

DAVID Y. IGE  
Governor

JOSH GREEN  
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER  
Chairperson, Board of Agriculture

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Deputy to the Chairperson

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

**BEFORE THE SENATE COMMITTEE ON COMMERCE AND CONSUMER  
PROTECTION**

**FEBRUARY 24, 2021  
9:30 A.M.  
VIA VIDEO CONFERENCE**

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

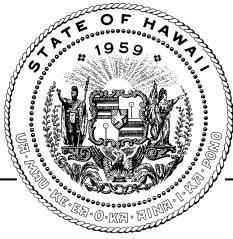
Chairperson Baker and Members of the Committee:

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.





**OFFICE OF PLANNING  
STATE OF HAWAII**

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GOVERNOR

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Statement of  
**MARY ALICE EVANS**  
Director, Office of Planning  
before the  
**SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION**  
Wednesday, February 24, 2021  
9:30 AM  
Via Videoconference

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

Chair Baker, Vice Chair Chang, and Members of the Senate Committee on Commerce and Consumer Protection:

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 this opportunity to testify.

Dear Hawaii State Legislators,

My name is John Wooten of Wootens Produce of Kauai.

I am humbly asking for your support for SB NO. 186.

I am a busy farmer here in Anahola / Moloaa, Kauai. During this pandemic the need for Hawaii grown produce is now more urgent than ever. I do not get involved much in legal & government issues. This was not always the case. A few years ago I was involved with the passage of HRS: 205 4.6 ("Act 5") which was created to protect agriculture (Ag.) on Ag. zoned lands, specifically prohibiting Home Owner's Associations (HOA) from restricting (or prohibiting) Farming with HOA CC&Rs. You might remember that this **Act 5 was passed with a historic override of Governor Linda Lingle's veto with overwhelming support!**

This bill was created to strengthen and support Chapter 205, Hawaii Revised Statutes. This Act 5 makes it **redundantly** clear that HOAs on Ag. zoned lands cannot restrict farming with CC&Rs! Sadly a few farmers were effected by a "Grandfather" clause that was added to Act 5 allowing that Act 5 dose not effect CC&Rs that predate Act 5's passage.

**When an HOA allows the original CC&Rs to expire and then renews the same CC&Rs then these renewed CC&Rs are in fact new.**

**These expired & renewed CC&Rs are no longer protected by a "Grandfather clause" in Act 5 since they are now new CC&Rs.** ~ An argument against this SB NO.186 might be, "We have enough laws in place. If a farmer has any problems they can hire lawyers and fight it out in court."

Of course, this is no argument at all. How many farmers can afford a lawyer and do farmers want to spend their lives involved in legal cases? **NO!** Hawaii farmers want to be growing food & tending their crops!

The **more clarity and redundancy** we legislate to protect farming & honest, hard working farmers in Hawaii - **the better.** Thank you for considering my testimony. Please contact me if you would like to discuss SB NO:186

Yours Truly; John Wooten (808 823 6807)



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February 24, 2021

HEARING BEFORE THE  
SENATE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

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

Conference Room 229  
9:30 AM

Aloha Chair Baker, Vice-Chair Chang, 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.