

ACT 160

H.B. NO. 822

A Bill for an Act Relating to Notice of Breach or Default of Agreements for Use of State Land.

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

SECTION 1. Section 171-20, Hawaii Revised Statutes, is amended to read:

“**§171-20 Notice of breach or default.** Except as otherwise specifically provided in this chapter, in the event of a breach or default of any term, covenant, restriction, or condition of any lease, patent, license, agreement, or other instrument heretofore or hereafter issued under this chapter, the board of land and natural resources shall deliver a written notice of the breach or default by personal service or by registered or certified mail to the party in default and to each holder of record having any security interest in the land covered by or subject to the lease, patent, license, agreement, or other instrument, making demand upon the party to cure or remedy the breach or default within sixty days from the date of receipt of the notice; provided that where the breach involves a failure to make timely rental payments pursuant to the lease, patent, license, agreement, or other instrument heretofore or hereafter issued under this chapter, the written notice shall include a demand upon the party to cure the breach within less than sixty days, but not less than five business days, after receipt of the notice. Upon failure of the party to cure or remedy the breach or default within the time period provided herein or within such additional period as the board may allow for good cause, the board may, subject to section 171-21 exercise such rights as it may have at law or as set forth in the lease, patent, license, agreement, or other instrument.”

SECTION 2. Section 171-21, Hawaii Revised Statutes, is amended to read:

“**§171-21 Rights of holder of security interest.** Whenever any notice of breach or default is given to any party under section 171-20, or under the terms of any lease, patent, license, agreement, or other instrument heretofore issued or hereafter to be issued under this chapter, a copy of the notice shall be delivered by the board of land and natural resources to all holders of record of any security interest in the land or

† Probably should read “or”.

interest covered by the lease, patent, license, agreement, or other instrument whose security interest has been recorded with the board. Should the board seek to forfeit the privilege, interest, or estate created by the lease, license, agreement, patent, or other instrument, each holder may, at its option, cure or remedy the breach or default, if the same can be cured or remedied, by the payment of money or, if such is not the case, by performing or undertake in writing to perform all the terms, covenants, restrictions, or conditions of any lease, patent, license, agreement, or other instrument capable of performance by the holder, as determined by the board, within the time period provided in section 171-20 or within such additional period as the board may allow for good cause and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the board may:

- (1) Pay to the holder from any monies at its disposal, including the special land and development fund, which is made available for that purpose, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder, or if ownership of the interest or estate shall then have vested in the holder by way of foreclosure or action in lieu thereof the board shall be entitled to a conveyance of the interest or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or
- (2) Terminate the outstanding privilege, interest, or estate subject to the lien of the mortgage, without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default, and thereupon use its best efforts to redispense of the land affected thereby to a qualified and responsible person who will assume the obligation of the mortgage and the debt thereby secured; provided, that a reasonable delay by the board in instituting or prosecuting any right or remedy it may have hereunder shall not operate as a waiver of the right or to deprive it of the remedy when it may still hope otherwise to resolve the problems created by the breach or default involved.

Section 171-19 to the contrary notwithstanding, the proceeds of any redispense effected hereunder shall be applied, first, to reimburse the board for costs and expenses in connection with the redispense, second, to discharge in full any unpaid purchase price or other indebtedness owing the State in connection with the privilege, interest, or estate terminated as aforesaid, and the balance, if any, shall be paid to the owner of the privilege, interest, or estate. Nothing herein contained shall be construed in a manner as to infringe upon or prejudice in any way the rights of a holder of record having a security interest which shall have vested prior to the effective date hereof, and to the extent that this section and section 171-98 shall or may conflict and adversely affect such interests, the same shall be of no force and effect.”

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 4. This Act shall take effect upon its approval.

(Approved June 16, 1981.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.