

1999 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB133)

Received: **06/23/99**

Received By: **isagerro**

Wanted: **Soon**

Identical to LRB:

For: **Assembly Republican Caucus**

By/Representing: **Dake**

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

Drafter: **nelsorp1**

May Contact:

Alt. Drafters:

Subject: **Transportation - miscellaneous**
Transportation - highways

Extra Copies: **PEN**
TNF

Pre Topic:

ARC:.....Dake - Motion #1525.

Topic:

Liability exemption for using recycled materials in public works projects

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>
/?	isagerro 06/23/99 nelsorp1 06/23/99	chanaman 06/24/99		_____			
/1			jfrantze 06/24/99	_____	lrb_docadmin 06/24/99		
/2	nelsorp1 06/24/99	chanaman 06/24/99	kfollet 06/24/99	_____	ismith 06/24/99		

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				<i>Kjf/mc</i> <i>6/24</i>			

FE Sent For:

<END>

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/?	isagerro 06/23/99	chanaman 06/24/99	lrb_wpo	_____			
	nelsorp1 06/23/99			_____			

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Drafter: ~~isagerro~~ **nelson**

May Contact:

Alt. Drafters:

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1?	isagerro	cmh 6/23	Jb 6/24	Jb Km 6/24			
FE Sent For:		/1					

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Legislative Fiscal Bureau

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JD

From:

Jon Dyck

Message:

MEMORANDUM

To: Wisconsin Legislators

From: Tom Walker, Executive Director
WI Transportation Builders Association

Date: June 14, 1999

Re: REGULATORY EXEMPTION AND LIABILITY IMMUNITY
REGARDING RECYCLABLE MATERIALS IN PUBLIC
WORK PROJECTS

There is a clear consensus in Wisconsin that it is sound public policy to promote the use of recyclable materials in transportation projects. That consensus is reflected in a number of existing statutes and rules, namely, §§ 84.078, 292.11(9)(f) and 895.56, of the Wisconsin Statutes, and NR 538 of the Department of Natural Resources' rules. Unfortunately, that consensus has not resulted in a coherent statutory framework which provides adequate liability protection for those who implement that consensus, the transportation builders. That lack of adequate protection is of great concern to the Association.

Attached is proposed legislation which addresses that concern. The proposal is modeled after the recently enacted §895.56 (1998), which provides protection for transportation builders when petroleum-contaminated soil is encountered in a transportation project. Essentially, the proposed legislation creates a regulatory exemption and provides liability immunity for transportation builders, amongst others, who are handling recyclable materials ("special waste" in the legislation) in accordance with a contract for a public work project.

Given the emphasis on recycling in this budget, it is appropriate that the Legislature enact the proposed legislation. It is only fair that those implementing the existing policy consensus do not bear an unreasonable risk. A straightforward regulatory exemption and liability immunity provision are necessary to ensure that transportation and other public work builders are protected.

TW:sb

behalf of the state to perform the bidding and contracting responsibilities associated with a highway improvement project.

21. *Liability Exemption for Public Works Contractors Using Recycled Materials in Public Works Projects.* Specify that any person (defined as an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency) is immune from any and all liability associated with the use of special waste (defined as any solid waste that is characterized for beneficial use in public work projects by the Department of Natural Resources) in public work projects (defined as any work done under contract with a state agency or local governmental unit) or from damages resulting from the person's actions or omissions relating to the special waste, provided that all of the following apply: (a) the acts or omissions by the person occurred while performing work under a contract for a public work

1032

project, including acts or omissions by any person who has a direct contractual relationship with the prime contractor under a contract for a public work project to perform labor or furnish materials; and (b) the acts or omissions involving special wastes were required or permitted in a contract for a public work project and the acts or omissions conformed to the provisions of the contract. Specify that these provisions do not apply to any person to whom either of the following applies: (a) the person's act or omission constitutes gross negligence or involves reckless, wanton or intentional misconduct; or (b) the person causes personal injury or wrongful death.

1999

Date (time) needed _____

LRB b 1032 1/1

CAUCUS BUDGET AMENDMENT
[ONLY FOR CAUCUS]

RPN: CMM: _____
(change request)

See form AMENDMENTS — COMPONENTS & ITEMS.

CAUCUS AMENDMENT
TO ASSEMBLY SUBSTITUTE AMENDMENT 1
TO 1999 ASSEMBLY BILL 133

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

At the locations indicated, amend the substitute amendment as follows:

#. Page 959, line 17: after that line insert:
(Insert A)

#. Page 1431, line 11: after that line insert:
(Insert B)

#. Page, line, (END)

#. Page, line

Page 1282, line 21: after that line insert:

#. Page, line

SECTION 2581 m. 292.11(9)(f) of the statutes is repealed.

#. Page, line

#. Page 1294, line 18: after that line insert:

SECTION 2611 m. 292.31(8)(b)3. of the statutes is repealed.

INSERTS A+B

DRS/WTBA Draft s. 895.58, Stats. - 25 Mar 1999 - For Discussion Only

Insert A
Insert B

SECTION 84.078 of the statutes is repealed.

SECTION 895.58 of the statutes is created to read:

895.58 Liability exemption; use of special waste under public work contracts. (1) In this

section:

(a) "Department" means the department of natural resources.

(b) "Special waste" means any solid waste which is characterized for beneficial use in public work projects by the department of natural resources. (The department may characterize the solid waste by rule, memorandum of understanding between itself and other state agencies or local governmental units, or on a case-by-case basis. The department shall compile and maintain a list of special wastes in a format readily available to the general public and only those wastes may be required to be used in a public work project.)

(c) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an agency or corporation of such a political subdivision or special purpose district, or a combination or subunit of any of the foregoing.

(d) "Person" means an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency, as defined in s. 1.12 (1) (6), or federal agency.

(e) "Public work project" means any work done under contract to a state agency or local governmental unit.

(f) Notwithstanding any other provision, special waste managed ~~in accordance with section 895.58~~ ^{under sub. (1)} is not subject to regulation as solid waste.

(g) A person is immune from ~~any~~ liability for the use of special waste on a public work project or for damages resulting from the person's actions or omissions relating to the special waste use of the

Insert
B

on a public work project
if all of the following apply:

(a) The acts or omissions by the person occurred while performing work under a contract for a public work project including acts or omissions by any person who has a direct contractual relationship with the prime contractor, as defined in s. 779.01 (2) (d), under a contract for a public work project to perform labor or furnish materials.

(b) The acts or omissions involving the special wastes were ~~authorized~~ ^{required or permitted} in a contract for a public work project and the acts or omissions conformed to the provisions of the contract.

(4) ~~Sections (a) and (b) do not apply to any person to whom either of the following applies:~~

(a) The person's act or omission ~~constituted gross negligence or reckless, wanton or intentional misconduct.~~ ^{involved}

(b) The ~~person's act or omission resulted in~~ ^{person's act or omission resulted in} injury or death ^{to an individual}

Sub section
7
does (4)

(end of insert B)

Nelson, Robert

From: Dyck, Jon
Sent: Thursday, June 24, 1999 2:33 PM
To: Dake, Brian
Cc: Nelson, Robert
Subject: LRB 1032/1 liability exemption for using recycled materials in public works projects

Brian,

I have asked Bob Nelson of the Reference Bureau to make several changes to LRB 1032/1 to reflect what I believe was the intent of the Assembly Republican Caucus. First, I asked him not to repeal s. 84.078 and the associated cross references. This section of the statutes governs the use of recovered materials in highway projects and provides some exemptions from environmental regulations if the use of recovered materials is done in accordance with rules for their use in highway projects. The exemption created by this draft does not necessarily make the exemptions under s. 84.078 (3) obsolete so I think it would not be wise to eliminate them. Although the proposed language drafted by the Wisconsin Transportation Builders Association, which this provision of motion #1525 was based on, included the repeal of s. 84.078, I did not include it in the motion because I felt it was counter to their intent.

Second, sub(3) of 895.58, which was taken directly from the Transportation Builder's Association draft is poorly worded -- sub (4) is not related to the management of special waste. Bob Nelson suggested that it may be better to say something like "special waste used in a public works project is not subject to regulation as solid waste under chapter 289."

Third, I suggested, and Bob agreed, that "public works" would be preferable to "public work."

Finally, on page 3, line 6, the (4) should be replaced with (5).

If you do not agree with any of these changes please let Bob and me know.

Jon Dyck, Fiscal Analyst
Legislative Fiscal Bureau



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb1032/1
RPN:cmh:jf

ARC:.....Dake - Motion #1525, Liability exemption for using recycled materials in public works projects

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 959, line 17: after that line insert:

3 “SECTION 1819g. 84.078 of the statutes is repealed.”

4 **2.** Page 1282, line 21: after that line insert:

5 “SECTION 2581m. 292.11 (9) (f) of the statutes is repealed.”

6 **3.** Page 1294, line 18: after that line insert:

7 “SECTION 2611m. 292.31 (8) (b) 3. of the statutes is repealed.”

8 **4.** Page 1431, line 11: after that line insert:

9 “SECTION 3113m. 895.58 of the statutes is created to read:

895.58 Liability exemption; use of special waste under public work^s

2 **contracts.** (1) In this section:

3 (a) "Department" means the department of natural resources.

4 (b) "Local governmental unit" means a political subdivision of this state, a
5 special purpose district in this state, an agency or corporation of such a political
6 subdivision or special purpose district, or a combination or subunit of any of the
7 foregoing.

8 (c) "Public work^s project" means any work done under contract to a state agency
9 or local governmental unit.

10 (d) "Special waste" means any solid waste which is characterized for beneficial
11 use in public work^s projects by the department of natural resources.

12 (2) The department may characterize a solid waste for beneficial use in public
13 works projects by rule, memorandum of understanding between itself and other
14 state agencies or local governmental units, or on a case-by-case basis. The
15 department shall compile and maintain a list of special wastes in a format readily
16 available to the general public and only those special wastes may be required to be
17 used in a public work^s project. *, when used in a public works project,*

18 (3) Special waste ~~managed under sub(4)~~ *under ch. 289* is not subject to regulation as solid
19 waste.

20 (4) A person is immune from liability for the use of special waste on a public
21 work^s project or for damages resulting from the person's actions or omissions relating
22 to the use of the special waste on a public work^s project if all of the following apply:

23 (a) The acts or omissions by the person occurred while performing work under
24 a contract for a public work^s project including acts or omissions by any person who
25 has a direct contractual relationship with the prime contractor, as defined in s.

1 779.01 (2) (d), under a contract for a public work^s/~~work~~ project to perform labor or furnish
2 materials.

3 (b) The acts or omissions involving the special wastes were required or
4 permitted in a contract for a public work^s/~~work~~ project and the acts or omissions conformed
5 to the provisions of the contract.

6 ⁽⁵⁾
7 ~~(4)~~ Subsection (4) does not apply to any person to whom either of the following
8 applies:

9 (a) The person's act or omission involved reckless, wanton or intentional
10 misconduct.

11 (b) The person's act or omission resulted in injury or death to an individual."

(END)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb1032/2
RPN:cmh:kjf

ARC:.....Dake - Motion #1525, Liability exemption for using recycled materials in public works projects

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 1431, line 11: after that line insert:

3 "SECTION 3113m. 895.58 of the statutes is created to read:

4 **895.58 Liability exemption; use of special waste under public works**
5 **contracts. (1) In this section:**

6 (a) "Department" means the department of natural resources.

7 (b) "Local governmental unit" means a political subdivision of this state, a
8 special purpose district in this state, an agency or corporation of such a political
9 subdivision or special purpose district, or a combination or subunit of any of the
10 foregoing.

1 (c) “Public works project” means any work done under contract to a state agency
2 or local governmental unit.

3 (d) “Special waste” means any solid waste which is characterized for beneficial
4 use in public works projects by the department of natural resources.

5 (2) The department may characterize a solid waste for beneficial use in public
6 works projects by rule, memorandum of understanding between itself and other
7 state agencies or local governmental units, or on a case-by-case basis. The
8 department shall compile and maintain a list of special wastes in a format readily
9 available to the general public and only those special wastes may be required to be
10 used in a public works project.

11 (3) Special waste, when used in a public works project, is not subject to
12 regulation as solid waste under ch. 289.

13 (4) A person is immune from liability for the use of special waste on a public
14 works project or for damages resulting from the person’s actions or omissions
15 relating to the use of the special waste on a public works project if all of the following
16 apply:

17 (a) The acts or omissions by the person occurred while performing work under
18 a contract for a public works project including acts or omissions by any person who
19 has a direct contractual relationship with the prime contractor, as defined in s.
20 779.01 (2) (d), under a contract for a public works project to perform labor or furnish
21 materials.

22 (b) The acts or omissions involving the special wastes were required or
23 permitted in a contract for a public works project and the acts or omissions conformed
24 to the provisions of the contract.

