



DAVID Y. IGE
Governor

JOSH GREEN
Lieutenant Governor

MIKE MCCARTNEY
Director

LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

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Statement of
Daniel E. Orodener
Executive Officer
State Land Use Commission

Before the
Senate Committee on
Agriculture and Environment

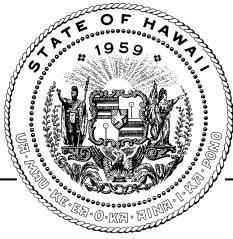
Monday February 8, 2021
1:00 PM
State Capitol, Virtual Video Conference

In consideration of
SB 186
RELATING TO RESTRICTIONS ON AGRICULTURAL USES AND ACTIVITIES

Chair Gabbard; Vice Chair Nishihara; and members of the Senate Committee on
Agriculture and Environment:

The Land Use Commission has no position on SB 186. However, as the State agency
authorized to implement the statute proposed for amendment; we are available for any questions
that may arise with respect to HRS Chapter 205.

Thank you for the opportunity to testify on this matter.



OFFICE OF PLANNING STATE OF HAWAII

DAVID Y. IGE
GOVERNOR

MARY ALICE EVANS
DIRECTOR
OFFICE OF PLANNING

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Statement of
MARY ALICE EVANS
Director, Office of Planning
before the
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT
Monday, February 8, 2021
1:00 PM
Via Videoconference

in consideration of
SB 186
RELATING TO RESTRICTIONS ON AGRICULTURAL USES AND ACTIVITIES.

Chair Gabbard, Vice Chair Nishihara, and Members of the Senate Committee
on Agriculture and Environment.

The Office of Planning **supports** SB 186 which would amend Hawaii Revised Statutes (HRS) § 205-4.6 to clarify that renewed contracts restricting agricultural uses and activities within the State Land Use Agricultural District are considered to be new contracts and are voidable. It provides that any private agreement under this subsection that limits or prohibits agricultural use or activity and is renewed and recorded in the bureau of conveyances after July 8, 2003 is considered a new private agreement that is subject to this section.

This measure is needed to prevent the restriction of agricultural uses and activities on lots within the State Agricultural District.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
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**TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

**MONDAY, FEBRUARY 8, 2021
1:00 P.M.
VIA VIDEO CONFERENCE**

**SENATE BILL NO. 186
RELATING TO RESTRICTIONS ON AGRICULTURAL ISSUES AND ACTIVITIES**

Chairperson Gabbard and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 186 that amends Section 205-4.6 by clarifying that renewed contracts that restrict agricultural uses and activities on agricultural lands are to be considered new contracts and therefore voidable, subject to limited circumstances. The Department of Agriculture supports the intent of this measure.

We understand that some "private agreements" established on subdivided and condominiumized agricultural lands with lot or unit owner associations prior to the effective date of Section 205-4.6 contained limitations and prohibitions on agricultural activities and uses such as limitations on hours of operation of farm equipment, height of windbreaks and types of crops that are allowed to be cultivated. The proposed amendment seeks to establish that a renewal of these "private agreements" and the carrying over of their limitations and restrictions are to be considered as "new private agreements" and therefore subject to the provisions of Section 205-4.6.

Thank you for the opportunity to comment on this measure



SB-186

Submitted on: 1/31/2021 4:40:41 PM

Testimony for AEN on 2/8/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Testifying for Associa	Comments	No

Comments:

The Bill seems overly broad. Many agricultural condominiums have restrictions on the types of agriculture permitted as the project itself may have limitations such as the availability of water, electricity, or the topography. The Association should not be forced into economic costs that were not anticipated at the inception of the project. Owners buy into an ag condominium knowing full well an advance the limitations.

SB-186

Submitted on: 2/1/2021 3:29:45 PM

Testimony for AEN on 2/8/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Testifying for Community Associations Institute	Oppose	No

Comments:

I am authorized to testify for Community Associations Institute (CAI). In Ag planned communities and condominiums, governing documents are established defining among other things the use and purpose. Buyers agree to those conditions at purchase, it's not a surprise. Many things effect and Ag community such as the availability of water, utilities, soil conditions, and land topography to name a few. The project may be suitable for some types of agriculture but not others. Thus, a bone fide form of agriculture may not be suitable based on the project itself and the cost to allow that agriculture form burdensome. The Bill as worded is too broad and will have unintended consequences. The governing documents of an association is a private contract between the parties and the Hawaii supreme court as ruled numerous times on the inability of the legislature to override same. We agree that an agriculture community must have an agricultural component but we do not support this Bill and prefer it be deferred.



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February 8, 2021

HEARING BEFORE THE
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

TESTIMONY ON SB 186
RELATING TO RESTRICTIONS ON AGRICULTURAL USES AND ACTIVITIES

Via Videoconference
1:00 PM

Aloha Chair Gabbard, Vice Chair Nishihara, and Members of the Committee:

I am Brian Miyamoto, Executive Director of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic, and educational interests of our diverse agricultural community.

The Hawaii Farm Bureau supports SB 186, which would prohibit enforcement of a homeowners' association's renewal of agricultural restrictions on agricultural land.

Restrictive covenants that limit agricultural uses on agricultural lands undermine the State's interest in protecting and preserving agricultural resources, and promoting agricultural self-sufficiency. Renewal of the terms of these agreements circumvent public policy and are inconsistent with Act 170 (2004), which prohibited homeowners' associations from restricting agricultural activities, but was not retroactive. This has created a problem when the association decides to renew its restrictive covenants.

Agricultural subdivisions like these promote conflict between "gentlemen farmers" and bona fide farmers in surrounding areas when dust, odors, smoke, and noise from legitimate farms offend those who live in the subdivisions. Ag lands that were developed to create "gentlemen farms," where little to no farming exists, also increase the cost of agricultural land, making it impossible for bona fide farmers to purchase farmland. These subdivisions are typically residential lots with larger yards and nice landscaping. A separate and distinct designation for this type of land use may be more appropriate. In the meantime, the renewal of agricultural restrictions on agricultural land should not be allowed.

Thank you for taking our concerns into consideration and for your continued support of Hawaii agriculture.

SB-186

Submitted on: 1/31/2021 7:07:04 PM

Testimony for AEN on 2/8/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
shantee brown	Individual	Support	No

Comments:

I support SB 186. It is almost impossible to buy a functioning homestead on Ag. land when so many HOA restrict usage on prime land.

SB-186

Submitted on: 2/6/2021 8:20:15 PM

Testimony for AEN on 2/8/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
R Laree McGuire	Individual	Oppose	No

Comments:

I respectfully oppose as certain agricultural subdivisions may not have the resources to support all bona fide Ag uses and the restrictions likely take that fact into consideration when determining which uses are and are not permitted. Thank you for your consideration.