

# Virginia Legislative Record

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JULY 2008

## HJR 75: Joint Subcommittee Studying Local Incentives Provided to Private Businesses for Economic Development

**June 23, 2008**

The first meeting of the Joint Subcommittee Studying Local Incentives Provided to Private Businesses for Economic Development Purposes was held at the General Assembly Building in Richmond. The joint subcommittee members elected Delegate Mark Cole as chair and Senator Mary Margaret Whipple as vice-chair.

The charge of the joint subcommittee is to:

- Determine all incentives that localities are permitted to provide to private businesses.
- Evaluate the impact of incentives on the smaller, local competitors of the businesses receiving the incentives.
- Evaluate the effectiveness of the incentives that are provided.

### Presentations

Gary McLaren, Deputy Director, Virginia Economic Development Partnership

The presentation provided an overview of incentives that localities in the Commonwealth are permitted to offer.

Gary McLaren reviewed the five primary factors that businesses include in their consideration of locations: available workforce, suitability of the site or building, general infrastructure, business climate, and quality of life. Many businesses have developed weighted indexes to quantify these factors. Mr. McLaren stated that different industries may consider these factors in

different ways. He then discussed common incentives at the local level that he grouped in six general categories: product (the land for the site, utilities, roads and zoning); tax and utility rates and classifications; grants; loan programs and/or financing; creation of special zones, such as technology zones, tourism zones, etc.; and project management assistance.

Louellen Brumgard, Virginia Department of Housing and Community Development

Louellen Brumgard provided a brief overview of the Virginia Enterprise Zone Program. Ms. Brumgard reviewed the objective of the Program: a means to stimulate job creation, private investment, and revitalization through a combination of state and local incentives. The individual enterprise zones are designated by the Governor based on a competitive application process. While the competition for the designations is open to all localities, the review criteria are designed to favor distressed localities. Fifty percent of the score is based on three-year averages of the localities' unemployment rate, median adjusted gross income, and percentage of public school students receiving free or reduced price lunches.

Based on legislation passed during the 2005 Session, the Program has transitioned from tax credits to grants. The Program offers two grants, one for job creation and one for real property investment. Ms. Brumgard noted that funding is subject to appropriation and

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*For more information, visit study websites. DLS staff members maintain a comprehensive website on each study that contains a complete summary of each meeting and links to additional study information, handouts, and resources.*

Five primary factors considered by businesses when looking at new locations include available workforce, suitability of site or building, general infrastructure, business climate, and quality of life.

that currently the grants are being pro-rated. The Program benefits both large and small businesses. Two-thirds of applicants for job creation grants have less than 100 employees and one-third have less than 25 employees. Ms. Brumgard indicated that for real property investment grants, one-third of the applicants had investments of less than \$250,000.

## Future Meetings

The members discussed possible meeting topics for the future, which include:

- Information on local incentives in other states with emphasis to be placed on surrounding states and states with which Virginia is in regular competition for businesses.
- Discussion of reliable measures for determining the effectiveness of incentives.
- An overview on the activities of the state's 14 economic development authorities.
- Information on what is being done to assist localities in rural and other areas to expand broadband infrastructure and access.

- Use of incentives from the perspective of economic development professionals.
- Evaluation of the impact on existing businesses that do not get the incentives.

The next meeting date will be posted on the study website and the General Assembly calendar as soon as information is available.

HJR 75

### *Joint Subcommittee Studying Local Incentives Provided to Private Businesses for Economic Development Purposes*

Delegate Mark Cole, Chairman

Amigo Wade, DLS Staff  
[study website](#)

<http://dls.state.va.us/incentives.htm>

(804) 786-3591

## HJR 195: Joint Subcommittee Studying Transfer of Development Rights

July 14, 2008

The Joint Subcommittee Studying Transfer of Development Rights held its initial meeting in Richmond on July 14, 2008. Delegate Matthew J. Lohr was elected chair and Senator Mark D. Obenshain was elected vice-chair.

### Background

Section 15.2-2316.1 of the Code of Virginia defines transfer of development rights (TDR) as the process by which development rights from a sending property are affixed to one or more receiving properties. Virginia's TDR statutes were enacted in 2006 but have not yet been utilized by any Virginia locality. HJR 195 instructs the joint subcommittee to "examine ways in which the existing TDR legislation may be modified to make it more appealing to localities."

The members of the joint subcommittee will examine the following issues:

- Establishment of a bank of credits that can be sold in advance of a developer needing to purchase them for a rezoning.

- Incentives for farmers to purchase additional farmland with the money they receive from selling development credits.
- Specific benefits developers would gain by participating in the TDR program.
- Use of a statewide system of development credits.

### Presentations

Lindsay Potts, Virginia Farm Bureau

Lindsay Potts noted that Virginia has seen significant farmland acreage lost to development in recent years and that large additional amounts of farmland are currently at risk due to the amount of land expected to transfer ownership in the next 10 years. Ms. Potts stated that the Farm Bureau would like to see the TDR statutes improved to provide a more consistent process for the transfer of development rights, including the creation of a development rights "bank" and the ability of a property owner to work through localities rather than a developer in transferring the rights.

Ted McCormack, Virginia Association of Counties

Ted McCormack stated that there is much interest in the TDR program among localities. Mr. McCormack also agreed that authorization of a TDR bank would be one of the most important issues in determining whether the TDR program would be successfully utilized. He also noted that TDRs are just one of several tools that can be used to preserve farmland.

Barrett Hardiman, Home Builders Association of Virginia (HBAV)

Barrett Hardiman informed the members that although his association was historically opposed to TDRs, it did not object to the current TDR law because of certain protections built into the law. Specifically, the HBAV wants to assure that the TDR program continues to be optional for developers, that the transfer process is a simplified, nonpolitical administrative process, and that the transferred rights retain perpetual protection.

## Next Meeting

The next meeting of the joint subcommittee will be Friday, September 5, 2008, at 10:00 a.m. in House Room C of the General Assembly Building.

HJR 195

### Joint Subcommittee Studying Transfer of Development Rights

Delegate Matthew Lohr, Chair

Jeff Sharp, DLS Staff

[study website](#)

[http://dls.state.va.us/Transfer\\_Dev%20Rights.htm](http://dls.state.va.us/Transfer_Dev%20Rights.htm)

(804) 786-3591

*Transfer of development rights is the process by which development rights from a sending property are affixed to one or more receiving properties.*

## From the Director's Desk - *Did You Know?*

*"Did You Know?"* will appear in each issue of the *Virginia Legislative Record*. The article will feature important topics or interesting facts relevant to the Virginia legislature. For general questions or issue suggestions, please contact Tomi Dechant at (804)786-3591 or [tdechant@leg.state.va.us](mailto:tdechant@leg.state.va.us).

### Our Anthem and Pledge

Appropriate conduct during the national anthem and the Pledge of Allegiance can be confusing and has led to several discussions with and among members of the General Assembly at recent conferences and meetings. As leaders and as citizens, proper etiquette during these solemn occasions is imperative.

According to the United States Code at Title 36 § 301 Section B, "During a rendition of the national anthem when the flag is displayed all present except those in uniform should stand at attention facing the flag with the right hand over the heart; men not in uniform should remove their headdress with their right hand and hold the headdress at the left shoulder, the hand being over the heart; individuals in uniform should give the military salute at the first note of the anthem and maintain that position until the last note; and when the flag is not displayed, all present should

face toward the music and act in the same manner they would if the flag were displayed."

Similarly for the Pledge of Allegiance, according to the United States Code Title 4 § 4, "When not in uniform men should remove any non-religious headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Persons in uniform should remain silent, face the flag, and render the military salute." It is also permissible for veterans and members of the military not in uniform under Title 4 § 9 to salute as well.

Whether at a baseball game, a public assembly, or a conference room filled with attendees from across the country, all citizens, especially elected officials and their staff members, should have a clear understanding of proper manners during a rendition of the national anthem or the Pledge of Allegiance.

- E.M. Miller, Director, DLS

## COMMISSIONS AND COUNCILS

Legislative Commissions and Advisory Councils are also staffed or monitored by Division of Legislative Services and some, such as FOIA and JCOTS and others that are featured in the Legislative Record, have independent, comprehensive websites that contain a wealth of information regarding research, proposed legislation, and ongoing activities and scheduled workshops. Be sure to visit each respective Commission and Council website for more detailed information.

### JCOTS - Open Education Subcommittee Meeting 7/8/08

The JCOTS Open Education Subcommittee meeting was held on July 8, 2008, with Senator Watkins as chair.

#### PRESENTATIONS

##### Patrick Cushing, JCOTS Staff Attorney

Patrick Cushing gave a brief overview of the role of the Joint Commission on Technology and Science and the Open Education Subcommittee. He explained open educational resources as “an Internet empowered worldwide community effort to create an education commons” (Wikipedia). He noted that resources range from learning content and course management programs, to software tools and implementation resources such as intellectual property licenses. The benefits of resources include reduction of costs to local school divisions across the Commonwealth and increased capability for teachers and schools to provide innovative content.

##### Michelle Vucci, Virginia Department of Education

Mrs. Vucci explained the impact of three bills passed by the 2008 Session of the General Assembly on the procurement process for textbooks for K-12 by the Commonwealth. Companion bills HB 137 and SB 356 updated the Textbook Procurement Act by removing obsolete sections, clarifying that the State Board of Education must publish a list of resources on its website, removing the requirement that a textbook remain in use for six years, and adding a definition of “textbook” that defines textbook as both print and electronic resources. HB 354 was identical to HB 137 and SB 356, but added a provision that allows private schools to purchase from local school board contracts if the local school board and publisher agree.

Mrs. Vucci also demonstrated updates to the VDOE website, which allows users to view procurement and pricing information for approved textbooks. The website includes a link to a spreadsheet viewable by subject and grade level, consolidating information and simplifying use of information that was previously available. The DOE will be providing school superintendents with a memorandum to publicize the new and improved website. Additionally, there will be a new email address for school officials who have questions about the textbook procurement process.

##### Mark Burnet, Director of Virginia Open Education Foundation

Mark Burnet presented to subcommittee members two draft bills for consideration by the subcommittee.

The first proposal was a resolution that would request the Superintendent of Public Instruction to encourage teachers who create educational content to use the Creative Commons Attribution Share-alike U.S. license or place the materials in the public domain.

The second proposal would create an open educational resource center in the Commonwealth. This proposal is based on similar legislation in California and would establish a clearinghouse for open educational materials and provide guidance to those teachers in the Commonwealth who would like to use or develop open education content.

#### WORK PLAN

One of the main topics of discussion during the meeting was the accessibility of content contained in past SOL tests released by the DOE. Although DOE provides the tests in an Adobe PDF format, Mr. Burnet claims it is difficult for teachers to manipulate the test and individual questions to create new learning content for the classroom. The subcommittee discussed the inclusion of a copyright notice and how that may be seen by teachers as a barrier to further use of SOL test questions. Mr. Burnet clarified that a Creative Commons 3.0 Share-alike license would protect a copyright from resale, just not reproduction or adaptation for noncommercial uses. Staff will review the copyright policies of the Commonwealth and provide an update at the next meeting and the DOE has agreed to work with Mr. Burnett to see what alternatives may exist for releasing SOL test questions.

The chairman remarked that the subcommittee should be more focused on bringing about a paradigm shift of how educational materials are made available, for example paper to digital.

Staff updated the subcommittee on a previous meeting with the Secretary of Technology, Aneesh Chopra, concerning textbook procurement. Secretary Chopra suggested registering textbook publishers on eVA in order to encourage greater competition among publishers. To gauge initial feedback from the local school boards, Staff sent questions through the Virginia School Board Association inquiring whether the local boards would be interested in using eVA to purchase textbooks. Staff will also examine possible interest from print-on-demand industries in the open education movement.



Dennis Reynolds, NBS Solutions, reported that Adobe is developing the technology to make PDF documents "livable" rather than static files. Such technology is not yet publicly available, but he offered to work with the subcommittee in researching options for distribution of state materials, such as the SOL tests.

The chairman requested John Felton of WCVE-PBS to provide a brief summary of his work to bring education content to Virginia's public schools. Mr. Felton reported that public television networks have over the past 40 years amassed a huge collection of educational videos that are being converted into a digital library. WCVE also has a SOL correlation database, so with digital conversion many materials could be made available to teachers and searchable by SOL content. Given current funding and support, it is estimated that it will take PBS 20 years to convert all of its materials to electronic format.

#### NEXT MEETING

A PBS presentation on available services, costs of conversion to electronic media, and the possibilities of putting digital information on a server; the Pearson Publishing presentation; a more detailed report on Creative Commons Licenses; and the results from polling questions sent to local school boards are on the agenda for the next meeting. Information on the date and location of the next meeting will be posted on the JCOTS website and the General Assembly calendar as soon as available.

#### JCOTS, OPEN EDUCATION SUBCOMMITTEE

THE HONORABLE JOHN WATKINS, CHAIRMAN

PATRICK CUSHING, DLS STAFF

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website—<http://dls.state.va.us/JCOTS>

## Meeting Calendar for August - September '08

<i>Study/Commission Name</i>	<i>Meeting Information</i>	<i>DLS Staff</i>
Freedom of Information Advisory Council	1:00 p.m., Tuesday, August 5, 2008 General Assembly Building, House Room D	Maria Everett Alan Gernhardt
Coal and Energy Commission	1:00 p.m., Thursday, August 7, 2008 Wytheville Meeting Center, 333 Community Boulevard, Wytheville, Virginia	Ellen Porter
Joint Subcommittee Studying Science, Math and Technology Education	10:00 a.m., Wednesday, August 13, 2008 General Assembly Building, House Room C	Patrick Cushing Nikki Cheuk
JCOTS Transportation Technologies Advisory Committee	10:00 a.m., Thursday, August 14, 2008 General Assembly Building, 6th Floor Conference Room	Patrick Cushing
Virginia Disability Commission	1:00 p.m., Thursday, August 14, 2008 General Assembly Building, House Room D	Jessica Eades
Study on Ways the Commonwealth May Work with Virginia's Private Nonprofit Colleges to Meet State Higher Education Needs	12:00 p.m., Monday, August 18, 2008 General Assembly Building, House Room C	Nikki Cheuk Jessica Eades
Joint Subcommittee Studying Biosciences and Biotechnology	10:00 a.m., Tuesday, August 19, 2008 General Assembly Building, House Room D	Patrick Cushing Lisa Wallmeyer
Joint Subcommittee to Study the Benefits of Adopting a Single Sales Factor	10:00 a.m., Wednesday, August 27, 2008 General Assembly Building, House Room D 10:00 a.m., Tuesday, September 30, 2008 Location TBA	Joan Putney Mark Vucci
Joint Subcommittee Studying Transfer of Development Rights	10:00 a.m., Friday, September 5, 2008 General Assembly Building, House Room C	Jeff Sharp Amigo Wade
Joint Subcommittee Studying the Hampton Roads Transportation Network	10:00 a.m., Wednesday, September 10, 2008 Virginia Modeling, Analysis and Simulation Center 1030 University Boulevard, Suffolk, Virginia	Alan Wambold Caroline Stalker
Virginia Housing Commission	For ongoing meeting information see website at: <a href="http://dls.state.va.us/HousComm.HTM">http://dls.state.va.us/HousComm.HTM</a>	Elizabeth Palen

*Meetings may be added at anytime, so please check the General Assembly and DLS websites for updates.*

## REGULATORY ALERT

### A CONVENIENT GUIDE TO REGULATORY ACTIVITY IN THE COMMONWEALTH

The Regulatory Alert is intended to assist General Assembly members as they keep up with the myriad regulations being proposed by agencies in the Commonwealth. The goal of this project is to provide a timely, simple, and accurate summary of the rules that are being proposed by agencies, boards, and commissions. Highlighting regulations when they are published as "proposed regulations" gives General Assembly members notice that the critical public participation phase of the rulemaking process is well underway. It is during the public participation process that the questions of an Assembly member or constituent may be most effectively communicated to the agency and examined by the individuals crafting the regulatory proposal.

The Regulatory Alert is not intended to be a substitute for the comprehensive information on agency rulemaking activity that is currently published biweekly in the *Virginia Register of Regulations* or the notification services offered by the Regulatory Town Hall website maintained by the Department of Planning and Budget. It is hoped that the Legislative Record will assist all members as they monitor the development, modification, and repeal of administrative rules in the Commonwealth. Access the *Virginia Register of Regulations* online at <http://legis.state.va.us/codecomm/register/regindex.htm> or contact [epalen@leg.state.va.us](mailto:epalen@leg.state.va.us) or the Code Commission staff at (804) 786-3591 for further information.

## TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

### STATE CORPORATION COMMISSION

#### Proposed Regulation

**REGISTRAR'S NOTICE:** The State Corporation Commission is exempt from the Administrative Process Act in accordance with §2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

**10VAC5-200. Payday Lending (amending 10VAC5-200-10, 10VAC5-200-20, 10VAC5-200-40, 10VAC5-200-60, 10VAC5-200-70, 10VAC5-200-80; adding 10VAC5-200-33, 10VAC5-200-35, 10VAC5-200-110, 10VAC5-200-120).**

A public hearing will be held August 5, 2008, at 10 a.m. at the State Corporation Commission Courtroom, 1300 East Main Street, Richmond, Virginia.

*The proposed amendments incorporate changes made by Chapter 849 of the 2008 Acts of Assembly (Chapter 849), which generally amends the Payday Loan Act effective January 1, 2009.\* The proposed amendments (i) specify the information that licensees are required to collect and transmit to the payday lending database and establish rules governing what licensees must do if they are unable to access the database at the time that they are required to transmit information to the database; (ii) limit licensees' access to the database and require licensees to transmit limited information to the database in connection with certain loans that remain outstanding as of January 1, 2009; (iii) instruct licensees how to calculate a borrower's pay cycle and minimum loan term, and require licensees to return the check given as security for a loan to a borrower within three business days of the loan being repaid in full with cash or good funds instrument; (iv) establish the rules applicable to extended payment plans and extended term loans, including when*

*these types of repayment arrangements may be elected by borrowers; (v) require licensees to provide consumers with oral and written notices regarding extended payment plans and extended term loans, and address the waiting periods associated with these repayment arrangements; (vi) contain definitions for "member of the military services of the United States" and "other dependent of a member of the military services of the United States," and establish the process by which licensees are required to determine whether an individual is a member of the military services of the United States, or the spouse or other dependent of a member of the military services of the United States; (vii) make various changes to 10VAC5-200-40, which relates to the prepayment of a payday loan, as well as 10VAC5-200-60, which pertains to the required posting of charges; and (viii) revise the text of the payday lending pamphlet, which licensees must give to all consumers prior to entering into payday loan transactions.*

• *Subsection A of §6.1-453.1 of the Code of Virginia becomes effective on July 1, 2008.*

For more information contact: E.J. Face, Jr., Bureau of Financial Institutions Commissioner, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9659, FAX (804)371-9416, or email [joe.face@scc.virginia.gov](mailto:joe.face@scc.virginia.gov).

## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### Proposed Regulation

**12VAC5-490. Virginia Radiation Protection Regulations: Fee Schedule (amending 12VAC5-490-10, 12VAC5-490-20).**

Public comments may be submitted until 5 p.m. on September 19, 2008.

*The proposed amendments increase X-ray machine registration fees and inspection fees for most X-ray machines; decrease inspection fees for veterinary, podiatric, and cephalometric machines; and include additional types of X-ray machines in the inspection fee schedule.*

For more information contact: Les Foldesi, Director, Bureau of Radiological Health, Department of Health, 109 Governor Street, Room 730, Richmond, VA 23219, telephone (804) 864-8151, FAX (804) 864-8155, or email les.foldesi@vdh.virginia.gov.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PSYCHOLOGY

#### Proposed Regulation

#### **18VAC125-20. Regulations Governing the Practice of Psychology (amending 18VAC 25-20-121, 18VAC125-20-122).**

Public comments may be submitted until 5 p.m. on September 19, 2008.

*The proposed action reduces the number of continuing education hours that must be gained face-to-face, include real-time interactive hours as face-to-face, recognize the education value in preparation for presentations or publication, expand the listing of approved providers, and eliminate the process and fee for board approval of individual courses and providers.*

For more information contact Evelyn B. Brown, Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804)367-4697, FAX (804)327-4435, or email evelyn.brown@dhp.virginia.gov.

## TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

### STATE CORPORATION COMMISSION

#### Proposed Regulation

**REGISTRAR'S NOTICE:** The State Corporation Commission is exempt from the Administrative Process Act in accordance with §2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

#### **20VAC5-414. Bad Check Charges and Late Payment Charges (adding 20VAC5-414-10 through 20VAC5-414-70).**

Public comments may be submitted until August 21, 2008.

*The proposed regulations govern local exchange telecommunications carriers in the determination and calculation of charges for bad or dishonored checks and payments not made by the customer by the stated due date on his bill. The regulations address bad check charges and late payment charges for local exchange telecommunications carriers notwithstanding 20VAC5-10-10. The proposed regulations define terms used and set forth a basis for understanding the proposed chapter; set forth the ability of a local exchange telecommunications carrier to impose a charge for checks made in payment by a customer that are dishonored by the payor bank, and set forth a maximum charge that may be imposed; set forth the ability of a local exchange telecommunications carrier to assess a late payment charge for bills that are not paid by the due date stated on the bill and set forth calculation options for the charge; and set forth the*

*commission's authority to grant exceptions to any provision of the rules, which is consistent with and similar to the language used in other chapters. The proposed regulations reflect changes suggested by the Virginia Telephone Industry Association in Case No. PUC-2008-00037, "Application of the Virginia Telecommunications Industry Association for change in 20VAC5-10-10 regarding bad check charges and late payment charges."*

For more information contact: Katie Cummings, Deputy Director, Division of Communications, State Corporation Commission, P.O. Box 1197, 1300 East Main Street, Richmond, VA 23218, telephone (804)371-9101, FAX (804)371-9069, or email katie.cummings@scc.virginia.gov.

#### Proposed Regulation

**REGISTRAR'S NOTICE:** The State Corporation Commission is exempt from the Administrative Process Act in accordance with §2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

#### **20VAC5-427. Rules for Local Exchange Telecommunications Company Service Quality Standards (repealing 20VAC5-427-10 through 20VAC5-427-170).**

#### **20VAC5-428. Rules Governing Local Exchange Telecommunications Carrier Retail Service Quality (adding 20VAC5-428-10 through 20VAC5-428-120).**

A public hearing will be held September 25, 2008, at 10 a.m. at the State Corporation Commission Courtroom, Richmond, Virginia. Written public comment may be submitted until 5 p.m. on August 21, 2008.

*Rules Governing Local Exchange Telecommunications Carrier Retail Service Quality, 20VAC5-428, replace the existing Rules for Local Exchange Telecommunications Company Service Quality Standards, 20VAC5-427. The regulations apply to all certificated local exchange carriers and prescribe a minimum acceptable level of quality of service under normal operating conditions. The regulations require the restoration of private property that has been disturbed as a result of construction or maintenance operations. They require companies with 10,000 or more network access lines to file quarterly performance reports, which can be publicly available, covering four performance standards including the restoration of out-of-service conditions, responding to customer calls, installing telephone service, and meeting scheduled customer appointments. They also set forth an enforcement and sanction process to address any concern for inadequate service.*

For more information contact Steven Bradley, Department Director, Division of Communications, State Corporation Commission, Richmond, Virginia, telephone (804)371-9420, FAX (804)371-9069, or email steve.bradley@scc.virginia.gov.

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