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BEFORE THE

SENATE COMMITTEE ON WAYS & MEANS

Senator Roz Baker, Chair

Senator Shan Tsutsui, Vice Chair

SB2652, SD1 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 22, 2008, 11:00 am
State Capitol Room 211

Chair Baker 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)** SB2652, SD1 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.

SB2652, SD1 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 Baker, Vice Chair Tsutsui and Members of the Senate Committee on Ways & Means
Fm: Paul Alston, Esq. and William M. Kaneko, Esq.
Re: Testimony of SB2652, SD1 Relating to Education
Hearing: 2/22/08 @ 11:00a.m., Rm. 211

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 SB2652, SD1 which would provide clear guidance to the DOE that substitute teacher pay be comparable to teachers in collective bargaining unit 5.

Three Required Amendments

However, in light of the history and background of the current pay rate for substitute teachers and SB2652, SD1 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 *Klitemick 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 *Klitemick 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) **Clarifying language of DOE's recommendation for retroactive pay for 2007-08.** At the DOE's recommendation, a \$2.0 million appropriation for retroactive wages for FY2007-08 and pay rate increases for FY2008-09 was added in SD1. The existing language in SD1 is vague and unclear, however, that the \$2.0 million is to be used for those purposes, only referring to expenditure of funds for "wage adjustments". To be crystal clear about the use of these funds, we suggest that more specific language be used to reflect the Legislature's intent (and the DOE's desire) to remedy the 2007-08 retroactive wage issue, and for pay rate increases for 2008-09.
- 3) **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, pursuant to section 89C-5." It is unclear why this provision is needed. What does the

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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** (with amendments) SB2652, SD1.