

ACT 215

H.B. NO. 2105-86

A Bill for an Act Relating to Public Lands.

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

SECTION 1. **Purpose.** The purpose of this Act is to remove the State as guarantor when its interests in lands are subjected to a security interest or mortgage.

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

“§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 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] moneys 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] If the property cannot be reasonably reassigned without loss to the State, then 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] land to a qualified and responsible person [who will assume the obligation] free and clear 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] under this section 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 redistribution [effected hereunder] under paragraph (2) shall be applied[.]; first, to reimburse the board for costs and expenses in connection with the redistribution[.]; 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]; third, to the mortgagee to the extent of the value received by the State upon redistribution which exceeds the fair market lease value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate. Nothing [herein] contained in this section 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 statutory material is underscored.

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

(Approved May 27, 1986.)