

Date of Hearing: March 14, 2008

Committees: House Education and Labor
& Public Employment

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent

Title: S.B. 2652, SD2 (SSCR2588), Relating to education

Purpose: To provide for periodic wage adjustments for substitute teachers that are comparable to the wage adjustments negotiated for teachers in bargaining unit 5.

Department's Position: The Department of Education supports S.B. 2652, SD2 (SSCR2588) to provide periodic wage adjustments for substitute teachers that are comparable to the wage adjustments negotiated for teachers in bargaining unit 5. Enactment of S.B. 2652, SD2 will recognize the vital role of substitute teachers in our public schools.



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TESTIMONY BEFORE THE HOUSE COMMITTEES ON
EDUCATION AND LABOR & PUBLIC EMPLOYMENT

RE: SB 2652, SD2 – RELATING TO EDUCATION.

March 14, 2008

ROGER TAKABAYASHI, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chairs Takumi, Sonson, and Members of the Committees:

The Hawaii State Teachers Association supports SB 2652, SD2.

The Association believes 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.



Attorneys at Law • A Law Corporation

BEFORE THE

HOUSE COMMITTEE ON EDUCATION

Representative Roy Takumi, Chair
Representative Lyla Berg, Vice Chair

HOUSE COMMITTEE ON LABOR

Representative Alex Sonson, Chair
Representative Bob Nakasone, Vice Chair

SB2652, SD2 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, March 14, 2008, 2:00 pm
State Capitol Room 309

Chair Takumi, Chair Sonson 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, SD2 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, SD2 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

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To: Chair Takumi, Chair Sonson and Members of the House Committees on Education and Labor
From: Paul Alston, Esq. and William M. Kaneko, Esq.
Re: Testimony of SB2652, SD2 Relating to Education
Hearing: 3/14/08 @ 2:00pm., Rm. 309

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 SB2652, SD2 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, SD2 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. That 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 *Klitenick 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 *Klitenick 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).

SEE ATTACHED CONFERENCE COMMITTEE REPORT FOR ACT 263 (SLH 2006).

- 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." It is

To: Chair Takumi, Chair Sonson and Members of the House Committees on Education and Labor
Fm: Paul Alston, Esq. and William M. Kaneko, Esq.
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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) SB2652, SD2.

ATTACHMENT

CONFERENCE COMMITTEE REP. NO. -0
216-06

Honolulu, Hawaii

, 2006

RE: S.B. No. 3197

S.D. 2

H.D. 1

C.D. 1

ACT 263, SLH 2006

Honorable Robert Bunda

President of the Senate

Twenty-Third State Legislature

Regular Session of 2006

State of Hawaii

Honorable Calvin K.Y. Say

Speaker, House of Representatives

Twenty-Third State Legislature

Regular Session of 2006

State of Hawaii

Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 3197, S.D. 2, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO SUBSTITUTE TEACHERS,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to set and provide moneys for substitute teacher classification and compensation rates that are consistent with those determined

by the legislature in 1996, and with the recommendations of the Department of Education (DOE).

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. These lawsuits were filed in 2000, and have been the source of contentious dispute between substitute teachers and the DOE. On December 16, 2005, Judge Karen Ahn ruled that the DOE failed to pay substitute teachers a per diem salary based upon the 1996 formula enacted by the Legislature. The Attorney General intends to appeal both lawsuits, potentially extending the length of this dispute to nearly a decade.

Your Committee on Conference finds that substitute teachers play an integral role in Hawaii's public education system. On any given day, about 1,000 substitute teachers fill in for approximately 12,000 regular, full-time teachers. 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.

Your Committee on Conference has amended this measure to omit all references to the measure as a vehicle to settle the on-going civil litigation between the DOE and plaintiff substitute teachers, and to insert dollar amounts in the pay scale.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 3197, S.D. 2, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 3197, S.D. 2, H.D. 1, C.D. 1.

Respectfully submitted
on behalf of the
managers:

ON THE PART OF THE HOUSE	ON THE PART OF THE SENATE
_____ ROY TAKUMI, Co-Chair	_____ NORMAN SAKAMOTO, Chair
_____ KIRK CALDWELL, Co-Chair	_____ BRIAN T. TANIGUCHI, Co-Chair
_____ SYLVIA LUKE, Co-Chair	END OF ATTACHMENT
_____ DWIGHT TAKAMINE, Co-Chair	

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

March 14, 2008

TO: Honorable Roy Takumi
Chair, House Committee on Education

Honorable Alex Sonson
Chair, House Committee on Labor

RE: SB2652, SD2 RELATING TO EDUCATION
Friday, March 14, 2008, 2:00 pm
State Capitol Room Room 309

Chair Takumi and Chair Sonson:

The Hawaii Carpenters Union strongly supports SB2652, SD2. 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 wage adjustments 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. SB2652, SD2 provides a reasonable means to determine interim substitute teacher pay on an on-going basis until the lawsuits with the DOE are resolved.

SB2652, SD2 also provides for retroactive and going-forward wage adjustments 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 SB2652, SD2 are for **interim pay rates** only until the pending lawsuits are resolved.

Thank you for the opportunity to testify on this matter.