

THE HAWAII TEACHER STANDARDS BOARD – IS OVERSIGHT NEEDED?

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FOREWORD

This study was prepared in response to Section 8 of Act 2, First Special Session Laws of Hawaii 2009. The Act directed the Legislative Reference Bureau to review the findings of the Auditor's report No. 09-05 on the Hawaii Teacher Standards Board, as well as other information as appropriate, and make recommendations, including proposed legislation, to determine (1) whether there is a need for oversight of the Hawaii Teacher Standards Board, and how oversight is provided for similar boards; and (2) how to strengthen and clarify interagency roles, responsibilities, and relationships between the Board, Department of Education, and Teacher Education Coordinating Committee.

The Bureau extends its appreciation to the staff and past and current members of the Hawaii Teacher Standards Board, the Dean of the University of Hawaii's College of Education, the staff of the Department of Education, the staff of the Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs, the staff of the Crime Victim Compensation Commission, the staff of the Public Utilities Commission, the Education Division of the Office of the Attorney General, and to various other professionals who assisted the Bureau in this study.

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Director

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SUMMARY

Prior to the creation of the Hawaii Teacher Standards Board (HTSB), teacher licensing was the responsibility of the Department of Education (DOE). In 1995, the HTSB was created to set teacher standards for licensing Hawaii's public school teachers. In 2001, the Legislature transferred the authority to actually license teachers and other related functions and duties from the DOE to the HTSB.

The HTSB is responsible for setting and reviewing teacher licensing standards, issuing and renewing teacher licenses, approving teacher education programs, implementing a National Board Certification Support program, and many other related duties.

In response to Senate Concurrent Resolution No. 83, Senate Draft 1 (2008), the State Auditor released a report on the HTSB in March of 2009. The Auditor reported problems with the HTSB related to lack of oversight over financial matters and procurement operations, failure to renew licenses, failure to apply teacher licensing standards, and exceeding statutory authority by extending licenses. After reviewing other licensing boards, including those found in the Department of Commerce and Consumer Affairs' (DCCA) Professional and Vocational Licensing Division, the Auditor concluded that attaching HTSB to DCCA would be inconsistent with the latter's regulatory structure and experience and would not fit within its primary purpose of protecting the health, safety, and welfare of consumers. The Auditor further concluded that having an independent teacher licensing board "has not yielded sufficient benefits for the teaching profession and students it was meant to serve to warrant its continuation"¹ and recommended that the HTSB be abolished and the teacher licensing function and related duties be transferred to the Board of Education.

The Legislature, in Act 2, First Special Session Laws of Hawaii 2009, directed the Legislative Reference Bureau to review the Auditor's report and make recommendations on (1) whether there is a need for oversight of the Hawaii Teacher Standards Board, and how oversight is provided for similar boards; and (2) how to strengthen and clarify interagency roles, responsibilities, and relationships between the Board, Department of Education, and Teacher Education Coordinating Committee.

The Bureau examined the history, duties, functions, and relationships of the HTSB and reviewed the composition and structures of other state teacher licensing boards and administratively attached agencies in the State to compare with the HTSB. It appears other administratively attached boards and commissions function relatively well. The Bureau also explored the relationship of the Teacher Education Coordinating Committee with the HTSB and the DOE, but concluded that interagency issues and concerns arose only with respect to the relationship between the HTSB and DOE.

¹ Hawaii State Auditor, *Study on the Appropriate Accountability Structure of the Hawai'i Teacher Standards Board*, Report No. 09-05 (executive summary), p. 2.

SUMMARY

The HTSB faces several challenges.

- The board members and executive director of the HTSB appear to misunderstand the nature of the relationship of an administratively attached agency and its principal department, and their respective roles, which seems to contribute to the lack of accountability and oversight of the HTSB.
- The HTSB appears to have been burdened with more responsibility than it can adequately handle, which may have caused it to lose focus of one of its core duties to issue and renew teacher licenses.
- The HTSB lacks the necessary resources to enable it to handle all of its present responsibilities. Already understaffed in view of its workload, the HTSB has experienced long-term vacancies in two key positions, the data processing systems analyst and the education specialist. Without a data processing systems analyst, the HTSB has failed to properly monitor the activities of the vendors it hired to develop its online licensing system. The burden fell upon the executive director who lacked expertise or training relating to information technology, contributing to the cost and inefficiency of the project. The absence of an education specialist has caused that position's duties to be shifted to an overburdened Executive Director.
- Over the course of seven years, the HTSB wasted over \$1 million in the attempt to develop an online licensing system. As of November 25, 2009, the online licensing system was not yet operable. More importantly, while the HTSB pursued the development of the online licensing system, it neglected its duty to renew teacher licenses. Instead of renewing teacher licenses, the HTSB exceeded its statutory authority and extended teacher licenses.
- The HTSB's requirements for license renewal and the renewal process do not comply with statutory requirements. Teachers seeking license renewal for the first time are not required to meet any of the licensing standards, while those seeking subsequent renewals have to demonstrate that they meet only two of the ten licensing standards.

If the Legislature wants the HTSB to remain independent, the Legislature should consider either transferring some of the HTSB's responsibilities to the DOE or give the HTSB more resources to adequately handle its responsibilities. The Legislature may wish to consider transferring the licensing and renewal function, since it has been the most problematic of the HTSB's duties. Other responsibilities that could be transferred to the DOE include the National Board Certification support program and authority over the state approval of teacher education programs. If the Legislature wants the foregoing functions, especially the licensing function, to remain with the HTSB, the Legislature should provide the HTSB with more resources, including a data processing systems analyst, educational specialist, and other professionals to assist with license renewals. Alternatively, the Legislature could adopt the recommendations in Auditor's Report No. 09-05, which include transferring responsibility for the teacher licensure program to the Board of Education and abolishing the HTSB.

If the HTSB is not abolished, the Legislature should consider directing the HTSB and DOE, with the assistance of the Department of the Attorney General, to meet to clarify their respective roles.

SUMMARY

If the HTSB continues to have responsibility to renew teachers' licenses, the Legislature should consider requiring the HTSB to:

- (1) Review its teacher license renewal process; and
- (2) Determine whether the HTSB should:
 - (a) Modify the licensing standards themselves;
 - (b) Modify its approach in determining whether a renewal applicant is in compliance by having satisfied all the standards; or
 - (c) Recommend that the Legislature amend section 302A-805(a), HRS, to conform to the HTSB's present requirements for license renewal and thus eliminate the present conflict with section 302A-805(a), HRS.

Finally, to improve oversight and accountability of the HTSB, the Legislature could require the HTSB to include more detailed information in its annual report.

Chapter 1

INTRODUCTION

Scope of Report

During the 2009 Regular Session, the Legislature adopted House Bill No. 183, Conference Draft 1, and enrolled it to the Governor for approval. The measure was vetoed on July 15, 2009, and returned by the Governor without her approval. On July 16, 2009, the Legislature overrode the Governor's veto of House Bill No. 183, Conference Draft 1, in the First Special Session of 2009. The measure was adopted as Act 2, First Special Session Laws of Hawaii 2009.

Section 8 of Act 2 directs the Legislative Reference Bureau to review the findings of the Auditor's Report No. 09-05 of the Hawaii Teacher Standards Board, as well as other information as appropriate, and make recommendations, including proposed legislation, regarding:

1. Whether there is a need for oversight of the Hawaii Teacher Standards Board, and how oversight is provided for similar boards; and
2. How to strengthen and clarify interagency roles, responsibilities, and relationships between the Hawaii Teacher Standards Board, Department of Education, and Teacher Education Coordinating Committee.

Organization

This report details the functions and duties of the Hawaii Teacher Standards Board ("HTSB"), and examines whether those duties and responsibilities are problematic for the HTSB. The remainder of the report is organized as follows:

- Chapter 2 reviews the background and current duties of the HTSB, and includes provisions of Act 2, First Special Session Laws of Hawaii 2009, and the Auditor's major findings, conclusions, and recommendations with regard to the HTSB;
- Chapter 3 reviews the issue of oversight as compared to other state teacher licensing entities, as well as other administratively attached agencies in Hawaii;
- Chapter 4 discusses the problems of the HTSB;
- Chapter 5 highlights the interagency role between the HTSB, Department of Education, and the Teacher Education Coordinating Committee; and
- Chapter 6 presents a summary of salient points, conclusions, and recommendations.

Chapter 2

BACKGROUND

History of the Hawaii Teacher Standards Board

In 1995, the Legislature established the Hawaii Teacher Standards Board ("HTSB") and transferred responsibility for setting public school teacher licensing standards¹ from the Hawaii Department of Education ("DOE") to the HTSB.² The DOE retained authority to issue licenses to teachers.³

In a publication released in 2000, the Hawaii Policy Group of the National Commission on Teaching and America's Future reported that the renewal and revocation of teacher licenses were not based on the licensing standards set by the HTSB.⁴ During the following legislative session, the Legislature shifted authority to issue, renew, revoke, suspend, and reinstate teacher licenses from the DOE to the HTSB.⁵ According to the Legislature, transferring the licensing duties would "remove the inherent conflict of interest faced by the Department in its current role as employer, as well as licensing agent."⁶ Even though the Legislature noted that its legislation "arose out of the work of the Hawaii Policy Group of the National Commission on Teaching and America's Future,"⁷ the conflict of interest was never actually mentioned in the Hawaii Policy Group's report. At the same time, the Legislature gave the HTSB additional responsibilities, including the authority to approve teacher education programs⁸ and the task of developing, implementing, and administering a program to assist public school teachers seeking National Board Certification.⁹

From the very beginning, the HTSB was not provided adequate resources or assistance from the DOE. During 1997 to 2002, the HTSB was located in a room at Moanalua High School. The HTSB was not charged rent and only had two employees at that time.¹⁰ According to the Executive Director, the room was provided as a favor by the Moanalua High School

¹ Authorization originally included credentials and certificates but later amendments (*see* 2001 Haw. Sess. Laws, Act 312) replaced credentials with emergency hires and transitioned certificates to licenses in an effort to distinguish between DOE and HTSB authority.

² 1995 Haw. Sess. Laws, Act 240.

³ *Id.*

⁴ *See* Hawaii Policy Group, National Commission on Teaching and America's Future, *The Magic Weavers: Securing the Future for Hawaii's Children*, at 21 (2000).

⁵ 2001 Haw. Sess. Laws, Act 312.

⁶ *Id.* at §1.

⁷ *Id.*

⁸ 2001 Haw. Sess. Laws, Act 312.

⁹ 2001 Haw. Sess. Laws, Act 314.

¹⁰ Interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (July 10, 2009).

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principal to assist her while the agency searched for office space.¹¹ When the licensing and other related functions were transferred to the HTSB, the agency required a suitable office space.¹²

The HTSB currently consists of fifteen board members¹³ who are appointed by the Governor,¹⁴ with the exception of the Superintendent of Education, the Dean of the University of Hawaii College of Education, and the Chairperson of the Board of Education or the designees of each.¹⁵ The remaining members are selected based on the following criteria:

- Six licensed teachers actively teaching;
- Three educational officers;
- One representative of independent schools; and
- Two members of the public representing the business community.¹⁶

All HTSB members are voting members and are eligible to serve as chairperson if so designated by the members.¹⁷ The chairperson is selected annually; the current Chairperson of the HTSB has served in that position for four years.¹⁸

The HTSB is funded by both general fund appropriations and the Hawaii Teacher Standards Board Special Fund.¹⁹ All fees, fines, grants, donations, appropriations, and other moneys received by HTSB are placed in the HTSB's special fund to cover expenses of the Board.²⁰ The following chart provides a breakdown of funding of HTSB staff positions for the 2009-2010 fiscal year.²¹

General Fund Appropriation	Special Fund Appropriation
1 Clerk IV (licensing)	3 Clerk IV (licensing)
1 Clerk V (clerk supervisor)	1 Secretary I
1 Clerk Typist II	1 Executive Officer
1 Education Specialist II	1 Data Processing Systems Analyst IV
1 Personnel Specialist	
Total Appropriated Positions	11²²

¹¹ *Id.*

¹² After occupying the room at Moanalua High School, the HTSB moved into two rooms in the Olelo headquarters before it finally settled into its current location at the Dole Cannery in Iwilei.

¹³ The number was increased to fifteen from thirteen members by 2009 Haw. Sess. Laws, 1st Sp. Sess., Act 2, §2.

¹⁴ Selection of members are made pursuant to section 26-34, Hawaii Revised Statutes (HRS).

¹⁵ Note: pursuant to section 302A-801(a), HRS, the dean's designee shall be chosen by the member institutions of the Teacher Education Coordinating Committee.

¹⁶ The two public members are selected from a list provided to the Governor by the Hawaii Business Roundtable, Hawaii P-20 council, and Hawaii Workforce Development Council.

¹⁷ See Section 302A-801(b) and (e), HRS.

¹⁸ Interview with Jonathan Gillentine, PhD., Chairperson, Hawaii Teacher Standards Board (Oct. 2, 2009).

¹⁹ See Section 302A-806, HRS.

²⁰ *Id.*

²¹ See Budget for the Department of Education for Fiscal Biennium 2009-2011, at 355-356.

²² The HTSB also has a student helper position that is not filled. The student helper position is not considered as an appropriated position in the DOE budget, therefore it was not included in this chart.

The clerical positions with the HTSB are civil service positions. Thus, the HTSB relies upon the DOE to fill vacancies in accordance with civil service rules.²³ The four clerk positions handle all licensing operations, including the review of submitted materials, verification of documents, and fielding questions from teachers. The professional positions, other than civil service positions, are hired by the HTSB.²⁴

The HTSB has never been fully staffed. Currently, the data processing systems analyst, the educational specialist, one licensing clerk, and the clerk typist positions are not filled.²⁵ As a result, the HTSB only has two dedicated professional staff, the Executive Director and licensing specialist (personnel specialist), to manage all of its functions and duties.

The Auditor's Report

The State Auditor conducted an audit of the HTSB in 2008, in accordance with Senate Concurrent Resolution No. 83, Senate Draft 1,²⁶ which requested that the Auditor study the appropriate accountability structure for the HTSB. The Auditor's major findings were:

- *The HTSB failed to develop a teacher licensing program.* The report faulted the HTSB for failing to actually create new standards and relying instead upon the DOE's requirements and also for failing to renew licenses;²⁷
- *The lack of a licensing program poses a problem for the Department of Education.* Under the No Child Left Behind Act of 2001,²⁸ all teachers must be validly licensed, therefore, problems with licensing directly affect the State's ability to meet No Child Left Behind's federal requirements;²⁹
- *The HTSB exceeded its statutory authority by extending instead of renewing licenses.* The Legislature did not authorize the HTSB to continue extending licenses beyond a two-year timeframe;³⁰
- *The HTSB has failed to apply the standards, both with initial licensing and renewals.* The HTSB has not applied the teacher performance standards to initial licenses; even

²³ E-mail correspondence from Judy Toguchi, Personnel Administrator, Department of Education (Aug. 10, 2009).

²⁴ Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 2, 2009).

²⁵ *Id.*

²⁶ See Hawaii State Auditor, *Study on the Appropriate Accountability Structure of the Hawai'i Teacher Standards Board*, Report No. 09-05, at 1 (Feb. 2009).

²⁷ "The board's initial licensing requirements for teacher applicants do not have a direct connection to the performance standards." Auditor's Report No. 09-05, *supra* note 26, at 23.

²⁸ Public Law 107-110, 115 Stat. 1425 (2002).

²⁹ "Although the standards board was intended to be independent of the DOE, the department is dependent upon the board to deliver an effective licensing program that meets federal requirements." Auditor's Report No. 09-05, *supra* note 26, at 15.

³⁰ "The board has been granting license extensions rather than renewing licenses beyond the two year statutory timeframe set by the 2001 Legislature and codified in Section 302A-805, HRS. We found that the board has exceeded the scope of its statutory authority by amending its administrative rules to extend licenses scheduled to expire after June 2004." Auditor's Report No. 09-05, *supra* note 26, at 20.

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- though the HTSB applied the standards to renewals, the HTSB failed to issue any renewals;³¹
- *The HTSB lacks fiscal accountability.* The Executive Director depends upon the DOE for all of the board's accounting and lacks an adequate understanding of the board's finances. The Auditor further found that "[t]he Board has chosen to fully entrust the executive director with all fiscal authority, depending on her to effectively manage the boards' finances. Despite the confidence of the board, the executive director has not served as a capable fiscal steward,"³² which further erodes the board's efficiency and effectiveness.³³
 - *Uncertainty exists between the HTSB and the DOE.* The misunderstanding of the roles between department and attached agency has contributed to a "lack of accountability and oversight";³⁴
 - *The development of an online licensing system has been an ongoing problem for six years, resulting in government waste.* After entering into a contract to produce an online licensing system, the HTSB failed to adequately monitor the contractor's performance;³⁵
 - *Placement of the board in another agency is contrary to regulatory policies.* In response to Senate Concurrent Resolution No. 83, Senate Draft 1, the Auditor explored placing the HTSB in another agency such as the Department of Commerce and Consumer Affairs. The Auditor concluded that the Department of Commerce and Consumer Affairs is not a good fit for the HTSB.³⁶

The Auditor concluded that:

[T]he laws transferring responsibility to the Hawai'i Teacher Standards Board for administering a teacher licensure program are not in the public interest. Nor has the

³¹ "We found that the board has failed to carry out the intent of the 1995 Legislature to apply the performance standards to teacher applicants. The board's initial licensing requirements for teacher applicants do not have a direct connection to the performance standards. Instead, the board's initial licensing requirements parallel the teacher certification requirements originally issued by the DOE. While the board has incorporated the teacher performance standards into its renewal procedures, the standards have not been applied to teachers seeking initial licensure and the board has not renewed any licenses." Auditor's Report No. 09-05, *supra* note 26, at 23-24.

³² *Id.* at 27.

³³ "The disparity between the information provided by the executive director and the DOE highlights a lack of understanding of the board's financial operations. The executive director is responsible for the maintenance of a well-functioning organization, which includes maintaining sound fiscal operations and accounting. The executive director's failure to serve as a capable chief financial officer further erodes the board's efficiency and effectiveness." Auditor's Report No. 09-05, *supra* note 26, at 29.

³⁴ "We found that the board's designation as an attached agency has created confusion and has contributed to the lack of accountability and oversight." Auditor's Report No. 09-05, *supra* note 26, at 29.

³⁵ "Based upon the absence of a functioning online licensing system, the passage of seven years, and the expenditure of more than \$1 million, we found that the project has been a waste of time and resources." Auditor's Report No. 09-05, *supra* note 26, at 36.

³⁶ Under the policies of the Hawaii Regulatory Licensing Reform Act found in section 26H-2, Hawaii Revised Statutes, regulation of a vocational profession is generally necessary to protect the health, safety, and welfare of the consumer. In applying the policies, the Auditor concluded that "[u]nlike other regulatory programs administered by the Professional and Vocational Licensing Division within the DCCA, teacher licensure was intended to benefit the teaching profession, not the students and parents, who are the true consumers." Auditor's Report No. 09-05, *supra* note 26, at 36.

standards board sufficiently served the interests of teachers and students to warrant its continuation. Creating an independent body composed of teachers employed by the department of Education with a mission to provide qualified teachers, promote professionalism and teaching excellence, build public confidence in teaching and provide more accountability to the public, has yielded no benefits for the teaching profession and students it was meant to serve. The teacher performance standards have not been applied effectively and efficiently to provide every public school student with a qualified teacher and raise public confidence in the teaching profession.³⁷

The recommendations by the Auditor were to repeal the authorizing statutes for the HTSB and transfer the functions to the Hawaii Board of Education.³⁸ The Auditor made this recommendation based upon the mandate of the Board of Education in the Hawaii Constitution to "formulate statewide educational policy."³⁹ The Auditor reasoned that the "administration of a teacher licensure program to apply performance standards is inherently an employer function that should rest with the Board of Education, consistent with its constitutional mandate and responsibility over the organization and management of the public school system."⁴⁰ The Auditor also recommended retroactively authorizing the extension of teacher licenses to remove any legal cloud over the validity of the HTSB's extensions.⁴¹

Significant Changes in Act 2, First Special Session Laws of Hawaii 2009

On July 15, 2009, the Legislature overrode the Governor's veto of House Bill 183, Conference Draft 1, thus enacting Act 2, First Special Session Laws of Hawaii 2009. In addition to requiring this Legislative Reference Bureau report, the Act made substantive amendments to the following:

- The composition of the HTSB;
- The manner in which the Executive Director is appointed;
- Duties of the HTSB;
- Payment of licensing fees;
- Authority to extend licenses; and
- Data sharing between the HTSB, DOE, and Charter School Administrative Office.

Act 2 changed the composition of the HTSB by increasing the board's membership from thirteen to fifteen members.⁴² The two new board members are to be members of the public nominated by the Hawaii Business Roundtable, Hawaii P-20 Council and Hawaii Workforce Development Council. The nominated members' names are to be placed on a list that is submitted to the Governor for appointment.⁴³ This change reflects the changing dynamic of

³⁷ See Auditor's Report No. 09-05, *supra* note 26, at 41.

³⁸ *Id.* at 42.

³⁹ *Id.* at 41. See also Hawaii Const. art. 10, section 3.

⁴⁰ See *supra* note 37.

⁴¹ *Id.*

⁴² See 2009 Haw. Sess. Laws, 1st Sp. Sess., Act 2.

⁴³ *Id.*

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teacher licensing by encouraging other professionals in the human resources and business fields to share their experience and expertise with the Board.

Act 2 also provides oversight over the selection of a new Executive Director of the HTSB, by requiring the HTSB to submit a nominee to the Board of Education for approval or disapproval and by limiting the Executive Director's term to four years.⁴⁴ This statutory change allows the Board of Education to review the qualifications and fitness of the nominee.

Another significant change made by Act 2 allows the HTSB to change how it collects license fees.⁴⁵ Before the enactment of Act 2, section 302A-803(6), Hawaii Revised Statutes (HRS), mandated the collection of fees through payroll deduction. Act 2 remedied a problem that the HTSB was facing with staff spending time trying to verify fee payments made by teachers.⁴⁶

Act 2 also addressed the issues raised in the Auditor's 2009 report concerning HTSB overstepping its statutory authority in granting license extensions,⁴⁷ the Legislature authorized the HTSB to grant license extensions in order to preserve the license process and compromising the State's compliance with the No Child Left Behind Act of 2001.⁴⁸ In Act 2, the Legislature authorized the HTSB to grant license extensions until June 30, 2010, and validated all extensions made prior to that date.⁴⁹

Under section 6 of Act 2, the HTSB, DOE, and Charter School Administrative Office are required to develop interim policies for sharing information.⁵⁰ Currently, the DOE does not share criminal background check,⁵¹ teacher termination, and teacher suspension information.

⁴⁴ See 2009 Haw. Sess. Laws, 1st Sp. Sess., Act 2, §2.

⁴⁵ *Id.* at §3.

⁴⁶ When the Department of Education (DOE) licensed public school teachers, collecting fees in this manner was efficient and convenient because the DOE was also the employer. When the responsibility for teacher licensure was shifted to the HTSB, the requirement that license fees be paid by payroll deduction remained unchanged. Thus, payments for licenses were spread out over the life of the license - five years - and approximately \$2 was deducted during each pay period. This method has made it difficult for the HTSB to keep adequate records of payments. For example, in order to track a licensee's fee payment status, HTSB staff had to go through individual payroll data to track each pay period for the licensee.

⁴⁷ See *supra* note 30.

⁴⁸ Pursuant to the No Child Left Behind Act of 2001, "highly qualified teachers" are defined as having obtained a valid state teacher license. Without Hawaii teachers having valid licenses, the State would fail to meet the provisions of the No Child Left Behind Act with respect to highly qualified teachers.

⁴⁹ See 2009 Haw. Sess. Laws, 1st Sp. Sess., Act 2, §4. Prior to the enactment of Act 2, section 302A-805, HRS, gave the Board the authority to grant an automatic extension of two years to teachers whose licenses expired on June 30, 2002, or June 30, 2003. The Board however, continued to extend licenses because its renewal procedures were not in place. Because the Board exceeded its authority to extend licenses beyond a two-year period, the Legislature needed to retroactively give this authority to the Board in order to maintain the validity of licenses that were extended.

⁵⁰ 2009 Haw. Sess. Laws, 1st Sp. Sess., Act 2, §6.

⁵¹ The DOE, as the employer for all public school teachers, has legal authority to conduct background checks of all its employees. See Section 302A-601.5, HRS. Any data sharing related to criminal background checks may require statutory changes.

The HTSB believes that having the parties share this information would help the HTSB verify the current employment status and any infractions or discipline of a teacher.⁵²

Current Functions and Duties of the Board

The HTSB has the following responsibilities:

- Setting and administering its own budget;⁵³
- Issuing, renewing, revoking, suspending, and reinstating licenses;⁵⁴
- Approving teacher preparation programs;⁵⁵
- Developing, implementing, and administering the National Board Certification support program;⁵⁶
- Establishing licensing standards that are adopted as rules under chapter 91, HRS (Administrative Procedures Act);⁵⁷
- Applying licensing standards on a case-by-case basis and conducting licensing evaluations;⁵⁸
- Adopting, amending, or repealing the rules of the HTSB in accordance with the Administrative Procedures Act (chapter 91, HRS);⁵⁹
- Receiving grants or donations from private foundations and state and federal funds;⁶⁰
- Submitting an annual report to the Governor and the Legislature on the HTSB's operations and, since the 2007-2008 school year, submitting a summary report every five years of the HTSB's accomplishment of objectives, efforts to improve or maintain teacher quality, and efforts to keep its operations responsive and efficient;⁶¹
- Conducting a cyclical review of standards and suggesting revisions for their improvement;⁶²
- Establishing licensing fees in accordance with chapter 91, HRS, including the collection of fees, to be deposited into the state treasury and credited to the Hawaii teacher standards board special fund;⁶³
- Establishing penalties in accordance with chapter 91, HRS;⁶⁴
- Reviewing reports from the department on individuals hired on an emergency basis;⁶⁵

⁵² See Hawaii Teacher Standards Board, 2006 Annual Report, at 10.

⁵³ See Section 302A-803(a)(1), HRS.

⁵⁴ See Sections 302A-802, 803(a)(8), 803(a)(8), 805, and 807, HRS. The DOE continues to issue certificates for other school professionals such as school administrators pursuant to section 302A-602.5, HRS.

⁵⁵ See Sections 302A-803(a)(12) and 805.5, HRS.

⁵⁶ See Section 302A-702, HRS.

⁵⁷ See Section 302A-802, HRS.

⁵⁸ See Section 302A-803(a)(10), HRS.

⁵⁹ See Section 302A-803(a)(2), HRS.

⁶⁰ See Section 302A-803(a)(3), HRS.

⁶¹ See Section 302A-803(a)(4), HRS.

⁶² See Section 302A-803(a)(5), HRS.

⁶³ Act 2 changed the way the HTSB collects fees by eliminating the requirement for mandatory payroll deductions. See 2009 Haw. Sess. Laws, 1st Sp. Sess., Act 2, §3.

⁶⁴ See Section 302A-803(a)(7), HRS.

⁶⁵ See Section 302A-803(a)(9), HRS.

BACKGROUND

- Preparing and disseminating teacher licensing information to schools and operational personnel;⁶⁶
- Administering reciprocity agreements with other states relative to licensing;⁶⁷
- Conducting research and development on teacher licensure systems, beginning teacher programs, the assessment of teaching skills, and other related topics;⁶⁸
- Participating in efforts relating to teacher quality issues, professional development related to the HTSB's licensing standards, and promotion of high teacher standards and accomplished teaching;⁶⁹
- Adopting policies, exempt from chapters 91 and 92 ("Sunshine" Law), HRS, to initiate the following:⁷⁰
 - Developing criteria allowing more individuals with trade or industry experience to teach in vocational, technical, and career pathway programs and criteria for the issuance of permits allowing qualified individuals to teach;
 - Developing a plan to accept teachers from any state as long as they have completed state-approved teacher education programs and passed relevant Hawaii teacher examinations or their equivalent;
 - Clarifying the requirements, on a state-by-state basis, for out-of-state licensed teachers to obtain a license in Hawaii;
 - Developing a plan to facilitate licensing for those who intend to teach in Hawaii immersion programs, the island of Niihau, or any other extraordinary situation as defined by the Superintendent or the Superintendent's designee;
 - Pursuing full teacher license reciprocity with all other states;
 - Issuing a license to a teacher with a valid out-of-state license who has passed tests in basic skills, pedagogy, and subject matter that are similar, though not identical, to that required for licensure in Hawaii; and
- Preparing Title II reports.⁷¹

Setting and Administering its Own Budget

Due to its size and limited staff, HTSB does not have a dedicated financial officer or personnel with accounting expertise to set and administer its own budget. As a result, this duty has fallen upon the Executive Director. Since HTSB's inception, the Executive Director has handled all fiscal matters relating to board operations.⁷²

The HTSB relies upon the DOE for financial and accounting services. For example, the DOE's Financial Management Service ("FMS") system keeps track of purchasing transactions

⁶⁶ See Section 302A-803(a)(11), HRS.

⁶⁷ See Section 302A-803(a)(13), HRS.

⁶⁸ See Sections 302A-803(15) and 805.6, HRS.

⁶⁹ The HTSB had the authority to conduct professional development; however, that duty was removed by 2009 Haw. Sess. Laws, 1st Sp. Sess., Act 2, §3.

⁷⁰ See Section 302A-802(c), HRS.

⁷¹ Duty assumed by the HTSB as the teacher licensing authority for Hawaii; not statutorily mandated.

⁷² Interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (July 10, 2009).

and personnel management transactions.⁷³ The FMS system allows the DOE to efficiently compile financial information relating to the HTSB's expenditures. Thus, the HTSB relies upon the DOE for periodic budget reports at the request of the HTSB's Executive Director.

Developing Teacher Licensing Standards

The HTSB was originally created to develop licensing standards for teachers.⁷⁴ In accordance with this responsibility, the HTSB adopted ten standards, referred to in the Hawaii Administrative Rules as teacher performance standards,⁷⁵ which are set forth in the following table. In developing these standards, HTSB ensured that they "are aligned with national standards that represent the entire continuum of teacher development - the National Council for the Accreditation of Teacher Education, the Interstate New Teacher Assessment and Support Consortium, and the National Board for Professional Teaching Standards. They are also aligned with the Hawai'i Content and Performance Standards for students."⁷⁶ Aligning Hawaii's standards with national standards ensures consistency with teacher preparation program reviews by national accreditation bodies and with other state licensing programs.⁷⁷

Hawaii Teacher Standards⁷⁸	
1.	Focuses on the Learner: The effective teacher consistently engages students in appropriate experiences that support their development as independent learners.
2.	Creates and Maintains a Safe and Positive Learning Environment: The effective teacher consistently creates a safe and positive learning environment that encourages social interaction, civic responsibility, active engagement in learning and self-motivation.
3.	Adapts to Learner Diversity: The effective teacher consistently provides opportunities that are inclusive and adapted to diverse learners.
4.	Fosters effective communication in the learning environment: The effective teacher consistently enriches communication in the learning environment.
5.	Demonstrates knowledge of content.
6.	Designs and provides meaningful learning experiences: The effective teacher consistently plans and implements meaningful learning experiences for students.
7.	Uses active student learning strategies: The effective teacher consistently uses a variety of active learning strategies to develop students' thinking, problem-solving and learning skills.
8.	Uses assessment strategies: The effective teacher consistently applies appropriate assessment strategies to evaluate and ensure the continuous intellectual, social, physical and emotional development of the learner.

⁷³ E-mail correspondence from Amy Shimamoto, Personnel Director, Department of Education (Aug. 20, 2009). Personnel management transactions include hours worked as well as vacation, sick, or other leaves.

⁷⁴ *Supra* note 4, at 16.

⁷⁵ See Teacher Performance Standards, Chapter 8-54, Appendix A, Hawaii Administrative Rules.

⁷⁶ *Supra* note 4, at 17.

⁷⁷ See State-Approved Teacher Education Programs, *infra* pp. 14-15.

⁷⁸ See Hawaii Teacher Standards Board: Teacher Standards, at <<http://www.htsb.org/html/details/teacherstandards/teachers.html>>. (Accessed Dec. 23, 2009.)

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Hawaii Teacher Standards⁷⁸	
9.	Demonstrates professionalism: The effective teacher continually evaluates the effects of his or her choices and actions and actively seeks opportunities to grow professionally.
10.	Fosters parent and school community relationships: The effective teacher establishes and maintains strong working relationships with parents and members of the school community to support student learning.

Source: Hawaii Teacher Standards Board.

The Hawaii teacher licensing standards are intended to apply to both initial licenses⁷⁹ and license renewals.⁸⁰ For initial licenses, the ten teacher standards are incorporated into the state approved teacher education programs. This is accomplished by requiring the higher education institutions to apply the standards to their own education program standards. The integration of teacher standards into each state approved teacher education program ensures that candidates for initial licensure who complete these programs have met the standards through teacher training and preparation. For example, the following chart provides the standards used for the secondary education program at the University of Hawaii at Manoa College of Education and shows how they are related to the HTSB's teacher standards.⁸¹

University of Hawaii College of Education (COE) Secondary Program Standards Alignment to COE Conceptual Framework, Hawaii Teachers Standards

COE Conceptual Framework	Secondary Program Standards	Hawaii Teacher Standards
K N O W L E D G E A B L E	1. Professional Legal & Ethical Responsibilities	3. Adapts to Learner Diversity 9. Demonstrates Professionalism
	2. Foundation of Secondary Education	9. Demonstrates Professionalism 10. Fosters Parent and School Community Relationships
	3. Philosophical Theories of Education	9. Demonstrates Professionalism
	4. Psychology of Learning	1. Focus on the Learner 7. Uses Active Student Learning Strategies

⁷⁹ See Section 302A-802, HRS.

⁸⁰ See Section 302A-805, HRS.

⁸¹ University of Hawaii at Manoa College of Education, *Secondary Teacher Education Program Handbook*, at 45 (revised on Sept. 20, 2009).

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COE Conceptual Framework	Secondary Program Standards	Hawaii Teacher Standards
C A R I N G	5. Adolescent Development	1. Focus on the Learner 8. Uses Assessment Strategies
	6. Inclusion, Equity and Democracy	2. Creates & Maintains a Safe and Positive Learning Environment 3. Adapts to Learner Diversity
E F F E C T I V E	7. Content of the Secondary Curriculum	5. Demonstrates knowledge of content
	8. Planning and Instructional Strategies	6. Designs and provides meaningful learning experiences
	9. Assessment and Accountability	8. Uses assessment strategies
	10. Educational Technology	4. Fosters effective communication in the learning environment 5. Demonstrates content knowledge 6. Designs and Provides meaningful learning experiences
	11. Communication and Relationships	4. Fosters effective communication in the learning environment 10. Fosters parent and school community relationships
	12. Classroom Learning Environment	2. Creates and maintains a safe and positive environment 6. Designs and provides meaningful learning experiences

Source: University of Hawaii at Manoa, College of Education, Secondary Teacher Education Handbook (2009).

In this chart the University of Hawaii at Manoa College of Education used conceptual frameworks, such as "knowledge," "caring," and "effective" and adapted its own secondary program standards within the conceptual framework to mirror the HTSB's standards. While not exact, this matrix shows how particular standards closely match the ten HTSB developed standards.

The HTSB's license renewal process incorporates only some of the teacher licensing standards. Under the renewal process, teachers are required to create a professional growth plan

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that incorporates activities based on one of the ten teacher standards. The HTSB requires completion of two standards: standard five, which is “demonstrat[ing] knowledge of content,” and one of the other nine standards.⁸² The teacher must complete each activity in their professional growth plan within the five-year renewal period.

Licensing

Beginning July 1, 2002, responsibility for teacher licensing was transferred from the DOE to the HTSB.⁸³ This responsibility includes issuing initial licenses, renewing licenses, and revoking, suspending, and reinstating licenses.⁸⁴ The HTSB has established licensing standards, requirements, and fees in order to carry out this essential statutory duty. The general requirements to obtain an initial teacher license are:

- (1) Completion of a state approved teacher education program;
- (2) Passage of basic skills, pedagogy, and content knowledge tests;
- (3) Satisfaction of all professional fitness requirements; and
- (4) Payment of licensing fees.⁸⁵

Nearly one thousand initial licenses are issued each year.⁸⁶ During the 2008-2009 school year, there were 11,459 licensed teachers in Hawaii.⁸⁷ Initial teacher licenses and license renewals are both valid for five years.⁸⁸

To ease the transition of the teacher licensing function from the DOE to the HTSB, the Legislature gave the HTSB the authority to grant a license extension for teachers whose licenses were to expire on June 30, 2002, or on June 30, 2003. The authority to extend licenses was intended to allow the HTSB time to develop a license renewal process. Setting up the license renewal process, however, has been challenging for the HTSB, which has yet to renew any licenses since the function was transferred.⁸⁹

⁸² See HTSB License Renewal Process, available at <http://htsb.org/docs/HTSB_LicRenewPacket.pdf> (Accessed Nov. 17, 2009).

⁸³ See 2001 Haw. Sess. Laws, Act 312, amending Section 302A-805, HRS.

⁸⁴ See Sections 302A-802, 803(a)(8) and 805, HRS. The administrative rules for revocation are currently waiting for approval from the Governor's office before they can be scheduled for public hearing. In the absence of administrative rules, the HTSB has been using interim rules reviewed by the Attorney General's office to conduct revocation and suspension proceedings.

⁸⁵ See Hawaii Teacher Standards Board: Standard License Minimum Requirements, at <<http://www.htsb.org/html/details/licensing/typesstandardminreq.html>> (Accessed Oct. 7, 2009).

⁸⁶ The number of initial licenses issued by the HTSB in the 2007-2008 school year was 975. See Hawaii Teacher Standards Board, 2008 Annual Report, at 10.

⁸⁷ See Auditor's Report No. 09-05, at 18.

⁸⁸ Interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (July 10, 2009).

⁸⁹ See Chapter 4: HTSB's Failure to Renew Licenses, *infra* pp. 63-64.

State-Approved Teacher Education Programs

One of HTSB's statutory functions is to approve teacher education programs at colleges and universities in the State to ensure that the programs meet the teacher standards set by the HTSB.⁹⁰

The state-approved teacher education program ("SATEP") approval process is a resource consuming and lengthy process. The SATEP evaluation has three components: approval of a program application, on-site program evaluation, and preparation of a comprehensive report with a recommendation for HTSB approval. The entire SATEP process requires dedicated staff time to review the application and supporting documents; assemble, organize, and coordinate a team for the site visit; and prepare the final report for review.

The first step of the SATEP process involves the submission of a program application to the HTSB for approval.⁹¹ Each institution seeking to initiate or add a new program must receive HTSB approval.⁹² The application and supporting materials provide the HTSB staff with program goals for the student advancement and achievement within the field. According to the HTSB's licensing specialist, the application review alone may take a few months to fully review and analyze for completeness.⁹³ The process is delayed if there are any questions or issues in the application that need to be resolved before moving forward. After the program application is approved, giving the program or institution a three-year provisional approval status, the HTSB moves to the second phase of the SATEP process consisting of an on-site visit and evaluation.

In the final year of the three-year provisional approval status, the HTSB assembles a team for an on-site review of the program.⁹⁴ The HTSB recruits teachers and administrators from other state approved teacher education programs to serve as evaluators.⁹⁵ The team includes at least one teacher and one administrator from a similar state approved program field. Finding members who are teaching or have administrative responsibilities to serve on the review team is challenging because of scheduling conflicts.⁹⁶ Another challenge to securing evaluators is the HTSB's practice of seeking out different evaluators instead of relying on the same individuals for all of the on-site visits, to ensure greater objectivity.⁹⁷ Once the team is assembled, the HTSB staff must train the evaluators on the evaluation process in order to keep the review fair and

⁹⁰ See Sections 302A-803(12) and 805.5, HRS. Every state requires approval of its teacher preparation programs, whether by independent board, education department, or other state agency. See Hilda Heine, EdD, *Policy Brief: Teacher Certification Systems*, Pacific Resources for Education and Learning, at 3 (Jan. 2006).

⁹¹ Interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (July 10, 2009).

⁹² *Id.* Approvals can either be for an institution or a program field. Since most of the institutions in Hawaii have full approval, the majority of applications are for the addition of new programs.

⁹³ Interview with Sharon Mahoe, Executive Director, and Lynn Hammonds, Licensing Specialist, Hawaii Teacher Standards Board (July 10, 2009). Note: During the interview with Sharon Mahoe, Ms. Mahoe invited subject matter expert Lynn Hammonds to join the interview to respond to certain questions. After Ms. Hammonds answered the questions pertaining to her areas of expertise, she left the interview; the interview with Ms. Mahoe continued.

⁹⁴ HTSB sets provisional approval at three years because it ensures that students entering the program have had a chance to complete it before the HTSB sends a team to evaluate the program.

⁹⁵ Interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (July 10, 2009).

⁹⁶ Interview with Sharon Mahoe, Executive Director, and Lynn Hammonds, Licensing Specialist, Hawaii Teacher Standards Board (July 10, 2009).

⁹⁷ *Id.*

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objective. Without this training, evaluators are likely to be critical of teaching methods, curriculum, or other aspects of the program that are different from their own program -- even if these aspects are not detrimental to the institution in meeting its program's goals.⁹⁸ The actual on-site review usually requires four or five days of interviews and data gathering from the institution.⁹⁹

Once the site visit is complete, the team prepares a comprehensive report for the HTSB to review.¹⁰⁰ Completion of the final report usually takes another five months.¹⁰¹ The process is lengthy because the first draft of the report is provided to the institution for comment. After the comment period, the report is then sent back to the HTSB for incorporation of the institution program's comments and preparation for the HTSB to review.¹⁰² HTSB's approval of the report's recommendations grants the program a seven-year full approval status.¹⁰³ At the end of the seven-year approval status, each institution repeats the approval process to ensure that the program continues to meet the HTSB's teacher licensing standards. Between institution renewals, HTSB staff provide technical assistance to institutions on the SATEP process.¹⁰⁴

State approval does not preclude institutions from seeking national accreditation from either the National Council for Accreditation of Teacher Education ("NCATE") or Teacher Education Accreditation Council ("TEAC"). Both NCATE and TEAC review program materials, send an on-site team to review the program, and complete a report of their findings.¹⁰⁵ Pursuant to statutory requirements, institutions that obtain national accreditation must still receive state approval from the HTSB; however, the national accreditation evaluation serves as a substitute for the state approval process. The HTSB has approved one nationally accredited institution based upon the recommendation of the accrediting body.¹⁰⁶

National Board Certification Support

Act 314, Session Laws of Hawaii 2001, created the National Board Certification support program within the DOE, but inexplicably required the program to be administered by the HTSB.¹⁰⁷ Accordingly, the HTSB is responsible for developing, implementing, and administering a support program that provides assistance to public school teachers who become

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ See Appendix C, HTSB's list of approved teacher education programs.

¹⁰⁴ See *supra* note 93.

¹⁰⁵ NCATE has an agreement with the HTSB to conduct joint reviews based upon an integration of Hawaii's standards.

¹⁰⁶ Currently, the University of Hawaii at Manoa, College of Education is the only state approved institution that holds national accreditation from NCATE.

¹⁰⁷ It should be noted that 2004 Haw. Sess. Laws, Act 51, also created the National Board Certification incentive program within the DOE, which has been administering the program. See 2004 Haw. Sess. Laws, Act 51, §38, codified as section 302A-706, HRS. Since both programs were created within the DOE, it is unclear why the HTSB was tasked with administering one of the programs.

candidates for National Board Certification.¹⁰⁸ National Board Certification, which is administered by the National Board for Professional Teaching Standards,¹⁰⁹ is a voluntary certification process that was developed by teachers, school counselors, and other education stakeholders. As noted by the Legislature, the process of obtaining National Board Certification "requires a tremendous commitment of time and professional risk-taking."¹¹⁰ This certification "signifies that a teacher or school counselor is accomplished, having met challenging professional standards as evidenced by performance-based assessments."¹¹¹

National Board Certification requires candidates to complete an assessment based upon four portfolio entries and several assessment center exercises.¹¹² Candidates are required to submit three classroom based portfolio entries (one classroom-based entry with accompanying student work and two classroom based entries that require video recordings of interactions between candidate and students) and one entry that provides evidence of accomplishments outside of the classroom and how that work impacts student learning.¹¹³ The candidate must also complete assessment center exercises that test for knowledge of the specific certificate field. Both the portfolio entries and assessment exercises are scored by a group of teachers based upon the National Board for Professional Teaching Standards' own standards and guidelines.¹¹⁴ Certification may take one to three years to complete.¹¹⁵

The HTSB's National Board Certification support program has resulted in an increase in the number of national certified teachers in Hawaii.¹¹⁶ The HTSB conducts an informational session annually, on every island, which provides interested teachers with the process, requirements, registration fees, and other information about National Board Certification.¹¹⁷ The HTSB also arranges eight sessions annually, at six different sites, to assist teachers with the certification process.¹¹⁸ The HTSB recruits facilitators, who are usually board certified teachers, to assist in these sessions. The sessions provide candidates with the opportunity to have their portfolio entries reviewed, prior to submission to the National Board for Professional Teaching Standards, by a facilitator who can provide valuable feedback to help the candidate achieve a

¹⁰⁸ 2001 Haw. Sess. Laws, Act 314, codified as section 302A-702, HRS, established the National Board Certification support program within the DOE, but provided administration by the HTSB. While the establishment of the National board Certification support program within the DOE might cause confusion, the HTSB has managed to run a productive program.

¹⁰⁹ The National Board for Professional Teaching Standards "is an independent, nonprofit, nonpartisan, and nongovernmental organization that is governed by a board of directors, the majority of whom are classroom teachers." *See* 2009 Guide to National Board Certification, *available at* <http://www.nbpts.org/userfiles/File/Guide_2009_web.pdf> (Accessed Aug. 25, 2009).

¹¹⁰ 2004 Haw. Sess. Laws, Act 51, §37.

¹¹¹ 2009 Guide to National Board Certification, *available at* <http://www.nbpts.org/userfiles/File/Guide_2009_web.pdf> (Accessed Aug. 25, 2009).

¹¹² *See* National Board for Professional Teaching Standards: Assessment Process, *at* <http://www.nbpts.org/become_a_candidate/assessment_process> (Accessed Oct. 23, 2009).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *See* Hawaii Teacher Standards Board, 2008 Annual Report at 12. The number of national certified teachers increased from 1 to 161 between 1998 and 2008.

¹¹⁷ *See* Hawaii Teacher Standards Board: Info Sessions, *at* <<http://www.htsb.org/html/details/nbc/infosessions.html>> (Accessed Oct. 27, 2009).

¹¹⁸ *See* Appendix D, Nation Board Certification Support Schedule and Information 2009-2010.

higher score.¹¹⁹ Finally, the HTSB also arranges for an annual recognition event for all candidates who successfully completed the certification process to become National Board Certified Teachers in the preceding year.¹²⁰ National Board Certified teachers are also eligible for incentives upon completion of the program; however, the HTSB is not responsible for administering the incentives program.¹²¹

Establishing Licensing Policies for Out-Of-State Applicants Teachers

Evaluating out-of-state educators is a labor intensive and time consuming process due to the complexities and differences among state teacher licensing requirements. One of the biggest challenges that the HTSB and the State have faced in recent years is the shortage of teachers within the public school system.¹²² As a result, the HTSB was required to create policies targeted at easing the process for out-of-state teachers to obtain a Hawaii teacher license. Specifically, section 302A-802(c), HRS, required the HTSB to adopt policies and procedures regarding:

- (1) Developing criteria allowing more individuals with trade or industry experience to teach in vocational, technical, and career pathway programs and criteria for the issuance of permits allowing qualified individuals to teach;
- (2) Developing a plan to accept teachers from any state as long as they have completed state-approved teacher education programs and passed relevant Hawaii teacher examinations or their equivalent;
- (3) Clarifying the requirements, on a state-by-state basis, for out-of-state licensed teachers to obtain a license in Hawaii;
- (4) Developing a plan to facilitate licensing for those who intend to teach in Hawaii immersion programs, the island of Niihau, or any other extraordinary situation as defined by the Superintendent or the Superintendent's designee;
- (5) Pursuing full teacher license reciprocity with all other states; and

¹¹⁹ Interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (July 10, 2009).

¹²⁰ *Id.*

¹²¹ The National Board Certification incentive program provides an annual bonus incentive for teachers. Applicants for National Board Certification must pay a non-refundable application processing charge of \$65, a non-refundable initial fee of \$500, and an assessment fee of \$2,500. The National Board Certification incentive program provides teachers with a reimbursement of \$1,500 upon completion of the certification program, a reimbursement of the remainder of the application fee upon achieving National Board Certification, and a bonus of \$5,000 per year. In addition, there is an additional \$5,000 bonus per year for each teacher who maintains National Board Certification and teaches at a school that is in restructuring under the No Child Left Behind Act, is experiencing a high turnover rate, is not making adequate yearly progress, or is designated as a hard-to-fill school.

¹²² See Dan Nakaso, *Leeward schools' outreach easing teacher shortage*, Honolulu Advertiser (Aug. 14, 2008).

- (6) Issuing a license to teachers with valid out-of-state licenses who have passed tests in basic skills, pedagogy, and subject matter that are similar, though not identical, to those required for licensure in the Hawaii.¹²³

With respect to its mandate to clarify the licensing requirements, on a state-by-state basis for out-of-state applicants,¹²⁴ in 2005 the HTSB began the process of looking at each state individually by requesting information from the other forty-nine states, the District of Columbia, and the Department of Defense.¹²⁵ Unfortunately this process was never completed, in part because only sixteen states ever replied to the request. The HTSB also discovered that no other state had adopted licensing policies for out-of-state applicants on a state-by-state basis.¹²⁶

Accordingly, in lieu of state-by-state analysis, the HTSB has explored other ways to meet this mandate, such as adopting general licensing policies for all out-of-state license candidates.¹²⁷ For example, the HTSB adopted policies for making completion of an out-of-state, state approved teacher preparation program equivalent to completion of a Hawaii approved program.¹²⁸ The HTSB also adopted a policy to waive applicants who hold a valid out-of-state teaching license from having to take tests for content that was taken in another state.¹²⁹ An applicant would still need to take tests on content not taken in order to meet the licensure requirements.¹³⁰ Finally, for non-traditionally licensed out-of-state teachers, the HTSB allows them to complete their teaching requirement in Hawaii, as long as they are employed and satisfactorily evaluated.¹³¹

The HTSB has also found the statutory requirement of pursuing full reciprocity is a challenge. States generally do not provide unconditional or full reciprocity with other states,¹³² that is, a teacher cannot present a license from one state and automatically be granted a license in another, without meeting other qualification requirements or minimum standards.¹³³ Thus, full

¹²³ See Section 302A-802(c), HRS.

¹²⁴ See Section 302A-802(c)(3), HRS.

¹²⁵ See Hawaii Teacher Standards Board, 2005 Annual Report, at 13.

¹²⁶ *Id.* Note: In the Bureau's own research of state teacher licensing, among Alaska, California, Connecticut, Wyoming, Rhode Island, and South Dakota, none had policies on a state by state basis.

¹²⁷ See Hawaii Teacher Standards Board, 2007 Annual Report, at 16.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* Non-traditionally licensed teachers means that the state allowed these teachers to obtain a license different from the conventional requirements of: completion of a state approved teacher preparation program and meeting all applicable testing requirements.

¹³² See the Vermont Department of Education, Reciprocity Overview: "Reciprocity does not guarantee that a license in one state can be 'traded in' for a license in another state. Reciprocity does not guarantee that an educator license from one state is recognized by another state. Decisions of licensure through reciprocity vary from state to state and are not governed by the Interstate Agreement," at

<<http://education.vermont.gov/new/html/licensing/forms/reciprocity.html#interstate>> (Accessed Oct. 30, 2009).

¹³³ Hawaii also adopted the Interstate Compact on Qualifications of Educational Personnel found in Chapter 315, Hawaii Revised Statutes. The Interstate Compact on Qualifications of Educational Personnel acts as a tool for the HTSB to contract with other states for the acceptance of education personnel based on minimum standards or criteria set by the states. The compact, while adopted in thirty-five other states, still requires extensive work by both contracting states to compare licensing standards, testing requirements, and other steps in the licensure process. Hawaii is also a member of the National Association of State Directors of Teacher Education and Certification

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teacher license reciprocity would be difficult for the HTSB to achieve, because it could jeopardize the integrity of the state licensing process.¹³⁴ This sentiment was expressed by the Interim Dean of the University of Hawaii College of Education in testimony to the Senate Committee on Education:

The profession should be setting the requirements for reciprocity rather than the State arbitrarily accepting full reciprocity with all other states. Is Hawai'i really prepared to accept substandard teachers because they completed a licensure program in another state?¹³⁵

As a result of these challenges, HTSB has not established full reciprocity with any state.

Title II Reporting

Title II of the Higher Education Act (Pub. L. 89-329) requires each state to provide a report on teacher standards to the United States Department of Education.¹³⁶ More specifically, section 207 in Title II of the Higher Education Act, as amended, requires each state receiving funding under the Act to report annually on the quality of teacher preparation, including:

- Standards for teachers and their alignment with standards for students;
- Requirements for an initial teacher license through either an alternate or regular route;
- Pass rates on each assessment test used to license teachers;
- State standards for evaluating the performance of teacher preparation programs;
- Placement and numbers of unlicensed teachers in the classroom; and
- State efforts in the past year to improve the quality of teaching.¹³⁷

The HTSB handles the preparation and submission of these reports.¹³⁸ As an annual project,¹³⁹ the reports can take between two to three months to prepare after receiving the data

interstate agreement. The agreement, executed by states and Canadian provinces, provides guidance on the types of licenses or certifications that each state would accept. Even though a state may accept a license or certification from another state, in accordance with the interstate agreement, a state may impose additional requirements in order for the educator to teach in the state.

¹³⁴ According to the National Council on Teacher Quality, requiring minimum standards instead of unconditional reciprocity is good practice. "While many states impose burdensome coursework requirements, they often fail to impose minimum standards on licensure tests. Instead, they offer waivers to veteran teachers transferring from other states, thereby failing to impose minimal standards of professional and subject matter knowledge. In upholding licensure standards for out-of-state teachers, the state should be flexible in its processes but vigilant in its verification of adequate knowledge." National Council on Teacher Quality, "Hawaii State Summary" *State Teacher Policy Yearbook: Progress on Teacher Quality*, at 111 (2007 edition).

¹³⁵ See Testimony for House Bill 25, House Draft 1, presented before the Senate Committee on Education by Donald B. Young, Interim Dean, College of Education, University of Hawai'i at Manoa (Feb. 26, 2007).

¹³⁶ Federal law also requires an annual report from all institutions of higher education (IHE) that conduct teacher preparation programs enrolling students who receive federal assistance under Title IV of the Higher Education Act.

¹³⁷ See 2008 Hawaii Title II State Report, available at <<https://title2.ed.gov/Title2DR/StateHome.asp>> (Accessed Oct. 8, 2009).

¹³⁸ *Id.*

and compiling the information in the required format.¹⁴⁰ The fact that the HTSB is handling the reporting duty is not unique, however, as it is generally the licensing agencies in other states that prepare and submit Title II reports.¹⁴¹ Moreover, the type of information that must be provided to the United States Department of Education is directly within the purview of the HTSB.

Other Duties

In addition to the foregoing, the HTSB has additional statutory responsibilities, such as those related to:

- Establishing licensing fees;
- Conducting research activities relating to teacher quality issues;
- Establishing penalties; and
- Submitting annual reports.

Many of these duties are ancillary to the core functions of the HTSB. Nevertheless, despite the HTSB's resources, it has attempted to complete each requirement. For example, the HTSB has engaged in research projects to examine the teacher shortage issues in Hawaii compared to the teacher shortages in other states.¹⁴²

In 1998, the HTSB set teacher licensing fees at \$48 per year and has not increased the fee since. Prior to Act 2, First Special Session Laws of Hawaii 2009,¹⁴³ the HTSB has been collecting these fees via payroll deduction pursuant to section 302A-803(a)(6), HRS. The HTSB was provided with a hard copy of all teacher payroll records for each pay period. Researching licensing fee payments required extensive staff time because for specific verification purposes, such as when a teacher resigned, retired, or took leave without pay, the HTSB has to review each payroll period record of that teacher to determine exactly when the fee payment ceased.¹⁴⁴

¹³⁹ Reports are due in early October of each year, near the start of the federal fiscal calendar. The U.S. Department of Education sets the annual due dates for the report. *See* Higher Education Act Title II Reporting Reference and User Manual, August 2006 <<https://title2.ed.gov/MANUAL2006.pdf>> Accessed Oct. 27, 2009.

¹⁴⁰ Interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (July 10, 2009).

¹⁴¹ *See* Title II state reports, *at* <<https://title2.ed.gov/View.asp>> (Accessed Oct. 8, 2009).

¹⁴² *See* Hawaii Teacher Standards Board, 2007 Annual Report, at 3-4.

¹⁴³ 2009 Haw. Sess. Laws, 1st Sp. Sess., Act 2, §3, authorized the HTSB to determine the manner in which licensing fees are collected.

¹⁴⁴ *See* Hawaii Teacher Standards Board, 2008 Annual Report, at 4.

Chapter 3

OVERSIGHT

Comparison to Other States

State teacher licensing is the responsibility of an education department, board of education, or independent board.¹⁴⁵ The following chart categorizes all fifty states by which state agency or department has statutory authority to issues teacher licenses. The chart addresses authority for the issuance of teacher licenses only; some states also give the authority over setting standards, qualifications, and adopting teacher licensing policies to a separate entity.¹⁴⁶

State Authority for Issuing Teacher Licensees

Department of Education		Board of Education	Independent Board
Alabama	Nevada	Arizona	California
Alaska	New Hampshire	Arkansas	Georgia
Colorado	New Mexico	Connecticut	Hawaii
Delaware	New York	Illinois	Iowa
Florida	Oklahoma	Kansas	Kentucky
Idaho	Pennsylvania	Massachusetts	Minnesota
Indiana	Rhode Island	Michigan	New Jersey
Louisiana	South Carolina	Missouri	North Dakota
Maine	South Dakota	North Carolina	Oregon
Maryland	Vermont	Ohio	Texas
Mississippi	Washington	Tennessee	Wyoming
Montana	West Virginia	Utah	
Nebraska	Wisconsin	Virginia	
Total:		13	11

Research into state teacher licensing entities revealed that more than half of the states place the statutory authority for the issuance of teacher licenses within the state department of

¹⁴⁵ For purposes of this section, comparisons are made between all teacher licensing boards as opposed to teacher standards boards. This distinction is important because many states have independent teacher standards boards that do not have statutory approval for issuing teacher licenses.

¹⁴⁶ See Appendix E for a complete list providing the statutory authority for teacher licensing in all states.

education.¹⁴⁷ Only eleven states, including Hawaii, vest teacher licensing authority within an independent board or commission.¹⁴⁸

Independent Boards

The first two states to establish independent teacher licensing and standards boards were California in 1970 and Oregon in 1973.¹⁴⁹ By establishing the boards, California and Oregon both "gave impetus to the idea that teaching, like other occupations that required specialized training and education, should be recognized in statute as a profession."¹⁵⁰ While this was the motivation for some states to move to independent boards, Hawaii, on the other hand, was apparently also trying to address a perceived conflict of interest.¹⁵¹

Independent teacher licensing boards are created by state statute. As a result, the composition, powers, oversight, and functions and duties of the boards vary from state to state. Besides the licensing function, most of the boards also have responsibility to renew licenses,¹⁵² and some boards approve or certify state teacher preparation programs and provide National Board Certification incentives. The following chart provides a comparison between all eleven states, including Hawaii, that have authorized independent boards to implement teacher licensing.¹⁵³ These state teacher licensing boards were compared by their oversight, renewal procedures, state approval of teacher education programs, and National Board Certification activities.¹⁵⁴

¹⁴⁷ Note: Where the power to issue teacher licenses was vested in the chief executive of the education department (i.e. Superintendent or Commissioner of Education), the state was placed into the department of education category for the purposes of this table.

¹⁴⁸ North Carolina has split duties between the independent board and the education department. Since the department has the actual authority to issue licenses even though the board plays a significant role in the licensing process, North Carolina was not placed in the "independent board" category for the purposes of this comparison.

¹⁴⁹ See Board, John. *Lessons Learned from Becoming an Independent Standards Board* National Association of State Directors of Teacher Education and Certification, at 5 (June 8, 2003).

¹⁵⁰ *Id.*

¹⁵¹ See Chapter 2: History of the Hawaii Teacher Standards Board, *supra* p. 2. Note: Hawaii is the only state that has a single school district. Having the DOE, as the employer also being the licensing authority apparently is what gave rise to the perceived conflict of interest. This situation does not exist in other states because even though the education department might issue licenses, independent school districts hire and are the employer of teachers.

¹⁵² Note: Many states use the term license and certificate to mean a document that grants a person the ability to teach in the state public school system. The U.S. Department of Education also treats the terms synonymously, unless the state distinguishes the terms otherwise. For example, while some states may distinguish between license and certificate (where certificate signifies the attainment of a field or specialty), for the purposes of this part, the term certificate refers to the state license equivalent.

¹⁵³ While the HTSB licenses teachers, counselors, and librarians, most of the other states also license or certify principals, school administrators, nurses, psychologists, and other education support personnel.

¹⁵⁴ See *infra* pp. 39-40, National Board Certification. In addition to those common powers, duties, and functions, each independent board also has localized requirements. For example, the HTSB's duties include: "Developing a plan to facilitate licensing for those who intend to teach in Hawaii immersion programs, the island of Niihau, or any other extraordinary situation as defined by the superintendent or the superintendent's designee." Similarly, the Wyoming Professional Teaching Standards Board is tasked with the "Certification of teachers of the Arapahoe and Shoshoni language." These requirements, however, are ancillary to the main duties of licensing, approving teacher preparation programs, and assisting with National Board Certification.

**Comparisons Between Selected
Independent State Teacher Licensing Agencies**

State	Total Public School Teachers¹⁵⁵	Total Public School Students¹⁵⁶	State Population¹⁵⁷	Total Staff¹⁵⁸
California	307,110	6,406,821	33,871,650	160
Georgia	113,597	1,629,157	8,186,455	90
Hawaii	11,459	180,728	1,211,535	7 ¹⁵⁹
Iowa	35,653	483,122	2,926,325	14
Kentucky	43,371	683,173	4,041,770	40
Minnesota	51,880	840,565	4,919,480	4 ¹⁶⁰
New Jersey	112,301	1,388,850	8,414,350	N/A ¹⁶¹
North Dakota	8,007	96,670	642,200	5
Oregon	26,443	562,574	3,421,400	24
Texas	311,649	4,599,509	20,851,820	73
Wyoming	6,757	85,193	493,780	6

¹⁵⁵ U.S. Department of Education, Institute for Education Sciences, 2006-2007 data, at <http://nces.ed.gov/programs/stateprofiles/> (Accessed Aug. 28, 2009).

¹⁵⁶ *Id.*

¹⁵⁷ U.S. Department of Education, Institute for Education Sciences, 2000 School District Demographics, at <http://nces.ed.gov/programs/stateprofiles/> (Accessed Aug. 28, 2009).

¹⁵⁸ Information was taken from agency annual reports, budget documents, and staff rosters.

¹⁵⁹ The HTSB only has seven filled positions even though it is appropriated eleven total positions.

¹⁶⁰ While the Minnesota Board of Teaching only has four dedicated staff members, there are four additional staff members that have joint duties between the Board of Teaching and the Minnesota Department of Education.

¹⁶¹ The New Jersey Board of Examiners' staff is provided by the New Jersey Department of Education; therefore these positions were not included.

California

The California Commission on Teacher Credentialing is the oldest and largest independent teacher licensing board in the country. The Commission on Teacher Credentialing relies on credentialing fees to fund its operations. The Commission is divided into five divisions: Certification, Assignments, and Waivers; Professional Services; Professional Practices/Office of Governmental Relations; Enterprise Technology Services; and Administrative Services.¹⁶² With over 300,000 public school teachers, the Commission on Teacher Credentialing has a total staff of one hundred sixty.

The California Commission on Teacher Credentialing consists of fifteen voting members, fourteen of whom are appointed by the Governor with the advice and consent of the Senate. The composition of the board is as follows:¹⁶³

- The Superintendent of Education or designee;
- Six practicing teachers from public elementary and secondary schools;
- One person who is employed on the basis of a services credential other than an administrative services credential;
- One school administrator in a public elementary or secondary school in California;
- One member of a school district governing board;
- Four representatives of the public;¹⁶⁴ and
- One faculty member from a college or university that grants baccalaureate degrees.

Members of the Commission on Teacher Credentialing serve on staggered terms with four members appointed for terms of two years, five members for terms of three years, and five members for terms of four years. The Superintendent of Education is the only non-appointed member on the Commission.

Georgia

In the state of Georgia, the Professional Standards Commission is the teacher licensing authority. The Professional Standards Commission has a staff of ninety, and has four divisions: the educator ethics, educator preparation, educator certification, and workforce research and development divisions.¹⁶⁵ The Commission is funded through legislative appropriations; all fees collected are deposited into the general fund.¹⁶⁶

¹⁶² See California Performance Review, "Chapter 3: Education, Training, and Volunteerism" *Issues and Recommendations*, at 523 (August 3, 2004).

¹⁶³ See Cal. Educ. Code §44210.

¹⁶⁴ None of the public members shall have been employed by an elementary or secondary school district in a position requiring certification, or shall have served as a school district governing board member in the five-year period immediately prior their appointment to the commission. See Cal. Educ. Code §44210(a)(5).

¹⁶⁵ See Georgia Department of Audits and Accounts, *Professional Standards Commission Performance Audit No. 06-35*, at 2 (April 2007).

¹⁶⁶ See Ga. Code Ann. §20-2-200(e)(3). See also State of Georgia, "Budget in Brief" *The Governor's Budget Report*, Amended Fiscal Year 2009 and Fiscal Year 2010, at 157.

OVERSIGHT

The Professional Standards Commission has eighteen members, all appointed by the Governor and approved by the Senate.¹⁶⁷ The Professional Standards Commission is composed of:

- Nine teachers (including at least two assigned within kindergarten through grade five, two assigned within the grades six through eight, and two assigned within grades nine through twelve);
- Two administrators actively engaged in administration and holding a valid professional certificate;
- Two faculty members from state or regionally approved teacher education institutions;
- Two members of local boards of education; and
- Three representatives of business or other private sector groups with an interest in improving Georgia public schools.¹⁶⁸

The members of the Professional Standards Commission serve for a term of three years, with a maximum of two terms. The first appointments were staggered; therefore, even though all members serve three years, members' terms expire at different times.¹⁶⁹

Iowa

The Iowa Board of Educational Examiners was created to assume the responsibilities of the former Iowa Professional Teaching Practices Commission and the licensing responsibilities of the State Board of Education.¹⁷⁰ The Board of Educational Examiners has a staff of fourteen.¹⁷¹ The board is funded through licensing fees, with a portion of the fees collected going into the general fund.¹⁷²

The Iowa Board of Educational Examiners consists of twelve members appointed by the Governor with consent from the Senate.¹⁷³ The Director of the Department of Education or the director's designee is a member and the only one not appointed. Two members are from the general public, with one having served on a school board. The remaining nine members must be licensed practitioners selected from the following areas and specialties of the teaching profession:

- Elementary teachers;
- Secondary teachers;
- Special education or other similar teachers;

¹⁶⁷ See Ga. Code Ann. §20-2-983.

¹⁶⁸ See Ga. Code Ann. §20-2-983(b).

¹⁶⁹ See Ga. Code Ann. §20-2-983(a).

¹⁷⁰ See Iowa Legislative Services Agency, "Board of Educational Examiners" *Fiscal Topics*, at 1 (July 2008).

¹⁷¹ See Board of Education Examiners, Annual Report, at 14 (Jan. 1, 2007). See also Board of Educational Examiners: Staff Directory, at <<http://www.iowa.gov/boee/boeedir.html>> (Accessed Nov. 16, 2009).

¹⁷² See Iowa Code Ann. §272.10. See also Iowa Legislative Services Agency, "Board of Educational Examiners" *Fiscal Topics*, at 1 (July 2008).

¹⁷³ See Iowa Code Ann. §272.4.

- Counselors or other special purpose practitioners;
- Administrators; and
- School service personnel.

All members, with the exception of the non-appointed members, serve a staggered term of four years. Member cannot serve more than two consecutive terms.¹⁷⁴

Kentucky

The Kentucky Education Professional Standards Board is the state's teacher licensing authority and is divided into four divisions: Certification, Educator Preparation, Legal Services, and Professional Learning and Assessment.¹⁷⁵ The Education Professional Standards Board has a staff of forty and is funded through legislative appropriations of general and restricted fund money.¹⁷⁶

The Kentucky Education Professional Standards Board is composed of seventeen members. All members are appointed by the Governor except for the Commissioner of Education and the President of the Council on Postsecondary Education, or their designees, who serve as ex officio voting members.¹⁷⁷ The appointed members are selected as follows:

- Nine teachers who represent elementary, middle or junior high, secondary, special education, and secondary vocational classrooms;
- Two school administrators, one of whom shall be a school principal;
- One representative from local boards of education; and
- Three representatives of postsecondary institutions: two deans of colleges of education at public universities and one chief academic officer of an independent not-for-profit college or university.¹⁷⁸

Minnesota

The Minnesota Legislature created the Minnesota Board of Teaching to implement teacher licensing. The Board of Teaching is funded through legislative appropriations and dedicated funds from licensing fees.¹⁷⁹ The board has a dedicated staff of four and has four staff personnel that share joint duties with the Board of Teaching and the Department of Education.¹⁸⁰

¹⁷⁴ See Iowa Code Ann. §272.3.

¹⁷⁵ See Kentucky Education Professional Standards Board: Divisions of the EPSB, at <<http://www.kyepsb.net/boardinfo/divisions.asp#pla>> (Accessed on November 20, 2009).

¹⁷⁶ See 2008-2010 State of Kentucky Operation Budget, Education Cabinet, Volume I (Part B), at 180. Restricted fund money is similar to HTSB's special fund money because it comes from the collection of licensing fees.

¹⁷⁷ See Ky. Rev. Stat. Ann. §161.028(2)(a).

¹⁷⁸ *Id.*

¹⁷⁹ E-mail correspondence from Karen Balmer, Executive Director, Minnesota Board of Teaching (Nov. 18, 2009).

¹⁸⁰ *Id.*

The Minnesota Board of Teaching has eleven members appointed by the Governor with the approval of the Senate.¹⁸¹ The board is composed of:

- Six teachers who are currently teaching in a Minnesota school, with at least four teaching in a public school;
- One higher education representative, who must be a faculty member preparing teachers;
- One school administrator; and
- Three members of the public, two of whom must be present or former members of school boards.

The members serve for a term of four years with a maximum of two terms.¹⁸²

New Jersey

The State Board of Examiners was created to be the teacher licensing authority in New Jersey. Rather than following the model of other licensing boards, however, the State Board of Examiners oversees the New Jersey Department of Education's Licensure and Credentials Office.¹⁸³ As a result, the New Jersey Department of Education's Licensure and Credentials Office determines eligibility and issues licenses upon approval by the Board of Examiners. The Board of Examiners does not have any dedicated staff; all personnel assisting with the board operations are provided by the New Jersey Department of Education.¹⁸⁴

The New Jersey State Board of Examiners consists of fourteen voting members, all appointed by the Commissioner of Education with the approval of the New Jersey Board of Education:

- The Commissioner of Education, serving as an ex officio member;
- One assistant Commissioner of Education;
- Two presidents of state colleges;
- One county superintendent;
- One superintendent of schools of a Type I district;¹⁸⁵
- One superintendent of a Type II district;¹⁸⁶
- One high school principal;

¹⁸¹ See Minn. Stat. §122A.07.

¹⁸² See Minn. Stat. §122A.07 and §214.09.

¹⁸³ See N.J. Stat. Ann. §18A:6-34, and N.J. Admin. Code tit. 6A, §9-4.2. See also New Jersey Licensure and Credentials Office: About Us, at <<http://www.state.nj.us/education/educators/license/about.htm>> (Accessed Nov. 17, 2009).

¹⁸⁴ See New Jersey Department of Education, Licensure and Credentials: About Us, at <<http://www.nj.gov/education/educators/license/about.htm>> (Accessed Nov. 27, 2009).

¹⁸⁵ Type I school districts have appointed school boards and Type II districts have elected school boards. See New Jersey School Board Association, New Jersey Public School Statistics: School Districts by Type 2005-2006, at <<http://www.njsba.org/PI/facts/bmr30-43.pdf>> (Accessed Nov. 27, 2009).

¹⁸⁶ *Id.*

- One elementary school principal;
- One school business administrator;
- One librarian; and
- Four teaching staff members other than a superintendent, principal, school business administrator, or librarian.

The assistant Commissioner of Education serves as chair of the board, and the director of the Office of Licensure and Credentials (a division within the New Jersey Department of Education) serves as board secretary.¹⁸⁷ The appointed members serve a term of two years.¹⁸⁸

North Dakota

The Education and Standards Practice Board is the teacher licensing authority in North Dakota. The Education and Standards Practice Board has a staff of five and does not receive any general fund appropriations, only relying on money generated by fees.¹⁸⁹

The Board's composition consists of ten voting members, who are appointed by the Governor, and the superintendent of public instruction, who serves as an ex officio non-voting member. The ten voting members include:

- Four individuals who are public school classroom teachers;
- One individual who is a nonpublic school classroom teacher;
- Two individuals who are school board members;
- Two individuals who are administrators; and
- One dean of a college of education or chairman of a department of education.¹⁹⁰

Members on the Education and Standards Practice Board serve for a term of three years and a maximum of two consecutive terms.¹⁹¹ The Education and Standards Practice Board has a total of five staff members including the executive director.

¹⁸⁷ See N.J. Stat. Ann. §18A:6-36.

¹⁸⁸ See N.J. Stat. Ann. §18A:6-35.

¹⁸⁹ E-mail correspondence from Janet Welk, Executive Director, Education and Standards Practice Board (Oct. 29, 2009).

¹⁹⁰ See N.D. Cent. Code §15.1-13-02.

¹⁹¹ See N.D. Cent. Code §15.1-13-04.

Oregon

The Teacher Standards and Practices Commission, Oregon's teacher licensing authority, is an autonomous agency that is fully funded by licensing fees and receives no general fund moneys.¹⁹² The Teacher Standards and Practices Commission is composed of seventeen voting members, who are appointed by the Governor, with representation by:

- Four elementary teachers;
- Four junior or senior high school teachers;
- One elementary school administrator;
- One junior or senior high school administrator;
- One superintendent of city schools;
- One county superintendent or a superintendent employed by an education service district board;
- One member from the faculty of an approved private teacher education institution in Oregon;
- One member from the faculty of a state institution of higher education;
- One member who is also a member of a district school board; and
- Two members of the general public.¹⁹³

The members all serve three year terms and select a chairperson and officers to serve a term at the discretion of the Teacher Standards and Practices Commission.¹⁹⁴ The Teacher Standards and Practices Commission has twenty-four staff members to carry out the duties and functions of the commission.¹⁹⁵

Texas

The Texas Legislature created the State Board for Educator Certification to implement teacher licensing in the state. As an independent board, the State Board for Educator Certification has seventy-three staff members and operates from teacher licensing fee revenues.¹⁹⁶

The Texas State Board for Educator Certification is composed of fourteen members. Three of the members are non-voting members, who are appointed by the Commissioner of

¹⁹² See Chamberlain, Vickie (Executive Director, Oregon Teacher Standards and Practices Commission). "Overview of Commission" -- a letter to the Oregon School Boards Association, at 1 (April 17, 2009), *available at* <http://www.osba.org/Resources/Article/Board_Operations/~media/Files/Resources/Board%20Operations/Leadership%20Oregon%202009%20materials/Session%203/TSPC%20-%20Vickie%20Chamberlain.ashx>

¹⁹³ See Or. Rev. Stat. §342.360(1).

¹⁹⁴ See Or. Rev. Stat. §342.350(2) and 342.380(1).

¹⁹⁵ See Chamberlain, *supra* note 192, at 2.

¹⁹⁶ See Sunset Advisory Commission: Texas Education Agency, State Board for Educator Certification, Regional Education Service Centers, Windham School District, *Sunset Staff Report*, at 119 (Nov. 2004).

Education, Commissioner of Higher Education, and the Governor.¹⁹⁷ The remaining eleven members are appointed by the Governor with the advice and consent of the Senate as follows:

- Four teachers employed in public schools;
- Two public school administrators;
- One public school counselor; and
- Four public members.¹⁹⁸

The members of the Texas State Board for Educator Certification all serve six-year terms, except for the non-voting members.¹⁹⁹ The terms are staggered, with one-third of the members' terms expiring on each odd numbered year.²⁰⁰

Wyoming

Wyoming's independent board, the Wyoming Professional Teaching Standards Board, is responsible for issuing state teacher certificates.²⁰¹ The Professional Teaching Standards Board receives no general funds and relies upon licensing fees to support its operations.²⁰² The Professional Teaching Standards Board has a staff of six, including its director.

The composition of the board consists of thirteen members appointed by the state superintendent as follows:

- Six certified public school employees (two grade K-6 and three grade 7-12 teachers; one certified professional employee);
- One faculty member of a state approved teacher education preparation program in Wyoming;
- One dean of a post-secondary education preparation program from an approved teacher preparation program;
- One Wyoming community college faculty member;
- Three public school administrators (one elementary principal, secondary school principal, and central office administrator); and
- One member of the Wyoming school district board of trustees.²⁰³

All board members have voting rights and are elected to four-year terms. The Professional Teaching Standards Board members can only serve a maximum of two four-year terms.²⁰⁴

¹⁹⁷ See Tex. Educ. Code Ann. §21.033.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ See Tex. Educ. Code Ann. §21.034.

²⁰¹ Note: Wyoming statutes refer to licensing as certification, but the terms are synonymous.

²⁰² See Wyoming State Government, 2006 Annual Report, "Professional Teaching Standards Board", at 3.343.

²⁰³ See Wyo. Stat. Ann §21-2-801(a).

²⁰⁴ See Wyo. Stat. Ann §21-2-801(b).

Oversight of State Teacher Licensing Agencies

Key findings:

- The statutory structure and placement within the state government of each state teacher licensing board varies between states;
- The Hawaii Teacher Standards Board (HTSB), Georgia Professional Standards Commission, Iowa Board of Educational Examiners, Kentucky Education Professional Standards Board, Minnesota Board of Teaching, New Jersey State Board of Examiners, Texas State Board for Educator Certification, and Wyoming Professional Teaching Standards Board are all directly or indirectly administratively attached to an executive agency; however, the level of oversight and control by the executive agency varies among the states;
- The California Commission on Teacher Credentialing, North Dakota Education and Standards Practice Board, and Oregon Teacher Standards and Practices Commission are placed in the executive branch of their respective governments without any direct oversight from another state department or agency;
- Both the Kentucky Education Professional Standards Board and the Department of Education are administratively attached to the Kentucky Education and Workforce Development Cabinet;
- The New Jersey State Board of Examiners has the authority to issue, suspend, and revoke teacher licenses under rules prescribed by the New Jersey Board of Education, and also relies upon the Licensure and Credentials Unit of the Department of Education for evaluating applicant credentials, approving teacher preparation programs, and providing staff; and
- Under Texas law, the Texas State Board of Education has the authority to reject any rule proposed by the Texas State Board for Educator Certification within ninety days.

Independence and Autonomy

The California Commission on Teacher Credentialing, North Dakota Education and Standards Practice Board, and Oregon Teacher Standards and Practices Commission are all placed within the executive branch of their respective state governments, although they are not attached to an executive department or agency.

The California Commission on Teacher Credentialing is a totally independent and autonomous executive agency that is separate from the State Board of Education, the Superintendent of Public Instruction, the Secretary for Education and other entities involved in statewide education policy and programs.²⁰⁵ Under California's structure, the Commission on Teacher Credentialing is not directly accountable to the Governor. In contrast, both the North

²⁰⁵ See The California Commission on Teacher Credentialing: About the Commission, at <<http://www.ctc.ca.gov/commission/about.html>> (Accessed Nov. 12, 2009), and see also California Performance Review, "Chapter 3: Education, Training, and Volunteerism" *Issues and Recommendations*, at 523 (Aug. 3, 2004).

Dakota and Oregon government structure provides oversight of the teacher licensing board by the Governor. In North Dakota, all independent governing boards and commissions are placed under the Office of the Governor.²⁰⁶ Similarly, the Oregon Teacher Standards and Practices Commission is placed under the Governor as an educational agency program separate from the education department.²⁰⁷

Statutory Controls

Statutory controls over a state teacher licensing board's rulemaking process are another form of oversight. The New Jersey State Board of Examiners is the entity with statutory authority to issue, suspend, and revoke licenses.²⁰⁸ They do not, however, have the statutory authority to adopt any rules for teacher licensing; rather, the New Jersey Board of Education has that authority.²⁰⁹ Under this structure, the New Jersey State Board of Examiners does not have the same policy setting authority that other teacher licensing boards have. Instead, the Board of Examiners closely resembles New Jersey's professional occupation boards and commissions by being a purely adjudicatory board.²¹⁰

The Texas State Board for Educator Certification has a different type of oversight of its rulemaking. Although the State Board for Educator Certification has the authority to adopt rules to carry out its statutory functions, before the Board adopts any rule, it must submit its proposed rule to the Texas State Board of Education for review.²¹¹ The Board of Education has ninety days to reject the proposed rule by a vote of two-thirds of its members.²¹² This step is in addition to the administrative process that the proposed rule must go through, including a public hearing²¹³ and approval by the Governor,²¹⁴ similar to Hawaii's rulemaking procedure for the HTSB.

²⁰⁶ See State of North Dakota Organizational Chart (2004), and see also Boards and Commissions of the Office of the Governor, at <http://www.governor.nd.gov/boards/boards-query.asp?Board_ID=37> (Accessed Oct. 30, 2009).

²⁰⁷ See State of Oregon -- Organizational Chart, at <<http://www.oregon.gov/DAS/BAM/docs/Publications/GRB0507/A7-StateORG.pdf>> (Accessed Oct. 30, 2009), and see also State of Oregon, "2007-09 Education -Program Area Agencies" *Governor's Recommended Budget*, at B-1.

²⁰⁸ See N.J. Stat. Ann. §18A:6-38. Note: The board system in New Jersey is a departure from the normal independent board because there are two boards that handle responsibilities associated with teacher licensing. The New Jersey State Board of Examiners is the entity with statutory authority to issue, suspend, and revoke licenses. The responsibility of setting teacher standards, however, is vested in the New Jersey Board of Professional Teaching Standards. The New Jersey Board of Professional Teaching Standards was created by the Board of Education in 2003 and is not statutorily mandated.

²⁰⁹ See N.J. Stat. Ann. §18A:6-38. For certificate revocations, the Commissioner of Education has the authority to adopt rules. See N.J. Stat. Ann. §18A:6-38.1(b).

²¹⁰ See N.J. Stat. Ann. §45:1-32. The professional occupation boards and commissions issue professional licenses under rules adopted by the Director of the Division of Consumer Affairs in the Department of Law and Public Safety. The professional occupation boards, similar to the Board of Examiners, do not have any rulemaking authority.

²¹¹ See Tex. Educ. Code Ann. §21.041.

²¹² See Tex. Educ. Code Ann. §21.042.

²¹³ See Tex. Gov't Code Ann. §2001.029.

²¹⁴ See Tex. Gov't Code Ann. §2001.006.

Administratively Attached Boards

The state teacher licensing boards in Georgia, Hawaii, Iowa, Kentucky, Minnesota, New Jersey, Texas, and Wyoming are all attached, either directly or indirectly, to an executive agency or department.²¹⁵ There are differences, however, between the roles of the department and attached agency in each state.²¹⁶

The structure of government for Kentucky's education agencies is unique. Unlike other states that attach the teacher licensing board to the state education department, the Kentucky Education Professional Standards Board and the Kentucky Department of Education are both administratively attached to the Kentucky Education and Workforce Development Cabinet, a governmental agency that reports to the Governor.²¹⁷ As administratively attached agencies, both the Department of Education and Education Professional Standards Board retain relative autonomy from direct control of the Cabinet.²¹⁸

The Georgia Professional Standards Commission is administratively attached to the Office of Planning and Budget, which is an executive agency that reports to the Governor.²¹⁹ The relationship has similarities to the attached agency relationship under section 26-35, Hawaii Revised Statutes, with some significant differences. The Office of Planning and Budget is required to provide staff for any attached agency unless the hiring of staff is specifically authorized by statute.²²⁰ The agency is also required to "[p]rovide record keeping, reporting, and related administrative and clerical functions for the agency."²²¹ The executive departments in Hawaii do not have the same statutory requirements to provide for any of these services to their attached agencies.

The Wyoming teacher licensing board has a similar structure to Georgia and Hawaii. The Wyoming Professional Teaching Standards Board is housed within the Wyoming Department of Administration and Information,²²² which also houses other regulatory boards, similar to Hawaii's Department of Commerce and Consumer Affairs.²²³ The Department of

²¹⁵ The Kentucky Education Professional Standards Board is attached to a cabinet level organization.

²¹⁶ For a discussion of the attached agency relationship, see *How Oversight is Provided for Other Attached Agencies*, *infra* pp. 41-42.

²¹⁷ See Ky. Rev. Stat. Ann. §12.020, see also Kentucky Education and Workforce Development Cabinet: Cabinet Agencies, at <<http://educationcabinet.ky.gov/departments/>> (Accessed on November 17, 2009).

²¹⁸ Even though the Cabinet Secretary has "exclusive control" over cabinet programs pursuant to §12.270(4), Kentucky Revised Statutes, the Kentucky Department of Education and Kentucky Education Professional Standards Board are governed by their respective statutes. See Ky. Rev. Stat. Ann. §12.295.

²¹⁹ See §20-2-983(a), Official Code of Georgia. Note: Under this structure, the Office of the Governor is also attached to the Department of Planning and Budget for administrative purposes.

²²⁰ See Ga. Code Ann. §50-4-3. The Georgia PSC is authorized to hire staff under Ga. Code Ann. §20-2-987.

²²¹ Ga. Code Ann. §50-4-3(b)(1).

²²² See Wyo. Stat. Ann. §9-2-2008(e)(xxiii).

²²³ See Wyo. Stat. Ann. §9-2-2008(e). The Department of Administration and Information also houses Wyoming's professional licensing boards including the board of certified public accountants, architects, barber examiners, chiropractic examiners, cosmetology, dental examiner, embalming, hearing aid specialists, medical examiners, nursing, nursing home administrators, examiners in optometry, pharmacy, physical therapy, registration in podiatry, psychology, radiologic technologists, veterinary medicine, examiners for speech pathology and audiology, occupational therapy, and professional geologists; as well as the mental health professions licensing

Administration and Information also has five other divisions that are the functional equivalent to Hawaii's Department of Accounting and General Services; Budget and Finance; Business, Economic Development, and Tourism; and Human Resources Development.²²⁴ Under Wyoming's structure, the Department of Administration and Information provides "administrative oversight of agency procedures to assure that each agency is in compliance with existing statutes that created the agency and that govern the agency's functions."²²⁵ Along with oversight, the Department of Administration and Information must also provide for budget, fiscal, administrative, and clerical services if requested by the Professional Teaching Standards Board; however, the board must compensate the department for any of these services.²²⁶ The DOE does not have the same statutory requirement to oversee HTSB's compliance with its governing statutes or any requirement to provide administrative or accounting services for a fee or otherwise.²²⁷

The Iowa Board of Educational Examiners is not specifically attached to the Department of Education. The Board of Educational Examiners, however, does have a relationship that resembles an attached agency. For example, the Commissioner of Education has the authority to "assign duties to . . . the secretary of the state board of examiners."²²⁸ Also according to the Board's Executive Secretary, the Department is an umbrella agency and acts in a manner similar to an attached agency even though the relationship is not statutorily defined.²²⁹ Through this relationship, the Iowa Department of Education provides the Board of Educational Examiners with network technology, purchasing, reconciliation for finances, and personnel.²³⁰

Similarly, the Minnesota Board of Teaching is not statutorily attached to an executive agency or department. However, the Board of Teaching may be considered indirectly attached to the state Department of Education, when considering the department's responsibilities vis-à-vis the Board.²³¹ For example, the Board of Teaching shares four staff members with the department. This comingling of staff does not occur within any other teacher licensing board. Furthermore, the Department of Education is required to "provide all necessary materials and assistance for the transaction of the business of the Board of Teaching"²³² This statutory requirement is similar to requirements in both Georgia and Wyoming's attached agency structure. Finally, the Commissioner of Education is required to "provide suitable offices and other space, joint conference and hearing facilities, examination rooms, and the following administrative support services: purchasing service, accounting service, advisory personnel services, consulting services relating to evaluation procedures and techniques, data processing, duplicating, mailing

board, pari-mutuel commission, real estate commission, and the Wyoming state board of outfitters and professional guides.

²²⁴ See Wyoming Department of Administration & Information, 2005 Annual Report, at 3.21.

²²⁵ Wyo. Stat. Ann. §9-2-1707(b)(iii)(A).

²²⁶ See Wyo. Stat. Ann. §9-2-1707(b)(iii).

²²⁷ See How Oversight is Provided for Other Attached Agencies for a discussion of Section 26-35, Hawaii Revised Statutes (HRS), *infra* pp. 41-42.

²²⁸ Iowa Code Ann. §18A:4-22(d).

²²⁹ E-mail correspondence from Kim Cunningham, Executive Secretary, Board of Educational Examiners (November 23, 2009).

²³⁰ *Id.*

²³¹ E-mail correspondence from Karen Balmer, Executive Director, Minnesota Board of Teaching (Nov. 18, 2009).

²³² Minn. Stat. §122A.09, Subdivision 7.

services, automated printing of license renewals, and such other similar services of a housekeeping nature as are generally available to other agencies of state government."²³³

The Texas State Board for Educator Certification also plays the role of an attached agency to the Texas Education Agency, even though the relationship is not stated in statute. Pursuant to Texas law, the Texas Education Agency "shall provide the board's administrative functions and services."²³⁴ This general mandate ensures that the State Board for Educator Certification is provided with all the administrative functions necessary to carry out its statutory duty in a manner that mirrors the attached agency relationship of other states.

Powers, Functions, and Duties

The majority of the independent state licensing boards have somewhat similar responsibilities of issuing, suspending, renewing, and revoking teacher licenses; approving teacher preparation programs; and assisting with National Board Certification.²³⁵ The boards were compared based on the primary functions of license renewals, approving teacher preparation programs, and assisting with National Board Certification.

License Renewals

License renewal procedures vary between states. In general, license renewals are based upon a teacher professional growth plan, professional development or continuing education credits, or other renewal procedures. The following chart provides details on the different renewal procedures and requirements for what is a "basic" teacher license in states with teacher licensing boards.²³⁶

²³³ Minn. Stat. §214.04, Subdivision 1.

²³⁴ Tex. Educ. Code Ann. §21.035.

²³⁵ See National Board Certification, *infra* pp. 39-40.

²³⁶ All states have different types of teacher licenses and use different terminology. For example, the HTSB has provisional, standard, and advanced teacher licenses. For the purposes of comparison, we have used the basic teacher license that is the closest equivalent in each state to the HTSB's standard teacher license, which excludes any provisional, temporary, or conditional licenses (that have numerous conditions and very limited durations) and any high-level master teacher licenses.

State	General Renewal Procedures/ Requirements for a "Basic" Teacher License ²³⁷	Duration of Renewal, Type	Online System
California	Completion of a renewal form (online only) that includes employment and personal fitness information. ²³⁸	5 years: Professional Clear credential	Yes
Georgia	Completion of staff development credits (or semester hours) from commission approved and accredited colleges. ²³⁹	5 years: Clear renewable certificate	Pending ²⁴⁰
Hawaii	Renewal based on the ten teacher standards requiring a candidate to submit work demonstrating the completion of two standards within the five-year renewal period.	5 years: Standard License	Pending ²⁴¹
Iowa	Completion of renewal credits within the five-year renewal period. ²⁴²	5 years: Standard License	Yes
Kentucky	For the first five-year renewal, completion of graduate hours or Phase I of the Continuing Education Option requirements. ²⁴³	5 years: Teacher Certificate	No ²⁴⁴

²³⁷ For more information see University of Kentucky, College of Education: 50 States' Certification Requirements, at <<http://education.uky.edu/AcadServ/content/50-states-certification-requirements>> (Accessed Nov. 23, 2009). (Compilation from individual board websites) Note: Payment of a renewal fee was not included in this list since it is a requirement in all states that conduct renewals.

²³⁸ See California Commission on Teacher Credentialing: Renewing Your Credential Manually, at <<http://www.ctc.ca.gov/credentials/renew-manually.html#LEAFLETS>> (Accessed Dec. 16, 2009). Note: Previously, California utilized a professional growth plan renewal process for teacher credentials. According to a memo issued by the Commission on Teacher Credentialing, Senate Bill 1209 (Chap. 517, Stats. 2006) that took effect on January 1, 2007, shifted professional growth requirements from the state to the local employing agencies. Due to this change, the Commission ceased requiring professional growth plans for renewing credentials. See California Commission on Teacher Credentialing, "Repeal, Deletion, and Amendment of 5 California Code of Regulations" *Coded Correspondence No. 09-11*, at 3 (June 25, 2009).

²³⁹ See Certification Rule 505-2-.24, Georgia Standards and Practices Commission, available at <<http://www.gapsc.com/Rules/Current/Certification/index.asp>> (Accessed Nov. 23, 2009).

²⁴⁰ Registration starting for the myPSC online system will begin in November 2009, with processing beginning in January 2010. See Georgia Professional Standards Commission, *The PSC Pulse*, Fall 2009 issue, at 5.

²⁴¹ The HTSB anticipated the online licensing system running in October 2009, but as of November 25, 2009, the board is still working with the vendor for full implementation.

²⁴² See Iowa Board of Educational Examiners: Renew or Renew and Convert a License or Authorization, at <<http://www.iowa.gov/boee/ChooseRenew.html>> (Accessed Nov. 30, 2009).

²⁴³ See Kentucky Education Professional Standards Board: Certification Renewal, at <<http://www.kyepsb.net/certification/renewal.asp>> (Accessed on Nov. 17, 2009). The Continuing Education Option requires candidates to submit an independent professional growth plan (based on the needs of the teacher, the students, and the school) and to have three years of teaching experience.

²⁴⁴ The Kentucky Education Professional Standards Board allows for on-line fee payment, but requires forms to be mailed. See Kentucky Education Professional Standards Board: Certification Renewal, at <<http://www.kyepsb.net/certification/renewal.asp>> (Accessed on Nov. 17, 2009).

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State	General Renewal Procedures/ Requirements for a "Basic" Teacher License ²³⁷	Duration of Renewal, Type	Online System
Minnesota	Completion of required clock hours of professional development activities. ²⁴⁵	5 years: Teaching License	Yes
New Jersey	Renewals not required. Standard certification is valid for life. ²⁴⁶	N/A	N/A
North Dakota	Completion of required number of re-education semester hours. ²⁴⁷	5 years: Regular License	No
Oregon	Completion of academic credit from an approved college or university, or having required professional educator experience. ²⁴⁸	5 years: Standard License	No
Texas	Complete Continuing Professional Education hours from a provider approved by the Texas Board for Educator Certification. ²⁴⁹	5 years: Standard License	Yes
Wyoming	Completion of required number of professional/developmental credit hours. ²⁵⁰	5 years: Classroom Teacher	Yes

In comparing the renewal procedures of the state licensing boards and commissions, eight of the eleven states rely upon continuing education credits as requirements for the renewal of a basic teacher license. The HTSB is the only teacher licensing board that bases teacher license renewals on a professional growth plan and completion of activities related to the plan.²⁵¹ The New Jersey State Board of Examiners does not require renewals, and the California Commission on Teacher Credentialing requires completion of an online renewal form. Most of the teacher

²⁴⁵ The activities must include evidence of: positive behavioral intervention strategies and accommodation, modification, and adaptation of curriculum, materials, and instruction; further reading preparation; and an understanding of key warning signs for early-onset mental illness in children and adolescents. See Minnesota Department of Education: License Renewal, at http://education.state.mn.us/MDE/Teacher_Support/Educator_Licensing/Licensing_Info/License_Renew/index.html (Accessed Nov. 23, 2009).

²⁴⁶ Under New Jersey law, a teacher must complete a three step process that includes establishing eligibility, becoming legally employed in a school district (requiring a two-year provisional certificate), and recommendation for permanent certification. Upon receiving permanent certification status, no renewal is necessary.

²⁴⁷ See North Dakota Education Standards and Practices Board, License Renewals.

<http://www.nd.gov/espb/licensure/renewal.html> (Accessed Nov. 23, 2009).

²⁴⁸ See Oregon Teacher Standards and Practices Commission. "How to Renew Your Oregon Teaching License" Form 584-01 (Dec. 30, 2005).

²⁴⁹ See Texas Education Agency - Office of Educator Standards, *Classroom Teacher - Standard Certificate Renewal and Continuing Professional Educator Requirements* (revised Sept. 30, 2005).

²⁵⁰ See Wyoming Professional Teaching Standards Board: Renewing a License or Permit, at <http://ptsb.state.wy.us/Licensure/RenewingaLicenseorPermit/tabid/67/Default.aspx> (Accessed Nov. 23, 2009).

²⁵¹ Note: Kentucky has a professional growth plan option for renewal as well, but teachers can opt for professional development credits instead. Although Hawaii is the only state with a teacher licensing board that renews through professional growth plans, there are other states that utilize a similar renewal program. For example, the Rhode Island Department of Elementary and Secondary Education requires teachers to create I-Plans, which are professional growth plans utilized in the five-year renewal process. See Rhode Island Department of Elementary and Secondary Education: Individual Professional Development Plans (I-Plans), at <http://www.ride.ri.gov/EducatorQuality/iplans.aspx> (Accessed Dec. 16, 2009).

licensing boards also have an online licensing renewal system, and in most cases, an initial licensing system as well. The HTSB and Georgia Professional Standards Commission are currently working on their online system that should be operational in the near future.²⁵²

Teacher standards, created by state teacher licensing boards, are generally integrated into the license renewal process.²⁵³ In Hawaii, where license renewals are based on professional growth plans, professional growth activities are directly related to one of the teacher standards adopted by the teacher licensing board. For the other states that utilize professional development or continuing education credits, the teacher licensing boards use the teacher standards to approve a seminar, program, or institutional course that will meet the renewal requirements.

State Approval of Teacher Education Programs

While all states approve teacher preparation programs as a component of teacher licensing, not all of the teacher licensing boards have this responsibility. Two of the states with a teacher licensing board, Iowa and New Jersey, rely upon the Department of Education to approve the programs.

The teacher licensing boards in California, Georgia, Hawaii, Kentucky, Minnesota, North Dakota,²⁵⁴ Oregon, and Texas all have state approval procedures that include institutional program reviews and on-site evaluations. They also allow for institutions to seek national accreditation from the National Council for Accreditation of Teacher Education (NCATE).²⁵⁵

By contrast, the Wyoming Professional Teaching Standards Board does not conduct any extensive program reviews or on-site program evaluations. The Professional Teaching Standards Board instead relies upon national or regional²⁵⁶ accreditation bodies that are approved by the

²⁵² See notes 240 and 241.

²⁵³ Some states, such as New Jersey, do not have renewal procedures that would allow for teacher standards to apply. Other states do not have teacher standards and instead rely on licensing requirements.

²⁵⁴ The North Dakota Education and Standards Practice Board do not conduct reviews; rather, the board utilizes a Program Approval Advisory Committee to oversee the approval process. The advisory committee is appointed by the board and consists of ten members including:

- Three representatives of institutions of higher education to include at least one unit head of a school or college of education, and one representative of a private institution;
- Three teachers;
- Two school administrators or principals;
- A school board member; and
- A member of the Education Standards and Practices Board, who serves as committee chair.

The Program Approval Advisory Committee reviews and adopts approval procedures; oversees and, in some cases, conducts on-site reviews; and assists in preparing recommendations for approval. All policies and procedures adopted by the committee must be approved by the Education Standards and Practices Board pursuant to statutory requirements.

²⁵⁵ See Chapter 2: State-Approved Teacher Education Programs, for a discussion on the approval process of teacher education programs, *supra* p. 14.

²⁵⁶ Regional accrediting bodies include: Middle States Association of Colleges and Schools, Commission on Higher Education; Northwest Commission on Colleges and Universities; North Central Association of Colleges and Schools, Higher Learning Commission; North Central Association of Colleges and Schools, Commission on Accreditation and School Improvement, Board of Trustees; New England Association of Schools and Colleges, Inc.,

United States Department of Education to determine whether the institution has knowledgeable faculty and an effective program.²⁵⁷ Candidates are required to submit an institutional recommendation by the accredited university to the Professional Teaching Standards Board for approval in order to satisfy the state approved teacher preparation program requirement.²⁵⁸ By relying upon the recommendations of national and regional accrediting agencies, the Wyoming Professional Teaching Standards Board does not have to expend its resources to review programs and arrange and coordinate on-site visits.

On October 1, 2009, the HTSB changed its policy for approvals of state teacher education programs. Under the new policy, all Hawaii institutions are required to seek national accreditation from either NCATE or the Teacher Education Accreditation Council. This policy change is similar to the state teacher education approval procedures in Wyoming and will presumably reduce the amount of time that the HTSB expends on program reviews and on-site visits.

National Board Certification

Programs for National Board Certification fall into two categories: incentives and support. Incentive programs provide candidates who attain National Board Certification with reimbursement expenses, annual bonus payments, or both. Support programs provide candidates with coaching and mentoring to guide them through the National Board Certification process. Incentive programs are more common than support programs; the Georgia Professional Standards Commission,²⁵⁹ Kentucky Education Professional Standards Board,²⁶⁰ North Dakota Educator Standards and Practices Board,²⁶¹ and Wyoming Professional Teaching Standards Board²⁶² are all required to provide National Board Certification incentives.²⁶³

The HTSB and Kentucky Education Professional Standards Board, however, are the only teacher licensing boards that have statutory responsibilities regarding a National Board

Commission on Institutions of Higher Education; New England Association of Schools and Colleges, Inc.; Commission on Technical and Career Institutions Education; Southern Association of Colleges and School, Commission on Colleges; Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges; Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities. See Wyoming Professional Teaching and Standards Board: Regional Accrediting Bodies, at <<http://ptsb.state.wy.us/EducationResources/RegionalAccreditingBodies/tabid/120/Default.aspx>> (Accessed Oct. 28, 2009).

²⁵⁷ *Id.*

²⁵⁸ See Wyoming Professional Teaching and Standards Board: Institutional Recommendation. <<http://ptsb.state.wy.us/Licensure/BecomingLicensed/InstitutionalRecommendation/tabid/155/Default.aspx>> (Accessed Oct. 28, 2009).

²⁵⁹ See Georgia Professional Standards Commission: National Board Certified Teachers, at <<http://www.gapsc.com/nationalboard/home.asp>> (Accessed Dec. 16, 2009).

²⁶⁰ See Ky. Rev. Stat. Ann. §161.133, see also Kentucky Education Professional Standards Board: National Board for Professional Teaching Standards (NBPTS), at <<http://www.kyepsb.net/certification/nationalboard.asp>> (Accessed Dec. 16, 2009).

²⁶¹ See N.D. Admin. Code §67.1-02-05-04.

²⁶² See Wyo. Stat. Ann. §21-7-501.

²⁶³ National Board Certification incentive programs are administered by the Department of Education in Hawaii and California. See section 302A-706, HRS, and Cal. Educ. Code §44395.

Certification support program.²⁶⁴ There are differences, however, between the level of responsibility of the HTSB and Kentucky Education Professional Standards Board. The HTSB is required by statute to develop, implement, and administer a National Board Certification support program.²⁶⁵ By contrast, the Kentucky Education Professional Standards Board "shall promulgate administrative regulations under which a local board of education, in cooperation with the school-based decision making council, may establish a mentoring program within a school to utilize national board certified teachers."²⁶⁶ In comparing the legislative mandates of the Hawaii and Kentucky boards, the Kentucky Education Professional Standards Board only adopts rules for local school boards to implement the mentoring program. The board does not actually administer the program, as mentoring is done at a county or district level.²⁶⁷ Thus, the HTSB appears to be the only state teacher licensing board that administers and implements a National Board Certification support program.²⁶⁸

Teacher Licensing Fees

Teacher licensing fees are a major component of a teacher licensing board's financial resources. Some teacher licensing boards are funded exclusively through licensing fees; others use both licensing fees and general fund appropriations to fund licensing activities. Due to the impact on teacher licensing operations, licensing fees should be periodically evaluated to determine if the fee amounts are sufficient to enable a licensing board to carry out its statutory obligations.²⁶⁹

Summary

All of the independent state teacher licensing boards were created by their respective legislatures to work within each state's unique educational system. No two boards are identical or share the exact same duties and responsibilities. All of the teacher licensing boards are different, to varying degrees, with regard to oversight, license renewals, state approval of teacher preparation programs, and National Board Certification incentives.

²⁶⁴ See Section 302A-702, HRS, and Ky. Rev. Stat. Ann. §161.134(3).

²⁶⁵ See Section 302A-702, HRS.

²⁶⁶ See Ky. Rev. Stat. Ann. §161.134(3).

²⁶⁷ See Kentucky Education Professional Standards Board: Kentucky Mentor Service Providers, at <<http://www.kyepsb.net/certification/NBmentorcontacts.asp>> (Accessed Nov. 16, 2009).

²⁶⁸ See Chapter 2: National Board Certification Support, *supra* pp. 15-17.

²⁶⁹ In the 2004 California Performance Review reorganization plan, the report discussed the fee structure of the California Commission on Teacher Credentialing (CTC) and noted "[a]t \$55 every five years, the credential fee for education professionals in California is below the average for other professions. Accountants, for example, pay \$250 for their initial license and \$250 every five years for renewal, while lawyers pay \$446 and automotive repair professionals pay \$200 for initial licensure. Education professionals in other states pay, on average, \$60 every five years for their license, though the fees range from \$0 in Arkansas to \$300 in Connecticut." California Performance Review, "Chapter 3: Education, Training, and Volunteerism" *Issues and Recommendations*, at 524-525 (August 3, 2004). The report also recommended that "The Secretary for Education, or his or her successor, should ensure that the credential fee is set at a level that is adequate to cover the actual costs of CTC activities and ensure a prudent reserve." Chapter 3: Education, Training, and Volunteerism, *The California Performance Review*, at 528.

Comparison to Other Administratively Attached Agencies

Need for Oversight of the HTSB

On its establishment, the Hawaii Teacher Standards Board (HTSB) was placed in the Department of Education (DOE) for administrative purposes.²⁷⁰ As a board administratively attached to the DOE, the HTSB is subject to section 26-35, Hawaii Revised Statutes (HRS), which sets forth the relationship between a principal department and an attached agency.

In its study of the HTSB, titled "Study on the Appropriate Accountability Structure of the Hawai'i Teacher Standards Board," Report No. 09-05, the Auditor "found that the board's designation as an attached agency has created confusion and has contributed to the lack of accountability and oversight."²⁷¹ While the Auditor's finding applies specifically to its review of the online licensing project, the directive to the Legislative Reference Bureau in Act 2 (First Special Session Laws of Hawaii 2009) is broader in scope, as it directs the Bureau to review the Auditor's findings and other appropriate information and make recommendations regarding "[w]hether there is a need for oversight of the Hawaii teacher standards board, and how oversight is provided for similar boards." Accordingly, this study considers whether there is a need for oversight of the HTSB for reasons that include but are not limited to the Auditor's finding that there was inadequate oversight of the online licensing project. In this regard, this part of the study looks at how oversight is provided to certain representative attached agencies. Based upon our review of these agencies, it appears the problems experienced by the HTSB are not common among other administratively attached boards and commissions. As discussed below, the designation as an attached agency appears to be working reasonably well for other agencies.

How Oversight is Provided for Other Attached Agencies

There are a number of state boards and commissions that are established or placed within a principal department for administrative purposes, or otherwise subject to the administrative control or supervision of the head of an executive department. Such boards and commissions are varied and include the Aloha Tower Development Corporation, Crime Victim Compensation Commission, Office of the State Public Defender, Public Utilities Commission, and the boards and commissions under the Department of Commerce and Consumer Affairs' Professional and Vocational Licensing division, including the Board of Chiropractic Examiners, Board of Electricians and Plumbers, and the Real Estate Commission.

A board's status as an attached agency does not exempt it from department oversight or make it completely independent. The relationship between a principal department and an agency

²⁷⁰ Section 302A-801, HRS.

²⁷¹ Auditor's Report No. 09-05, *supra* note 26, at 29. The Auditor's finding that the HTSB's status as an attached agency has created confusion and contributed to the lack of accountability and oversight was made in the specific context of its conclusion "that inadequate oversight of the [HTSB's online licensing] project and a lack of technical expertise caused the board to waste more than \$1 million on an online system that has yet to be delivered despite numerous promises." (*Id.* at 27.) For discussion of HTSB's problems with the online system, see *infra* pp. 59-61.

attached for administrative purposes is defined in section 26-35, HRS. The statute, which applies unless otherwise specified in Chapter 26, HRS, provides that:

- (1) The head of the department shall represent the board or commission in communications with the Governor and with the Legislature; unless the Legislature or a legislative committee requests to communicate directly with the board or commission;
- (2) The financial requirements from state funds of the board or commission shall be submitted through the head of the department and included in the budget for the department;
- (3) All rules adopted by the board or commission shall be subject to the approval of the Governor;
- (4) The employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of, or under the jurisdiction of, the board or commission shall be determined by the board or commission, subject to the approval of the head of the department and to applicable personnel laws;
- (5) All purchases of supplies, equipment, or furniture by the board or commission shall be subject to the approval of the head of the department;
- (6) The head of the department shall have the power to allocate the space or spaces available to the department and that are to be occupied by the board or commission;
- (7) Any quasi-judicial functions of the board or commission shall not be subject to the approval, review, or control of the head of the department; and
- (8) Except as set forth hereinabove, the head of the department shall not have the power to supervise or control the board or commission in the exercise of its functions, duties, and powers.²⁷²

Thus, in the absence of provisions that supersede section 26-35, HRS, the head of a principal department has significant authority to oversee certain aspects of a board or commission, including the approval of employment decisions such as the appointment, promotion, transfer, and discharge of employees, as well the approval of purchases of supplies, equipment, and furniture.

Comparisons with Other Administratively Attached Agencies, State Boards, and Commissions

Each administratively attached board or commission serves a distinct purpose and function. As a result, the statutes governing each board or commission are different, and the manner in which each entity operates varies. In order to compare the HTSB with other administratively attached entities, we tried to look at aspects that are common among all such entities, such as the board or commission's statutory authority, and practices in the areas of procurement, employment, and services provided to the entity by the principal department.

²⁷² Section 26-35, HRS.

In comparison with other commissions and boards in the State, the manner in which the HTSB is attached to the DOE is not particularly unique. Boards and commissions that are attached to principal departments for administrative purposes must similarly follow the provisions of section 26-35, HRS, unless specific statutory authority supersedes those provisions.

Real Estate Commission

The Real Estate Commission (REC) is one of forty-seven boards and commissions administratively attached to the Department of Commerce and Consumer Affairs (DCCA).²⁷³ The REC is responsible for:

[T]he education, licensure, and discipline of real estate licensees, certifying and monitoring activities of pre-license real estate schools, pre-license courses, curricula and instructors, certifying continuing education providers, developing continuing education core courses, and registering condominium projects, associations, and managing agents. The Commission is also responsible for testing and certifying broker and salesperson applicants, publishing and disseminating reports and bulletins in its overall communication with schools, instructors, licensees, condominium owners and associations. The Commission also administers the real estate recovery fund."²⁷⁴

Other powers and duties of the REC, set forth in section 467-4, HRS, include the authority to:

- Grant licenses, registrations, and certificates pursuant to chapter 467;
- Make rules, subject to the approval of the Governor and the Director of Commerce and Consumer Affairs and adopted pursuant to chapter 91, to regulate the professional conduct of brokers and salespersons;
- Enforce chapter 467 and rules adopted pursuant thereto;
- Inspect client trust funds;
- Suspend or revoke licenses;
- Issue certificates of registration to prelicense real estate schools and continuing education providers;
- Certify prelicense and continuing education instructors;
- Fine licensees for violations of the license laws and rules; and
- Register condominium managing agents, if they are not broker-exempt.²⁷⁵

The REC is similar to the HTSB because it licenses and regulates professionals, which in this case are real estate brokers, salespersons, sole proprietors, corporations, partnerships, and

²⁷³ There are twenty-five regulatory licensing boards and commissions (including the Real Estate Commission) and twenty-two licensing programs administratively attached to the DCCA. The Professional and Vocational Licensing Division of the DCCA provides staff support to the boards, commissions, and programs, handles applications, licenses, reviews and processes renewals, and maintains license records. *See* PVL Overview/Services, at <http://hawaii.gov/dcca/areas/pvl/main/about_pvl> (Accessed Aug. 4, 2009).

²⁷⁴ Real Estate Commission, 2008 Annual Report, at 3 (2008).

²⁷⁵ Department of Commerce and Consumer Affairs Real Estate Commission: About the Commission, at <http://hawaii.gov/dcca/areas/real/home_about/re_comm> (Accessed June 1, 2009). *See also* Section 467-4, HRS.

limited liability corporations (LLC). The REC has one of the largest licensing programs in the State, with a total of 21,868 active and inactive licensees.

Number Of Real Estate Licensees -- By License Type (July 2007)

License Type	Number of Licensees		
	Active Licensees	Inactive Licensees	Total Active and Inactive
Broker	3,130	606	3,736
Salesperson	9,072	6,254	15,326
Sole Proprietor	1,154	--	1,154
Corporation, Partnership, LLC	1,547	105	1,652
Total	14,903	6,965	21,868

Source: Real Estate Commission 2008 Annual Report

Despite the similarities in their respective purposes of licensing certain professionals, the manner in which the REC and HTSB carry out their respective duties is distinguishable. The difference is attributable to the fact that the REC is one of forty-seven licensing areas in the DCCA's Professional and Vocational Licensing division (PVL). As the division responsible for implementing the licensing regulations for the various professions and vocations, the PVL is designed to efficiently and effectively provide services and support to forty-seven licensing areas.²⁷⁶ As a result, many of the services provided to the REC and other boards and commissions are centralized in PVL.

A review of the real estate licensing process provides an example of how the centralization of services in PVL affects the REC. The Licensing Branch of PVL, which is divided into two sections -- Application and Record -- processes applications for licensure and renewals for all forty-seven licensing areas in the DCCA, including the REC.

Office assistants²⁷⁷ in the Application Section review and process initial applications for licensure. The forty-seven licensing areas are divided among the section's ten office assistants. Each office assistant is responsible for more than one licensing area. For example, a single office assistant may be assigned to handle licensing for the boards of nursing, optometry, and naturopathic medicine. In cases where the applicant clearly meets the requirements for licensure, the office assistant issues a license to the applicant. The names of applicants who meet the licensing requirements are placed on a list that is sent to the REC for ratification. When there is a problem with an application for licensure, the office assistant sends the application to the REC's Executive Officer. If the issue with the application is within the scope of the Executive

²⁷⁶ The PVL is divided into four branches: Licensing, Examination, Administration, and Real Estate. In brief, the Licensing Branch reviews and processes applications for licensure and renewal; the Examination Branch administers licensing examinations and duties related to examinations; and the Administration Branch serves as the liaison between the Director of Commerce and Consumer Affairs and the boards and commissions. The Administration Branch also provides clerical, administrative, and other support services to the boards and commissions. The Real Estate Branch performs the same functions as the Administration Branch for the Real Estate Commission. For more information, see PVL Overview/Services, available at <http://hawaii.gov/dcca/areas/pvl/main/about_pvl> (Accessed Oct. 28, 2009).

²⁷⁷ Office assistants are clerical positions. (Telephone interview with Noe Noe Tom, PVL Division Administrator, Department of Commerce and Consumer Affairs (Oct. 28, 2009).)

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Officer's authority, the Executive Officer makes the determination to issue a deficiency or approve the application.²⁷⁸ However, if the issue is not within the Executive Officer's authority or is the type of issue that the commission usually reviews, the application is forwarded to the REC commissioners to address.²⁷⁹

The Record Section of the Licensing Branch handles renewals of real estate licenses. The procedure for handling renewals is similar to the procedure applicable to applications for initial licenses.²⁸⁰

In accordance with this procedure for issuing real estate licenses, the REC staff is not directly involved with the review and processing of applications for licensure or renewals of licenses. This is different from the manner in which the HTSB issues and renews licenses, in that the HTSB's staff is intimately involved with the review of applications for licensure and renewal.

In addition to the centralization of certain services in PVL, some responsibilities that might typically belong to a board or commission are placed with the Director of Commerce and Consumer Affairs. This centralization of authority is particularly unique to the DCCA and is necessary because of the large number of professions and vocations regulated, whether by administratively attached boards and commissions or directly by the Director. For example, section 26-9, HRS, authorizes the Director of Commerce and Consumer Affairs to "[e]stablish, increase, decrease, or repeal fees relating to any aspect of the registration, certification, licensure, or any other administrative process for all laws within the jurisdiction of the department" and provides that "[a]mendments to fee assessments shall be made pursuant to chapter 91." In the case of the HTSB, the authority to establish licensing fees in accordance with chapter 91 is granted to the board as a whole, rather than a single person.²⁸¹

In addition to other provisions, section 467-4(5), HRS, directs the REC to "[r]eport to the governor and the legislature relevant information that shall include but not be limited to a summary of the programs and financial information about the trust funds, including balances and budgets, through the director of commerce and consumer affairs annually, before the convening of each regular session, and at other times and in other manners as the governor or the legislature may require concerning its activities." This provision is similar to section 302A-803(a)(4), HRS, which requires the HTSB to submit an annual report. The reporting requirement that applies to

²⁷⁸ An example of a situation where the Executive Officer has authority to issue a deficiency on an application is where the experience listed on an application does not meet the criteria of experience as outlined in the statute. The Executive Officer determines whether the applicant's experience is similar to or fits within the experience requirement. The Executive Officer's determination may be based on his or her judgment or on board precedence, if the board has previously handled that issue. (Telephone interview with Noe Noe Tom, PVL Division Administrator, Department of Commerce and Consumer Affairs (Nov. 12, 2009).)

²⁷⁹ An example of an issue that is not within the Executive Officer's authority is one that involves an applicant's prior disciplinary action or conviction. Unless otherwise authorized by the commission, all applications that list prior discipline or convictions are reviewed by the REC commissioners. In such cases, the application is forwarded to the REC commissioners. (Telephone interview with Noe Noe Tom, PVL Division Administrator, Department of Commerce and Consumer Affairs (Nov. 12., 2009).)

²⁸⁰ Telephone interview with Noe Noe Tom, PVL Division Administrator, Department of Commerce and Consumer Affairs (Oct. 28, 2009).

²⁸¹ Section 302A-803, HRS.

the REC is different, however, in that it specifies the information that shall be included in the annual report. The provision that requires the HTSB to submit an annual report does not specify any particular information that must be included, but only calls for the HTSB to report on "the board's operations" to the Governor, Legislature, and Board of Education.²⁸² Thus, the HTSB is not required to report on the specifics of its activities, such as the amount of fees collected or how it spends its funds. Rather, the HTSB may determine what information to include in its report and is in compliance with the law as long as its report falls within the broad category of "the board's operations."

In some instances, additional statutory provisions that apply to the boards and commissions in the DCCA vary from the general rules contained in section 26-35, HRS. For example, the section 26-9(e), HRS, provides that "the employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees *under the administrative control*" of the DCCA shall be determined by the Director of Commerce and Consumer Affairs.²⁸³ As noted previously, section 26-35, HRS -- which would apply in the absence of section 26-9(e), HRS -- provides that such authority rests with the board or commission and is subject to the approval of the head of the department and applicable personnel laws. In practice, the hiring of REC employees is handled by DCCA staff, although the interview and selection process is conducted by a panel of three people, which is typically comprised of the Executive Officer of the REC, and two other people, such as the Chairperson of the REC or a member of the REC staff. The DCCA Professional and Vocational Licensing Division Administrator reviews and approves the paperwork to hire, which is then forwarded to the Director of Commerce and Consumer Affairs for approval.²⁸⁴ The HTSB's hiring process is similar. When it has a vacancy to fill, the DOE's Office of Human Resources (OHR) posts the position, conducts an initial screening of applicants, and sends a list of applicants to the HTSB. The HTSB interviews candidates and selects the person to fill the vacancy. The person's name is then forwarded to OHR, which handles the rest of the hiring process, including putting the employee on payroll and assisting with employment benefits.²⁸⁵

In the area of procurement, the REC follows state procurement laws and all contracts are signed by the Director of the DCCA, who has authority over procurement. For example, when the REC hires consultants for condominium property regimes, an employee of the REC prepares the required paperwork and the Director of the DCCA signs the documents. Authority over procurement is not delegated to the individual boards or commissions.²⁸⁶ HTSB's procurement process is different. When the HTSB seeks to procure goods or services, it works with the DOE's procurement office to prepare the required paperwork and follows the same procurement rules that apply to the DOE.²⁸⁷ If the contract is small (less than \$5,000), the Executive Director

²⁸² Section 302A-803(a)(4), HRS.

²⁸³ Section 26-9(e), HRS (emphasis added).

²⁸⁴ Telephone interviews with Noe Noe Tom, PVL Division Administrator, Department of Commerce and Consumer Affairs (June 30, 2009, Oct. 28, 2009). *See also* Section 26-9, HRS.

²⁸⁵ Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 2, 2009).

²⁸⁶ Telephone interview with Noe Noe Tom, PVL Division Administrator, Department of Commerce and Consumer Affairs (June 30, 2009).

²⁸⁷ Interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (July 10, 2009); E-mail correspondence from Amy Shimamoto, Personnel Director, Department of Education (Aug. 20, 2009).

signs it.²⁸⁸ For larger contracts, the Department of the Attorney General reviews and signs off on the contract.²⁸⁹

The DCCA provides certain other centralized services to the REC, as well as to other boards and commissions administratively attached to the DCCA. For example, the DCCA provides payroll and personnel services to the REC. Similarly, computer problems that cannot be resolved by the REC's staff are handled by the DCCA's information technology staff.

The REC and other administratively attached boards and commissions in the DCCA receive legal services from the Department of the Attorney General. There are five deputy attorneys general assigned to the boards and commissions in PVL. The workload of advising the forty-seven boards and commissions is divided among the five attorneys. For the most part, the assigned deputy attorney generals attend all board meetings and advise boards when issues arise. Neither the PVL nor REC reported having any problems or difficulty with obtaining the assistance of or of the services provided by the Department of the Attorney General.²⁹⁰

Crime Victim Compensation Commission

The Crime Victim Compensation Commission (CVCC) was established in 1967 to "pay un-reimbursed expenses for crime-related losses experienced by victims who suffer physical or emotional injury, or death, as a result of violent crime."²⁹¹ The CVCC processes applications for compensation and issues monetary awards to qualifying victims, to assist them with medical costs, counseling costs, lost wages, and funeral expenses that are not covered by any other source.²⁹² The CVCC's mission is to "equitably and efficiently provide crime victims with the services due to them under Hawai'i law. In doing so, the Commission treats every victim and survivor with dignity and respect, acknowledging the tremendous impact that violent crime has upon crime victims and our society."²⁹³

In addition to processing applications for compensation²⁹⁴ and awarding payments to victims, the CVCC is engaged in several projects that assist it in pursuing its mission: the assessment and collection of the Crime Victim Compensation Fee;²⁹⁵ the Medical Expense Reduction Project;²⁹⁶ and the Restitution Recovery Project.²⁹⁷

²⁸⁸ Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 25, 2009); E-mail correspondence from Amy Shimamoto, Personnel Director, Department of Education (Aug. 20, 2009).

²⁸⁹ E-mail correspondence from Amy Shimamoto, Personnel Director, Department of Education (Aug. 20, 2009).

²⁹⁰ Telephone interview with Noe Noe Tom, PVL Division Administrator, Department of Commerce and Consumer Affairs (Oct. 28, 2009).

²⁹¹ Crime Victim Compensation Commission, 2008 Annual Report, at 1 (2008).

²⁹² *Id.* at 3.

²⁹³ *Id.*

²⁹⁴ During the 2008 fiscal year, the CVCC received 802 new applications for compensation and processed over 900 new and ongoing applications. (Crime Victim Compensation Commission, 2008 Annual Report, *supra* note 291, at 4.)

²⁹⁵ The mandatory Crime Victim Compensation Fee was established to provide funding for the CVCC and enable it to become financially independent. Since 2003, the CVCC has been financially self-sufficient. (Crime Victim Compensation Commission, 2008 Annual Report, *supra* note 291, at 3.) It relies solely on compensation fees assessed by judges against criminal offenders, court-ordered offender restitution as reimbursement for compensation

The CVCC is attached to the Department of Public Safety (PSD) for administrative purposes.²⁹⁸ As an administratively attached agency, the CVCC is subject to section 26-35, HRS. There are a few additional statutory provisions that set forth the duties, obligations, and structure of the CVCC. For example, section 351-13, HRS, sets forth the powers and procedures of the CVCC, including the authority to hold hearings on applications for compensation, sets the number of members required for quorum, and obligates the board to provide the applicant with notice of the hearing.²⁹⁹ Section 351-13 also specifically allows the CVCC to delegate to the Executive Director the authority to sign any order issued by the CVCC and requires the CVCC to assign cases to the Executive Director for determination of eligibility and any order of compensation.³⁰⁰

Like the HTSB, the CVCC is required, by statute, to submit an annual report on its operations. Section 351-70, HRS, provides:

The commission shall transmit annually to the governor and to the director of public safety, at least thirty days prior to the convening of the legislature a report of its activities under this chapter including a brief description of the facts in each case, and the amount, if any, of compensation awarded, and the names of attorneys and health care providers where they are the applicants. The director of public safety shall, within five days after the opening of the legislative session, transmit the report, together with the tabulation of the total amount of compensation awarded during the prior fiscal year and an estimate of the amount that is reasonably estimated to be required for the next fiscal year, and a legislative bill to appropriate funds for the crime victim compensation special fund for the next fiscal year. The commission shall provide upon request of the governor, the

awarded, ten percent of inmate wages for offenders convicted of violent crimes, interest income from funds on deposit, and federal Victim of Crimes Act funds (the CVCC receives a sixty percent federal match for every state dollar expended to compensate victims of violent crime). Historically, the CVCC has had difficulty collecting the compensation fee. As a result, the CVCC monitors cases to see whether or not judges order the fee and whether or not the Judiciary collects it in eligible cases. (*Id.* at 12.)

²⁹⁶ The Medical Expense Reduction Project is a program to reduce overall medical expenses of uninsured victims of violent crime. Under state law, the CVCC is barred from awarding compensation that exceeds \$20,000. In cases where medical expenses do not exceed the \$20,000 limit on compensation, the CVCC requests that the medical providers accept 70% payment from the CVCC as payment in full. Where medical expenses exceed the \$20,000 limit, the CVCC leverages the \$20,000 maximum award against the amount of the medical expenses owed by requesting that medical providers accept the CVCC's payment as payment in full. (Crime Victim Compensation Commission, 2008 Annual Report, *supra* note 291, at 6.)

²⁹⁷ In the past, the Judiciary processed restitution payments. Then, for a period of time, the Judiciary and the Department of Public Safety were "at an administrative stalemate over who was responsible for processing restitution payments made by inmates and parolees." (Crime Victim Compensation Commission, 2008 Annual Report, *supra* note 291, at 7.) For more details about the problems with the prior system for processing court-ordered restitution payments, see Crime Victim Compensation commission, 2008 Annual Report, *supra* note 291, at 87. Ultimately, the CVCC stepped forward and developed a project to collect and disburse restitution payments.

²⁹⁸ Section 351-11, HRS.

²⁹⁹ See Section 351-13, HRS.

³⁰⁰ *Id.* The references to the CVCC "administrator" in section 351-13(b) and (c) are to the Executive Director. (Telephone interview with Pamela Ferguson-Brey, Executive Director, Crime Victim Compensation Commission (Nov. 19, 2009).)

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director of public safety, or the legislature, the relevant data, including the names of all applicants for compensation, under this chapter.³⁰¹

Accordingly, this provision requires that the CVCC's annual report, unlike statutory provisions governing the HTSB's report, include specific information.³⁰²

When hiring employees, the CVCC is subject to both sections 26-35(a)(4) and 351-69, HRS. As noted previously, section 26-35(a)(4) provides that the employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of officers and employees of a board or commission be approved by the department head.³⁰³

Section 351-69 provides more specific direction, by stating that "[s]upervisory, administrative, and clerical personnel necessary for the efficient functioning of the commission shall be appointed as provided in section 26-35, without regard to chapter 76, but subject to chapter 89."³⁰⁴ In other words, in contrast to the HTSB's employees, new hires at the CVCC are exempt from civil service.³⁰⁵ When filling positions, the PSD's human resources office reviews the applications and certifies that the candidates meet the qualifications and requirements of the job classification. For example, if a position requires a bachelor's degree, the human resources office ensures that the applicant has one. The CVCC interviews applicants and ultimately selects its employees.³⁰⁶

In addition, when dealing with reimbursements or payments, PSD, while not approving or denying the requests, ensures that the CVCC complies with the department's technical and clerical procurement requirements.³⁰⁷ This appears to be aligned with the requirement in section 26-35, HRS, that "[a]ll purchases of supplies, equipment, or furniture by the board or commission shall be subject to the approval of the head of the department."³⁰⁸

The PSD also provides certain services to the CVCC, such as the processing of payroll and support for the Commission's computer system. For example, if the CVCC experiences minor computer issues that can be fixed quickly, the PSD's staff is dispatched to take care of the problem. If the problem is more complex and requires more time to repair, the CVCC covers the

³⁰¹ Section 351-70, HRS.

³⁰² See *supra* note 282 and accompanying text.

³⁰³ See *supra* note 272 and accompanying text.

³⁰⁴ Section 351-69(a), HRS. Section 351-69(a) also provides that "[n]o position filled as of June 19, 2007 by an employee appointed pursuant to chapter 76 shall be affected by this [section]" and that "[u]pon becoming vacant, any position filled as of June 19, 2007 by an employee appointed pursuant to chapter 76 shall be filled by an employee appointed without regard to chapter 76." In addition, section 351-69(b) states "[a]n executive director and an administrative assistant shall be appointed, without regard to chapter 76, for the proper administration and enforcement of this chapter."

³⁰⁵ The CVCC has a staff of eight employees. Only one of those positions is considered clerical and the rest are considered professional. However, because of the nature of the CVCC's work, all employees are tasked with handling a variety of levels of work. (Telephone interview with Pamela Ferguson-Brey, Executive Director, Crime Victim Compensation Commission (Nov. 19, 2009).)

³⁰⁶ Telephone interview with Pamela Ferguson-Brey, Executive Director, Crime Victim Compensation Commission (Oct. 21, 2009.)

³⁰⁷ Telephone interview with Pamela Ferguson-Brey, Executive Director, Crime Victim Compensation Commission (July 1, 2009).

³⁰⁸ Section 26-35(a)(4), HRS.

cost of the department employee's overtime. As another example, when the CVCC undertakes larger computer projects that are contracted out, such as the reconfiguration of a computer network, it consults with PSD staff to identify what is needed, and the department -- since it has staff experienced with computers and information technology issues -- assists the CVCC by monitoring the project to ensure that the contractor is performing according to the contract.

Like the REC and HTSB, the CVCC receives services from the Department of the Attorney General. There are two attorneys that typically assist the CVCC when needed. Like the REC, the CVCC did not report experiencing any problems or difficulties in obtaining legal assistance.³⁰⁹

Public Utilities Commission

The Public Utilities Commission (PUC) "was established in 1913 by Act 89, [Session Laws of Hawaii] 1913, as a part-time, three-member body with broad regulatory oversight and investigative authority over all public utility companies doing business in the Territory of Hawaii."³¹⁰ The PUC continues to be comprised of three commissioners, all of whom now serve full time.

The primary purpose of the PUC is to "ensure that regulated companies efficiently and safely provide their customers with adequate and reliable services at just and reasonable rates, while providing regulated companies with a fair opportunity to earn a reasonable rate of return."³¹¹ The PUC regulates "all chartered, franchised, certificated, and registered public utility companies that provide electricity, gas, telecommunications, private water and sewage, and motor and water carrier transportation services in the State."³¹² To carry out the purpose described above, the PUC has a variety of powers, including but not limited to the authority to issue certificates of public convenience and necessity to public utilities,³¹³ the power to compel the attendance of witnesses in all investigations and proceedings before the PUC,³¹⁴ and the regulation of utility rates.³¹⁵

In addition to the duties and responsibilities set forth above, the PUC "oversees the administration of a one call center that provides advance warning to excavators of the location of subsurface installations in the area of an excavation in order to protect those installations from damage and the development and maintenance of the petroleum industry monitoring, analysis and reporting ("PIMAR") program that is intended to increase transparency within the petroleum industry."³¹⁶ The PUC is also "tasked with establishing the public benefits fee, which will be

³⁰⁹ Telephone interview with Pamela Ferguson-Brey, Executive Director, Crime Victim Compensation Commission (Oct. 21, 2009).

³¹⁰ Public Utilities Commission, 2007-08 Annual Report, at 3 (2008).

³¹¹ *Id.* at 6.

³¹² *Id.* at 3.

³¹³ Section 269-7.5, HRS.

³¹⁴ Section 269-10, HRS.

³¹⁵ Section 269-16, HRS.

³¹⁶ Public Utilities Commission, 2007-08 Annual Report, *supra* note 310, at 3; Chapters 269E, 486J, HRS.

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used to support energy efficiency programs and services on the islands of Oahu, Maui, Molokai, Lanai and Hawaii."³¹⁷

In total, the PUC regulates 220 utility companies or entities (4 electric, 1 gas, 178 telecommunications, and 37 water and sewer companies), 4 water carriers, 627 passenger carriers, and 588 property carriers. During the 2007-2008 fiscal year, the PUC opened 370 new dockets related to regulated utilities and transportation companies, completed and disposed of 316 dockets from its total case load, and issued 751 decisions and orders relating to new dockets and to those carried over from prior years.³¹⁸

As of November 2009, the PUC had approximately 37 employees, which included an administrative director, attorneys, engineers, auditors, researchers, investigators, neighbor island representatives for the counties of Kauai, Maui, and Hawaii, documentation staff, and clerical staff.³¹⁹

The PUC is placed in the Department of Budget and Finance (B&F) for administrative purposes.³²⁰ Like other administratively attached agencies, the PUC is subject to section 26-35, HRS, as well as additional statutory provisions that apply specifically to the PUC.

Similar to the CVCC, the PUC's process for hiring employees follows section 26-35(a)(4), HRS, and a statute that is specific to the PUC. While section 26-35(a)(4) provides that the appointment of employees of a board or commission be approved by the department head, section 269-3, HRS, is more specific. It states:

The chairperson of the [PUC] may appoint and employ clerks, stenographers, agents, engineers, accountants, and other assistants for the [PUC] as the chairperson finds necessary for the performance of the commission's functions and define their powers and duties. The chairperson may appoint and, at pleasure, dismiss a chief administrator and hearings officers as may be necessary. Notwithstanding section 103D-209, the chairperson shall appoint one or more attorneys independent of the attorney general who shall act as attorneys for the commission and define their powers and duties and fix their compensation. The chief administrator, chief of policy and research, chief of administrative support, chief of consumer affairs and compliance, utility analysts, and attorneys shall be exempt from chapter 76. Research assistants, economists, legal secretaries, legal assistants, and enforcement officers may be appointed with or without regard to chapter 76. Other employees shall be appointed as may be needed by the chairperson in accordance with chapter 76.³²¹

When filling a vacant position, the PUC establishes a panel to interview applicants. The panel makes a recommendation to the Chairperson. If the Chairperson approves the candidate, paperwork is then sent to the Director of Finance for approval.³²²

³¹⁷ Public Utilities Commission, 2007-08 Annual Report, *supra* note 310, at 3; Part VII of Chapter 269, HRS.

³¹⁸ Public Utilities Commission, 2007-08 Annual Report, *supra* note 310, at 7.

³¹⁹ Telephone interview with Brooke Kane, Administrative Director, Public Utilities Commission (Nov. 18, 2009); *see also* Public Utilities Commission, 2007-08 Annual Report, *supra* note 310, at 5.

³²⁰ Sections 26-8, 269-2, HRS.

³²¹ Section 269-3, HRS.

³²² Telephone interview with Brooke Kane, Administrative Director, Public Utilities Commission (Nov. 18, 2009).

Other aspects of the PUC's duties, responsibilities, and structure are also governed by specific statutory provisions other than section 26-35, HRS. For example, section 269-6, HRS, specifies that the powers and duties of the PUC include the responsibility of general supervision over all public utilities and all other duties and powers imposed by chapter 269, HRS.³²³ Section 269-7, HRS, authorizes the PUC's investigative powers, including the power to:

[E]xamine into the condition of each public utility, the manner in which it is operated with reference to the safety or accommodation of the public, the safety, working hours, and wages of its employees, the fares and rates charged by it, the value of its physical property, the issuance by it of stocks and bonds, and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations.³²⁴

As another example, section 269-5, HRS, requires the PUC to annually "prepare and present to the governor, through the director of finance . . . a report respecting its actions during the preceding fiscal year." Statutory law specifies information that must be included in the report, such as:

[S]ummary information and analytical, comparative, and trend data concerning major regulatory issues acted upon and pending before the commission; cases processed by the commission, including their dispositions; utility company operations, capital improvements, and rates; utility company performance in terms of efficiency and quality of services rendered; environmental matters having a significant impact upon public utilities; actions of the federal government affecting the regulation of public utilities in Hawaii; long and short-range plans and objectives of the commission; together with the commission's recommendations respecting legislation and other matters requiring executive and legislative consideration.³²⁵

In addition, the PUC is required to prepare a separate annual report on the Public Utilities Commission Special Fund. Section 269-33, HRS, requires the PUC to "submit a report to the legislature detailing all funds received and all moneys disbursed out of the fund prior to the convening of each regular session."

In accordance with the above-mentioned statutes, the PUC is required to provide specific information about its activities. Thus, the requirements that apply to the PUC's annual reports are vastly different from that of the HTSB's annual report, which, as noted previously, does not specify any particular information that must be included.³²⁶

³²³ Section 269-6, HRS.

³²⁴ Section 269-7(a), HRS.

³²⁵ Section 269-5, HRS.

³²⁶ Section 302A-803(a)(4), HRS.

When it comes to procurement issues, the PUC operates differently than the HTSB. In accordance with a current budget policy, the Governor must approve the PUC's plans to enter into contracts. Thus, the PUC's request is submitted and approved by the Director of Finance and the Governor. Once approved, the PUC staff works on the necessary contract documents, which are reviewed by the Department of the Attorney General. While a copy of the contract is sent to B&F, the Chairperson of the PUC has delegated authority to enter into contracts and, for that reason, ultimately signs such contracts.³²⁷

Like other administratively attached agencies, the PUC receives certain services from the department to which it is attached. B&F's Administrative and Research Office processes payroll for the PUC, provides direction in the development of its budget and expenditure plans, and handles personnel matters for it, such as fielding questions from PUC employees about employee benefits.³²⁸

B&F also provides some information technology services to the PUC. Until a few years ago, the PUC relied upon B&F for information technology assistance. The PUC then established an information technology position on its staff. This staff member handles the PUC's computer problems, but when there are situations that require additional assistance, the PUC seeks help from the department's information technology staff.³²⁹

Unlike other administratively attached agencies discussed in this study, the PUC receives legal services from both the Department of the Attorney General and its own staff attorneys.³³⁰ The attorneys on the PUC's staff, which are hired in accordance with authority granted in section 269-3(a), HRS, handle the PUC's substantive matters, such as its dockets.³³¹ The deputy attorney general assigned to assist the PUC typically handles the PUC's administrative matters, such as contract review. Like the REC and CVCC, the PUC reported that it does not have any problems or difficulties with the assistance provided by the Department of the Attorney General.³³²

Administratively Attached Status is Working for Other Boards and Commissions

The Real Estate Commission, Crime Victim Compensation Commission, and Public Utilities Commission appear to be functioning reasonably well as administratively attached agencies governed by section 26-35, HRS. In contrast, it appears that the HTSB's problems are not caused solely by its designation as an administratively attached agency. As discussed below, the dysfunction of the HTSB appears to be the result of a number of other problems.

³²⁷ Telephone interview with Brooke Kane, Administrative Director, Public Utilities Commission (Nov. 18, 2009).

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ Section 269-3(a), HRS; telephone interview with Brooke Kane, Administrative Director, Public Utilities Commission (Nov. 18, 2009).

³³¹ Telephone interview with Brooke Kane, Administrative Director, Public Utilities Commission (Nov. 18, 2009); *supra* note 321 (Section 269-3(a), HRS, authorizes the Chairperson of the PUC to "appoint one or more attorneys independent of the attorney general who shall act as attorneys for the commission.")

³³² Telephone interview with Brooke Kane, Administrative Director, Public Utilities Commission (Nov. 18, 2009).

Chapter 4

PROBLEMS WITH THE HAWAII TEACHER STANDARDS BOARD

In its study of the Hawaii Teacher Standards Board (HTSB), the State Auditor identified problems at the HTSB, including its failure to develop a professional teacher licensure program and a lack of oversight and mismanagement of operations that resulted in government waste.³³³ These problems at the HTSB appear to be caused by several factors. First, while other administratively attached boards and commissions have operated relatively smoothly, in the case of the HTSB, there appears to be confusion about what it means to be an administratively attached agency. Second, the HTSB is assigned more responsibility than it can handle. Third, the HTSB's inability to accomplish all of its responsibilities is caused, in part, by the fact that it does not have proper resources. Fourth, the HTSB spent an inordinate amount of time and resources in its attempt to develop an online renewal system and, while doing so, neglected its responsibility to renew teacher licenses. Fifth, unlike other administratively attached boards and commissions, the HTSB is not required by statute to report on the specifics of its activities. Sixth, the HTSB Executive Director exceeded her authority on multiple occasions. Finally, the HTSB's requirements for license renewal and the renewal process it developed do not comply with statutory requirements.

Differing Views and Confusion About Administrative Attachment

The Auditor "found that the board's designation as an attached agency has created confusion and has contributed to the lack of accountability and oversight."³³⁴ We found that, generally, a board or commission's status as an administratively attached agency is not problematic, as other attached agencies operate reasonably well. In the case of the HTSB, however, there appears to be a misunderstanding of what it means to be placed in the DOE for administrative purposes.

The Auditor reported that the Superintendent of Education "believes that the responsibility for the oversight of the [HTSB] and the executive director should rest with the board itself," and "that accountability for outcomes and oversight also rests with the board."³³⁵ Moreover, "[t]he superintendent recalled that the board was given the licensure function as there was a perception that the department had a conflict of interest in its capacity as employer and licensing authority" and that there was a "perception that it was intended for the board to have some degree of independence and separation from the department."³³⁶ Accordingly, the

³³³ See Auditor's Report No. 09-05, *supra* note 26, at 14-36.

³³⁴ *Id.* at 29.

³³⁵ *Id.* at 30.

³³⁶ *Id.* Act 312, Session Laws of Hawaii 2001, which transferred certain duties, including the responsibility for teacher licensing, to the HTSB from the DOE, arose out of the work of the Hawaii Policy Group of the National Commission on Teaching and America's Future. The report by the Hawaii Policy Group, entitled *Securing the Future for Hawaii's Children*, (see *supra* note 4) is void of any mention of a conflict of interest arising from the

Superintendent "remarked that should the department scrutinize the board's operations and deny payments for the activities approved by the board, the department could be accused of interfering in the board's operations."³³⁷

As noted by the Auditor, section 26-35, Hawaii Revised Statutes (HRS), specifically prohibits the department head from exercising certain powers over an attached agency. As applied to the Superintendent of Education and HTSB, in particular, the statute provides that the quasi-judicial functions of the HTSB shall not be subject to the approval, review, or control of the Superintendent, and specifies that the Superintendent does not have the power to supervise or control the HTSB in the exercise of its functions, duties, and powers, except as set specifically forth in section 26-35(a)(1)-(7).³³⁸

The Auditor also noted that in accordance with the procurement code, the Superintendent should be providing supervision for the HTSB's procurement of goods and services, but concluded that the relationship is "muddled" because section 26-35, states that the Superintendent does not have the power to supervise or control the HTSB's functions, duties, and powers, except as specifically set forth in section 26-35.³³⁹

Furthermore, according to the Auditor, the board members of the HTSB apparently failed to provide sufficient oversight of the Executive Director. The Auditor's report included several examples of this lack of oversight. First, the Auditor found that inadequate oversight of the online licensing project was one of the causes of the HTSB's waste of more than \$1 million.³⁴⁰ Second, the Auditor noted that the board members chose to "fully entrust the executive director

employer-issued teaching licenses. The origin of the idea that there existed a conflict of interest appears to be the legislative history of Act 312, SLH 2001, which states: "Transferring these duties from the department of education to the Hawaii teacher standards board will remove the inherent conflict of interest faced by the department in its current role as employer, as well as licensing agent." (2001, SLH, Act 312, § 1.)

³³⁷ Auditor's Report No. 09-05, *supra* note 26, at 30.

³³⁸ Section 26-35, Hawaii Revised Statutes (HRS), specifies that:

- The head of the department shall represent the board or commission in communications with the governor and with the legislature, unless the legislature or a legislative committee requests to communicate directly with the board or commission;
- The financial requirements from state funds of the HTSB is submitted through the head of the department and included in the budget for the department;
- The employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the board or commission shall be determined by the board or commission, subject to the approval of the head of the department and applicable personnel laws;
- All purchases of supplies, equipment, or furniture by the board or commission is subject to the approval of the head of the department; and
- The head of the department has the power to allocate the space or spaces available to the board or commission and that are to be occupied by the board or commission.

³³⁹ Auditor's Report No. 09-05, *supra* note 26, at 29-30.

³⁴⁰ The Auditor specifically found that:

[I]nadequate oversight of the project and a lack of technical expertise caused the board to waste more than \$1 million on an online system that has yet to be delivered despite numerous promises. We also found that the absence of an online licensing system severely limited the board's ability to implement an effective licensing renewal program. The board's executive director, despite her lack of expertise or training related to information technology, was placed in control of the project and contributed to the project's inefficiency and waste.

Auditor's Report No. 09-05, *supra* note 26, at 27.

with all fiscal authority, depending on her to effectively manage the board's finances," and that "[d]espite the confidence of the board, the executive director has not served as a capable fiscal steward."³⁴¹ Third, the Auditor found that the HTSB members "failed to follow basic guidelines and best practices regarding the oversight and monitoring of contracts" related to its online licensing project, and that "the board's failure to question missed deadlines and the lack of deliverables contributed to the project's complete breakdown, resulting in a waste of time and resources."³⁴² Finally, the Auditor found that the HTSB members lacked awareness and oversight of the online licensing project, but was "unable to determine whether board members were ever informed of the cost of the project and whether they made the proper inquiries of the executive director to monitor expenditures during the project."³⁴³

The HTSB's status as an administratively attached agency is not clear to the HTSB's Executive Director, who appears to expect more assistance from the DOE. The Executive Director expressed frustration about the uncertainty surrounding the HTSB's relationship to the DOE. Despite the fact that the Executive Director has held her position with the HTSB since its inception fourteen years ago, she stated that she was not aware of any source of guidance -- statutory or otherwise -- for administratively attached agencies like the HTSB.³⁴⁴

This failure to understand the appropriate roles of a board and the department to which it is administratively attached has resulted in confusion and apparently has strained the relationship between the HTSB and DOE. For example, when the HTSB was first created, the HTSB was told that it could not receive information technology support from the DOE because it was not part of the DOE. In the last one or two years, the DOE and HTSB, with the help of a deputy attorney general, came to an agreement that the DOE would provide some assistance to the HTSB. As a result, the DOE has assisted the HTSB with reestablishing the HTSB computer network.³⁴⁵ However, whether the DOE will continue to provide information technology support to the HTSB is apparently the source of some confusion. According to the DOE, the HTSB can call the information technology office whenever assistance is needed. Nevertheless, the Executive Director of the HTSB is uncertain that support will still be provided, because the person that was initially assigned to help the HTSB with its network problems has left the DOE.³⁴⁶ Despite this concern, the Executive Director has not contacted the DOE to seek

³⁴¹ See Auditor's Report No. 09-05, *supra* note 26, at 27.

³⁴² *Id.* at 33.

³⁴³ *Id.* at 34.

³⁴⁴ Interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (July 10, 2009).

³⁴⁵ Open Frameworks Corporation, a vendor that previously contracted with the HTSB to develop the online licensing system, shut down the HTSB's computer network in 2008, after a dispute arose. (See *infra* pp. 59-60.) The shut down caused the HTSB to lose access to its e-mail and licensing systems, and disabled the HTSB website. Hawaii Information Consortium, a private company, helped the HTSB restore its e-mail and website, and the DOE helped the HTSB with reestablishing its computer network. (Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 18, 2009).)

³⁴⁶ E-mail correspondence from Amy Shimamoto, Personnel Director, Department of Education (Aug. 20, 2009); Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 2, 2009).

clarification.³⁴⁷ Instead, it appears that the Executive Director is delaying such contact until the HTSB has a computer issue that needs attention.³⁴⁸

Another example of the confusion concerning the nature of administratively attached agencies arises with respect to discussions about an alleged administrative fee that the HTSB pays to the DOE. When the HTSB asked the DOE about an administrative fee that it believed it was charged, the HTSB indicated it was told that the fee was for support services, such as use of the FMS system.³⁴⁹ The HTSB believed that the payment of the fee should entitle it to other services from the DOE, such as computer support. The HTSB was frustrated when the DOE did not provide such services to the HTSB.³⁵⁰ Subsequently, in the summer of 2009, the HTSB was informed that the fee was not a fee for support services, but is instead an administrative fee charged by the Department of Budget and Finance.³⁵¹

The HTSB Appears to Have Too Many Duties

The HTSB appears to have too many duties, given its limited staff. Over the last fourteen years, the HTSB's responsibilities have expanded from the single task of setting teacher licensing standards to include a variety of duties that extend far beyond its original purpose. The HTSB's additional duties include the responsibility for issuing and renewing teacher licenses, approving state teacher preparation programs, administering the support program for teachers pursuing National Board Certification, establishing policies for out-of-state applicants, and reporting annually to the federal government on teacher standards in accordance with section 207 of Title II of the Higher Education Act. The nature and scope of the work associated with each of these responsibilities are set forth in greater detail in Chapter 2 of this report. The amount of responsibility placed on the HTSB may have caused it to lose focus of its core duties, including the responsibility to renew teacher licenses.

Recently, the HTSB took action to alleviate some of its workload. On October 1, 2009, the HTSB approved a change to its policy regarding the state approved teacher education program approval process.³⁵² The HTSB will no longer conduct on-site evaluations of teacher education programs at colleges and universities in Hawaii, and it will not prepare the reports of such evaluations.³⁵³ Teacher education programs will be required to obtain national accreditation from NCATE or TEAC; and the HTSB's role in the accreditation process will be

³⁴⁷ Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 2, 2009).

³⁴⁸ *Id.* When asked whether she contacted the DOE to ask whether it would continue to provide the HTSB with information technology support services, Ms. Mahoe stated that she has not contacted the DOE because the HTSB has not needed to seek assistance.

³⁴⁹ "FMS" is the DOE's Financial Management Service system. *See supra* note 73 and accompanying text.

³⁵⁰ Interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (July 10, 2009).

³⁵¹ E-mail correspondence from Amy Shimamoto, Personnel Director, Office of Human Resources, DOE (Aug. 20, 2009). The HTSB is subject to the central service fee charged by the Department of Budget and Finance in accordance with section 36-27, HRS, and the special fund reimbursement for departmental administrative expenses, charged in accordance with section 36-30. (*See* sections 36-27 and 36-30, HRS.)

³⁵² Interview with Jonathan Gillentine, PhD., Chairperson, Hawaii Teacher Standards Board (Oct. 2, 2009). For more detailed discussion of the HTSB's role in the state-approved teacher education programs, *see supra* pp. 14-15.

³⁵³ *See supra* notes 94-102 and accompanying text.

scaled back to reviewing and approving the accrediting agency's reports.³⁵⁴ Although presumably this will alleviate some of the HTSB's workload, it is unclear whether the overall impact will be significant.

The HTSB Does Not Have Adequate Resources to Handle All of its Present Responsibilities

It appears that the HTSB does not have the resources necessary to handle its present workload. In particular, the HTSB has experienced long-term staff vacancies and does not appear to have qualified employees to adequately handle its work.

Vacancies in the HTSB's Staff

As of November 2, 2009, four of the HTSB's eleven staff positions were vacant.³⁵⁵ With the clerk typist, licensing clerk, data systems processing analyst, and education specialist positions unfilled, the HTSB operates with only sixty-four percent of its staff.³⁵⁶ The large number of vacant positions impedes the board's ability to do its job, because the existing employees are carrying the burden of a workload that should be shared by a staff of eleven employees. For example, in the area of license processing, one unfilled licensing clerk position requires the remaining three licensing clerks to do the work that would be done by the fourth clerk, if the position were filled.

Of the HTSB's four professional positions, two were vacant in November 2009. One of these positions is the education specialist position, which was filled for only a brief time.³⁵⁷ The education specialist is responsible for license renewal and National Board Certification.³⁵⁸ In its attempts to fill the education specialist position, the HTSB's efforts have been hampered by hiring freezes and unqualified applicants. Because this position is not filled, the duties of the education specialist have fallen on the Executive Director who appears overburdened.

³⁵⁴ "NCATE" is the National Council for the Accreditation of Teacher Education and "TEAC" is the Teacher Education Accreditation Council. (*See supra* p. 15.) In accordance with NCATE requirements, programs are reviewed by specialized professional associations, which are national groups of teachers in specified areas. For example, a specialized professional association in the area of English and Language Arts is the National Council of Teachers of English. For a limited number of programs, there is no national-level specialized professional association, such as Hawaiian language. In such cases, the HTSB will continue to conduct reviews of those programs. (Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 25, 2009).)

³⁵⁵ Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 2, 2009).

³⁵⁶ The HTSB also has one vacant student helper position. *See supra* note 22.

³⁵⁷ The education specialist position, which was created in or around 2002, was filled for about a year and has been vacant for the remainder of its existence. (Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 18, 2009).)

³⁵⁸ Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 2, 2009).

Staff Vacancy Contributes to Online Licensing System Woes

The other vacant professional position -- the data processing systems analyst -- has never been filled. According to the Auditor's report, this position was originally intended to provide leadership in the development of the online licensing system, but was later amended to also fill the board's need for general information technology support for the HTSB.³⁵⁹ The Auditor noted that the HTSB "moved forward" with the online licensing system "despite lacking the internal technical expertise to oversee this major endeavor. Instead, the executive director assumed control of the project and performed the duties of the [data processing systems analyst] position even though she lacked training in information technology."³⁶⁰

Since 2002, the HTSB placed great hope in an online teacher licensing system. According to its 2002 annual report, the HTSB believed the online system:

[W]ill allow applicants to complete and submit their license applications as well as license renewal documents on line. It will empower teachers to monitor and update their license and license renewal date themselves. It will create a paperless environment in which documentation is scanned and received electronically to facilitate the processing of applications. It will also help the Board to access and summarize data about its license applicants and licensees that is not currently available to anyone.³⁶¹

The HTSB "prepar[ed] to fully launch its system in January 2003."³⁶² The nearly seven years that followed were plagued with problems with the contractors hired to develop the online licensing system. As reported by the Auditor, the HTSB hired its first contractor, Teacher Records, Inc., in April 2002. The contract required Teacher Records, Inc., "to provide the software, maintenance, and professional services to implement the online licensing system. The contract included clear deliverables to be completed according to a specific timeline and forecasted the completion of the project over a three-year period."³⁶³ Near the end of 2003, Teacher Records, Inc., informed the contractor that it "had underestimated the scope of the project and needed additional resources to complete it."³⁶⁴

In January 2004, HTSB members, wary of continuing to work with Teacher Records, Inc., considered assigning the contract to another contractor. According to the Executive Director, "an employee of Teacher Records, Inc., intended to create his own company in order to take over and finish the project. By March 2004, the contract for the online licensing system was formally assigned to Open Frameworks Corporation, a new company incorporated in Florida and managed by the former Teacher Records, Inc. employee. This assignment would hold Open Frameworks Corporation to the same contract provisions that Teacher Records, Inc. was held to, such as the project timeline and issuance of deliverables."³⁶⁵

³⁵⁹ Auditor's Report No. 09-05, *supra* note 26, at 35.

³⁶⁰ *Id.* at 31.

³⁶¹ HTSB 2002 Annual Report, at 4.

³⁶² *Id.*

³⁶³ Auditor's Report No. 09-05, *supra* note 26, at 31.

³⁶⁴ *Id.* at 32.

³⁶⁵ *Id.*

Over the next several years, there were repeated promises by the contractor, Executive Director, and the HTSB that the project was near completion.³⁶⁶ After a conflict occurred between the HTSB and Open Frameworks Corporation in 2008, the contractor shut down the HTSB's computer system, disabled the HTSB's website and e-mail function, and blocked access to licensing applications used by the HTSB's staff.³⁶⁷ The HTSB is now using a third contractor, Hawaii Information Consortium, to develop the online licensing system.³⁶⁸

The Auditor found that the lack of an internal data processing systems analyst was detrimental to the HTSB's attempt to develop an online licensing system and stated:

This position would have provided the technical expertise to monitor the work specified in the contract and facilitate the completion of the online licensing system. Without this expertise, the executive director and the board were at a significant disadvantage in any discussions with the contractor pertaining to the technical aspects of the project.³⁶⁹

The Auditor concluded that a lack of technical expertise, along with inadequate oversight, "caused the board to waste more than \$1 million on an online system that has yet to be delivered despite numerous promises."³⁷⁰

The continued vacancy of the data processing systems analyst position appears to be due to several causes. At times, the HTSB has been unable to hire a data processing systems analyst because of hiring freezes imposed by the Governor. When hiring freezes were not in place, the HTSB tried to fill this position and received only one or two applications, but the candidates were not qualified.³⁷¹ In addition, the Auditor reported that once the prior contractor began providing support services to the HTSB, the Executive Director no longer actively tried to fill the data processing systems analyst position.³⁷² In its annual report covering 2008, however, the HTSB acknowledged that it needs to fill this position, stating that "[w]ithout the [data processing

³⁶⁶ *Id.* See also Hawaii Teacher Standards Board, 2004 Annual Report, at 8 ("Next month the Board hopes to launch the license application, personal profile and public look-up features of the system."); Hawaii Teacher Standards Board, 2005 Annual Report, at 8 ("By year's end the Board hopes to launch the license application, personal profile, public look-up and license renewal features of this system. The project has suffered technical delays, but we are hopeful that it is back on track."); Hawaii Teacher Standards Board, 2006 Annual Report, at 9-10 ("[E]fforts to launch its electronic licensing system have been delayed in order to ensure that the system is secure, accurate and backed up . . . [and a change in approach for the development of the system] resulted in a need to update software and address various bugs that emerged. This in turn required more time and effort to deliver the necessary 'fixes.' We are still hopeful that by year's end the Board can launch the license application, personal profile, public look-up and license renewal features of this system."); Hawaii Teacher Standards Board, 2007 Annual Report, at 10 ("The [HTSB] is finally seeing the light at the end of the tunnel in its efforts to launch an electronic licensing system. Changing directions and opting to use an Open Source approach in developing this system resulted in project setbacks, which then delayed testing and delivery of the system. The Board believes the major bugs have now been identified and installation of layer after layer of the system is now proceeding more quickly with live data being converted for use by staff and clients. The Board is now confident that soon the license application, personal profile, public look-up and license renewal features of the system can be launched.").

³⁶⁷ Auditor's Report No. 09-05, *supra* note 26, at 33.

³⁶⁸ Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 2, 2009).

³⁶⁹ Auditor's Report No. 09-05, *supra* note 26, at 31.

³⁷⁰ *Id.* at 27.

³⁷¹ Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 2, 2009).

³⁷² Auditor's Report No. 09-05, *supra* note 26, at 35 (2009).

systems analyst] we are extremely vulnerable to IT problems."³⁷³ In mid-November 2009, the Governor gave the Superintendent of Education the authority to approve the filling of vacant positions. As of November 18, 2009, the Superintendent approved the HTSB's request to fill the Executive Director, licensing clerk, and clerk typist positions. However, the HTSB has not yet received approval to hire a data processing systems analyst.³⁷⁴

As a result, the HTSB still lacks an employee who has the expertise to monitor the work of its contractor, Hawaii Information Consortium. For the reasons stated above, until the data processing systems analyst is hired, it would seem that the HTSB will continue to be significantly disadvantaged in its ability to monitor the work of this contractor.

The HTSB Needs Qualified Professional Staff

At the HTSB, licensing clerks process the applications for licenses.³⁷⁵ According to the HTSB's Executive Director, the licensing clerks do a good job, especially in light of the fact that they are understaffed, but there are times when issues arise that require referral to the licensing specialist.³⁷⁶ The Executive Director said that some of the HTSB's counterparts in other states use professional staff, rather than clerical, to process license applications. She believes that it would be beneficial to the HTSB to have professional staff process the applications for licensure.

In addition, it appears that the Executive Director lacks the ability to adequately perform the job. The Executive Director is not trained in information technology, yet took control of the HTSB's online licensing system project.³⁷⁷ The Auditor found that, as the person in control of the project, the Executive Director's lack of expertise or training relating to information technology "contributed to the project's inefficiency and waste."³⁷⁸ In addition, the Executive Director lacked an understanding of the HTSB's financial operations and failed to serve as a capable chief financial officer.³⁷⁹ The Auditor's report also revealed that the Executive Director acted without the approval of the HTSB on multiple occasions. For example, the Executive Director approved and made payments to Open Frameworks Corporation, the vendor that failed to produce an online renewal system for the HTSB, and took such action without the board's approval.³⁸⁰ This unauthorized action by the Executive Director contributed to the waste of time and money on the online licensing project. As another example, the Auditor found that the

³⁷³ Hawaii Teacher Standards Board, 2008 Annual Report, at 5 (2008).

³⁷⁴ Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 18, 2009). When asked whether the HTSB is seeking to fill the data processing systems analyst position, the Executive Director stated that the HTSB will have to determine what kind of information technology support it currently needs. She stated that certain duties of the data processing systems analyst are now handled by its contractor, Hawaii Information Consortium. For example, management of the online licensing system and e-mail support are duties that have been shifted to the contractor. For this reason, the Executive Director said that the HTSB's information technology needs have changed since the data processing systems analyst position was established.

³⁷⁵ The licensing clerks are identified as "Clerk IV" in chapter 2 of this study. See *supra* at p. 3.

³⁷⁶ In November 2009, one of the four Clerk IV positions was vacant. (Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 2, 2009).)

³⁷⁷ Auditor's Report No. 09-05, *supra* note 26, at 31.

³⁷⁸ *Id.* at 27.

³⁷⁹ *Id.* at 29.

³⁸⁰ *Id.* at 34.

Executive Director assumed the Board's authority and approved new or initial licenses. This unauthorized action clouded the validity of those licenses.³⁸¹

Moreover, the Executive Director appears to be at least partially responsible for the confusion surrounding the HTSB's relationship with the DOE. For example, despite her fourteen-year tenure as the head of the HTSB, the Executive Director indicates she has been unable to obtain clarification about the HTSB's status as an administratively attached agency of the DOE.³⁸² Further, the response of the Executive Director with respect to whether the DOE would continue to provide information technology support to the HTSB appears to indicate a lack of initiative and contributes to the uncertain state of the relationship. After years of struggling to manage its computer needs because the DOE had declined to provide information technology support services to the HTSB, the HTSB had finally reached an agreement with the DOE that it would provide assistance to the HTSB.³⁸³ Subsequently, the DOE employee assigned to assist the HTSB left his position with the DOE, and the Executive Director has not yet contacted the DOE to find out whether the DOE would continue to provide support to the HTSB.³⁸⁴ Rather than being proactive, the Executive Director appears to be waiting until the HTSB actually needs assistance with a computer problem.³⁸⁵

A new statutory provision providing for some limited oversight of the selection of the Executive Director may provide some assurance that the next Executive Director of the HTSB is qualified and able to perform satisfactorily.³⁸⁶ Section 2 of Act 2, First Special Session Laws of Hawaii 2009, amended section 302A-801, HRS, to specify a four-year term of appointment for the Executive Director and require the Board of Education to approve the selection and termination of the Executive Director.³⁸⁷ Prior to this amendment, the only provision that governed the appointment of the HTSB Executive Director was section 26-35(a)(4), HRS, which provides that the appointment of all officers and employees shall be determined by the board and subject to the approval of the head of the department and to applicable personnel laws.³⁸⁸ There

³⁸¹ *Id.* at 22.

³⁸² See *supra* note 344 and accompanying text.

³⁸³ See *supra* notes 345 and 346 and accompanying text.

³⁸⁴ See *supra* note 346 and accompanying text.

³⁸⁵ See *supra* note 348 and accompanying text.

³⁸⁶ Sharon Mahoe, who has been the HTSB's Executive Director since its inception, will retire at the end of 2009. The HTSB is in the process of hiring a new executive director. In mid-November 2009, the HTSB was informed that the Governor gave the Superintendent authority to approve the filling of vacant positions. As of November 18, 2009, the Superintendent has approved the HTSB's request to fill the executive director, licensing clerk, and clerk typist positions. (Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 18, 2009).)

³⁸⁷ As amended, section 302A-801(f), HRS, provides:

The board may employ an executive director for a term of up to four years, who shall be appointed by the board of education without regard to chapters 76 and 89; provided that the board shall submit a nominee to the board of education for approval or disapproval; provided further that if the nominee is disapproved, the board shall submit another nominee to the board of education for approval or disapproval.

The board may terminate the executive director's contract for cause; provided that the board shall submit the recommendation for termination to the board of education for approval or disapproval.

³⁸⁸ In 1995, the HTSB hired Sharon Mahoe as its Executive Director. According to a former board member, the position was initially advertised within the DOE, then later announced to the general public. The HTSB received applications from in-state and out-of-state applicants. The applications were reviewed to determine whether the

are no other laws that impose qualifications or otherwise provide guidance for hiring the HTSB Executive Director.

HTSB's Failure to Renew Licenses

Act 312, Regular Session 2001, gave the HTSB authority to issue initial licenses beginning on July 1, 2002. Licenses are valid for five years and may be renewed if the teacher continues to satisfy the HTSB's licensing standards, show evidence of successful teaching in the previous five years, and satisfy the HTSB's requirements for renewal of licenses.³⁸⁹

Pursuant to authority granted by section 4 of Act 312 and codified in section 302A-805, HRS, teachers whose licenses expired on June 30, 2002, or June 30, 2003,³⁹⁰ were granted an automatic two-year extension. Thus, licenses that expired on or after June 30, 2004, were required by law to be renewed by the HTSB. In the absence of a proper renewal, the teacher's license is invalid. To date however, the HTSB *has not renewed a single license*. Instead, for a period of five years, the HTSB acted in excess of its statutory authority and *extended* licenses that were set to expire.³⁹¹ According to the Auditor's report:

[T]he board ... extend[ed] licenses beyond its statutory authority because it failed to implement a license renewal process. ... As a result, the board amended its administrative rules, approved by the governor in 2007, by granting three-year extensions to teachers with licenses expiring in 2005, 2006, and 2007. The executive director confirmed that these rule amendments were made without amending the laws that govern the board or without legislative approval.³⁹²

The absence of a license renewal process, cited above, was not the only reason for the HTSB's complete and total failure to renew licenses. The HTSB intentionally delayed the renewal of licenses because it was waiting for the launch of its online licensing system. As discussed in detail in Auditor's Report No. 09-05, the HTSB spent six years and over \$1 million in its attempt to develop an online licensing renewal system.³⁹³ Without an online system, the

applicants met the minimum requirements for the position. [The Bureau has been unable to determine what these minimum requirements were.] The HTSB's personnel committee narrowed the search to two candidates and ultimately recommended hiring Ms. Mahoe. Subsequently, the HTSB adopted the committee's recommendation and hired Ms. Mahoe. The Superintendent was not involved in this process and did not give final approval of the HTSB's selection. According to a former member of the HTSB, the Superintendent was not involved because the HTSB is an "independent board." (Telephone interview with Twylla-Dawn Steer, former member, Hawaii Teacher Standards Board (Dec. 7, 2009).) In accordance with section 26-35, HRS, however, the employment of all officers and employees of the HTSB is subject to the approval of the Superintendent. (See *supra* note 272 and accompanying text.)

³⁸⁹ Section 302A-805(a), HRS; see *supra* note 82 and accompanying text.

³⁹⁰ Under the DOE licensure scheme, licenses were valid on July 1 and expired five years later on June 30. (Auditor's Report No. 09-05, *supra* note 26, at 20.)

³⁹¹ Auditor's Report No. 09-05, *supra* note 26, at 20; Interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (July 10, 2009).

³⁹² Auditor's Report No. 09-05, *supra* note 26, at 21. For a full account of the Auditor's findings regarding the HTSB's failure to renew licenses, see *id.* at 20-22.

³⁹³ Auditor's Report No. 09-05, *supra* note 26, at 30. See also discussion *supra* note 366.

HTSB believed that it did not have adequate staff resources to review and process applications for license renewal.³⁹⁴ However, the Auditor found:

[T]he [HTSB] is not equipped to handle license renewals without the necessary staff to assist in the renewal process. The amount of work will increase once the board begins to renew licenses, and the board will not be able to efficiently perform its renewal duties without employing a renewal specialist (a vacant position, the duties for which currently are being performed by the executive director), sufficiently trained staff, and, most importantly, successfully installing and maintaining an online licensing system.³⁹⁵

Thus, the online licensing system will still entail considerable personnel time to review the information submitted by applicants and determine whether it meets the requirements.³⁹⁶ Because of its limited staff, the HTSB plans to recruit teachers to volunteer to review applications for license renewal.³⁹⁷ However, the HTSB has already encountered difficulty obtaining volunteers to assist with its teacher education program approval process.³⁹⁸

During the time that the HTSB pursued the development of an online licensing system, it neglected its duty to renew licenses. The HTSB may have been concerned about its lack of resources to do the job, but it did not even attempt to accept and process hard copies of applications. Instead, the HTSB exercised authority it did not have to extend licenses. Further, HTSB's attempt to rectify this situation by amending its rules to authorize the extensions was inadequate. The solution required an amendment to its statutes, which it did not seek. By extending licenses beyond the two-year time period authorized by the Legislature in 2001, the HTSB exceeded its authority.

As a result of the HTSB's unauthorized acts, the validity of licenses that expired in 2004 or later was questionable. The Auditor noted that this "pose[s] serious problems for the DOE in meeting [No Child Left Behind] requirements that highly qualified teachers have state licensure. Due to state laws that require the teachers employed by the department [of education] to be licensed, any teachers holding invalid licenses would be considered emergency hires and not highly qualified according to NCLB requirements."³⁹⁹ Section 4 of Act 2, First Special Session Laws of Hawaii 2009, attempts to fix the problems caused by the invalidly extended licenses, by providing that "[a]ny previously-approved extensions shall be deemed valid as issued."⁴⁰⁰ The Act also authorizes HTSB, through June 30, 2010, to grant additional extensions.⁴⁰¹

³⁹⁴ Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 2, 2009).

³⁹⁵ Auditor's Report No. 09-05, *supra* note 26, at 26.

³⁹⁶ *Id.*

³⁹⁷ Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 2, 2009).

³⁹⁸ See *supra* notes 95-97 and accompanying text.

³⁹⁹ Auditor's Report No. 09-05, *supra* note 26, at 22.

⁴⁰⁰ 2009, First Special Session Laws of Hawaii, Act 2 § 4.

⁴⁰¹ *Id.*

HTSB's Requirements for License Renewal and the Renewal Process are Inadequate

The HTSB is currently working with a third contractor, Hawaii Information Consortium, to develop its online licensing system.⁴⁰² The HTSB recently unveiled its new website and, in August and September 2009, held meetings across the State to introduce teachers to the new online license renewal system. The HTSB expected to allow teachers to access the online system by October 1, 2009, but the system was not yet operable as of November 25, 2009.⁴⁰³

Pursuant to Act 2, First Special Session Laws of Hawaii 2009, HTSB has permitted teachers whose licenses expired prior to October 1, 2009, to extend their licenses.⁴⁰⁴ Teachers whose licenses expire *on or after* October 1, 2009, however, are required to apply online for their license renewals.⁴⁰⁵ Once the online renewal system is activated, the teacher must create a user account on the system, look up his or her license online, submit a request to renew the license, and pay the license fee. The teacher will be deemed to have renewed his or her license and then will have five years to complete the following requirements in preparation for the next renewal: submit a professional growth plan online, which contains teacher performance standard five and one of the other standards;⁴⁰⁶ participate in or seek professional growth experiences and document such activities; and during the fifth year following renewal, submit a reflection report about the impact of the activities and experiences on his or her teaching or the students' learning.⁴⁰⁷ The documents submitted will be reviewed by teachers who volunteer to assist the HTSB with the renewals.

⁴⁰² The online system will initially allow teachers to renew licenses online. The HTSB plans to add a feature, in the future, that will allow teachers to apply for initial licenses online. (Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 18, 2009).)

⁴⁰³ The HTSB has delayed such access because tests of the online system revealed that there was some data loss on the system. For example, a teacher who holds a valid license may find that the system does not reflect that he or she possesses a license. The HTSB worked with the Hawaii Information Consortium to correct problems with the system. (Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 18, 2009).) On November 18, 2009, the HTSB reported that it has access to the administrative portion of the system, which allows its staff to input information, such as information about new licenses that are issued. (*Id.*) On November 23, 2009, the HTSB notified teachers that it was launching a beta test of its user account and license search functions. (Letter from Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board, dated November 23, 2009, *available at* <<http://htsb.org/docs/HTSBInstructions.pdf>> (Accessed Nov. 23, 2009).) All licensed teachers may set up user accounts, update contact and work site information, look up their license information, link their user accounts to their license information, and give feedback on their experience with the system, including any problems encountered. The HTSB also informed teachers that the beta test would take a minimum of two to three weeks to complete. (*Id.*) If the online system runs without significant problems, the vendor will activate the fee payment and renewal features. (Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 18, 2009).) On November 25, 2009, the Executive Director confirmed that the online renewal system was not yet operable. (Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 25, 2009).)

⁴⁰⁴ HTSB: License Renewal, at<<http://htsb.org/html/details/licensing/renewal.html>> (Accessed Nov. 4, 2009). These license extensions are granted with statutory authority, in accordance with section 4 of Act 2, Session Laws of Hawaii, First Special Session 2009.

⁴⁰⁵ *Id.*

⁴⁰⁶ See *supra* note 82 and accompanying text.

⁴⁰⁷ HTSB License Renewal Process, *available at* <http://htsb.org/docs/HTSB_LicRenewPacket.pdf> (Accessed Nov. 17, 2009).

This procedure has proven inadequate, however, because at the very least, it places teachers whose licenses expire on or after October 1, 2009, in limbo while they wait for the online renewal system to be activated. Until the online renewal system is operable, these teachers will not be able to renew their licenses. Moreover, because the HTSB is not exercising its discretion, granted through June 30, 2010, under Act 2, to allow this group of teachers to extend their licenses, teachers whose licenses expired after October 1, 2009, technically no longer have valid licenses.⁴⁰⁸

Another significant problem with the online license renewal process is that it does not fulfill the requirements proscribed by section 302A-805(a), HRS, for two reasons. First, in accordance with the HTSB's renewal process, a teacher's first renewed license will be issued without requiring that the teacher actually satisfy the board's licensing standards, and it does not require evidence of successful teaching in the previous five years, as mandated by section 302A-805(a).⁴⁰⁹ Second, under the HTSB's renewal process, even subsequently renewed licenses will be issued without requiring a teacher to satisfy the board's licensing standards, as required by section 302A-805(a). As stated above, the HTSB's subsequent license renewal process requires a teacher's professional growth plan and reflection report to be focused on only two of the ten teacher performance standards: standard five and another standard of the teacher's choice.⁴¹⁰ Thus, the HTSB's license renewal process does not appear to comply with the requirements of section 302A-805(a).

The HTSB is Not Required to Report on the Specifics of its Activities

Section 302A-803(a)(4), HRS, requires the HTSB to submit an annual report to the Governor, the Legislature, and the Board of Education on the HTSB's operations. The statutory provision does not state any specific information that must be included in the annual report.

The reporting requirement that applies to the HTSB is in stark contrast to the statutory provisions that are imposed on other administratively attached agencies. For example, the Real Estate Commission must include in its annual report a summary of the programs and financial information about the trust funds, including balances and budgets,⁴¹¹ while the Crime Victim Compensation Commission is required to provide a brief description of the facts in each

⁴⁰⁸ Based on information from its vendor, the HTSB believed that the online system would be functioning by October 1, 2009. The HTSB apparently wanted to stop the issuance of extensions as soon as possible, so it set October 1, 2009, as the date from which licenses would need to be renewed instead of extended. The HTSB has not taken any other action to extend, or otherwise validate, the licenses that expired on or after October 1, 2009.

(Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 18, 2009).)

⁴⁰⁹ Section 302A-805(a), HRS, provides, in relevant part, that "[a]ll licenses issued by the board . . . shall be renewable every five years if the individual continues to:

- (1) Satisfy the board's licensing standards;
- (2) Show evidence of successful teaching in the previous five years; and
- (3) Satisfy the board's requirements for renewal of licenses."

⁴¹⁰ HTSB License Renewal Process, *available at* <http://htsb.org/docs/HTSB_LicRenewPacket.pdf> (Accessed Nov. 17, 2009); *see supra* note 82 and accompanying text.

⁴¹¹ Section 467-4(5), HRS; *see supra* pp. 45-46.

compensation case, the amount, if any, of compensation awarded, and the names of attorneys and health care providers where they are the applicants.⁴¹² The statutory provisions governing the Public Utilities Commission's (PUC) annual reports are the most detailed of the agencies surveyed for this report, as it requires information including but not limited to: summary information and analytical, comparative, and trend data concerning major regulatory issues acted upon and pending before the commission; information about utility company operations, capital improvements, and rates; and actions of the federal government affecting the regulation of public utilities in Hawaii.⁴¹³ The PUC is also required to submit a separate annual report that details all funds received and all moneys dispersed out of the PUC Special Fund.⁴¹⁴

Based on the foregoing, it appears that the HTSB is not required to report on any particular aspect of its operations or financial condition, and is in compliance with section 302A-803(a)(4) as long as its annual report is on "the board's operations."⁴¹⁵ While the HTSB's 2008 annual report included some financial information, prior annual reports did not. Requiring specific fiscal information to be reported to the Governor and Legislature may provide additional oversight and thus prevent the future waste of funds, as addressed in the Auditor's report.⁴¹⁶

⁴¹² Section 351-70, HRS; *see supra* note 301 and accompanying text.

⁴¹³ Section 269-5, HRS; *see supra* note 325 and accompanying text.

⁴¹⁴ Section 269-33, HRS; *see supra* p. 52.

⁴¹⁵ Section 302A-803(a)(4), HRS; *see supra* note 282 and accompanying text.

⁴¹⁶ *See* Auditor's Report No. 09-05, *supra* note 26, at 27-36, for a discussion of the HTSB's waste of time and resources in its pursuit of the online licensing system.

Chapter 5

ROLES AND RELATIONSHIPS BETWEEN THE HAWAII TEACHER STANDARDS BOARD, DEPARTMENT OF EDUCATION, AND TEACHER EDUCATION COORDINATING COMMITTEE

In response to Act 2, First Special Session Laws of Hawaii 2009, which directed the Legislative Reference Bureau to provide recommendations to strengthen and clarify interagency roles, responsibilities, and relationships between the Hawaii Teacher Standards Board (HTSB), Department of Education (DOE), and Teacher Education Coordinating Committee, the Bureau examined history and relationships of the Teacher Education Coordinating Committee to determine whether any problems exist between the committee and other education agencies.

Background of the Teacher Education Coordinating Committee

In 1931, the Teacher Education Coordinating Committee (TECC) started as a collaborative relationship between the Hawaii Department of Education and the teacher education institutions of higher learning in Hawaii.⁴¹⁷ In 1965, the state Legislature codified the relationship, formally establishing the TECC as an educational think-tank.⁴¹⁸

As an advisory committee, the TECC was established "to identify, study, take action, or make recommendations on matters of education of common interest to the department of education and institutions of higher learning in Hawaii."⁴¹⁹ The Superintendent of Education, the Dean of the College of Education at the University of Hawaii, and a representative from each accredited teacher training institution in Hawaii sit on the TECC.⁴²⁰ In addition to the members listed, the statute authorized the Superintendent of Education and the Dean of the College of Education to appoint other members to the TECC, provided that the Dean appoints at least two members from the University who are not within the College of Education. The TECC meets at least six times a year to "(1) Work out problems related to the development of strong teacher training programs at accredited institutions of higher learning in Hawaii; and (2) Identify, study, and discuss educational problems or other educational matters of interest to the committee and to develop findings and make recommendations for the improvement of education in Hawaii."⁴²¹

The TECC's relationship with the HTSB and DOE is an advisory one. In this capacity, the TECC only reviews and makes recommendations with respect to problems that arise within

⁴¹⁷ See Dr. Winona Chang, *Teacher Education in Hawaii: The Story of a Successful Collaboration*, Pacific Resources for Education and Learning, at 1 (1997).

⁴¹⁸ 1965 Haw. Sess. Laws, Act 175; see also Teacher Education Coordinating Committee Annual Report 2003-2004, at 5, available at < http://doe.k12.hi.us/reports/tolegislature_2005/TeacherEducCoordCmte.pdf >

⁴¹⁹ Section 304A-1202, Hawaii Revised Statutes.

⁴²⁰ *Id.*

⁴²¹ *Id.*

the State's education system. Thus, the TECC does not have any control or oversight over the teacher licensing process or the relationship between the HTSB and DOE.

In examining the roles and relationships of the TECC with the HTSB and DOE, the Bureau interviewed the Dean of the College of Education, the Chairperson of the HTSB, and the HTSB's Executive Director. The Bureau also contacted a representative from the Department of Education assigned as a liaison for purposes of this study. Both the HTSB Chairperson and Executive Director felt that the TECC is important to both the HTSB and DOE, and neither was aware of any problems or issues with the relationship between the TECC and HTSB.⁴²² Similarly, the Dean of the College of Education was unaware of any problems between the TECC and HTSB and expressed the view that the TECC could be useful in working through teacher licensing concerns raised by Title II of the Higher Education Act.⁴²³ A representative from the Department of Education opined that no problems exist between the TECC and DOE.⁴²⁴ Based upon the foregoing information provided by these individuals, the Bureau is unable to determine any particular issue relating to the TECC's relationships between the HTSB and DOE that requires attention.

⁴²² Interview with Jonathan Gillentine, PhD. (Oct. 2, 2009) and E-mail correspondence from Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Dec. 23, 2009).

⁴²³ Interview with Christine Sorenson, PhD., Dean of the College of Education, University of Hawaii at Manoa (June 16, 2009).

⁴²⁴ E-mail correspondence from Amy Shimamoto, Personnel Director, Department of Education (Dec. 23, 2009).

Chapter 6

CONCLUSIONS AND RECOMMENDATIONS

Salient Points

- The State Auditor's Report No. 09-05 found that confusion exists between the Hawaii Teacher Standards Board (HTSB) and the Department of Education (DOE) over the appropriate roles of an attached agency and department, which has caused administrative problems for the HTSB and prevented the board from focusing on teacher licensing.
- The State Auditor concluded that the creation and composition of the HTSB "yielded no benefits for the teaching profession and students it was meant to serve." The Auditor recommended that the HTSB should be dissolved and its duties, including the licensure functions, be transferred to the Board of Education.
- There appears to be no actual conflict of interest that prevents the DOE, as the employer of public school teachers, from acting as the licensing agent for those teachers. Thirty-nine states rely upon the state Department of Education and Board of Education (or equivalent) to issue teacher licenses.
- The Legislature addressed some of the HTSB's challenges in Act 2, First Special Session Laws of Hawaii 2009. Some of the changes to the HTSB from Act 2 included:
 - ❖ Increasing HTSB's membership to include two public members;
 - ❖ Providing for the HTSB to hire an executive director, with approval by the State Board of Education, for a term of up to four years;
 - ❖ Giving the HTSB discretion over the method for collecting licensing fees;
 - ❖ Providing the HTSB the authority to extend licenses; and
 - ❖ Requiring the HTSB, DOE, and Charter School Administrative Office to develop policies for the sharing of information, including licensing and employment data.
- Only eleven states vest the statutory authority to issue teacher licenses within a separate board or commission. Among the eleven, however, each board is unique and no two boards share the same composition, duties, functions, and responsibilities.
- The majority of state teacher licensing boards are attached, either directly or indirectly, to an executive department or agency. Under this relationship the oversight agency generally provides administrative services to the teacher licensing board. In some cases the oversight agency is also responsible for providing staff and determining whether the teacher licensing board is meeting its statutory requirements.
- Even though the teacher license renewal process varies between states, all teacher licensing boards that adopted teacher standards have incorporated them into the license renewal process.
- While the specific functions and duties of other administratively attached boards in the State make direct comparisons to the HTSB difficult, a review of a sample of

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administratively attached agencies in the State reveals that other agencies appear to be functioning reasonably well as administratively attached agencies.

- The HTSB does not appear to understand what it means to be an agency attached for administrative purposes.
- The lack of a clear understanding about the administratively attached agency relationship has resulted in confusion between HTSB and DOE and has contributed to the waste of time and resources.
- The Teacher Education Coordinating Committee plays a significant role as an advisory board to the DOE and HTSB. The only apparent problems with interagency roles exist between the HTSB and DOE.
- The National Board Certification incentive program and National Board Certification support programs were both created by the Legislature within the DOE, however, the support program is statutorily required to be administered by the HTSB.
- On October 1, 2009, the HTSB changed its procedure for state approval of teacher education programs. Under the new procedure, all institutions requiring state approval must seek national accreditation from either the National Council for Accreditation of Teacher Education or the Teacher Education Accreditation Council. Although the change in procedure is meant to reduce the amount of time the HTSB's staff spends on approving teacher education programs, the actual effect of this change on the Board's current workload is as yet uncertain.
- The HTSB has more duties than it seems to be able to handle, given its resources.
- The HTSB's Executive Director appears to lack the ability to adequately perform the job. In addition, according to the Auditor, the Executive Director acted without the approval of the HTSB on several occasions. For example, the Executive Director exacerbated the completion of an online licensing system by continuing payments to a contractor that failed to complete the job. The Executive Director also approved initial licenses and extensions without board action, calling into question the validity of those licenses.
- As of December 2009, the HTSB still had not renewed any teacher licenses. As noted by the Auditor, instead of renewing licenses, the HTSB had earlier extended licenses even though the board did not have statutory authority to do so. As a result, the Legislature (during the 2009 Regular Session) was forced to retroactively validate all teacher license extensions.
- The viability of the HTSB's program to renew licenses is contingent upon the completion of an online licensing system. As of November 25, 2009, the HTSB's online licensing system was still not operable.
- Pursuant to Act 2, First Special Session Laws of Hawaii 2009, the HTSB is authorized through June 30, 2010, to extend teacher licenses. However, the HTSB is not granting extensions to licenses that expired on or after October 1, 2009. Rather, the HTSB is requiring these license holders to renew their licenses once the online renewal system is operable. Until that time, these teachers are holding licenses that are, or will be, technically invalid, once again threatening the State's ability to comply with federal requirements of the No Child Left Behind Act.
- The HTSB has never been fully staffed and has always had at least two positions vacant. Currently, the HTSB has four vacant positions and is operating with only sixty-four percent of its total allotment of staff. Two professional positions have

never been filled due to hiring freezes and a lack of qualified candidates, creating a situation where all of the functions and duties of the HTSB are being managed by only two professional personnel (one of whom is the Executive Director).

- The lack of a data processing systems analyst on staff has contributed to the HTSB's problems in developing an online licensing system. The data processing systems analyst is needed to monitor the work of the vendor contracted by the HTSB to develop and maintain the online renewal system, website, and e-mail system.
- The HTSB already has too few professional staff to handle its current workload. When the HTSB begins renewing teacher licenses, it will experience an increase in its workload. The online system will make document transfers, storage, and retrieval faster and efficient, but even if the online system were functioning, the HTSB staff would still be required to evaluate the materials submitted by teachers in order to determine whether the submissions meet the HTSB's standards and renewal requirements. Thus, the HTSB will need the additional staff resources to assist with license renewals.
- The HTSB's license renewal requirements do not comply with statutory requirements under section 302A-805, HRS, to satisfy the HTSB's licensing standards because:
 - ❖ Teachers who currently hold licenses that are due for renewal will not have to demonstrate that they meet *any* of the licensing standards -- the payment of the license renewal fee and the completion of an application will entitle these teachers to a renewed license; and
 - ❖ Any subsequent renewals *only* require teachers to meet *two of the ten* licensing standards.
- Unlike other state attached agencies, the HTSB's annual reporting requirements do not require specific information, such as about its finances. For example, the board is not required to report on fund balances, budget information, or expenditures.

Conclusions and Recommendations

I. The HTSB has more responsibility than it seems able to handle given its current resources.

Among other things, the HTSB is responsible for establishing licensing standards that govern teacher licensing; issuing, renewing, revoking, suspending, and reinstating teacher licenses; approving teacher education programs in the State; and developing, implementing, and administering the National Board Certification support program.

The HTSB has been utterly unable to carry out one of its primary functions: license renewal. Since acquiring this responsibility over eight years ago, the HTSB has not yet renewed any licenses. Rather than renewing teacher licenses, the HTSB extended licenses when it had no authority to do so. This unauthorized action forced the Legislature to retroactively approve the

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HTSB's action to preserve the validity of teachers' licenses.⁴²⁵ The main reason for postponing the renewal of licenses was the HTSB's pursuit of an online licensing system. Over the last seven years, the HTSB has sought to develop an online licensing system because it believed that the online system would reduce the amount of work required to issue and renew licenses. Without an online system, the HTSB feared that it did not have adequate staff resources to review and process applications for license renewal.

The HTSB's reasoning is flawed, however, because the HTSB's license renewal process requires that the documents submitted via the HTSB's online licensing system be reviewed by staff or volunteers to determine whether to grant the applications for renewal.⁴²⁶ Thus, while an online system may reduce the amount of space required to store documentation and provide teachers and HTSB staff with the convenience of accessing electronically-stored information, it will not reduce or eliminate the need for people to review the information submitted by applicants and determine whether it satisfies the requirements.⁴²⁷

A substantial amount of time and money has been wasted on the development of the online licensing system. The HTSB has gone through a series of three contractors and, to date, does not have an operable online licensing system.⁴²⁸ On numerous occasions, the HTSB has claimed to be on the verge of completing its online licensing project.⁴²⁹ For this reason, while the HTSB might finally be close to having a functional online licensing system, we are cautious about relying on its representations that the system will be operable in the near future.

For reasons we cannot discern, the HTSB has continued to delay the renewal of teacher licenses while it waits for the online licensing system to be accessible to teachers. The information that will be submitted through the online system could be submitted to the HTSB in hard copy while the HTSB and its vendor complete the development of the system's renewal feature. A review of the hard copy submissions would not entail any more work than that needed to review electronic submissions, although there may seem to be some additional work involved in filing the hard copy submissions.

Furthermore, the HTSB's actions, once again, have caused some teachers' licenses to become technically invalid. The HTSB is requiring teachers with licenses that expired on or after October 1, 2009, to renew their licenses online once the online licensing system becomes operational and is not allowing these teachers to apply for a license extension while the HTSB and its vendor complete work on the renewal feature of the online licensing system. As a result, teachers whose licenses expired on or after October 1, 2009, are technically not validly licensed. The HTSB's actions in allowing the lapsing of these licenses is inexplicable given that HTSB has authority through June 30, 2010, to extend teacher licenses.⁴³⁰

⁴²⁵ See *supra* note 49 and accompanying text.

⁴²⁶ See *supra* notes 396 and 397 and accompanying text.

⁴²⁷ See *supra* notes 395 and 396 and accompanying text. The Auditor noted that "the amount of work will increase once the board begins to renew licenses . . ." Auditor's Report No. 09-05, *supra* note 26, at 26.

⁴²⁸ On November 25, 2009, the Executive Director said that the online renewal system was not yet operable.

(Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 25, 2009).

⁴²⁹ See *supra* note 366 and accompanying text.

⁴³⁰ 2009, First Special Session Laws of Hawaii, Act 2, § 4; See *supra* note 408 and accompanying text.

- A. If the HTSB is to remain as a separate entity, the Legislature will need to either transfer some of the HTSB's responsibilities or give the HTSB considerably more resources to adequately handle its present responsibilities.**

The HTSB may be better able to handle its responsibilities if some of its duties are transferred to the Department of Education (DOE). Alternatively, if the Legislature wants all of the current responsibilities to remain with the HTSB, the Legislature will need to provide more resources to the HTSB, so it may adequately handle its present responsibilities.

- 1. *If the Legislature decides to transfer some of the HTSB's responsibilities, it should consider transferring the licensing and renewal function because this is the most problematic responsibility for the HTSB.***

In recommending that the responsibility for a teacher licensure program be transferred back to the Board of Education, the Auditor found that the "administration of a teacher licensure program to apply performance standards is inherently an employer function that should rest with the Board of Education, consistent with its constitutional mandate and responsibility over the organization and management of the public school system."⁴³¹ The Legislative Reference Bureau (LRB) notes that the authority to issue, renew, revoke, suspend, and reinstate teacher licenses was transferred from the DOE to the HTSB, to "remove the inherent conflict of interest faced by the [DOE] in its ... role as employer, as well as licensing agent."⁴³² In the course of our study, we did not find any evidence of an actual conflict of interest arising from the DOE's dual role as employer and licensing authority. At best, we believe that there was a "perception" of a potential conflict of interest that is unique to Hawaii, because it is the only state that has a single employer for all public school teachers in the state. We do not believe this perception of a potential conflict of interest is a sufficient bar to the DOE issuing teacher licenses. For this reason, we believe it would not be inappropriate for the Legislature to transfer the licensing function back to the DOE. If this responsibility, which has been a problem for the HTSB, is transferred to the DOE, the need for oversight of this part of the HTSB's responsibility will be eliminated.

- 2. *Other HTSB responsibilities the Legislature could consider transferring include the National Board Certification support program, the state approval of teacher education programs, and Title II reporting.***

To reduce the HTSB's responsibilities, the Legislature could transfer responsibility for the National Board Certification support program from the HTSB to the DOE. This program is not directly related to the HTSB's duty to establish teacher licensing standards and, for this reason, could be shifted to the DOE. Further, in accordance with Act 51, Session Laws of Hawaii 2004, the DOE already administers the National Board Certification incentive program. Thus, the support program may be a more natural fit within the DOE.

⁴³¹ Auditor's Report No. 09-05, *supra* note 26, at 41.

⁴³² See *supra* note 6 and accompanying text.

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The Legislature could consider transferring responsibility for the state approved teacher education program (SATEP) approval process. It is not clear, however, how much of an impact this would have on the HTSB's workload. In accordance with a recent change adopted by the HTSB, teacher education programs are now required to obtain national accreditation from the National Council for the Accreditation of Teacher Education (NCATE) or the Teacher Education Accreditation Council (TEAC).⁴³³ The HTSB's role in the accreditation process will now be limited to reviewing and approving the accrediting entity's reports, and the HTSB will be relieved from the time-consuming portion of the accreditation process.

Additionally, the Legislature could consider transferring responsibility for the reporting requirements in section 207 of Title II of the Higher Education Act, as amended. Title II requires each state receiving funding under the Act to report annually on the quality of teacher preparation. However, the information that must be reported relates to teacher standards and licensing. In other states, it is generally the licensing agencies that prepare and submit Title II reports.⁴³⁴ Accordingly, if the Legislature transfers the licensing function to the DOE, the responsibility for Title II reporting should be transferred too.

B. Even if the Legislature transfers some of the HTSB's duties to the DOE, if it keeps the licensing function with the HTSB, the Legislature will need to provide the HTSB with more resources -- particularly a data processing systems analyst and education specialist, and other professionals to help with license renewals.

To date, the inability to fill vacant staff positions has been detrimental to the HTSB's operation. While the HTSB recently obtained approval to fill the licensing clerk, clerk typist, and executive director positions,⁴³⁵ two professional-level positions remain vacant: data processing systems analyst and education specialist.

The data processing systems analyst position should be filled immediately. The absence of the data processing systems analyst contributed to the waste of time and resources on the HTSB's failed attempts to develop its online licensing system. A data processing systems analyst could have monitored the vendors that were hired to perform the job. The continued vacancy leaves the HTSB unable to effectively monitor the work of its current vendor, which is contracted to develop the HTSB's online licensing system, website, and e-mail system.

An education specialist should also be hired as soon as possible. The education specialist is tasked with handling license renewals and the National Board Certification support program. While this position remains vacant, the responsibilities tied to this position fall upon the Executive Director and detract from her ability to handle her own responsibilities.

⁴³³ The HTSB approved this policy change on October 1, 2009. (Interview with Jonathan Gillentine, PhD., Chairperson, Hawaii Teacher Standards Board (Oct. 2, 2009).)

⁴³⁴ It should be noted that while the HTSB does not have statutory responsibility for this, HTSB has undertaken the reporting requirements because of its licensing function. *See supra* note 71 and accompanying text.

⁴³⁵ The current Executive Director is retiring on December 31, 2009. (Telephone interview with Sharon Mahoe, Executive Director, Hawaii Teacher Standards Board (Nov. 2, 2009).)

In its previous attempts to fill the data processing systems analyst and education specialist positions, the HTSB was unable to attract qualified applicants. For this reason, it might be more effective if the DOE Office of Human Resources assisted the HTSB in its efforts to attract appropriate candidates for these vacant positions. Accordingly, the Legislature may wish to consider directing the DOE to assist the HTSB in this regard.

If responsibility for the renewal of teacher licenses remains with the HTSB, the HTSB will need additional staff members to assist with license renewals. The commencement of the license renewal process will result in an increase in the HTSB's workload, as it will require staff to review the applications and other documents submitted by applicants. As previously noted, the HTSB's current plan involves relying on teachers to volunteer to assist in the review of applications.⁴³⁶ This plan could prove problematic, however, because the HTSB is likely to encounter the same challenges it experienced in finding teachers to assist in the SATEP approval process: teachers are busy with their own teaching and administrative responsibilities, and as a result, it is difficult to find volunteers to assist the HTSB.⁴³⁷ For this reason, the HTSB should rely on its own staff members to review the applications for renewals, rather than volunteers.

As recommended by the Executive Director, the use of professional-level staff to review applications for initial licensure and renewal could improve the HTSB's ability to process these applications. The license renewals, in particular, will require reviewers to utilize analytical skills to determine whether a teacher has fulfilled the requirements for renewal. Accordingly, the Legislature should consider authorizing HTSB to convert its existing licensing clerk positions to a higher classification, providing that any positions added to HTSB to accommodate the additional workload attributable to the license renewals be of the same higher classification, and providing adequate funding for these positions.

As an alternative to filling the vacant positions at the HTSB, the Legislature could consider directing the DOE to provide assistance to the HTSB in areas where it needs help. For example, the Legislature could direct that the DOE's information technology staff provide services to the HTSB and oversight of the vendor's work on the online licensing system, website, and e-mail system. Similarly, the DOE could be directed to assist the HTSB with the renewal of teacher licenses. However, it should be noted that if it is decided not to transfer the licensing function back to the DOE on the rationale of preserving the independent licensing entity, then this alternative would seem counterproductive to maintaining that independence.

C. The HTSB should consider reviewing the current teacher licensing fee structure.

The teacher license fee has not been raised or amended since it was set in 1998 at \$48 per year.⁴³⁸ If the HTSB retains responsibility over the licensure function, thus requiring additional staff resources, the HTSB will need more funding to cover its personnel costs. Section 10 of

⁴³⁶ See *supra* note 397 and accompanying text.

⁴³⁷ See *supra* note 96 and accompanying text.

⁴³⁸ See *supra* p. 20.

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Act 2, First Special Session Laws of Hawaii 2009, directed the HTSB to consider, among other things, amending its current fee structure to meet its operating costs. The LRB notes that an increase in fees could provide a source of funds to cover some of the increased personnel costs.

D. The Legislature could adopt the Auditor's recommendations, including those to transfer responsibility for the teacher licensure program to the Board of Education and abolish the HTSB.

In the Auditor's report number 09-05, the Auditor concluded that "laws transferring responsibility to the [HTSB] for administering a teacher licensure program are not in the public interest. Nor has the standards board sufficiently served the interests of teachers and students to warrant its continuation."⁴³⁹ Accordingly, the Auditor recommended that the Legislature repeal provisions relating to the establishment of the HTSB and transfer to the Board of Education (BOE) the duties that were assigned to the HTSB, including responsibility for the teacher licensure program.⁴⁴⁰ As an alternative to transferring some of the HTSB's responsibilities to the DOE, as discussed herein, the Legislature could consider adopting the Auditor's recommendation in full.

II. The HTSB's misunderstanding concerning the nature of the relationship of an administratively attached agency and a principal department and the appropriate role of each has contributed to the HTSB's problems.

The HTSB has been administratively attached to the DOE since 1995, yet the Executive Director and the board members of the HTSB have failed to understand the nature of the relationship of an attached agency and principal department, and their appropriate roles. This has impeded development of a smooth working relationship between the two entities and contributed to the lack of oversight of the HTSB's operations, including the HTSB's failure to provide oversight of the Executive Director, the Board's finances, or the development of the online licensing system.

Although other administratively attached boards and commissions have functioned relatively well, the HTSB and DOE are apparently unable to sort out the relationship on their own. It is imperative that the relationship between the HTSB and DOE be clarified as soon as possible.

The Legislature should consider directing the HTSB and DOE to meet to clarify their respective roles.

The LRB notes that section 6(a) of Act 2, First Special Session Laws of Hawaii 2009, directs the HTSB, the DOE, and the charter school administrative office to implement interim policies and procedures for the mutual sharing of data. Building upon this cooperative model, the Legislature may wish to consider requiring the HTSB, Superintendent of Education, and

⁴³⁹ Auditor's Report No. 09-05, *supra* note 26, at 41.

⁴⁴⁰ *Id.*

Chairperson of the BOE, with the assistance of the Department of the Attorney General, and a professional mediator if necessary, to meet to clarify the relationship between the HTSB and DOE. The Department of the Attorney General could be requested to assist with any legal opinions and advice that may be required to resolve outstanding issues. If considered desirable to memorialize the understanding, the parties could adopt a memorandum of understanding, which the Department of the Attorney General could be requested to assist in drafting.

III. The HTSB's renewal requirements and process do not comply with statutory law.

While the HTSB has developed teacher licensing standards, it has failed to require teachers seeking license renewal to demonstrate that they meet all ten licensing standards as is required by section 302A-805(a), Hawaii Revised Statutes. Moreover, teachers who currently hold licenses that are due for an initial renewal will not have to demonstrate that they meet *any* of the standards, because the mere payment of the license renewal fee and the completion of an application will entitle these teachers to a renewed license. Not until the teachers' subsequent renewal, five years later, will licensing standards be applied, and then the applicant must only provide evidence of meeting two of the ten standards.⁴⁴¹

If the Legislature does not transfer the licensing function, the Legislature should require the HTSB to review its teacher license renewal process with respect to compliance with section 302A-805(a), HRS.

As noted previously, the HTSB's license renewal procedures do not comply with statutory requirements in that applicants for an initial license renewal do not have to demonstrate meeting any standards, and, upon subsequent renewals, applicants have to demonstrate only that they meet two of the ten licensing standards. If the Legislature decides that the licensing function should remain with the HTSB, it should require the HTSB to (1) review its teacher license renewal process and (2) determine whether the HTSB should: (a) modify the licensing standards themselves; (b) modify its approach in determining whether a renewal applicant is in compliance by having satisfied all the standards; or (c) recommend that the Legislature amend section 302A-805(a), HRS, to conform to the HTSB's present requirements for license renewal and thus eliminate the conflict with section 302A-805(a), HRS.

IV. Imposing more detailed reporting requirements on HTSB may improve oversight of the HTSB.

The only statutory requirement that presently applies to the content of the HTSB's annual report is that it report on the Board's operations.⁴⁴² Other administratively attached entities are required to include specific information in their annual reports, such as fund balances and budget information. For example, the Public Utilities Commission (PUC) is required by statute to submit an annual report that details all funds received and moneys disbursed out of the PUC

⁴⁴¹ See *supra* notes 409 and 410 and accompanying text.

⁴⁴² See *supra* note 272 and accompanying text.

CONCLUSIONS AND RECOMMENDATIONS

general fund. Similarly, the law requires the Real Estate Commission to include in its annual report financial information about its trust funds, including balances and budgets.

The Legislature may wish to require that more detailed reporting be included in the HTSB's annual report.

While the HTSB's 2008 annual report did contain some financial reporting, such has not been the case with its prior annual reports. The Legislature, at a minimum, may wish to consider requiring the HTSB to include in its annual report detailed information about all the funds it receives, as well as its expenditures. The publication of such information may encourage transparency and accountability of the HTSB's operations.

V. There were no identifiable issues to address relating to the teacher education coordinating committee and its relationship with the DOE or the HTSB.

The LRB, based upon interviews with representatives of the entities involved, was unable to identify any significant issues or concerns relating to the teacher education coordinating committee and its relationship with the DOE or the HTSB. Thus, it is uncertain what prompted the concern leading to the LRB being directed to explore this issue. The LRB notes that section 6(c) of Act 2, First Special Session Laws of Hawaii 2009, provides for the participation of the teacher education coordinating committee, in conjunction with the HTSB, the DOE, and the charter school administrative office, in developing and implementing interim policies and procedures for the mutual sharing of license and employment data. This may address whatever issues prompted this concern.

Appendix A

ACT 2

H.B. NO. 183

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature finds that the thirteen-member Hawaii teacher standards board is responsible for establishing standards for the issuance and renewal of licenses for teachers; serves as the adjudicator for appeals relating to licensing, including issuance or nonissuance of licenses, and the suspension, nonrenewal, and revocation of licenses; and approves teacher education programs and the professional development of teachers.

The purpose of this part is to make clarifying and other amendments to:

- (1) Increase the membership on the Hawaii teacher standards board from thirteen to fifteen with two public members representing the community;
- (2) Allow the board to employ an executive director for a term of up to four years, who shall be appointed by the board of education, and also allow the board to terminate the executive director's contract for cause;
- (3) Require the board to submit its annual report to the board of education;
- (4) Authorize the board to determine the manner in which licensing fees are collected;
- (5) Authorize the board to adopt, amend, repeal, or suspend the policies and standards of the board;
- (6) Authorize the board to grant additional licensing extensions through June 30, 2010;
- (7) Make permanent the board's authority to temporarily suspend its rules in extenuating circumstances;
- (8) Make permanent the board's authority to amend licensing-related fees and set or amend other charges related to the performance of its duties; and
- (9) Beginning July 1, 2009, require the board, department of education, and charter school administrative office to implement interim policies and procedures for the mutual sharing of data necessary for licensing and verifying the status of teachers.

SECTION 2. Section 302A-801, Hawaii Revised Statutes, is amended to read as follows:

"§302A-801 Hawaii teacher standards board established. (a) There is established the Hawaii teacher standards board, which shall be placed within the department for administrative purposes only. The board shall consist of ~~[thirteen]~~ fifteen members, including not less than six licensed teachers regularly engaged in teaching~~;~~ at the time of the appointment, three educational officers~~;~~ employed at the time of the appointment, the chairperson of the board of education or the chairperson's designee, the superintendent or the superintendent's designee, a representative of independent schools, ~~[and]~~ the dean of the University of Hawaii college of education or the dean's designee~~;~~ and two members of the public; provided that the dean's designee shall be chosen from the member institutions of the teacher education coordinating committee established under section ~~[[304A-1202]]~~.

(b) Except for the chairperson of the board of education, [the] superintendent, and [the] dean of the college of education, the governor shall appoint the members of the board pursuant to section 26-34, from a list of qualified nominees submitted to the governor by the departments, agencies, [and] organizations representative of the constituencies of the board[-], and current members of the board; provided that the two members of the public shall be from lists of qualified nominees submitted to the governor by the Hawaii Business Roundtable, Hawaii P-20 council, and Hawaii workforce development council. To the extent possible, the board membership shall reflect representation of elementary and secondary school personnel from all islands.

(c) Appointed board members shall serve not more than three consecutive three-year terms[-]; provided that the initial terms of the appointed members that commence after June 30, 2000, shall be staggered, as follows:

- (1) Three members to serve three-year terms;
- (2) Three members to serve two-year terms; and
- (3) One member to serve a one-year term].

(d) Board members shall receive no compensation. When board duties require that a board member take leave of the board member's duties as a state employee, the appropriate state department shall allow the board member to be placed on administrative leave with pay and shall provide substitutes, when necessary, to perform that board member's duties. Board members shall be reimbursed for necessary travel expenses incurred in the conduct of official board business.

(e) The chairperson of the board shall be designated by the members of the board.

(f) The board may employ an executive director for a term of up to four years, who shall be appointed by the board of education without regard to chapters 76 and 89; provided that the board shall submit a nominee to the board of education for approval or disapproval; provided further that if the nominee is disapproved, the board shall submit another nominee to the board of education for approval or disapproval.

The board may terminate the executive director's contract for cause; provided that the board shall submit the recommendation for termination to the board of education for approval or disapproval."

SECTION 3. Section 302A-803, Hawaii Revised Statutes, is amended to read as follows:

"§302A-803 Powers and duties of the board. (a) In addition to establishing standards for the issuance and renewal of licenses and any other powers and duties authorized by law, the board's powers shall also include:

- (1) Setting and administering its own budget;
- (2) Adopting, amending, or repealing the rules of the board in accordance with chapter 91;
- (3) Receiving grants or donations from private foundations, and state and federal funds;
- (4) Submitting an annual report to the governor [and], the legislature, and the board of education on the board's operations and from the 2007-2008 school year, submitting a summary report every five years of the board's accomplishment of objectives, efforts to improve or maintain teacher quality, and efforts to keep its operations responsive and efficient;
- (5) Conducting a cyclical review of standards and suggesting revisions for their improvement;
- (6) Establishing licensing fees in accordance with chapter 91[-], including the collection of fees by means of mandatory payroll deductions, which shall] and determining the manner by which fees are collected and subsequently [be] deposited into the state treasury and credited to the Hawaii teacher standards board special fund;

- (7) Establishing penalties in accordance with chapter 91;
- (8) Issuing, renewing, revoking, suspending, and reinstating licenses;
- (9) Reviewing reports from the department on individuals hired on an emergency basis;
- (10) Applying licensing standards on a case-by-case basis and conducting licensing evaluations;
- (11) Preparing and disseminating teacher licensing information to schools and operational personnel;
- (12) Approving teacher preparation programs;
- (13) Administering reciprocity agreements with other states relative to licensing;
- (14) Conducting research and development on teacher licensure systems, beginning teacher programs, the assessment of teaching skills, and other related topics;
- (15) Participating in efforts relating to teacher quality issues, ~~conducting~~ professional development related to the board's standards, and promotion of high teacher standards and accomplished teaching; ~~and~~
- (16) Adopting applicable rules and procedures~~[-]; and~~
- (17) Adopting, amending, repealing, or suspending the policies and standards of the board.

(b) If, in accordance with chapter 92, the board determines, on a case-by-case basis, that extenuating circumstances exist to justify the suspension, the board may temporarily suspend its rules, or any portion thereof. The board shall establish, in accordance with chapter 91, procedures for the suspension of its rules. When determining whether to suspend its rules, the board shall also establish the length of time for which the suspension shall be in effect.

(c) The board, in accordance with chapter 92, may also amend licensing-related fees and set or amend other charges related to the performance of its duties."

SECTION 4. Section 302A-805, Hawaii Revised Statutes, is amended to read as follows:

"§302A-805 Teachers; license required; renewals. (a) Beginning July 1, 2002, all ~~new~~ licenses shall be issued by the board. No person shall serve as a half-time or full-time teacher in a public school without first having obtained a license from the board under this subpart. All licenses issued by the board shall be valid only for the fields and levels specified on the licenses and shall be renewable every five years if the individual continues to:

- (1) Satisfy the board's licensing standards;
- (2) Show evidence of successful teaching in the previous five years; and
- (3) Satisfy the board's requirements for renewal of licenses.

(b) Teachers whose licenses expire on June 30, 2002, or June 30, 2003, shall be granted an automatic extension of two years.

(c) The board, at its discretion, through June 30, 2010, may grant additional extensions. Any previously-approved extensions shall be deemed valid as issued.

(d) No person shall be issued a license or teach on an emergency basis in the public schools without having first paid the fees established by the board in accordance with chapter 91."

SECTION 5. Act 263, Session Laws of Hawaii 2007, is amended by amending section 4 to read as follows:

~~"SECTION 4. This Act shall take effect on July 1, 2007[; provided that on July 1, 2009, section 2 of this Act shall be repealed and section 302A-803, Hawaii Revised Statutes, shall be reenacted in the form in which it read on June 30, 2007]."~~

SECTION 6. (a) Beginning on July 1, 2009, the Hawaii teacher standards board, department of education, and charter school administrative office shall implement interim policies and procedures for the mutual sharing of data necessary for licensing and verifying the status of teachers, including criminal background checks; employment status and work sites; license test information; license validity, fields, and levels; and academic transcripts and program completion information.

(b) The interim policies and procedures may be amended to reflect the recommendations of the Hawaii teacher standards board to coordinate the creation of a data interface network consisting of teacher education institutions and the department of education to support the free interchange of information valuable to all of the participating organizations, pursuant to section 10 of this Act.

(c) The board, department of education, charter school administrative office, and members of the teacher education coordinating committee shall also develop and implement interim policies and procedures for the mutual sharing of license and employment data necessary for the teacher education institutions to comply with the requirements of the Higher Education Opportunity Act, including criminal background checks; employment status and work sites; license validity, fields, and levels; and teaching performance.

PART II

SECTION 7. In 2008, Senate Concurrent Resolution No. 83, S.D. 1, requested the auditor to conduct a study on the appropriate accountability structure for the Hawaii teacher standards board, and to report the findings and recommendations to the 2009 legislature. Report No. 09-05, Study on the Appropriate Accountability Structure of the Hawai'i Teacher Standards Board, submitted in February 2009, focused on determining whether the board has delivered an effective licensing and re-licensing program, which is its core function. Using the department of commerce and consumer affairs as the model for boards and commissions administratively attached to an agency, the report compared that model with the Hawaii teacher standards board and examined other states for alternatives for licensing programs.

The auditor's report found a number of problems, including ineffective management of the licensing function, lack of oversight, and miscommunication between the Hawaii teacher standards board and department of education regarding responsibilities and accountability. While the auditor's report provided considerable useful information, its release in the middle of the 2009 legislative session did not allow time to develop meaningful responses.

The purpose of this part is to develop specific recommendations to address the concerns raised in the auditor's report.

SECTION 8. (a) The legislative reference bureau shall review the findings of the auditor's Report No. 09-05, and other information as appropriate, and make recommendations, including proposed legislation, regarding:

- (1) Whether there is a need for oversight of the Hawaii teacher standards board, and how oversight is provided for similar boards; and
- (2) How to strengthen and clarify interagency roles, responsibilities, and relationships between the board, department of education, and teacher education coordinating committee.

(b) The legislative reference bureau shall submit its findings and recommendations, including all proposed legislation and budget requests, to the legislature no later than twenty days prior to the convening of the regular session of 2010.

SECTION 9. (a) The dean of the University of Hawaii at Manoa college of education shall convene a working group to review and make recommendations to address:

- (1) Licensing rules and their impact on teacher workforce needs in Hawaii;
 - (2) Relicensing and tiered licensing options to ensure effective teachers and continuing development of teachers;
 - (3) Streamlining processes for reviewing out-of-state and military applicants for licensure;
 - (4) Alignment of licensing standards and requirements with the federal No Child Left Behind Act;
 - (5) Teacher preparation program alignment with national standards and the role of national accreditation of teacher preparation programs in Hawaii; and
 - (6) The role of higher education institutions in assisting teachers in achieving National Board certification.
- (b) The working group shall consist of seven members as follows:
- (1) The dean of the University of Hawaii at Manoa college of education, or the dean's designee;
 - (2) The superintendent of education, or the superintendent's designee;
 - (3) The chairperson of the Hawaii teacher standards board, or the chairperson's designee;
 - (4) The executive director of the Hawaii P-20 council, or the executive director's designee;
 - (5) The executive director of the Hawaii state teachers association, or the executive director's designee;
 - (6) The division administrator of the professional and vocational licensing division of the department of commerce and consumer affairs, or the division administrator's designee; and
 - (7) A member of the National Milken Educators of Hawaii.

The working group may consult with other educational and licensing organizations and individuals, as appropriate. The working group shall cease to exist on June 30, 2010.

(c) The dean shall submit the findings and recommendations of the working group, including any proposed legislation and budget requests, to the legislature no later than twenty days prior to the convening of the regular session of 2010.

SECTION 10. (a) The Hawaii teacher standards board shall review the findings of the auditor's Report No. 09-05, and shall make recommendations for policy and procedural changes necessary to refocus and support the purpose of the Hawaii teacher standards board. At a minimum, the board shall consider:

- (1) Procedures to streamline the appeals process, pursuant to section 302A-807, Hawaii Revised Statutes;
- (2) Amendments to the current licensing fees, if required, to meet the operating costs associated with the Hawaii teacher standards board;
- (3) Requirements for training of licensing and administrative personnel to provide increased accessibility and customer service;
- (4) Procedures to improve the coordination of the interim policies and procedures related to the creation of a data interface network consisting of teacher education institutions and the department of education to support the free interchange of information valuable to all of the participating organizations; and

- (5) Recommendations as to whether the board may be authorized to request attendance of a deputy attorney general at the meetings of the board.
- (b) The Hawaii teacher standards board shall submit its findings and recommendations, including any proposed legislation and budget requests, to the legislature no later than twenty days prior to the convening of the regular session of 2010.

PART III

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect on July 1, 2009; provided that on July 1, 2010, section 4 of this Act shall be repealed and section 302A-805, Hawaii Revised Statutes, shall be reenacted in the form in which it read on June 30, 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

Appendix B

PROPOSED LEGISLATION

Section 8 of Act 2, First Special Session Laws of Hawaii 2009, directs the Legislative Reference Bureau to "review the findings of the auditor's Report No. 09-05, and other information as appropriate, and make recommendations, including proposed legislation, regarding:

- (1) Whether there is a need for oversight of the Hawaii teacher standards board, and how oversight is provided for similar boards; and
- (2) How to strengthen and clarify interagency roles, responsibilities, and relationships between the board, department of education, and teacher education coordinating committee.

Many of the LRB's recommendations are made in the alternative. Thus any legislation necessary will depend upon how the Legislature decides to address the issues surrounding the HTSB. Accordingly, we have attempted to provide a roadmap for legislative actions that would be necessary to achieve the various recommendations made in this report.

1. Transfer of licensing function to the DOE from the HTSB.

To transfer the licensing function and related duties to the Department of Education (DOE) from the Hawaii Teacher Standards Board (HTSB), the following provisions of the Hawaii Revised Statutes (HRS) should be amended:

- Section 302A-802, HRS: Delete subsection (c), which requires HTSB to adopt policies relating to issuance of teacher licenses.
- Section 302A-803, HRS: Delete language related to the teacher licensing function, licensing fees, and establishing penalties.
- Section 302A-804, HRS: Add powers and duties that relate to the teacher licensing function and licensing fees to the powers and duties of the DOE.
- Section 302A-805, HRS: Change references from the HTSB to the DOE.
- Section 302A-805.6, HRS: Delete language related to the teacher licensing function.
- Section 302A-807, HRS: Change all references from the HTSB to the Superintendent of Education or the DOE, as appropriate.
- Section 302A-808, HRS: Delete reference to depositing fines in the Hawaii teacher standards board special fund.

2. Transfer of responsibility for the approval of teacher education programs to the DOE from the HTSB.

To transfer the authority to approve teacher education programs to the DOE from the HTSB, the following provisions of the HRS should be amended:

- Section 302A-803, HRS: Delete language related to the approval or assessment of teacher education programs.
- Section 302A-805.5, HRS: Change all references from the HTSB to the DOE.

3. Transfer of responsibility for the National Board Certification support program to the DOE from the HTSB.

To transfer the responsibility for the National Board Certification support program to the DOE from the HTSB, section 302A-702(b), HRS, should be amended by changing the reference from the HTSB to the DOE.

4. Additional resources for HTSB to handle its present workload.

If the Legislature decides not to transfer any of the HTSB's current responsibilities and instead provide the HTSB with additional resources, it may do so by increasing the HTSB's budgetary appropriations and ensuring that the HTSB may use those funds to provide for additional professional staff.

5. DOE assistance with the HTSB's staffing issues.

The Legislature may direct the DOE to assist the HTSB in recruiting for and filling of the HTSB's vacant positions. In the alternative, the Legislature may direct the DOE to provide departmental staff support to assist the HTSB with its information technology issues and with carrying out its license renewal functions.

6. Meeting of the DOE and HTSB to clarify their respective roles.

The Legislature may direct that the DOE and HTSB, with the assistance of office of the attorney general, meet to clarify their respective roles and, if desirable, adopt a memorandum of understanding concerning interagency procedures, consistent with the provisions of section 26-35, HRS.

7. HTSB review of its teacher license renewal process with respect to compliance with section 302A-805(a), HRS.

The Legislature may require the HTSB to:

- (A) Review its teacher license renewal process with respect to compliance with section 302A-805(a), HRS; and
- (B) Determine whether the HTSB should:
 - (1) Modify the licensing standards themselves;
 - (2) Modify its approach to determining whether a renewal applicant is in compliance by having satisfied all the standards; or
 - (3) Recommend that the Legislature amend the section 302A-805(a), HRS, to conform to the HTSB's present requirements for license renewal.

8. Detailed information in the HTSB annual report.

If the Legislature decides to require the HTSB to provide more detailed financial information in its annual report, section 302A-803(a)(4), HRS, should be amended to require that the HTSB include certain information in its annual report, such as detailed information on all funds received and moneys expended.

9. Implement Auditor's recommendation to transfer responsibility for teacher licensing and related duties to the Board of Education and abolish the HTSB.

If the Legislature decides to transfer the responsibility for teacher licensing and related duties to the Board of Education from the HTSB and abolish the HTSB, as recommended by the Auditor in report number 09-05, the Legislature may use the draft legislation (updated as necessary) in Appendix D of the Auditor's report.

Appendix C

STATE APPROVED TEACHER EDUCATION PROGRAMS (SATEP) HAWAII TEACHER STANDARDS BOARD

9/2009

Teacher Education Programs approved under Policy, Procedures, and Standards of the Hawai'i Teacher Standards Board

Contact Person: Lynn Hammonds, Licensing and SATE Specialist, Hawai'i Teacher Standards Board

650 Iwilei Road, Suite 201, Honolulu, Hawai'i 96817 Phone: (808) 586-2619; Fax: (808) 586-2606; E-mail: lhammonds@htsb.org

INSTITUTION/ CONTACT	APPROVAL TYPE DATE	SATE PROGRAMS LEAD TO THESE TEACHING FIELDS FOR LICENSURE
Brigham Young University- Hawai'i 55-220 Kulanui Street, #1954 Laie, HI 96762 Dr. Barry Mitchell, Department Chair School of Education Phone: (808) 675-3887 Fax: (808) 675-3899 E-mail: mitchelb@byuh.edu	<p style="text-align: center;">Full Approval</p> <p style="text-align: center;">through</p> <p style="text-align: center;">June 2014</p>	Undergraduate and Post-baccalaureate Programs: <ul style="list-style-type: none"> Elementary (K-6); Dual Elementary/Special Education (K-12). Secondary (7-12): Business, English, Mathematics, Science, and Social Studies. <i>Note:</i> May also include candidates with degrees or content equivalencies determined by IHE in other HTSB teaching fields. K-12 Programs: Art, Computer Education, Music, Physical Education, Special Education-Mild/Moderate and/or Severe/Profound, and TESOL. <i>Note:</i> May also include candidates with degrees or content equivalencies determined by IHE in other HTSB teaching fields. Alternative Program- for contracted experienced DOE emergency hires. Requires principal's recommendation.
Chaminade University of Honolulu 3140 Waiālae Avenue Honolulu, HI 96816-1578 Education Division Dr. David Grossman, Interim Dean (808) 735-4844 Fax: (808) 739-4670 Email: david.grossman@chaminade.edu	<p style="text-align: center;">Full Approval</p> <p style="text-align: center;">through</p> <p style="text-align: center;">December 2009</p>	Undergraduate, Post-baccalaureate and Master's Programs: <ul style="list-style-type: none"> Early Childhood Education (PK-3) Elementary (K-6) Secondary (7-12)- English, Math, Science, Social Studies. <i>Note:</i> May also include candidates with degrees or content equivalencies determined by IHE in other HTSB teaching fields. Special Ed- Mild/Moderate (K-12) Master of Education in Teaching (thru RRSC): Special Education.

INSTITUTION/ CONTACT	APPROVAL TYPE DATE	SATE PROGRAMS LEAD TO THESE TEACHING FIELDS FOR LICENSURE
<p>Chaminade University, continued</p> <p>Behavioral Sciences Division Counseling Psychology Program/ School Counseling Emphasis Dr. Robert Santee, Dean (808) 735-4720 Fax: (808) 739-4670 Email: rsantee@chaminade.edu</p> <p>Director for School Counseling Dr. Dale Fryxell (808) 739-4678 Fax: (808) 739-4670 Email: dfryxell@chaminade.edu</p> <p>Internship Director, School Counseling Darren Iwamoto (808) 739-4604 Fax: (808) 739-4670</p>	<p>Full Approval</p> <p>through</p> <p>December 2009</p>	<p>Master of Science in Counseling Psychology</p> <ul style="list-style-type: none"> Master of Science in Counseling Psychology/ School Counseling (K-12)
<p>City University Hawai'i Contact for City University: Dr. Don Enoki Phone: (808) 587-5580 Email: don_enoki@notes.k12.hi.us</p>	<p>Full Approval</p> <p>through</p> <p>June 2015</p>	<p>Undergraduate Program:</p> <ul style="list-style-type: none"> BA in Special Education (K-12) in conjunction with DOE Training and Certification Section.

INSTITUTION/ CONTACT	APPROVAL TYPE DATE	SATE PROGRAMS LEAD TO THESE TEACHING FIELDS FOR LICENSURE
Halau Wanana POB 6511 Kamuela, Hawaii 96743 Dr. Ku Kahakalau Phone: (808) 887-1117 Email: studentservices@halauwanana.org	Provisional Approval through June 2011	Undergraduate and Post-baccalaureate Programs: <ul style="list-style-type: none"> • Elementary Education K-6 • Secondary Education for 7-12 teaching area. Note: Teacher candidates may enter with any level of post-secondary education. Before being recommended for licensure, program completers must finish their bachelor's degree and pass PRAXIS tests required for licensure.
Hawai'i DOE – ARLISE/RISE Dole Cannery Building 680 Iwilei Road, Suite 400 Honolulu, HI 96817 (808) 587-5580 Fax: 587-5595 Not accepting applications at this time.	Full approval through December 2015	Post-baccalaureate and Master's Programs: For individuals hired in contracted special education positions in DOE or charter schools. Specially designed SPED course work in partnership with Chaminade University of Honolulu. <ul style="list-style-type: none"> • RISE ALTERNATIVE I for individuals who have already completed a SATEP in another subject area. • RISE ALTERNATIVE II for individuals who have not completed a SATEP but have at least a bachelor's degree from an accredited university.
Hawai'i Pacific University 1188 Fort Street Mall Honolulu, Hawaii 96813 Dr. Valentina M. Abordonado Phone: (808) 544-1143 Email: vabordonado@hpu.edu	Full Approval through December 2015	Post-baccalaureate and Master's Programs: <ul style="list-style-type: none"> • Secondary (7-12): Computer Education, English, Mathematics, Science, Social Studies, TESOL, and World Languages. • Master of Education in Secondary Education

INSTITUTION/ CONTACT	APPROVAL TYPE DATE	SATE PROGRAMS LEAD TO THESE TEACHING FIELDS FOR LICENSURE
University of Hawai'i-Hilo 200 West Kawili Street Hilo, HI 96720 Dr. Jan Zulich, Chair Education Department (808) 974-7584 Fax: (808) 974-7737 Email: biffle@hawaii.edu	Full approval through December 2012	Post-baccalaureate Programs <ul style="list-style-type: none"> • Elementary (K-6) • Secondary (7-12)- Agriculture, Art, Computer Education, English, Hawaiian, Japanese, Mathematics, Music, Physical Education, Science, Social Studies (includes Hawaiian Studies), Spanish, and Speech. <i>Note:</i> May also include candidates with degrees or content equivalencies determined by IHE in other HTSB teaching fields. • K-12 Program: Hawaiian Language Immersion.
University of Hawai'i- Hilo, Kahuawaiola Indigenous Teacher Education Program 200 West Kawili Street Hilo, HI 96720 Keiki Kawai'ae'a Kahuawaiola Program Director (808) 974-7794 Fax: (808) 974-7797 Email: keiki@leoki.uhh.hawaii.edu	Full Approval through December 2009	Post-baccalaureate Programs <ul style="list-style-type: none"> • Hawaiian Language Immersion (P-6 and K-12) • Hawaiian Language (7-12) with Kahuawaiola pre-requisite • Hawaiian Studies (7-12) with Kahuawaiola pre-requisite • Elementary (K-6) • Secondary (7-12) for program completers with content area degrees and related student teaching.
University of Hawai'i - Manoa 1776 University Avenue Honolulu, HI 96822 Dr. Chris Sorensen, Dean College of Education (808) 956-7703 Fax: (808) 956-3106 Email: chris.sorensen@hawaii.edu Dr. Beth Pateman, Interim Associate Dean for Academic Affairs	Full approval through December 2009	Undergraduate, Post-baccalaureate, and Master's Programs: <ul style="list-style-type: none"> • Early Childhood (PK-3) • ** Elementary (K-6); Elementary Music (K-6) • DUAL Elementary/ Special Education (PK-6) • Hawaiian Language Immersion (K-12) • Secondary (7-12)- Agriculture; Office /Business; English; English as a Second Language; World Languages, including Hawaiian; Family Consumer Science; Marketing/Business; Mathematics; Music; Science; Social Studies; Practical Arts/ Vocational Education (includes Industrial Arts). <i>Note:</i> May also include candidates with bachelor's degrees or content equivalencies in other HTSB teaching fields. • K-12 Areas- Art, Health, Music, Physical Education, School Counselor, School Librarian, Special Ed (M/M) and/or Special Ed (S/P)

INSTITUTION/ CONTACT	APPROVAL TYPE DATE	SATE PROGRAMS LEAD TO THESE TEACHING FIELDS FOR LICENSURE
<p>Office of Student Academic Services College of Education (808) 956-4278 Fax: (808) 956-4271 Email: mpateman@hawaii.edu</p> <p>Library and Information Science Program Dr. Violet Harada (808) 956-5814 Fax: (808) 956-5835 Email: vharada@hawaii.edu</p>		<ul style="list-style-type: none"> • ** Post-baccalaureate in Secondary (PBCSE) (7-12) • ** Post-baccalaureate in Special Education (PB SPED PK-6; 7-12; K-12) • DUAL Secondary/Special Education (7-12) • Master of Education: Special Education (Mild/Moderate, Severe/Profound PK-6;7-12;K-12) • Master of Education: Teaching (Elementary, Secondary) • Master of Library and Information Science. Required: completion of SATE. <p>**Offered to neighbor islands through distance education</p>
<p>University of Hawai'i – West Oahu 96-129 Ala "Ike Pearl City, HI 96782</p> <p>Dr. Mary Heller, Professor & Chair Education Division (808) 454-4725 Fax: (808) 453-6176 Email: mfheller@hawaii.edu</p>	<p>Provisional approval through December 2011</p> <p>Provisional Approval through December 2012</p>	<p>Baccalaureate Programs:</p> <ul style="list-style-type: none"> • Bachelor's degree in Elementary Education for K-6 Elementary License. • Secondary Education in Mathematics 7-12, Science 7-12, Social Studies 7-12 and English 7-12. • Middle Level Education in Mathematics 5-9, Science 5-9, Social Studies 5-9 and English 5-9.

INSTITUTION/ CONTACT	APPROVAL TYPE DATE	SATE PROGRAMS LEAD TO THESE TEACHING FIELDS FOR LICENSURE
<p>University of Phoenix-Hawai'i University Center 828 Fort Street Mall Honolulu, HI 96813</p> <p>Deborah Hornsby Campus College Chair, Education (808) 536-2686.35170 Fax: (808) 536-2744 Email: deborah.hornsby@phoenix.edu</p>	<p>Approval through September 2009</p> <p>Full Approval through June 2013</p>	<p>Master's Programs</p> <ul style="list-style-type: none"> • Master of Arts in Education with Specialization in Special Education (K-12) <p>Master's Program</p> <ul style="list-style-type: none"> • Master of Arts in Education - Elementary Education (K-6) • Master of Arts in Education - Secondary Education (7-12) Content Fields consist of Math, English, Science, and Social Studies.

Appendix D

2009-10 SUPPORT SESSION SCHEDULE AND REGISTRATION FOR NATIONAL BOARD CERTIFICATION CANDIDATES

Registration is required for candidates wishing to participate in the candidate support sessions conducted by trained facilitators of the Hawaii Teacher Standards Board. This will help determine whether sessions will be offered at each of the sites listed below. If there is insufficient interest in sessions at a particular site, those sessions may be cancelled and candidates may have to travel to a different site. In this case, your registration will help us to coordinate your placement at another site. Neighbor islanders other than those from Hilo area should select HTSB site. If count is ample, sessions may be scheduled on these dates on other islands. Otherwise, candidates will participate via an online session with the HTSB site.

Aliamanu Elem. Rm G-3 3:30-6:30pm	Hilo District Office Annex Rm. 1 9:00am-12:00pm	HTSB 650 Iwilei Rd., Suite 201 Honolulu 96817 9:00am-12:00pm	Kailua High School Library 3:30-6:30pm	Kaimuki High School Room G102 3:30-6:30pm	Kapolei High Library 3:30-6:30 pm Idica
August 25, 2009	September 12, 2009	September 12, 2009	August 24, 2009	September 14, 2009	September 3, 2009
September 22, 2009	October 17, 2009	October 17, 2009	September 28, 2009	October 19, 2009	October 15, 2009
October 27, 2009	November 14, 2009	November 14, 2009	November 16, 2009	November 16, 2009	November 19, 2009
November 17, 2009	December 12, 2009	December 12, 2009	December 14, 2009	December 7, 2009	December 10, 2009
January 12, 2010	January 9, 2010	January 9, 2010	January 11, 2010	January 11, 2010	January 14, 2010
February 16, 2010	February 13, 2009	February 20, 2010	February 22, 2010	February 8, 2010	February 11, 2010
March 9, 2010	March 13, 2010	March 13, 2010	March 22, 2010	March 8, 2010	March 11, 2010
April 20, 2010	April 10, 2010	April 10, 2010	April 19, 2010	April 5, 2010	April 8, 2010

Please download this registration form and fax it to NBC Support, HTSB at 808-586-2606.

Name _____ Email _____

School _____ Work Phone _____ Home Phone _____

NBPTS Certificate (field & level) that you are pursuing _____

Site you are registering to attend _____

DEADLINE FOR REGISTRATION: August 20, 2009

Appendix E

STATE TEACHER LICENSING AUTHORITY

STATE	STATE TEACHER LICENSING AUTHORITY
Alabama	Department of Education, Teacher Education and Certification Office (Ala. Admin. Code 290-3-2.01(1))
Alaska	Department of Education and Early Development (Alaska Stat. §14.20.017)
Arizona	Board of Education (Ariz. Rev. Stat. §15-203(A)(14))
Arkansas	Board of Education (Ark. Code Ann. §6-11-105)
California	Commission on Teacher Credentialing (Cal. Educ. Code §44225)
Colorado	Department of Education (Colo. Rev. Stat. §22-60.5-101 et seq.)
Connecticut	Board of Education (Conn. Gen. Stat. §10-145b)
Delaware	Professional Standards Board and Board of Education promulgate and adopt rules and regulations governing qualifications, licensure, and certification of educators. (Del. Code Ann. tit. 14, §1220) Department of Education issues certificates. (Del. Code Ann. tit. 14, §122)
Florida	Department of Education (Fla. Stat. Ann. §1012.56)
Georgia	Professional Standards Commission (Ga. Code Ann. §20-2-200)
Hawaii	Hawaii Teacher Standards Board (Haw. Rev. Stat. §302A-802)
Idaho	Department of Education (Idaho Code §33-114)
Illinois	Board of Education, Educator Certification Division (105 Illinois Compiled Statutes 5/2 3.9)
Indiana	Department of Education, Division of Professional Standards (Ind. Code Ann. §20-28-2-1.5)
Iowa	Board of Educational Examiners (Iowa Code §272.2)
Kansas	Board of Education (Kan. Stat. Ann. §72-1388)
Kentucky	Education Professional Standards Board (Ky. Rev. Stat. §161.028)
Louisiana	Department of Education (La. Rev. Stat. Ann. §17:7)
Maine	Department of Education (Me. Rev. Stat. Ann. §13011)

STATE	STATE TEACHER LICENSING AUTHORITY
Maryland	Board of Education and Professional Standards and Teacher Education Board set standards and regulations regarding teacher certification (Md. Code Ann., Educ. §6-704) Superintendent of Education issues certificates (Md. Code Ann., Educ. §2-303)
Massachusetts	Board of Education (Mass. Gen. Laws Ann. §38G)
Michigan	Board of Education (Mich. Comp. Laws Ann. §380.1531)
Minnesota	Board of Teaching (Minn. Stat. Ann. §122A.18)
Mississippi	Department of Education, Commission on Teacher and Administrator Education, Certification and Licensure Development recommends standards for licensure to the Department of Education. Department of Education, Office of Educator Licensure issues licenses. (Miss. Code Ann. §37-3-2)
Missouri	Board of Education (Mo. Rev. Stat. §168.021)
Montana	Board of Public Education adopts certification policies. Superintendent of Public Instruction issues certificates. (Mont. Code. Ann. §20-4-103)
Nebraska	Board of Education establishes rules, regulations and procedures regarding the issuance of certificates to teach Commissioner of Education issues certificates (Neb. Rev. Stat. §79-810)
Nevada	Licenses for teachers are granted by the Superintendent of Public Instruction pursuant to regulations adopted by the Commission. (Nev. Rev. Stat. §391.033)
New Hampshire	Board of Education sets qualifications and duties, and the Department of Education, Bureau of Credentialing issues licenses. (N.H. Rev. Stat. Ann. §186:8)
New Jersey	Board of Examiners (N.J. Stat. Ann. §18A:6-38)
New Mexico	Department of Education (N.M. Stat. Ann. §22-10A-3)
New York	Commissioner of Education (N.Y. Educ. Law §3006)
North Carolina	North Carolina Professional Teaching Standards Commission, which is independent of the Board of Education, establishes the standards for teachers and the teaching profession. (N.C. Gen. Stat. §115C-295) Board of Education certifies applicants for teaching positions. (N.C. Gen. Stat. §115C-296)
North Dakota	Education Standards and Practices Board (N.D. Cent. Code §15.1-13-08)

STATE	STATE TEACHER LICENSING AUTHORITY
Ohio	Board of Education (Ohio Rev. Code §3301.07(D))
Oklahoma	Department of Education (Okla. Stat. tit. 70, §3-104(9))
Oregon	Teacher Standards and Practices Commission (Or. Rev. Stat. §342.121)
Pennsylvania	Department of Education, Bureau of School Leadership and Teacher Quality (22 Pa. Code §49.13)
Rhode Island	The Commissioner of Elementary and Secondary Education issues certificates at the direction of the Board of Regents (R.I. Gen. Laws §16-1-5)
South Carolina	Department of Education (S.C. Code Ann. §59-26-30)
South Dakota	Department of Education (S.D. Codified Laws §13-42-4)
Tennessee	Board of Education (Tenn. Code Ann. §49-5-5201)
Texas	State Board for Educator Certification (Tex. Educ. Code §21.033)
Utah	Board of Education (Utah Code Ann. §53A-6-104)
Vermont	Board of Professional Educators establishes standards; Education Commissioner issues licenses (Vt. Stat. Ann. §§1694, 1696)
Virginia	Board of Education (Va. Code Ann. §22.1-298.1)
Washington	Office of Superintendent of Public Instruction (Wash. Rev. Code §28A.300.040)
West Virginia	Superintendent of Schools (W. Va. Code §18A-3-2a)
Wisconsin	Superintendent of Public Instruction (Wis. Stat. Ann. §115.28(7))
Wyoming	Wyoming Professional Teaching Standards Board (Wyo. Stat. Ann. §21-2-802)

