**A** **BILL**

TO AMEND CHAPTER 146, TITLE 59, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE STATE SCHOOL FACILITIES BOND ACT, BY ADDING SECTION 59‑146‑55 SO AS TO PROVIDE THAT BEGINNING WITH FISCAL YEAR 2009‑2010 AND CONTINUING FOR A PERIOD OF FOUR FISCAL YEARS THEREAFTER, AN ADDITIONAL THREE HUNDRED MILLION DOLLARS IN SCHOOL FACILITIES BONDS MAY BE ISSUED OVER THIS FIVE YEAR PERIOD, AND TO PROVIDE THAT THESE BONDS MUST BE ALLOCATED TO SCHOOL DISTRICTS BASED ON A FORMULA WHICH GIVES PRIORITY CONSIDERATION TO DISTRICTS WITH HIGHER PERCENTAGES OF STUDENTS ELIGIBLE FOR FREE OR REDUCED PRICED LUNCHES, THE RELATIVE FINANCIAL ABILITY OF A DISTRICT TO FUND NEW SCHOOL FACILITIES OR IMPROVE EXISTING FACILITIES, AND REMAINING CAPACITY OF A DISTRICT TO ISSUE ADDITIONAL CAPITAL IMPROVEMENT BONDS; AND TO AMEND TITLE 59, BY ADDING CHAPTER 75 SO AS TO ENACT THE “SOUTH CAROLINA SCHOOL FACILITIES INFRASTRUCTURE ACT”, TO ESTABLISH THE SOUTH CAROLINA SCHOOL FACILITIES INFRASTRUCTURE AUTHORITY, AND TO PROVIDE FOR ITS GOVERNANCE, POWERS, AND DUTIES; TO AUTHORIZE THE AUTHORITY TO PROVIDE LOANS AND OTHER FINANCIAL ASSISTANCE TO SCHOOL DISTRICTS TO FINANCE SCHOOL FACILITIES; TO ALLOW STATE APPROPRIATIONS, GRANTS, LOAN REPAYMENTS, AND OTHER AVAILABLE AMOUNTS TO BE CREDITED TO THE FUND OF THE AUTHORITY; TO AUTHORIZE LENDING TO AND BORROWING BY SCHOOL DISTRICTS THROUGH THE AUTHORITY; AND TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION BONDS BY THE AUTHORITY TO BE USED FOR ITS STATED PURPOSES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Part I

School Facilities Bonds

SECTION 1. Chapter 146, Title 59 of the 1976 Code is amended by adding:

“Section 59‑146‑55. In addition to the provisions of Section 59‑146‑50, beginning with fiscal year 2009‑2010 and continuing for a period of four fiscal years thereafter, an additional three hundred million dollars in state school facilities bonds may be issued under this chapter over this five‑year period. These bonds must be allocated to school districts based on a formula implemented by regulation of the Department of Education which gives priority consideration to districts with higher percentages of students eligible for free or reduced priced lunches, the relative financial ability of a district to fund new school facilities or improve existing facilities as determined under the Education Finance Act, and remaining capacity of a district to issue additional capital improvement bonds.”

Part II

School Facilities

SECTION 2. Title 59 of the 1976 Code is amended by adding:

“CHAPTER 75

South Carolina School Facilities Infrastructure Act

Article 1

General Provisions

Section 59‑75‑100. This chapter may be referred to as the ‘South Carolina School Facilities Infrastructure Act’.

Section 59‑75‑110. The General Assembly finds that:

(1) Adequate school facilities are an important element in the ability of a community to provide for the education of its children and the resulting continuing economic growth and development that will provide jobs for the citizens of South Carolina.

(2) The State of South Carolina has a need for a uniform educational facilities information and accountability system.

(3) Traditional school facilities financing methods in South Carolina cannot generate the resources necessary to fund the cost of school facilities which are required for an adequate education system throughout our State so that every student in this State can achieve twenty‑first century skills and knowledge by attending school at state‑of‑the‑art facilities.

(4) The State of South Carolina has the ability to provide for alternative methods of financing school projects which when combined with existing financing sources and methods will allow the State to address its school facilities needs in a more timely and responsive manner.

(5) Loans and other financial assistance to school districts can play an important part in meeting school facility needs. This assistance is in the public interest for the public benefit and good as a matter of legislative intent.

(6) The chapter provides an instrumentality to assist school districts in constructing and improving school facilities by providing loans and other financial assistance.

Section 59‑75‑120. (A) There is created a body corporate and politic and an instrumentality of the State to be known as the South Carolina School Facilities Infrastructure Authority.

(B) The authority is governed by a board of directors as provided in this chapter.

(C) The corporate purpose of the authority is to select and assist in financing qualified school projects by providing loans and other financial assistance to school districts for constructing and improving school facilities. The exercise by the authority of a power conferred in this chapter is an essential public function.

(D) The authority shall establish and maintain the South Carolina School Facilities Infrastructure Fund into which monies for the purposes of the authority shall be deposited.

Section 59‑75‑130. As used in this chapter unless the context clearly indicates otherwise:

(1) ‘Authority’ means the South Carolina School Facilities Infrastructure Authority.

(2) ‘Board’ means the board of directors of the authority.

(3) ‘Bonds or school infrastructure bonds’ means bonds as authorized by this chapter.

(4) ‘Eligible cost’ means as applied to a qualified project to be financed from the School Facilities Infrastructure fund, the costs that are permitted under applicable laws, requirements, procedures, and guidelines in regard to establishing, operating, and providing assistance from the authority.

(5) ‘Eligible project’ means school facilities as defined in item (11).

(6) ‘Financing agreement’ means any agreement entered into between the authority and a school district pertaining to a loan or other financial assistance. This agreement may contain, in addition to financial terms, provisions relating to the regulation and supervision of a qualified project, or other provisions as the board may determine. The term ‘financing agreement’ includes, without limitation, a loan agreement, trust indenture, security agreement, reimbursement agreement, guarantee agreement, bond or note, ordinance or resolution, or similar instrument.

(7) ‘Governing body of a school district’ means the board of trustees of a school district, a county board of education, or the entity responsible for administering the school district.

(8) ‘Loan’ means an obligation subject to repayment which is provided by the authority to a qualified school district borrower for all or a part of the eligible cost of a qualified project. A loan may be disbursed in anticipation of reimbursement for or direct payment of eligible costs of a qualified project.

(9) ‘Loan obligation’ means a bond, note, or other evidence of an obligation issued by a qualified borrower.

(10) ‘Other financial assistance’ means, but is not limited to, grants, contributions, credit enhancement, capital or debt reserves for bonds or debt instrument financing, interest rate subsidies, provision of letters of credit and credit instruments, provision of bond or other debt financing instrument security, and other lawful forms of financing and methods of leveraging funds that are approved by the board.

(11) ‘School facility or facilities’ means facilities necessary for instructional and related purposes for grades K‑12 including, but not limited to, classrooms, libraries, media centers, laboratories, cafeterias, physical education spaces, related interior and exterior facilities, and the conduit, wiring, and powering of classroom computers or area network systems. ‘School facilities’ does not include unimproved real property, centralized district administration facilities, portable classrooms, or other facilities, including those normally identified with interscholastic sports activities.

(12) ‘Qualified borrower’ means any school district which is authorized to construct, operate, or own a qualified project.

(13) ‘Qualified project’ means an eligible project which has been selected by the authority to receive a loan or other financial assistance from the authority to defray an eligible cost.

(14) ‘Revenues’ means, when used with respect to the authority, any receipts, fees, income, or other payments received or to be received by the authority including, without limitation, receipts and other payments deposited in the School Facilities Infrastructure fund and investment earnings on the School Facilities Infrastructure fund.

Section 59‑75‑140. The board of directors is the governing board of the authority. The board consists of seven voting directors as follows: the State Superintendent of Education, ex officio or her designee; one director appointed by the Governor who shall serve as chairman; one director appointed by the Governor; one director appointed by the Speaker of the House of Representatives; one member of the House of Representatives appointed by the Speaker, ex officio; one director appointed by the President Pro Tempore of the Senate; and one member of the Senate appointed by the President Pro Tempore of the Senate, ex officio. Directors appointed by the Governor, the Speaker, and the President Pro Tempore shall serve terms coterminous with those of their appointing authority. The terms for the legislative members are coterminous with their terms of office. The vice chairman must be elected by the board. Any person appointed to fill a vacancy must be appointed in the same manner as the original appointee for the remainder of the unexpired term.

Section 59‑75‑150. (A) In addition to the powers contained elsewhere in this chapter, the authority has all power necessary, useful, or appropriate to fund, operate, and administer the authority, and to perform its other functions including, but not limited to, the power to:

(1) have perpetual succession;

(2) adopt, promulgate, amend, and repeal bylaws, not inconsistent with provisions in this chapter for the administration of the authority’s affairs and the implementation of its functions including the right of the board to select qualifying projects and to provide loans and other financial assistance;

(3) sue and be sued in its own name;

(4) have a seal and alter it at its pleasure, although the failure to affix the seal does not affect the validity of an instrument executed on behalf of the authority;

(5) make loans to qualified borrowers to finance the eligible costs of qualified projects and to acquire, hold, and sell loan obligations at prices and in a manner as the board determines advisable;

(6) provide qualified borrowers with other financial assistance necessary to defray eligible costs of a qualified project;

(7) enter into contracts, arrangements, and agreements with qualified borrowers and other persons and execute and deliver all financing agreements and other instruments necessary or convenient to the exercise of the powers granted in this chapter;

(8) enter into agreements with school districts of this State for the purpose of planning and providing for the financing of qualified projects, including the establishment of a uniform, statewide educational facilities information and accountability system;

(9) establish policies and procedures for the making and administering of loans and other financial assistance, and establish fiscal controls and accounting procedures to ensure proper accounting and reporting by the authority and school districts;

(10) acquire by purchase, lease, donation, or other lawful means and sell, convey, pledge, lease, exchange, transfer, and dispose of all or any part of its properties and assets of every kind and character or any interest in it to further the public purpose of the authority;

(11) procure insurance, guarantees, letters of credit, and other forms of collateral or security or credit support from any public or private entity, including any department, agency, or instrumentality of this State, for the payment of any bonds issued by it, including the power to pay premiums or fees on any insurance, guarantees, letters of credit, and other forms of collateral or security or credit support;

(12) collect or authorize the trustee under any trust indenture securing any bonds to collect amounts due under any loan obligations owned by it, including taking the action required to obtain payment of any sums in default;

(13) unless restricted under any agreement with holders of bonds, consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest, or any other term of any loan obligations owned by it;

(14) borrow money through the issuance of bonds and other forms of indebtedness as provided in this chapter;

(15) expend funds to obtain accounting, management, legal, financial consulting, and other professional services necessary to the operations of the authority;

(16) expend funds credited to the authority as the board determines necessary for the costs of administering the operations of the authority;

(17) establish advisory committees as the board determines appropriate, which may include individuals from the private sector with banking and financial expertise;

(18) procure insurance against losses in connection with its property, assets, or activities including insurance against liability for its acts or the acts of its employees or agents or to establish cash reserves to enable it to act as a self‑insurer against any and all such losses;

(19) collect fees and charges in connection with its loans or other financial assistance;

(20) apply for, receive and accept from any source, aid, grants, and contributions of money, property, labor, or other things of value to be used to carry out the purposes of this chapter subject to the conditions upon which the aid, grants, or contributions are made;

(21) enter into contracts or agreements for the servicing and processing of financial agreements; and

(22) do all other things necessary or convenient to exercise powers granted or reasonably implied by this chapter.

(B) The authority is subject to the provisions of Article 1, Chapter 23 of Title 1, the Administrative Procedures Act.

Section 59‑75‑160. (A) The following sources may be used to capitalize the School Facilities Infrastructure fund and for the authority to carry out its purposes:

(1) state general fund appropriations made by the General Assembly;

(2) federal funds made available to the State;

(3) federal funds made available to the State for the authority;

(4) contributions and donations from government units, private entities, and any other source as may become available to the authority;

(5) all monies paid or credited to the authority, by contract or otherwise, payments of principal and interest on loans or other financial assistance made from the authority, and interest earnings which may accrue from the investment or reinvestment of the authority’s monies;

(6) proceeds from the issuance of bonds as provided in this chapter; and

(7) other lawful sources as determined appropriate by the board.

Section 59‑75‑170. Earnings on balances in the School Facilities Infrastructure fund must be credited and invested as provided by law. Earnings must be credited to the School Facilities Infrastructure fund. The authority may establish accounts and subaccounts within the School Facilities Infrastructure fund as considered desirable to effectuate the purposes of this chapter, or to meet the requirements of any state or federal program. All accounts must be held in trust by the State Treasurer.

Section 59‑75‑180. (A) The board of directors of the authority shall establish a priority weighting system under which school districts shall be ranked in order of need under a formula developed by the board, taking into consideration district capital needs as defined by the facilities information, accountability, and reporting system provided for in subsection (C) of this section; the number of students in the district living in poverty, the wealth of a district based on the assessed value of property in the district, the remaining general obligation debt capacity of the district, and those other factors the board considers pertinent. Based on this priority weighting, the board shall select specific projects of a district for financing under the terms of this chapter.

(B) Based on the relative wealth of a school district or its capacity to incur additional general obligation debt for school facilities, the board may require a local financial contribution from a particular district.

(C) The authority, working in conjunction with the department, shall require that all school districts establish a uniform system to measure and determine accountability for the expenditures made by the authority throughout the State. The uniform accountability system shall initially measure the following six minimum standards and apply to all school districts:

(1) a maintenance management program that is a formal system that records maintenance activities on a work‑order basis and tracks the timing and costs, including labor and materials, of maintenance activities in sufficient detail to produce reports of planned and completed work;

(2) an energy management plan that includes recording energy consumption for all utilities on a monthly basis for each building;

(3) a custodial program that includes a schedule for custodial activities for each building based on type of work and scope of effort;

(4) a maintenance training program that specifies training for custodial and maintenance staff and records training by each person;

(5) a renewal and replacement schedule that identifies the construction costs of major building systems, including electrical, mechanical, structural, and other components; evaluates and establishes the life expectancy of those systems; compares life expectancy to the age and condition of the systems; and uses the data to forecast a renewal and replacement year and cost for each system; and

(6) a capital planning program that allows for assessment of existing resources and planning for future development.

All reports generated from the accountability system shall be delivered to the authority and the department. This accountability and information system shall be based on the existing district software systems to the extent feasible in order to preserve existing district system investments.

Section 59‑75‑185. (A) The authority may provide loans and other financial assistance to a school district to pay for all or part of the eligible cost of a qualified project. Before providing a loan or other financial assistance to a qualified borrower, the authority must obtain the review and approval of the Joint Bond Review Committee. The term of the loan or other financial assistance must not exceed the useful life of the project. The authority may require the school district to enter into a financing agreement in connection with its loan obligation or other financial assistance. The authority shall determine the form and content of loan applications, financing agreements, and loan obligations including the term and rate or rates of interest on a financing agreement.

(B) The board shall determine which projects are eligible projects and then select from among the eligible projects those qualified to receive from the authority a loan or other financial assistance.

Section 59‑75‑190. (A) School districts are authorized to obtain loans or other financial assistance from the authority through financing agreements. Qualified borrowers entering into financing agreements and issuing loan obligations to the authority may perform any acts, take any action, adopt any proceedings, and make and carry out any contracts or agreements with the authority as may be agreed to by the authority and any qualified borrower for the carrying out of the purposes contemplated by this chapter.

(B) In addition to the authorizations contained in this chapter, all other statutes or provisions permitting school districts to borrow money may be utilized by any school district in obtaining a loan or other financial assistance from the authority to the extent determined necessary or useful by the school district in connection with any financing agreement and the issuance, securing, or sale of loan obligations to the authority.

(C) A school district may receive, apply, pledge, assign, and grant a security interest in revenues or ad valorem taxes, to secure its obligations as provided in this chapter, to meet its obligations under a financing agreement, or to provide for the construction and improving of a qualified project.

Section 59‑75‑200. The authority is performing an essential governmental function in the exercise of the powers conferred upon it and is not required to pay taxes or assessments upon property or upon its operations or the income from them, or taxes or assessments upon property or loan obligations acquired or used by the authority or upon the income from them.

Section 59‑75‑210. (A) If a school district fails to collect and remit in full all amounts due to the authority on the date these amounts are due under the terms of any note or other obligation of the school district, the authority shall notify the State Treasurer who, subject to the withholding of amounts under Article X, Section 15 of the Constitution, shall withhold all or a portion of the funds of the State and all funds administered by the State allotted or appropriated to the school district and apply an amount necessary to the payment of the amount due.

(B) Nothing contained in this section mandates the withholding of funds allocated to a school district which would violate contracts to which the State is a party or judgments of a court binding on the State.

Section 59‑75‑220. Neither the authority nor any officer, employee, or committee of the authority acting on behalf of it, while acting within the scope of this authority, is subject to any liability resulting from carrying out any of the powers given in this chapter.

Section 59‑75‑230. Notice, proceeding, or publication, except those required in this chapter, are not necessary to the performance of any act authorized in this chapter nor is any act of the authority subject to any referendum.

Section 59‑75‑240. All money of the authority and in the School Facilities Infrastructure fund, except as authorized by law or provided in this chapter, must be deposited with and invested by the State Treasurer. Funds of the authority not needed for immediate use or disbursement may be invested by the State Treasurer in obligations or securities which are declared to be legal obligations by the provisions of Section 11‑9‑660.

Section 59‑75‑250. Following the close of each state fiscal year, the authority shall submit an annual report of its activities for the preceding year to the Governor and to the General Assembly. An independent certified public accountant shall perform an audit of the books and accounts of the authority at least once in each state fiscal year.

Section 59‑75‑260. (A) This chapter, being for the welfare of this State and its inhabitants, must be liberally construed to effect the purposes specified in this chapter. However, nothing in this chapter must be construed as affecting any proceeding, notice, or approval required by law for the issuance by a school district of the loan obligations, instruments, or security for loan obligations.

(B) Where the governing body of a school district does not have unlimited fiscal autonomy granting them the right to impose ad valorem property taxes for general operating school purposes without limitation, the public entity, if applicable, which has the authority to approve ad valorem property taxes for general operating school purposes without limitation must also approve a loan or security obligation provided by this chapter.

Section 59‑75‑270. If any provision of this chapter is held or determined to be unconstitutional, invalid, or otherwise unenforceable by a court of competent jurisdiction, it is the intention of the General Assembly that the provision is severable from the remaining provisions of the chapter and that the holding does not invalidate or render unenforceable another provision of the chapter.

Article 3

School Infrastructure General Obligation Bonds

Section 59‑75‑310. As used in this article:

(1) ‘Board’ means the board of directors of the authority.

(2) ‘State board’ means the State Budget and Control Board.

(3) ‘School infrastructure bonds’ means all general obligation bonds of this State designated as school infrastructure bonds, which are now outstanding and which may hereafter be issued pursuant to the authorizations of this article.

Section 59‑75‑320. Whenever it shall become necessary that monies be raised for qualified projects, including monies to be used to refund any school infrastructure bonds then outstanding, the board may make a request to the state board for the issuance of school infrastructure bonds pursuant to this article. This request may be in the form of a resolution adopted at any regular or special meeting of the board. The request shall set forth on the face thereof or by schedules attached thereto:

(1) the amount then required for qualified projects;

(2) a tentative time schedule setting forth the period of time during which the sum requested will be expended; and

(3) a debt service table showing the annual principal and interest requirements for all the school infrastructure bonds then outstanding.

Section 59‑75‑330. Following the receipt of any request pursuant to Section 59‑75‑320, the state board shall review the same and it shall approve the request, by resolution duly adopted, to effect the issuance of school infrastructure bonds, or pending the issuance thereof, effect the issuance of bond anticipation notes.

Section 59‑75‑340. The issuance of school infrastructure bonds is subject to the limitations contained in Article X, Section 13(6)(c) of the Constitution of this State. These school infrastructure bonds so issued shall be considered general obligation debt of the State of South Carolina under Section 13 of Article X of the Constitution of this State and not of the school district under Section 15 of Article X of the Constitution of this State. Within such limitations, school infrastructure bonds may be issued for qualified projects or to refund school infrastructure bonds from time to time under the conditions prescribed by this article. The review and approval of the Joint Bond Review Committee must be obtained prior to the issuance of any school infrastructure bonds. No school infrastructure bonds may be issued unless the board has a source of revenues to pay the principal and interest on the bonds.

Section 59‑75‑350. For the payment of the principal of and interest on all school infrastructure bonds, whether or not outstanding or hereafter issued, as they come due, there is pledged the full faith, credit, and taxing power of this State, and in accordance with the provisions of Article X, Section 13(4) of the Constitution of this State, the General Assembly authorizes the allocation on an annual basis of sufficient tax revenues to provide for the punctual payment of the principal and interest on school infrastructure bonds. In addition to the full faith, credit, and taxing power, there also is pledged such revenue as may be available to the board, and the State Treasurer is authorized to use the revenue when pledged, without further action of the board, for the payment of the principal and interest on school infrastructure bonds as the bonds respectively mature. If the revenues so pledged prove insufficient to meet the payments of the interest on and principal of the school infrastructure bonds in the fiscal year, then the State Treasurer shall set aside from the general tax revenues received in the fiscal year so much of the general tax revenues as are needed for the purpose and shall apply these revenues to the punctual payment of the interest on and principal of school infrastructure bonds due or to become due in the fiscal year.

Section 59‑75‑360. The board is authorized to request the state board to issue school infrastructure bonds. In order to effect the issuance of bonds pursuant to this article, the state board may adopt a resolution providing for the issuance of school infrastructure bonds, upon written request by the board, and may transmit a certified copy thereof to the Governor and to the State Treasurer, with the request that they issue and deliver school infrastructure bonds in accordance with the terms and conditions of such resolution. This resolution must set forth:

( 1) the amount, denomination, and numbering of school infrastructure bonds to be issued;

( 2) the date as of which the same shall be issued;

( 3) the maturity schedule for the retirement of the school infrastructure bonds;

( 4) the redemption provisions, if any, applicable to the bonds;

( 5) the maximum rate or rates of interest the bonds shall bear;

( 6) the purposes for which the bonds are to be issued;

( 7) the occasion on which bids must be received for the sale of the bonds;

( 8) the form of advertisement of sale;

( 9) the form of the bonds of the particular issue; and

(10) such other matters as may be considered necessary in order to effect the sale, issuance, and delivery thereof.

Section 59‑75‑370. Following receipt of a certified copy of the resolution of the state board, the Governor and State Treasurer shall issue school infrastructure bonds in accordance with the provisions of the resolution of the state board.

Section 59‑75‑380. School infrastructure bonds must be issued in the form, in the denominations, and with such provisions as to time, place, or places and medium of payment as may be determined by the state board, subject to the provisions of this article.

Section 59‑75‑390. School infrastructure bonds must be issued as fully registered bonds with both principal and interest thereof made payable only to the registered holder. The fully registered bonds are subject to transfer under such conditions as the state board prescribes.

Section 59‑75‑400. School infrastructure bonds shall bear interest, payable on such occasions as shall be prescribed not more than thirty years after such date. The installments or series may be equal or unequal in amount. School infrastructure bonds, in the discretion of the state board, may be made subject to redemption at par and accrued interest, plus such redemption premium as it shall approve and on such occasions as it may prescribe. School infrastructure bonds are not redeemable before maturity unless they contain a statement to that effect.

Section 59‑75‑410. All school infrastructure bonds issued under this article, and the interest thereon, are exempt from all state, county, municipal, school district, and other taxes or assessments, direct or indirect, general or special, imposed by this State, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, or transfer taxes.

Section 59‑75‑420. School infrastructure bonds must be sold by the Governor and the State Treasurer upon sealed proposals, after publication of notice of the sale one or more times at least seven days before the sale, in a newspaper of general circulation in the State and also in a financial paper published in New York City which regularly publishes notices of sale of state or municipal bonds. The bonds must be awarded to the bidder offering to purchase the school infrastructure bonds at the lowest net interest cost to the State at a price of not less than ninety‑nine percent of par and accrued interest to the date of delivery, but the right is reserved to reject all bids and to readvertise the bonds for sale and to waive technicalities in the bidding.

Section 59‑75‑430. The proceeds derived from the sale of school infrastructure bonds must be applied only to the purposes set forth in the resolution of the state board pursuant to which the bonds are issued.”

Part III

Time Effective

SECTION 3. This act takes effect upon approval by the Governor.

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