

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



SHARON HURD
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TESTIMONY OF SHARON HURD
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON AGRICULTURE AND FOOD SYSTEMS

WEDNESDAY, FEBRUARY 1, 2023
ROOM 325
9:45 A.M.

HOUSE BILL NO. 615
RELATING TO RESTRICTIONS ON AGRICULTURAL USES AND ACTIVITIES

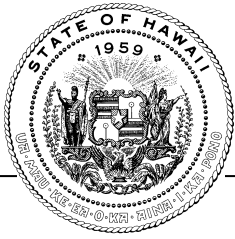
Chairperson Gates and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 615 that seeks to further clarify that private agreements found in conveyances of agricultural land prior to July 8, 2003 that limits or restricts agricultural uses or activities, and that such agreements have expired and not been renewed and recorded in bureau of conveyances, shall be void. The Department of Agriculture appreciates 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. These limitations and prohibitions include limitations on hours of operation of farm equipment, height of windbreaks and types of crops that are allowed to be cultivated. The proposed amendment appears to prevent "private agreements" created prior to July 8, 2003 that have since expired and not been renewed, from being enforced.

Thank you for the opportunity to present our testimony.





**STATE OF HAWAII
OFFICE OF PLANNING
& SUSTAINABLE DEVELOPMENT**

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GOVERNOR

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Statement of
SCOTT GLENN, Director

before the
HOUSE COMMITTEE ON AGRICULTURE AND FOOD SYSTEMS

Wednesday, February 1, 2023, 9:45 AM
State Capitol, Conference Room 325

in consideration of
HB 615

RELATING TO RESTRICTIONS ON AGRICULTURAL USES AND ACTIVITIES.

Chair Gates, Vice Chair Kahaloa, and Members of the House Committee on Agriculture and Food Systems, the Office of Planning and Sustainable Development (OPSD) supports HB 615, which clarifies § 205-4.6 (a), Hawaii Revised Statutes, to prohibit any provision in private agreements contained in a conveyance of land recorded on or before July 8, 2003 that have since expired and not been renewed and recorded in the bureau of conveyances from restricting agricultural uses and activities.

OPSD supports measures that strengthen the protection of agricultural uses and activities in the State Agricultural District.

Thank you for the opportunity to testify on this measure.



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February 1, 2023

HEARING BEFORE THE
HOUSE COMMITTEE ON AGRICULTURE & FOOD SYSTEMS

TESTIMONY ON HB 615
RELATING TO RESTRICTIONS ON AGRICULTURAL USES AND ACTIVITIES

Conference Room 325 & Videoconference
9:45 AM

Aloha Chair Gates, Vice-Chair Kahaloa, and Members of the Committee:

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

The Hawai'i Farm Bureau supports HB 615, which clarifies that any provision in a private agreement contained in a conveyance of land recorded on or before 7/8/2003 that have since expired but have not been renewed and recorded in the bureau of conveyances are prohibited from restricting bona fide agricultural uses and activities 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 circumvents public policy and is 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.

Act 94, SLH 2021, addressed this by disallowing the enforcement of a re-recorded homeowners' association restriction if the restriction prohibits bona fide agricultural uses

and activities on agricultural land. HB 615 further clarifies 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 shall be void.

Thank you for the opportunity to testify on this measure.

Testimony in Support of HB615

The law Act 94, formerly bill SB186, was passed in 2021. This law was intended to help true local farmers grow agricultural products in gentleman agricultural estates. However, **there's a loophole that needs to be fixed this year.**

I have spoken with a Hawaii State Homeowner's Association (HOA) attorney. He stated that SB186 does not affect restrictions on agriculture founded before 2003, as long as the HOA does not re-record Covenants, Conditions & Restrictions (CC&R'S). This is true even with the CC&Rs duration/expiration clause, came into effect in 2003 or after 2003.

SB186 focused on CC&R's and failed to consider the CC&R's recorded before 2003, with the duration/expiration clauses applied. Due to this loophole, HOA's avoid following the current law that SB186 enacted by never re-recording the CC&R'S. There was no consideration of CC&R's before 7/8/03 that expire after 7/8/03.

HB615 addresses this loophole that affects me and other farmers. **I urge you to support HB615.** Thank you for the continued efforts to help hard working farmers of Hawai'i.

Yours Truly; John Wooten
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