

JAN 25 2006

A BILL FOR AN ACT

RELATING TO SUBSTITUTE TEACHERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. In 2005, the legislature enacted Act 70,
2 Session Laws of Hawaii 2005 (Act 70), which required the
3 department of education to develop a classification and
4 compensation schedule for public school substitute teachers.
5 Act 70 was prompted by years of pending litigation in which
6 substitute teachers claimed they were not being paid the
7 specified rate determined by the legislature in 1996. The
8 legislature provided temporary relief to substitute teachers, by
9 specifying payment of more than the disputed \$112.53 they were
10 being paid in 2005 by the department, and required the
11 department to recommend a classification and compensation
12 schedule to the 2006 legislature.

13 Pursuant to Act 70, the department of education created a
14 substitute teacher task force (task force), which included
15 representatives from the Hawaii State Teachers Association,
16 Hawaii Government Employees Association, office of human
17 resources, substitute teachers, and parents. The task force
18 recognized the important role that substitute teachers play in



1 providing quality education to students when regular classroom
2 teachers are absent or unable to perform their duties.

3 On any given day, about one thousand substitute teachers
4 are employed by the department of education to carry out the
5 duties of Hawaii's ten thousand regular, full-time teachers. In
6 the final report entitled "A Report to the Legislature on the
7 Department of Education's Response to Act 70," it was noted that
8 there were approximately 4,568 substitute teachers employed by
9 the department of education during school year 2004-2005. The
10 significant role of public school substitute teachers cannot be
11 underestimated.

12 The department of education recommended that salary
13 increases for substitute teachers should be across-the-board,
14 regardless of class, and reflect current negotiated rates by
15 various bargaining units. To be consistent with the 1996 law,
16 which established the salary schedules for regular, full-time
17 teachers, the legislature believes that rate increases for
18 substitute teachers should be based on rate increases for
19 licensed class II teachers as determined by bargaining unit 5,
20 between the department and the Hawaii State Teachers
21 Association.



1 On December 16, 2005, in Garner v. DOE (Civil No. 03-1-
2 000305) and Klitternick v. Hamamoto (Civil No. 05-1-0031-01),
3 Judge Karen Ahn ruled that under section 302A-624(e), Hawaii
4 Revised Statutes, as enacted in 1996, the department of
5 education failed to pay substitute teachers a per diem salary
6 based on the annual step salary rate established for a licensed
7 class II teacher established by bargaining unit 5. As of June
8 30, 2005, that rate was \$146.09 per day. Judge Ahn further
9 ruled that the department of education was obligated to pay the
10 per diem compensation prescribed by law during the period from
11 November 8, 2000, to June 30, 2005, amounting to approximately
12 \$14,300,000. Total claims against the department, including
13 attorney's fees and costs, as well as related unpaid wages for
14 part-time teachers whose pay was based on erroneous substitute
15 teacher rates, total approximately \$24,000,000.

16 In light of Judge Ahn's ruling, the legislature
17 acknowledges that Act 70 was not intended to cut substitute
18 teachers' pay. Rather, it was intended to establish a temporary
19 solution of providing adequate compensation to substitute
20 teachers while a more permanent, equitable compensation formula
21 could be crafted and enacted.



1 The legislature finds that it is now time to finally put
2 this matter to rest. Years of pending litigation between
3 Hawaii's substitute teachers and the department of education has
4 created significant strain between substitute teachers and the
5 department of education, resulting in declining substitute
6 teacher morale, distrust between substitute teachers and the
7 department, and voluntary attrition of substitute teachers,
8 ultimately adversely impacting the quality and availability of
9 substitute teachers serving the department of education.

10 The legislature further finds that this Act is essential to
11 finally resolving the costly and harmful litigation between the
12 two parties and creating a clean slate between the substitute
13 teachers and the department of education in order to provide the
14 highest quality teaching and work environment for Hawaii's
15 substitute teachers and students.

16 The legislature also finds that this Act is consistent with
17 the department of education's recommendation that salary
18 increases should be across-the-board regardless of the class.
19 The per diem rate of class I, II, and III teachers are to be
20 adjusted upward to match the salary or wage increases that are
21 provided to licensed class II teachers in bargaining unit 5 in



1 the collective bargaining agreement between the Hawaii State
2 Teachers Association and the department of education.

3 The purpose of this Act is to:

4 (1) Determine the classification and compensation rates
5 for substitute teachers that are consistent with the
6 compensation rates determined by the legislature in
7 1996; and

8 (2) Settle all legal claims between substitute teachers
9 and the department of education.

10 SECTION 2. Section 302A-624, Hawaii Revised Statutes, is
11 amended by amending subsection (e) to read as follows:

12 "(e) Effective July 1, [~~2005,~~] 2006, the minimum hourly or
13 minimum per diem rate for substitute teachers shall be
14 determined by the legislature [~~; provided that the department~~
15 ~~shall develop a classification and compensation schedule that is~~
16 ~~not restricted to the minimum compensation rates but may exceed~~
17 ~~them,~~] as follows; provided [~~further~~] that any individual in
18 class I, II or III who works less than a full seven-hour work
19 day shall be compensated on a pro-rated, hourly basis [~~as~~
20 ~~follows~~]:



1 (1) Class I: other individuals who do not possess a
 2 bachelor's degree shall be compensated at a rate of
 3 not less than [~~\$119.80~~] \$146.09 for a full work day;

4 (2) Class II: individuals with a bachelor's degree shall
 5 be compensated at a rate of not less than [~~\$130~~]
 6 \$156.09 for a full work day; and

7 (3) Class III: department of education teachers, or
 8 licensed or highly qualified teachers, shall be
 9 compensated at a rate of not less than [~~\$140~~] \$166.09
 10 for a full work day.

11 Notwithstanding any other law to the contrary, the per diem
 12 rates established in paragraphs (1), (2), and (3) shall be
 13 adjusted to match the salary or wage increases provided to
 14 licensed class II teachers under a collective bargaining
 15 agreement executed under chapter 89 for bargaining unit 5."

16 SECTION 3. There is appropriated out of the general
 17 revenues of the State of Hawaii the sum of \$, or so
 18 much thereof as may be necessary for fiscal year 2006-2007, for
 19 the purpose of resolving the claims of substitute teachers in
 20 Garner v. Department of Education and Klitternick v. Hamamoto and
 21 to resolve the claims of all other personnel who were underpaid

1 based upon pay rates that were calculated in violation of §302A-
2 624(e), Hawaii Revised Statutes.

3 SECTION 4. The sum appropriated shall be expended by the
4 department of education for the purposes of this Act.

5 SECTION 5. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 6. This Act shall take effect on July 1, 2006.

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INTRODUCED BY:

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Report Title:

Substitute Teachers; Compensation Formula; Appropriation

Description:

Establishes that the compensation of substitute teachers shall be tied to the salary or wage increases provided to licensed class II teachers of the department of education.

