

**2013 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-SB488)**

Received: **2/26/2014** Received By: **pkahler**  
 Wanted: **Soon** Same as LRB:  
 For: **Frank Lasee (608) 266-3512** By/Representing: **Rob Kovach**  
 May Contact: Drafter: **pkahler**  
 Subject: **Courts - immunity liability** Addl. Drafters: **phurley**  
**Real Estate - foreclosures**

Extra Copies:

Submit via email: **YES**  
 Requester's email: **Sen.Lasee@legis.wisconsin.gov**  
 Carbon copy (CC) to: **Fern.Knepp@legis.wisconsin.gov**  
**pam.kahler@legis.wisconsin.gov**  
**peggy.hurley@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Allowing foreclosure plaintiff to enter property

**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>
/?	pkahler 2/27/2014	wjackson 2/27/2014		_____			
/PI	pkahler 2/28/2014		jfrantze 2/27/2014	_____	sbasford 2/27/2014		
/1		wjackson	jfrantze	_____	mbarman	mbarman	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
		2/28/2014	2/28/2014	_____	2/28/2014	2/28/2014	

FE Sent For:

**<END>**

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### Senate Substitute Amendment (SSA-SB488)

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#### Pre Topic:

No specific pre topic given

---

#### Topic:

Allowing foreclosure plaintiff to enter property

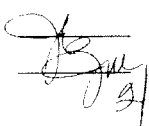
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#### Instructions:

See attached

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#### 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>
/?	pkahler 2/27/2014	wjackson 2/27/2014		_____			
/P1		1/1/2/28	jfrantze 2/27/2014		sbasford 2/27/2014		

FE Sent For:

<END>

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**Pre Topic:**

No specific pre topic given

**Topic:**

Allowing foreclosure plaintiff to enter property

**Instructions:**

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/?	pkahler						

*Handwritten signature and date 2/27*

FE Sent For:

<END>

2-26

Rob Kovach by phone

draft a sub to SB 488; use sub to AB 625  
remove municipality and utility  
authorization to enter property  
(limit to plaintiff after judgment)

also limit to mortgage foreclosures

keep notice requirement for date of court

keep immunity from liability but change  
to willful misconduct



PI  
PJK+PJH  
WJ  
r m not run

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**SENATE SUBSTITUTE AMENDMENT,**  
**TO SENATE BILL 488**

(in 2-27)

today, please  
D-note

you cat

1 AN ACT relating to: entry on property in foreclosure.

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

2 (END)

↓

**SENATE BILL 488**

necessary to preserve or protect the property or public health and safety. This may be done, however, only if the municipality has determined that it is likely that the property is abandoned, using any reasonable criteria, including the criteria that a court uses in a foreclosure action to determine that property has been abandoned, and that it is necessary to preserve or protect the property or public health and safety or to inspect the property to determine if any action is necessary to preserve or protect the property or the public health and safety. The bill also provides that, in a mortgage foreclosure action in which the court has determined that the property has been abandoned, after judgment is entered for the plaintiff in the action, the plaintiff may go on the property and enter into any buildings on the property, using such reasonable force as is necessary, to inspect the property and take any action necessary to preserve or protect the property. The bill provides immunity from civil and criminal liability to any employee or agent of, or contractor with, a municipality in which a property in foreclosure is located or utility company that provides service to the property, and to a plaintiff in a foreclosure action, for acts or omissions related to going on, and inspecting, the property and taking any actions authorized under the bill.

The bill requires the clerk of circuit court for the county in which a mortgage foreclosure action is commenced to provide notice of the commencement of the action to the municipality in which the property in foreclosure is located and to the law enforcement agency that provides primary law enforcement services to that municipality. The notice must include the address of the property and the name and address of the plaintiff in the foreclosure action, but may not include the name of the property owner or defendant in the foreclosure action.

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

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

- 1           **SECTION 1.** 846.085 of the statutes is created to read:
- 2           **846.085 Entry on property in foreclosure. (1) DEFINITIONS.** In this section:
- 3           (a) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).
- 4           (b) "Municipality" means a city, village, or town.
- 5           (c) "Property" means mortgaged premises that are the subject of a foreclosure
- 6           action.
- 7           (d) "Representative of a utility" means a person who is employed by, an agent
- 8           of, or under contract with a public utility, as defined in s. 196.01 (5), or a cooperative



## SENATE BILL 488

1 association organized under ch. 185, that provides water, electric, or natural gas  
2 service to the property.

3 (e) "Representative of the municipality" means a person who is employed by,  
4 an agent of, or under contract with a municipality.

5 ~~(2) ENTRY BY MUNICIPALITY OR UTILITY.~~ At any time after the commencement of  
6 a mortgage foreclosure action, a representative of the municipality in which the  
7 property is located or a representative of a utility may go on the property, enter any  
8 buildings on the property, using such reasonable force as appears necessary, and take  
9 any action necessary to preserve or protect the property or public health and safety,  
10 if all of the following apply:

11 (a) The municipality has determined that the property is abandoned or that it  
12 is likely that the property is abandoned. The municipality may use any reasonable  
13 criteria to determine whether the property is abandoned, including the criteria  
14 under s. 846.102 (2) (a) to (f).

15 (b) The municipality has determined that entry on the property or in buildings  
16 on the property is necessary to preserve or protect the property or public health and  
17 safety or to inspect the property to determine if any action is necessary to preserve  
18 or protect the property or public health and safety.

19 ~~(2)~~ <sup>(3)</sup> ENTRY BY PLAINTIFF. In a mortgage foreclosure action, if the court finds under  
20 s. 846.102 that the property has been abandoned, at any time after judgment for the  
21 plaintiff has been entered, the plaintiff, or an employee or agent of or contractor with  
22 the plaintiff, may go on the property and enter any buildings on the property, using  
23 such reasonable force as appears necessary, to inspect the property and take any  
24 action necessary to preserve or protect the property.

**SENATE BILL 488****SECTION 1**

1 <sup>3</sup> (1) NOTICE FROM CLERK OF COURT. (a) At the commencement of a mortgage  
2 foreclosure action, the clerk of circuit court for the county in which the action is filed  
3 shall provide notice of the commencement of the action to the municipality in which  
4 the property is located and to the law enforcement agency that provides primary law  
5 enforcement services to the municipality in which the property is located.

6 (b) The clerk of circuit court and the municipality and law enforcement agency  
7 may agree on the form of the notice and the method of delivering the notice, or the  
8 clerk may provide the notice in the form and manner most convenient for the clerk,  
9 which may include delivery by electronic mail.

10 (c) The notice provided under this subsection shall include the street address  
11 or location of the property and the name and address of the plaintiff in the action.  
12 The notice may not include the name of the owner of record of the property or the  
13 name of the defendant in the action.

14 <sup>4</sup> (5) IMMUNITY FROM LIABILITY. A person authorized under sub. (2) or (3) to go on  
15 a property and enter buildings on a property is immune from civil liability for acts  
16 or omissions related to carrying out the powers and responsibilities under sub. (2)  
17 or (3), whichever is applicable, unless the person asserting liability proves that the  
18 act or omission constitutes willful misconduct.

19 **SECTION 2.** 943.13 (4m) (e) of the statutes is created to read:

20 943.13 (4m) (e) A person entering or remaining on the land as authorized under  
21 s. 846.085 (2) or (3).

22 **SECTION 3.** 943.14 of the statutes is amended to read:

23 **943.14 Criminal trespass to dwellings.** Whoever intentionally enters the  
24 dwelling of another without the consent of some person lawfully upon the premises,  
25 under circumstances tending to create or provoke a breach of the peace, is guilty of

1 clerk may provide the notice in the form and manner most convenient for the clerk,  
2 which may include delivery by electronic mail.

3 (c) ~~The notice provided under this subsection shall include the street address  
4 or location of the property and the name and address of the plaintiff in the action.  
5 The notice may not include the name of the owner of record of the property or the  
6 name of the defendant in the action.~~

7 (5) IMMUNITY FROM LIABILITY. A person authorized under sub. (2) or (3) to go on  
8 a property and enter buildings on a property is immune from civil liability for acts  
9 or omissions related to carrying out the powers and responsibilities under sub. (2)  
10 or (3), whichever is applicable, unless the person asserting liability proves that the  
11 act or omission constitutes recklessness.

12 <sup>3</sup> (6) APPLICABILITY. (a) Subsections (2) and (3) <sup>2</sup> apply to foreclosure actions that  
13 are pending on, or commenced on or after, the effective date of this paragraph ....  
14 [LRB inserts date].

15 (b) Subsection (4) <sup>3</sup> applies to foreclosure actions that are commenced on or after  
16 the effective date of this paragraph .... [LRB inserts date].

17 SECTION 2. <sup>846.085</sup> 66.0414 of the statutes, as created by 2013 Wisconsin Act .... (this  
18 act), is repealed.

19 SECTION 3. 943.13 (4m) (e) of the statutes is created to read:

20 943.13 (4m) (e) A person entering or remaining on the land as authorized under  
21 s. 66.0414 (2) or (3) <sup>846.085(2)</sup>.

22 SECTION 4. 943.13 (4m) (e) of the statutes, as created by 2013 Wisconsin Act ....

23 (this act), is amended to read:

24 943.13 (4m) (e) A person entering or remaining on the land as authorized under  
25 s. 66.0414 (2) or (3) <sup>2013 stats.</sup>

<sup>846.085(2)</sup>

1 SECTION 5. 943.14 of the statutes is amended to read:

2 943.14 Criminal trespass to dwellings. Whoever intentionally enters the  
3 dwelling of another without the consent of some person lawfully upon the premises,  
4 under circumstances tending to create or provoke a breach of the peace, is guilty of  
5 a Class A misdemeanor. This section does not apply to a person entering or

6 remaining on the land as authorized under s. 66.0414 (2) or (3). → 846.085(2)

auto 7 ref

7 SECTION 6. 943.14 of the statutes, as affected by 2013 Wisconsin Act .... (this  
8 act), is amended to read:

9 943.14 Criminal trespass to dwellings. Whoever intentionally enters the  
10 dwelling of another without the consent of some person lawfully upon the premises,  
11 under circumstances tending to create or provoke a breach of the peace, is guilty of  
12 a Class A misdemeanor. This section does not apply to a person entering or

13 remaining on the land as authorized under s. 66.0414 (2) or (3), 2013 stats.

14 SECTION 7. 943.15 (1r) of the statutes is created to read:

15 943.15 (1r) This section does not apply to a person entering or remaining on  
16 the land as authorized under s. 66.0414 (2) or (3). → 846.085

17 SECTION 8. 943.15 (1r) of the statutes, as created by 2013 Wisconsin Act .... (this  
18 act), is amended to read:

19 943.15 (1r) This section does not apply to a person entering or remaining on  
20 the land as authorized under s. 66.0414 (2) or (3), 2013 stats. → 846.085(2)

21 SECTION 9. Effective dates. This act takes effect on the day after publication,  
22 except as follows:



*auto ref* →

1

(1) The amendment of sections 943.13 (4m) (e), 943.14 (by SECTION 6), and

2

943.15 (1r) of the statutes and the repeal of section 66.0414 of the statutes take effect

3

on the first day of the 37th month beginning after publication.

4

(END)

↓ 846.085

*D-into*

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0352/<sup>pl</sup>dn  
PJK:.....  
*WJ*  
*rm not run*

Date

I assumed that you wanted your substitute amendment to Senate Bill 488. Let me know if that is not correct.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0352/P1dn  
PJK:wlj:jf

February 27, 2014

I assumed that you wanted your substitute amendment to Senate Bill 488. Let me know if that is not correct.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)

## Kahler, Pam

---

**From:** Kovach, Robert  
**Sent:** Thursday, February 27, 2014 4:26 PM  
**To:** Kahler, Pam  
**Subject:** RE: Status for Sub SB-488

No sunset please

## Rob Kovach

Policy Advisor/Committee Clerk  
Office of Senator Frank Lasee  
(608) 266-3512

---

**From:** Kahler, Pam  
**Sent:** Thursday, February 27, 2014 4:25 PM  
**To:** Kovach, Robert  
**Subject:** RE: Status for Sub SB-488

They wanted to sunset it in three years. Do you want to get rid of that?

---

**From:** Kovach, Robert  
**Sent:** Thursday, February 27, 2014 3:50 PM  
**To:** Kahler, Pam  
**Subject:** RE: Status for Sub SB-488

Looks Great! Thank you!

What's up with the 37<sup>th</sup> month thing on page 4?

## Rob Kovach

Policy Advisor/Committee Clerk  
Office of Senator Frank Lasee  
(608) 266-3512

---

**From:** Kahler, Pam  
**Sent:** Thursday, February 27, 2014 3:09 PM  
**To:** Kovach, Robert  
**Subject:** RE: Status for Sub SB-488

I got them to drop what they were proofing and take up that one – should be out in the next few minutes.

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**From:** Kovach, Robert



**Sent:** Thursday, February 27, 2014 2:26 PM

**To:** Kahler, Pam

**Subject:** Status for Sub SB-488

Hi Pam,

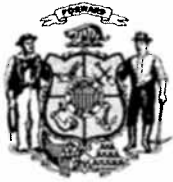
Do you have an ETA for the Sub for SB-488 that we talked about yesterday? I want to give it to the Bankers before I run out of time to introduce it.

**Rob Kovach**

Policy Advisor/Committee Clerk

Office of Senator Frank Lasee

(608) 266-3512



stays

✓ is run

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~  
**SENATE SUBSTITUTE AMENDMENT ,**  
**TO SENATE BILL 488**

to pay  
by 1:00, please

1 **AN ACT to repeal** 846.085; **to amend** 943.13 (4m) (e), 943.14, 943.14 and 943.15  
2 (1r); and **to create** 846.085, 943.13 (4m) (e) and 943.15 (1r) of the statutes;  
3 **relating to:** entry on property in foreclosure.

~~entry~~  
§

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

4 **SECTION 1.** 846.085 of the statutes is created to read:  
5 **846.085 Entry on property in foreclosure. (1) DEFINITIONS.** In this section:  
6 (a) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).  
7 (b) "Municipality" means a city, village, or town.  
8 (c) "Property" means mortgaged premises that are the subject of a foreclosure  
9 action.  
10 **(2) ENTRY BY PLAINTIFF.** In a mortgage foreclosure action, if the court finds under  
11 s. 846.102 that the property has been abandoned, at any time after judgment for the

1 plaintiff has been entered the plaintiff, or an employee or agent of or contractor with  
 2 the plaintiff, may go on the property and enter any buildings on the property, using  
 3 such reasonable force as appears necessary, to inspect the property and take any  
 4 action necessary to preserve or protect the property.

5 (3) NOTICE FROM CLERK OF COURT. (a) At the commencement of a mortgage  
 6 foreclosure action, the clerk of circuit court for the county in which the action is filed  
 7 shall provide notice of the commencement of the action to the municipality in which  
 8 the property is located and to the law enforcement agency that provides primary law  
 9 enforcement services to the municipality in which the property is located.

10 (b) The clerk of circuit court and the municipality and law enforcement agency  
 11 may agree on the form of the notice and the method of delivering the notice, or the  
 12 clerk may provide the notice in the form and manner most convenient for the clerk,  
 13 which may include delivery by electronic mail.

14 (c) The notice provided under this subsection shall include the street address  
 15 or location of the property and the name and address of the plaintiff in the action.  
 16 The notice may not include the name of the owner of record of the property or the  
 17 name of the defendant in the action.

18 (4) IMMUNITY FROM LIABILITY. A person authorized under sub. (2) to go on a  
 19 property and enter buildings on a property is immune from civil liability for acts or  
 20 omissions related to carrying out the powers and responsibilities under sub. (2),  
 21 unless the person asserting liability proves that the act or omission constitutes  
 22 willful misconduct.

23 (5) APPLICABILITY. (a) Subsection (2) applies to mortgage foreclosure actions that are  
 24 pending on, or commenced on or after, the effective date of this paragraph .... [LRB  
 25 inserts date].

mortgage  
↑

1 (b) Subsection (3) applies to foreclosure actions that are commenced on or after  
2 the effective date of this paragraph .... [LRB inserts date].

3 **SECTION 2.** 846.085 of the statutes, as created by 2013 Wisconsin Act .... (this  
4 act), is repealed.

5 **SECTION 3.** 943.13 (4m) (e) of the statutes is created to read:  
6 943.13 (4m) (e) A person entering or remaining on the land as authorized under  
7 s. 846.085 (2).

8 **SECTION 4.** 943.13 (4m) (e) of the statutes, as created by 2013 Wisconsin Act ....  
9 (this act), is amended to read:  
10 943.13 (4m) (e) A person entering or remaining on the land as authorized under  
11 s. 846.085 (2), 2013 stats.

12 **SECTION 5.** 943.14 of the statutes is amended to read:  
13 **943.14 Criminal trespass to dwellings.** Whoever intentionally enters the  
14 dwelling of another without the consent of some person lawfully upon the premises,  
15 under circumstances tending to create or provoke a breach of the peace, is guilty of  
16 a Class A misdemeanor. This section does not apply to a person entering or  
17 remaining on the land as authorized under s. 846.085 (2).

18 **SECTION 6.** 943.14 of the statutes, as affected by 2013 Wisconsin Act .... (this  
19 act), is amended to read:  
20 **943.14 Criminal trespass to dwellings.** Whoever intentionally enters the  
21 dwelling of another without the consent of some person lawfully upon the premises,  
22 under circumstances tending to create or provoke a breach of the peace, is guilty of  
23 a Class A misdemeanor. This section does not apply to a person entering or  
24 remaining on the land as authorized under s. 846.085 (2), 2013 stats.

25 **SECTION 7.** 943.15 (1r) of the statutes is created to read:

