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SENATE BILL 398

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Gerald Ortiz y Pino

AN ACT

RELATING TO TAXATION; ENACTING THE SPECIAL NEEDS STUDENT SCHOLARSHIP ACT; PROVIDING FOR TUITION SCHOLARSHIP ORGANIZATIONS TO GRANT EDUCATIONAL SCHOLARSHIPS TO SPECIAL NEEDS STUDENTS TO ATTEND CERTAIN PUBLIC AND NONPUBLIC SCHOOLS; CREATING INCOME TAX AND CORPORATE INCOME TAX CREDITS FOR CONTRIBUTIONS TO TUITION SCHOLARSHIP ORGANIZATIONS THAT PROVIDE EDUCATIONAL SCHOLARSHIPS FOR SPECIAL NEEDS STUDENTS TO ATTEND PUBLIC OR PRIVATE SCHOOLS OF THE STUDENT'S PARENTS' CHOICE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 5 of this act may be cited as the "Special Needs Student Scholarship Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Special Needs Student Scholarship Act:

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1 A. "certification document" means the document
2 issued by the department to an organization verifying that the
3 organization is a tuition scholarship organization and
4 contributions to that organization for special needs student
5 scholarships may be claimed as a special needs student
6 scholarship tax credit;

7 B. "contribution receipt" means a document
8 developed by the taxation and revenue department pursuant to
9 the Special Needs Student Scholarship Act and provided to a
10 tuition scholarship organization that in turn provides the
11 document to an individual or corporate contributor that is a
12 taxpayer that intends to claim a special needs student
13 scholarship tax credit as a receipt for a contribution to the
14 tuition scholarship organization;

15 C. "department" means the public education
16 department;

17 D. "educational scholarship" means a tuition grant
18 or other grant of funds to a special needs student to cover all
19 or part of the costs of that student at a qualified school,
20 including transportation costs;

21 E. "eligible student" means a special needs student
22 who attended a public school for the semester prior to first
23 receiving an educational scholarship pursuant to the Special
24 Needs Student Scholarship Act;

25 F. "parent" means a guardian, custodian or other

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1 person with authority to act on behalf of a child;

2 G. "qualified school" means a public or nonpublic
3 elementary, middle or secondary school located in New Mexico to
4 which a parent has chosen to send a special needs student;

5 H. "relative" means a person related by affinity or
6 consanguinity to the third degree;

7 I. "special needs student" means a student who has
8 or is eligible to have an individual education plan as defined
9 in Section 1401 of the federal Individuals with Disabilities
10 Education Act or a plan created pursuant to Section 504 of the
11 federal Rehabilitation Act of 1973 or who is living in foster
12 care;

13 J. "special needs student scholarship tax credit"
14 means the special needs student scholarship income tax credit
15 provided in the Income Tax Act and the special needs student
16 scholarship corporate income tax credit provided in the
17 Corporate Income and Franchise Tax Act;

18 K. "tuition grant" means a grant of funds for the
19 purpose of covering the costs of tuition for a qualified
20 school; and

21 L. "tuition scholarship organization" means an
22 organization that provides educational scholarships to students
23 attending qualified schools of their parents' choice and that
24 meets the criteria established in the Special Needs Student
25 Scholarship Act.

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1 SECTION 3. ~~[NEW MATERIAL]~~ TUITION SCHOLARSHIP

2 ORGANIZATION--CERTIFICATION.--

3 A. An organization may seek certification from the
4 department as a tuition scholarship organization by submitting
5 an application for certification to the department.

6 B. To be certified as a tuition scholarship
7 organization by the department, the organization shall provide
8 documentation as deemed appropriate by the department to verify
9 that:

10 (1) the organization has been granted an
11 exemption from federal income tax as an organization described
12 in Section 501(c)(3) of the Internal Revenue Code of 1986;

13 (2) the organization has awarded or intends to
14 award educational scholarships to special needs students who
15 are attending or plan to attend qualified schools;

16 (3) the scholarships are funded from
17 contributions that the organization has received in or prior to
18 the current calendar year or anticipates receiving during the
19 remainder of the calendar year and:

20 (a) at least ninety percent of the
21 contributions received during a calendar year for which the
22 organization issues a contribution receipt to an individual or
23 corporate taxpayer for purposes of obtaining a special needs
24 student scholarship tax credit is awarded by the organization
25 as educational scholarships and all revenue from interest or

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1 investments is expended solely on educational scholarships; and

2 (b) a scholarship award to an eligible
3 student shall not exceed eighty percent of the three-year
4 rolling average of the state equalization guarantee
5 distribution for the respective level of an eligible student as
6 calculated for the associated program units;

7 (4) the organization distributes periodic
8 scholarship payments as checks that are issued to an eligible
9 student's parent, that are mailed to the qualified school in
10 which the eligible student is enrolled and that require the
11 endorsement of the parent prior to deposit of the check;

12 (5) educational scholarships awarded by the
13 organization are portable during the school year and can be
14 used at any qualified school that accepts the eligible student
15 according to a parent's wishes; provided that the scholarship
16 shall be prorated between schools based on the number of days
17 attended at each school by the eligible student;

18 (6) criminal background checks on all of the
19 organization's employees and board members have been conducted
20 by the organization, with the understanding that individuals
21 who might reasonably pose a risk to the sound fiscal management
22 of the funds of the organization shall be excluded from
23 employment or governance, and all pertinent findings on
24 employees and board members have been provided to the
25 department for review and approval;

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1 (7) the organization has in place systems to
2 provide for financial accountability, including independent
3 annual audits that shall be submitted to the department in the
4 form of a financial information report that complies with
5 generally accepted accounting procedures as specified by the
6 department and is certified to be free of material
7 misstatements by the certified public accountant who performed
8 the audit; and

9 (8) the organization is financially viable and
10 receives or is likely to receive donations of fifty thousand
11 dollars (\$50,000) or more during a school year by filing with
12 the department prior to the start of the school year a surety
13 bond payable to the state in an amount equal to the aggregate
14 amount of contributions expected to be received during the
15 school year.

16 SECTION 4. [NEW MATERIAL] TUITION SCHOLARSHIP
17 ORGANIZATION--DUTIES.--

18 A. No later than thirty days prior to the start of
19 a new school year or the start of a new semester, a tuition
20 scholarship organization shall provide to the department the
21 names of eligible students who received scholarships, the
22 respective levels of the students that have special education
23 needs and the students' previous school district or charter
24 school affiliation. The tuition scholarship organization shall
25 provide verification that the eligible students have been

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1 awarded a tuition scholarship and have enrolled in a private
2 school for the new school year or the new semester.

3 B. A tuition scholarship organization shall ensure
4 that a school participating in the tuition scholarship
5 organization's scholarship program:

6 (1) is in compliance with all health and
7 safety laws or rules that apply to schools;

8 (2) holds a valid occupancy permit as required
9 by applicable laws;

10 (3) certifies to the tuition scholarship
11 organization that the school does not discriminate in
12 admissions on the basis of race, color or national origin;

13 (4) provides academic accountability to
14 parents of the students in the program by regularly reporting
15 to the parent on the student's academic and developmental
16 progress;

17 (5) certifies that every school employee with
18 unsupervised access to students has undergone a background
19 check as described in Subsection B of Section 22-10A-5 NMSA
20 1978;

21 (6) has no paid staff or board members who are
22 also staff or board members of the tuition scholarship
23 organization or who are relatives of the staff or board members
24 of the tuition scholarship organization; and

25 (7) is a qualified school and, if the school

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1 has more applications for educational scholarships from
2 eligible students than positions available for students
3 receiving scholarships, the school fills the available
4 scholarship positions only by using a random selection process.

5 C. By June 1 of each year beginning in 2012, a
6 tuition scholarship organization shall report the following
7 information to the department and the taxation and revenue
8 department:

9 (1) the name and address of the tuition
10 scholarship organization;

11 (2) the total number and dollar amount of
12 contributions received for which contribution receipts were
13 issued during the calendar year ending on December 31 of the
14 prior year;

15 (3) the total number and dollar amount of all
16 educational scholarships awarded during the calendar year
17 ending on December 31 of the prior year; and

18 (4) the total number and dollar amount of
19 educational scholarships awarded to eligible students during
20 the calendar year ending on December 31 of the prior year.

21 D. A tuition scholarship organization shall:

22 (1) provide to each individual and corporate
23 contributor of funds dedicated for educational scholarships a
24 contribution receipt that shall be completed according to
25 taxation and revenue department requirements;

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1 (2) maintain a list by the sequential number
2 on the contribution receipt identifying to whom each copy is
3 issued, the amount and date of the contribution and any other
4 information deemed necessary by the taxation and revenue
5 department to allow the contributor to receive a special needs
6 student scholarship tax credit; and

7 (3) account for all copies of contribution
8 receipts damaged, destroyed, lost or otherwise unusable.

9 SECTION 5. [NEW MATERIAL] DEPARTMENT--DUTIES.--

10 A. The department shall administer the Special
11 Needs Student Scholarship Act.

12 B. The department shall:

13 (1) provide the name of each certified tuition
14 scholarship organization to the taxation and revenue department
15 by no later than thirty days after issuing the certification
16 document to the tuition scholarship organization;

17 (2) upon notification by the tuition
18 scholarship organization, calculate the associated program
19 units for an eligible student receiving an educational
20 scholarship that would have been generated under the funding
21 formula using the current year unit value and determine the
22 dollar amount of that student's program cost, if that student
23 were to have enrolled in the student's previous school for the
24 new school year or the new semester;

25 (3) if an eligible student receiving an

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1 educational scholarship withdraws prior to the start of a new
2 school year, deduct that student's program cost from the
3 student's previous school district or charter school state
4 equalization guarantee distribution allocation prior to
5 distribution;

6 (4) if an eligible student receiving an
7 educational scholarship withdraws between semesters, make a
8 prorated reduction in the school district's or charter school's
9 distribution for the remainder of the school year and not
10 distribute the funds attributed to the adjustments, which shall
11 remain undistributed and shall revert to the general fund at
12 the end of the fiscal year;

13 (5) engage an auditor to conduct a financial
14 and program audit of a tuition scholarship organization, at the
15 expense of the tuition scholarship organization, if there is
16 evidence of fraud or failure to comply with the Special Needs
17 Student Scholarship Act;

18 (6) deny, suspend or revoke the certification
19 of a tuition scholarship organization for purposes of the
20 special needs student scholarship tax credit if the department
21 determines that the organization has intentionally and
22 substantially failed to comply with the requirements of the
23 Special Needs Student Scholarship Act; and

24 (7) notify the taxation and revenue department
25 if the certification of an organization as a tuition

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1 scholarship organization is denied, suspended or revoked within
2 ten days of the denial, suspension or revocation.

3 SECTION 6. A new section of the Income Tax Act is enacted
4 to read:

5 "[NEW MATERIAL] SPECIAL NEEDS STUDENT SCHOLARSHIP INCOME
6 TAX CREDIT.--

7 A. A taxpayer who files a New Mexico income tax
8 return and is not a dependent of another taxpayer may claim,
9 and the department may approve, a credit against the income tax
10 liability of the taxpayer for a contribution made to a tuition
11 scholarship organization. The credit may be approved in an
12 amount equal to ninety percent of the total contributions made
13 by the taxpayer to a tuition scholarship organization for which
14 contribution receipts have been provided by that organization
15 during the taxable year but shall not exceed fifty percent of
16 the taxpayer's income tax liability for the taxable year. The
17 credit provided in this section may be referred to as the
18 "special needs student scholarship income tax credit".

19 B. The purpose of the special needs student
20 scholarship income tax credit is to encourage individuals and
21 businesses to contribute money to tuition scholarship
22 organizations that provide scholarships for special needs
23 students to attend public or nonpublic schools that are chosen
24 by the students' parents.

25 C. To ensure that the department receives the

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1 information needed to allow a special needs student scholarship
2 income tax credit, the department shall develop a contribution
3 receipt that requests all of the information needed by the
4 department to determine if a credit is due. The contribution
5 receipts shall be sequentially numbered, and a charge, not to
6 exceed fifty cents (\$.50) per numbered copy, may be charged by
7 the department to the tuition scholarship organization.

8 D. Upon receiving notice from the public education
9 department that an organization has been certified as a tuition
10 scholarship organization, the department shall provide
11 sequentially numbered copies of contribution receipts to a
12 tuition scholarship organization to be distributed by the
13 tuition scholarship organization to its contributors to
14 indicate the recipient, date and value of a contribution to the
15 tuition scholarship organization and other information required
16 by the department.

17 E. The department shall require a taxpayer claiming
18 the special needs student scholarship income tax credit to
19 submit the numbered copy of the contribution receipt from the
20 tuition scholarship organization to which the taxpayer
21 contributed money with the taxpayer's application for the
22 credit provided by this section.

23 F. The special needs student scholarship income tax
24 credit shall not be allowed for a contribution that is included
25 for the taxable year in the taxpayer's itemized deductions, as

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1 defined in Section 63 of the Internal Revenue Code.

2 G. A husband and wife who file separate returns for
3 a taxable year in which they could have filed a joint return
4 may each claim only one-half of the special needs student
5 scholarship income tax credit that would have been allowed on a
6 joint return.

7 H. A taxpayer who otherwise qualifies for and
8 claims a special needs student scholarship income tax credit
9 for a contribution made to a tuition scholarship organization
10 by a partnership or other business association of which the
11 taxpayer is a member may claim a credit only in proportion to
12 the taxpayer's interest in the partnership or business
13 association. The total credit claimed in the aggregate by all
14 members of the partnership or business association in a taxable
15 year with respect to a contribution made to a tuition
16 scholarship organization, including special needs student
17 scholarship corporate income tax credits claimed by a corporate
18 member of the partnership or business association, shall not
19 exceed the maximum credit that would have been allowable
20 pursuant to this section if claimed by a single taxpayer.

21 I. Any amount of the special needs student
22 scholarship income tax credit allowed by the department that
23 exceeds fifty percent of the income tax liability of the
24 taxpayer in the taxable year in which the credit is first
25 claimed may be carried forward for three consecutive taxable

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1 years.

2 J. The department shall compile a report annually
3 for the revenue stabilization and tax policy committee that
4 sets forth the number of taxpayers approved to receive special
5 needs student scholarship income tax credits, the aggregate
6 amount of credits approved and the average and median amounts
7 of credits approved. The department shall determine every
8 three years beginning in 2013 whether the special needs student
9 scholarship income tax credit is performing the purpose for
10 which it was created.

11 K. A taxpayer that claims a special needs student
12 scholarship income tax credit pursuant to the Income Tax Act
13 shall not also claim a special needs student scholarship
14 corporate income tax credit pursuant to the Corporate Income
15 and Franchise Tax Act or any other similar tax credit for the
16 same contribution to a tuition scholarship organization. The
17 special needs student scholarship income tax credit shall be
18 applied to the taxpayer's tax liability before application of
19 any other tax credit claimed for the taxable year by the
20 taxpayer.

21 L. Acceptance of the special needs student
22 scholarship income tax credit is authorization to the
23 department to disclose the amount of the tax credit claimed by
24 the taxpayer as needed to report fully as required by this
25 section to the revenue stabilization and tax policy committee

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1 of the legislature.

2 M. As used in this section:

3 (1) "contribution receipt" means the document
4 developed by the department and issued pursuant to the Special
5 Needs Student Scholarship Act by a tuition scholarship
6 organization to a contributor;

7 (2) "parent" means a guardian, custodian or
8 other person with authority to act on behalf of a child;

9 (3) "special needs student" means a student
10 who has or is eligible to have an individual education plan as
11 defined in Section 1401 of the Individuals with Disabilities
12 Education Act or a plan created pursuant to Section 504 of the
13 federal Rehabilitation Act of 1973 or who is living in foster
14 care; and

15 (4) "tuition scholarship organization" means
16 an organization that provides educational scholarships to
17 students attending qualified schools of their parents' choice
18 and that meets the requirements of the Special Needs Student
19 Scholarship Act."

20 SECTION 7. A new section of the Corporate Income and
21 Franchise Tax Act is enacted to read:

22 "[NEW MATERIAL] SPECIAL NEEDS STUDENT SCHOLARSHIP
23 CORPORATE INCOME TAX CREDIT.--

24 A. A taxpayer that files a New Mexico corporate
25 income tax return may claim, and the department may approve, a

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1 credit against the corporate income tax liability of the
2 taxpayer for a contribution made to a tuition scholarship
3 organization. The credit may be approved in an amount equal to
4 ninety percent of the total contributions made by the taxpayer
5 to a tuition scholarship organization for which contribution
6 receipts have been provided by that organization during the
7 taxable year but shall not exceed fifty percent of the
8 taxpayer's corporate income tax liability for the taxable year.
9 The credit provided in this section may be referred to as the
10 "special needs student scholarship corporate income tax
11 credit".

12 B. The purpose of the special needs student
13 scholarship corporate income tax credit is to encourage
14 corporations to contribute money to tuition scholarship
15 organizations that provide scholarships for special needs
16 students to attend public or nonpublic schools that are chosen
17 by the students' parents.

18 C. To ensure that the department receives the
19 information needed to allow a special needs student scholarship
20 corporate income tax credit, the department shall develop a
21 contribution receipt that requests all of the information
22 needed by the department to determine if a credit is due. The
23 contribution receipts shall be sequentially numbered, and a
24 charge, not to exceed fifty cents (\$.50) per numbered copy, may
25 be charged by the department to the tuition scholarship

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1 organization.

2 D. Upon receiving notice from the public education
3 department that an organization has been certified as a tuition
4 scholarship organization, the department shall provide
5 sequentially numbered copies of contribution receipts to a
6 tuition scholarship organization to be distributed by the
7 tuition scholarship organization to its contributors to
8 indicate the recipient, date and value of a contribution to the
9 tuition scholarship organization and other information required
10 by the department.

11 E. The department shall require a taxpayer claiming
12 the special needs scholarship corporate income tax credit to
13 submit the numbered copy of the certification document from the
14 tuition scholarship organization to which the taxpayer
15 contributed money with the taxpayer's application for the
16 credit provided by this section.

17 F. The special needs student scholarship corporate
18 income tax credit shall not be allowed for a contribution that
19 is included for the taxable year in the taxpayer's itemized
20 deductions, as defined in Section 63 of the Internal Revenue
21 Code.

22 G. Any amount of the special needs student
23 scholarship corporate income tax credit allowed by the
24 department that exceeds fifty percent of the corporate income
25 tax liability of the taxpayer in the taxable year in which the

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1 credit is first claimed may be carried forward for three
2 consecutive taxable years.

3 H. The department shall compile a report annually
4 for the revenue stabilization and tax policy committee that
5 sets forth the number of taxpayers approved to receive special
6 needs student scholarship corporate income tax credits, the
7 aggregate amount of credits approved and the average and median
8 amounts of credits approved. The department shall determine
9 every three years beginning in 2013 whether the special needs
10 student scholarship corporate income tax credit is performing
11 the purpose for which it was created.

12 I. A taxpayer that claims a special needs student
13 scholarship corporate income tax credit pursuant to the
14 Corporate Income and Franchise Tax Act shall not also claim a
15 special needs student scholarship income tax credit pursuant to
16 the Income Tax Act or any other similar tax credit for the same
17 contribution to a tuition scholarship organization. The
18 special needs student scholarship corporate income tax credit
19 shall be applied to the taxpayer's tax liability before
20 application of any other tax credit claimed for the taxable
21 year by the taxpayer.

22 J. Acceptance of the special needs student
23 scholarship corporate income tax credit is authorization to the
24 department to disclose the amount of the tax credit claimed by
25 the taxpayer as needed to report fully as required by this

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1 section to the revenue stabilization and tax policy committee
2 of the legislature.

3 K. As used in this section:

4 (1) "contribution receipt" means the document
5 issued pursuant to the Special Needs Student Scholarship Act by
6 a tuition scholarship organization to a contributor;

7 (2) "parent" means a guardian, custodian or
8 other person with authority to act on behalf of a child;

9 (3) "special needs student" means a student
10 who has or is eligible to have an individual education plan as
11 defined in Section 1401 of the Individuals with Disabilities
12 Education Act or a plan created pursuant to Section 504 of the
13 federal Rehabilitation Act of 1973 or who is living in foster
14 care; and

15 (4) "tuition scholarship organization" means
16 an organization that provides educational scholarships to
17 students attending qualified schools of their parents' choice
18 pursuant to the Special Needs Student Scholarship Act."

19 **SECTION 8.** Section 22-8-12.1 NMSA 1978 (being Laws 1978,
20 Chapter 128, Section 5, as amended) is amended to read:

21 "22-8-12.1. MEMBERSHIP PROJECTIONS AND BUDGET
22 REQUESTS.--

23 A. Each local school board or governing body of a
24 state-chartered charter school shall submit annually, on or
25 before October 15, to the department:

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1 (1) an estimate for the succeeding fiscal year
2 of:

3 (a) the membership of qualified students
4 to be enrolled in the basic program;

5 (b) the full-time-equivalent membership
6 of students to be enrolled in approved early childhood
7 education programs; and

8 (c) the membership of students to be
9 enrolled in approved special education programs, adjusted for
10 deductions due to student participation in the scholarship
11 programs of the Special Needs Student Scholarship Act;

12 (2) all other information necessary to
13 calculate program costs; and

14 (3) any other information related to the
15 financial needs of the school district or state-chartered
16 charter school as may be requested by the department.

17 B. All information requested pursuant to Subsection
18 A of this section shall be submitted on forms prescribed and
19 furnished by the department and shall comply with the
20 department's rules and procedures.

21 C. The department shall:

22 (1) review the financial needs of each school
23 district or state-chartered charter school for the succeeding
24 fiscal year; and

25 (2) submit annually, on or before November 30,

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1 to the secretary of finance and administration the
2 recommendations of the department for:

3 (a) amendments to the public school
4 finance formula;

5 (b) appropriations for the succeeding
6 fiscal year to the public school fund for inclusion in the
7 executive budget document; and

8 (c) appropriations for the succeeding
9 fiscal year for pupil transportation and instructional
10 materials."

11 SECTION 9. APPLICABILITY.--The provisions of Sections 6
12 and 7 of this act apply to taxable years beginning on or after
13 January 1, 2012 but before January 1, 2016.

14 SECTION 10. EFFECTIVE DATE.--

15 A. The effective date of the provisions of Sections
16 1 through 5 and 8 of this act is July 1, 2011.

17 B. The effective date of the provisions of Sections
18 6 and 7 of this act is January 1, 2012.

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