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**TESTIMONY BEFORE THE HOUSE COMMITTEE ON  
LABOR AND PUBLIC EMPLOYMENT**

**RE: HB 2792, HD1 – RELATING TO EDUCATION.**

February 8, 2008

**ROGER TAKABAYASHI, PRESIDENT  
HAWAII STATE TEACHERS ASSOCIATION**

Chair Sonson and Members of the Committee:

The Hawaii State Teachers Association supports HB 2792.

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 8, 2008

TO: Honorable Alex Sonson, Chair  
House Committee on Labor & Public Employment

RE: HB2792, HD1 RELATING TO EDUCATION  
Friday, February 8, 2008, 8:30 am  
State Capitol Room 309

Chair Sonson:

The Hawaii Carpenters Union strongly supports HB2792, HD1. The bill establishes that the interim 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 LABOR & PUBLIC EMPLOYMENT

Honorable Alex M. Sonson  
Honorable Bob Nakasone, 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*

Friday, February 8, 2008, 8:30 am  
State Capitol Room 309

Chair Sonson, Vice Chair Nakasone and members of the House  
Committee on Labor:

We represent Hawaii's substitute teachers in *Garner v. DOE* and *Klitternick v. Hamamoto*. We **STRONGLY SUPPORT (with amendments)** HB 2792, HD1, which provides wage adjustments to substitute teachers that are comparable to wage adjustments that are negotiated for teachers in collective bargaining unit 5.

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 pay 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.

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To: Chair Sonson, Vice Chair Nakasone and Members of the House Committee on Labor  
Fm: Paul Alston, Esq. and William M. Kaneko, Esq.  
Re: Testimony of HB2792, HD1 Relating to Education  
Hearing: 2/8/08 @ 8:30a.m., Rm. 209  
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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

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, and provides retroactive and going-forward pay rate increases to substitute teachers.

**Recommended Amendment to Reflect  
Legislative Intent to Increase Interim Rates**

In light of the history and background of the current pay rate for substitute teachers and HB2792, HD1, we recommend that a **new section** be added which outlines the historical background and intent of the Legislature to continue to provide pay rate increases to the interim pay rate until the courts ultimately determine substitute teacher pay. The section would be consistent with 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).

Thank you for the opportunity to testify on this matter. We STRONGLY SUPPORT (with amendments) HB2972, HD1.

Date of Hearing: February 8, 2008

Committee: House Labor and Public  
Employment

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent

Title: H.B. 2792, H.D.1, 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, 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

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**ON THE FOLLOWING MEASURE:**

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

**BEFORE THE:**

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

**DATE:** Friday, February 8, 2008 **TIME:** 8:30 AM

**LOCATION:** State Capitol, Room 309  
*Deliver to: Committee Clerk, Room 424, 5 copies*

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

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Chair Sonson and Members of the Committee:

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

(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 the 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.

(2) We also respectfully request that section 302A-626, Hawaii Revised Statutes, be repealed in its entirety, due to its inconsistency with section 302A-624. It appears that section 302A-

626 is a renumbering of section 297-34, which was initially enacted in 1962 and amended in 1965, and which clearly pre-dates public sector collective bargaining. The inconsistency is that section 302A-624 requires that the salary schedule for all teachers of the Department of Education shall be negotiated pursuant to section 89-9, whereas section 302A-626 statutorily grants annual salary increases based on longevity, taking such adjustments in teacher compensation out of the realm of negotiation in collective bargaining. Failure to resolve this ambiguity invites litigation and confuses collective bargaining.

We respectfully request that this measure be passed with amendments.