

**Inventory of Records
of the
Hawaiian Sovereignty Elections Council**

March, 2006

**Hawai'i State Archives
'Iolani Palace Grounds
Honolulu, Hawai'i 96813**

HAWAIIAN SOVEREIGNTY ELECTIONS COUNCIL

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**HAWAIIAN SOVEREIGNTY ELECTIONS COUNCIL
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Introduction

Through Act 359, the 1993 Hawaii state legislature established the **Hawaiian Sovereignty Advisory Commission (“HSAC”)** to seek counsel from the native Hawaiian people on how to facilitate their effort to be governed by an indigenous sovereign nation of their own choosing, to study self-determination and self-governance for Hawaiians. HSAC was placed administratively under the Office of State Planning (“OSP”). Act 359 provided that HSAC “shall advise the legislature” on:

- (1) Conducting special elections related to this Act;
- (2) Apportioning voting districts;
- (3) Establishing the eligibility of convention delegates;
- (4) Conducting educational activities for Hawaiian voters, a voter registration drive, and research activities in preparation for the convention;
- (5) Establishing the size and composition of the convention delegation; and
- (6) Establishing the dates for the special elections.

In addition, section 4(c) of Act 359 required HSAC to submit a report of its findings and recommendations to the legislature “not less than twenty days prior to the convening of the regular session of 1994.” Act 359, §4(c), 1993 SLH at p. 1012. Responding to the legislature’s mandate, in 1994, HSAC submitted legislation, given House Bill (H.B.) No. 3630 and Senate Bill (S.B.) No. 3153.

The legislature, by Act 200 of 1994 (formerly known as H.B. No. 3630), amended Act 359 and changed HSAC from an advisory body to an implementing body, independent of state agencies and election laws. All reference to HSAC was removed from the law, and the body was renamed the **Hawaiian Sovereignty Elections Council (“HSEC”)**. HSEC was placed administratively under the Department of Accounting and General Services (“DAGS”). One of the main purposes for HSEC was to “hold a **plebiscite** in 1995 to determine the will of the indigenous Hawaiian people to restore a nation of their own choosing.” Act 200 provided that HSEC “shall”:

- (1) Plan and conduct the plebiscite in 1995;
- (2) Carry out the responsibilities necessary for the conduct of elections and the convening of delegates;
- (3) Provide for an apportionment plan;
- (4) Establish the eligibility of convention delegates;
- (5) Conduct Hawaiian voter education and registration; and
- (6) Establish task forces and committees necessary for the purposes of this Act.

Act 200, pursuant to its terms, was to be repealed on December 31, 1997.

Finally, the legislature, by Act 140 of 1996, made further amendments to the law which, among other things, removed all reference to the word “**plebiscite**,” and inserted the words “Native Hawaiian Vote”. Act 140 also extended the deadline for the Native Hawaiian Vote from 1995 to 1996, and added another section to the law, adding these purposes for the HSEC to:

- (1) Plan and conduct the Native Hawaiian Vote in 1996;
- (2) Carry out the responsibilities necessary for the conduct of elections and the convening of delegates;

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- (3) Provide for an apportionment plan;
- (4) Establish the eligibility of convention delegates;
- (5) Conduct Hawaiian voter education and registration;
- (6) Establish task forces and committees necessary for the purposes of this Act; and
- (7) Provide election guidelines and procedures for the Native Hawaiian Vote, without regard to chapter 91, Hawaii Revised Statutes.

Act 140 also inserted specific language to terminate HSEC's existence on December 31, 1996.

Timeline

- | | | |
|------|--------------|---|
| 1993 | July 1. | By enacting Act 359, the Hawaii State Legislature creates the Hawaiian Sovereignty Advisory Commission ("HSAC"). This Commission is a 19-member body, and one ex-officio member representing mainland Hawaiians, within the Office of State Planning; the members, including three state officials, are to be appointed by Governor John Waihee. HSAC, which is funded with \$240,000, is to submit to the legislature, prior to its 1994 session, a plan for: (1) an election, "under the election laws of the state," of delegates for: (2) a convention to develop: (3) an "organic document for the governance of a Hawaiian sovereign nation," and (4) a "ratification election." |
| 1994 | February 18. | HSAC issues its final report |
| | June 2. | The Hawaii State Legislature enacts Act 200 for the purposes of supporting a fair and impartial process to determine the will of the indigenous people and to restore a nation of their own choosing. The Act requires, among other things, that: "Nothing arising out of the Hawaiian convention provided for in this Act, or any results of the ratification vote on proposals from the Hawaiian convention, shall be applied or interpreted to supersede, conflict, waive, alter, or affect the constitution, charters, statutes, laws, rules, regulations, or ordinances of the State of Hawaii or its political subdivisions, including its respective department, agencies, boards, and commissions." |
| 1995 | | HSEC issues an interim report. |
| 1996 | July 15. | Approximately 85,000 ballots are mailed to ethnic Hawaiians in a State sponsored election ¹ asking the question "Shall the Hawaiian people elect |

¹ Although sponsored by the State of Hawaii, the Native Hawaiian Vote was not subject to state election laws and requirements. Since HSEC sunsetted on December 31, 1996, DAGS retained the organization's records. Pursuant to HSEC election guidelines, the ballots, voted, discarded, unused, invalid and spoiled, were to be retained and locked by seal. When the records, including these ballots, were accessioned in 1997, State Archivist Jolyn Tamura recommended and received approval for the destruction of the ballots following provisions of federal election law, 42 U.S.C. §1974-1974e. Accordingly, the ballots and 38 voter registration cards were retained for 22 months, physically located in the Office of Elections (see note 2 below). Under the supervision of Chief Elections Officer Dwayne Yoshino, the ballots and cards were apparently destroyed on June 16, 1998 pursuant to Ms. Tamura's recommendation.

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delegates to propose a Native Hawaiian government?" Ballots were to be returned by August 15,² with plans to announce the results of the vote on September 2.

- July 31. The Native Hawaiian Convention is convened. One of the announced goals is the development of a constitution on Hawaiian self-determination that can be ratified by the more than 200,000 Hawaiians in Hawaii and on the mainland.
- August. Vote counting is administered by the League of Women Voters. The results are certified on August 24.
- September 6. As the result of a lawsuit filed earlier that summer, United States District Judge David A. Ezra issues a ruling in favor of HSEC. The lawsuit had challenged the constitutionality of the Native Hawaiian Vote. The case was titled Kakalia vs. Cayetano, Civil No. 96-00616. In his ruling, Judge Ezra announced that the results of the vote could be announced on September 9. Plaintiffs appealed Judge Ezra's decision to the Ninth Circuit Court of Appeals; that Court upheld the decision shortly thereafter.
- A companion case was Rice vs. Cayetano, Civil No. 96- 00390, wherein the plaintiff Harold Rice challenged the race-based elections for the Office of Hawaiian Affairs ("OHA"); that case was appealed to, heard, and resolved by the United States Supreme Court in 2000.
- September 11. Results of the Native Hawaiian vote are announced. Of the 85,000 ballots mailed, only 33,000 ballots were returned. Of those 33,000 ballots returned, 30,423 were eligible to be counted. Of the 30,423 ballots eligible to be counted, 26.72% of voters or 8,129 votes 'a'ole or no, and 73.28% of voters or 22,294 voted 'ae or yes.
- December. HSEC issues its final report.³
- December 31. HSEC's existence is formally terminated pursuant to the legislation that created it. Its work is assumed by the non-governmental, non-profit organization Hawaiian Sovereignty Council, also known as Ha Hawaii.

² Based on HSEC's election procedures, the returned ballots were held by the U.S. Post Office until August 16, 1996, and thereafter transferred to a counting center overseen by the League of Women Voters. The League had custody of the counted ballots until they were transferred, on November 29, 1996, to the Office of Elections.

³ Note, although this final report is not among the accessioned records, it is available at the University of Hawaii, Hamilton Library.

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Administrative History

Established: By Act 200, 1994 SLH

Dates: July 1, 1993 to December 31, 1996

Predecessor Agency: HSAC, established by Act 359, 1993 SLH

Organization: The Hawaii State Legislature created this independent agency with membership specified in Act 359, 1993 SLH. Initially, as HSAC, it was composed of 20 members: 19 members appointed by the governor, with at least 12 of these 19 members appointed from nominations submitted by Hawaiian organizations, and one member serving in an *ex officio* capacity, representing “mainland” resident Hawaiians. HSAC, and later HSEC, were provided staff assistance through DAGS.

In response to concerns that the members were not elected by the native Hawaiian people, the members of HSAC submitted legislation in January, 1994 to have members selected by Hawaiian organizations for the newly-established HSEC. See H.B. 3630, 1st draft, 1994 SLH. At the Hawaiian Organization Conference on February 4, 1994, however, the overwhelming consensus of the 200 organizations represented was that selecting new members would be a waste of time and money, and that HSAC should continue providing leadership in this process. The legislation adopted as Act 200, 1994 SLH, therefore, changed the nature and name of the organization, but made no changes in the composition of its membership.

Disestablished: Act 200, 1994 SLH, by its own terms, was to be repealed on December 31, 1997. Act 140, 1996 SLH contained a specific termination provision, ending HSEC’s existence on December 31, 1996.

Successor agency: Hawaiian Sovereignty Council, also known as Ha Hawaii, a non-governmental, non-profit organization

References: Session Laws of Hawaii
Act 359, 1993 SLH, pp. 1009-1013
Act 200, 1994 SLH, pp. 479-483
Act 140, 1996 SLH, pp. 313-315

Final Report, February 18, 1994, Hawaiian Sovereignty Advisory Commission, JX 245.H3 H38 1994

A Report to the People of Hawaii via the Hawaii State Legislature: Another View on the Subject of Hawaiian Sovereignty & Self-Determination, Poka Laenui, JX 245.H3 B86 1994

Hawaiian Sovereignty: Do the Facts Matter? Thurston Twigg-Smith, JX 245.H3 T85 (1998)

**HAWAIIAN SOVEREIGNTY ELECTIONS COUNCIL
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SERIES DESCRIPTIONS

Series Number: 527

Series Title: Records of the Hawaiian Sovereignty Elections Council (“HSEC”)

Date Range: 1993-1996

Quantity: 4 cubic feet, in eight 6-inch Hollinger boxes

Creator: Created or collected by the predecessor agency, Hawaiian Sovereignty Advisory Commission (“HSAC”), and the successor agency, Hawaiian Sovereignty Elections Council (“HSEC”), by or through the administrative offices of the Office of State Planning (“OSP”) or the Department of Accounting and General Services (“DAGS”), respectively.

Physical Characteristics/Condition: Paper records: letter, legal and folded oversize; manuscript and typescript; originals and Xerox copies; some quantities of published materials and newsprint. The records are in good condition, and the newsprint materials have not been preserved by photocopying methods.

Content Description: Consists of agendas and minutes of HSAC and HSEC meetings, public meetings, supplemented by several reports. Also includes personnel files of the commissioners and council members, informational files on other Native Hawaiian organizations, litigation and legislation files, and some correspondence. The files have been arranged as briefly described here:

I. Administrative Matters: 1993-1996, 0.75 cubic feet

This series contains administrative materials organized into files by document type and chronologically therein. The majority of records in this series is comprised of member biographies and personnel files. Some personnel information contained in these member files will remain restricted to researchers pursuant to state law. Operational budgets, internal communications and “commissioner packets” have also been organized in this series.

II. Correspondence: 1993-1996, 0.5 cubic feet

This series contains incoming and outgoing correspondence. Where possible, they have been organized into files identified by correspondent and chronologically therein.

III. Legislation and Legislature: 1993-1996, 0.5 cubic feet

This series contains proposed legislation in both the House of Representatives and Senate of the Legislature of the State of Hawaii. It also contains reports and draft reports prepared by HSAC or HSEC to be submitted to the legislature.

IV. Litigation / Case Materials: 1996, 0.25 cubic feet

This series contains pleadings and research files used for the companion cases filed in 1996 in the U.S. District Court for the District of Hawaii: Rice v. Cayetano and Kakalia v. Cayetano. Some

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attorney-client communications were accessioned by the Archives, and they will remain restricted from researchers pursuant to state law.

V. Minutes / Notes: 1993-1996, 0.5 cubic feet

This series contains meeting minutes of HSAC and HSEC, as well as some of its component subcommittees. It also contains materials prepared for and presented during public information meetings.

VI. Newspapers / Publications: 1994-1996, 0.25 cubic feet

This series contains publications and a small amount of clippings on newsprint. Accordingly, preservation methods were not used, i.e., photocopying originals onto acid-free archival paper, and the original paper records retained.

VII. Reports: 1994-1996, 0.25 cubic feet

This series contains reports and materials presented by other organizations as part of the public information meeting process. A native-rights expert from the mainland was retained to give a lecture, and his prepared materials and transcript of the lecture have been retained.

VIII. Sovereignty Organizations: various, 0.5 cubic feet

Publications and reports from other sovereignty organizations were apparently collected and retained by HSAC and HSEC members. When accessioned, the materials were arranged according to the name of the organization or entity.

Arrangement: The records have been arranged in these general subseries: Administrative Matters; Correspondence; Legislation and Legislature; Litigation/Case Materials; Minutes/Notes; Newspapers/Publications; Reports; Sovereignty Organizations.

Access: Personal information contained in commissioner files and/or nominee files may be protected against unreasonable disclosure. Such information may be protected and restricted from researchers pursuant to letter opinion from the Office of Information Practices (“OIP”), Letter No. 94-9 (May 14, 1994). Access to some material is restricted under HRS §92F-14, as marked on the Container List. The restrictions are removed, under HRS §94-7, as marked on the Container List. See the Reference Archivist for permission to use restricted material. Other information is unrestricted, except as to attorney-client communications.

For Additional Information See: Session Laws of Hawaii (“SLH”): Act 359, 1993 SLH; Act 200, 1994 SLH; and Act 140, 1996 SLH.

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527-1-3	Executive Director policy papers
	<u>HSAC Commissioners / HSEC Members</u>
527-1-4	HSAC Member summary
527-1-5	Agard, Louis, Jr., expired [RESTRICTED, HRS §92F-14; expires on July 30, 2073]
527-1-6	Beirne, Ululani, expired [RESTRICTED, HRS §92F-14; expires on October 7, 2074]
527-1-7	Beniamina, Ilei, expired [RESTRICTED, HRS §92F-14; expires on October 4, 2074]
527-1-8	Berard, Analu, expired [RESTRICTED, HRS §92F-14; expires on October 7, 2074]
527-1-9	Decker, Olani, expired [RESTRICTED, HRS §92F-14; expires on October 7, 2074]
527-1-10	Evans, Sherry, expired [RESTRICTED, HRS §92F-14; expires on February 13, 2075]
527-1-11	Hoe, Allen
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527-1-13	Kahooalahala, Solomon
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527-1-21	Kanui-Gill, Kawehi [RESTRICTED, HRS §92F-14; expires on July 25, 2076]
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527-1-24	Keppeler, Bruss [RESTRICED, HRS §92F-14; expires on February 12, 2073]
527-1-25	Laenui, Poka
527-1-26	Lindsey, Robert, expired [RESTRICED, HRS §92F-14; expires on October 4, 2074]
527-2-1	McClellan, Aimoku, expired [RESTRICED, HRS §92F-14; expires on July 5, 2074]
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527-2-5	Naone, Lyons, expired [RESTRICED, HRS §92F-14; expires on October 7, 2074]
527-2-6	Nathaniel, Ann
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527-2-8	September 23, 1993
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527-2-15	Nominees [RESTRICED, HRS §92F-14; expires on September 15, 2074]
527-2-16	Statement of self-insurance and liability
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527-4-1	HSAC Final Report, February, 1994
527-4-2	HSEC Information Packet, December, 1994
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527-4-8	SJ Resolution 19 apology bill (1993)
	IV. Litigation/case materials
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