

## 2001 ASSEMBLY BILL 766

January 31, 2002 – Introduced by Representatives KEDZIE, MUSSER, STEINBRINK, AINSWORTH, HAHN, GUNDERSON, OTT, ALBERS and JESKEWITZ, cosponsored by Senators SCHULTZ and COWLES, by request of Department of Natural Resources. Referred to Committee on Environment.

1     **AN ACT** *to amend* 895.58 (1) (d), 895.58 (2) and 895.58 (3); and *to create* 289.43  
2           (8) (b) 4. and 895.58 (1) (cr) of the statutes; **relating to:** immunity for the use  
3           of solid waste for public projects.

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### *Analysis by the Legislative Reference Bureau*

Under current law, the department of natural resources (DNR) may characterize a solid waste as a special waste available for beneficial use in a public works project and must maintain a list of those characterized solid wastes in a format that is available to the public. Currently, a contracting agency in a public works project may only require the use of those special wastes in a public works project. Current law grants immunity from liability to any person for his or her acts or omissions while using those special wastes in a public works project if those acts or omissions occurred while performing work under the contract for the public works project, the contract permitted or required the use of those special wastes, and the acts or omissions conformed to the contract provisions. Current law makes the immunity inapplicable to acts or omissions that involve reckless, wanton, or intentional misconduct or that result in the death or injury of an individual.

Under current law, as a way to encourage new ways to recycle solid waste, DNR may grant a research waiver or an exemption from the requirements regarding the disposal or recycling of high-volume industrial wastes and certain other solid wastes. Under this bill, solid wastes that DNR has exempted from the normal disposal requirement are considered special wastes and may be characterized by DNR as suitable for beneficial use in public works projects. This bill requires DNR

**ASSEMBLY BILL 766**

to maintain a list of those special wastes that are suitable for use in specified types of public works projects. The list may include conditions under which the wastes may be used in public works projects. Under the bill, the current provisions granting immunity from liability apply to the use of those listed special wastes in public works projects if the conditions established by DNR for their use are met. In addition, the current law provisions prohibiting immunity for acts of reckless, wanton, or intentional misconduct or that result in the death or injury of an individual apply.

For further information see the *state* 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.** 289.43 (8) (b) 4. of the statutes is created to read:

2           289.43 **(8)** (b) 4. Authorize use of the solid waste in public works projects.

3           **SECTION 2.** 895.58 (1) (cr) of the statutes is created to read:

4           895.58 **(1)** (cr) “Solid waste” has the meaning given in s. 289.01 (33).

5           **SECTION 3.** 895.58 (1) (d) of the statutes is amended to read:

6           895.58 **(1)** (d) “Special waste” means any type of solid waste that is  
7 ~~characterized for beneficial use in public works projects by the department of natural~~  
8 ~~resources for which the department has granted a waiver or an exemption under s.~~  
9 ~~289.43 (3), (4), (7), or (8) or which is exempt by rule promulgated under s. 289.05 (4).~~

10          **SECTION 4.** 895.58 (2) of the statutes is amended to read:

11          895.58 **(2)** The department may characterize a ~~solid~~ special waste as suitable  
12 ~~for beneficial use in public works projects by rule, memorandum of understanding~~  
13 ~~between itself and other state agencies or local governmental units, or on a~~  
14 ~~case-by-case basis.~~ The department shall compile and maintain a list of special  
15 wastes that are suitable for use in specified types of public works projects in a format  
16 readily available to the general public and only those special wastes may be required  
17 by contracting agencies to be used in a public works project. The list may include

**ASSEMBLY BILL 766**

1 conditions under which the special waste may be used in the public works project in  
2 order for subs. (3) and (4) to be applicable. The list under this subsection is not a rule  
3 under s. 227.01 (13).

4 **SECTION 5.** 895.58 (3) of the statutes is amended to read:

5 895.58 (3) Special waste, when used in a public works project, is ~~not subject to~~  
6 exempt from regulation as solid waste under ch. 289 if all applicable conditions  
7 included in the list compiled under sub. (2) are met.

8 (END)