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**BEFORE THE****SENATE COMMITTEE ON EDUCATION**

Senator Norman Sakamoto, Chair  
 Senator Jill N. Tokuda, Vice Chair

**COMMITTEE ON JUDICIARY AND LABOR**

Senator Brian T. Taniguchi, Chair  
 Senator Clayton Hee, Vice Chair

**SB2652 RELATING TO EDUCATION**

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

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

Friday, February 1, 2008, 3:45 pm  
 State Capitol Room 309 2 2 J

Chair Sakamoto and Chair Taniguchi and members of the  
 Senate Committees on Education and Judiciary and Labor:

We represent Hawaii's substitute teachers in *Garner v. DOE* and *Kliternick v. Hamamoto*. We **STRONGLY SUPPORT** SB2652, which provides wage adjustments to substitute teachers that are comparable to wage adjustments that are negotiated for teachers in collective bargaining unit 5.

SB2652 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

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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.

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 SB 2652 which would provide clear guidance to the DOE that substitute teacher pay be comparable to teachers in collective bargaining unit 5.

In light of the history and background of the current pay rate for substitute teachers and SB 2652, we also recommend the following amendments:

- Add new section outlining the historical background and intent of the Legislature to provide pay rate increases to the interim pay rate set by the Legislature until the courts will finally determine substitute teacher pay. The section would be consistent with Act 70 and Act 263, 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).

- Provision for retroactive pay for substitute teachers for pay rate increases not received in 2007.
- Further clarify Section 2 specifying that the rate increases be commensurate with licensed class II teachers within bargaining unit 5. There are several classes of teachers within bargaining unit 5. Providing clear guidance to the DOE to use class II teacher pay would minimize the ambiguity and potential dispute about substitute teacher pay. Furthermore, tying substitute teacher pay to class II teachers is consistent with the original intent of the 1996 substitute teacher statute.

Thank you for the opportunity to testify on this matter. We **STRONGLY SUPPORT** (with amendments) SB2652.