

2009 DRAFTING REQUEST

Bill

Received: **01/06/2010**

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **Jon Richards (608) 266-0650**

By/Representing: **Brett Blomme**

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - banking inst.**

Extra Copies: **MDK**

Submit via email: **YES**

Requester's email: **Rep.Richards@legis.wisconsin.gov**

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Bank foreclosures

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 01/06/2010 chanaman 01/12/2010	wjackson 01/14/2010		_____			State
/1			rschluet 01/14/2010	_____	sbasford 01/14/2010	mbarman 01/21/2010	State
/2	chanaman 01/28/2010	wjackson 01/28/2010	jfrantze 01/28/2010	_____	cduerst 01/28/2010	cduerst 01/28/2010	

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intro*

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1/28

Retd
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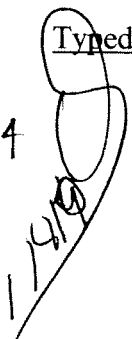
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FE Sent For:

<END>

1/6

file from Brett Blomme

- all financial institutions
- residential mortgage loans
- bank-owned property → judgment of foreclosure
 - ~~add~~ bank-owned → 100 at any one time
- draft the first portion → hold off on the second portion

Hanaman, Cathlene

From: Gary, Aaron
Sent: Wednesday, January 06, 2010 3:16 PM
To: Hanaman, Cathlene
Cc: Nelson, Robert P.
Subject: FW: Bill Draft for Rep. Richards

Cathlene,

I spoke with Brett after I talked to you. He wants to go forward with the first item, the state contracting piece, and hold off on the second part for now.

I can help you as need be. Bob can advise on the foreclosure issues.

In answer to the questions below:

1. The draft should apply to financial institutions. The definition of financial institution under s. 214.01(1)(jn) is a good one.
2. Yes, he wants this to apply only for residential mortgage foreclosures. (So the draft would refer to foreclosures of residential mortgage loans. There is a definition of this term in s. 224.71(14).)
3. What they have in mind is "bank-owned" properties - the financial institution has obtained a judgement of foreclosure and now owns the residential property but cannot or will not get rid of it. (They consider this to create a neighborhood blight when blocks of houses in a neighborhood become "bank-owned." Presumably the bank is holding them because there are no buyers out there.) The provision would apply if the financial institution holds 100 or more bank-owned properties at any one time. So I suppose, if a state agency engages banking services with a financial institution, the state agency would have to make the financial institution report/certify that it doesn't.

If you need any help on this, please let me know. I will forward the electronic file to you.

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Gary, Aaron
Sent: Wednesday, January 06, 2010 1:19 PM
To: Blomme, Brett
Cc: Kunkel, Mark
Subject: RE: Bill Draft for Rep. Richards

Hi Brett,

I'll be one of the drafters on this request. I have entered it as LRB-4080. I'll need to flesh out some details of the request.

1. Do you want this draft to apply only to banks, or to all financial institutions (banks, savings banks, savings and loan associations, and credit unions)?
2. Do you want this to apply only to residential mortgage loans?
3. What does it mean to "hold 100 or more foreclosed properties"? Do you want this bill to apply if the "bank" has: (a) obtained more than 100 judgments of foreclosure ever, (b) obtained more than 100 judgments of foreclosure within the prior year, (c) instituted more than 100 foreclosure actions (regardless of whether the judgment has been entered) within a certain time period, (d) served more than 100 borrowers with a notice of potential foreclosure within a certain time period, OR (e) some other criteria?
4. As a general matter, I don't see a problem with the first idea below relating to state contracting with these banks. However, there is a problem with the second idea, imposing a penalty on banks. There are state-chartered banks and national banks. In my view, it is likely that the penalty against national banks would be null and unenforceable because it would probably be found to be preempted by federal law. Under federal law, national banks are granted authority to engage in lending activity, including taking security interests (mortgages) in real property and enforcing those security interests (filing foreclosure actions). In fact, a national bank is required to do what is necessary to remain solvent, which means it is generally required to enforce security arrangements necessary for the repayment of its loans. While the U.S. Supreme Court has said that national banks are subject to state court procedures in foreclosure actions, I believe that the

proposed penalty would be found to fundamentally interfere with the authorized activities of national banks. Accordingly, I believe this part of the bill (the penalty) probably won't be enforceable against national banks but would be enforceable against state banks. To my understanding, it has been national banks and not state banks that have been most culpable in abusive lending and foreclosure practices. As a policy matter, you may want to consider whether you want a bill that will likely punish those less culpable and put state institutions at a disadvantage against their federal counterparts. You might wish to talk to DFI about this issue - DFI has a history of opposing legislation that disadvantages state institutions and creates incentives for state banks to flee their state charters and become national banks.

Thanks in advance for your feedback. When I hear back from you, I can begin drafting this.

Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Blomme, Brett
Sent: Wednesday, January 06, 2010 10:36 AM
To: Kunkel, Mark
Subject: Bill Draft for Rep. Richards

Mark,

Rep. Richards would like a bill drafted relating to banks that hold foreclosed homes.

The idea is to prohibit any bank from doing business with the State of Wisconsin if they hold 100 or more foreclosed properties in the State of Wisconsin.

Also, Banks would have to pay a penalty or surcharge per house if they exceed 100 foreclosed properties.

Please let me know if you have any questions about this. I am at 6-0650. I can also put you in contact with the constituent that is requesting the legislation, as he is much more knowledgeable about the topic than I.

Thanks,

Brett

Brett Blomme
Office of Representative Jon Richards
(608) 266-0650
brett.blomme@legis.wisconsin.gov



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-4080/7

CMH:.....

WJ

BY FRIDAY
per requester
please

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

general

1 AN ACT ..., relating to: state contracts with financial institutions with
2 foreclosures in the state.

Dwn

Analysis by the Legislative Reference Bureau

Under current law, with numerous exceptions, if a state agency contracts for services, the services must be obtained from the lowest responsible bidder or the person submitting the most advantageous competitive sealed proposal. This bill creates an exception by prohibiting an agency that is contracting for services from contracting with a financial institution unless the financial institution certifies that it does not hold 100 or more residential properties in this state from foreclosure actions on residential mortgages. ^{resulting}

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 16.75 (1) (a) 1. of the statutes is amended to read:

4 16.75 (1) (a) 1. All orders awarded or contracts made by the department for all
5 materials, supplies, equipment, and contractual services to be provided to any
6 agency, except as otherwise provided in par. (c) and subs. (2), (2g), (2m), (3m), (3t),

1 (6), (7), (8), (9), (10e), ~~and (10m)~~, and (10r) and ss. 16.73 (4) (a), 16.751, 16.754, 16.964
 2 (8), 50.05 (7) (f), 153.05 (2m) (a), and 287.15 (7), shall be awarded to the lowest
 3 responsible bidder, taking into consideration life cycle cost estimates under sub.
 4 (1m), when appropriate, the location of the agency, the quantities of the articles to
 5 be supplied, their conformity with the specifications, and the purposes for which they
 6 are required and the date of delivery.

History: 1975 c. 224; 1977 c. 418, 419; 1979 c. 34, 221, 314, 340, 355; 1979 c. 361 s. 112; 1981 c. 121 s. 20; 1983 a. 27 ss. 91, 93 to 99; 1983 a. 333 ss. 3g, 3r to 4b, 6; 1983 a. 368, 390; 1985 a. 29 ss. 122m to 124, 3200 (1); 1985 a. 180; 1987 a. 27, 119, 142, 147, 186, 399, 403; 1989 a. 31, 335, 345, 359; 1991 a. 39, 170; 1993 a. 16, 414; 1995 a. 27 ss. 368 to 382, 9116 (5); 1995 a. 225, 227, 244, 289, 432; 1997 a. 3; 1999 a. 9, 44, 197; 2001 a. 16, 38; 2003 a. 33; 2005 a. 22, 25, 74, 141, 335; 2007 a. 20 ss. 102 to 103h, 9121 (6) (a); 2007 a. 97; s. 13.92 (2) (i).

7 **SECTION 2.** 16.75 (10r) of the statutes is created to read:

8 16.75 (10r) The department, any other delegated purchasing agent under s.
 9 16.71, any agency making purchases under s. 16.74, and any authority may not enter
 10 into any contract with a financial institution, as defined in s. 214.01 (1) (jn), unless
 11 the financial institution can certify that it does not ~~hold~~ ^{own} 100 or more properties in this
 12 state resulting from foreclosures of residential mortgage loans, as defined under s.
 13 224.71 (14) ^o

14 **SECTION 3. Initial applicability.**

15 (1) The treatment of section 16.75 (10r) of the statutes first applies to contracts
 16 entered into on the effective date of this subsection.

17 (END)

Basford, Sarah

From: Hanaman, Cathlene
Sent: Thursday, January 21, 2010 1:37 PM
To: Christina Duerst; Lori Northrop; Mike Barman; Sarah Basford
Subject: FW:

Could you jacket -4080 for the Assembly?

From: Blomme, Brett
Sent: Thursday, January 21, 2010 1:33 PM
To: Hanaman, Cathlene
Subject: RE:

Yes, thanks. Can you send over the email that will allow me to jacket the bill?

Brett Blomme
Office of Representative Jon Richards
(608) 266-0650
brett.blomme@legis.wisconsin.gov



State of Wisconsin
2009 - 2010 LEGISLATURE

2
LRB-4080/1 (stop)
CMH:wj:rs
ARG

RMR

2009 BILL

today
please

Agency

1 AN ACT *to amend* 16.75 (1) (a) 1.; and *to create* 16.75 (10r) of the statutes;
2 **relating to:** state contracts with financial institutions with foreclosures in the
3 state.

Analysis by the Legislative Reference Bureau

Under current law, with numerous exceptions, if a state agency contracts for services, the services must be obtained from the lowest responsible bidder or the person submitting the most advantageous competitive sealed proposal. This bill creates an exception by prohibiting an agency that is contracting for services from contracting with a financial institution unless the financial institution certifies that it does not own 100 or more residential properties in this state from foreclosure actions on residential mortgages.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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BILL

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11 into any contract with a financial institution, as defined in s. 214.01 (1) (jn), unless
12 the financial institution can certify that it does not own 100 or more properties in this
13 state resulting from foreclosures of residential mortgage loans, as defined under s.
14 224.71 (14).

15 **SECTION 3. Initial applicability.**

16 (1) The treatment of section 16.75 (10r) of the statutes first applies to contracts
17 entered into on the effective date of this subsection.

18 (END)

*Not = for purposes of this subsection, a financial institution
acting as a trustee with respect to the property is
considered to own the property.*