

Date: 03/14/2012

Committee: House Education/House Labor & Public
Employment

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: SB 2652,SD1(sscr2757) RELATING TO EDUCATION.

Purpose of Bill: Repeals minimum hourly and per diem rates for substitute teachers.
Repeals substitute teacher wage adjustments based upon teacher pay.
(SD1)

Department's Position:

The Department of Education (Department) supports SB 2652, SD 1, SSCR 2757, repealing the minimum hourly and per diem rates for substitute teachers based upon teacher's pay. The Department agrees that the Board of Education shall provide wage adjustments for substitute teachers without legislative approval. This will would provide the Department with flexibility to determine pay rates for substitute teachers based on a range of considerations which might include, but not be limited to, labor market demand and supply conditions, minimum standards of qualifications, and other factors.



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BEFORE THE

HOUSE COMMITTEE ON EDUCATION

Honorable Roy Takumi, Chair
Honorable Della Au Belatti, Vice Chair

HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Honorable Karl Rhoads, Chair
Honorable Kyle Yamashita, 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 Kliternick v. Hamamoto

Wednesday, March 14, 2010, 2:10 pm
State Capitol Room 309

Chair Takumi, Chair Rhoads, and members of the Joint Committee:

We represent Hawaii's substitute teachers in *Garner v. DOE* and *Kliternick v. Hamamoto*. We **STRONGLY OPPOSE** SB2652, SD1 which repeals substitute teacher wage adjustments based upon regular teacher pay.

SB2652, SD1 will unravel a fair solution and re-open the wounds of calculating substitute teacher pay that was finally resolved with a reasonable method adopted by the Legislature in 2008.

Substitute teachers and the DOE spent many years at the Legislature arriving at a sound resolution in 2008 that would tie substitute teacher salary raises to regular teachers. The current law, pursuant to Act 187 (SLH 2008), provides for periodic wage adjustments for substitute teachers that are comparable to the wage adjustments negotiated for teachers in bargaining unit (5), and enables the BOE to adjust the hours, benefits, and other terms and conditions of employment for substitute teachers.

Simply stated, if regular teachers receive a percentage increase in their wages, so would substitute teachers. Substitute teachers, however, currently do not receive any benefits, including vacation, sick leave, unemployment, pension and other benefits that regular teachers enjoy. Act

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187 is a suitable approach to adjust substitute teacher wages commensurate with regular teachers without having to come to the Legislature or BOE every single year.

The current method for calculating substitute teacher wages was a fair resolution since for several years (2005 to 2008), substitute teacher salaries were capped at an interim fixed rate set by the Legislature pending resolution of the class action law suits referred to above. Previously, for nearly a decade (between 1996 and 2005), substitute teachers were illegally underpaid by the DOE, resulting in two class action lawsuits. In 2009, the Intermediate Court of Appeals affirmed the Circuit Court's 2005 decision that Hawaii's substitute teachers were illegally underpaid. The calculation of damages and final resolution of these cases are pending soon.

SB2652, SD1 would repeal Act 187 and give the BOE unfettered discretion to determine substitute teacher wages and benefits. Considering the long and contentious history of substitute teacher wages, SB2652, SD1 would be a disaster for Hawaii's substitute teachers and the DOE. SB2652, SD1 would likely result in annual negotiations and disputes between Hawaii's 5,000 substitute teachers and the BOE for annual wage adjustments. With a fair method to calculate substitute teacher wages in place, and the two lawsuits coming to a close, both parties are on the verge of ending a decade-long chapter of wage disputes.

Attachment "A" reflects the long-standing history and dispute between the DOE and substitute teachers. SB2652, SD1 would re-open the wounds of contention between the DOE and substitute teachers. Let's not go there.

We STRONGLY OPPOSE SB2652, SD1. Thank you for the opportunity to testify on this matter.

ATTACHMENT "A"
Hawaii's Substitute Teachers
The History of Substitute Teacher Pay
1996 to Current

1996

ACT 90 (SLH 1996). The Hawai'i State Legislature passed legislation to ensure that substitute teachers were adequately compensated. HRS Sec. 302A-624(e) provides that substitute teacher pay "shall be based on the annual entry salary step rate established for a Class II teacher on the most current teachers' salary schedule."

1996 to 2005

The DOE illegally fails to pay substitute teachers their statutorily mandated rate since the law became effective on July 1, 1996.

2002

Class action lawsuits against the Department of Education were filed to recover back pay for substitute teachers. The consolidated actions are entitled *Garner v. State of Hawaii*, Civ. No. 03-1-000305 and *Klitternick v. State of Hawaii*, Civ. No. 05-1-0031-01, and allege DOE violations of HRS Sec. 302A-624(e).

2005

ACT 70 (SLH 2005) 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.

On December 16, 2005, Judge Karen Ahn determined that the DOE has underpaid substitutes during the entire period covered by the statute of limitations (11/8/00 to 6/30/2005). Under the Lingle Administration, the matter was appealed by the Attorney General to the Intermediate Court of Appeals.

2006

ACT 263 (SLH 2006) increased the interim pay rate by 5%, resulting in the existing minimum daily rate of \$125 for a substitute teacher. The 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).

2007

No legislation passed. However, 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.

2008

ACT 187 (SLH 2008) provides for periodic wage adjustments for substitute teachers that are comparable to the wage adjustments negotiated for teachers in bargaining unit (5), and enables the Board of Education to adjust the hours, benefits, and other terms and conditions of employment for substitute teachers. **ACT 187 is a suitable approach to adjusting substitute teacher salary to regular teachers without having to come to the Legislature every year.**

2009

In October 2009, the Intermediate Court of Appeals affirmed the Circuit Court's decision to award back-pay to substitute teachers from November 2000 - June 2005.

2010

On July 20, 2010, the DOE filed an Application for Writ of Certiorari requesting the Hawaii Supreme Court review the underpayment of substitute teachers. On August 16, 2010, the Hawaii Supreme Court issued an Order rejecting the DOE's request, which in effect affirms the ICA's opinion that substitute teachers were illegally underpaid.

2012

SB2652 was introduced. The bill provides unfettered discretion to the BOE to determine substitute teacher pay, hours and benefits. The bill disregards the long-standing history of the Legislature's efforts to provide for fair wage adjustments for substitute teachers and it opens the door to further abuse of Substitute Teachers by the DOE.

Presently, the DOE claims the right to set pay rates for part-time and summer school teachers. In 2011, the Circuit Court ruled that the DOE was illegally underpaying these teachers, as well from 2000-11. The DOE has ignored the ruling and continues to underpay these teachers at hourly rates that are below the statutory rates set for substitute teachers.