

LEGISLATIVE AND REGULATORY - Special Edition May 2009

SINE DIE: A Summary of the 2009 Maryland General Assembly Session

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By Chas Stuart, Chairman State Government & Legislative Affairs Committee

The Maryland General Assembly ended its 2009 Session on Monday, April 13th in the traditional way: "Sine Die" from the Latin "without day" meaning a final adjournment. The 90-day Session considered over 2,600 bills and 21 joint resolutions and of that 799 bills and one Senate Joint Resolution were enacted. The Governor, in the initial traditional day for signing bills the day following the Session adjournment, signed 168. At press time, the Governor still had two bill-signing days left: May 7 and May 21.

This 2009 legislative Session was somewhat subdued given the continuing budgetary problems the State faces, but legislators were trying to get bills through rather than waiting for the 2010 Session, which precedes the local and state elections in November. Though the General Assembly passed its fiscal package consisting of the Budget Bill (HN 100) and the Budget Reconciliation and Financing Act (BRFA - HB 101) that enacted a \$32 billion budget that increased spending by 3.5 percent and included \$2.5 billion in federal stimulus funds for fiscal 2009 and 2010, the General Assembly and the Administration failed to make the hard decisions to reorganize some programs, particularly in the health field, and to make enough budget cuts and will face a \$1 billion shortfall next year. If the revenue projections that come in later this year are above the 20 percent level, the state will not have enough money to operate. If the Board of Public Works cannot make additional cuts, the General Assembly is facing the prospect of a Special Session in September or October of this year to raise taxes.

The MNCBIA and the Maryland State Builders Association (MSBA) reviewed more than 191 bills this session, (a num-

ber were crossed filed in both Houses), down from last year, and 42 were considered priority bills as rated by the MSBA's Legislative Committee. Our success rate continued to be very good. Below is a summary of our successes and some of the bills that impact our industry. Many thanks are owed to MNCBIA's Hamer Campbell, MSBA's Katie Maloney, our friends at Alexander and Cleaver and the many others who spent numerous hours reviewing, drafting, testifying, lobbying and otherwise contributing to the great team effort that was so fruitful this year. These included my Vice Chairman, **David Lunden** of Timberlake Homes, **Steve Orens** of Miles & Stockbridge P.C., **Sylke Knuppel** of Winchester Homes Inc., **Bill Bilo** of DICO Inc., **Peter Fosselman** of Rodgers Consulting Inc., **Gary Kret** of Stuart-Kret Homes, **Jonathan Kipnis** of Jonathan I. Kipnis LLC, **Lisa Sincere** of Wertheimer & Ciazza LLC, **Jay Hellman** of The Hellman Company, Inc., **Andrea Leahy-Fuchek** of Leahy & Desmet, **Roger Winston** of Ballard Spahr, et.al., and special thanks to **Charlie Dukes** of Scheer Partners and **Rick Bailey** of Marrick Properties Inc. who helped work the Septic legislation by contacting the Senate President, Mike Miller.

Again, two key pieces of legislation accounted for much of the group's efforts this year. The **Standing-Miscellaneous Environmental Protection Proceedings & Judicial Review bill (SB 1065/HB 1569)**, a noxious bill as originally drafted that would have given almost anyone involved in environmental issues the right to sue and extend the litigation process. A large number of interests developed a coalition, led by MSBA's Katie Maloney, who did a superb job getting some key amendments, but in the end, the definition of standing was so onerous to the industry that MSBA was one of only a few groups who ended up opposing the bill, which passed. We also received key

support from Alexander and Cleaver on this legislation.

The other key bill was the **Bay Restoration Act of 2009-Septics (SB 554/HB 176)**, which was pushed by Senate President Mike Miller that would have required all new construction in the State built with septic systems to use the latest technology for nitrogen removal. MSBA estimated this would add an additional \$600-\$900 to the cost of a new home. The bill also provided funding from the Bay Restoration Fund but it was not guaranteed. MSBA fought hard to limit the new construction to the Critical Area only and this amendment was added. Though we failed to get a provision in the bill mandating payment for these improvements, the Maryland Department of Environment has indicated they will make monies available to those properties affected in the Critical Area.

I also want to thank all those members who responded to our Legislative Alert on this issue. It helped turn the tide to get our amendments on the bill and even resulted in one Prince George's Senator dropping his name as a bill sponsor and voting to support our amendments.

The other key priority bills included the Governor's trio of **Smart Growth bills (SB 273/HB 294; SB 276/HB 295; and SB 280/HB 297)** that were going to be enacted. There were provisions in several of the pieces of legislation we did not like, but in order to have a "seat at the table" and proffer amendments, it was necessary to support the bills while offering amendments. Another key priority was **SB 958/HB 921** permitted tolling of development permits issued by a county or municipality for construction or development. And **SB 666/HB 1291**, the No Net Loss of Forest Policy, which we were able to get amended. Many of the other priority bills will be described below.

MNCBIA's success was also evident at the local level. We were successful in getting killed bills we opposed. In Prince George's County, HB 1496, again reared its ugly head and would have required builders to pay back to homeowners 10 percent of the sales price of their homes if a subdivision's amenities were not in place by a certain date. With the help of Kenny Battle of Alexander and Cleaver, we were able to insure that the House Government Matters Committee never voted the bill out at the end of the Session.

As many of you know, the primary responsibility of the State Legislative Affairs Committee is to monitor pending legislation and represent the interests of MNCBIA before the Maryland General Assembly. Working to assure that our point of view is made known to the Maryland Legislature is among the most important member services of MNCBIA. Each year, during the 90-day Session, the State Legislative committee meets weekly to review proposed legislation that has an impact on the building industry. The Committee studies legislation that effects both commercial and residential development, as well as legislation that would affect those industries that provide both products and services to builders. During the annual legislative session MNCBIA works closely with other local associations and MSBA in order to coordinate our efforts and take greatest advantage of the combined resources available to the MSBA and MNCBIA.

Now that the General Assembly session has ended, the State Legislative Committee takes a short recess before reconvening to prepare our legislative initiatives for the coming year (an election year). And given the continued budgetary concerns of the State as noted above, there is a possibility that a special session may be called this Fall since government may not be able to continue its operation as funded. This year we will again seek to expand our exposure to key legislators and state government officials, particularly through our engagement of Alexander and Cleaver. This relationship has served the Association well this year and we intend to increase its effectiveness.

If you wish to obtain a copy of any of the bills discussed in this report, please contact the Government Affairs Department at 301-445-5404 or by email at hcampbell@mncbia.org.

As I complete another year as Chairman of the State Legislative Committee, I want to express my thanks to President **Tom Farasy** and the MNCBIA Board of Directors for their support. Thanks also go to the staff of MNCBIA and MSBA for their efforts. We are fortunate to have the talents of Katie Maloney, Hamer Campbell and Raquel Montenegro. I also want to again thank the members of the State Legislative Committee for their hard work and those members who took time from their schedule to testify in Annapolis with Katie on key bills: Eliot Powell of Whitehall Development on the Construction Permits Expiration Dates and Randy Melvin of Winchester Homes on the Visitability bill.

Statewide MSBA Priority Bills

Chairman Stuart noted above a number of the MSBA primary priorities for the 2009 Session, which included the Standing bill for environmental issues and the Chesapeake Bay Restoration Act of 2009 that requires the latest nitrogen removal processes for septic systems for new construction in the Critical Area. Below are other issues the MSBA tracked during the session, along with a summary of local bills. We have not covered all 42 priority bills here. If you don't see a bill you are interested in, please contact BIA's Hamer Campbell at the contact information noted above in the Chairman's column.

HB 1569/SB 1065 (Standing - Miscellaneous Environmental Protection Proceedings and Judicial Review) was legislation the Attorney General wanted, and with the support of Chairman Maggie McIntosh of the House Environmental Matters Committee, the industry was faced with not whether we would get a bill, but what form it would take. The Senate was not going to do much on this legislation but let the House Committee do the heavy lifting and simply agree to whatever came over. The original draft of the bill would have allowed any group that has as part of its charter, the review of environmental

issues, to have standing regardless of whether they are directly impacted or live near the proposed project. This is similar to the federal legislation. We were able to get significant amendments with the help of a wide coalition, particularly one that eliminates the contested case process for affected permits and requires appeals to go to the Circuit Court on the record. Research shows that that process leads to the agencies' position being up held in the vast majority of cases. The industry still opposed the legislation, though most of the other coalition members dropped their opposition, due to the expanded definition of "standing" for individuals, associations and organizations. The bill provides that the federal test for standing shall be used to determine whether a party may contest a determination by MDE or the Board of Public Works when making determinations on the issuance, denial, renewal or revision of the covered permits and license. The standing will cover environmental permits that relate to state wetlands, ambient air quality, landfills/incinerators, discharge pollutants, structures used for sewage sludge storage or distribution, controlled hazardous substance facilities, hazardous materials facilities, low-level nuclear waste facilities, water appropriation and use, non-tidal wetlands, gas and oil drilling, surface mining and private wetlands.

SB 554/SB 176 (Chesapeake Bay Nitrogen Reduction Act of 2009 - Septics) was legislation originally drafted to require the installation of a new septic system, as well as the replacement of a failing system, unless the new or replaced system utilizes the best available technology for nitrogen removal. MSBA was able to get the bill amended to only apply to the Chesapeake and Atlantic Coastal Bays Critical Area. The industry also tried to get an amendment that would require the Bay Restoration Fund to finance the differential for the cost of providing the nitrogen removal, which in some instances would have meant anywhere from \$6,000 to \$9,000 additional costs for new construction. Though this was not mandated, for those who cannot obtain assistance from the fund, a tax deduction will be provided. Failure to comply with these requirements will result in an \$8,000 fine. We expect the environmental community to

expand this requirement statewide in upcoming Maryland General Assembly sessions. As noted above, thanks go the Charlie Dukes and Rick Bailey for their help in contacting the Senate President Mike Miller to allow these amendments and to all those who responded to our Legislative Alerts that led to several Senators changing their votes and/or dropping off the bill as sponsors.

Other key pieces of legislation included are summarized below.

Environmental Issues

SB 4/HB 1054 (Environment-Permitting Process-Environmental Justice Review).

The bill would have required the Department of Environment to develop maps of environmentally stressed areas and would have required an environmental justice review as a condition of issuing permits. The industry opposed the bill and no action was taken by either the House or Senate.

SB 47/HB 1078 (Environment-Permit Applications-Notice Requirements).

This legislation was opposed by the industry but passed with amendments. As originally drafted it would have put a major burden on the industry. It now will require the Department of Environment to electronically post notice and information about permit applications for ambient air quality control, landfills/incinerators, discharge pollutants, structures used for sewage sludge storage or distribution, controlled hazardous substance facilities, hazardous material facilities and low-level nuclear waste facilities. MDE will also have to provide a method for interested persons to electronically request additional notices related to such permit applications.

SB 539/HB 992 (Driver Relief Act of 2009) would have required state, local, and regional transportation programs to plan for reduction in vehicle miles traveled (VMT) per capita of 35 percent by 2036. The industry opposed the legislation and no action was taken in the Senate and the House bill was withdrawn.

SB 666/HB 1291 (Natural Resources-No Net Loss of Forest Policy-Forest Conservation Act). This legislation was the outgrowth of the Task Force set up last year (the industry had Dusty Rood, MNCBIA's Environmental Chairman sitting on the Task Force). The bill, which was opposed by the industry, was amended to require DNR to cooperate with forestry-related stakeholder groups to determine the meaning of no net loss of forests for any State policy and to develop proposals for creating a State policy on no net loss of forests. The deadline to report back to the General Assembly is December 1, 2011. The bill also increases the fee-in-lieu contributions rate to the State and local Forest Conservation Funds, limits the exemptions for forest clearing associated with a single lot and a dwelling house to a maximum disturbance of 20,000 sq. ft. (instead of 40,000 sq. ft.), limits the exemption for construction of dwelling houses to owners and their children, eliminates an exemption for areas that were previously developed and covered by paved surface, and requires that priority be given to specified trees, shrubs, plants, and areas for retention and protection unless a variance is granted. The legislation was enacted.

SB 606 (Carroll County-Privately Employed Sanitarians Licensed by the State-Soil Percolation). The industry supported the legislation in its original form, which would have allowed licensed private sanitarians to perform percolation tests. However, the bill was amended to make it a local Carroll County bill only. We have word that the bill will be back as a statewide bill next year. The House took no action on the bill, though it passed the Senate, and it died.

SB 625/HB 707 (Maryland Building Performance Standards-Energy Conservation and Efficiency). The industry opposed the bill, but it was amended to require the Department of Housing and Community Development to adopt the International Energy Conservation Code (IECC) as part of the building code in Maryland. The state is required to adopt the most updated version of the IECC within 12 months of issuance and local jurisdictions will then have six months to adopt the changes. The legislation passed.

Land Use Issues

The major issue in this category was the Governor's package of Smart Growth Bills, which were going to pass. The industry had concerns about several of the bills, but in order to have amendments considered, we were in a position of having to support them.

SB 273/HB 294 (Smart, Green and Growing-Local Government Planning-Planning Visions) was passed and increases the number of Smart Growth visions to 12 and adds a reporting requirement for local jurisdictions with planning and zoning authority. The bill is an outgrowth of the Task Force on the Future for Growth and Development in Maryland that is studying a wide range of smart growth and land use issues and released a report in January 2009 providing a number of recommendations. The old eight visions were replaced with 12 new ones that include: addressing quality of life and sustainability, public participation, growth areas, community design; infrastructure, transportation, housing, economic development, environmental protection, resource conservation, stewardship, and implementation. The bill also addresses APFOs and TDRs. Local jurisdictions must report to the Maryland Department of Planning (MDP) on any APFO restrictions in priority funding areas (PFAs) every two years about the nature of those restrictions, the infrastructure affected, the estimated time for resolving them, and the proposed resolution. And MDP must report on the statewide impact of APFOs every two years. The bill also authorizes local jurisdictions to establish TDR program within PFAs. The funds raised by the TDRs must be used for site acquisition and facility construction in PFAs.

The second bill **SB 276/HB 295 (Smart, Green and Growing-Local Government Planning-Measures and Indicators)** authorizes the Department of Planning to establish land use goals that reflect Smart Growth visions and the inclusion in the annual report of measures and indicators to demonstrate compliance with the land use goals. The goal of the state is to increase the current percentage of growth located within PFAs and to decrease the percentage of growth outside

the PFAs. The local jurisdictions are required to develop a percentage goal toward achieving the statewide goal. Included in the annual report must be: the amount and share of growth being located inside and outside PFAs, the net density of growth being located inside and outside the PFAs, the creation of new lots and issuance of building permits inside and outside the PFAs, the development capacity analysis (an issue we have pushed for a long time), the number of acres preserved using local agricultural land preservation funding, and specified information on achieving the statewide goal. On or before January 1 of each year, MDP, in consultation with the National Center for Smart Growth Research and Education at the University of Maryland, must submit a report to the Governor and General Assembly on the measures and indicators collected. The Task Force, noted above under SB 273/HB 294 must recommend by July 1, 2009 additional measures and indicators to be collected by the State, the National Center, or a local jurisdiction.

The final bill was **SB 280/HB 297 (Smart, Green and Growing-Smart and Sustainable Growth Act of 2009)**, which was aimed at the Terrapin Run project in Western Maryland. The bill was aimed at the Maryland Court of Appeals ruling in the case that a special exception could be granted to a local comprehensive plan even if it did not strictly conform to the comprehensive plan. However, the broad language of the opinion seemed to suggest that local land use ordinances and regulations need not be consistent with the locally adopted comprehensive plan. This legislation expressly overturns the Court of Appeals ruling by stating that a special exception must be consistent with their local comprehensive plans. The definitions create a separate definition of consistency for ordinances and regulations applicable within the PFAs that omits land uses and densities and intensities so that they do not interfere with the ability of local jurisdictions to enact ordinances related to PUDs, mixed uses, and density bonuses. The bill also requires local government planning commissions and boards of appeals to complete educational courses on the role of the comprehensive plan. The Task Force is directed to create

recommendations on educational course for local jurisdictions and MDP to develop an online planning education course by January 1, 2010.

SB 878/HB 1116 (Smart Growth-Visions and Performance Standards), which was opposed by the industry, would have established strict performance standards for local jurisdictions to adhere to comprehensive plans in approving future development. It would have severely limited growth out of the PFAs and required percentages of affordable housing and certain percentages with close proximity to transit. It would have authorized the Department of the Environment to deny permits in a local jurisdiction if they failed to meet the standards. There was no action in the Senate and the House bill was withdrawn.

SB 958/HB 921 (Construction Permits-Expiration Date). The industry strongly supported this legislation (the Senate version passed) and both houses overwhelmingly approved SB 958. The legislation extends through June 30, 2010, the duration of approved State, county, and municipal permits for construction and development that were approved on or after January 1, 2008. The legislation does not apply to permits with some federal requirements. The Maryland Department of Planning must report to the General Assembly on the impact of the legislation, whether the extension period should be lengthened and what other alternatives might be available to the State and local jurisdictions. The bills do not affect the authority of the State, a county, or a municipal corporation to revoke or modify a permit and do not affect the obligation of permit holders to pay any applicable renewal fees.

HB 194 (Land Use-Development Rights and Responsibilities Agreements). The industry strongly supported this bill, which died in the House Environmental Matters Committee, that would have extended the time period for development rights and responsibilities agreements if the agreement did not have a specific time period provision. And it would have prohibited a local jurisdiction from altering the density or intensity of a parcel under such agreement unless there was an imminent threat to the public health.

Tax Issues

SB 39 (Municipal Corporations-Tax Increment Financing-Application of Bond Proceeds). The bill, supported by the industry, authorizes municipalities to utilize tax increment financing (TIFs) for financing infrastructure improvements related to redevelopment. The bill passed.

SB 274/HB 300 (Tax Increment Financing and Special Taxing Districts-Transit-Oriented Development). The industry supported the bills and they passed. The legislation authorizes local jurisdictions to utilize tax increment financing (TIFs) to fund infrastructure needs related to transit oriented development. This follows on DOT legislation for transit-oriented districts that was approved in the 2008 General Assembly.

SB 672/HB 1457 (Environment-Stormwater Management-Stormwater User Charge). Supported by the industry with amendments, the bill would have required counties to implement a stormwater fee on all residential and commercial buildings, thus spreading the cost to all structures and not just new building. The bill died on the Senate floor.

SB 727/HB 983 (Recordation and Transfer Tax-Controlling Interest Transfers). The industry opposed the bills that would have removed the \$1 million threshold that triggers the controlling interest tax requirement and requires additional information be provided by the LLCs. The House bill was withdrawn and the Senate Budget & Taxation Committee took no action.

Professional Issues

SB 657 (Real Property-New Home Sales Contracts-Financing Contingency Clauses). The industry supported the bill with amendments that would provide new home sales contracts contingent upon financing unless it is expressly stated in the contract that it is not contingent upon financing. The legislation was enacted.

SB 660/HB 16 (Labor and Employment-Shift Brakes). The industry opposed the bill that would have required employers to provide non-work-

ing shift breaks to employees who work over six hours and would also require that the breaks count towards the employees' work day. Neither bill got out of its respective house.

HB 1168 (Interior Designers-Licensing). Opposed by the industry, it would have established a licensing program for interior designers. The bill died in the House Economic Matters Committee.

Other Legislation

SB 753/HB 27 (Transportation-Intercounty Connector-Elimination of Funding) is a perennial bill opposed by the industry that would eliminate funding for the ICC. The Senate took no action and it died in the House Ways and Means Committee. We expect the environmentalist to submit similar legislation since the Maryland League of Conservation Voters calls the ICC the "most environmentally damaging and fiscally irresponsible transportation project in Maryland history."

SB 894/HB 140 (Transportation Trust Fund Protection Act) would have prohibited the transfer or diversion of Transportation Trust Fund revenues unless it is critical and the Administration must provide a plan to pay the Fund back. The industry supported the bill but the Senate took no action and the bill died in the House Appropriations Committee.

HB 139 (Transportation Trust Fund-Dedicated Highway Funds) would require all revenue from the gas tax, vehicle excise tax and vehicle registration fees be deposited in the Transportation Trust Fund. Another bill strongly supported by the industry, but the House Ways & Means Committee took no action.

SB 918/HB 998 (Housing-Maryland Building Performance Standards-Minimum Feature for Accessibility). The infamous visitability bill that came out of the summer interim was again strongly opposed by the industry since it required the state Department of Housing and Community Development to adopt the ANSI 117 accessibility (visitability) code that would require all new single-family homes to be built to the code.

Thanks go to Randy Melvin from Winchester Homes who testified on the legislation.

HB 1038 (Public Safety-New Construction-Carbon Monoxide Alarms and Radon Detectors). The industry opposed the legislation that would have required all newly constructed dwellings to install carbon monoxide alarms and radon detectors. The bill died in the House Environmental Matters Committee.

Local Legislation

This year there were fewer local bills than usual that required action by the industry, though we will mention some that are of interest that we did not take positions on.

Montgomery County. On the bi-county side, **MC/PG 102-09**, which would have required local jurisdictions to forward copies of their local building requirements to the County 30 days prior to the municipality's public hearing was withdrawn by the sponsors.

MC/PG 109-09 (HB 1140) would have allowed the Montgomery County Planning Board to appoint a hearing officer to conduct hearings, make recommendations, and to take depositions and issue subpoenas, which would be enforced by the Circuit Court. The bill was given a favorable recommendation by both the House and Senate Delegations, but died for lack of action in the Senate.

For local county bills, **MC/PG 906-09 (HB 838)** would have permitted the County to set rates of taxation for any class of property and specifically noted that the personal property rate would be two and a half times the rate of the real property tax rate. The bill was given an unfavorable recommendation by the Montgomery House Delegation.

MC 926-09 (HB 824), which the industry opposed, would have allowed the imposition of a recordation tax on Indemnity Mortgages (a local IDOT bill) for those not primarily liable for the loan. Both the Montgomery House County Affairs Committee and the full House Delegation gave the bill an unfavorable recommendation.

Finally, **MC 932-09 (HB 820)** would have given a five-year tax credit to County employees against their property tax. The employees, who had their principal residence in the County, included county government workers, Montgomery County College, public schools, Park & Planning, WSSC, Health Department, and other county offices.

Prince George's County. On the bi-county side, the Council pushed **PG/MC 106-09 (HB 1138)** that would require Prince George's County to update its' General Plan for the Metropolitan-Washington Regional District every seven years. The legislation was adopted.

MC/PG 107-09 would have limited an individual from filing a Zoning Text Amendment to the periods of February 1-28th and August 1-31, but would have allowed both the Planning Board and District Council members to file any time. The bill never got to committee since it was withdrawn, as was another ZTA bill, **MC/PG 123-09**.

MC/PG 114-09 would have turned over county stormwater management operations in Laurel to the City. The bill was withdrawn after the County agreed to work with the City on this issue. Any transfer would have resulted in the County losing revenues.

With respect to local county affairs bills, **PG 406-09 (HB 1131)** would have required that minority businesses be allowed a 20 percent ownership in any project that was partly funded through TIF bonds. Though the legislation got through the House Delegation, no action was taken in the House Government Operations Committee.

PG 410-09 (HB 961) would have required developers receiving any state funding to be in compliance with minority business enterprise goals. The House Delegation special ordered the legislation and it died.

Prince George's County Executive Jack Johnson presented two bills late in the Session to try and compensate for the County's budget deficit. One bill was withdrawn and the other raised the Homestead Tax Credit (**PG 415-09 (HB 979)**) to 110 percent. This legislation was

killed by the House Delegation. Del. Proctor's annual Home Builders Community Amenities bill, **PG 416-09 (HB 1496)**, that would have required a builder to refund 10 percent of the purchase price of the new home to the buyer if certain facilities (such as golf courses, trails, community centers, etc.) were not constructed by a certain date, passed the House Delegation. It had a sponsor-only hearing in the House Economic Matters Committee on April 7th, but was never voted out of ECM and died in the House. Kenny Battle of Alexander & Cleaver worked this bill on behalf of the industry.

Copies of Legislation

For copies of these and other bills noted in this Report, you can contact either Hamer Campbell or Raquel Montenegro in MNCBIA's Government Affairs Department at 301-445-5404 or 301-445-5408 or go to the Maryland General Assembly Website at <http://mlis.state.md.us/>. Once there, scroll down to the Bill Information and Status Section and type in the bill number where it says submit inquiry, e.g., for a House bill you would enter HB 1136 or for a Senate bill SB 47 (*note, do not use the local bill designations, such as PG 416.*) To find the status of all local bills in Prince George's County, go to the Delegation Website at www.princegeorgesdelegation.com/. For local bills in Montgomery County, go to www.montgomerycountydelegation.com/

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