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# Report on the Implementation of State Auditor's 2009 Recommendations

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A Report to the  
Governor  
and the  
Legislature of  
the State of  
Hawai'i

Report No. 12-06  
August 2012



**THE AUDITOR**  
STATE OF HAWAI'I

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## Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawai'i State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. Financial audits attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. Management audits, which are also referred to as performance audits, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called program audits, when they focus on whether programs are attaining the objectives and results expected of them, and operations audits, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. Sunset evaluations evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
4. Sunrise analyses are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.
5. Health insurance analyses examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.
6. Analyses of proposed special funds and existing trust and revolving funds determine if proposals to establish these funds are existing funds meet legislative criteria.
7. Procurement compliance audits and other procurement-related monitoring assist the Legislature in overseeing government procurement practices.
8. Fiscal accountability reports analyze expenditures by the state Department of Education in various areas.
9. Special studies respond to requests from both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

Hawai'i's laws provide the Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.



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**“I am flabbergasted  
to learn that  
this was never  
addressed.”**

*– Deputy attorney general  
for Hawai'i Teacher  
Standards Board when  
told that the contractor  
refused to return  
teachers' confidential  
personal information.*

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*Less than half of 2009 recommendations have been implemented;  
public school teachers' personal information at risk*

To ensure agency accountability over audit recommendations, the 2008 Legislature amended the Auditor's governing statute to require follow-up reporting on recommendations made in various audit reports. The purpose of this change was to apprise the Legislature of recommendations not implemented by audited agencies. Section 23-7.5, Hawai'i Revised Statutes, now requires the Auditor to report to the Legislature annually on each audit recommendation more than one-year old that has not been implemented by the audited agency.

The review focused on the departments' implementation of audit recommendations made in calendar year 2009. We conducted interviews with department personnel, board members, and various advisory board/counsels, as applicable. We reviewed pertinent policies and procedures, reports, and other documents to assess management's claims regarding audit implementations. We conducted site visits to observe processes in place.

We found that of the 92 recommendations made in 2009, 39 (42 percent) were implemented and deemed closed. Seven recommendations (8 percent) remain open and 23 (25 percent) are open but in the process of implementation. We also determined that six recommendations (6 percent) are open and not likely to be pursued and eight recommendations (9 percent) are no longer applicable. We did not assess the implementation of nine recommendations (10 percent).

## ***Management and Financial Audit of Hawai'i Tourism Authority's Major Contracts, Report No. 09-02***

In our 2009 audit, we found that the Hawai'i Tourism Authority's (HTA) year-to-year approach to planning and program implementation hindered its ability to strategically manage the long-term growth of the state's visitor industry. In addition, we found that the authority did not have a functional strategic plan of its own to serve as a roadmap for the organization. The agency also lacked performance goals and targets for both its contractors and itself. Lastly, the agency's reports, which focused on actual spending compared with budgeted amounts, provided no indication of progress toward planned outcomes or measurable results.

In our follow-up effort, we found that the HTA has developed a new strategic plan, which it used to establish key performance indicators that measure the performance of its marketing contractors. The contractors, in turn, are required to provide monthly, quarterly, and annual reports detailing their results. However, we found that while HTA produces extensive information on the economic performance of the visitor industry in general, it has not established agency targets nor reported on its own performance towards achieving its goals. Moreover, we could not discern from our review of agency documents how well HTA is achieving its goal to optimize benefits that integrate visitors', the community's, and the visitor industry's interests. We found that the agency commissions reports and gathers data relevant to such a determination, but does minimal analysis and reporting of it.

## ***Procurement Audit of the Department of Education: Part 1 and Part 2, Report No. 09-03 and Report No. 09-04***

In part 1 of our report, we found no evidence that the department has the mechanisms and functions to monitor and review procurement compliance on a regular basis. Even though our audit was based on a relatively small sample size, we uncovered numerous instances of non-compliance and violations of procurement rules and regulations. In addition to the high volume of violations, we also identified several risk factors and indications of potential fraud, which compelled us to expand the scope of our work. We issued a separate report presenting the results of that expanded work.

Part 2 of our report revealed an organizational culture of disregard for procurement rules in the Office of School Facilities and Support Services (OSFSS). That culture had allowed office directors,



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**“The worst I’ve  
seen in my career.”**

*– The state chief  
information officer  
commenting on Hawai'i  
state government's  
management structure for  
information technology.*

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managers, and staff to believe they had the discretion to unilaterally determine whether compliance with procurement laws and rules was in the best interest of the department. As a result, non-compliant procurement practices were tolerated and, more importantly, unethical and possibly fraudulent behavior has been allowed to thrive.

The response to our audit was swift: the then-superintendent returned procurement authority for construction projects to the Procurement and Contracts Branch. However, five months after the then-superintendent rescinded OSFSS's procurement authority, the then-deputy superintendent restored it. In addition, despite the findings of our audits and its own independent investigator, the department did not take strong disciplinary measures against two of the three OSFSS employees who were found to have committed multiple procurement violations.

Today, two of the employees remain in their same jobs as heads of their respective OSFSS branches, which have been given even greater procurement authority with greatly reduced, if any, oversight by the Procurement and Contracts Branch. As a result, the risk of ethical misconduct in the OSFSS remains high, which creates a perception that the department has done little to address the issues.

### ***Study on the Appropriate Accountability Structure of the Hawai'i Teacher Standards Board, Report No. 09-05***

Our study found that the board failed to develop, administer, and deliver a professional teacher licensing program, its core function as a licensing agency. We found little evidence that licensing by the board ensured quality teaching and sufficiently served the interests of teachers and students to warrant its continuation. We concluded that the laws governing the board should be repealed and the responsibility for teacher licensure be transferred to the Board of Education.

In our follow-up effort, we found that the board has addressed operational issues highlighted in our audit report. The board's focus on its duty of setting teacher performance standards and serving as a licensing agency has led to noticeable improvement. These efforts have resulted in the board achieving its primary function—developing and administering a professional teacher licensure program for the teachers of Hawai'i. However, unresolved issues with a former contractor may have severe consequences for the board and public school teachers. Most serious of these was a refusal by the contractor to return confidential personal information of public school teachers licensed by the board from 2003 through 2008. The board's inability to retrieve this data exposes teachers to significant risk.

### ***Audit of the State of Hawai'i's Information Technology: Who's in Charge? Report No.09-06***

In our original report, we found an information technology (IT) governance structure that was bereft of effective leadership and coherent direction. In addition to confusion over roles, responsibilities, and lines of authority, the system was overseen by a part-time chief information officer (CIO) who lacked the commitment, time, and authority necessary to manage the government-wide system.

In our follow-up effort, we found that the Legislature and the governor's office have done much to establish a new IT infrastructure. However, we also found that the fundamental issues regarding the CIO's authority to implement and manage statewide initiatives have yet to be addressed. At this time, the scope of the CIO's authority does not extend beyond his own office and support staff of six. Therefore, the question of who is in charge of IT governance in Hawai'i remains unanswered.

### ***Investigation of the Procurement and Expenditure Practices of the Department of Business, Economic Development and Tourism and Selected Attached Agencies, Report No.09-07***

Our audit report, released in April 2009, revealed an organizational culture unconcerned with the directives of the Legislature and unconvinced of the importance of the Hawai'i Public Procurement Code. Department leadership was lacking, with a “tone at the top” that placed emphasis on expediency over accountability. Moreover, there were no assurances that policies and procedures were in place.

In our follow-up of the report's recommendations, we found that the department no longer uses appropriation transfer authority to fund projects denied by the Legislature and has discontinued funding of prior projects funded in this manner. In addition, the director enforces the rules, policies, and procedures of the Procurement Code by having division heads and executive directors sign an annual Procurement Delegation Agreement. The department also conducts internal audits to ensure compliance with the code.

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Submitted by

**THE AUDITOR**  
STATE OF HAWAI'I

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August 2012

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## Foreword

This is a report on the follow-up review of the implementation of audit recommendations made to various entities in calendar year 2009. We conducted the follow-up pursuant to Section 23-7.5, Hawai‘i Revised Statutes, which requires the Auditor to report to the Legislature on each recommendation that the Auditor has made that is more than one year old and that has not been implemented by the audited agency.

We wish to express our appreciation for the cooperation and assistance extended to us by the Hawai‘i Tourism Authority, Board of Education, Department of Education, Hawai‘i Teacher Standards Board, Office of the Governor, Department of Accounting and General Services, Department of Business, Economic Development and Tourism, and others whom we contacted during the course of the follow-up review.

Marion M. Higa  
State Auditor

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# Chapter 1

## Introduction

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To ensure agency accountability over audit recommendations, the 2008 Legislature amended the Auditor's governing statute to require follow-up reporting on recommendations made in various audit reports. The purpose of this change was to apprise the Legislature of recommendations not implemented by audited agencies. Section 23-7.5, Hawai'i Revised Statutes (HRS), now requires the Auditor to report to the Legislature annually on each audit recommendation more than one year old that has not been implemented by the audited agency.

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### Legislative Request

The 2008 Legislature intended to provide itself with greater oversight over the implementation of audit recommendations. Act 36, Session Laws of Hawai'i (SLH) 2008, was modeled after a 2006 California law which enabled legislators to use agencies' claims of progress against audit recommendations in their budget discussions.

The Hawai'i Legislature requested the Auditor to report annually, for each unimplemented recommendation: 1) the agency that was audited; 2) the title and number of the audit report that contained the recommendation; 3) a brief description of the recommendation; 4) the date the audit report was issued; and 5) the most recent explanation provided by the agency to the Auditor regarding the status of the recommendation.

In addition, agencies notified by the Auditor that a recommendation is not considered implemented must submit a written report to the Auditor, the Senate president, and the Speaker of the House of Representatives. This written report must be submitted within 30 days of being notified by the Auditor. The report must also include an explanation of why the recommendation was not implemented and the estimated date when the recommendation will be implemented.

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### Objectives of the Review

1. Validate claims made by departments regarding implemented audit recommendations.
2. Report to the Legislature on audit recommendations not yet implemented.

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## Criteria

We relied on Chapter 23, *Auditor*, HRS; *GAO-07-731G Government Auditing Standards*, U.S. Government Accountability Office (GAO), December 2011 Revision; and *How to Get Action on Audit Recommendations*, U.S. General Accounting Office, July 1991 in the conduct of our review.

The GAO's criteria were especially useful for our purposes, since the GAO also reports on the status of recommendations that have not been fully implemented. The GAO's reports are intended to "help congressional and agency leaders determine the actions necessary to implement the open recommendations so that desired improvements to government operations can be achieved." In particular, the GAO reports on whether:

- Monitoring and follow-up are done by staff members responsible for, and knowledgeable about, the recommendation;
- Each recommendation is followed up on an ongoing basis, with at least semi-annual updates, and an individual recommendation follow-up plan is developed for each assignment; and
- Results intended by each recommendation and the benefits expected from its implementation are defined as a basis for determining the adequacy of implementation.

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## Scope and Methodology

We based our scope and methodology on GAO's guidelines in *How to Get Action on Audit Recommendations* (1991). According to the GAO, saving tax dollars, improving programs and operations, and providing better service to the public represent audit work's "bottom line." Recommendations are the vehicles by which these objectives are sought. However, it is action on recommendations—not the recommendations themselves—that helps government work better at less cost. Effective follow-up is essential to realizing the full benefits of audit work.

Our review focused on departments' implementation of our prior reports' audit recommendations. We conducted interviews with department personnel, board members, legislators, and contractors. We reviewed relevant statutes and rules, policies and procedures, reports, and other documents to assess management's claims regarding audit implementations. We conducted site visits to observe processes in place. Our review focused on audit reports issued in calendar year 2009.

Our review was conducted between January 2012 and March 2012. We followed standard office procedures for conducting audits, pursuant

to the Office of the Auditor's *Manual of Guides*, and also followed generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings, and conclusions based on our objectives. We believe the evidence we obtained provided a reasonable basis for our conclusions based on our review objectives.

### ***Determining progress***

The rate of progress of a recommendation's implementation depends on the type of recommendation. While some fall fully within the purview of the audited agency and can be addressed relatively quickly, others may deal with complex problems and involve multiple agencies, resulting in a long implementation period. Therefore, ample time should be afforded to agencies implementing recommendations in order for a follow-up system to be useful and relevant. In addition, the GAO has found that action on recommendations usually occurs within the first three years. After that time, few recommendations are implemented.

With those observations in mind, we decided that an active follow-up effort would be most effective and relevant if conducted three years after publication of an initial audit report. Too short an interval between audit report and follow-up might not give agencies enough time to implement a complex recommendation; too long a period might allow agencies to lose valuable personnel and institutional knowledge needed to conduct an adequate follow-up.

Eleven reports were issued in 2009. These include a study related to mandatory health insurance coverage; a study on the appropriate structure of the Hawai'i Teacher Standards Board; two reviews of revolving funds, trust funds, and trust accounts; and various reviews and audits. Because the recommendations made in our mandatory health insurance coverage report and our revolving funds, trust funds, and trust accounts reports relate to specific legislation rather than operations of agencies and/or departments, we conclude that Act 36 does not apply to these reports. In addition, two of the reports cover a review and audit of the Office of Hawaiian Affairs, which our office is obliged to audit again in 2013; we have therefore elected to consolidate both our 2009 follow-up and 2013 efforts at that time. After excluding the above reports, we were left with the following six 2009 reports to review for audit recommendation implementation:

1. Report No. 09-02, *Management and Financial Audit of the Hawai'i Tourism Authority's Major Contracts*
2. Report No. 09-03, *Procurement Audit of the Department of Education: Part 1*

3. Report No. 09-04, *Procurement Audit of the Department of Education: Part 2*
4. Report No. 09-05, *Study on the Appropriate Accountability Structure of the Hawai'i Teacher Standards Board*
5. Report No. 09-06, *Audit of the State of Hawai'i's Information Technology: Who's in Charge?*
6. Report No. 09-07, *Investigation of the Procurement and Expenditure Practices of the Department of Business, Economic Development & Tourism and Selected Attached Agencies*

Similar to our original efforts in 2009, our review procedures included interviews with selected administrators, managers, and staff from the respective agencies. We examined the various agencies' policies, procedures, and relevant documents and records to assess and evaluate whether agencies' actions adequately fulfilled our recommendations. Our review efforts were limited to the inquiry, testing, and reporting on implementation of recommendations made in the above-mentioned reports. We did not explore new issues or revisit old ones that did not relate to our original recommendations. Site visits and observations were conducted as needed to achieve our objectives.

### **Identifying key recommendations**

The extent of work done to verify implementation depends on the significance of individual recommendations. For instance, GAO notes that while all audit recommendations should be aggressively pursued, some recommendations are so significant that added steps are needed to implement them. The significance of a recommendation depends on the subject matter and specific situation to which it applies. Significance can be assessed in terms of dollars; however, dollars are only one measure, and not necessarily the most important one. For instance, recommendations to ensure safe operations often take precedence, since their implementation could prevent the loss of life, substantial bodily injury, or environmental contamination.

### **Closing recommendations**

In accordance with GAO guidelines, we considered recommendations "closed" for the following reasons:

- The recommendation was effectively implemented;

- An alternative action was taken that achieved the intended results;
- The recommendation was not implemented despite the use of all feasible strategies.

**Definition of terms**

*Closed:* Recommendation has been addressed and/or implemented.

*Open:* Work on the recommendation has not started, or cannot start because a precursor event has not occurred.

*Open but in progress:* The agency has taken action, but implementation of the recommendation is not complete.

*Open and likely not to be pursued:* The agency has no intention of pursuing implementation of the recommendation.

*Not applicable:* Recommendation is no longer applicable.

*Did not assess:* Did not assess implementation of the recommendation.

**Summary of recommendations**

Our review covered a total of 92 recommendations and sub-recommendations. Thirty-nine of these were closed (42 percent), seven were open (8 percent), 23 were open but in progress (25 percent), six were open and likely not to be pursued (6 percent), eight were not applicable (9 percent) and nine were not assessed (10 percent). Our report details each recommendation, its status, and actions taken related to the recommendation. Exhibit 1.1 lists the reports reviewed and the recommendations' status.

**Exhibit 1.1**  
**Reports Reviewed and Recommendation Status**

Report No.	Report Name	Status of Recommendation						Total
		Closed	Open	Open but in progress	Open and likely not to be pursued	Not applicable	Did not assess	
09-02	<i>Management and Financial Audit of Hawai'i Tourism Authority's Major Contracts</i>							
	Board of Directors	1		2				3
	Hawai'i Tourism Authority	4		3				7
09-03	<i>Procurement Audit of the Department of Education: Part 1</i>							
	Board of Education	3						3
	Superintendent of Education	6						6
09-04	<i>Procurement Audit of the Department of Education: Part 2</i>							
	Superintendent of Education	11		2	6		4	23
09-05	<i>Study on the Appropriate Accountability Structure of the Hawai'i Teacher Standards Board</i>							
	Legislature	1				6		7
09-06	<i>Audit of the State of Hawai'i's Information Technology: Who's in Charge?</i>							
	Governor	3		1				4
	Legislature	4		2				6
	Chief Information Officer	1	1	7				9
	Information Technology Steering Committee		6	4				10
	Information and Communication Services Division						5	5
09-07	<i>Investigation of the Procurement and Expenditure Practices of the Department of Business, Economic Development &amp; Tourism and Selected Attached Agencies</i>							
	Department of Business, Economic Development & Tourism	5		2				7
	Legislature					2		2
	<b>TOTAL</b>	<b>39</b>	<b>7</b>	<b>23</b>	<b>6</b>	<b>8</b>	<b>9</b>	<b>92</b>
	<b>Percent of Total</b>	<b>42%</b>	<b>8%</b>	<b>25%</b>	<b>6%</b>	<b>9%</b>	<b>10%</b>	<b>100%</b>

Source: Office of the Auditor

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# Chapter 2

## While the Hawai‘i Tourism Authority Reports on Key Performance Indicators for Its Contractors, It Has Not Done So for Itself

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*Our Management and Financial Audit of Hawai‘i Tourism Authority’s Major Contracts*, Report No. 09-02, released in January 2009, found that the Hawai‘i Tourism Authority’s (HTA) year-to-year approach to planning and program implementation hindered its ability to strategically manage the long-term growth of the State’s visitor industry. In addition, we found that the authority did not have a functional strategic plan of its own to serve as a roadmap for the organization. The authority also lacked performance goals and targets for both its contractors and itself. Lastly, the authority’s reports, which focused on actual spending compared with budgeted amounts, provided no indication of progress toward planned outcomes or measurable results.

Since our audit report’s release, HTA has taken steps to address many of these deficiencies. For example, HTA has developed a new strategic plan, which it implemented in December 2009. Considered the agency’s key document, or “bible,” the goal of the plan is to “optimize benefits for Hawai‘i that integrates [sic] the interests of visitors, the community, and the visitor industry.” Using the plan, the authority has established key performance indicators which it uses to measure the performance of its marketing contractors. The contractors, in turn, are required to provide monthly, quarterly, and annual reports detailing their results.

In addition, HTA has undergone an extensive reorganization, designed to increase organizational efficiency and accountability. The authority has also absorbed operations of the Department of Business, Economic Development and Tourism’s Tourism Research and Statistics Program, which has enabled it to collect, analyze, and disseminate visitor data to industry stakeholders. The HTA’s president and chief executive officer (CEO) said that these and other changes have resulted in “a more strategic, knowledge-based tourism authority that follows a best-practices approach.”

However, we found that while HTA produces extensive information on the economic performance of the visitor industry in general, it has not established agency targets nor reported on its own performance towards achieving its goals. Moreover, we could not discern from our review of agency documents how well HTA is achieving its overarching goal to optimize benefits that integrate visitors’, the community’s, and the visitor

industry's interests. We found that the authority commissions reports and gathers data (visitor satisfaction and resident sentiment surveys) relevant to such a determination, but does minimal analysis and reporting of it.

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## Background

The tourism agency's mission is to "strategically manage Hawai'i tourism in a sustainable manner consistent with our economic goals, cultural values, preservation of natural resources, community desires and visitor industry needs." The authority is governed by a 12-member policy-making board of directors, which oversees the agency's responsibilities in promoting, marketing, and developing the tourism industry in the state. The board is also responsible for developing a long-range strategic plan for tourism in Hawai'i as well as preparing a report to the governor and the Legislature of HTA's expenditures, including descriptions and evaluations of programs funded.

Originally, HTA was required to report on how its marketing plan resulted in directly attributable benefits for the tourism industry, employment in Hawai'i, state taxes, and the State's lesser known and underused destinations. Through Act 102 of the 2010 legislative session, HTA's statutes were amended to require it to report instead the progress of its efforts against the goals of its strategic plan. The HTA's president/CEO testified in support of the change, on the grounds that measuring and documenting benefits directly attributable to the marketing plan is difficult to do.

### ***The HTA developed and is monitoring specific performance indicators and targets for its marketing contractors***

In response to our recommendations in Report No. 09-02, the HTA board of directors developed the *Hawai'i Tourism Authority Strategic Plan: 2010–2012*. Approved in December 2009, 11 months after our audit report was published, the plan provides expected economic targets that focus on visitor arrivals and visitor spending: e.g., visitor arrivals, per-person-per-day visitor expenditures, and total statewide economic impact. In turn, HTA established key performance indicators by which effectiveness of the services and performance of its marketing contractors are measured. The authority also established targets for seven key performance indicator categories that it outlined in its contracts: 1) total expenditures; 2) per-person-per-day visitor spending; 3) visitor arrivals; 4) average length of stay; and 5) number of visitor days; 6) island distribution; and 7) air seats. We found these key performance indicators and targets in multiple agency documents including the 2011 Japan marketing request for proposals and contract, the 2011 annual tourism marketing plans for Japan and North America, and the 2011 contractor performance evaluations.



***The HTA's "annual deliverables" or annual goals lack specifics***

Our audit found the HTA lacks performance goals and targets that can be compared to actual accomplishments, and its reports provide no indication of progress toward planned outcomes or measurable results. As we pointed out in 2009, government managers are responsible for providing reliable, useful, and timely information to stakeholders, including legislators and the general public, to demonstrate that public resources have been used properly. In addition, there should be evidence that the government agency has achieved its objectives and desired outcomes, and that services were effectively and efficiently provided.

The *HTA Strategic Plan: 2010-2012* established multiple "annual deliverables," or annual goals, to indicate how well the agency is carrying out its mission. However, we found that unlike the requirements for its contractors, HTA's annual deliverables lack detail and measures necessary to determine the effectiveness of its efforts. For example, an HTA FY2012 operations goal is to "[e]nhance the quantity and quality of tourism information distributed through the comprehensive communications system." The language is vague and non-specific. It is not clear what outcomes would constitute an enhancement of the authority's tourism information. In addition, the goal provides no baseline against which performance can be compared. For example, what is the quality and quantity of information that the authority currently produces? Without these specifics, agency performance can neither be tracked nor assessed.

***The HTA does not report on key measures of success to the Legislature***

The HTA has a plethora of market information at its disposal. It either commissions or produces such reports as the *Resident Sentiment Survey*, *Hawai'i Tourism Industry Facts & Figures*, *HTA Annual Report*, *Visitor Satisfaction and Activity Report*, and the "dashboard," an internal document distributed to board members during their meetings.

According to its strategic plan, the HTA is required to report on four high-level measures of success in its annual legislative report. These measures provide indicators of the overall health of Hawai'i's visitor industry. They are:

- Resident Sentiment Survey;
- Report on Tax Receipts;
- Visitor Expenditure Study; and
- Visitor Satisfaction Survey.

While the 2010 and 2011 HTA annual reports to the Legislature include select data on the economic performance of the visitor industry as a whole, including tax revenues and visitor expenditures, they do not mention resident sentiment or visitor satisfaction data as required. According to the HTA, the resident sentiment survey is compiled and published every two years. The last report was issued in January 2011 and covered calendar year 2010. The visitor satisfaction survey is prepared and reported quarterly and annually to the board. In addition, these reports, which do not contain any agency targets, do not report HTA's progress in achieving its strategic goal "to optimize benefits for Hawai'i that integrates [sic] the interests of visitors, the community and the visitor industry."

Of the agency publications, only the dashboard compares current visitor industry data against targets. However, the dashboard is also incomplete, since it reports on the performance of the visitor industry in general. It does not report data in the context of specific authority initiatives or programs and therefore cannot be considered a measurement of authority performance. An example of the dashboard can be found at Exhibit 2.1.

Furthermore, the dashboard does not fully report on the plan's performance indicators as presented in the *HTA Strategic Plan: 2010-2013*. The plan lists eight performance indicators; however, the dashboard reports progress on only one of the eight—visitor spending. Missing is progress on other indicators such as visitor satisfaction, resident sentiments, number of jobs, tax revenues, and return on investment. As a result, the HTA fails to demonstrate how well it is carrying out its mission to integrate the interests of visitors, the community, and the visitor industry.

We conclude that without measurable outcomes for the other seven performance indicators, it is impossible to evaluate HTA's success in its financial performance, customer satisfaction, and operational efficiency in performing its role as the State's lead agency for tourism. The Hawai'i Tourism Authority is a public agency, responsible for spending public money for the public good. As such, it has an obligation to provide reliable, useful, and timely information to stakeholders, including legislators and the general public, to demonstrate that public resources are used properly. The HTA president/CEO has acknowledged that HTA has not been able to implement all of our 2009 recommendations, but he expressed confidence that the recommendations will be fully executed in the next 12 months.

Exhibit 2.1  
Dashboard

HTA Key Performance Indicators Dashboard

**REVISED**  
02/22/12 Tab #4



\* Excludes Supplemental Business Expenditures

Source: Hawai'i Tourism Authority

## Status of Recommendations Made in the Management and Financial Audit of Hawai'i Tourism Authority's Major Contracts

Report No. 09-02 included two multi-part recommendations to both the HTA Board of Directors and the Hawai'i Tourism Authority.

### Recommendations to the HTA Board of Directors

We made a three-part recommendation to the HTA Board of Directors that focused on the board's lack of leadership in defining the strategic marketing directions and expected outcomes under their strategic plan; in incorporating quantifiable goals, objectives, and measures as a basis for evaluations; and in reporting its achievements in terms of these goals. In our follow-up effort, we found that the authority developed and implemented a new strategic plan, which it used to establish key performance indicators that measure the performance of its marketing contractors. Therefore, we deem recommendation No. 1a **Closed**. However, we conclude that while HTA produces extensive information on the economic performance of the visitor industry in general, it has not established agency targets nor reported its own performance towards achieving its goals and has not addressed audit recommendation No. 1b and No. 1c. Therefore, we deem both of them **Open but in progress**.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
<b>Recommendations to the HTA Board of Directors</b>			
(1) The HTA Board of Directors should provide the leadership needed to ensure that the authority:			
(1a) Develops an action plan that provides stakeholders with a clear picture of its strategic marketing directions and expected outcomes under the Hawai'i Tourism Strategic Plan;	The HTA board no longer has a functional strategic plan of its own and has no long-term strategies to fulfill the goals of the Hawai'i Tourism Strategic Plan: 2005–2015.	<b>Closed</b>	The HTA board approved the HTA Strategic Plan: 2010–2012, and an updated HTA Strategic Plan: 2010–2013. In 2010, the HTA statutes were amended whereby HTA would measure its effectiveness on achieving its HTA strategic plan goals.
(1b) To the extent possible, incorporates quantifiable goals, objectives, and measures as a basis for objective evaluations and accountability for its achievements; and	The authority lacks performance goals and targets that can be compared against actual accomplishments.	<b>Open but in progress</b>	The HTA plan includes eight plan performance indicators and 34 annual deliverables that can be used to evaluate HTA's achievements. However, the quantifiable targets are limited to only one plan performance indicator—visitor spending. There are no targets for the annual deliverables.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
(1c) Reports its achievements in terms of its success in meeting planned outcomes, using benchmarks and performance measures to the extent feasible.	The HTA contends that its strategic directives are achieved through its annual budgetary process. However, these one-year spending plans provide no details on the long-term growth and development of Hawai'i's tourism industry.	<b>Open but in progress</b>	Our review of the two external reports found that these reports do not provide any update on HTA achievements in terms of success in meeting planned outcomes as no outcomes or targets are stated. Rather, the numbers are presented by themselves or through trends in the form of year-over-year results.

**Recommendations to the Hawai'i Tourism Authority**

There was a seven-part recommendation directed to the Hawai'i Tourism Authority. The recommendation focused on developing objectively measurable deliverables, outcomes, and performance indicators in its strategic plans and contracts. We suggested that the authority use these outcomes and measures as a basis for evaluations and contract renewals. The recommendation also focused on considering alternative contractors, improving contract terms, and ensuring contract terms and established policies and procedures are adhered to by contractors. We deem four of the recommendations **Closed** and three of the recommendations **Open but in progress**.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
<b>Recommendations to the Hawai'i Tourism Authority</b>			
(2) With regard to its oversight over contractors, the Hawai'i Tourism Authority should:			
(2a) To the extent possible, incorporate objectively measurable outcomes and performance indicators in its contracts;	Specific to the North America leisure and Japan marketing contracts, references are made throughout to "HTA's stated goal and objectives" but nowhere in the contracts are these clearly defined.	<b>Closed</b>	The Japan market request for proposals (RFP) and contract was the only major marketing contract solicitation in 2011. Review of the Japan market RFP and contract found that they incorporate key performance indicators and targets.
(2b) Clearly define deliverables with measurable outcomes, performance measures and benchmarks as a basis for evaluation and contract renewal/extension purposes;	In the past, HTA relied on the contractor to define its deliverables, and even the means by which contractor performance will be evaluated.	<b>Closed</b>	The HTA provides the contractors with performance targets which are the basis for contractor evaluations.
(2c) Include objectively measurable outcomes in its annual tourism marketing plans;	The current reporting does not include any means to measure contractors' performance against set goals or otherwise objectively measurable deliverables.	<b>Closed</b>	The contractor's annual tourism marketing plans include objectively measurable outcomes in the form of key performance indicators and targets.
(2d) To the extent possible, consider alternative providers to the existing major contractors and ensure that such consideration is documented;	The contractor renewal process places more emphasis on contractor continuity rather than performance. Nor does it seriously consider open competition or alternative contractors who might perform more effectively.	<b>Closed</b>	In the Japan RFP we reviewed, the HTA considered alternative providers as it received proposals from eight bidders.

**Chapter 2: While the Hawai'i Tourism Authority Reports on Key Performance Indicators for Its Contractors, It Has Not Done So for Itself**

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
(2e) Adopt a review process which ensures that original agreements, modifications, and supplements to contracts are free of errors and accurately reflect the intent of the parties;	Overly casual contract administration results in shoddy contracts. Review of the contract with the Japan marketing contractor found errors that are inconsistent with sound contract administration.	<b>Open but in progress</b>	In February 2012, the HTA board approved HTA policies related to contract management, including one covering the formation, management, and resolution of contracts executed by the HTA. However, the procedures to implement the policies are in the draft stage with a target completion date of April 2012.
(2f) Ensure that contract provisions are adhered to or modify contractual provisions in writing where enforcement is deemed impractical; and	The authority has not consistently held its Japan marketing contractor to the terms of the contract which reveals a sense of informality in dealings between the parties.	<b>Open but in progress</b>	In February 2012, the HTA board approved HTA policies related to contract management, including one covering the formation, management, and resolution of contracts executed by the HTA. However, the procedures to implement the policies are in the draft stage with a target completion date of April 2012.
(2g) Ensure that established policies and procedures for procurement of goods and services are adhered to by contractors, mandating appropriate tasks to be performed by contractors' auditors where necessary.	The lack of clear criteria and the dependence on judgment to determine the appropriateness of expenditures in an environment with a high risk for excesses and abuse highlights the need for compensating controls.	<b>Open but in progress</b>	In February 2012, the HTA board approved HTA policies related to contract management, including one covering efficient, effective and productive contract management. However, the procedures to implement the policies are in the draft stage with a target completion date of April 2012.



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# Chapter 3

## Education Department's Words Speak Louder Than Its Actions

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In *Procurement Audit of the Department of Education: Part 1*, Report No. 09-03, we found no evidence that the department has the mechanisms and functions to monitor and review procurement compliance on a regular basis. Even though our audit was based on a relatively small sample size, we uncovered numerous instances of non-compliance and violations of procurement rules and regulations. In addition to the high volume of violations, we also identified several risk factors and indications of potential fraud, which compelled us to expand the scope of our work. Due to the significant amount of time involved in performing that additional work and the serious nature of the findings discovered, we issued a separate report presenting the results of that expanded work.

The second phase of our audit, *Procurement Audit of the Department of Education: Part 2*, Report No. 09-04, revealed an organizational culture of disregard for procurement rules in the Office of School Facilities and Support Services (OSFSS). That culture had allowed office directors, managers, and staff to believe they had the discretion to unilaterally determine whether compliance with procurement laws and rules was in the best interest of the department. As a result, non-compliant procurement practices were tolerated and, more importantly, unethical and possibly fraudulent behavior has been allowed to thrive.

The response to our audit from the Department of Education (DOE) was swift. On February 19, 2009, the then-superintendent wrote us a letter in which she indicated that the department had rescinded the delegation of procurement authority for construction projects given to the facilities office, and returned it to the Procurement and Contracts Branch (PCB) under the chief financial officer. In addition, four months after the release of our reports, the Board of Education adopted, among other measures, an "Employee, Contractor, and Volunteer Ethics and Conflict of Interest Policy" to guide management, fiscal, and professional behavior to ensure ethical conduct. The department also hired an independent investigator to determine whether specific DOE employees had acted inappropriately and engaged in misconduct by failing to follow department policies, procedures, rules, and/or processes.

However, five months after the then-superintendent rescinded OSFSS's procurement authority, the then-deputy superintendent restored it, claiming that the office's procurement process had slowed down. In

addition, despite the findings of our audits and its own independent investigator, the department did not take strong disciplinary measures against two of the three OSFSS employees who were found to have committed multiple procurement violations. Today, two of the employees remain in their same jobs as heads of their respective OSFSS branches, which have been given even greater procurement authority with limited, if any, oversight by the Procurement and Contracts Branch.

These and other department actions are contradictory and troubling. While the department took quick and seemingly decisive measures to respond to the findings and recommendations of our reports, its actions do not fully address our overall message that unethical behavior and non-compliance with rules and procedures will not be tolerated and that violations will have consequences. As a result, the risk of ethical misconduct in the OSFSS remains high, which creates a public perception that the department has done little to address the issues.

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## Background

The Department of Education is governed by the Board of Education. Composed of nine appointed members, the board sets statewide educational policy within general laws enacted by the Legislature, adopts student performance standards and assessment models, and monitors school success. The board also appoints the chief executive officer of the public school system, the superintendent of education.

The Office of School Facilities and Support Services exercises technical oversight of business activities, construction and maintenance of facilities, food services, and transportation support for the public school system. The OSFSS develops and administers administrative rules and regulations, publishes operational guidelines, and provides related in-service training, monitoring, and technical assistance to schools to ensure that support is provided in accordance with laws, policies, and accepted principles of management. The office is comprised of six branches: Facilities Development, Facilities Maintenance, Auxiliary Services, Student Transportation Services, Safety and Emergency Preparedness, and School Food Services.

The Procurement and Contracts Branch is responsible for providing departmental procurement direction, oversight and expertise in compliance with the procurement code. It also represents the superintendent in all matters of procurement. The PCB conducts procurement training, which provides a comprehensive overview of procurement within the department.



In Report No. 09-03, *Procurement Audit of the Department of Education: Part 1*, we documented numerous occurrences of non-compliance with procurement laws and regulations for each of the various procurement methods utilized by the department. Many of the infringements appeared to be inadvertent. For example, we found 20 purchases made in FY2007 using purchasing cards that exceeded the \$2,500 limit without proper approval. Those 20 purchases were also for prohibited items, including computers and travel coupons.

In Report No. 09-04, *Procurement Audit of the Department of Education: Part 2*, we discovered numerous instances in which department personnel manipulated the professional services selection process and awarded contracts to predetermined consultants. For instance, for a \$300,000 construction management project selection, the Project Control Section head bypassed established procedures by hand-picking the selection committee members and recommending a specific firm. The public works administrator then led the committee as its chair, documented the results selecting the recommended firm, addressed the results to himself as public works administrator, and approved the results on behalf of the branch.

We also found several other alarming practices within the OSFSS that appeared to be fraudulent and unethical. In one example, a high-ranking department official instructed a consultant to hire a specific sub-consultant in exchange for additional contract funding, thereby evading the competitive procurement process. The sub-consultant, who had close ties with the department, performed work under a department program that was unrelated to the contract's scope. Another inappropriate action involved selection committee members agreeing via email to change a prior selection decision to award the project to a vendor who was previously unranked, but had been improperly allowed to begin work on the project. The committee then falsified the selection documents to reflect the modified decision as the original selection.

***The department rescinded OSFSS's procurement authority only to return it five months later***

In a February 19, 2009 letter to our office, the then-superintendent agreed to comply with our report's recommendation to rescind an order to transfer procurement authority of construction projects from the Procurement and Contracts Branch to OSFSS. She wrote:

The chief executive sets the "tone at the top" that affects integrity, ethics, and other factors of a positive control environment. DOE employees shall adhere to state procurement law and procedures when conducting and transacting business on behalf of the state, ensuring compliance with the spirit and intent of the procurement code as well as the specifics of the law.

The then-superintendent went on to state that she had taken away OSFSS's procurement authority and returned it to the Procurement and Contracts Branch more than a week earlier. In closing, she wrote, "As public servants, we have a professional and moral mandate to increase transparency and raise accountability in our state government."

However, roughly five months later, in July 2009, the then-deputy superintendent initiated an action that restored procurement authority back to the OSFSS. Subsequently, in March 2010, the current superintendent reaffirmed that the procurement authority would remain with OSFSS, reasoning that the procurement process was bogging down as it went through the Procurement and Contracts Branch and that the branch's workload was already full. The superintendent added that changes to the procurement process in 2009 had convinced her that there were sufficient controls at OSFSS to give it authority over its procurements of construction and professional services contracts.

In addition, procurement branch staff told us that they received no justification from the department for their reduced role. Currently, branch staff are not sure what kind of oversight authority over the OSFSS the branch has, but they are clear that it "does not touch" any construction or planning project from the Facilities and Development Branch.

As a result, contrary to the audit reports' recommendation, the OSFSS and its branches—two of which are led by employees who were found to have engaged in unethical behavior regarding procurements of school projects—have been given more, not less, procurement authority. In addition, the branch with the most expertise in procurement and provides departmental oversight has been removed from the process.

***Investigation's scope and timeframe were narrow, limiting findings***

As promised by the then-superintendent, the department took action and hired an independent investigator in March 2009 to perform an administrative, fact-finding investigation to determine whether specific DOE employees acted inappropriately and engaged in misconduct by failing to follow department policies, procedures, rules and/or processes. In particular, the investigation focused on three employees within the OSFSS: a branch director, a section head, and a branch administrator.

According to the terms of the nearly \$12,000 contract, the department gave the investigator less than a month to finish the investigation. The investigator said that the scope of work for the investigation was narrow and was limited to the actions of the three employees. The investigator added that the amount of time he was given restricted the scope of work, and he was unable to investigate all of the contracts and issues cited in the audit report recommendations. The investigator said the department

was aware that time restrictions would confine the investigation to examining the actions of only the three employees associated with contracts involving procurement violations or ethical concerns. The investigation did not include the department's outsourcing of services or the contracts associated with that issue.

Among the issues not examined were the actions of a former OSFSS assistant superintendent regarding the procurement of a \$600,000 contract in 2005. Our audit report had found that the former assistant superintendent violated state procurement laws by instructing a construction consultant to hire a specific sub-consultant to perform work for the department unrelated to the contract. The sub-contractor was identified as a former principal with no construction experience. At the instruction of the then-superintendent, the former assistant superintendent was excluded from the investigation because she was no longer a department employee. However, the interactions between the former assistant superintendent and current DOE personnel were allowed to be included in the investigation. But the investigator noted that although he encountered evidence that other department employees were involved in questionable activity, they were not included in the report because they were not part of the work scope specified in his contract.

### **Statute of limitations expired**

Given that the findings associated with the former assistant superintendent involved possible fraud, our audit report was forwarded to the Department of the Attorney General (AG) for further action. According to the Criminal Justice Division of the AG's department, the case involving the former assistant superintendent was assigned to the Investigations Division in April 2009. The Investigations Division said it forwarded its findings to the Criminal Justice Division in late 2009 for a determination of whether to prosecute. The Criminal Justice Division said other department employees were included in the same investigation. However, in both cases, the statute of limitations had expired. As a result, the Criminal Justice Division said all DOE procurement fraud cases were closed in July 2011, not due to a lack of evidence but because the period when it could take any possible action had run out.

Roughly two months after the AG's department closed the DOE procurement fraud cases, the Facilities Development Branch of the OSFSS entered into a \$1.1 million professional services contract with the company where the same former assistant superintendent is employed.

### **Ethics Code violations cited**

Our audit report also found that the same former assistant superintendent was employed by an engineering firm when she engaged in communications with her former department subordinates, giving her company an unfair advantage over other bidders. Her company was eventually awarded a DOE construction services contract in 2007, but the processing of the contract was suspended after the Procurement and Contracts Branch raised concerns regarding the way the selection was awarded. The contract was then abruptly rescinded.

In its review of the 2007 contract, the department's independent investigator concluded that a branch director had violated Board of Education policy and the Fair Treatment Law of the Ethics Code by giving an unfair advantage to the engineering firm. The investigator also found that the branch administrator and a section head had violated board policy and the Ethics Code by their actions in regards to this contract. As previously noted, the investigator also found that the two exposed the department to violations of Section 84-15, Hawai'i Revised Statutes, *Standards of Conduct*, by entering into a contract with a business represented by a person who had worked at the department within the preceding two years.

Although the current contract with the company where the former assistant superintendent is employed was executed within the parameters of the contracts provision in the Ethics Code, the decision to engage in business roughly two months after the criminal investigation was closed may undermine public confidence in the DOE's leadership.

### **Investigation did not examine all audit findings**

The current superintendent said she places importance on the need for the department to follow all the rules and regulations and to gain the public's confidence that the department is in compliance and doing things the right way. She added that public perception is something the department considers a notable factor and is working to mitigate any appearance of impropriety. The department's repeated claim that an independent investigator performed an examination of all audit findings is misleading. It is arguable that the department's repeated claims present a false impression that the department thoroughly examined and investigated all of the audit findings.

### ***Lenient disciplinary actions despite multiple violations***

We currently found that the department decided not to impose serious disciplinary action against two of the three DOE employees who had committed multiple violations of board policy, the Ethics Code, and department procurement policy guidelines regarding various school projects. Instead, of the three department employees, one was suspended

for three days without pay but only after receiving more than three months of paid leave. He then was allowed to return to his old job. The second employee was not suspended but temporarily assigned within the same branch after receiving nearly four months of paid leave and retired under his old position while earning the same salary as he had previously. The third employee was demoted and took a pay cut but was later returned to his old job.

***Oversight of Office of School Facilities and Support Services is minimal***

The audit report also encouraged the department to take steps to ensure independent oversight of the OSFSS' procurements. The department, to its credit, has taken steps to better clarify the responsibilities for OSFSS employees involved in the procurement process. However, the OSFSS assistant superintendent noted that it would be difficult to ensure its employees engage in ethical practices through additional controls. He said establishing a culture of expectations for appropriate behavior is a key factor, which he helps establish through monthly branch meetings which begin with a review of the latest procurement violations.

The current superintendent said while she believes there is a procurement process in place to ensure technical compliance, she questioned how it would be able to “evidence ethical practices.” We agree that ensuring ethical conduct by employees during the course of the procurement process is challenging. However, it is a challenge of the department's own making. The department has allowed the heads of OSFSS branches—whose conduct resulted in a demotion and suspension—to be in the same jobs they held when the infractions occurred. They also work within a division that now has been given *greater* procurement autonomy, not *less*. This presents a risk, given that the department cannot ensure that the employees will not engage in similar conduct in the future.

In short, without the mechanisms and functions to monitor and review procurement compliance at OSFSS, the department has made little progress since our initial report in 2009. In fact, we would argue that by returning procurement authority to the OSFSS and returning staff who committed multiple violations of the Procurement Code to their previous positions after relatively little punishment, the culture of disregard that we found three years ago has only been reinforced.

**Status of Recommendations Made in the Procurement Audit of the Department of Education: Part 1**

Report No. 09-03 included two multi-part recommendations to the Board of Education and the superintendent of education that focused on strengthening its control environment over procurement.

**Recommendations in Part 1 to the Board of Education**

We made a three-part recommendation to the Board of Education that focused on adopting a code of ethics, establishing a fraud/risk management program, and increasing the authority and responsibilities of the Internal Audit Branch. In our follow-up effort, we found that the board adopted an employee, contractor, and volunteer ethics and conflict of interest policy; established an audit committee; and approved an internal audit charter. Therefore, we deem the three parts of recommendation No. 1 **Closed**.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
<b>Recommendations to the Board of Education</b>			
The Board of Education and the superintendent of education should take immediate action to strengthen their control environment over procurement. The Board of Education should:			
(1a) Adopt a code of ethics and conflicts of interest policy and ensure they, at a minimum, incorporate Chapter 84, HRS, Code of Conduct, and Section 3-131-1.02 HAR, Procurement Code of Ethics. The department currently has draft guidelines regarding these; however, we have not reviewed these guidelines. The board could consider developing policies specific to senior management and require all employees to acknowledge understanding of the policies.	The Board of Education has not established policies to promote efficient and effective spending by the department and not maintained a sufficiently involved role in overseeing procurement.	<b>Closed</b>	The elected Board of Education adopted an "Employee, Contractor, and Volunteer Ethics and Conflict of Interest Policy" to guide management, fiscal, and professional behavior to ensure ethical conduct. The elected board adopted an "Accountability Policy" which held each school, office, or program accountable for its knowledge and implementation of policies, rules, regulations and procedures to avoid negative impacts to the department.
(1b) Establish an environment that effectively manages the department's fraud risk that incorporates the principles identified by the previously referenced Managing the Business Risk of Fraud: A Practical Guide.	It is unclear whether the Board of Education's mission and vision have been broadened to address the department's additional financial management duties. The board has yet to implement policies to monitor procurement which would help ensure that the department has implemented an effective system of controls.	<b>Closed</b>	The appointed Board of Education established an audit committee to help ensure that the risk assessment process, the accounting and financial reporting processes, the internal controls, the internal and external auditing, and compliance programs of the department are in accordance with all related requirements and of the highest quality.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
(1b.i) Establish a fraud risk management program that includes a written policy conveying the expectation of board members, the superintendent, and all other employees.	See comments above		See comments above
(1b.ii) Ensure that the department develops an adequate fraud risk assessment process that would include regular reports submitted to the board. Regarding procurement, these reports could include contract awards and change orders/modifications exceeding a predetermined threshold, total awards/ expenditures by procurement method, and violations.	See comments above		See comments above
(1b.iii) Ensure that the department has adequate fraud prevention controls (i.e., appropriate segregation of duties, authority/ transaction limits) and fraud detection controls (i.e., whistleblower hotlines, appropriate process controls such as reconciliations).	See comments above		See comments above
(1b.iv) Require the department to report on all alleged fraud and reported violations of the code of conduct/ethics, including any disciplinary or corrective actions.	See comments above		
(1c) Consider increasing the authority and responsibilities of the Internal Audit Branch. The Internal Audit Branch should be operationally responsible for the department's risk management program and governance process (including procurement).	During the time of our audit, the department's Internal Audit Office consisted of one person, an insufficient staff to monitor an organization with a budget of \$2.4 billion. The department has since increased its staff to three.	<b>Closed</b>	The appointed Board of Education approved an internal audit charter, which states that the department's Internal Audit Office is responsible for determining whether the department's risk management, control, and governance processes are adequate and effective. The Internal Audit Office is accountable to the superintendent and the Audit Committee of the board.

**Recommendations  
in Part 1 to the  
superintendent of  
education**

There was a six-part recommendation directed to the superintendent of education that focused on designing, developing, and operating an effective internal control system; ensuring that procurement reports are developed for review approval by the superintendent; formalizing procurement and contracting policies and procedures; conducting procurement and program/project management training programs; and revoking procurement authority over construction contracts to Office of School Facilities and returning it to the Procurement and



Contracts Branch. We found that the superintendent addressed these recommendations, therefore we deem all six parts of recommendation No. 2 **Closed**.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
<b>Recommendations to the superintendent of education</b>			
The Board of Education and the superintendent of education should take immediate action to strengthen their control environment over procurement. The superintendent of education should:			
(2a) Design, develop, and operate an effective internal control system based on the Committee of Sponsoring Organizations of the Treadway Commission's published findings in Internal Control-Integrated Framework.	Although not a direct cause of the violations, the lax tone at the top and the failure to actively mandate and monitor for compliance have contributed to a vulnerable procurement environment.	<b>Closed</b>	According to the superintendent, the department has revamped the OSFSS procurement processes to clarify the process and identify the responsibilities of key personnel. Flow charts were provided by the superintendent to show that the process related to construction procurement contains more oversight.
(2b) Ensure that procurement reports are developed and disseminated on a recurring basis for review approval by the superintendent, as well as for the assistant superintendents and applicable managerial employees. These periodic reports should contain relevant procurement information and should be disseminated quickly to be meaningful for monitoring purposes.	The department's failure to regularly monitor expenditures impedes the effective management of spending and makes it difficult to ensure compliance with procurement policies and procedures.	<b>Closed</b>	The department has developed and implemented two electronic systems, FACTRAK and SharePoint, which allow for monitoring project information such as expenditures, status, and approvals.
(2c) Formalize the existing <i>Guidelines for Procurement and Contracting</i> into enforceable policies and procedures. A formal process for reporting procurement violations, including remedial actions, should be incorporated.	The department has yet to establish any formal procurement policies and procedures. There are no corrective procedures in place to properly address procurement violations and deter repeat behavior.	<b>Closed</b>	The department's <i>Guidelines for Procurement and Contracting</i> include a section that covers procurement violations and reporting. The guidelines specify that procurement violations, penalties, and corrective action are subject to State administrative rules pertaining to procurement compliance.
(2d) Through the Procurement and Contracts Branch, continue to provide procurement training and tailor the programs to the specific needs of each school and branch. Periodic training should be mandatory for employees having procurement authority, and attendance should be formally tracked. The superintendent should make officers, directors, and managers having procurement authority aware of Section 3-131-1.02, HAR, Procurement Code of Ethics.	Most personnel in charge of procurement do not have much experience in the area, since procurement has never been and is not currently their primary responsibility.	<b>Closed</b>	The Procurement and Contracts Branch (PCB) provides training with an overview of procurement, which includes other modules such as small purchases and contract administration. Employees with procurement responsibilities are required to attend the PCB training.



RECOMMENDATION	PURPOSE	STATUS	COMMENTS
(2e) Provide program/management training to ensure projects are properly planned, budgeted, and administered. A reporting system should be developed to track budget to actual results, with explanations for material discrepancies. This system would track the project through completion and reflect any change orders or modifications.	Without proper planning and oversight of contracted projects, state funds may be inefficiently expended, vendors may deliver unwanted services, and ultimately, liabilities to the State may increase.	<b>Closed</b>	The PCB training on contract administration provides information and guidance on creating contracts which clearly define the scope of work and deliverables. The branch's business objectives include maintaining a communications system that provides and receives information from all schools and offices and optimizing resources to improve the quality of the branch's and department's performance.
(2f) Revoke procurement authority over construction contracts that was recently granted to the Office of School Facilities, returning such authority to the Procurement and Contracts Branch.	A loose culture has resulted in extensive non-compliance with procurement rules in the Office of School Facilities and Support Services.	<b>Closed</b>	Procurement authority was briefly returned to the Procurement and Contracts Branch then returned to OSFSS five months later.

**Status of Recommendations Made in the Procurement Audit of the Department of Education: Part 2**

Report No. 09-04 included five multi-part recommendations to the superintendent of education focused on addressing procurement violations, ethical concerns, and potential fraud; improving outsourcing of program and construction management services; and addressing the lax environment and leadership void.

**Recommendations in Part 2 to the superintendent of education**

We made five multi-part recommendations that included 23 recommendations directed to the superintendent. The recommendations focused on investigating selected procurement service contracts, a contract entered into by a former assistant superintendent, the use and structure of project and construction management contracts, and the practice of holding checks. It also focused on investigating and taking appropriate actions on the procurement violations cited in our report.

In our follow-up effort, we found that although the department hired a contractor to perform an investigation, the contractor who conducted the administrative investigation reported the scope of his work did not call for him to investigate all of the contracts and issues cited in the audit report recommendations. Therefore, we deem 11 parts of these recommendations **Closed**, two parts **Open but in progress**, and four parts **Did not assess**. We deem six of the recommendations **Open and likely not to be pursued**, because the investigation did not address these audit findings, but the department contends that these audit finding have been examined.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
<b>Recommendations to the superintendent of education</b>			
(1) The superintendent of education should conduct an investigation regarding the following professional service contracts:	Actions associated with these contracts involved procurement violations, ethical concerns and potential fraud.		
(1a) \$300,000 contract to provide construction management and professional services at Wilson Elementary and 'Anuenue Elementary awarded in April 2006;		<b>Closed</b>	The contractor found multiple violations involving two DOE employees regarding the procurement of this contract. Although the superintendent decided to reject two of the report's findings for one of the employees, she did not dismiss the findings for the second employee.
(1b) \$22,205 contract for Jefferson Elementary School Building S Re-roof awarded in July 2008;		<b>Open and likely not to be pursued</b>	The external independent investigator contracted by the department did not provide any conclusions regarding this particular contract in its report findings.
(1c) Approximately \$80,000 contract for playground maintenance that was never awarded; and		<b>Closed</b>	The external independent investigator found multiple violations of the ethics code and board policy regarding the conduct of one of its employees during the procurement of this contract.
(1d) \$325,000 contract for professional services to assist in the development of a Facilities Asset Management System Request for Proposals awarded in April 2008.		<b>Closed</b>	The administrative investigation report found multiple violations of the ethics code and department procurement guidelines regarding the conduct of three DOE employees.
(1e) The investigation should focus on the following issues:			
(1e.i) Inappropriate discussions and meetings with contractors prior to public notice that provided those contractors with an unfair advantage;	Actions would be in violation of the Fair Treatment Law of the Ethics Code.	<b>Closed</b>	The administrative investigation report found there was a violation of the Fair Treatment Law that provided a prospective contractor an unfair advantage by allowing access to department staff.
(1e.ii) Inappropriate discussion with and involvement of former department employees now employed by contractors;	Actions would be in violation of Section 84-15, HRS, Standards of Conduct.	<b>Closed</b>	The administrative investigation report cited the actions the three DOE employees committed as exposing the department to multiple violations of the Ethics Code. The department's response did not admit any culpability nor indicate any action it has taken to avoid such conduct in the future.
(1e.iii) Manipulation of the selection committee process by:			
(1e.iii.A) Overriding the normal process for selecting committee members;	The hand-picking of selection committee members by a project section head circumvented the normal process.	<b>Closed</b>	The administrative investigation report found that bypassing the normal selection process provided an unfair advantage to a specific contractor and was a violation of the Ethics Code. In its response, the department said the audit report found no evidence that any law was violated. Its response did not include the findings of its independent contractor.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
(1e.iii.B) Providing the committee with recommended contractors;	Actions would be in violation of the Fair Treatment Law of the Ethics Code.	<b>Closed</b>	The department's response stated that no recommendation was made to the selection committee members and that the consultants were assigned based on geographical location. The administrative investigation report determined there was a violation of the Ethics Code and board policy.
(1e.iii.C) Placing high-ranking personnel on the committee who are also responsible for approving the committee's decision; and	Best practices segregate duties among different people to reduce the risk of error or fraud.	<b>Closed</b>	The administrative investigation report found the appointment to the selection committee was not done through the normal process and that it inevitably provided an advantage to a contractor.
(1e.iii.D) Changing committee decisions after-the-fact without reconvening or adequate justification.	Actions violated department procurement procedures and lacked transparency which increased risk of abuse.	<b>Open but in progress</b>	The administrative investigative report did not issue any findings regarding this issue.
(1e.iv) Authorizing contractors to start work without an executed contract, and in one case, department denial of granting such authorization.	This practice is discouraged by the State Procurement Office and arguably undermines the intent of the Procurement Code.	<b>Closed</b>	The administrative investigative report concluded that this practice violated DOE procurement policy guidelines. The department responded that there are no statutes that prohibit this practice and has elected to incorporate it as part of its procurement process for professional services. However, the State Procurement Office said it would arguably be a violation of sections of the Procurement Code.
(2) The superintendent of education should also investigate the former assistant superintendent of the Office of Business Services actions regarding the \$600,000 contract for Project Management and Technical Assistance for Repair and Maintenance & Capital Improvement Projects awarded on February 4, 2005.	Some acts associated with this contract may be construed as procurement fraud and could be subject to civil and criminal penalties.	<b>Closed</b>	The department responded that the superintendent did not include the former assistant superintendent in the investigation as she was no longer an employee of the department. The Department of the Attorney General opened a criminal investigation of actions by department personnel, including the former assistant superintendent, associated with this contract. The case was closed in 2011 due to the expiration of the statute of limitations.
The investigation should focus on the following issues:			
(2a) A review of the contract award to determine if the consultant was preselected based on emails between the department and the consultant prior to selection committee convening;	Actions would circumvent procurement rules.	<b>Open and likely not to be pursued</b>	The department responded that its independent investigator examined all audit findings. The contractor who conducted the investigation said his report did not include contractors as they were not part of the scope of work, which called for an investigation of three DOE employees specifically identified by the department and did not include the former assistant superintendent.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
(2b) A review of emails from the former superintendent to the consultant instructing him to hire specific sub-consultants in order to circumvent procurement rules;	Actions would circumvent procurement rules and possibly be fraudulent and unethical.	<b>Open and likely not to be pursued</b>	The department responded that its independent investigator examined all audit findings. The contractor who conducted the investigation said the scope of his work did not call for him to investigate all of the contracts and issues cited in the audit report recommendations. Again, his investigation did not include any contractors and did not include the former assistant superintendent.
(2c) A review of the sub-consultants' work performed to determine whether these fit under the scope of the contract and whether these services should be performed by department employees;	Outsourcing large-dollar program and management contracts appears to be inefficient and wasteful.	<b>Open and likely not to be pursued</b>	The contractor who conducted the investigation did not include an examination of any contractors as they were not included in the scope of work in the contract with the department.
(2d) A review of other work performed by these sub-consultants, whether directly or indirectly, for the department; and	Outsourcing large-dollar program and management contracts appears to be inefficient and wasteful.	<b>Open and likely not to be pursued</b>	A review of contractors was not included in the independent investigator's report even though the department responded that the investigation examined all audit findings.
(2e) A review of other contracts involving sub-consultants to determine whether this practice is widespread.	Outsourcing large-dollar program and management contracts appears to be inefficient and wasteful.	<b>Open and likely not to be pursued</b>	The contractor who conducted the investigation said the work scope was narrow and limited to the actions of three DOE employees and did not include contractors.
(3) The superintendent should also investigate the practice of "holding checks" within the Office of School Facilities and Support Services. This practice should be banned immediately and individuals responsible should be properly disciplined.	Practice of holding checks resulted in falsifying documents by the vendor at the behest of a department official.	<b>Open but in progress</b>	The Auxiliary Services Branch administrator responded that purchase orders are now extended in order to avoid check holding. However, this practice is not embedded in any written procedure which fails to ensure this directive has been or will be carried out as envisioned.

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# Chapter 4

## Failed Online Development Efforts Overshadow the Hawai'i Teacher Standards Board's Recent Work and Put the State, the Board, and Teachers at Risk

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### Background

Our *Study on the Appropriate Accountability Structure of the Hawai'i Teacher Standards Board*, Report No. 09-05, released in February 2009, found that the board failed to develop, administer, and deliver a professional teacher licensing program, its core function as a licensing agency. We found little evidence that licensing by the board ensured quality teaching and sufficiently served the interests of teachers and students to warrant its continuation. We concluded that the laws governing the board should be repealed and the responsibility for teacher licensure be transferred to the Board of Education.

Since issuance of our report, the Legislature has demonstrated it does not intend to repeal the board. Instead, the Legislature passed laws increasing membership of the board and clarifying its responsibilities and duties. With this support, the board has addressed operational issues highlighted in our audit report. The board's focus on its duty of setting teacher performance standards and serving as a licensing agency has led to noticeable improvement. These efforts have resulted in the board achieving its primary function—developing and administering a professional teacher licensure program for the teachers of Hawai'i.

Nonetheless, unresolved issues with a former contractor may have severe consequences for the board and public school teachers. In 2009 we found that the board had wasted six years and more than a million dollars on the development of an online licensing system, yet it had nothing to show for its efforts and investment.

Our recent evaluation found that the board never fully resolved the issues that arose with a former contractor, Open Frameworks Corporation. Most serious of these was a refusal by the contractor to return confidential personal information of public school teachers licensed by the board from 2003 through 2008. The board's inability to retrieve this data exposes teachers to significant risk.

***The board has developed a professional teacher licensure program***

In 2009, we found that the Hawai'i Teacher Standards Board was in a state of confusion and unable to deliver an effective teacher licensing program. The board had been established to set performance standards for Hawai'i's public school teachers to ensure every child was provided a teacher qualified to practice the profession of teaching and to establish public confidence in teaching. We concluded that teacher performance standards had not been applied effectively and efficiently to achieve these objectives.

The development and implementation of an online licensing system has allowed the board to accept initial applications, process payment of teacher licensing fees, and issue renewal licenses. Recently, the board adopted new national teacher performance standards that will replace the current standards by July 2013. Additionally, the board has amended its administrative rules to establish a process for contested cases and appeals, the absence of which was a serious flaw that was reported in our audit report. These actions have allowed the board to finally deliver a teacher licensing program for the public school teachers of Hawai'i.

**The Legislature has addressed the invalid licenses previously issued by the board**

Our audit report found that the board exceeded its authority by extending licenses beyond the two-year period the Legislature originally authorized under statute. The failure to implement a license renewal process resulted in the board extending rather than renewing licenses. Without securing amendments to the laws governing teacher licensure or obtaining legislative approval, the board amended its administrative rules to allow it to continue to grant extensions. According to Hawai'i case law, an agency's rules may not enlarge, alter, or restrict the provisions of statutes being administered. We concluded that without the statutory basis to extend licenses for more than the time authorized by the Legislature, the administrative rules allowing for license extensions were invalid. This raised concerns regarding the validity of the extended licenses themselves and the problems this would cause the Department of Education in meeting federal No Child Left Behind requirements.

Following issuance of our audit report, the Legislature passed Act 2, Special Session Laws of Hawai'i 2009, which amended Chapter 302A, the statute governing teacher licensure. A provision of Act 2 added specific language into Chapter 302A: "Any previously-approved extensions shall be deemed valid as issued." Thus the Legislature allayed concerns regarding the validity of extended licenses.

### **The board has addressed numerous operational issues**

The Legislature established the Hawai'i Teacher Standards Board for the purpose of transferring the responsibility for setting licensure and credentialing standards for public school teachers from the Department of Education to a more independent body. The Legislature intended for the standards to meet two objectives: 1) provide every child with a teacher qualified to practice the profession of teaching because no child should have to attend a class conducted by a person who is not qualified, and 2) establish public confidence in the teaching profession. At the time of our 2009 audit report, the teacher performance standards, first effective in July 1998, had last been revised in May 2003.

In May 2011, the board considered replacing the 2003 standards with the Interstate Teacher Assessment and Support Consortium (InTASC) standards, new model core teaching standards. A consortium of state education agencies and national education organizations, InTASC is dedicated to the reform of the preparation, licensing, and on-going professional development of teachers. The InTASC Core Teaching Standards describe what teachers should know and be able to do in the current learning context to ensure students attain learning goals as well as to encourage teachers to build literacy and thinking skills across the curriculum. By August 2011, the board approved adoption of these standards, which will replace the existing Teacher Performance Standards by July 1, 2013.

Our audit report also found that the board did not have an appeals process, despite the fact that it had the authority to serve as the final adjudicator for appeals over the issuance, suspension, and revocation of licenses. Written procedures documenting an appeals process were necessary to ensure transparency and understanding for both the board and teachers. At the time of our 2009 report, we noted that the board had drafted rules related to appeals that were being reviewed by the Department of the Attorney General.

In June 2009, the board approved amendments to its administrative rules for contested case hearings. Section 8-54-10, Hawai'i Administrative Rules, provides rules on contested cases which allow license applicants an opportunity to contest application of the board's rules on the denial, suspension, non-renewal, or revocation of a license. An applicant may have a contested case heard by the board provided a written request is submitted to the board within 30 days of the decision on a license. The rules also specify that any appeal of a license hearing decision must be filed in the circuit court where the applicant resides. Out-of-state applicants must file in the First Circuit Court.



### **An online licensing system has allowed the board to renew rather than extend licenses**

In October 2008, the board entered into a contract with Hawai'i Information Consortium, LLC (HIC), to provide online services for the board's website. The HIC, a local subsidiary of the National Information Consortium, had been under contract with the State of Hawai'i since 2000 as the developer of the eHawaii.gov Internet Portal. That portal allows the public to transact business online with government agencies such as registering a business, renewing a license, or filing taxes online.

According to reports from the former executive director, by February 2009, the board's staff had met with HIC to discuss the board's needs and interests in an online licensing system. Shortly thereafter, the board provided an HIC project manager with a "walkthrough" of the licensing applications process. The following month, the board and HIC designed a renewal application business flow based on the board's license renewal process. By April 2009, the board was moving ahead with plans for HIC to begin the compilation and cleaning of data into a central database to facilitate development of the online licensing system.

The board then focused its efforts on the launch of its redesigned website. With technical assistance and guidance from HIC, the board's administrative systems website was operational in September 2009; by July 2010 the board deployed its online licensing system to the public following extensive testing and data correction.

Through the website, teachers are able to apply for initial licenses, renew licenses, pay licensing fees, and print licenses. When renewing a license, teachers are required to verify that they have successfully taught in the last five years and must demonstrate they meet all ten teacher performance standards set by the board. The renewal form contains a list of approved professional growth activities, which includes the Department of Education's Professional Evaluation Program for Teachers.

The board conducts random audits of teacher renewal applications to ensure that teachers are meeting the requirements for the license renewal. According to the executive director, the board has set target goals of a minimum of 120 and a maximum of 180 audits conducted on an annual basis.

When asked why the board was able to develop and implement the online licensing system more easily and faster with HIC rather than with Open Frameworks Corporation, a board member and the current executive director said that HIC was a reputable local company that had experience in the field and knew what it was doing. The board member



further stated that the people in charge of the original contract, such as the former executive director, lacked expertise in information technology and “didn’t know what they were doing.” This lack of expertise enabled Open Frameworks Corporation to make promises but ultimately deliver nothing, leading to a waste of more than \$1.2 million.

***Failed online development efforts wasted more than \$1.2 million and exposes the State, the board, and teachers to risk***

Our audit criticized the board for its failure to deliver an online licensing system, which severely impeded its ability to fulfill its mission and operate effectively. We noted that the board failed to properly monitor and provide oversight of contracts for its online system, depending instead on its former executive director who lacked the technical expertise and necessary training to manage a project dealing with information technology. The project fell apart when the contractor disabled the board’s website and email functions and blocked access to licensing applications utilized by the staff, effectively shutting down and locking the board out of its own computer system. After six years and more than \$1.2 million, the board had nothing to show for its effort and investment.

In our follow-up review, we found that the board has failed to resolve its issues with Open Frameworks. For instance, the board requested the return of confidential information used by the contractor in developing the online licensing system. The contractor refused to return the information, which includes social security numbers and dates of birth of public school teachers licensed by the board between 2003 and 2008.

**Previous attempts to develop an online licensing system wasted six years and \$1.2 million**

Beginning in 2002, the board designated the development and implementation of an online licensing system as one of its top priorities and contracted first with Teacher Records, Inc., and then with Open Frameworks Corporation. The board relied on the former executive director to manage the contracts, act as liaison between the contractors and the board, and approve and make payments. Our review of the board’s financial documents confirm that more than \$1.2 million was paid to the two contractors, but an online licensing system was never implemented by either.

When the contract with Open Frameworks was about to expire around September 2008, some board members were completely opposed to renewing it. Despite pressure from the former executive director to renew the contract, the board no longer had any confidence in Open Frameworks and, as one board member said, “There was no damn way I would vote to renew until he showed me something.”

On September 22, 2008, Open Frameworks disabled the servers holding HTSB's email, licensing, and other confidential data pertaining to license applicants. On October 4, 2008, Open Frameworks suspended all services to HTSB and informed the board via letter that services were suspended until contractual issues were resolved by the attorney general and the contractor's attorney. A letter from Open Framework's attorney, sent October 20, 2008, informed the board that Open Frameworks intended to pursue legal action for damages resulting from a breach of contract amounting to approximately \$1.4 million. The letter also stated that the issues could be resolved if the board agreed to an extensive list of demands, which included HTSB paying a licensing fee of \$1.5 million to Open Frameworks.

Board minutes, correspondence, emails, and executive director reports provide little detail on the board's handling of these issues, and there is no record of any official board action. According to three current board members who were on the board in 2008, the former executive director did not provide the board with detailed information regarding the problems with Open Frameworks. When asked whether the board resolved this matter, a board member said that the contractor "just vanished." Other board members said that the matter "just faded away," and they thought it had been resolved.

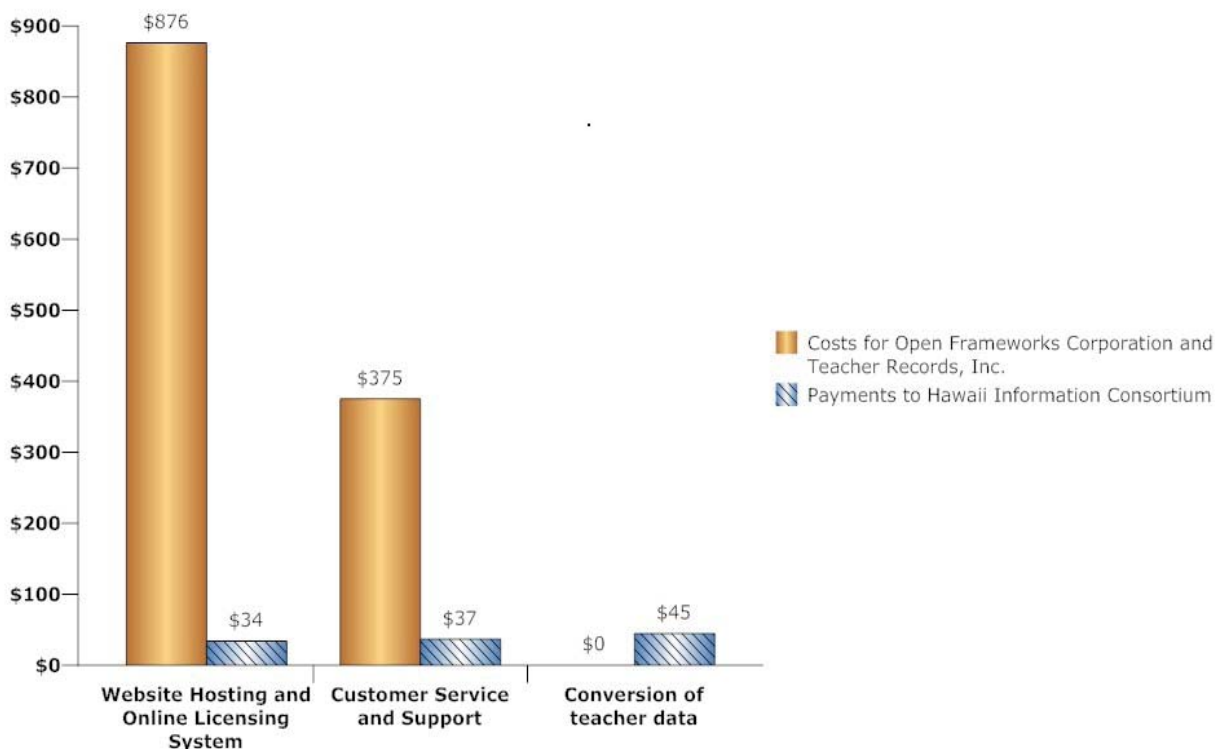
Since the board's involvement with HIC from October 2008 through present day, the board has paid HIC approximately \$116,000 for a variety of services including the development and implementation of an online system. Included in the \$116,000 was a \$45,000 fee for the review, research, and update of licensee information. Since Open Frameworks Corporation refused to return licensee information, HIC had to review and correct 6,000 incomplete and inaccurate teacher records. Exhibit 4.1 compares payments made to all three contractors for website hosting and implementation of an online licensing system.

### **Open Frameworks Corporation refused to return teachers' personal information**

In November 2008, the former executive director drafted a letter to Open Frameworks Corporation requesting the return of all emails, data, and information that belonged to HTSB. The letter stated that the board had not had access to the confidential information submitted by license applicants. The letter was reviewed by staff from the University of Hawai'i College of Education for technical accuracy and by the Department of the Attorney General for legal accuracy. Minutes from the board's meeting that month reveal that the board did not receive a response from Open Frameworks.

### Exhibit 4.1

#### Comparison of Costs and Payments to Online Licensing System Contractors (in thousands of dollars)



Source: Office of the Auditor

However, a January 2009 email from the former executive director to the board's advising deputy attorney general states that the contractor did respond to the request to transfer back the data saying it did not believe the requested data was part of the contract. The contractor claimed it would be willing to transfer the data back if it was contracted to do so. This email is the only evidence that the contractor responded to the request to return the data.

Our review of board minutes and reports from the former executive director found no mention of any dealings with Open Frameworks Corporation after April 2009. In addition, there was no mention or discussion in the board's minutes or the former executive director's reports concerning the return of sensitive personal information in the contractor's possession. The current executive director also confirmed that she has not been in contact with Open Frameworks. Therefore, it is reasonable to assume that Open Frameworks is still in possession of the data, which poses a potential privacy risk to teachers who were licensed by the board between 2003 and 2008.

### **Overwhelming majority of public school teachers may be affected**

Since the board cannot specify what information Open Frameworks Corporation may have in its possession, we are unable to determine the exact number of teachers whose Personal Information is at risk.

Currently, there are approximately 13,000 public school teachers in Hawai'i. Because teachers are required to obtain a license from the board before serving as a teacher within the Department of Education, the Personal Information of every public school teacher employed between 2003 and 2008, the period in which the board attempted to develop and implement an online licensing system with Teacher Records, Inc. and Open Frameworks Corporation, could potentially be at risk.

Chapter 487N, HRS, governs state policies and procedures regarding incidents of security breaches of personal information. The Legislature recognized that privacy and financial security are increasingly at risk due to the widespread collection of personal information by government agencies and therefore passed Act 135, Session Laws of Hawai'i 2006. The purpose of Act 135 was to alleviate identity theft by requiring businesses and government agencies that maintain records containing personal information to notify an individual whenever the individual's personal information has been compromised by unauthorized disclosure.

Chapter 487N defines a "security breach" as an incident of unauthorized access to and acquisition of un-redacted records or data containing personal information where illegal use of the personal information has occurred or is reasonably likely to occur and that creates a risk of harm to a person. "Personal information" is defined as an individual's name in combination with a social security number, driver's license number or Hawai'i identification card number, or an account number or access code that would permit access to an individual's financial accounts.

When a security breach occurs in a government organization that collects personal information, Chapter 487N requires the agency to provide notification to the affected persons following discovery or notification of the breach. The notification must be made without unreasonable delay and must include a description of the incident and the type of personal information that was subject to unauthorized access and acquisition. Also, the government agency must submit a written report to the Legislature within 20 days after discovery of a security breach. The written report must contain information on the nature of the breach, the number of individuals affected by the breach, and a copy of the notice of the security breach that was issued to the affected individuals.

We consulted with the Department of the Attorney General to determine whether a security breach occurred when Open Frameworks Corporation refused to return confidential information upon request. The attorney general's position is that a security breach, as defined in statute, has not occurred since the contractor came into possession of the information through a "good faith acquisition... for a legitimate purpose." Therefore, since there is no evidence that Open Frameworks has made any unauthorized disclosure of teachers' confidential information, a breach has not occurred. However, the attorney general stated that HTSB nevertheless needs to pursue return of the information.

Recent data breaches of the University of Hawai'i (UH) system provide an example of how state agencies should respond to a breach of security, as required by Chapter 487N. In June 2010, a routine audit of system logs of a server used by the UH Mānoa Parking Office found unusual activity. The university stated that an investigation could neither prove nor disprove whether sensitive personal information was accessed, but it did concede that unauthorized privileged access had occurred and the personal information of 53,800 individuals was at risk of exposure. To address the potential risk, the university sent letters and emails to affected individuals per Chapter 487N in July 2010.

This year, the First Circuit Court approved a class action settlement for a lawsuit of the university's data breach. The lawsuit covered the data breaches at UH Mānoa in addition to breaches at West O'ahu, Kapi'olani, and Honolulu Community Colleges. The settlement provided free credit monitoring and free identity theft consultation and restoration services for a two-year period for affected individuals.

We emphasize that the actions of the university were in response to a *potential* risk of exposure, since its investigation could not conclude whether or not confidential personal information had been accessed. The response sets a strong precedent for other state agencies responsible for protecting the personal information of those who conduct business with the State. At the time of our follow-up evaluation, the HTSB board had not pursued efforts to recover the data from Open Frameworks, nor had it alerted teachers to the possible exposure of their personal information. If it has not done so already, the Hawai'i Teacher Standards Board needs to immediately do both.

**Status of Recommendations Made in our Study on the Appropriate Accountability Structure of the Hawai'i Teacher Standards Board**

Report No. 09-05 included two recommendations to the Legislature, a six-part recommendation and a single recommendation.

The six-part recommendation directed to the Legislature focused on abolishing the Hawai'i Teacher Standards Board and transferring its duties and responsibilities to the Board of Education. The duties and responsibilities would include administering the teacher licensing process and adjudicating appeals, setting of licensing requirements and standards, negotiating and entering into contracts, developing and administering the national board candidate certification support program, and allowing for an automatic one year extension of licenses. The Legislature did not repeal the Hawai'i Teacher Standards Board, therefore the six parts of the first recommendations are deemed **Not applicable**.

The second recommendation requested the Legislature consider amending the laws by stating that any previously approved license extensions are valid. We found that the Legislature amended the laws governing the board to validate previously approved license extensions, therefore we deem recommendation No. 2 **Closed**.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
Recommendations to the Legislature			
(1) The Legislature should amend the laws relating to the Hawai'i Teacher Standards Board to include:	The Hawai'i Teacher Standards Board failed in its core function to develop a professional teacher licensing program, which had implications on federal funding for the Department of Education. The board's inability to serve the interests of the public, teachers, and students did not warrant its continuation.		It appears highly unlikely the Legislature intends to repeal the Hawai'i Teacher Standards Board. Since the issuance of our report, the Legislature has passed laws expanding HTSB's membership and clarifying the roles and responsibilities of the board regarding teacher licensure.
(1a) Transferring to the Board of Education the powers, duties, and responsibilities for administering the teacher licensing process, and serving as the final adjudicator of appeals;	See comments above	<b>Not applicable</b>	See comments above
(1b) Repealing the establishment of Hawai'i Teacher Standards Board and the setting of licensing standards, efforts relating to teacher quality, and penalties;	See comments above	<b>Not applicable</b>	See comments above
(1c) Assigning to the Board of Education the adoption of policies for licensure requirements, and the approval of teacher education programs for professional development;	See comments above	<b>Not applicable</b>	See comments above

**Chapter 4: Failed Online Development Efforts Overshadow the Hawai'i Teachers Standards Board's Recent Work and Put the State, the Board, and Teachers at Risk**

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
(1d) Authorizing the Board of Education or its superintendent of education to be the designated state official for Hawai'i to negotiate and enter into contracts under the Interstate Agreement on Qualifications of Educational Personnel;	See comments above	<b>Not applicable</b>	See comments above
(1e) Transferring to the Board of Education the powers, duties and responsibilities for developing, implementing, and administering the national board candidate certification support program and state approval of teacher education programs; and	See comments above	<b>Not applicable</b>	See comments above
(1f) Allowing for a one-year automatic extension of licenses set to expire between January 1, 2009 and June 30, 2010 and providing the Board of Education the discretion to grant an additional one-year extension.	See comments above	<b>Not applicable</b>	See comments above
(2) Authorizing retroactively the extension of licenses by the Hawai'i Teacher Standards Board.	The board exceeded its statutory authority by amending its administrative rules to extend licenses beyond a date authorized by the Legislature. As a result, the licenses extended were invalid.	<b>Closed</b>	Act 2, Special Session Laws of Hawai'i 2009, amended the laws governing the board by deeming valid any previously approved license extensions.



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# Chapter 5

## CIO May Be “In Charge,” But He Cannot Implement or Manage His Strategic Plan

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Our audit report on the State’s information technology (IT) system asked the rhetorical question, “Who’s in charge?” after we found an IT governance structure that was bereft of effective leadership and coherent direction. In addition to confusion over roles, responsibilities, and lines of authority, the system was overseen by a part-time chief information officer (CIO) who lacked the commitment, time, and authority necessary to plan, implement, and manage the State’s government-wide IT effort.

In our follow-up on the recommendations in our *Audit of the State of Hawai‘i’s Information Technology: Who’s in Charge?*, Report No. 09-06, we found that the Legislature and the governor’s office have done much to set the stage for a new IT infrastructure, establishing a full-time CIO tasked with not only developing and executing an IT strategic plan but also overseeing statewide IT governance. In addition, the recently hired and highly qualified CIO is in the process of drafting an ambitious and comprehensive IT strategic plan that promises to provide needed structure and direction to the executive branch departments. However, in our review, we also found that the fundamental issues regarding the CIO’s authority to implement and manage statewide initiatives have yet to be addressed. Currently, the CIO is administratively attached to the Department of Accounting and General Services (DAGS), whose executive in charge is the comptroller.

While the governor has promised the CIO “carte blanche” by issuing an administrative directive clarifying the authority and responsibilities of the CIO to the appropriate executive branch departments, such an action does not have the force of law. At this time, the scope of the CIO’s authority does not extend beyond his own office and support staff of six. Therefore, the question of who is in charge of IT governance in Hawai‘i remains unanswered.

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### Background

In our *Audit of the State of Hawai‘i’s Information Technology: Who’s in Charge?*, Report No. 09-06, we procured the services of Accuity LLP to assist us in reviewing the governance structure of the state executive branch’s information technology for fiscal years 1995-96 through 2006-07, focusing on eight large departments, excluding the University of Hawai‘i. We found that the State’s IT leaders provided weak and ineffective management, and as a result, the State no longer had a lead

agency for information technology. In 2004, the appointment of a state CIO and the subsequent appointment of IT governing bodies and officials appeared to be an acknowledgment by the executive branch of the importance of IT and the necessity of its effective, coordinated management. But, we found that both the CIO position and the IT governing bodies were established without clearly defined roles, duties, or responsibilities. In addition, the job of CIO was a part-time position, and State agencies’ participation in the IT governing process was voluntary. Moreover, decisions that resulted from the IT Executive Committee’s deliberations were non-binding. As a result, meetings were poorly attended and policy decisions were rare.

We also found that the Information and Communication Services Division (ICSD) within the Department of Accounting and General Services, the State’s official lead agency for IT, had not maintained up-to-date technology standards, no longer enforced or monitored compliance with this requirement, and did not provide necessary guidance to departments for critical processes such as disaster recovery. During interviews, several departments’ IT managers indicated that ICSD did not offer the relevant services and support to effectively assist them in carrying out their missions.

We recommended that the governor formally assign responsibility for the development and execution of the IT strategic plan to a full-time CIO. We also made several recommendations to the Legislature to explicate the responsibilities of the various IT governance entities.

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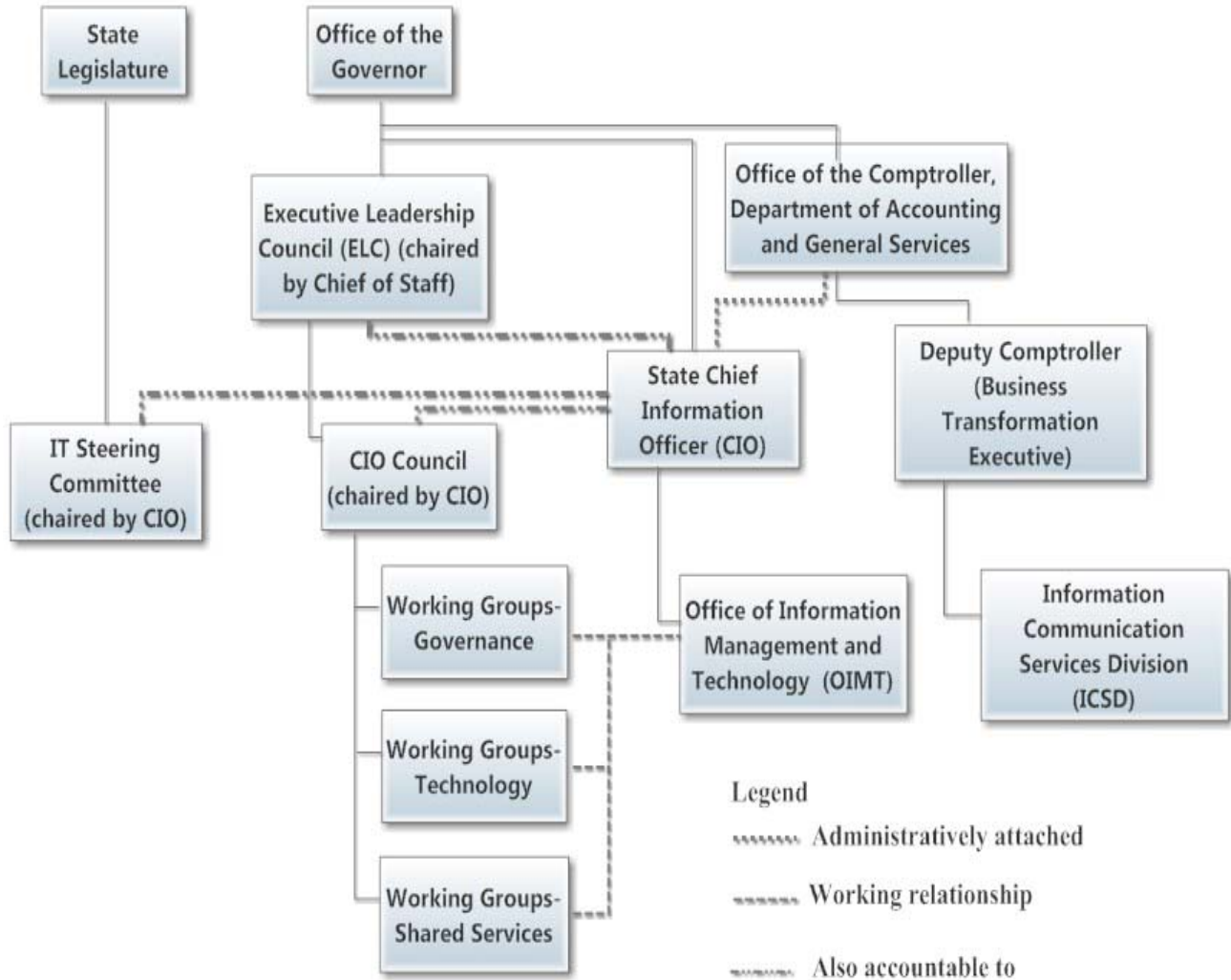
## **Legislature Placed CIO Position Within DAGS, Limiting Its Powers**

In 2010, the Legislature passed Act 200, which established a full-time CIO as well as an Information Technology Steering Committee. The act became law without the governor’s signature and took effect in January 2011. According to the law, the CIO reports directly to the governor and is responsible for the development, implementation, and management of statewide IT governance, state IT strategic plans, and the development and implementation of statewide technology standards.

The CIO chairs the IT Steering Committee, which is comprised of representatives from executive branch departments and private individuals and is appointed by the Legislature. Exhibit 5.1 shows the IT governance structure for the CIO, the IT Steering Committee and related oversight councils as reported to us by the CIO. In addition, the CIO Council, comprised of IT leads of state departments and counties and chaired by the CIO, is responsible for bringing issues related to IT to the attention of the CIO and provides leadership and strategic direction and prioritization among the departments with respect to

business transformation and IT. The CIO Council is accountable to the CIO, the respective department directors, and the Executive Leadership Council. The CIO Council is also the entity that will recommend to the Executive Leadership Council (ELC) whether to approve or reject the IT strategic plan. The ELC is chaired by the governor's chief of staff and is comprised of the directors of the executive branch departments and the CIO. It is the senior board accountable to the governor and is the body that will approve or disapprove the statewide IT strategic plan.

**Exhibit 5.1**  
**Statewide IT Governance Structure**



Source: Office of the Auditor based on information from the Office of Information Management and Technology, and Acts 200, SLH 2010, and 84, SLH 2011, codified in Section 27-43, HRS

In our follow-up work, we found that while the governor appointed Hawai‘i’s first full-time CIO, the position lacks the authority to completely carry out its statutory responsibilities, which undermines the purpose of the position. When the CIO position was established by the Legislature in 2010, it was initially placed within the Office of the Governor. However, this placement violated the Constitution of the State of Hawai‘i, which requires that state executive branch agencies be placed within principal departments of the executive branch—which the Office of the Governor is not. Subsequently, the Legislature amended the law during the 2011 session by passing Act 84, which placed the CIO position within the Department of Accounting and General Services but continued to have the CIO report directly to the governor.

Lawmakers also enabled the CIO and the comptroller to receive private donations to a special fund to supplement general fund moneys. The Shared Services Technology Special Fund is administered and expended by the CIO. The Legislature initially appropriated \$1.2 million from the special fund for FY2011–12 to support the operations of the CIO and the IT Steering Committee. In March 2011, the governor announced the establishment of the Office of Information Management and Technology, which would be led by the CIO. Three months later, the governor announced his appointment of the State’s first full-time CIO.

***The new CIO: highly credentialed and given “carte blanche”***

Report No. 09-06 cited the importance of selecting a candidate who possesses the skills and experience necessary to accomplish a CIO’s multiple roles and responsibilities. Upon announcement of the CIO’s selection, his credentials were released. They included two positions as CIO on the federal level, one with the U.S. Department of the Interior and the other with the Bureau of Indian Affairs and Bureau of Indian Education. The CIO also assisted the Federal Bureau of Investigation’s (FBI) CIO in transforming the FBI’s enterprise IT systems. Based on his listed work experience, the current CIO seems fully qualified.

The CIO noted that when he was hired he was assured by the governor he would have “carte blanche” to do what a CIO needs in order to revamp and improve the State’s IT system—but according to him that has not been the case. In September 2011, the governor issued an administrative directive to all of the executive branch department heads in an effort to clarify the authority and responsibilities of the CIO. The directive informed the department heads that each agency under the governor’s executive authority with the exception of the Office of Hawaiian Affairs, the University of Hawai‘i, and the Department of Education—that the CIO has authority over the design and implementation of all executive branch IT infrastructure and shared services; will work with the director of finance in approving all department IT budget requests;

and will develop the IT Strategic Plan for the executive branch and its departments. This provides a measure of clarity to the departments as to the role and responsibilities of the CIO, which was a point of contention in the 2009 audit report. However, the Office of the Governor conceded that while departments are expected to comply with the administrative directive, it does not have the force of law.

### **CIO authority conflicts with state law**

Placement of the CIO’s position within DAGS has limited his ability to fully carry out his duties. For example, Section 26-4, HRS, lists 18 principal departments in the executive branch—DAGS among them—all of which are headed by a single executive or board. The comptroller is DAGS’ single executive. And through the department, it is the comptroller who has the authority to adopt rules that implement, interpret, and prescribe law or policy and describe the organization, procedure, or practice requirements of the agency. This conflicts with the authority given to the CIO under Section 27-43, HRS, as the CIO arguably cannot independently exercise executive-level powers under an executive branch agency currently run by the comptroller.

The CIO expressed that although he is treated like a department head by a number of people, there is confusion, even among those within DAGS, as to the scope of his authority. The CIO added that while he has been able to fulfill his statutory duty to plan statewide IT governance and the IT Strategic Plan, he does not have the ability to implement and manage those ideas as long as he is within DAGS.

### **CIO encounters ICSD difficulties—a sign of challenges to come**

An example of the CIO’s difficulties in exercising his statutory responsibilities is evident in his dealings with ICSD. Section 27-43, HRS, also empowers the CIO to provide supervision and oversight of ICSD, which has been the State’s traditional lead organization for IT and had been responsible for the State’s overall technology plan for the executive branch. The ICSD is responsible for managing the information processing and telecommunication systems for all state agencies. The CIO said that changes made to ICSD’s IT operations could provide a working model of his ideas and ease any transition concerns other state departments might have.

According to the CIO, he initially thought the prospect of implementing changes at ICSD would be simple. However, his efforts were met with resistance from staff. The comptroller sought the opinion of the director of human resources development, who described the CIO’s statutory authority regarding ICSD as “not clear.” The director also opined that should the Office of Information Management and Technology (OIMT) eventually “employ” ICSD personnel within OIMT, a formal

reorganization would need to be completed and approved. In addition, the director said that Section 27-43, HRS, which requires OIMT employees to be exempt from civil service, would need to be revised, as ICSD employees are currently civil service workers. The director pointed out that even if ICSD personnel remained within their current division but were required to report to the CIO or to operate under his authority, union consultation would be required.

The Office of the Comptroller responded that a deliberate decision was made by the administration not to burden the CIO with the day-to-day operational responsibilities of ICSD while the CIO is working on the State’s IT Strategic Plan. Although the CIO is statutorily placed within DAGS, the CIO’s position is not reflected in DAGS’ organizational chart. The Office of the Comptroller said that pending implementation of the IT Strategic Plan, there is no organizational relationship between the CIO and ICSD, and that currently, only the CIO’s staff report directly to the CIO. The CIO conceded there is confusion as to whether he has any authority over ICSD staff but noted he does not want to be restricted to planning (as opposed to having the authority to implement those plans) for the next two years.

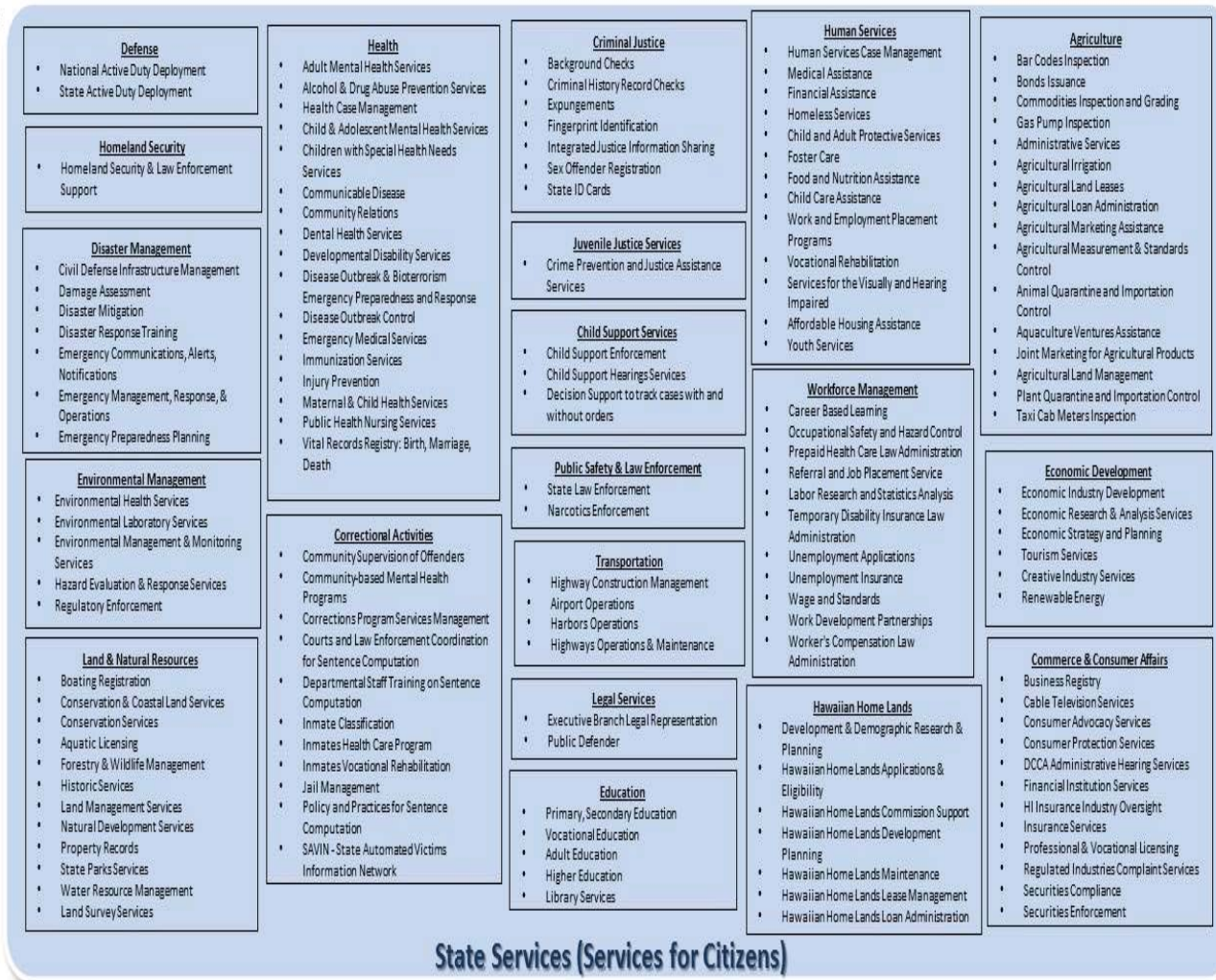
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## **IT Strategic Plan Will Require a Government-wide Transformation**

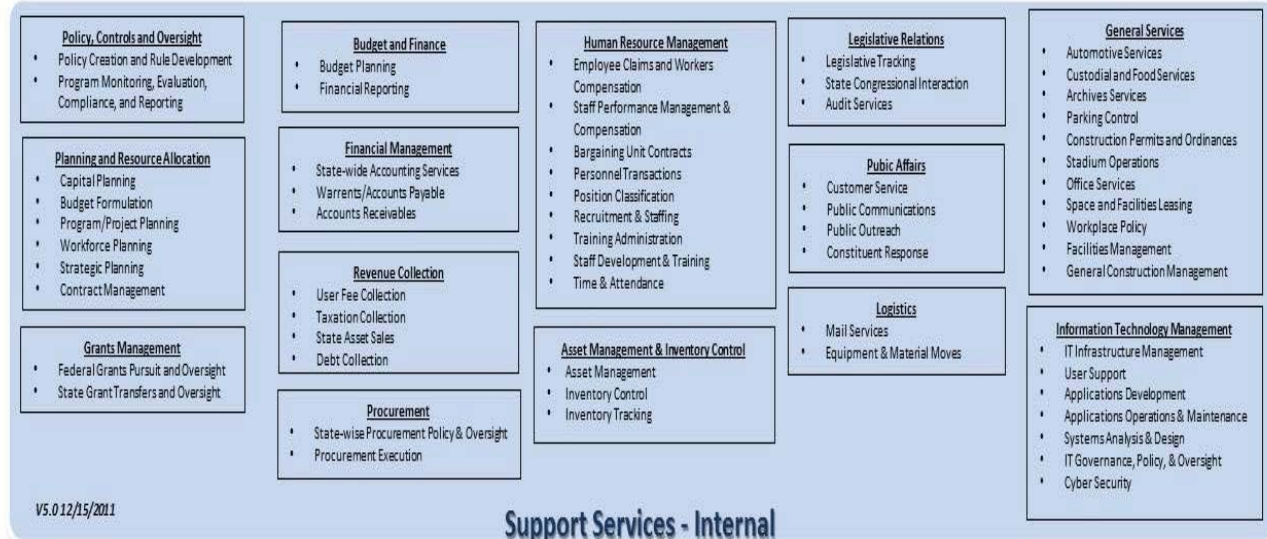
The CIO admitted he expects that the statewide IT Strategic Plan will “ruffle some feathers.” Indeed, a review of portions of the draft plan shows that every department, every process, and every IT staff member statewide will be involved in transforming the State’s IT operations. According to the plan, the State of Hawai‘i’s 18 departments each operates independently, with cooperation and sharing of resources being the exception rather than the rule. Duplication of functions and services is often the result. This “siloes” approach is a reflection of how departments are funded at the program level. Because technology investments are siloes into various branches of government, the economic and operating synergies of shared expertise and equipment across departments have been limited. The use of technology to share information and services across departments would enable a new approach. Specifically, the IT strategy looks at state government from the standpoint of lines of business (LOBs)—that is, groupings of state activities by desired end outcomes—so that opportunities to work across organizational boundaries can be identified. For example, the LOBs for health fall primarily under the Department of Health, although they also cross into other departments such as the Department of Education, which is responsible for the health of students while they are in school. The IT strategic plan has identified 20 LOBs that are core mission services and 14 that are support services. These are depicted in Exhibit 5.2.



## Exhibit 5.2 Hawai'i Lines of Business



### State Services (Services for Citizens)



VS.012/15/2011

### Support Services - Internal

Source: Office of Information Management and Technology

The plan, which is to be implemented over an 11-year period, involves time-consuming and politically sensitive issues, such as reorganizing existing IT support offices for executive branch departments. For example, such a government-wide effort may involve developing a set of new position descriptions, a move that would require consultations with various unions, among other actions. The plan is also expected to identify 1) the necessary steps that would enable ICSD to fall under the supervision and oversight of the CIO, and 2) how to implement potential restructuring of the IT divisions of other state departments and agencies in subsequent years. The CIO observed that the success of the plan’s implementation will depend on the leadership of the administration and the Legislature. The Office of the Governor said the prospects of successfully implementing the plan will rest with the Legislature, whose support is essential.

The scheduled date for completion of the IT Strategic Plan is July 31, 2012. The plan is set to be presented to the Legislature in September 2012. The Legislature and the administration must then decide whether to fully empower the CIO so that he is able to implement an IT management structure, which he described as “the worst I’ve seen in my career.” The Legislature, to its credit, took action and established the CIO position to not only develop but to execute an IT Strategic Plan and oversee statewide IT governance. However, unless the CIO is provided the authority to fulfill these responsibilities, the question of who is in charge of IT governance in Hawai‘i will remain unanswered. Exhibit 5.3 shows the 11-year Transition and Sequencing Plan for the various Strategic Plan activities.

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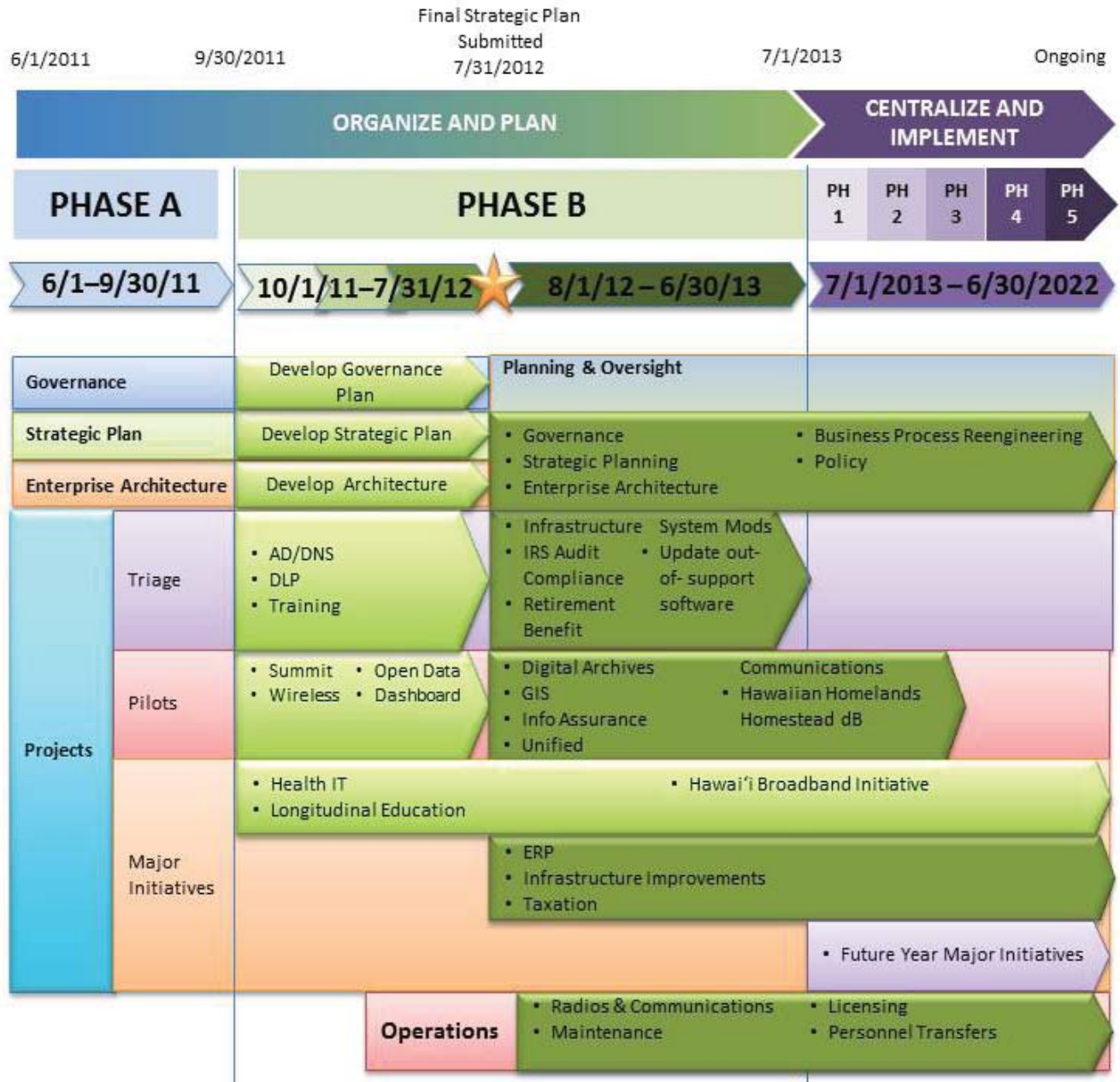
**Status of  
Recommendations  
Made in the  
Audit of the  
State of Hawai‘i’s  
Information  
Technology:  
Who’s in Charge?**

***Recommendations to  
the governor***

Report No. 09-06 included ten recommendations to the governor, the Legislature, the chief information officer (CIO), the Information Technology (IT) Steering Committee, and the Information and Communication Services Division (ICSD).

The first recommendation directed to the governor was focused on assigning responsibility for development and execution of the IT Strategic Plan to the State CIO. The governor announced the hiring of the State’s first full-time CIO who is responsible to develop and implement the IT Strategic Plan. Therefore, we deem this recommendation **Closed**.

### Exhibit 5.3 Transition and Sequencing Plan for Strategic Plan Activities



Source: Office of Information Management and Technology



The three parts of the next recommendation directed to the governor were focused on thoroughly evaluating candidates and hiring a qualified CIO, defining and communicating his roles and responsibilities, and evaluating the CIO’s performance. The governor’s office prepared a position description and used this to evaluate candidates and communicate roles and responsibilities, therefore we deem the first two parts of this recommendation **Closed**. The third part of the recommendations is deemed **Open but in progress**.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
Recommendations to the governor			
(1) Formally assign responsibility for development and execution of the IT Strategic Plan to the State CIO.	Hawai'i has not had a formally established IT strategic planning process because the administration had not tasked an individual or group with coordinating and planning the strategic use of technology despite IT's importance to the State's operations and services.	<b>Closed</b>	On June 7, 2011, the governor announced that the State hired its first full-time Chief Information Officer (CIO) to develop and implement a plan to transform Hawai'i's outdated technology infrastructure.
(6a) Thoroughly evaluate the necessary knowledge, experience, skills and abilities in selecting the State CIO;	To ensure the selected candidate possesses the skills and experience necessary to accomplish the roles and responsibilities of a CIO.	<b>Closed</b>	The State CIO's work history includes two CIO roles, one with the U.S. Department of the Interior and the other with the Bureau of Indian Affairs and Bureau of Indian Education. He also assisted the FBI's CIO in transforming the FBI's enterprise and information resource management portfolio.
(6b) Define and communicate the roles, responsibilities, and authority of the CIO to the executive departments; and	Without a clear understanding of the CIO's roles, responsibilities, and authority, departments would be uncertain whether the CIO's policies and directives are mandates or suggested practices.	<b>Closed</b>	The governor issued Administrative Directive No. 11-02 to all executive departments. It stated that the CIO and the Office of Information Management and Technology (OIMT) will have authority over the design and implementation of all executive branch IT infrastructure, information resource management (IRM), and shared services.
(6c) Formally evaluate the performance of the State CIO.	Evaluating performance will provide ability to assess effectiveness of the CIO in achieving the goal to develop the necessary IT governance structures and processes.	<b>Open but in progress</b>	The CIO must report to the governor and also provide an annual report to the Legislature on the status and implementation of the state information technology strategic plan. The Office of the Governor responded that it meets regularly with the CIO.

**Recommendations to the Legislature**

The first recommendation directed to the Legislature was focused on establishing a full-time, dedicated CIO to organize, manage, and oversee statewide IT governance. The Legislature established the CIO position

in 2010. However, fundamental issues regarding the CIO’s authority to implement and manage statewide initiative have yet to be addressed. Therefore, we deem this recommendation **Open but in progress**.

The four parts of the next recommendation directed to the Legislature were focused on the establishment of the IT Steering Committee, including defining its roles and responsibilities. The committee is chaired by the CIO and includes representatives from each executive department, the Legislature, and private individuals. All four parts of this recommendation are deemed **Closed**.

The next recommendation directed to the Legislature was focused on clarifying the roles, responsibilities, and authority of the ICSD. Since this work is still underway, we deem this recommendation **Open but in progress**.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
Recommendations to the Legislature			
(4) Consider establishing a full-time, dedicated CIO to organize, manage, and oversee statewide IT governance, including the roles and responsibilities recommended by CobiT.	Based on the extensive duties recommended by CobiT, the position of CIO requires a full-time commitment. In the past, the CIO position was filled by the State Comptroller.	<b>Open but in progress</b>	The Legislature established the CIO position in 2010. The CIO agreed he arguably does not have the authority to implement or manage the IT Strategic Plan as long as he remains within DAGS.
(7) Consider establishing an IT Steering Committee, including the roles and responsibilities recommended by CobiT. The committee should:	A steering committee defines project priorities; reviews, approves, funds, and assesses how IT initiatives improve the business process; assesses strategic fit, performs reviews for continuing strategic relevance, ensures identification of all costs to fulfill cost/benefit analyses, and makes key IT governance decisions.	<b>Closed</b>	In 2010, the Legislature established the Information Technology Steering Committee under Section 27-43, HRS.
(7a) Be chaired by the CIO;	In accordance with Act 200, SLH 2010, that implements the recommendations in the 2009 Auditor’s report.	<b>Closed</b>	Under Section 27-43, HRS, the IT committee is chaired by the CIO.
(7b) Include representatives from each executive department, the Legislature, and private individuals; and	In accordance with Act 200, SLH 2010.	<b>Closed</b>	In accordance with Section 27-43, HRS, the committee members include representatives from the executive branch and include the Legislature, as well as private individuals.
(7c) Have clear roles, responsibilities and authority for shaping IT governance and steering the State’s priorities.	To ensure accountability.	<b>Closed</b>	The roles and responsibilities of the IT Steering Committee are stated in the Section 27-43, HRS.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
(9) Consider clarifying the roles, responsibilities, and authority of the ICSD, specifically as it relates to its statewide duties.	ICSD is responsible for the State’s overall technology plan for the executive branch but has not provided guidance and direction to departments.	<b>Open but in progress</b>	The steering committee, in conjunction with the CIO, is to develop standards and policies that include clarifying the role of ICSD, which is reflected in the committee’s charter. A Request for Quotes to develop a human resources component for the IT Strategic Plan included a task to determine the steps necessary for ICSD to come under the supervision and oversight of the CIO.

**Recommendations to the Chief Information Officer**

The four parts of the first recommendation directed to CIO were focused on adopting an IT strategic planning process, ensuring IT Steering Committee involvement, and ensuring that the IT strategic plans are linked to the State’s goals and objectives and include objectives with sufficient detail. Since all of this work is underway, the four recommendations are deemed **Open but in progress**.

The five parts of the next recommendation directed to the CIO were focused on the CIO reporting directly to the governor as well as having the CIO in conjunction with the IT Steering Committee develop, implement, and manage statewide IT governance, the State’s IT strategic plans, and statewide technology standards. One of the recommendations is deemed **Closed**, one of the recommendations is deemed **Open**, and three recommendations are deemed **Open but in progress**.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
Recommendations to the chief information officer			
(2a) Adopt an IT strategic planning process based on nationally recognized best practices such as CobiT;	CobiT enables clear policy development and good practice for IT control throughout organizations and emphasizes regulatory compliance.	<b>Open but in progress</b>	The CIO has adopted proven best practices from industry and government to develop a ten-year business transformation and IT Strategic Plan for the State. Assessment is pending completion of the plan, which is scheduled for the end of July 2012.
(2b) Ensure the IT Steering Committee is involved with the State’s IT strategic planning process;	IT Steering Committee prioritizes projects, ensures their alignment with the goals of the organization, and monitors their performance.	<b>Open but in progress</b>	Minutes of IT Steering Committee meetings show that the committee is providing comments and input regarding development of the IT Strategic Plan.
(2c) Ensure the State’s IT strategic plans are linked to the State’s goals and objectives, and take into consideration risks to the State’s operations; and	Strategic planning aligns IT resources with organizational priorities, addresses risks, and presents how its stated goals and initiatives will contribute to the State’s strategic objectives.	<b>Open but in progress</b>	The governor’s office confirms regular meetings with the CIO are held and progress reports are received. Further assessment is pending completion of the IT Strategic Plan, which is set for the end of July 2012.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
(2d) Ensure the plans include objectives with sufficient detail so that adequate action plans, tasks, and criteria to monitor progress can be established.	An IT strategic plan should include clear objectives, tasks, criteria to monitor progress, and sufficient detail to guide the development of action plans.	<b>Open but in progress</b>	According to the CIO, the strategic plan will provide goals, objectives and performance measures to monitor progress. Further assessment is pending completion of the plan.
(5a) Report directly to the governor;	Section 27-43 (a), HRS, states the CIO reports directly to the governor.	<b>Closed</b>	The 2010 Legislature established the CIO position, which reports directly to the governor. Minutes of the IT Steering Committee show the CIO provides weekly reports to the governor. The governor’s office confirms regular meetings with the CIO are held with progress reports.
(5b) In conjunction with the IT Steering Committee, the CIO should develop, implement, and manage statewide IT governance;	In accordance with Section 27-43 (a) (1), HRS.	<b>Open but in progress</b>	According to the CIO, the IT governance structure and processes, are being finalized. The IT Steering Committee charter was adopted in January 2012, which includes its roles and responsibilities. A January 2012 draft of the CIO Council Charter was pending adoption during our fieldwork.
(5c) In conjunction with the IT Steering Committee, develop, implement, and manage the State’s IT strategic plans;	In accordance with Section 27-43 (a) (2), HRS.	<b>Open but in progress</b>	The 2010 Legislature also mandated that both parties develop, implement, and manage the State’s IT strategic plans. The IT Strategic Plan was in development during our fieldwork. Completion date was the end of July 2012.
(5d) In conjunction with the IT Steering Committee, develop and implement statewide technology standards; and	In accordance with Section 27-43 (a) (3), HRS.	<b>Open but in progress</b>	According to the CIO, the IT Strategic Plan will include minimum standards for technology that all state departments and agencies must follow. The governor issued an administrative directive in September 2011 informing department heads that the CIO will coordinate their IT investment planning. Further assessment is pending completion of the IT Strategic Plan.
(5e) Ensure the IT Steering Committee is evaluated periodically.	In accordance with Section 27-43 (b), HRS.	<b>Open</b>	Response by the CIO did not address whether periodic evaluations are conducted by the CIO. The IT Steering Committee Charter does not address performance evaluation.



**Recommendations to the IT Steering Committee**

The six parts of the first recommendation directed to the IT Steering Committee were focused on working with the CIO to develop and implement the State’s IT Strategic Plan, then using the plan to assess progress in accomplishing the defined objectives and to make decisions. The recommendation also focused on selecting technology projects based on impact and risk and ensuring departments assess the value and benefit of technology initiatives. Three of the recommendations are deemed **Open**, and three of the recommendations are deemed **Open but in progress**.

The four parts of the next recommendation directed to the IT Steering Committee were focused on having it work with the CIO to develop the State’s IT Strategic Plan. After that was completed, the steering committee was to monitor and assess progress in implementation of the plan, develop IT standards, and review and approve large-scale IT projects. Because the IT Strategic Plan is still under development, three of the recommendations are deemed **Open** and one is deemed **Open but in progress**.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
Recommendations to the IT Steering Committee			
(3a) Work closely with the CIO to develop and implement the State’s IT strategic plans;	The CIO has sufficient authority to establish standards and set statewide priority and should be actively involved in the IT Steering Committee.	<b>Open but in progress</b>	Minutes of IT Steering Committee meetings demonstrate committee input regarding development of the IT Strategic Plan. The plan is expected to be completed by July 31, 2012 with implementation a year later.
(3b) Continuously assess the administration’s progress in accomplishing the objectives defined in the State’s IT strategic plans;	The responsibilities of an IT Steering Committee include monitoring progress on major IT projects and monitoring key IT governance processes.	<b>Open but in progress</b>	Presentation of the plan to the Legislature is scheduled for September 2012 with implementation to begin in July 2013.
(3c) Use the State’s IT strategic plans to make management decisions;	The responsibilities of an IT Steering Committee include assessing strategic fit and making key IT governance decisions.	<b>Open</b>	Implementation of the plan is scheduled to begin in 2013.
(3d) Periodically update the State’s IT strategic plans, at least every two years;	National survey shows a majority of states have a process to update their IT strategic plans on an annual or biennial basis.	<b>Open</b>	Completion of the plan is set for July 2012.
(3e) Ensure technology projects are selected based on their potential impact and risk to the State, as well as their strategic value; and	In accordance with Section 27-43 (b) (3), HRS.	<b>Open but in progress</b>	The presentation of the plan to the Legislature is scheduled for September 2012 and implementation of the plan to begin in July 2013.
(3f) Ensure departments maintain sufficient tools to assess the value and benefit of technology initiatives.	Audit report found without proper tools, the State cannot ensure its IT investments are cost effective, adequately planned, or have operational flexibility.	<b>Open</b>	The Legislature included in Section 27-43, HRS, a provision that the IT Steering Committee is responsible for ensuring that executive branch departments maintain sufficient tools to assess the value and benefits of technology initiatives.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
(8a) Assist the CIO in the development of the State's IT Strategic Plan;	In accordance with Section 27-43 (b) (1), HRS.	<b>Open but in progress</b>	This responsibility is included in Section 27-43, HRS.
(8b) Monitor and assess the State's implementation of the State's IT Strategic Plan;	In accordance with Section 27-43 (b) (2), HRS.	<b>Open</b>	According to the CIO, once the plan is implemented, the IT Steering Committee will review performance measures defined in the strategic plan and recommend appropriate actions. Implementation of the plan is not scheduled until July 2013.
(8c) Assist the CIO in developing the State's IT standards and policies; and	In accordance with Section 27-43 (b) (5), HRS.	<b>Open</b>	Both Section 27-43, HRS and the IT Steering Committee charter require that the steering committee help the CIO develop IT standards and polices for the State. Minutes of the committee's first two meetings do not reflect any discussion of specific IT standards or policies.
(8d) Review, approve, and monitor large scale IT projects for the State.	In accordance with Section 27-43 (b) (3), HRS, to ensure technology projects are selected based on their potential impact and risk to the State, as well as their strategic value.	<b>Open</b>	Further assessment is pending the completion and implementation of the IT Strategic Plan.

**Recommendations to the Information and Communication Services Division**

Lastly, there were five parts to the final recommendation directed to ICSD that focused on having it update its operating model and service offerings based on departmental needs. The recommendation also focused on assessing staffing and training needs and developing a plan to address the needs while developing core competencies, and establishing a process to ensure technology investments provide the greatest value to the State. Because the CIO is still working on the supporting structure for IT governance, we elected not to assess these recommendations and deem these recommendations as **Did not assess**.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
Recommendations to the Information and Communication Services Division			
(10a) Adopt a customer focus;	Departmental IT managers expressed concerns about ICSD's ability to provide essential services which raised questions about the division's development of its staff skills to provide services departments needed and wanted.	<b>Did not assess</b>	We assessed recommendations in the audit report that focused on the larger issue of establishing a leadership post and supporting structure for IT governance. As a result, we elected not to assess operational recommendations for the ICSD.
(10b) Assess and modify its operating model and service offerings based on its roles and responsibilities and departmental needs;		<b>Did not assess</b>	

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
(10c) Assess its staffing and training needs and develop a plan to recruit and train appropriate staff to accomplish its mission;		<b>Did not assess</b>	
(10d) Provide value to the departments by further developing its core competencies, taking advantage of its unique position as a statewide IT organization, providing: centralized computing solutions; network and Internet connectivity; data center services; disaster recovery services; and	See comments above	<b>Did not assess</b>	See comments above
(10e) Establish processes to ensure technology investments provide the greatest value to the State.	See comments above	<b>Did not assess</b>	See comments above

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# Chapter 6

## Director is Setting Tone for Agency That Adheres to the Policies and Procedures of the Hawai‘i Public Procurement Code

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Our audit report, *Investigation of the Procurement and Expenditure Practices of the Department of Business, Economic Development & Tourism and Selected Attached Agencies*, Report No. 09-07, released in April 2009, revealed an organizational culture unconcerned with the directives of the Legislature and unconvinced of the importance of the Hawai‘i Public Procurement Code. Department leadership was lacking, with a “tone at the top” that placed emphasis on expediency over accountability. Moreover, there were no assurances that appropriate policies and procedures were in place, which contributed to an environment filled with internal control deficiencies.

In our follow-up of the report’s recommendations, we found that the tone at the top has changed significantly, with the current department director stressing—through words and actions—the importance of adhering to the rules and regulations of the Hawai‘i Procurement Code. For example, the department no longer uses appropriation transfer authority to fund projects denied by the Legislature and has discontinued funding of prior projects funded in this manner. In addition, the director enforces the rules, policies, and procedures of the Procurement Code by having division heads and executive directors sign an annual Procurement Delegation Agreement. The department also conducts internal audits to ensure compliance with the code.

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### Background

In *Investigation of the Procurement and Expenditure Practices of the Department of Business, Economic Development & Tourism and Selected Attached Agencies*, Report No. 09-07, we found that the department made use of appropriation transfer authority (intradepartmental transfers) to fund projects denied by the Legislature. In FY2007 and FY2008, we noted two contracts in particular with terms mirroring bills that died during their respective legislative sessions. The department located “payroll savings” and redirected money to fund these projects. Because these contracts were entered into outside the normal budgeting process, the goals, objectives, and measures of effectiveness for the particular projects were not reported to the Legislature. Moreover, with no mechanism to either determine the impact of or reconcile the changes in funding levels, transparency was lost. We also noted violations of procurement procedures, poor procurement practices, and inadequate training.

Our findings raised questions about the department's awareness of, compliance with, and commitment to the requirements of the Hawai'i Public Procurement Code. Many of the exceptions and procedural errors resulted from a lack of understanding of procurement laws, rules, and internal policies and procedures. The department's deficiencies in implementing the procurement code and its own procurement policies and procedures were the direct result of its lack of training, poor management oversight, and a weak control climate.

We recommended that the department develop clearly documented policies and procedures, maintain financial records, and monitor staff and contractor performance. We noted that the department director must set the ethical tone for the department by stressing the importance of training and adherence to rules and regulations to ensure that both staff and management understand that fraud, waste, and abuse will not be tolerated.

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## **The Department No Longer Uses Appropriation Transfer Authority to Fund Projects Denied by the Legislature**

In response to the recommendations in Report No. 09-07, the current director reported that the department no longer uses appropriation transfer authority to fund projects and programs denied by the Legislature. Today, the department implements programs only based on legislative intent and funding. The two programs the director inherited from the prior director that were funded by intradepartmental transfers have been discontinued.

Provisos within the general and supplemental appropriations act authorize the governor to transfer operating funds between appropriations and to allow for flexibility in operations within an expending agency. The department is able to use this transfer authority by requesting authorization from the governor through the submission of form A-21, Request for Transfer of Funds, to the director of finance. We verified through a review of the department's A-21 forms that while the Department of Business, Economic Development and Tourism (DBEDT) continued to process intradepartmental transfers over the past three years, it did not fund any of its projects through the transfer of funds from other projects or programs.

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## **By Enforcing the Procurement Code and Conducting Post-audits, the Current Director Emphasizes Compliance**

In January 2009, the department formally reissued delegation of procurement authority after designated staff received State Procurement Office (SPO) training in the specific area of their responsibilities. Delegation of procurement authority is now made upon confirmation that the individual requesting delegation has received the required training.

All employees seeking procurement delegation to conduct the various methods of procurement must sign SPO Form 036. This form must be approved by the director and requires the employee to acknowledge full responsibility for the procurement authority delegated and the procurements conducted. Prior to conducting any procurement, the employee is responsible for attending all appropriate SPO training workshops pursuant to Procurement Circular 2010-05.

The department also emphasizes greater accountability by requiring division heads and executive directors to sign an annual Procurement Delegation Agreement with the director. The agreement documents delegated procurement authority, defines roles and responsibilities, and holds department personnel accountable for complying with all applicable procurement law, policies, and rules. The agreement also includes a list of consequences for failing to comply. The department has also taken steps to provide greater clarity regarding responsibilities of each party involved in the procurement process. The department maintains a list of responsible parties within each division who are required to ensure that policies and procedures are followed and procurement records are properly maintained.

In addition, we found that the department has established processes to ensure procurements and subsequent contracts are appropriately monitored and has identified audit points that present opportunities to review documents to ensure compliance with the procurement code. Program performance/compliance is monitored through the normal processing of payments by DBEDT's fiscal office under its Administrative Services Office (ASO) and by the Department of Accounting and General Services (DAGS) pre-audit function. The department also developed and implemented a post-audits function with defined disciplinary action for procurement violations. Periodic post-audit sampling is done by the DBEDT ASO's Contracts Section and Budget Section.

In 2011, DBEDT's ASO Contracts Section began conducting fiscal year post-audits of each program. Through these audits, the department identified only two individuals who had second procurement violations.

As a result, the director issued a warning and implemented mandatory retraining on the first violation and rescinded procurement delegation for at least a one-year period for the second significant violation.

In our report, we recommended that DBEDT conduct a department-wide training upon completion of the updating of its Procurement/Contracts Manual and documentation of its guidelines for the procurement and contract process. The department scheduled a department-wide procurement training for May 11, 2012 to provide a general overview of the procurement requirements of the Hawai'i Revised Statutes, Hawai'i Administrative Rules, and the department's internal procedures.

While the department has made significant progress in implementing our audit recommendations, it still has personnel conducting procurement activities without appropriate procurement delegation and training. We found two of the 36 individuals on the department's list of responsible parties do not have Procurement Delegation SPO-036 Forms on file. In addition, two individuals delegated with procurement authority do not have records to show they have attended all mandatory training workshops required by the SPO in their specific area of responsibility.

Overall, we conclude that the department director has sent a strong message to his staff about the importance of complying with rules, policies, and laws of the Hawai'i Public Procurement Code.

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**Status of  
Recommendations  
Made in the  
*Investigation of  
the Procurement  
and Expenditure  
Practices of  
the Department  
of Business,  
Economic  
Development  
& Tourism and  
Selected Attached  
Agencies***

Report No. 09-07 included multi-part recommendations to the Legislature and the Department of Business, Economic Development and Tourism (DBEDT).

***Recommendations to  
the Legislature***

The recommendation directed to the Legislature was focused on devising a reporting mechanism to incorporate transfers into future budgets and



requiring justification to transfer funds and documenting new program goals, objectives, and performance measures. The Legislature did not pass any new legislation to address this, therefore the two parts of this recommendation are deemed **Not applicable**.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
Recommendations to the Legislature			
(2) As the Legislature desires to be more aware of these funding vehicles and ensure greater transparency and accountability in government, the Legislature should:	We reported these reallocations of funds lack accountability and therefore pose a great risk for the State.	<b>Not applicable</b>	Controls over these kinds of transfers already exist. Departments must file a form A-21 with the director of the Department of Budget and Finance. Based on the above, it is reasonable to conclude that the Legislature does not intend to address this recommendation.
(2a) Devise a reporting mechanism to incorporate transfers into future budgets. As "savings" are identified in one program, the savings should be carried over via decreasing base budgets for the following period; and	See comments above		See comments above
(2b) Require justification of transfers to also include impact on existing programs and to formalize new programs by establishing goals, objectives and performance measures.	See comments above		See comments above

**Recommendations to the Department of Business, Economic Development & Tourism**

The first recommendation made to DBEDT was focused on creating the proper balance of funding the projects legislatively mandated versus those with funding denied. We found the department no longer uses appropriation transfer authority to fund projects denied by the Legislature and has discontinued funding of prior projects funded in this manner. Therefore, we deem this recommendation **Closed**.

The six parts of the next recommendation directed to DBEDT were focused on improvements to the department's policies and procedures to ensure that the Hawai'i Public Procurement Code is adhered to at all levels within the department and attached agencies. This included revising the current procurement policies and procedures, conducting department-wide training, establishing responsible parties, and seeking appropriate disciplinary action for procurement violations. We found that the director enforces the procurement rules, policies, and procedures by having division heads and executive directors sign an annual procurement delegation agreement. The department also conducts internal audits to ensure compliance with the code. Therefore, we deem four of the recommendations **Closed** and two of the recommendations as **Open but in progress**.

**Chapter 6: Director Is Setting Tone for Agency That Adheres to the Policies and Procedures of the Hawai'i Public Procurement Code**

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
Recommendations to the Department of Business, Economic Development & Tourism			
(1) The department must create the proper balance of funding the projects legislatively mandated versus those with funding denied, while still focusing on its main objective to spur business development in Hawai'i.	The department used transfer authority to fund projects denied by the Legislature. These reallocations of funds lacked accountability and therefore posed a great risk for the State. The Legislature was not informed what these contract-created programs intended to accomplish.	<b>Closed</b>	The department no longer uses appropriation transfer authority to fund projects denied by the Legislature. The two projects identified in our audit that had been funded by the previous director through the use of intradepartmental transfers have been discontinued by the new director.
(3) The department should ensure that the Hawai'i Public Procurement Code is adhered to at all levels within the department and its attached agencies. To address this, the department should:			
(3a) Ensure all staff and management dealing with the procurement of goods, services, and construction are familiar with and properly trained in the requirements of the Hawai'i Public Procurement Code;	We noted violations of procurement procedures, poor procurement practices, and inadequate training. Our findings raised questions about the department's awareness of, compliance with, and commitment to the requirements of the Hawai'i Public Procurement Code.	<b>Open but in progress</b>	Delegation of procurement authority is now made upon confirmation that an individual requesting delegation has received the required training. Delegation of procurement authority was formally reissued in January 2009 after each person received SPO training in their specific area of delegation. However, the department still has personnel conducting procurement activity without appropriate procurement delegation and training.
(3b) Revise the current procurement/contracts manual to clarify procedure and roles and responsibilities of individuals within branches, divisions, and central support offices. Upon completion of procurement/contracts manual update, a department-wide training should be held to ensure all staff is aware of requirements;	We found a number of deficiencies in the individual procurement and expenditure items throughout the division and attached agencies we examined, with ignorance of the rules as the common defense for not following procedure.	<b>Open but in progress</b>	The department discontinued use of its procurement policies and procedures manual in favor of SPO's policies and procedures manual. DBEDT scheduled a department-wide procurement training for May 11, 2012 to provide a general overview of the Procurement requirements of the Hawai'i Revised Statutes, the Hawai'i Administrative Rules, and the department's internal procedures.
(3c) Clearly establish responsible parties within each division to ensure that policies and procedures are followed and the maintenance of records related to procurement are closely adhered to;	In reviewing procurement and expenditure data, we noted numerous errors in our sample selections. Many of the exceptions and procedural errors resulted from a lack of understanding of procurement laws, rules, and internal policies and procedures.	<b>Closed</b>	The department issued a list of responsible parties within each division required to ensure that policies and procedures are followed and procurement records are properly maintained.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
<p>(3d) Develop procedures to ensure that procurements and subsequent resulting contracts are appropriately monitored, and as necessary, employ a process to audit compliance;</p>	<p>Our review of contract management functions showed that contract monitoring was not consistently performed.</p>	<p><b>Closed</b></p>	<p>The department has established processes to ensure that procurements and subsequent contracts are appropriately monitored. It has also identified audit points that present opportunities to review documents to ensure compliance with the procurement code. The department also developed and implemented a post-audit function with defined discipline for procurement violations.</p>
<p>(3e) If the procurement and contracting process continues to have a decentralized focus, develop procedures to ensure responsible parties are adequately trained and have technical expertise to conduct procurement for the State. As necessary, revise position descriptions in order to hold individuals accountable to the procurement choices made; and</p>	<p>Oversight has shifted with program and division personnel having greater authority over procurement. As a consequence of shifting these functions, delegating the authority and responsibility of procurement requires greater understanding of the underlying laws, which non-specialists may not possess.</p>	<p><b>Closed</b></p>	<p>Prior to conducting any procurement, the employee is responsible for attending all appropriate SPO training workshops pursuant to Procurement Circular 2010-05.</p>
<p>(3f) In instances where individuals procuring items have intentionally violated procurement requirements, the department should seek appropriate remedies, including disciplinary action, to ensure there is an understanding between staff and management that fraud, waste, and abuse will not be tolerated.</p>	<p>Despite the division's failure to adhere to the department's more stringent procurement rules, the specific divisions suffered no negative consequence for non-compliant practices.</p>	<p><b>Closed</b></p>	<p>In 2011, DBEDT administrative services office's contracts section identified two individuals who had second procurement violations. As a result, the director rescinded these individuals' procurement authority for at least one year and required that they be retrained in the department's procurement rules.</p>

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