

Date of Hearing: February 27, 2008

Committee: House Finance

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent

Title: H.B. 2792, H.D.1 (HSCR500-08), Relating to education.

Purpose: To require the Board of Education to provide wage adjustments for substitute teachers comparable to the wage adjustments negotiated for teachers in collective bargaining unit 5. Allows BOE to adjust hours, benefits, and other terms and conditions of employment for substitute teachers.

Department's Position: The Department of Education supports H.B. 2792, H.D.1 (HSCR500-08), which requires the Board of Education (BOE) to provide across-the-board per cent wage adjustments for substitute teachers comparable to the wage adjustments negotiated for teachers in collective bargaining unit 5, authorizes the BOE to adjust hours, benefits, and other terms and conditions of employment for substitute teachers, and appropriates \$2,000,000 to cover the cost of retroactive pay increases for FY 2008 and for pay increases for FY 2009 for substitute teachers. Enactment of H.B. 2792, H.D.1 will recognize the vital role of substitute teachers in our public schools.



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

H.B. NO. 2792, H.D.1 RELATING TO EDUCATION

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, February 27, 2008 **TIME:** 11.00 AM

LOCATION: State Capitol, Room 308

Deliver to: , Room 306, 2 Copies

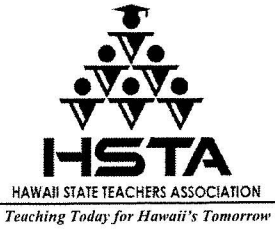
TESTIFIER(S): Mark J. Bennett, Attorney General
or James E. Halvorson, Deputy Attorney General

Chair Oshiro and Members of the Committee:

The Attorney General supports this bill and respectfully requests the following amendment:

(1) We request that section 302A-624, Hawaii Revised Statutes, be amended by adding the following wording to the last sentence of the proposed new subsection (f), so that the sentence would read: "The board may also adjust hours, benefits, and other terms and conditions of employment for substitute teachers, subject to approval, pursuant to section 89C-5." The reason for this is to make it absolutely clear and unambiguous that chapter 89C, Hawaii Revised Statutes, provides authorities, such as the Board of Education, with the flexibility to adjust the compensation, as well as hours, benefits, and other terms and conditions of employment for those employees, such as substitute teachers, who are part-time, casual and/or intermittent employees, and who are excluded from collective bargaining. It also makes it clear that such adjustments are subject to approval by the Legislature, just as collective bargaining cost items are. This is the approach taken by S.B. No. 2652, in regards to substitute teacher compensation.

We respectfully request that this measure be passed with amendment.



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TESTIMONY BEFORE THE HOUSE COMMITTEE ON
FINANCE

RE: HB 2792, HD1 – RELATING TO EDUCATION

February 27, 2008

ROGER TAKABAYASHI, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Oshiro and Members of the Committee:

The Hawaii State Teachers Association supports HB 2792, HD 1.

Substitute teachers play a vital role in our schools. This legislation adjusts substitute teachers wages to make them comparable to the wage adjustments negotiated for teachers in Collective Bargaining Unit 5 in the most recent contract.

We urge the committee to pass this bill.

Thank you for the opportunity to testify.

**TESTIMONY OF THE
HAWAII CARPENTERS UNION, LOCAL 745**

February 26, 2008

TO: Honorable Marcus Oshiro
Chair, House Committee on Finance

RE: HB2792, HD1 RELATING TO EDUCATION
Wednesday, February 27, 2008, 11:00 am
State Capitol Room Room 308

Chair Oshiro:

The Hawaii Carpenters Union strongly supports HB2792, HD1. The bill establishes that the compensation of substitute teachers shall be tied to the salary or wage increases provided to bargaining unit 5 teachers of the Department of Education, and appropriates funds for retroactive pay and per diem increases for substitute teachers.

For the past several years, the Hawaii Carpenters Union has supported Hawaii's 5000 substitute teachers during their plight for fair wages. Their long-standing dispute with the DOE is troublesome, and we are pleased that the Legislature has stepped in to provide temporary relief by setting an interim rate pay rate in 2005 and 2006. HB2792, HD1 provides a reasonable means to determine interim substitute teacher pay on an on-going basis until the lawsuits with the DOE are resolved.

HB2792, HD1 also provides retroactive wages for substitute teachers for the 2007-08 school year. While regular teachers received a 4% increase; substitute teachers receive no increases. It's only fair that substitute teachers receive similar pay increases for their service to our students.

Proposed Amendment: We request that clarifying language be inserted that the rates in HB2792, HD1 are for interim pay rates only until the pending lawsuits are resolved.

Thank you for the opportunity to testify on this matter.



Attorneys at Law • A Law Corporation

BEFORE THE

HOUSE COMMITTEE ON FINANCE
Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice Chair

HB2792, HD1 RELATING TO EDUCATION

TESTIMONY OF
PAUL ALSTON, ESQ.
WILLIAM M. KANEKO, ESQ.

Attorneys for Substitute Teachers in
Garner v. Department of Education and *Klitternick v. Hamamoto*

Wednesday, February 27, 2008, 11:00 am
State Capitol Room 308

Chair Oshiro, Vice Chair Lee and members of the Committee:

We represent Hawaii's substitute teachers in *Garner v. DOE* and *Klitternick v. Hamamoto*. We **STRONGLY SUPPORT (but only with amendments)** HB2792, HD1 which provides wage adjustments to substitute teachers that are comparable to wage adjustments that are negotiated for teachers in collective bargaining unit 5, as well as an appropriation for wage adjustments for substitute teacher pay.

HB2792, HD1 provides a fair and reasonable mechanism to determine substitute teacher pay, including providing appropriate benefits. Because substitute teacher pay is set by statute, and not by a collective bargaining agreement, to adjust substitute teacher pay would require potentially annual visits to the Legislature. As a matter of efficiency, tying substitute teacher pay to regular teachers in collective bargaining unit 5 is highly appropriate.

It should be noted, however, that the base rate of \$125 in Haw. Rev. Stat. §302A-624(e) was an interim rate set to provide relief to substitute teachers while pending litigation of *Garner v. DOE* and *Klitternick v. Hamamoto* is being resolved. In 2005, Judge Karen Ahn ruled in favor of the substitute teachers. The matter was appealed by the Attorney General and is pending before the Intermediate Court of Appeals. It is unclear when these cases will be resolved. In 2005, pursuant to Act 70 (SLH 2005), the Legislature provided an interim pay rate for substitute teachers of a minimum \$119.80 per day to provide temporary relief while the class actions lawsuits were being litigated. In 2006, pursuant to Act 263 (SLH 2006), the Legislature increased the interim pay rate by 5%, resulting in the existing minimum daily rate of \$125 for a substitute teacher.

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To: Chair M. Oshiro, Vice Chair M. Lee and Members of the House Committee on Finance
Fm: Paul Alston, Esq. and William M. Kaneko, Esq.
Re: Testimony of HB2792, HD1 Relating to Education
Hearing: 2/27/08 @ 11:00a.m., Rm. 308

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In 2007, while class II teachers received a 4% pay increase, the DOE refused to provide substitute teachers with a corresponding percentage increase, despite legislative intent in Act 263 to increase interim pay rate commensurate with regular teachers.

Hence, we strongly support HB2792, HD1 which would provide clear guidance to the DOE that substitute teacher pay be comparable to teachers in collective bargaining unit 5.

Two Required Amendments

However, in light of the history and background of the current pay rate for substitute teachers and HB2792, HD1 we also recommend the following amendments:

- 1) **Clarification of Interim rates.** Because the going-forward rates increases are tied to interim rates set by the Legislature, appropriate language in the bill or committee report is needed. It should outline the intent of the Legislature to provide pay rate increases to the interim pay rates set by the Legislature until the courts will finally determine substitute teacher pay. The would be consistent with the Legislature's past measures in Act 70 (SLH 2005) and Act 263 (SLH 2006), which in its Conference Committee Report No. 216-06 stated in relevant part:

The intent of this measure is to provide relief to Hawaii's substitute teachers while the long-standing dispute in *Garner v. DOE* (Civil No. 03-1-000305) and *Klitternick v. Hamamoto* (Civil No. 05-1-0031-01) is being litigated. . . . Similar to Act 70, Session Laws of Hawaii 2005, this measure provides an **interim pay rate** for substitute teachers until *Garner v. DOE* and *Klitternick v. Hamamoto* are resolved. At that time, this Committee urges the Legislature to make appropriate adjustments, including retroactive pay adjustments, to substitute teacher pay in accord with the appellate court's final ruling. (Emphasis added).

- 2) **Eliminating the DOE's request to change the work rules for substitutes.** Section 2 provides unfettered discretion to the board to "adjust hours, benefits, and other terms and conditions of employment for substitute teachers, subject to approval." It is unclear why this provision is needed. What does the DOE intent to do? Reduce hours? Further eliminate what little benefits substitute teachers have – they currently receive no health, retirement or sick leave. Change qualification requirements? There must be some checks and balances between the DOE and substitute teachers. Without knowing the details of this, we cannot support this provision.

Thank you for the opportunity to testify on this matter. We STRONGLY SUPPORT (only with amendments) HB2792, HD1.