

ACT 220

H.B. NO. 2471

A Bill for an Act Relating to Inspections on Public Land.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that under chapter 171, Hawaii Revised Statutes, and the terms and conditions of the various land dispositions approved by the board of land and natural resources, the department of land and natural resources (department) has the authority to periodically inspect the

premises under lease or license. However, due to staff constraints, the department's land agents are not able to conduct regular inspections of every property under lease or license. Additionally, 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 legislature further finds that the house investigative committee (committee) established under House Resolution No. 164 during the regular session of 2021 was tasked with, among other things, reviewing audit report No. 19-12 by the state auditor, regarding 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 Act is to establish a statutory framework for inspections of public land subject to a department of land and natural resources lease or license; provided that:

- (1) The inspections of structures or buildings may be conducted by qualified third-party inspectors contracted by the department but paid for by the lessee or licensee as applicable; and
- (2) If the inspection identifies structures or buildings needing repair or replacement, the lessee or licensee shall be required to make the necessary repair or replacement at its expense or risk termination of its land disposition.

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

“§171- Inspection of demised premises. (a) The department may conduct inspections of all public land subject to a lease or license under this chapter only. The inspection is to ensure that:

- (1) The land is being used for the purpose for which it was originally leased or an alternative use as provided and approved by the board pursuant to section 171-36;
- (2) No unauthorized activities are taking place on the land;
- (3) The lease or license has not been transferred or assigned in violation of section 171-36;
- (4) No portion of the land has been sublet in violation of section 171-36 or the terms and conditions of the lease or license;
- (5) No hazardous materials are present on the land, except as specifically authorized under and in conformity with the applicable lease or license; and
- (6) All structures on, buildings on, and improvements to the land are maintained in acceptable condition so that:

- (A) The purpose of the lease or license may be adequately and safely fulfilled;
- (B) The use or conditions of the land do not endanger the health and safety of individuals present on the land or the public; and
- (C) All property and improvements that may revert to the State at the termination of the lease or license are present and maintained in functional and safe condition.

(b) Inspection of structures or buildings pursuant to this section may be conducted by a disinterested third-party inspector contracted by the department; provided that any land agent of the department and any party to the lease or license may be present during the inspection and may observe the inspection. All costs of the inspection of structures or buildings shall be paid by the lessee or licensee. Inspectors shall submit a report of their findings and recommendations to the department no later than fifteen days after the inspection has been completed. The department may use the inspector's report as a basis for taking any corrective action in regard to a structure or building that is allowable under this chapter. Any action taken by the department pursuant to the inspector's report shall be carried out in conformity with the requirements of this chapter. The lessee or licensee shall be responsible for the cost of and for carrying out any corrective action required under this section.

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

- (1) Prevent, interfere with, unduly influence, obstruct, refuse to cooperate with, hinder, or unreasonably delay any inspection or attempt to inspect pursuant to this section;
- (2) Harass, interfere with, unduly influence, obstruct, refuse to cooperate with, hinder, or unreasonably delay any inspector, land agent, or officer or employee of the department acting or attempting to act in accordance with this section; or
- (3) Refuse to comply with, interfere with, obstruct, refuse to cooperate with, hinder, or unreasonably delay any corrective action ordered by the department pursuant to an inspector's report submitted pursuant to this section or attempted corrective action;

provided that the board may impose any penalty allowable for violation of this chapter, including termination of the lease or license; assessment of administrative penalties; and imposition of fines.

(d) This section shall be incorporated by operation of law as a provision of all leases or licenses entered into by the board after the effective date of this Act.”

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

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2024.

(Approved July 8, 2024.)

Note

1. Edited pursuant to HRS §23G-16.5.