

JAN 24 2024

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 authority to periodically inspect the premises
6 under lease, license, or revocable permit. However, due to
7 staff constraints, the department's land agents are not able to
8 conduct regular inspections of every property under lease,
9 license, or revocable permit. Additionally, the department's
10 land agents are typically not architects, engineers, or licensed
11 contractors and may not be qualified to identify components of
12 existing structures on the premises in need of repair or
13 replacement. Furthermore, to the extent the department's land
14 agents are able to identify items requiring repair or
15 replacement, existing lease terms and conditions do not provide
16 the department with sufficient leverage to compel the lessee to
17 make the necessary repair or replacement. This is particularly
18 problematic at the end of a long-term lease when the lessee has

S.B. NO. 3160

1 little incentive to invest significant funds in the upkeep of
2 the property.

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

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

19 (1) The inspections may be conducted by qualified third-
20 party inspectors contracted by the department but paid
21 for by the lessee, licensee, or permittee, as
22 applicable; and

S.B. NO. 3160

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

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

9 "§171- Inspection of demised premises. (a) The
10 department may conduct inspections of all public land subject to
11 a lease, license, or revocable permit to ensure that:

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

16 (2) No unauthorized activities are taking place on the
17 land;

18 (3) The lease or license has not been transferred or
19 assigned in violation of section 171-36 and the
20 revocable permit has not been transferred or assigned
21 in violation of its terms and conditions;

SB. NO. 3160

1 (4) No portion of the land has been sublet in violation of
2 section 171-36 or the terms and conditions of the
3 lease, license, or revocable permit;

4 (5) No hazardous materials are present on the land, except
5 as specifically authorized under and in conformity
6 with the applicable lease, license, or revocable
7 permit; and

8 (6) All structures, buildings, and improvements to the
9 land are maintained in acceptable condition so that:

10 (A) The purpose of the lease, license, or revocable
11 permit may be adequately and safely fulfilled;

12 (B) The use or conditions of the land do not endanger
13 the health and safety of individuals present on
14 the land or the public; and

15 (C) All property and improvements that may revert to
16 the State at the termination of the lease,
17 license, or revocable permit are present and
18 maintained in functional and safe condition.

19 Notice of inspections shall be given in accordance with the
20 terms and conditions of lease, license, or revocable permit, as
21 applicable, or in the event the applicable disposition document
22 is silent as to the notice required, then in writing to the

S.B. NO. 3160

1 lessee, licensee, or permittee at least five business days prior
2 to the inspection. No notice shall be required for inspections
3 conducted in response to an emergency. For purposes of this
4 section, "emergency" means any occurrence, or imminent threat
5 thereof, that results or may likely result in substantial injury
6 or harm to a natural person or substantial damage to or loss of
7 property or substantial damage to or loss of the environment.

8 (b) Inspections pursuant to this section may be conducted
9 by a disinterested third-party inspector contracted by the
10 department; provided that any land agent of the department and
11 any party to the lease, license, or revocable permit may be
12 present during the inspection and may observe the inspection.
13 All costs of the inspection shall be paid by the lessee,
14 licensee, or permittee. Inspectors shall submit a report of
15 findings and recommendations to the department no later than
16 fifteen days after the inspection has been completed. The
17 department may use the inspector's report as a basis for taking
18 any corrective action in regard to the lease, license, revocable
19 permit, or land that is allowable under this chapter. Any
20 action taken by the department pursuant to the inspector's
21 report shall be carried out in conformity with the requirements
22 of this chapter. The lessee, licensee, or permittee shall be

S.B. NO. 3160

1 responsible for the cost of and for carrying out any corrective
2 action required under this section.

3 (c) It shall be a violation of the provisions of the
4 applicable lease, license, or permit for any lessee, licensee,
5 or permittee to:

6 (1) Prevent, interfere with, unduly influence, obstruct,
7 refuse to cooperate with, hinder, or unreasonably
8 delay any inspection required by this section or
9 attempt to do so;

10 (2) Harass, interfere with, unduly influence, obstruct,
11 refuse to cooperate with, hinder, or unreasonably
12 delay any inspector, land agent, or officer or
13 employee of the department acting in accordance with
14 this section or attempt to do so; or

15 (3) Refuse to comply with, interfere with, obstruct,
16 refuse to cooperate with, hinder, or unreasonably
17 delay any corrective action ordered by the department
18 pursuant to an inspector's report submitted pursuant
19 to this section or attempt to do so;

20 provided that the board may impose any penalty allowable for
21 violation of this chapter including termination of the lease,

S.B. NO. 3160

1 license, or revocable permit, assessment of administrative
2 penalties, and imposition of fines.

3 This section shall be incorporated as a provision of all
4 the board's hereafter entered into leases, licenses, and
5 revocable permits by operation of law as of the effective date
6 of the Act establishing this section."

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

13 SECTION 4. New statutory material is underscored.

14 SECTION 5. This Act, upon its approval, shall take effect
15 on July 1, 2024.

16

17

INTRODUCED BY:



18

BY REQUEST

S.B. NO. 3160

Report Title:

Public Land; Inspections

Description:

Establishes a statutory framework for inspections of public land leases, licenses, and revocable permits by the Department of Land and Natural Resources.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO INSPECTIONS ON PUBLIC LAND.

PURPOSE: To establish a statutory framework for inspections of public land leases, licenses, and revocable permits by the Department of Land and Natural Resources (Department).

MEANS: Add a new section to subpart B of part II, chapter 171, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Under chapter 171, HRS, and the terms and conditions of the various land dispositions approved by the Board of Land and Natural Resources, the Department has authority to periodically inspect the premises under lease, license, or revocable permit. However, the Department's land agents are typically not architects, engineers, or licensed contractors and may not be qualified to identify components of existing structures on the premises in need of repair or replacement. Furthermore, to the extent the Department's land agents are able to identify items requiring repair or replacement, existing lease terms and conditions do not provide the Department with sufficient leverage to compel the lessee to make the necessary repair or replacement. This is particularly problematic at the end of a long-term lease when the lessee has little incentive to invest significant funds in the upkeep of the property.

The House Investigative Committee (Committee), established under House Resolution No. 164 during the 2021 Regular Session, was tasked with, among other things, reviewing Audit Report No. 19-12 by the State Auditor, on the Department's Special Land and Development Fund. Rather than having the Department's land agents

conduct the inspections, the Committee recommended that the Department require lessees to pay for third-party inspectors selected by the Department to conduct physical inspections of the leased property every five years. The Committee further recommended that if the third-party inspector finds any defaults with the lease terms, the lessee should be required to take any corrective actions recommended by the inspector.

The purpose of this bill is to establish a statutory framework for inspections of public land leases, licenses, and revocable permits. The inspections may be conducted by qualified third-party inspectors contracted by the Department but paid for by the lessee, licensee, or permittee, as applicable. If the inspection identifies items needing repair or replacement, the lessee, licensee, or permittee will be required to make the necessary repair or replacement at its expense or risk termination of its land disposition.

Impact on the public: None.

Impact on the department and other agencies:
The Department will conserve its limited resources and funds by avoiding situations where a lease, license, or revocable permit expires or is terminated with dilapidated improvements on it. Under the Department's older dispositions, ownership of improvements automatically vests in the State upon expiration or earlier termination of the disposition. If the improvements are unusable at the end of the lease, license, or permit and must be demolished, the cost of demolition can be very high, as in the case of the former Uncle Billy's Hilo Bay Hotel on the Island of Hawaii. Inspections by qualified professionals will ensure that improvements are maintained in good condition through the term of the disposition. Under current land

dispositions, the State generally has the option to require the removal of existing improvements or to accept ownership of them at the termination of the disposition. Where inspections reveal that improvements have outlived their useful lives, the Department will work with the lessee, licensee, or permittee to ensure the improvements are removed at their cost prior to the expiration of the disposition.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 101.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2024.