
A BILL FOR AN ACT

RELATING TO INSPECTIONS ON PUBLIC LAND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that under chapter 171,
2 Hawaii Revised Statutes, and the terms and conditions of the
3 various land dispositions approved by the board of land and
4 natural resources, the department of land and natural resources
5 (department) has the authority to periodically inspect the
6 premises under lease, license, or revocable permit. However,
7 due to staff constraints, the department's land agents are not
8 able to conduct regular inspections of every property under
9 lease, license, or revocable permit. Additionally, the
10 department's land agents are typically not architects,
11 engineers, or licensed contractors and may not be qualified to
12 identify components of existing structures on the premises in
13 need of repair or replacement. Furthermore, to the extent the
14 department's land agents are able to identify items requiring
15 repair or replacement, existing lease terms and conditions do
16 not provide the department with sufficient leverage to compel
17 the lessee to make the necessary repair or replacement. This is



1 particularly problematic at the end of a long-term lease when
2 the lessee has little incentive to invest significant funds in
3 the upkeep of the property.

4 The legislature further finds that the house investigative
5 committee (committee) established under House Resolution No. 164
6 during the regular session of 2021 was tasked with, among other
7 things, reviewing audit report No. 19-12 by the state auditor,
8 regarding the department's special land and development fund.
9 Rather than having the department's land agents conduct the
10 inspections, the committee recommended that the department
11 require lessees to pay for third-party inspectors selected by
12 the department to conduct physical inspections of the leased
13 property every five years. The committee further recommended
14 that if the third-party inspector finds any defaults with the
15 lease terms, the lessee should be required to take any
16 corrective actions recommended by the inspector.

17 The purpose of this Act is to establish a statutory
18 framework for inspections of public land leases, licenses, and
19 revocable permits by the department; provided that:

20 (1) The inspections may be conducted by qualified third-
21 party inspectors contracted by the department but paid



1 for by the lessee, licensee, or permittee, as
2 applicable; and

3 (2) If the inspection identifies items needing repair or
4 replacement, the lessee, licensee, or permittee shall
5 be required to make the necessary repair or
6 replacement at its expense or risk termination of its
7 land disposition.

8 SECTION 2. Chapter 171, Hawaii Revised Statutes is amended
9 by adding to subpart B of part II a new section to be
10 appropriately designated and to read as follows:

11 "§171- Inspection of demised premises. (a) The
12 department may conduct inspections of all public land subject to
13 a lease, license, or revocable permit to ensure that:

14 (1) The land is being used for the purpose for which it
15 was originally leased or an alternative use as
16 provided and approved by the board pursuant to section
17 171-36;

18 (2) No unauthorized activities are taking place on the
19 land;

20 (3) The lease or license has not been transferred or
21 assigned in violation of section 171-36 and the



- 1 revocable permit has not been transferred or assigned
2 in violation of its terms and conditions;
- 3 (4) No portion of the land has been sublet in violation of
4 section 171-36 or the terms and conditions of the
5 lease, license, or revocable permit;
- 6 (5) No hazardous materials are present on the land, except
7 as specifically authorized under and in conformity
8 with the applicable lease, license, or revocable
9 permit; and
- 10 (6) All structures, buildings, and improvements to the
11 land are maintained in acceptable condition so that:
- 12 (A) The purpose of the lease, license, or revocable
13 permit may be adequately and safely fulfilled;
- 14 (B) The use or conditions of the land do not endanger
15 the health and safety of individuals present on
16 the land or the public; and
- 17 (C) All property and improvements that may revert to
18 the State at the termination of the lease,
19 license, or revocable permit are present and
20 maintained in functional and safe condition.



1 Notice of inspections shall be given in accordance with the
2 terms and conditions of the lease, license, or revocable permit,
3 as applicable, or in the event the applicable disposition
4 document is silent as to the notice required, then in writing to
5 the lessee, licensee, or permittee at least five business days
6 prior to the inspection. No notice shall be required for
7 inspections conducted in response to an emergency. For purposes
8 of this section, "emergency" means any occurrence, or imminent
9 threat thereof, that results or may likely result in substantial
10 injury or harm to a natural person or substantial damage to or
11 loss of property or substantial damage to or loss of the
12 environment.

13 (b) Inspections pursuant to this section may be conducted
14 by a disinterested third-party inspector contracted by the
15 department; provided that any land agent of the department and
16 any party to the lease, license, or revocable permit may be
17 present during the inspection and may observe the inspection.
18 All costs of the inspection shall be paid by the lessee,
19 licensee, or permittee. Inspectors shall submit a report of
20 their findings and recommendations to the department no later
21 than fifteen days after the inspection has been completed. The



1 department may use the inspector's report as a basis for taking
2 any corrective action in regard to the lease, license, revocable
3 permit, or land that is allowable under this chapter. Any
4 action taken by the department pursuant to the inspector's
5 report shall be carried out in conformity with the requirements
6 of this chapter. The lessee, licensee, or permittee shall be
7 responsible for the cost of and for carrying out any corrective
8 action required under this section.

9 (c) It shall be a violation of the applicable lease,
10 license, or permit for any lessee, licensee, or permittee to:

11 (1) Prevent, interfere with, unduly influence, obstruct,
12 refuse to cooperate with, hinder, or unreasonably
13 delay any inspection or attempt to inspect pursuant to
14 this section;

15 (2) Harass, interfere with, unduly influence, obstruct,
16 refuse to cooperate with, hinder, or unreasonably
17 delay any inspector, land agent, or officer or
18 employee of the department acting or attempting to act
19 in accordance with this section; or

20 (3) Refuse to comply with, interfere with, obstruct,
21 refuse to cooperate with, hinder, or unreasonably



1 delay any corrective action ordered by the department
2 pursuant to an inspector's report submitted pursuant
3 to this section or attempted corrective action;
4 provided that the board may impose any penalty allowable for
5 violation of this chapter, including termination of the lease,
6 license, or revocable permit; assessment of administrative
7 penalties; and imposition of fines.

8 (d) This section shall be incorporated by operation of law
9 as a provision of all leases, licenses, and revocable permits
10 entered into by the board as of the effective date of this Act."

11 SECTION 3. If any provision of this Act or the application
12 thereof to any person or circumstance is held invalid, the
13 invalidity does not affect other provisions or applications of
14 the Act that can be given effect without the invalid provision
15 or application, and to this end the provisions of this Act are
16 severable.

17 SECTION 4. New statutory material is underscored.

18 SECTION 5. This Act shall take effect on July 1, 3000.



Report Title:

Public Land; Inspections; DLNR

Description:

Establishes a statutory framework for inspections of public land leases, licenses, and revocable permits by the Department of Land and Natural Resources. Effective 7/1/3000. (HD1)

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