

**STATE OFFICE OF EDUCATION HUMAN  
RESOURCE MANAGEMENT AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ronda Rudd Menlove**

Senate Sponsor: Peter C. Knudson

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**LONG TITLE**

**General Description:**

This bill modifies the Utah State Personnel Management Act to require the State Board of Education to adopt human resource policies and procedures for its employees and exempt them from overtime, career service, and classified service provisions under the Department of Human Resource Management.

**Highlighted Provisions:**

This bill:

- ▶ requires the State Board of Education to adopt human resource policies and procedures governing its employees;
- ▶ exempts all employees instead of only certified employees of the State Board of Education from overtime provisions under the Department of Human Resource Management;
- ▶ exempts all employees instead of only certified employees of the State Board of Education from classified service provisions under the Department of Human Resource Management;
- ▶ exempts employees of the State Board of Education from career service provisions under the Department of Human Resource Management; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**



28 None

29 **Other Special Clauses:**

30 This bill takes effect on July 1, 2007.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **53A-1-401**, as last amended by Chapter 2, Laws of Utah 2005, First Special Session

34 **67-19-6.7**, as last amended by Chapter 139, Laws of Utah 2006

35 **67-19-12**, as last amended by Chapter 139, Laws of Utah 2006

36 **67-19-15**, as last amended by Chapter 139, Laws of Utah 2006



38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section **53A-1-401** is amended to read:

40 **53A-1-401. Powers of State Board of Education -- Adoption of rules --**

41 **Enforcement - Human resource policies.**

42 (1) (a) The State Board of Education has general control and supervision of the state's  
43 public education system.

44 (b) "General control and supervision" as used in Article X, Sec. 3, of the Utah  
45 Constitution means directed to the whole system.

46 (2) The board may not govern, manage, or operate school districts, institutions, and  
47 programs, unless granted that authority by statute.

48 (3) The board may adopt rules and policies in accordance with its responsibilities under  
49 the constitution and state laws, and may interrupt disbursements of state aid to any district  
50 which fails to comply with rules adopted in accordance with this Subsection (3).

51 (4) (a) The board may sell any interest it holds in real property upon a finding by the  
52 board that the property interest is surplus.

53 (b) The board may use the money it receives from a sale under Subsection (4)(a) for  
54 capital improvements, equipment, or materials, but not for personnel or ongoing costs.

55 (c) If the property interest under Subsection (4)(a) was held for the benefit of an agency  
56 or institution administered by the board, the money may only be used for purposes related to  
57 the agency or institution.

58 (d) The board shall advise the Legislature of any sale under Subsection (4)(a) and

59 related matters during the next following session of the Legislature.

60 (5) The board shall develop policies and procedures related to federal educational  
61 programs in accordance with Title 53A, Chapter 1, Part 9, Implementing Federal Programs  
62 Act.

63 (6) The board shall adopt human resource policies and procedures governing its  
64 employees.

65 Section 2. Section **67-19-6.7** is amended to read:

66 **67-19-6.7. Overtime policies for state employees.**

67 (1) As used in this section:

68 (a) "Accrued overtime hours" means:

69 (i) for nonexempt employees, overtime hours earned during a fiscal year that, at the end  
70 of the fiscal year, have not been paid and have not been taken as time off by the nonexempt  
71 state employee who accrued them; and

72 (ii) for exempt employees, overtime hours earned during an overtime year.

73 (b) "Appointed official" means:

74 (i) each department executive director and deputy director, each division director, and  
75 each member of a board or commission; and

76 (ii) any other person employed by a department who is appointed by, or whose  
77 appointment is required by law to be approved by, the governor and who:

78 (A) is paid a salary by the state; and

79 (B) who exercises managerial, policy-making, or advisory responsibility.

80 (c) "Department" means the Department of Administrative Services, the Department of  
81 Corrections, the Department of Financial Institutions, the Department of Alcoholic Beverage  
82 Control, the Insurance Department, the Public Service Commission, the Labor Commission,  
83 the Department of Agriculture and Food, the Department of Human Services, [~~the State Board~~  
84 ~~of Education,~~] the Department of Natural Resources, the Department of Technology Services,  
85 the Department of Transportation, the Department of Commerce, the Department of Workforce  
86 Services, the State Tax Commission, the Department of Community and Culture, the  
87 Department of Health, the National Guard, the Department of Environmental Quality, the  
88 Department of Public Safety, the Department of Human Resource Management, the  
89 Commission on Criminal and Juvenile Justice, all merit employees except attorneys in the

90 Office of the Attorney General, merit employees in the Office of the State Treasurer, and merit  
91 employees in the Office of the State Auditor.

92 (d) "Elected official" means any person who is an employee of the state because he was  
93 elected by the registered voters of Utah to a position in state government.

94 (e) "Exempt employee" means a state employee who is exempt as defined by the Fair  
95 Labor Standards Act of 1978, 29 U.S.C. Section 201 et seq.

96 (f) "FLSA" means the Fair Labor Standards Act of 1978, 29 U.S.C. Section 201 et seq.

97 (g) "FLSA agreement" means the agreement authorized by the Fair Labor Standards  
98 Act of 1978, 29 U.S.C. Section 201 et seq., by which a nonexempt employee elects the form of  
99 compensation he will receive for overtime.

100 (h) "Nonexempt employee" means a state employee who is nonexempt as defined by  
101 the Department of Human Resource Management applying FLSA requirements.

102 (i) "Overtime" means actual time worked in excess of the employee's defined work  
103 period.

104 (j) "Overtime year" means the year determined by a department under Subsection  
105 (4)(b) at the end of which an exempt employee's accrued overtime lapses.

106 (k) (i) "State employee" means every person employed by a department who is not an  
107 appointed official or an elected official.

108 (ii) "State employee" does not mean:

109 (A) certificated employees of the State Board of Education; and

110 (B) employees of the Department of Community and Culture or the Governor's Office  
111 of Economic Development, whose positions are designated as schedule AM exempt employees  
112 under Section 67-19-15.

113 (l) "Uniform annual date" means the date when an exempt employee's accrued  
114 overtime lapses.

115 (m) "Work period" means:

116 (i) for all nonexempt employees, except law enforcement and hospital employees, a  
117 consecutive seven day 24 hour work period of 40 hours;

118 (ii) for all exempt employees, a 14 day, 80 hour payroll cycle; and

119 (iii) for nonexempt law enforcement and hospital employees, the period established by  
120 each department by rule for those employees according to the requirements of the Fair Labor

121 Standards Act of 1978, 29 U.S.C. Section 201 et seq.

122 (2) Each department shall compensate each state employee who works overtime by  
123 complying with the requirements of this section.

124 (3) (a) Each department shall negotiate and obtain a signed FLSA agreement from each  
125 nonexempt employee.

126 (b) In the FLSA agreement, the nonexempt employee shall elect either to be  
127 compensated for overtime by:

128 (i) taking time off work at the rate of one and one-half hour off for each overtime hour  
129 worked; or

130 (ii) being paid for the overtime worked at the rate of one and one-half times the rate per  
131 hour that the state employee receives for nonovertime work.

132 (c) Any nonexempt employee who elects to take time off under this Subsection (3)  
133 shall be paid for any overtime worked in excess of the cap established by the Department of  
134 Human Resource Management.

135 (d) Before working any overtime, each nonexempt employee shall obtain authorization  
136 to work overtime from the employee's immediate supervisor.

137 (e) Each department shall:

138 (i) for employees who elect to be compensated with time off for overtime, allow  
139 overtime earned during a fiscal year to be accumulated; and

140 (ii) for employees who elect to be paid for overtime worked, pay them for overtime  
141 worked in the paycheck for the pay period in which the employee worked the overtime.

142 (f) If the department pays a nonexempt employee for overtime, the department shall  
143 charge that payment to the department's budget.

144 (g) At the end of each fiscal year, the Division of Finance shall total all the accrued  
145 overtime hours for nonexempt employees and charge that total against the appropriate fund or  
146 subfund.

147 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), each department shall  
148 compensate exempt employees who work overtime by granting them time off at the rate of one  
149 hour off for each hour of overtime worked.

150 (ii) The executive director of the Department of Human Resource Management may  
151 grant limited exceptions to this requirement, where work circumstances dictate, by authorizing

152 a department to pay employees for overtime worked at the rate per hour that the employee  
153 receives for nonovertime work, if the department has funds available.

154 (b) (i) Each department shall:

155 (A) establish in its written human resource policies a uniform annual date for each  
156 division that is at the end of any pay period; and

157 (B) communicate the uniform annual date to its employees.

158 (ii) If any department fails to establish a uniform annual date as required by this  
159 Subsection (4), the executive director of the Department of Human Resource Management, in  
160 conjunction with the director of the Division of Finance, shall establish the date for that  
161 department.

162 (c) (i) Any overtime earned under this Subsection (4) is not an entitlement, is not a  
163 benefit, and is not a vested right.

164 (ii) A court may not construe the overtime for exempt employees authorized by this  
165 Subsection (4) as an entitlement, a benefit, or as a vested right.

166 (d) At the end of the overtime year, upon transfer to another department at any time,  
167 and upon termination, retirement, or other situations where the employee will not return to  
168 work before the end of the overtime year:

169 (i) any of an exempt employee's overtime that is more than the maximum established  
170 by the Department of Human Resource Management rule lapses; and

171 (ii) unless authorized by the executive director of the Department of Human Resource  
172 Management under Subsection (4)(a)(ii), a department may not compensate the exempt  
173 employee for that lapsed overtime by paying the employee for the overtime or by granting the  
174 employee time off for the lapsed overtime.

175 (e) Before working any overtime, each exempt employee shall obtain authorization to  
176 work overtime from the exempt employee's immediate supervisor.

177 (f) If the department pays an exempt employee for overtime under authorization from  
178 the executive director of the Department of Human Resource Management, the department  
179 shall charge that payment to the department's budget in the pay period earned.

180 (5) The Department of Human Resource Management shall:

181 (a) ensure that the provisions of the FLSA and this section are implemented throughout  
182 state government;

183 (b) determine, for each state employee, whether that employee is exempt, nonexempt,  
184 law enforcement, or has some other status under the FLSA;

185 (c) in coordination with modifications to the systems operated by the Division of  
186 Finance, make rules:

187 (i) establishing procedures for recording overtime worked that comply with FLSA  
188 requirements;

189 (ii) establishing requirements governing overtime worked while traveling and  
190 procedures for recording that overtime that comply with FLSA requirements;

191 (iii) establishing requirements governing overtime worked if the employee is "on call"  
192 and procedures for recording that overtime that comply with FLSA requirements;

193 (iv) establishing requirements governing overtime worked while an employee is being  
194 trained and procedures for recording that overtime that comply with FLSA requirements;

195 (v) subject to the FLSA, establishing the maximum number of hours that a nonexempt  
196 employee may accrue before a department is required to pay the employee for the overtime  
197 worked;

198 (vi) subject to the FLSA, establishing the maximum number of overtime hours for an  
199 exempt employee that do not lapse; and

200 (vii) establishing procedures for adjudicating appeals of any FLSA determinations  
201 made by the Department of Human Resource Management as required by this section;

202 (d) monitor departments for compliance with the FLSA; and

203 (e) recommend to the Legislature and the governor any statutory changes necessary  
204 because of federal government action.

205 (6) In coordination with the procedures for recording overtime worked established in  
206 rule by the Department of Human Resource Management, the Division of Finance shall modify  
207 its payroll and human resource systems to accommodate those procedures.

208 (a) Notwithstanding the procedures and requirements of Title 63, Chapter 46b,  
209 Administrative Procedures Act, Section 67-19-31, and Section 67-19a-301, any employee who  
210 is aggrieved by the FLSA designation made by the Department of Human Resource  
211 Management as required by this section may appeal that determination to the executive director  
212 of the Department of Human Resource Management by following the procedures and  
213 requirements established in Department of Human Resource Management rule.

214 (b) Upon receipt of an appeal under this section, the executive director shall notify the  
215 executive director of the employee's department that the appeal has been filed.

216 (c) If the employee is aggrieved by the decision of the executive director of the  
217 Department of Human Resource Management, he shall appeal that determination to the  
218 Department of Labor, Wage and Hour Division, according to the procedures and requirements  
219 of federal law.

220 Section 3. Section **67-19-12** is amended to read:

221 **67-19-12. State pay plans -- Applicability of section -- Exemptions -- Duties of the**  
222 **executive director.**

223 (1) (a) This section, and the rules adopted by the department to implement this section,  
224 apply to each career and noncareer employee not specifically exempted under Subsection (2).

225 (b) If not exempted under Subsection (2), an employee is considered to be in classified  
226 service.

227 (2) The following employees are exempt from this section:

228 (a) members of the Legislature and legislative employees;

229 (b) members of the judiciary and judicial employees;

230 (c) elected members of the executive branch and their direct staff who meet career  
231 service exempt criteria as defined in Subsection 67-19-15(1)(k);

232 (d) [~~certificated~~] employees of the State Board of Education;

233 (e) officers, faculty, and other employees of state institutions of higher education;

234 (f) employees in any position that is determined by statute to be exempt from this  
235 Subsection (2);

236 (g) attorneys in the Office of the Attorney General;

237 (h) department heads and other persons appointed by the governor pursuant to statute;

238 (i) employees of the Department of Community and Culture whose positions are  
239 designated as executive/professional positions by the executive director of the Department of  
240 Community and Culture with the concurrence of the executive director;

241 (j) employees of the Governor's Office of Economic Development whose positions are  
242 designated as executive/professional positions by the director of the office; and

243 (k) employees of the Medical Education Council.

244 (3) (a) The executive director shall prepare, maintain, and revise a position



245 classification plan for each employee position not exempted under Subsection (2) to provide  
246 equal pay for equal work.

247 (b) Classification of positions shall be based upon similarity of duties performed and  
248 responsibilities assumed, so that the same job requirements and the same salary range may be  
249 applied equitably to each position in the same class.

250 (c) The executive director shall allocate or reallocate the position of each employee in  
251 classified service to one of the classes in the classification plan.

252 (d) (i) The department shall conduct periodic studies and desk audits to provide that the  
253 classification plan remains reasonably current and reflects the duties and responsibilities  
254 assigned to and performed by employees.

255 (ii) The executive director shall determine the schedule for studies and desk audits after  
256 considering factors such as changes in duties and responsibilities of positions or agency  
257 reorganizations.

258 (4) (a) With the approval of the governor, the executive director shall develop and  
259 adopt pay plans for each position in classified service.

260 (b) The executive director shall design each pay plan to achieve, to the degree that  
261 funds permit, comparability of state salary ranges to salary ranges used by private enterprise  
262 and other public employment for similar work.

263 (c) The executive director shall adhere to the following in developing each pay plan:

264 (i) Each pay plan shall consist of sufficient salary ranges to permit adequate salary  
265 differential among the various classes of positions in the classification plan.

266 (ii) (A) The executive director shall assign each class of positions in the classification  
267 plan to a salary range and shall set the width of the salary range to reflect the normal growth  
268 and productivity potential of employees in that class.

269 (B) The width of the ranges need not be uniform for all classes of positions in the plan,  
270 but each range shall contain merit steps in increments of 2.75% salary increases.

271 (iii) (A) The executive director shall issue rules for the administration of pay plans.

272 (B) The rules may provide for exceptional performance increases and for a program of  
273 incentive awards for cost-saving suggestions and other commendable acts of employees.

274 (C) The executive director shall issue rules providing for salary adjustments.

275 (iv) Merit step increases shall be granted, if funds are available, to employees who

276 receive a rating of "successful" or higher in an annual evaluation of their productivity and  
277 performance.

278 (v) By October 31 of each year, the executive director shall submit market  
279 comparability adjustments to the director of the Governor's Office of Planning and Budget for  
280 consideration to be included as part of the affected agency's base budgets.

281 (vi) By October 31 of each year, the executive director shall recommend a  
282 compensation package to the governor.

283 (vii) (A) Adjustments shall incorporate the results of a total compensation market  
284 survey of salary ranges and benefits of a reasonable cross section of comparable benchmark  
285 positions in private and public employment in the state.

286 (B) The survey may also study comparable unusual positions requiring recruitment in  
287 other states.

288 (C) The executive director may cooperate with other public and private employers in  
289 conducting the survey.

290 (viii) (A) The executive director shall establish criteria to assure the adequacy and  
291 accuracy of the survey and shall use methods and techniques similar to and consistent with  
292 those used in private sector surveys.

293 (B) Except as provided under Section 67-19-12.3, the survey shall include a reasonable  
294 cross section of employers.

295 (C) The executive director may cooperate with or participate in any survey conducted  
296 by other public and private employers.

297 (D) The executive director shall obtain information for the purpose of constructing the  
298 survey from the Division of Workforce Information and Payment Services and shall include  
299 employer name, number of persons employed by the employer, employer contact information  
300 and job titles, county code, and salary if available.

301 (E) The department shall acquire and protect the needed records in compliance with the  
302 provisions of Section 35A-4-312.

303 (ix) The establishing of a salary range is a nondelegable activity and is not appealable  
304 under the grievance procedures of Sections 67-19-30 through 67-19-32, Title 67, Chapter 19a,  
305 Grievance and Appeal Procedures, or otherwise.

306 (x) The governor shall:

307 (A) consider salary adjustments recommended under Subsection (4)(c)(vi) in preparing  
308 the executive budget and shall recommend the method of distributing the adjustments;

309 (B) submit compensation recommendations to the Legislature; and

310 (C) support the recommendation with schedules indicating the cost to individual  
311 departments and the source of funds.

312 (xi) If funding is approved by the Legislature in a general appropriations act, the  
313 adjustments take effect on the July 1 following the enactment.

314 (5) (a) The executive director shall regularly evaluate the total compensation program  
315 of state employees in the classified service.

316 (b) The department shall determine if employee benefits are comparable to those  
317 offered by other private and public employers using information from:

318 (i) the most recent edition of the Employee Benefits Survey Data conducted by the U.S.  
319 Chamber of Commerce Research Center; or

320 (ii) the most recent edition of a nationally recognized benefits survey.

321 (6) (a) The executive director shall submit proposals for a state employee  
322 compensation plan to the governor by October 31 of each year, setting forth findings and  
323 recommendations affecting employee compensation.

324 (b) The governor shall consider the executive director's proposals in preparing budget  
325 recommendations for the Legislature.

326 (c) The governor's budget proposals to the Legislature shall include a specific  
327 recommendation on employee compensation.

328 Section 4. Section **67-19-15** is amended to read:

329 **67-19-15. Career service -- Exempt positions -- Schedules for civil service**  
330 **positions -- Coverage of career service provisions.**

331 (1) Except as otherwise provided by law or by rules and regulations established for  
332 federally aided programs, the following positions are exempt from the career service provisions  
333 of this chapter:

334 (a) the governor, members of the Legislature, and all other elected state officers,  
335 designated as Schedule AA;

336 (b) the agency heads enumerated in Section 67-22-2, and commissioners designated as  
337 Schedule AB;

- 338 (c) all employees and officers in the office and at the residence of the governor,  
339 designated as Schedule AC;
- 340 (d) employees who are in a confidential relationship to an agency head or  
341 commissioner and who report directly to, and are supervised by, a department head,  
342 commissioner, or deputy director of an agency or its equivalent, designated as Schedule AD;
- 343 (e) unskilled employees in positions requiring little or no specialized skill or training,  
344 designated as Schedule AE;
- 345 (f) part-time professional noncareer persons who are paid for any form of medical and  
346 other professional service and who are not engaged in the performance of administrative duties,  
347 designated as Schedule AF;
- 348 (g) attorneys in the attorney general's office who are under their own career service pay  
349 plan, designated as Schedule AG;
- 350 (h) teaching staff of all state institutions and patients and inmates employed in state  
351 institutions, designated as Schedule AH;
- 352 (i) persons appointed to a position vacated by an employee who has a right to return  
353 under federal or state law or policy, designated as Schedule AI;
- 354 (j) noncareer employees compensated for their services on a seasonal or contractual  
355 basis who are hired for limited periods of less than nine consecutive months or who are  
356 employed on less than 1/2 time basis, designated as Schedule AJ;
- 357 (k) those employees in a personal and confidential relationship to elected officials,  
358 designated as Schedule AK;
- 359 (l) employees appointed to perform work of a limited duration not exceeding two years  
360 or to perform work with time-limited funding, designated as Schedule AL;
- 361 (m) employees of the Department of Community and Culture whose positions are  
362 designated as executive/professional positions by the executive director of the Department of  
363 Community and Culture with the concurrence of the executive director, and employees of the  
364 Governor's Office of Economic Development whose positions are designated as  
365 executive/professional positions by the director of the office, designated as Schedule AM;
- 366 (n) employees of the Legislature, designated as Schedule AN;
- 367 (o) employees of the judiciary, designated as Schedule AO;
- 368 (p) all judges in the judiciary, designated as Schedule AP;

369 (q) members of state and local boards and councils appointed by the governor and  
370 governing bodies of agencies, other local officials serving in an ex officio capacity, officers,  
371 faculty, and other employees of state universities and other state institutions of higher  
372 education, designated as Schedule AQ;

373 (r) employees who make statewide policy, designated as Schedule AR;

374 (s) any other employee whose appointment is required by statute to be career service  
375 exempt, designated as Schedule AS; [~~and~~]

376 (t) employees of the Department of Technology Services, designated as  
377 executive/professional positions by the executive director of the Department of Technology  
378 Services with the concurrence of the executive director, designated as Schedule AT[:]; and

379 (u) employees of the State Board of Education, designated as schedule AU.

380 (2) The civil service shall consist of two schedules as follows:

381 (a) (i) Schedule A is the schedule consisting of positions exempted by Subsection (1).

382 (ii) Removal from any appointive position under Schedule A, unless otherwise  
383 regulated by statute, is at the pleasure of the appointing officers without regard to tenure.

384 (b) Schedule B is the competitive career service schedule, consisting of all positions  
385 filled through competitive selection procedures as defined by the executive director.

386 (3) (a) The executive director, after consultation with the heads of concerned executive  
387 branch departments and agencies and with the approval of the governor, shall allocate positions  
388 to the appropriate schedules under this section.

389 (b) Agency heads shall make requests and obtain approval from the executive director  
390 before changing the schedule assignment and tenure rights of any position.

391 (c) Unless the executive director's decision is reversed by the governor, when the  
392 executive director denies an agency's request, the executive director's decision is final.

393 (4) (a) Compensation for employees of the Legislature shall be established by the  
394 directors of the legislative offices in accordance with Section 36-12-7.

395 (b) Compensation for employees of the judiciary shall be established by the state court  
396 administrator in accordance with Section 78-3-24.

397 (c) Compensation for officers, faculty, and other employees of state universities and  
398 institutions of higher education shall be established as provided in Title 53B, Chapters 1,  
399 Governance, Powers, Rights, and Responsibilities, and 2, Institutions of Higher Education.

400 (d) Unless otherwise provided by law, compensation for all other Schedule A  
401 employees shall be established by their appointing authorities, within ranges approved by, and  
402 after consultation with the executive director of the Department of Human Resource  
403 Management.

404 (5) All employees of the Office of State Auditor, the Office of State Treasurer, the  
405 Office of the Attorney General, excluding attorneys who are under their own career service  
406 system, and employees who are not exempt under this section are covered by the career service  
407 provisions of this chapter.

408 Section 5. **Effective date.**

409 This bill takes effect on July 1, 2007.

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**Legislative Review Note**  
as of **1-24-07 8:02 AM**

**Office of Legislative Research and General Counsel**

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**H.B. 184 - State Office of Education Human Resource Management Amendments**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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*1/30/2007, 3:33:17 PM, Lead Analyst: Schoenfeld, J.D.*

**Office of the Legislative Fiscal Analyst**