

Date: February 1, 2008

Committees: Senate Education and Judiciary & Labor

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent

Title of Bill: S.B. 2658, Relating to substitute teachers

Purpose of Bill: To establish that the interim compensation of substitute teachers shall be tied to the salary or wage increases provided to licensed class II teachers of the Department of Education. Appropriates funds for retroactive pay and per-diem increases for substitute teachers.

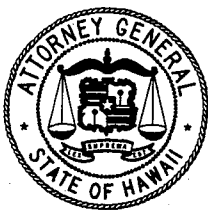
Department's Position: The Department of Education (Department) cannot support the current language of S.B. 2658 and suggest the inclusion of clarifying language in Section 2, following (e) (3):

“Notwithstanding any other law to the contrary, effective July 1, 2008, the Board of Education shall provide wage adjustments for substitute teachers. The wage adjustments shall be comparable to the across-the-board percent wage adjustments for teachers that are negotiated with collective bargaining unit 5.”

In Section 3, the Department recommends the insertion of \$1,000,000 from the general revenue to cover the cost of across-the-board retroactive pay increase for substitute teachers (2007 – 2008 S.Y.).

In Section 4, the Department recommends the insertion of an additional \$1,000,000 to cover the across-the-board pay increases for substitute teachers for the 2008 – 2009 school year to carry out the purpose of the Act.

These funds will be recurring cost each fiscal year.



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2658, RELATING TO SUBSTITUTE TEACHERS.

**BEFORE THE:**

SENATE COMMITTEES ON EDUCATION AND ON JUDICIARY AND LABOR

**DATE:** Friday, February 1, 2008 **TIME:** 3:45 PM

**LOCATION:** State Capitol, Room 225  
*Deliver to: Committee clerk, Room 230, 1 copy*

**TESTIFIER(S):** James E. Halvorson, Deputy Attorney General

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Chairs Sakamoto and Taniguchi and Members of the Committees:

The Attorney General opposes this bill for the following reasons:

(1) The stated purpose of this bill is to provide for an annual compensation formula for substitute teachers tied to the salary or wage increases for licensed class II teachers, provide an appropriation for retroactive per diem increases for substitute teachers for the 2007-2008 school year, and to make an appropriation for per diem increases for substitute teachers for the 2008-2009 school year.

(2) However, in addition to stating the purpose of the bill, much of section 1 contains what we consider to be gratuitous remarks and assertions not supported by the facts of this case, which is still in litigation. The matter involving the substitute teachers is on-going and before the Hawaii appellate courts on interlocutory appeal, with various matters being appealed by both the Department of Education and by the substitute teachers. The statement in the second paragraph of section 1, which states that "[t]he attorney general has appealed the court's decision, causing additional strife between the department of education and the affected employees" is objectionable since there are no findings that support this conclusion and we believe that such editorial comments are not conducive to resolution of the matter between the parties.

We are of the opinion that section 1, paragraph four is factually incorrect and not supported by the finding of the court. The lawsuit, filed on behalf of the class of substitute teachers concerning the increase to the per diem rate for substitute teachers for the 2007-2008 school year is now before the Intermediate Court of Appeals, with an appeal from the October 2007 final judgment in favor of the Department of Education granted by the circuit court.

It is well understood that the Legislature has the authority to set compensation for state employees in the manner and at the level that the Legislature deems appropriate. This being done in a manner that is completely clear and unambiguous, to remove the possibility of future litigation based on differing interpretations is to everyone's advantage. However, the mechanism to provide for that in this bill, is, we believe, an inappropriate mechanism. This is due to the fact that this bill continues to try to tie the salary adjustments of substitute teachers to a specific class of teachers who come under a collective bargaining agreement, which has proven in the past to be fraught with problems.

With the aim of setting the compensation for substitute teachers, with adjustments as deemed necessary, in a clear and unambiguous manner, we respectfully suggest looking at the wording in chapter 89C, Hawaii Revised Statutes, which provides appropriate authorities, such as the Board of Education, with the flexibility to adjust the wages, 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. This is the approach taken by S.B. No. 2652, in regards to substitute teacher compensation. Specifically, we request that section 302A-624, Hawaii Revised Statutes, be amended by adding the following language in a new subsection (f): "Effective July 1, 2008, the board shall provide wage adjustments for substitute teachers. The wage adjustments shall be comparable to the across the board wage adjustments that are negotiated with bargaining unit 5. 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."

Following this approach would identify that the Board of Education would be responsible for providing to the Legislature the necessary justification for appropriations for compensation adjustments for substitute teachers, just as it does for all other part-time, casual employees, who are excluded from but associated with bargaining units covered by a collective bargaining agreement.

With this approach, full authority to approve or not, or to make adjustments to, compensation levels as provided for in the appropriations would still reside with the Legislature pursuant to section 89C-5, Hawaii Revised Statutes.

We respectfully request that this bill be held and S.B No. 2652 be passed, or, if this bill is passed, we request that it be amended as suggested.