

Amendment No. 01 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

The Committee on Governmental Rules & Regulations offered the following:

Amendment (with title amendment)

Remove from the bill: Everything after the enacting clause and insert in lieu thereof:

Section 1. Effective October 1, 1998, subsections (3) and (4) of section 11.62, Florida Statutes, are amended to read:

11.62 Legislative review of proposed regulation of unregulated functions.--

(3) In determining whether to regulate a profession or occupation, the Legislature shall consider the following factors:

(a) Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare and whether the potential for harm is recognizable and not remote;

(b) Whether the practice of the profession or occupation requires specialized skill or training, and whether

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1 that skill or training is readily measurable or quantifiable
2 so that examination or training requirements would reasonably
3 assure initial and continuing professional or occupational
4 ability;

5 (c) Whether the regulation will have an unreasonable
6 effect on the job creation or job retention in the state or
7 will place unreasonable restrictions on the ability of
8 individuals who seek to practice or who are practicing a given
9 profession or occupation to find employment;

10 (d)~~(c)~~ Whether the public is or can be effectively
11 protected by other means; and

12 (e)~~(d)~~ Whether the overall cost-effectiveness and
13 economic impact of the proposed regulation, including the
14 indirect costs to consumers, will be favorable.

15 (4) The proponents of legislation that provides for
16 the regulation of a profession or occupation not already
17 expressly subject to state regulation shall provide, upon
18 request, the following information in writing to the state
19 agency that is proposed to have jurisdiction over the
20 regulation and to the legislative committees to which the
21 legislation is referred:

22 (a) The number of individuals or businesses that would
23 be subject to the regulation;

24 (b) The name of each association that represents
25 members of the profession or occupation, together with a copy
26 of its codes of ethics or conduct;

27 (c) Documentation of the nature and extent of the harm
28 to the public caused by the unregulated practice of the
29 profession or occupation, including a description of any
30 complaints that have been lodged against persons who have
31 practiced the profession or occupation in this state during

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1 the preceding 3 years;

2 (d) A list of states that regulate the profession or
3 occupation, and the dates of enactment of each law providing
4 for such regulation and a copy of each law;

5 (e) A list and description of state and federal laws
6 that have been enacted to protect the public with respect to
7 the profession or occupation and a statement of the reasons
8 why these laws have not proven adequate to protect the public;

9 (f) A description of the voluntary efforts made by
10 members of the profession or occupation to protect the public
11 and a statement of the reasons why these efforts are not
12 adequate to protect the public;

13 (g) A copy of any federal legislation mandating
14 regulation;

15 (h) An explanation of the reasons why other types of
16 less restrictive regulation would not effectively protect the
17 public;

18 (i) The cost, availability, and appropriateness of
19 training and examination requirements;

20 ~~(j)(i)~~ The cost of regulation, including the indirect
21 cost to consumers, and the method proposed to finance the
22 regulation;

23 (k) The cost imposed on applicants or practitioners or
24 on employers of applicants or practitioners as a result of the
25 regulation;

26 ~~(l)(j)~~ The details of any previous efforts in this
27 state to implement regulation of the profession or occupation;
28 and

29 ~~(m)(k)~~ Any other information the agency or the
30 committee considers relevant to the analysis of the proposed
31 legislation.

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1 Section 2. Effective October 1, 1998, subsection (4)
2 of section 455.201, Florida Statutes, is amended to read:

3 455.201 Professions and occupations regulated by
4 department; legislative intent; requirements.--

5 (4)(a) Neither ~~No board, nor~~ the department nor any
6 board may, shall create unreasonably restrictive and
7 extraordinary standards that deter qualified persons from
8 entering the various professions. Neither ~~No board, nor~~ the
9 department nor any board may, shall take any action that which
10 tends to create or maintain an economic condition that
11 unreasonably restricts competition, except as specifically
12 provided by law.

13 (b) Neither the department nor any board may create a
14 regulation that has an unreasonable effect on job creation or
15 job retention in the state or that places unreasonable
16 restrictions on the ability of individuals who seek to
17 practice or who are practicing a given profession or
18 occupation to find employment.

19 (c) The Legislature shall evaluate proposals to
20 increase regulation of professions or occupations that are
21 already regulated to determine their effect on job creation or
22 retention and job opportunities.

23 Section 3. Section 455.2035, Florida Statutes, is
24 created to read:

25 455.2035 Rulemaking authority.--The department may
26 adopt rules pursuant to ss. 120.54 and 120.536(1) to implement
27 the regulatory requirements of any profession within the
28 department's jurisdiction which does not have a governing
29 board.

30 Section 4. Subsection (2) of section 455.209, Florida
31 Statutes, is amended to read:

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1 455.209 Accountability and liability of board
2 members.--

3 (2) Each board member and each former board member
4 serving on a probable cause panel shall be exempt from civil
5 liability for any act or omission when acting in the member's
6 official capacity, and the department, or the Department of
7 Legal Affairs shall defend any such member in any action
8 against any board or member of a board arising from any such
9 act or omission. In addition, the department or the Department
10 of Legal Affairs may defend the member's company or business
11 in any action against the company or business if the
12 department or the Department of Legal Affairs determines that
13 the actions from which the suit arises are actions taken by
14 the member in the member's official capacity and were not
15 beyond the member's statutory authority. In providing such
16 defense, the department, ~~the agency,~~ or the Department of
17 Legal Affairs may employ or utilize the legal services of
18 outside counsel.

19 Section 5. Subsection (1) of section 455.213, Florida
20 Statutes, is amended and a new subsection (10) is added to
21 said section to read:

22 455.213 General licensing provisions.--

23 (1) Any person desiring to be licensed shall apply to
24 the department in writing. The application for licensure shall
25 be made on a form prepared and furnished by the department and
26 include the applicant's social security number. The
27 application shall be supplemented as needed to reflect any
28 material change in any circumstance or condition stated in the
29 application which takes place between the initial filing of
30 the application and the final grant or denial of the license
31 and which might affect the decision of the department ~~agency~~.

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1 In order to further the economic development goals of the
2 state, and notwithstanding any law to the contrary, the
3 department may enter into an agreement with the county tax
4 collector for the purpose of appointing the county tax
5 collector as the department's agent to accept applications for
6 licenses and applications for renewals of licenses. The
7 agreement must specify the time within which the tax collector
8 must forward any applications and accompanying application
9 fees to the department. In cases where a person applies or
10 schedules directly with a national examination organization or
11 examination vendor to take an examination required for
12 licensure, any organization- or vendor-related fees associated
13 with the examination may be paid directly to the organization
14 or vendor.

15 (10) The board, or the department when there is no
16 board, shall not issue or renew a license to any applicant or
17 licensee that the board, or the department when there is no
18 board, has assessed a fine, interest, or costs associated with
19 investigation and prosecution until the applicant or licensee
20 has paid in full such fine, interest, or costs associated with
21 investigation and prosecution, or until the applicant or
22 licensee complies with or satisfies all terms and conditions
23 of the final order.

24 Section 6. Subsection (6) of section 455.218, Florida
25 Statutes, is amended to read:

26 455.218 Foreign-trained professionals; special
27 examination and license provisions.--

28 (6) The department, for its boards, shall not issue an
29 initial license to, or renew a license of, any applicant or
30 licensee who is under investigation or prosecution in any
31 jurisdiction for an action which would constitute a violation

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1 of this part or the professional practice acts administered by
2 the department ~~or agency~~ and the boards until such time as the
3 investigation or prosecution is complete, at which time the
4 provisions of the professional practice acts shall apply.

5 Section 7. Section 455.2237, Florida Statutes, is
6 created to read:

7 455.2237 Authority to inspect.--Any board, or the
8 department when there is no board, may by rule authorize
9 inspections and investigations of records, offices, or job
10 sites at times when a licensee or the employee or agent of the
11 licensee, or any person suspected of unlicensed activity, is
12 performing an activity regulated by this chapter or the
13 applicable practice act. Such rule may establish more
14 definitively the times and conditions of inspections and
15 investigations and may authorize such inspections and
16 investigations only to the extent necessary to determine
17 whether a person is in compliance with the provisions of this
18 chapter or of the regulated practice acts or any rule
19 promulgated thereunder, to aid in the enforcement of the
20 provisions of this chapter or of the regulated practice acts
21 or any rule adopted thereunder, or to determine if any of the
22 provisions of this chapter or of the regulated practice acts,
23 or any rule adopted thereunder, is being or has been violated.

24 Section 8. Subsections (2), (3), (4), and (9) of
25 section 455.225, Florida Statutes, are amended to read:

26 455.225 Disciplinary proceedings.--Disciplinary
27 proceedings for each board shall be within the jurisdiction of
28 the department.

29 (2) The department shall allocate sufficient and
30 adequately trained staff to expeditiously and thoroughly
31 determine legal sufficiency and investigate all legally

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1 sufficient complaints. ~~For purposes of this section, it is the~~
2 ~~intent of the Legislature that the term "expeditiously" means~~
3 ~~that the agency, for disciplinary cases under its~~
4 ~~jurisdiction, shall complete the report of its initial~~
5 ~~investigative findings and recommendations concerning the~~
6 ~~existence of probable cause within 6 months after its receipt~~
7 ~~of the complaint. The failure of the agency, for disciplinary~~
8 ~~cases under its jurisdiction, to comply with the time limits~~
9 ~~of this section while investigating a complaint against a~~
10 ~~licensee constitutes harmless error in any subsequent~~
11 ~~disciplinary action unless a court finds that either the~~
12 ~~fairness of the proceeding or the correctness of the action~~
13 ~~may have been impaired by a material error in procedure or a~~
14 ~~failure to follow prescribed procedure.~~When its investigation
15 is complete and legally sufficient, the department shall
16 prepare and submit to the probable cause panel of the
17 appropriate regulatory board the investigative report of the
18 department. The report shall contain the investigative
19 findings and the recommendations of the department concerning
20 the existence of probable cause. At any time after legal
21 sufficiency is found, the department may dismiss any case, or
22 any part thereof, if the department determines that there is
23 insufficient evidence to support the prosecution of
24 allegations contained therein. The department shall provide a
25 detailed report to the appropriate probable cause panel prior
26 to dismissal of any case or part thereof, and to the subject
27 of the complaint after dismissal of any case or part thereof,
28 under this section. For cases dismissed prior to a finding of
29 probable cause, such report is confidential and exempt from s.
30 119.07(1). The probable cause panel shall have access, upon
31 request, to the investigative files pertaining to a case prior

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1 to dismissal of such case. If the department dismisses a case,
2 the probable cause panel may retain independent legal counsel,
3 employ investigators, and continue the investigation and
4 prosecution of the case as it deems necessary.

5 (3)(a) As an alternative to the provisions of
6 subsections (1) and (2), when a complaint is received, the
7 department may provide a licensee with a notice of
8 noncompliance for an initial offense of a minor violation. A
9 violation is a minor violation if it does not demonstrate a
10 serious inability to practice the profession, result in
11 economic or physical harm to a person, or adversely affect the
12 public health, safety, or welfare or create a significant
13 threat of such harm. Each board, or the department if there is
14 no board, shall establish by rule those violations which are
15 minor violations under this provision. Failure of a licensee
16 to take action in correcting the violation within 15 days
17 after notice may result in the institution of regular
18 disciplinary proceedings.

19 (b) The department may issue a notice of noncompliance
20 for an initial offense of a minor violation, notwithstanding a
21 board's failure to designate a particular minor violation by
22 rule as provided in paragraph (a).

23 (c) In any instance in which a licensee is charged
24 with failure to comply with continuing-education requirements,
25 the department's or board's, as appropriate, initial response
26 may only be to issue a notice of noncompliance, including
27 granting the licensee a reasonable time to comply. However,
28 if the department finds that the licensee's failure to comply
29 was done knowingly, the department or board, as appropriate,
30 may levy any other penalty otherwise available to it under the
31 circumstances. This paragraph does not apply to any licensee

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1 for which failure to comply with continuing-education
2 requirements is not grounds for discipline but is instead only
3 a prerequisite for renewal.

4 (4) The determination as to whether probable cause
5 exists shall be made by majority vote of a probable cause
6 panel of the board, or the department, as appropriate. Each
7 regulatory board shall provide by rule that the determination
8 of probable cause shall be made by a panel of its members or
9 by the department. Each board may provide by rule for multiple
10 probable cause panels composed of at least two members. Each
11 board may provide by rule that one or more members of the
12 panel or panels may be a former board member. The length of
13 term or repetition of service of any such former board member
14 on a probable cause panel may vary according to the direction
15 of the board when authorized by board rule. Any probable cause
16 panel must include one of the board's former or present
17 consumer members, if one is available, willing to serve, and
18 is authorized to do so by the board chair. Any probable cause
19 panel must include a present board member. Any probable cause
20 panel must include a former or present professional board
21 member. However, any former professional board member serving
22 on the probable cause panel must hold an active valid license
23 for that profession. All proceedings of the panel are exempt
24 from s. 286.011 until 10 days after probable cause has been
25 found to exist by the panel or until the subject of the
26 investigation waives his or her privilege of confidentiality.
27 The probable cause panel may make a reasonable request, and
28 upon such request the department shall provide such additional
29 investigative information as is necessary to the determination
30 of probable cause. A request for additional investigative
31 information shall be made within 15 days from the date of

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1 receipt by the probable cause panel of the investigative
2 report of the department. The probable cause panel or the
3 department, as may be appropriate, shall make its
4 determination of probable cause within 30 days after receipt
5 by it of the final investigative report of the department. The
6 secretary may grant extensions of the 15-day and the 30-day
7 time limits. In lieu of a finding of probable cause, the
8 probable cause panel, or the department when there is no
9 board, may issue a letter of guidance to the subject. If,
10 within the 30-day time limit, as may be extended, the probable
11 cause panel does not make a determination regarding the
12 existence of probable cause or does not issue a letter of
13 guidance in lieu of a finding of probable cause, the
14 department agency, for disciplinary cases under its
15 jurisdiction, must make a determination regarding the
16 existence of probable cause within 10 days after the
17 expiration of the time limit. In addition, if the probable
18 cause panel finds no probable cause, the department may
19 determine within 10 days thereafter that probable cause
20 exists. If the probable cause panel finds that probable cause
21 exists, it shall direct the department to file a formal
22 complaint against the licensee. The department shall follow
23 the directions of the probable cause panel regarding the
24 filing of a formal complaint. If directed to do so, the
25 department shall file a formal complaint against the subject
26 of the investigation and prosecute that complaint pursuant to
27 chapter 120. However, the department may decide not to
28 prosecute the complaint if it finds that probable cause had
29 been improvidently found by the panel. In such cases, the
30 department shall refer the matter to the board. The board may
31 then file a formal complaint and prosecute the complaint

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1 pursuant to chapter 120. The department shall also refer to
2 the board any investigation or disciplinary proceeding not
3 before the Division of Administrative Hearings pursuant to
4 chapter 120 or otherwise completed by the department within 1
5 year after the filing of a complaint. The department ~~agency~~,
6 for disciplinary cases under its jurisdiction, must establish
7 a uniform reporting system to quarterly refer to each board
8 the status of any investigation or disciplinary proceeding
9 that is not before the Division of Administrative Hearings or
10 otherwise completed by the department ~~or agency~~ within 1 year
11 after the filing of the complaint. ~~Annually, the agency, for~~
12 ~~disciplinary cases under its jurisdiction if there is no~~
13 ~~board, or each board must establish a plan to reduce or~~
14 ~~otherwise close any investigation or disciplinary proceeding~~
15 ~~that is not before the Division of Administrative Hearings or~~
16 ~~otherwise completed by the agency within 1 year after the~~
17 ~~filing of the complaint.~~ A probable cause panel or a board
18 may retain independent legal counsel, employ investigators,
19 and continue the investigation as it deems necessary; all
20 costs thereof shall be paid from the Professional Regulation
21 Trust Fund. All proceedings of the probable cause panel are
22 exempt from s. 120.525.

23 (9)(a) The department shall periodically notify the
24 person who filed the complaint of the status of the
25 investigation, whether probable cause has been found, and the
26 status of any civil action or administrative proceeding or
27 appeal.

28 ~~(b) In any disciplinary case under the jurisdiction of~~
29 ~~the Agency for Health Care Administration for which probable~~
30 ~~cause has been found, the Agency for Health Care~~
31 ~~Administration shall provide to the person who filed the~~

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1 ~~complaint a copy of the administrative complaint, including:~~
2 1. ~~A written explanation of how an administrative~~
3 ~~complaint is resolved by the disciplinary process.~~
4 2. ~~A written explanation of how and when the person~~
5 ~~may participate in the disciplinary process.~~
6 3. ~~A written notice of any hearing before the Division~~
7 ~~of Administrative Hearings or the regulatory board at which~~
8 ~~final agency action is taken.~~
9 (c) ~~In any disciplinary case for which probable cause~~
10 ~~is not found, the Agency for Health Care Administration shall~~
11 ~~so inform the person who filed the complaint and notify that~~
12 ~~person that he or she may, within 60 days, provide any~~
13 ~~additional information to the probable cause panel which may~~
14 ~~be relevant to the decision. In any administrative proceeding~~
15 ~~under s. 120.57, the person who filed the disciplinary~~
16 ~~complaint shall have the right to present oral or written~~
17 ~~communication relating to the alleged disciplinary violations~~
18 ~~or to the appropriate penalty.~~

19 Section 9. Section 455.2285, Florida Statutes, is
20 amended to read:

21 455.2285 Annual report concerning finances,
22 administrative complaints, disciplinary actions, and
23 recommendations.--The department is directed to prepare and
24 submit a report to the President of the Senate and Speaker of
25 the House of Representatives by November 1 of each year. In
26 addition to finances and any other information the Legislature
27 may require, the report shall include statistics and relevant
28 information, profession by profession, detailing:

29 (1) The revenues, expenditures, and cash balances for
30 the prior year, and a review of the adequacy of existing fees.

31 (2) The number of complaints received and

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1 investigated.

2 (3) The number of findings of probable cause made.

3 (4) The number of findings of no probable cause made.

4 (5) The number of administrative complaints filed.

5 (6) The disposition of all administrative complaints.

6 (7) A description of disciplinary actions taken.

7 (8) A description of any effort by the department
8 ~~agency~~, for any disciplinary cases under its jurisdiction, to
9 reduce or otherwise close any investigation or disciplinary
10 proceeding not before the Division of Administrative Hearings
11 under chapter 120 or otherwise not completed within 1 year
12 after the initial filing of a complaint under this chapter.

13 (9) The status of the development and implementation
14 of rules providing for disciplinary guidelines pursuant to s.
15 455.2273.

16 (10) Such recommendations for administrative and
17 statutory changes necessary to facilitate efficient and
18 cost-effective operation of the department and the various
19 boards.

20 Section 10. Effective October 1, 1998, subsection (4)
21 of section 455.517, Florida Statutes, is amended to read:

22 455.517 Professions and occupations regulated by
23 department; legislative intent; requirements.--

24 (4)(a) Neither ~~No board, nor~~ the department nor any
25 board may, shall create unreasonably restrictive and
26 extraordinary standards that deter qualified persons from
27 entering the various professions. Neither ~~No board, nor~~ the
28 department nor any board may, shall take any action that ~~which~~
29 tends to create or maintain an economic condition that
30 unreasonably restricts competition, except as specifically
31 provided by law.

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1 (b) Neither the department nor any board may create a
2 regulation that has an unreasonable effect on job creation or
3 job retention in the state or that places unreasonable
4 restrictions on the ability of individuals who seek to
5 practice or who are practicing a profession or occupation to
6 find employment.

7 (c) The Legislature shall evaluate proposals to
8 increase regulation of professions or occupations to determine
9 their effect on job creation or retention and employment
10 opportunities.

11 Section 11. Section 481.222, Florida Statutes, is
12 created to read:

13 481.222 Architects performing building code inspector
14 duties.--Notwithstanding any other provision of this part, a
15 person currently licensed to practice as an architect under
16 this part may provide building inspection services described
17 in s. 468.603(6) and (7) to a local government or state agency
18 upon its request, without being certified by the Board of
19 Building Code Administrators and Inspectors under part XIII of
20 chapter 468. When performing these building inspection
21 services, the architect is subject to the disciplinary
22 guidelines of this part and s. 468.621(1)(c)-(g). The
23 complaint processing, investigation, and discipline shall be
24 conducted by the Board of Architecture and Interior Design
25 rather than the Board of Building Code Administrators and
26 Inspectors. An architect may not perform plans review as an
27 employee of a local government upon any job that the architect
28 or the architect's company designed.

29 Section 12. Section 471.029, Florida Statutes, is
30 created to read:

31 471.029 Professional engineers performing building

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1 code inspector duties.--Notwithstanding any other provision of
2 this part, a person currently licensed to practice as a
3 professional engineer under this part may provide building
4 inspection services described in s. 468.603(6) and (7) to a
5 local government or state agency upon its request, without
6 being certified by the Board of Building Code Administrators
7 and Inspectors under part XIII of chapter 468. When
8 performing these building inspection services, the
9 professional engineer is subject to the disciplinary
10 guidelines of this chapter and s. 468.621(1)(c)-(g). The
11 complaint processing, investigation, and discipline shall be
12 conducted by the Board of Professional Engineers rather than
13 the Board of Building code Administrators and Inspectors. A
14 professional engineer may not perform plans review as an
15 employee of a local government upon any job that the
16 professional engineer or the professional engineer's company
17 designed.

18 Section 13. Except as otherwise provided in this act,
19 this act shall take effect upon becoming a law.

22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 On page 1, lines 2 through page 2 line 2
25 remove from the title of the bill: all of said lines

27 and insert in lieu thereof:

28 An act relating to professional regulation;
29 amending s. 11.62, F.S.; adding criteria for
30 evaluating new regulation; amending s. 455.201,
31 F.S.; requiring the Department of Business and

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1 Professional Regulation to consider the impact
2 on jobs when considering new regulation;
3 creating s. 455.2035, F.S.; providing the
4 department rulemaking authority; amending s.
5 455.213, F.S.; requiring payment of certain
6 fees or fines prior to the board or department
7 renewing or issuing an initial license or
8 registration; amending ss. 455.209, 455.218,
9 F.S.; conforming provisions to a previous
10 administrative reorganization; creating s.
11 455.2237, F.S.; providing authority to inspect
12 and investigate records, offices, and job
13 sites; amending s. 455.225, F.S.; revising
14 probable-cause provisions; prescribing
15 authority of the department or a board in cases
16 of failure to comply with continuing-education
17 requirements; conforming provisions to a
18 previous administrative reorganization;
19 amending s. 455.2285, F.S.; conforming
20 provisions to a previous administrative
21 reorganization; amending s. 455.517, F.S.;
22 requiring the Department of Health to consider
23 the impact on jobs when creating new
24 regulation; creating section 481.222, relating
25 to architects providing building inspection
26 services; creating 471.029, relating to
27 engineers providing building inspection
28 services; providing effective dates.
29
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31