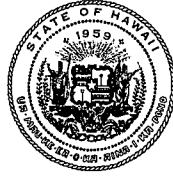


HB 183





LATE

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

Testimony of
Linda L. Smith
Senior Policy Advisor to the Governor

WRITTEN ONLY

Before the
SENATE COMMITTEE ON WAYS AND MEANS
Thursday, April 2, 2009, 9:30 p.m.
Room 211, State Capitol

H.B. 183, HD1, SD1 RELATING TO EDUCATION

Chair Kim, Vice Chair Tsutsui, and members of the Committee:

The Office of the Governor would like to offer amendments to H.B. 183, HD1, SD1. At present, this bill establishes an Advisory Committee to provide oversight of the Hawaii Teacher Standards Board and to provide the Governor with lists of nominees for appointment to the Hawaii Teacher Standards Board, and requires an annual report of the Advisory Committee to the Board of Education and the Legislature. The bill also authorizes the Board to determine how it collects license fees; to adopt, amend, repeal, or suspend its policies and standards; to hire an Executive Director; and to create a data interface network to promote the free interchange of information among public and private Hawaii teacher education institutions and the Department of Education.

The Administration offers amendments that remove the present contents of H.B. 183 and replace them with provisions that would transfer the Hawaii Teacher Standards Board (HTSB) to the Department of Commerce and Consumer Affairs.

The release of the State Auditor's Report No. 09-05 raised serious concerns regarding the Hawaii Teacher Standards Board (HTSB) and its ability to develop, administer, and deliver an effective teacher licensing program. The report recommends transferring the teacher licensure responsibilities of the HTSB to the Board of Education (BOE). We feel an alternative approach to providing additional oversight of the HTSB will benefit both the HTSB and the State.

As an alternative to the current structure, the Administration proposes reestablishing HTSB as a professional licensing operation within the Department of Commerce and Consumer Affairs (DCCA). Currently, DCCA's Professional and Vocational Licensing Division is responsible for 25 professional boards and commissions and 21 licensing

programs. Examples of boards that fall under the purview of DCCA include the Hawaii Medical Board, Board of Pharmacy, Contractors License Board, and the Board of Public Accountancy.

Although the Auditor's report recommended against placement of HTSB in DCCA, we contend that there are key administrative frameworks established within DCCA that may remedy the problems plaguing HTSB. For example, one of the main thrusts of the Auditor's findings was HTSB's lack of rules and procedures. DCCA has a robust administrative hearings process in place that could serve as the framework for the HTSB to conduct appeals and disciplinary proceedings. Also, the audit criticized HTSB's expenditure of funds for an information system. DCCA has a good track record of on-line licensing that makes it easier for clients to apply for and renew licenses.

Additionally, we recommend allowing the Hawaii State PTSA, School Community Councils, Hawaii State Teachers Association, Hawaii Association of Independent Schools, and Charter School Administrative Office to make recommendations for candidates to the HTSB. The teacher licensure program is intended to serve all of the state's educational institutions, and not only Hawaii's regular public schools. Therefore, we should consider the recommendations of these key stakeholders as they are accurate representations of the educational systems of our state. Our suggested amendments provide for this change.

Lastly, the Administration proposes changing the composition of the HTSB by converting one of the six seats designated for teachers to one representative from the business sector. We believe that an individual from the business community will be able to bring a much needed perspective to the HTSB at a time when its management has been called into question.

In order to provide sufficient time to implement this transfer of HTSB to DCCA, as well as adequate notice, we also ask that the effective date of H.B. 183 be amended to January 1, 2010.

In addition, given that a critical aspect of this proposal is having HTSB fit within the existing administrative frameworks established by DCCA for its boards and commissions, both the Administration and DCCA look forward to working closely with the Legislature to refine the details of this legislation.

The Office of the Governor supports this bill with the amendments offered and respectively requests that the Committee pass H.B. 183 with our suggested amendments.

We appreciate the opportunity to provide comments on this legislation.

The amendments are as follows:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

HAWAII TEACHER STANDARDS BOARD

§ -1 **Definitions.** As used in this chapter:

"Board" means the Hawaii teacher standards board.

"Department" means the department of commerce and consumer affairs.

"Emergency hire" means an unlicensed employee of the department of education paid under the salary schedule contained in the unit 5 collective bargaining agreement.

"License" means the document signifying the board's grant of permission to practice the profession of teaching.

"Teacher" means a licensed employee of the department of education paid under the salary schedule contained in the unit 5 collective bargaining agreement.

§ -2 **Hawaii teacher standards board established.** (a)

There is established the Hawaii teacher standards board, which shall be placed within the department of commerce and consumer affairs for administrative purposes only. The board shall consist of thirteen members, including not less than five licensed teachers regularly engaged in teaching, three

educational officers, one representative of the business community, 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; 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. Departments, agencies, and organizations representative of the constituencies of the board shall include, but not be limited to, the Hawaii State Parent, Teacher, Student Association, school community councils, the Hawaii State Teachers Association, the Hawaii Association of Independent Schools, and the charter school administrative office. 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.

§ -3 **Licensing standards; policies.** (a) The board shall establish licensing standards that govern teacher licensing in Hawaii. Licensing standards established by the board shall be adopted as rules under chapter 91 unless otherwise specified in this chapter.

(b) In the development of its standards, the board shall consider the existing teacher applicant pool that is available in the State and the level of the qualification of these applicants, as well as the nature and availability of existing preservice higher education teacher training programs.

(c) The board shall adopt policies, exempt from chapters 91 and 92, to initiate the following:

- (1) Develop 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 when recommended by the superintendent. The department of education shall be responsible for the review and acceptance of the relevant licenses, certificates, or other qualifications related to an individual's vocational, technical, or career pathway education-related experience that the department of education deems necessary for a permit. The department of education shall have the authority to waive the requirement of a bachelor's degree to teach in a vocation, technical, or career pathway education program;
- (2) Develop a plan to accept teachers from any state as long as they have completed state-approved teacher

education programs and pass relevant Hawaii teacher examinations or their equivalent;

- (3) Clarify the requirements, on a state-by-state basis, for out-of-state licensed teachers to obtain a license in Hawaii;
- (4) Develop 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) Pursue full teacher license reciprocity with all other states; and
- (6) Issue a license to a teacher with a valid out-of-state license who has passed similar, though not identical, tests in basic skills, pedagogy, and subject matter to those required for licensure in the State; provided that upon the effective date of the adoption of administrative rules addressing the recognition of out-of-state teacher licenses, those administrative rules shall supersede the requirements of this paragraph.

§ **-4 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 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 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 of education 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.

(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.

§ -5 Powers and duties of the department of education.

The department of education shall retain all of its rights and powers except for the authority provided to the board under this chapter. The department of education's powers and duties under this chapter shall be limited to:

- (1) Hiring, except in emergency situations as described in this chapter, licensed teachers to teach in their fields of licensing;
- (2) Reporting data annually to the board about the supply of, and demand for, teachers, including the identification of shortage areas, out-of-field teaching assignments, numbers of teachers teaching out-of-field, numbers and types of courses and classes taught by out-of-field teachers, and numbers and types of students taught by out-of-field teachers;

- (3) On an emergency and case-by-case basis, hiring unlicensed individuals; provided that:
 - (A) A list of the names, work sites, teaching assignments, and progress toward licensing of these individuals shall be reported to the board and any changes shall be updated on a monthly basis by the department of education;
 - (B) There are no properly licensed teachers for the specific assignments for which the individuals are being hired;
 - (C) No individual may be employed by the department of education on an emergency basis for more than three years. During this time, the individual shall demonstrate active pursuit of licensing in each year of employment; and
 - (D) Notwithstanding subparagraph (3)(C), unlicensed individuals who have been hired on an emergency basis prior to July 1, 2008, shall attain licensure no later than four years from the date of their employment;
- (4) Submitting an annual report to the board documenting:
 - (A) The number of emergency hires by subject matter areas and by schools;

- (B) The reasons and duration of employment for the emergency hiring enumerated in subparagraph (A);
 - (C) Individual progress toward licensing; and
 - (D) The department of education's efforts to address the shortages described in subparagraph (A); and
- (5) Providing any other information requested by the board that is pertinent to its powers and duties.

§ **-6 Teachers; license required; renewals.** 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 chapter. All licenses issued by the board shall be valid only for the fields 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.

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

§ -7 **Approval of teacher education programs; professional development of teachers.** The board shall be responsible for approving teacher education programs that meet the standards established by the board. The board may engage in efforts relating to the improvement of instruction through teacher education and professional development, and to attract qualified candidates for teacher training from among the high school graduates of the State.

§ -8 **Efforts related to teacher quality.** (a) The board may participate in efforts relating to issues affecting teacher quality. The board may conduct professional development activities related to its standards, and shall promote and support high teacher standards and accomplished teaching through means deemed appropriate by the board.

(b) To remain current with trends and issues in teacher licensure systems, beginning teacher programs, the assessment of teaching skills, teacher development, and other related topics, the board shall participate in programs and attend conferences and training that address these topics. The board may conduct

research and development activities for the purpose of staying abreast of or better understanding these trends and issues.

§ -9 Hawaii teacher standards board special fund.

There is established within the state treasury a special fund to be known as the Hawaii teacher standards board special fund, into which shall be deposited all moneys received by the board in the form of appropriations, fees, fines, grants, donations, or revenues regardless of their source. The special fund shall be administered by the department and used to pay the expenses of the board, including but not limited to the payment of all operational and personnel costs, and reimbursements to board members for travel expenses incurred.

§ -10 Refusal, suspension, revocation, and reinstatement of licenses. (a) The board shall serve as the final adjudicator for appeals relating to licensing, including the issuance or nonissuance of licenses, and the suspension, nonrenewal, and revocation of licenses.

(b) The board shall establish procedures for the conduct of proceedings for the consideration of requests filed with the board. In every case to revoke or suspend a license, the board shall give the person concerned written notice that a request has been filed with the board. The board shall conduct a hearing in conformity with chapter 91, and shall provide for

confidentiality of the proceedings to protect the parties. In all proceedings before it, the board may administer oaths, compel the attendance of witnesses and production of documentary evidence, and examine witnesses. In case of disobedience by any person to any order of the board or to any subpoena issued by the board, or the refusal of any witness to testify to any matter that the person may be questioned lawfully, any circuit judge, on application of the board or a member thereof, shall compel obedience in the case of disobedience of the requirements of a subpoena issued by a circuit court or a refusal to testify.

(c) Any applicant who has been refused a license, or any licensee whose license has been suspended or revoked, shall have the right to appeal the board's decision to the circuit court of the circuit in which the applicant or licensee resides in the manner provided in chapter 91; provided that out-of-state resident applicants shall file their appeals in the first circuit court.

(d) Upon revocation of a license, the board may disclose the name, birthdate, social security number, and any other pertinent information about the former holder of the license:

- (1) To the department of education or the department of commerce and consumer affairs; and
- (2) For the purpose of exchanging information under chapter 315 with other national or state teacher

certification agencies about school personnel who have had licenses revoked.

(e) The board shall not renew or reinstate, or shall deny or suspend any license or application, if the board has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract that financed the licensee's or applicant's education, or has failed to comply with a repayment plan.

The board in receipt of a certification pursuant to chapter 436C shall, as applicable, and without further review or hearing:

- (1) Suspend the license;
 - (2) Deny the application or request for renewal of the license; or
 - (3) Deny the request for reinstatement of the license,
- and unless otherwise provided by law, shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity.

§ -11 **Penalty.** Any person who engages in the profession of teaching in a public school without first being issued a license or hired on an emergency basis as defined in this chapter shall be fined not more than \$500. Any person who

knowingly or intentionally violates this chapter by employing an individual as a public school teacher who does not possess a valid license or is not a department of education emergency hire as defined in this chapter may be fined not more than \$500. All fines shall be deposited into the Hawaii teacher standards board special fund."

SECTION 2. Section 302A-410, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Beginning with the 1997-1998 school year, this section shall be interpreted as though the term "certification" read "licensing", as the term is used in [~~part III, subpart D,~~] chapter _____, and as circumstances require."

SECTION 3. Section 302A-501, Hawaii Revised Statutes, is amended to read as follows:

"§302A-501 Definitions. [~~(a)~~] For the purposes of sections 302A-602 to 302A-612, "school" includes every academic and noncollege type of school under governmental supervision.

~~[(b) For the purposes of subpart D:~~

~~—"Board" means the Hawaii teacher standards board.~~

~~—"Emergency hire" means an unlicensed employee of the department paid under the salary schedule contained in the unit 5 collective bargaining agreement.~~

~~—"License" means the document signifying the board's grant of permission to practice the profession of teaching.~~

~~"Teacher" means a licensed employee of the department paid under the salary schedule contained in the unit 5 collective bargaining agreement.]"~~

SECTION 4. Section 302A-602, Hawaii Revised Statutes, is amended to read as follows:

"§302A-602 Teachers; licenses and certificates. (a) No person shall serve as a teacher in the department without first having obtained a license from the Hawaii teacher standards board in such form as the Hawaii teacher standards board determines. The department shall establish types of certificates in the educational field and the requirements to qualify for those certificates issued to individuals who are not required to obtain a license pursuant to ~~[sections 302A-801 to 302A-808.]~~ chapter _____.

(b) Beginning with the 2002-2003 school year, no person paid under the salary schedule contained in the unit 5 collective bargaining agreement shall serve as a teacher in the department without first having obtained a license pursuant to ~~[sections 302A-801 to 302A-808]~~ chapter _____ from the Hawaii teacher standards board in such form as the Hawaii teacher standards board determines.

(c) Beginning with the 2002-2003 school year, the department may employ unlicensed individuals as emergency hires pursuant to ~~[sections 302A-801 to 302A-808.]~~ chapter _____."

SECTION 5. Section 302A-602.5, Hawaii Revised Statutes, is amended to read as follows:

"§302A-602.5 Certificates; revocation. The department may revoke any certificate after its issuance if the certificate holder does not possess the requisite qualifications. For the purposes of this section, the term "certificate" does not include a license issued by the Hawaii teacher standards board pursuant to [~~part III, subpart D.~~] chapter _____."

SECTION 6. Section 302A-603, Hawaii Revised Statutes, is amended to read as follows:

"§302A-603 Teaching without certificates or licenses; penalty. (a) Except as otherwise provided, before the 1997-1998 school year, whoever serves in the department as a teacher without holding an unrevoked certificate issued under sections 302A-602 to 302A-640, and 302A-701, shall be fined not more than \$25.

(b) Beginning with the 1997-1998 school year, whoever serves in the department as a teacher, paid under the salary schedule contained in the unit 5 collective bargaining agreement, without holding an unrevoked or unsuspended license or credential issued under [~~sections 302A-801 to 302A-808,~~] chapter _____, shall be fined not more than \$500.

(c) Beginning with the 2002-2003 school year, an individual paid under the salary schedule contained in the unit

5 collective bargaining agreement, without holding an unrevoked license issued under [~~sections 302A-801 to 302A-808,~~] chapter , shall be fined not more than \$500.

(d) Beginning with the 2002-2003 school year, emergency hires shall not be subject to this penalty."

SECTION 7. Section 302A-610, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) Beginning with the 2002-2003 school year, this section shall be interpreted as though the term "certificated" read "licensed" as the latter term is used in [~~subpart D,~~] chapter , and as circumstances require."

SECTION 8. Section 302A-616, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Beginning with the 2002-2003 school year, this section shall be interpreted as though the term "certificate" read "license", as the latter terms are used in [~~subpart D,~~] chapter , and as circumstances require."

SECTION 9. Section 302A-618, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Beginning with the 2002-2003 school year, this section shall be interpreted as though the terms "certification" and "certificate" read "licensing" and "license", as the latter terms are used in [~~subpart D,~~] chapter , and as circumstances require."

SECTION 10. Chapter 302A, part III, Subpart D, Hawaii Revised Statutes, is repealed.

Section 11. The permanent full-time equivalent (FTE) positions in the Hawaii teacher standards board are hereby transferred from the department of education to the department of commerce and consumer affairs to carry out the purposes of this Act. All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act.

In the event that an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the director of human resources development.

All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the agencies, divisions, or offices transferred or placed for administrative purposes under this Act relating to the functions transferred to the department of commerce and consumer affairs shall be transferred with the functions to which they relate.

All rules, policies, procedures, guidelines, and other material adopted or developed by the agencies, divisions, or offices transferred or placed for administrative purposes under this Act, shall remain in full force and effect until amended or repealed by the Hawaii teacher standards board or the department of commerce and consumer affairs pursuant to chapter 91, Hawaii Revised Statutes.

All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the agencies, divisions, or offices transferred or placed for administrative purposes with the department of commerce and consumer affairs by this Act, shall remain in full force and effect.

The provisions of this section are to be liberally construed to effectuate its purposes.

SECTION 12. All acts passed by the legislature during this regular session of 2009, whether enacted before or after the

effective date of this Act, shall be amended to conform to this Act unless such acts specifically provide that this Act is being amended.

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect on January 1, 2010.