

STAND. COM. REP. NO.

644

Honolulu, Hawaii

FEB 17 , 2023

RE: H.B. No. 615
H.D. 1

Honorable Scott K. Saiki
Speaker, House of Representatives
Thirty-Second State Legislature
Regular Session of 2023
State of Hawaii

Sir:

Your Committee on Water & Land, to which was referred H.B. No. 615 entitled:

"A BILL FOR AN ACT RELATING TO RESTRICTIONS ON AGRICULTURAL USES AND ACTIVITIES,"

begs leave to report as follows:

The purpose of this measure is to clarify that any provision in a private agreement contained in a conveyance of land recorded on or before July 8, 2003, that limits or prohibits agricultural use or activity and has since expired but has not been renewed and recorded in the Bureau of Conveyances is void.

Your Committee received testimony in support of this measure from the Department of Agriculture, Office of Planning and Sustainable Development, Hawai'i Farm Bureau, and one individual.

Your Committee finds that Act 170, Session Laws of Hawaii 2004 (Act 170), exempted agricultural leases and utility and access easements from the prohibition of private restrictions on agricultural uses and activities within state agricultural districts, thus prohibiting homeowners' associations from restricting agricultural activities on agricultural lands. However, to avoid impairing any existing contracts, Act 170 only applied to restrictions made after July 8, 2003. In 2021, the Legislature believed that some homeowners' associations were



circumventing the law by renewing agricultural restrictions that existed as of July 8, 2003, claiming that the renewed terms continue to be exempt from the law despite those agreements, by their own terms, expiring after 2003. Bona fide farmers seeking to enforce the law had to accept the restriction or hire an attorney for a costly lawsuit against the well-funded homeowners' associations. As a result, Act 94, Session Laws of Hawaii 2021 (Act 94), was enacted to clarify that any private agreement contained in a conveyance of land recorded on or before July 8, 2003, that:

- (1) Limits or prohibits agricultural use or activity; and
- (2) Is renewed and recorded in the Bureau of Conveyances after July 8, 2003,

shall be considered a new private agreement that is subject to the prohibition on agricultural use and activity restrictions under section 205-4.6, Hawaii Revised Statutes.

Your Committee finds that although any expired provision in a private agreement that limits or prohibits agricultural use or activity is arguably void even without any subsequent renewal or recording in the Bureau of Conveyances, this measure seeks to close any loophole created by Act 94 by deeming void any provisions in a private agreement contained in a conveyance of land recorded on or before July 8, 2003, that limits or prohibits agricultural use or activity and has since expired, even if it has not been renewed and recorded in the Bureau of Conveyances.

Your Committee has amended this measure by changing the effective date to June 30, 3000, to encourage further discussion.

As affirmed by the record of votes of the members of your Committee on Water & Land that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 615, as amended herein, and recommends that it be referred to your Committee on Consumer Protection & Commerce in the form attached hereto as H.B. No. 615, H.D. 1.



Respectfully submitted on
behalf of the members of the
Committee on Water & Land,


LINDA ICHIYAMA, Chair



