

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 10, 1947

By Mr. LEWIS

Referred to Committee on Judiciary

AN ACT concerning liens and encumbrances of the State of New Jersey, and amending section 2:61-4 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*
2 *Jersey:*

1 1. Section 2:61-4 of the Revised Statutes is amended to read as follows:
2 2:61-4. On the return of the notice, duly served, or on appearance for
3 the State, the suit may proceed as in other cases, and a judgment or decree
4 therein shall bind the State the same as if it had been made against an indi-
5 vidual; and the lien of the State, on sale under such judgment or decree,
6 shall be cut off and the claim of the State shall be made out of the surplus,
7 if any, in the order or priority in which the encumbrance of the State stands;
8 *provided, however,* that in any suit to foreclose the equity of redemption
9 of a certificate of sale for taxes or other municipal liens or in any suit of
10 strict foreclosure to cure defects and omissions in a prior foreclosure and
11 sale, there may be entered a decree barring and extinguishing any lien or
12 encumbrance of the State on the lands described in the bill of complaint,
13 in case (a) no answer shall be made by the State within the time limited
14 by statute or rule of court; or (b) where a disclaimer shall be filed by the
15 State; or (c) where it shall be determined that the lien of the tax or assess-
16 ment or any part thereof or the lien or encumbrance theretofore foreclosed
17 is prior to the lien or encumbrance of the State. Such suit of strict fore-

18 closure to cure defects and omissions in such prior foreclosure of and sale
19 under any lien or encumbrance previous to the lien or encumbrance of the
20 State of New Jersey may be brought by the purchaser at said foreclosure
21 sale or by the legal representatives, heirs, devisees, successors or assigns
22 of such purchaser.

1 2. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to afford relief to a prior mortgagee, lienor or encumbrancer who has inadvertently failed to join the State of New Jersey as a party defendant or sufficiently to state the encumbrance or lien of the State sought to be affected in his action for foreclosure of his prior mortgage, lien or encumbrance and sale of lands in question. The present law, sections 2:61-1, 2, 3 and 4, of the Revised Statutes, permits a mortgagee, lienor or encumbrancer to bring in question the lien or encumbrance of the State which is subsequent to the lien of his mortgage, lien or encumbrance and cut the State's lien off by foreclosure and sale, but if there be any error or omission in such suit either in joining the State as a defendant or in setting up its interest, the mortgagee, lienor or encumbrancer cannot, after the completion of such action, resell, or enforce his equity by bringing strict foreclosure against the State to remedy such defect or omission. Section 54:49-13 of the Revised Statutes as amended by chapter 306 of the laws of 1945 does not afford relief.

This bill has the approval of the Law and Tax Departments of the State.

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SENATE, No. 69

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