 for licensure under this chapter and published in the roster.

25 (2) The publication shall constitute due notice to ~~all~~ the
 26 licensees.

27 (3) The board may ~~revise and~~ amend ~~these~~ the rules of
 28 professional conduct from time to time and shall notify each licensee in
 29 writing of the ~~revisions or~~ amendments.

30 (d) The board may:

31 (1) Revoke a certificate of authorization;

32 (2) Suspend a certificate of authorization for ~~a period of time~~
 33 ~~not exceeding~~ no more than two (2) years of ~~any a firm where~~ if one (1) or
 34 more of its officers or directors have been found guilty of ~~any~~ conduct that
 35 would authorize a revocation or suspension of ~~their certificates~~ the
 36 certificate of licensure of the officer or director under this section;

1 (3) Place a licensee on probation ~~for a period of time and~~
 2 ~~subject to such conditions as~~ under rules prescribed by the board may
 3 ~~specify; or~~

4 (4) Levy a fine ~~in an amount not to exceed~~ of not more than five
 5 thousand dollars (\$5,000) for each ~~count or separate~~ offense.

6 (e) The board may discipline nonlicensees that violate this chapter by
 7 ~~the levy of imposing~~ a fine ~~in an amount not to exceed~~ of not more than five
 8 thousand dollars (\$5,000) for each offense.

9
 10 SECTION 7. Arkansas Code § 17-30-306 is amended to read as follows:

11 17-30-306. Disciplinary action – Procedures.

12 (a) ~~A person may prefer charges of fraud, deceit, gross negligence,~~
 13 ~~incompetence, misconduct, or violation of the rules of professional conduct~~
 14 ~~against any individual licensee or against a firm holding a certificate of~~
 15 ~~authorization~~ The rules promulgated by the State Board of Licensure for
 16 Professional Engineers and Professional surveyors for disciplinary procedures
 17 shall be based on and consistent with the model rules of procedure of the
 18 Attorney General.

19 (b) ~~All charges~~ A charge, unless dismissed by the State Board of
 20 ~~Licensure for Professional Engineers and Professional Surveyors as unfounded~~
 21 ~~or trivial or unless settled informally shall~~ is to be heard by the board
 22 within ~~six (6)~~ twelve (12) months after the date on which ~~they were preferred~~
 23 the charge was submitted.

24 (c)(1) ~~The time and place for the hearings shall be fixed by the board~~
 25 ~~and a copy of the charges, together with a notice of the time and place of~~
 26 ~~hearing, shall be personally served on or mailed to the last known address of~~
 27 ~~the individual licensee or firm holding a certificate of authorization at~~
 28 ~~least twenty (20) days before the date fixed for the hearing.~~

29 (2) ~~At the hearing, the accused individual licensee or firm~~
 30 ~~holding a certificate of authorization may appear in person or by counsel, or~~
 31 ~~both, to cross-examine witnesses in his or her or its defense and to produce~~
 32 ~~evidence and witnesses in his or her or its own defense.~~

33 (3) ~~If the accused person or firm fails or refuses to appear,~~
 34 ~~the board may proceed to hear and determine the validity of the charges.~~

35 (d)(1) ~~If after such a hearing a majority of the board votes in favor~~
 36 ~~of sustaining the charges, the board may:~~

1 ~~(A) Reprimand;~~
 2 ~~(B) Refuse to issue, restore, or renew;~~
 3 ~~(C) Place on probation for a period of time; or~~
 4 ~~(D) Subject to conditions specified by the board, suspend~~
 5 ~~or revoke the individual's certificate of licensure or the firm's certificate~~
 6 ~~of authorization.~~

7 ~~(2) In addition to or in lieu of any of the items in subdivision~~
 8 ~~(d)(1) of this section, the board may fine the individual or firm in an~~
 9 ~~amount not to exceed five thousand dollars (\$5,000) for each offense.~~

10 ~~(e) An individual licensee who has a certificate of licensure or a~~
 11 ~~firm that has a certificate of authorization or a nonlicensee aggrieved by~~
 12 ~~any action of the board in levying a fine or denying, suspending, refusing to~~
 13 ~~issue, restoring, renewing, or revoking his or her certificate of licensure~~
 14 ~~or its certificate of authorization may appeal to the proper court under~~
 15 ~~normal civil procedures.~~

16 ~~(f)(1) A penalty assessed under § 17-30-305 shall be assessed in a~~
 17 ~~proceeding as provided in this section.~~

18 ~~(2)(c) Unless the amount of the A fine or civil penalty is not~~
 19 ~~paid within fifty (50) days after the order becomes final, the order shall~~
 20 ~~constitute a judgment, and the order shall be filed and execution executed~~
 21 ~~issued thereon in the same manner as any other judgment of a court of record.~~

22 ~~(g)(d) The board may, upon Upon~~ petition of an individual licensee or
 23 firm holding a certificate of authorization, the board may reissue a
 24 certificate of licensure or authorization if a majority of the members of the
 25 board vote ~~in favor of such issuance~~ to reissue the certificate of licensure
 26 or authorization.

27
 28 SECTION 8. Arkansas Code Title 17, Chapter 30, Subchapter 3 is amended
 29 to add an additional section to read as follows:

30 17-30-307. Continuing education requirements.

31 (a)(1) The State Board of Licensure for Professional Engineers and
 32 Professional Surveyors shall issue rules establishing the continuing
 33 education requirements for professional engineers and engineer-interns.

34 (2) The rules shall take into account the accessibility to
 35 applicants of the board's continuing education requirements.

36 (3) The rules may:

1 (A) Rely upon guidelines and pronouncements of recognized
2 educational and professional associations;

3 (B) Prescribe the content, duration, and organization of
4 courses;

5 (C) Provide for the relaxation or suspension of
6 requirements for:

7 (i) Applicants who certify that they do not intend
8 to engage in the practice of engineering; and

9 (ii) Instances of individual hardship;

10 (D) Exempt from licensed continuing education requirements
11 a professional engineer sixty-five (65) years of age or older with twenty-
12 five (25) or more years of experience as a practicing professional engineer;
13 and

14 (E)(i) Prescribe the manner and condition under which
15 credit shall be given for participation in a program of continuing education
16 that the board considers necessary and appropriate to maintain competency in
17 the practice of engineering.

18 (ii) Examples of programs of continuing education
19 that are acceptable include without limitation programs or seminars sponsored
20 by higher educational institutions, government agencies, and professional
21 engineering organizations and related professions.

22 (b)(1) An application for renewal of a certificate of licensure shall
23 be accompanied by evidence documenting the completion of acceptable
24 continuing education credit during the previous renewal period.

25 (2) Failure by an applicant to provide this evidence upon
26 request by the board is grounds for disciplinary action unless the board
27 determines the failure is due to a reasonable cause or the applicant was not
28 engaged in the practice of engineering during the previous renewal period.

29 (3) The board may renew a certificate of licensure despite an
30 applicant's failure to furnish satisfactory evidence of meeting continuing
31 education requirements and may issue a certificate of licensure to an
32 applicant who has previously maintained inactive status under § 17-30-304 if
33 the applicant follows a particular program or schedule of continuing
34 education prescribed by the board.

35
36 SECTION 9. Arkansas Code § 8-6-1801 is amended to read as follows:

1 8-6-1801. Management plan – Substitution.

2 If the Arkansas Department of Environmental Quality requires a person
3 to obtain an animal waste management plan, including ~~any a~~ permit
4 ~~applications~~ application, prepared by a ~~registered~~ professional engineer as
5 defined in § 17-30-101, the person may substitute a plan prepared under the
6 supervision of a ~~registered~~ professional engineer employed by one (1) of the
7 following agencies:

8 (1) A conservation district;

9 (2) ~~The Arkansas Soil and Water Conservation Commission~~ Arkansas
10 Natural Resources Commission;

11 (3) The Natural Resources Conservation Service; or

12 (4) The University of Arkansas Cooperative Extension Service.
13

14 SECTION 10. Arkansas Code § 12-80-104(b)(2), concerning seismic design
15 requirements, is amended to read as follows:

16 (2) The design of structural elements of public buildings and
17 structures shall be performed by a professional engineer ~~registered in the~~
18 ~~State of Arkansas~~ as defined in § 17-30-101 who is competent in seismic
19 structural design according to current standards of technical competence.
20

21 SECTION 11. Arkansas Code § 14-164-402(6)(B), concerning efficiency
22 savings, is amended to read as follows:

23 (B) In the case of a new performance-based efficiency
24 project, the applicable project's projected annual operational cost without
25 the implementation, construction, and installation of the performance-based
26 efficiency project as determined by a ~~licensed~~ professional engineer defined
27 in § 17-30-101 who is not affiliated or associated with the qualified
28 efficiency engineering company;
29

30 SECTION 12. Arkansas Code § 17-15-302(a)(1), concerning exemptions to
31 the architects licensing law, is amended to read as follows:

32 (1) ~~Professional engineers duly licensed or registered, A~~
33 professional engineer, as defined in § 17-30-101, but only ~~insofar as concerns~~
34 for work incidental to engineering practice, provided such persons do not if
35 the professional engineer does not use the designation "architect" or any
36 related term derived therefrom;

1
 2 SECTION 13. Arkansas Code § 17-28-201(b)(2), concerning members of the
 3 Board of Electrical Examiners of the State of Arkansas, is amended to read as
 4 follows:

5 (2) One (1) member shall be a professional engineer as defined
 6 in § 17-30-101 engaged primarily in the design or maintenance of electrical
 7 installations;

8
 9 SECTION 14. Arkansas Code § 17-38-202(a), concerning the Committee of
 10 Plumbing Examiners, is amended to read as follows:

11 (a)(1) The State Board of Health shall appoint a Committee of Plumbing
 12 Examiners consisting of seven (7) voting members, prescribe their
 13 qualifications, and assign their duties.

14 (2) Qualifications of the members of the committee shall be as
 15 follows:

- 16 (A) Two (2) of the members shall be master plumbers~~;~~;
- 17 (B) ~~one~~ One (1) shall be a journeyman plumber~~;~~;
- 18 (C) ~~one~~ One (1) shall be a professional engineer as
 19 defined in § 17-30-101 with special expertise in plumbing design~~;~~;
- 20 (D) ~~two~~ Two (2) shall be consumers~~;~~ and
- 21 (E) ~~one~~ One (1) shall be a representative of the
 22 Department of Health.

23
 24 SECTION 15. Arkansas Code § 20-7-102(a)(3), concerning the State Board
 25 of Health, is amended to read as follows:

26 (3) One (1) member shall be a ~~registered~~ professional engineer
 27 as defined in § 17-30-101 who has at least seven (7) years' experience in the
 28 practice of his or her profession in this state. This member shall be
 29 appointed from a list of not fewer than three (3) names presented by the
 30 Arkansas Society of Professional Engineers;

31
 32 SECTION 16. Arkansas Code § 22-9-101(a), concerning capital
 33 improvements of public works, is amended to read as follows:

34 (a) ~~Neither the state nor any township, county, municipality, village,~~
 35 ~~or other political subdivision of the state~~ The state or a township, county,
 36 municipality, village, or other political subdivision of the state shall not

1 engage in the capital improvement of ~~any~~ public works involving engineering
 2 or architecture for which the plans, specifications, and estimates have not
 3 been made by and the capital improvement executed under the observation of a
 4 ~~registered~~ professional engineer as defined in § 17-30-101 or architect as
 5 defined in § 17-15-102, in their respective areas of expertise, ~~who are~~
 6 ~~licensed to practice under the laws of Arkansas.~~

7
 8 SECTION 17. Arkansas Code § 23-89-515(b), concerning inspection of
 9 amusement rides, is amended to read as follows:

10 (b)(1) If manufacturer's nondestructive testing standards are
 11 unavailable for an amusement ride and the Department of Labor deems it
 12 necessary, the owner shall provide ~~such~~ the standards through a ~~registered~~
 13 professional engineer as defined in § 17-30-101 ~~or an~~ engineering agency, or
 14 ~~any an~~ individual qualified by training and experience to compile standards
 15 based ~~upon~~ on the ride's specifications and history and using accepted
 16 engineering practices.

17 (2) The professional engineer or other qualified individual
 18 shall be approved by the Director of the Department of Labor ~~and~~.

19 (3) ~~the~~ The amusement ride ~~must~~ shall meet the criteria ~~so~~
 20 established under this subsection.

21
 22 SECTION 18. Arkansas Code § 23-93-207(5)(B), concerning documents
 23 required by continuing care providers, is amended to read as follows:

24 (B) The map shall be drawn to scale, signed, and sealed by
 25 a ~~licensed~~ professional engineer as defined in § 17-30-101 or a professional
 26 surveyor as defined in § 17-48-101;

27
 28 SECTION 19. Arkansas Code § 27-72-311(2), concerning county engineers,
 29 is amended to read as follows:

30 (2)(A) The county has employed ~~or retained~~ a county engineer who
 31 is a ~~registered~~ professional engineer as defined in § 17-30-101 to act ~~for~~
 32 ~~and~~ on behalf of the county as a whole.

33 (B) ~~However, if any~~ If a county judge is a ~~registered~~
 34 professional engineer as defined in § 17-30-101, the county judge may perform
 35 the duties provided ~~herein~~ in this section for the county engineer.

36 (C) ~~Any~~ A county may contract with the Arkansas State

1 Highway and Transportation Department for engineering services ~~in lieu of~~
2 instead of employing ~~or retaining~~ a county engineer.

3 (D) The cost of employing ~~or retaining~~ a county engineer,
4 or contracting with the ~~Arkansas State Highway and Transportation Department~~
5 department for engineering services, ~~shall be~~ is paid from the county road
6 funds of the county and ~~shall not be~~ is not payable from the County Aid Road
7 Fund.

8 (E) Engineering costs on federal-aid projects may be
9 included as a cost item of ~~such~~ the projects;

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