
SENATE BILL 5926

State of Washington

64th Legislature

2015 Regular Session

By Senators Chase and Liias

Read first time 02/11/15. Referred to Committee on Energy,
Environment & Telecommunications.

1 AN ACT Relating to paint stewardship; amending RCW 43.21B.110 and
2 43.21B.110; reenacting and amending RCW 42.56.270; adding a new
3 chapter to Title 70 RCW; prescribing penalties; providing an
4 effective date; and providing an expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that:

7 (1) Leftover architectural paints are a waste management issue
8 and present environmental risks and health and safety risks,
9 especially to workers in the solid waste industry. During waste
10 collection and processing, wet paint can create spills and splashes
11 and oil paint and aerosol containers may rupture, releasing fumes
12 hazardous to workers and the remaining liquids may contribute to
13 leachate problems in landfills. Many local governments provide
14 collection sites or events for latex paint in order to provide their
15 residents with at least some disposal options and to keep latex paint
16 out of the solid waste stream. But residents and small businesses
17 need more convenient options for disposal of architectural paint.
18 Drying latex for disposal is difficult for many residents and wastes
19 latex paint that can otherwise be reused or recycled. Local
20 government special and moderate-risk waste collection programs are
21 heavily impacted by the cost of managing unwanted architectural

1 paints and these costs decrease the available funds to address other
2 hazardous and hard to handle materials.

3 (2) An estimated average of ten percent of architectural paint
4 purchased becomes leftover paint nationally. Current programs only
5 collect a fraction of the potential leftover paint for proper reuse,
6 recycling, or disposal. There is not a comprehensive statewide, end-
7 of-life management plan for architectural paint, resulting in
8 significant missed opportunities to reduce, reuse, and recycle paint.

9 (3) It is in the best interest of Washington for paint
10 manufacturers to assume responsibility for development and
11 implementation of a cost-effective paint stewardship program that
12 will: Develop and implement strategies to reduce the generation of
13 leftover paint; promote the reuse of leftover paint; and collect,
14 transport, and process leftover paint for end-of-life management,
15 including reuse, recycling, energy recovery, and disposal. A paint
16 stewardship program will follow the paint waste management hierarchy
17 for managing and reducing leftover paint in the order as follows:
18 Reduce consumer generation of leftover paint; reuse; recycle; and
19 provide for energy recovery and disposal. Requiring paint
20 manufacturers to assume responsibility for the collection, recycling,
21 reuse, transportation, and disposal of leftover paint will provide
22 more opportunities for consumers to properly manage their leftover
23 paint, provide fiscal relief for local government in managing
24 leftover paint, keep paint out of the waste stream, and conserve
25 natural resources.

26 (4) The legislature further finds that the existing waste
27 collection, recycling, and disposal system leads the nation in
28 innovation and environmentally sound practices. This system has
29 achieved some of the highest overall recycling rates in the nation at
30 fifty-one percent in 2012. The legislature further finds that
31 leftover paint is a toxic and hard to handle waste product that is
32 appropriate for a product stewardship program to increase the safe,
33 convenient, and effective reuse, recycling, and disposal of leftover
34 paint. Product stewardship programs for toxic and hard to handle
35 materials, including an architectural paint stewardship program,
36 should integrate with and complement the existing waste collection,
37 recycling, and disposal system.

38 (5) This chapter creates an architectural paint recovery program
39 to be enforced by the department.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply
2 throughout this chapter unless the context clearly requires
3 otherwise.

4 (1) "Architectural paint" or "paint" means interior and exterior
5 architectural coatings, sold in a container of five gallons or less.
6 "Architectural paint" or "paint" does not mean industrial, original
7 equipment, or specialty coatings.

8 (2) "Architectural paint stewardship assessment" or "assessment"
9 means the amount determined by a stewardship organization that must
10 be added to the purchase price of architectural paint sold in this
11 state to cover a stewardship organization's costs of administration,
12 education and outreach, collecting, transporting, and processing of
13 the leftover architectural paint managed through a statewide
14 architectural paint stewardship program.

15 (3) "Conditionally exempt small quantity generator" means a
16 dangerous waste generator whose dangerous wastes are not subject to
17 regulation under chapter 70.105 RCW, hazardous waste management,
18 solely because the waste is generated or accumulated in quantities
19 below the threshold for regulation and meets the conditions
20 prescribed in WAC 173-303-070(8)(b), as it existed on the effective
21 date of this section.

22 (4) "Conditionally exempt small quantity generator waste" means
23 dangerous waste generated by a conditionally exempt small quantity
24 generator.

25 (5) "Consumer" means any household, nonprofit, small business, or
26 other entity whose leftover paint is eligible under applicable laws
27 and regulations.

28 (6) "Covered entity" means:

29 (a) Any household;

30 (b) Any conditionally exempt small quantity generator of oil-
31 based and latex architectural paint; or

32 (c) Any generator of dangerous waste as defined in RCW 70.105.010
33 that brings architectural latex paint to a paint program collection
34 site operating under an approved Washington state paint stewardship
35 plan.

36 (7) "Curbside service" means a waste collection, recycling, and
37 disposal service providing pickup of covered paint from residential
38 sources, such as single-family households and multifamily housing, or
39 other covered entities in quantities generated from households or
40 small businesses.

1 (8) "Department" means the department of ecology.

2 (9) "Distributor" means a person that has a contractual
3 relationship with one or more manufacturers to market and sell
4 architectural paint to retailers in Washington.

5 (10) "End-of-life" or "end-of-life management" means activities
6 including, but not limited to, collection, transportation, reuse,
7 recycling, energy recovery, and disposal for leftover architectural
8 paint.

9 (11) "Energy recovery" means the recovery of energy in a useable
10 form from mass burning or refuse-derived fuel incineration,
11 pyrolysis, or any other means of using the heat of combustion of
12 solid waste that involves high temperature (above twelve hundred
13 degrees Fahrenheit) processing.

14 (12) "Environmentally sound management practices" means
15 compliance with all applicable laws and rules to protect workers,
16 public health, and the environment, and also addresses such issues as
17 safe and environmentally sound management of architectural paint from
18 collection through final disposition, adequate recordkeeping,
19 tracking and documenting the fate of materials within the state and
20 beyond, and adequate environmental liability coverage for the
21 stewardship organization and for contracted service providers to the
22 stewardship organization.

23 (13) "Final disposition" means the point beyond which no further
24 processing takes place and the paint has been transformed for direct
25 use as a feedstock in producing new products or is disposed of,
26 including for energy recovery, in permitted facilities.

27 (14) "Household hazardous waste" means waste that exhibits any of
28 the properties of dangerous waste that is exempt from regulation
29 under chapter 70.105 RCW, hazardous waste management, solely because
30 the waste is generated by households. Household hazardous waste may
31 also include other solid waste identified in the local hazardous
32 waste management plan prepared pursuant to chapter 70.105 RCW.

33 (15) "Leftover paint" means architectural paint not used and no
34 longer wanted by a consumer.

35 (16) "Moderate risk waste" means solid waste that is limited to
36 conditionally exempt small quantity generator waste and household
37 hazardous waste as defined in this chapter.

38 (17) "Paint retailer" means any person that offers architectural
39 paint for sale at retail in Washington.

1 (18) "Person" means any individual, business, manufacturer,
2 transporter, collector, processor, retailer, charity, nonprofit
3 organization, or government agency.

4 (19) "Population center" means urbanized areas or urban clusters
5 as defined by the United States census bureau to identify areas of
6 high population density and urban land use with populations of two
7 thousand five hundred or greater.

8 (20) "Producer" means a manufacturer of architectural paint that
9 is sold, offered for sale, or distributed in Washington under the
10 producer's own name or other brand name.

11 (21) "Recycling" means transforming or remanufacturing waste
12 materials into usable or marketable materials for use other than
13 landfill disposal, energy recovery, or incineration. Recycling does
14 not include collection, compacting, repackaging, and sorting for the
15 purpose of transport.

16 (22) "Reuse" means any operation by which an architectural paint
17 product changes ownership and is used for the same purpose for which
18 it was originally purchased.

19 (23) "Sell" or "sale" means any transfer of title for
20 consideration, including remote sales conducted through sales
21 outlets, catalogues, or the internet or any other similar electronic
22 means.

23 (24) "Stewardship organization" means a nonprofit organization
24 created by a producer or group of producers to implement a paint
25 stewardship program required under this chapter.

26 NEW SECTION. **Sec. 3.** (1) All producers of architectural paint
27 selling in or into the state of Washington shall participate in an
28 approved Washington state paint stewardship plan for covered entities
29 through membership in and appropriate funding of a stewardship
30 organization.

31 (2) Producers not participating in a stewardship plan may not
32 sell architectural paint in or into Washington state.

33 (3) Paint retailers are prohibited from selling architectural
34 paint manufactured or distributed by a producer not in compliance
35 with this chapter.

36 NEW SECTION. **Sec. 4.** (1) A stewardship organization
37 representing producers shall submit a plan for the implementation of

1 a paint stewardship program to the department for approval by January
2 15, 2016. The plan must include the following components:

3 (a) A description of how the program proposed under the plan will
4 collect, transport, recycle, and process leftover paint from covered
5 entities for end-of-life management, including reuse, recycling,
6 energy recovery, and disposal, using environmentally sound management
7 practices.

8 (b) Stewardship organization contact information and a list of
9 participating brands and producers under the program.

10 (c) A demonstration of sufficient funding for the architectural
11 paint stewardship program as described in the plan. The plan must
12 include a funding mechanism whereby each architectural paint producer
13 remits to the stewardship organization payment of an architectural
14 paint stewardship assessment for each container of architectural
15 paint the producer sells in this state. The plan must include a
16 proposed budget and a description of the process used to determine
17 the architectural paint stewardship assessment. The architectural
18 paint stewardship assessment must be added to the cost of all
19 architectural paint sold to Washington paint retailers and
20 distributors, and each Washington paint retailer or distributor shall
21 add the assessment to the purchase price of all architectural paint
22 sold in this state. No fee may be charged at the time of collection.

23 (d) To ensure that the funding mechanism is equitable and
24 sustainable, the plan must establish a uniform architectural paint
25 stewardship assessment for all architectural paint sold in this
26 state. The architectural paint stewardship assessment must be
27 sufficient to recover, but not exceed, the costs of the architectural
28 paint stewardship program. The plan must require any surplus funds
29 generated from the funding mechanism be put back into the program to
30 either increase and improve program services or reduce the cost of
31 the program and the architectural paint stewardship assessment, or
32 both.

33 (e) The proposed architectural paint stewardship assessment must
34 be reviewed by an independent auditor to ensure that such an
35 assessment is consistent with the budget of the paint stewardship
36 program and the independent auditor shall recommend an amount for the
37 architectural paint stewardship assessment to the department. The
38 department is responsible for the approval of the architectural paint
39 stewardship assessment based on the information provided in the plan
40 and in the auditor's report.

1 (f) A description of goals as practical to reduce the generation
2 of leftover paint, to promote the reuse and recycling of leftover
3 paint, for the overall collection of leftover paint, and for the
4 proper end-of-life management of leftover paint. The goal for overall
5 collection of leftover paint must be based on current or historical
6 household hazardous waste program information from Washington state.
7 The goals may be revised by a stewardship organization based on the
8 information collected annually.

9 (g) A description of the reasonably convenient and available
10 statewide collection system required under section 5 of this act.

11 (h) A description of the criteria to be used for selecting
12 collection locations when there are multiple paint retail stores that
13 want to serve as collection sites in the same geographic area.

14 (i) A description of how leftover paint will be managed using
15 environmentally sound management practices, including following the
16 paint waste management hierarchy of: Source reduction; reuse;
17 recycling; energy recovery; and disposal.

18 (j) A description of the process for managing architectural paint
19 containers collected under the program, with an emphasis on recycling
20 containers, where practical.

21 (k) A description of education and outreach efforts to promote
22 the paint stewardship program. The education and outreach efforts
23 must include effective strategies for reaching all sectors of the
24 population and describe how the paint stewardship program will
25 evaluate the effectiveness of its education and outreach.

26 (l) A description of collection site procedural manuals for
27 architectural paint products, including training procedures and
28 electronic copies of materials that will be provided to collection
29 sites to ensure the use of environmentally sound management practices
30 when handling leftover architectural paint.

31 (m) A list of processors that will be used to manage leftover
32 paint collected by the stewardship organization and a list of
33 potential processors to be used for final disposition.

34 (2) A stewardship organization shall promote a paint stewardship
35 program and provide consumers, covered entities, and retailers with
36 educational and informational materials describing collection
37 opportunities for leftover paint statewide, the architectural paint
38 stewardship assessment used to finance the program, and promotion of
39 waste prevention, reuse, and recycling. These materials may include,
40 but are not limited to, the following:

1 (a) Signage that is prominently displayed and easily visible to
2 the consumer;

3 (b) Written materials and templates of materials for reproduction
4 by paint retailers to be provided to the consumer at the time of
5 purchase or delivery, or both;

6 (c) Advertising or other promotional materials, or both, that
7 include references to the architectural paint stewardship program;
8 and

9 (d) An explanation that the architectural paint stewardship
10 assessment has been added to the purchase price of architectural
11 paint to fund the paint stewardship program in the state. The
12 architectural paint stewardship assessment may not be described as a
13 department recycling fee at the point of retail.

14 (3) A new plan or plan amendment is required to be submitted to
15 the department for approval when:

16 (a) There is a change to the amount of the assessment;

17 (b) There is an addition to the products covered under the
18 program; or

19 (c) There is a revision of the product stewardship organization's
20 goals.

21 NEW SECTION. **Sec. 5.** (1) A stewardship organization's program
22 plan required in section 4 of this act must also describe how the
23 program will provide for reasonably convenient and available
24 statewide collection of leftover paint from covered entities in urban
25 and rural areas of the state, including island communities. The
26 program plan must address how it will utilize the existing solid
27 waste collection, disposal, and recycling system to implement any
28 stewardship program adopted.

29 (2) The program plan must address how it will incorporate
30 existing public and private waste collection services and facilities
31 for activities, which may include, but is not limited to:

32 (a) The coverage of costs for collecting postconsumer
33 architectural paint and paint containers through permanent collection
34 sites and collection events;

35 (b) The reuse or processing of postconsumer architectural paint
36 at the permanent collection site; and

37 (c) The collection, transportation, and recycling or proper
38 disposal of postconsumer architectural paint, including curbside
39 services.

1 (3) To ensure adequate collection coverage, the plan must use
2 geographic information modeling to determine the number and
3 distribution of collection sites based on the following criteria: At
4 least ninety percent of Washington residents must have a permanent
5 collection site within a fifteen mile radius; and one additional
6 permanent site must be established for every thirty thousand
7 residents of a population center distributed to provide convenient
8 and reasonably equitable access for residents within each population
9 center, unless otherwise approved by the department. For the portion
10 of the population that does not have a permanent collection location
11 within a fifteen mile radius, the plan must provide collection
12 events. The stewardship organization, in consultation with the
13 department and the local community, will determine the frequency and
14 location of these collections events, to be held at least once a year
15 in underserved areas, unless otherwise determined through
16 consultation with the local community. Special consideration is to be
17 made for providing opportunities to island and geographically
18 isolated populations.

19 (4)(a) Nothing in subsection (3) of this section prohibits a
20 program plan from identifying an available curbside service for a
21 specific area or population that provides convenient and reasonably
22 equitable access for Washington residents that is at least equivalent
23 to the level of convenience and access that would be provided by a
24 collection site.

25 (b) The producers participating in an approved program plan are
26 responsible for covering all administrative and operational costs of
27 the program, including, but not limited to collection, reuse,
28 recycling, transportation, and disposal of paint under the program. A
29 fee may not be charged at the time the unwanted paint is delivered or
30 collected for recycling. However, this does not prohibit collectors
31 providing curbside services from charging customers a fee, as
32 provided by city contract or the Washington utilities and
33 transportation commission, for the additional collection cost of
34 providing this service.

35 (5) The program plan must utilize the existing public and private
36 waste collection services and facilities where cost-effective and
37 mutually agreeable.

38 (6) For purposes of this subsection, a stewardship organization
39 shall renegotiate a contract for the establishment of a permanent

1 collection site once every two years unless another period is agreed
2 to by the contracting parties.

3 (7) The program must utilize existing paint retail stores as
4 collection sites where cost effective and mutually agreeable.

5 (8) The plan must provide the collection site name and location
6 of each site statewide in Washington accepting architectural paint
7 under the program.

8 NEW SECTION. **Sec. 6.** (1) Each stewardship organization shall
9 submit a paint stewardship program plan in accordance with section 4
10 of this act.

11 (2) Each stewardship organization shall develop and distribute a
12 collection site procedural manual to collection sites to ensure
13 proper management of architectural paints at collection locations.

14 (3) A stewardship organization shall implement the paint
15 stewardship plan by July 1, 2016, or three months after approval of a
16 paint stewardship program plan under section 4 of this act, whichever
17 comes later.

18 (4) A stewardship organization shall submit an annual report by
19 October 15th following the first year or partial year of operations
20 and every year thereafter, structured to be used as a basis for
21 annual plan review by the department. The report must be based on the
22 requirements outlined in section 9 of this act.

23 (5) A stewardship organization shall work with producers,
24 distributors, and retailers to provide consumers with educational and
25 informational materials describing collection opportunities for
26 leftover paint statewide and promotion of waste prevention, reuse,
27 and recycling of leftover paint.

28 (6) A stewardship organization shall pay an annual administrative
29 fee, described in section 7 of this act, in an amount sufficient to
30 cover only the department's cost of administering and enforcing a
31 paint stewardship program established under this chapter.

32 NEW SECTION. **Sec. 7.** (1) The department shall review the plan
33 within one hundred twenty days of receipt, and make a determination
34 whether or not to approve the plan. The department shall provide a
35 letter of approval for the plan if it provides for the establishment
36 of a stewardship program that meets the requirements of sections 4
37 and 5 of this act. If a plan is rejected, the department shall
38 provide the reasons for rejecting the plan to the stewardship

1 organization. The stewardship organization must submit a new plan
2 within sixty days after receipt of the letter of disapproval.

3 (2) When a plan or an amendment to an approved plan is submitted
4 under this section, the department shall make the proposed plan or
5 amendment available for public review and comment for at least thirty
6 days.

7 (3) The department shall actively supervise the conduct of a
8 stewardship organization in determination and implementation of the
9 architectural paint stewardship assessment specified in section 4(1)
10 of this act.

11 (4) Beginning April 1, 2016, and annually thereafter, the
12 department shall determine the department's costs required to be paid
13 by each stewardship organization sufficient to cover only the
14 department's costs of administering and enforcing paint stewardship
15 programs under this chapter. The total amount of yearly reimbursement
16 must not exceed the amount necessary to recover costs incurred by the
17 department in connection with the administration, oversight, and
18 enforcement of the requirements of this chapter. Any unspent money
19 from the previous twelve-month period must be retained in the paint
20 product stewardship account created in section 11 of this act and
21 applied to reduce the payments by stewardship organizations in the
22 following year.

23 (a) The department shall estimate the annual fee for the period
24 of July 1st through June 30th and notify each stewardship
25 organization by April 1st of the prior fiscal year. If there is more
26 than one stewardship organization implementing a paint stewardship
27 program in Washington, the fee will be divided equally between
28 programs. The department shall make the proposed annual fee, along
29 with an accounting of the costs, available for public review and
30 comment for at least thirty days.

31 (b) The department shall collect annual fees from each
32 stewardship organization by June 30, 2016, and annually thereafter.

33 (5) The department shall enforce this chapter.

34 (a) A civil penalty may be administratively imposed by the
35 department on any person who violates this chapter in an amount of up
36 to one thousand dollars per violation per day.

37 (b) A person who intentionally, knowingly, or negligently
38 violates this chapter may be assessed a civil penalty by the
39 department of up to ten thousand dollars per violation per day.

1 (c) Any person who incurs a penalty may appeal the penalty
2 prescribed under this section to the pollution control hearings board
3 created under chapter 43.21B RCW.

4 (6) By July 1, 2016, or upon the date the first plan is approved,
5 whichever date is earlier, the department shall post on its web site
6 a list of producers and their brands for which the department has
7 approved a plan pursuant to section 4 of this act. The department
8 shall update the list of producers and brands participating under an
9 approved program plan on a monthly basis based on information
10 provided to the department from a stewardship organization.

11 (7) A producer that is not listed on the department's web site
12 pursuant to this section, but demonstrates to the satisfaction of the
13 department that it is in compliance with this chapter, must be added
14 to the web site within fourteen days.

15 (8) The department shall review each annual report required
16 pursuant to section 9 of this act within ninety days of its
17 submission to ensure compliance with section 9(1) of this act.

18 (9) The department may request additional information from the
19 stewardship organization outside the annual reporting requirements in
20 section 9 of this act.

21 (10) The department may adopt rules as necessary for the purpose
22 of implementing, administering, and enforcing this chapter.

23 NEW SECTION. **Sec. 8.** (1) A producer or paint retailer may not
24 sell or offer for sale to any person in the state architectural paint
25 unless the producer or brand of architectural paint is participating
26 in an approved stewardship plan under this chapter. A retailer
27 complies with the requirements of this section if, on the date the
28 architectural paint was ordered from the producer or its agent, the
29 producer of the paint was listed on the department's web site as a
30 producer implementing an approved paint stewardship program plan.
31 However, a retailer may sell any paint purchased prior to the
32 effective date of this section.

33 (2) A paint wholesaler or a paint retailer that distributes or
34 sells architectural paint shall monitor the department's web site to
35 determine if the sale of a producer's architectural paint is in
36 compliance with this chapter.

37 (3) At the time of sale to a consumer, a producer, a stewardship
38 organization, or a paint retailer selling or offering architectural
39 paint for sale in Washington shall provide the consumer with

1 information regarding available end-of-life management options for
2 architectural paint collected through a paint stewardship program or
3 a brand of paint being sold under the program.

4 (4) A paint retailer that collects leftover architectural paint
5 from covered entities must follow the collection site procedure
6 manual developed by a stewardship organization to ensure the use of
7 environmentally sound management practices when handling
8 architectural paints at collection locations.

9 (5) Neither a retailer of architectural paint, nor any other
10 retailer, is required to serve as a leftover paint collection
11 facility.

12 NEW SECTION. **Sec. 9.** (1) By October 15, 2016, and annually
13 thereafter, a stewardship organization shall submit to the department
14 a report describing the stewardship program that the stewardship
15 organization implemented during the previous fiscal year. The report
16 must include all of the following:

17 (a) A description of the methods the stewardship organization
18 used to reduce, reuse, collect, transport, recycle, and process
19 leftover paint statewide in Washington;

20 (b) The volume of latex and oil-based architectural paint
21 collected by the stewardship organization in the preceding fiscal
22 year in Washington;

23 (c) The total volume of leftover paint collected by the
24 stewardship organization in Washington, including any increase in
25 total volume of paint collected each year, cost of the program per
26 gallon of paint collected, and the per capita cost of the program;

27 (d) The volume of latex and oil-based architectural paint
28 collected by method of disposition, including reuse, recycling,
29 energy recovery, and disposal;

30 (e) An estimate of the total weight of all paint containers
31 collected by the program and the amount recycled;

32 (f) A list of all processors through to final disposition that
33 are used to manage leftover paint collected by the stewardship
34 organization in the preceding year;

35 (g) A list of all the producers participating in the plan;

36 (h) The total volume of architectural paint sold in Washington
37 during the preceding year based on the collected architectural paint
38 stewardship assessment by the stewardship organization;

1 (i) An independent financial audit of the paint stewardship
2 program implemented by the stewardship organization, including a
3 breakdown of the program's expenses such as collection, recycling,
4 education, and overhead;

5 (j) The total cost of implementing the paint stewardship program
6 broken out by administrative, collection, transportation and
7 disposition, and communications costs;

8 (k) An evaluation of the effectiveness of the paint stewardship
9 program from year to year, and anticipated steps, if needed, to
10 improve performance throughout the state; and

11 (l) A summary of outreach and education activities undertaken and
12 samples of the educational materials that the stewardship
13 organization provided to consumers of architectural paint during the
14 first year of the program and any changes to those materials in
15 subsequent years.

16 (2) All reports submitted to the department must be available to
17 the general public through the internet. Proprietary information
18 submitted to the department under this chapter is exempt from public
19 disclosure under RCW 42.56.270. The department may use and disclose
20 such information in summary or aggregated form that does not directly
21 or indirectly identify financial, production, or sales data of an
22 individual producer or stewardship organization.

23 NEW SECTION. **Sec. 10.** Producers or stewardship organizations
24 acting on behalf of producers that prepare, submit, and implement a
25 paint stewardship plan pursuant to section 4 of this act and thereby
26 are subject to regulation by the department are granted immunity from
27 state laws relating to antitrust, restraint of trade, unfair trade
28 practices, and other regulation of trade and commerce, for the
29 limited purpose of planning and reporting on a paint stewardship
30 program and proposing and establishing the architectural paint
31 stewardship assessment required in section 4(1)(c) and (d) of this
32 act.

33 NEW SECTION. **Sec. 11.** The paint product stewardship account is
34 created in the state treasury. All receipts received by the
35 department from stewardship organizations must be deposited in the
36 account. Moneys in the account may be spent only after appropriation.
37 Expenditures from the account may be used by the department only for
38 administering and enforcing paint stewardship programs.

1 NEW SECTION. **Sec. 12.** This chapter is void if a federal law, or
2 a combination of federal laws, takes effect that establishes a
3 national program for the collection and recycling of architectural
4 paint that substantially meets the intent of this chapter, including
5 the creation of a funding mechanism for collection, transportation,
6 recycling, and proper disposal of all architectural paint in the
7 United States.

8 NEW SECTION. **Sec. 13.** Nothing in this chapter changes or limits
9 the authority of the Washington utilities and transportation
10 commission to regulate collection of solid waste, including curbside
11 collection of residential recyclable materials, nor does this chapter
12 change or limit the authority of a city or town to provide the
13 service itself or by contract under RCW 81.77.020.

14 NEW SECTION. **Sec. 14.** (1) Records, subject to chapter 42.56
15 RCW, filed with the department from any person that contain valuable
16 commercial information, including trade secrets or confidential
17 marketing, cost, or financial information, or customer-specific usage
18 information, are not subject to inspection or copying under chapter
19 42.56 RCW unless the following conditions are met:

20 (a) The department has provided notice to the person or persons
21 whose information is subject to possible inspection or copying under
22 chapter 42.56 RCW; and

23 (b) Within ten days of the notice, the person has not obtained a
24 superior court order protecting the records as confidential.

25 (2) Upon the notice provided under subsection (1)(a) of this
26 section of the possible inspection or copying of valuable commercial
27 information pursuant to chapter 42.56 RCW, a person may petition the
28 superior court for an order protecting the records as confidential.
29 The superior court must determine that the records are confidential
30 and not subject to inspection or copying if disclosure would result
31 in private loss, including an unfair competitive disadvantage.

32 (3) When providing information to the department, a person shall
33 designate which records or portions of records contain valuable
34 commercial information.

35 **Sec. 15.** RCW 42.56.270 and 2014 c 192 s 6, 2014 c 174 s 5, and
36 2014 c 144 s 6 are each reenacted and amended to read as follows:

1 The following financial, commercial, and proprietary information
2 is exempt from disclosure under this chapter:

3 (1) Valuable formulae, designs, drawings, computer source code or
4 object code, and research data obtained by any agency within five
5 years of the request for disclosure when disclosure would produce
6 private gain and public loss;

7 (2) Financial information supplied by or on behalf of a person,
8 firm, or corporation for the purpose of qualifying to submit a bid or
9 proposal for (a) a ferry system construction or repair contract as
10 required by RCW 47.60.680 through 47.60.750 or (b) highway
11 construction or improvement as required by RCW 47.28.070;

12 (3) Financial and commercial information and records supplied by
13 private persons pertaining to export services provided under chapters
14 43.163 and 53.31 RCW, and by persons pertaining to export projects
15 under RCW 43.23.035;

16 (4) Financial and commercial information and records supplied by
17 businesses or individuals during application for loans or program
18 services provided by chapters 43.325, 43.163, 43.160, 43.330, and
19 43.168 RCW, or during application for economic development loans or
20 program services provided by any local agency;

21 (5) Financial information, business plans, examination reports,
22 and any information produced or obtained in evaluating or examining a
23 business and industrial development corporation organized or seeking
24 certification under chapter 31.24 RCW;

25 (6) Financial and commercial information supplied to the state
26 investment board by any person when the information relates to the
27 investment of public trust or retirement funds and when disclosure
28 would result in loss to such funds or in private loss to the
29 providers of this information;

30 (7) Financial and valuable trade information under RCW 51.36.120;

31 (8) Financial, commercial, operations, and technical and research
32 information and data submitted to or obtained by the clean Washington
33 center in applications for, or delivery of, program services under
34 chapter 70.95H RCW;

35 (9) Financial and commercial information requested by the public
36 stadium authority from any person or organization that leases or uses
37 the stadium and exhibition center as defined in RCW 36.102.010;

38 (10)(a) Financial information, including but not limited to
39 account numbers and values, and other identification numbers supplied
40 by or on behalf of a person, firm, corporation, limited liability

1 company, partnership, or other entity related to an application for a
2 horse racing license submitted pursuant to RCW 67.16.260(1)(b),
3 marijuana producer, processor, or retailer license, liquor license,
4 gambling license, or lottery retail license;

5 (b) Internal control documents, independent auditors' reports and
6 financial statements, and supporting documents: (i) Of house-banked
7 social card game licensees required by the gambling commission
8 pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted
9 by tribes with an approved tribal/state compact for class III gaming;

10 (11) Proprietary data, trade secrets, or other information that
11 relates to: (a) A vendor's unique methods of conducting business; (b)
12 data unique to the product or services of the vendor; or (c)
13 determining prices or rates to be charged for services, submitted by
14 any vendor to the department of social and health services for
15 purposes of the development, acquisition, or implementation of state
16 purchased health care as defined in RCW 41.05.011;

17 (12)(a) When supplied to and in the records of the department of
18 commerce:

19 (i) Financial and proprietary information collected from any
20 person and provided to the department of commerce pursuant to RCW
21 43.330.050(8); and

22 (ii) Financial or proprietary information collected from any
23 person and provided to the department of commerce or the office of
24 the governor in connection with the siting, recruitment, expansion,
25 retention, or relocation of that person's business and until a siting
26 decision is made, identifying information of any person supplying
27 information under this subsection and the locations being considered
28 for siting, relocation, or expansion of a business;

29 (b) When developed by the department of commerce based on
30 information as described in (a)(i) of this subsection, any work
31 product is not exempt from disclosure;

32 (c) For the purposes of this subsection, "siting decision" means
33 the decision to acquire or not to acquire a site;

34 (d) If there is no written contact for a period of sixty days to
35 the department of commerce from a person connected with siting,
36 recruitment, expansion, retention, or relocation of that person's
37 business, information described in (a)(ii) of this subsection will be
38 available to the public under this chapter;

1 (13) Financial and proprietary information submitted to or
2 obtained by the department of ecology or the authority created under
3 chapter 70.95N RCW to implement chapter 70.95N RCW;

4 (14) Financial, commercial, operations, and technical and
5 research information and data submitted to or obtained by the life
6 sciences discovery fund authority in applications for, or delivery
7 of, grants under chapter 43.350 RCW, to the extent that such
8 information, if revealed, would reasonably be expected to result in
9 private loss to the providers of this information;

10 (15) Financial and commercial information provided as evidence to
11 the department of licensing as required by RCW 19.112.110 or
12 19.112.120, except information disclosed in aggregate form that does
13 not permit the identification of information related to individual
14 fuel licensees;

15 (16) Any production records, mineral assessments, and trade
16 secrets submitted by a permit holder, mine operator, or landowner to
17 the department of natural resources under RCW 78.44.085;

18 (17)(a) Farm plans developed by conservation districts, unless
19 permission to release the farm plan is granted by the landowner or
20 operator who requested the plan, or the farm plan is used for the
21 application or issuance of a permit;

22 (b) Farm plans developed under chapter 90.48 RCW and not under
23 the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject
24 to RCW 42.56.610 and 90.64.190;

25 (18) Financial, commercial, operations, and technical and
26 research information and data submitted to or obtained by a health
27 sciences and services authority in applications for, or delivery of,
28 grants under RCW 35.104.010 through 35.104.060, to the extent that
29 such information, if revealed, would reasonably be expected to result
30 in private loss to providers of this information;

31 (19) Information gathered under chapter 19.85 RCW or RCW
32 34.05.328 that can be identified to a particular business;

33 (20) Financial and commercial information submitted to or
34 obtained by the University of Washington, other than information the
35 university is required to disclose under RCW 28B.20.150, when the
36 information relates to investments in private funds, to the extent
37 that such information, if revealed, would reasonably be expected to
38 result in loss to the University of Washington consolidated endowment
39 fund or to result in private loss to the providers of this
40 information; (~~and~~)

1 (21) Market share data submitted by a manufacturer under RCW
2 70.95N.190(4); (~~and~~)

3 (22) Financial information supplied to the department of
4 financial institutions or to a portal under RCW 21.20.883, when filed
5 by or on behalf of an issuer of securities for the purpose of
6 obtaining the exemption from state securities registration for small
7 securities offerings provided under RCW 21.20.880 or when filed by or
8 on behalf of an investor for the purpose of purchasing such
9 securities); and

10 (23) Records filed with the department of ecology under chapter
11 70.--- RCW (the new chapter created in section 20 of this act) that a
12 court has determined are confidential valuable commercial information
13 under section 14 of this act.

14 **Sec. 16.** RCW 43.21B.110 and 2013 c 291 s 33 are each amended to
15 read as follows:

16 (1) The hearings board shall only have jurisdiction to hear and
17 decide appeals from the following decisions of the department, the
18 director, local conservation districts, the air pollution control
19 boards or authorities as established pursuant to chapter 70.94 RCW,
20 local health departments, the department of natural resources, the
21 department of fish and wildlife, the parks and recreation commission,
22 and authorized public entities described in chapter 79.100 RCW:

23 (a) Civil penalties imposed pursuant to RCW 18.104.155,
24 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250,
25 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and
26 90.64.102.

27 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
28 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
29 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

30 (c) A final decision by the department or director made under
31 chapter 183, Laws of 2009.

32 (d) Except as provided in RCW 90.03.210(2), the issuance,
33 modification, or termination of any permit, certificate, or license
34 by the department or any air authority in the exercise of its
35 jurisdiction, including the issuance or termination of a waste
36 disposal permit, the denial of an application for a waste disposal
37 permit, the modification of the conditions or the terms of a waste
38 disposal permit, or a decision to approve or deny an application for
39 a solid waste permit exemption under RCW 70.95.300.

1 (e) Decisions of local health departments regarding the grant or
2 denial of solid waste permits pursuant to chapter 70.95 RCW.

3 (f) Decisions of local health departments regarding the issuance
4 and enforcement of permits to use or dispose of biosolids under RCW
5 70.95J.080.

6 (g) Decisions of the department regarding waste-derived
7 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
8 decisions of the department regarding waste-derived soil amendments
9 under RCW 70.95.205.

10 (h) Decisions of local conservation districts related to the
11 denial of approval or denial of certification of a dairy nutrient
12 management plan; conditions contained in a plan; application of any
13 dairy nutrient management practices, standards, methods, and
14 technologies to a particular dairy farm; and failure to adhere to the
15 plan review and approval timelines in RCW 90.64.026.

16 (i) Any other decision by the department or an air authority
17 which pursuant to law must be decided as an adjudicative proceeding
18 under chapter 34.05 RCW.

19 (j) Decisions of the department of natural resources, the
20 department of fish and wildlife, and the department that are
21 reviewable under chapter 76.09 RCW, and the department of natural
22 resources' appeals of county, city, or town objections under RCW
23 76.09.050(7).

24 (k) Forest health hazard orders issued by the commissioner of
25 public lands under RCW 76.06.180.

26 (l) Decisions of the department of fish and wildlife to issue,
27 deny, condition, or modify a hydraulic project approval permit under
28 chapter 77.55 RCW.

29 (m) Decisions of the department of natural resources that are
30 reviewable under RCW 78.44.270.

31 (n) Decisions of an authorized public entity under RCW 79.100.010
32 to take temporary possession or custody of a vessel or to contest the
33 amount of reimbursement owed that are reviewable by the hearings
34 board under RCW 79.100.120.

35 (o) Appeals from penalties imposed by the department of ecology
36 under chapter 70.— RCW (the new chapter created in section 20 of this
37 act).

38 (2) The following hearings shall not be conducted by the hearings
39 board:

1 (a) Hearings required by law to be conducted by the shorelines
2 hearings board pursuant to chapter 90.58 RCW.

3 (b) Hearings conducted by the department pursuant to RCW
4 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
5 90.44.180.

6 (c) Appeals of decisions by the department under RCW 90.03.110
7 and 90.44.220.

8 (d) Hearings conducted by the department to adopt, modify, or
9 repeal rules.

10 (3) Review of rules and regulations adopted by the hearings board
11 shall be subject to review in accordance with the provisions of the
12 administrative procedure act, chapter 34.05 RCW.

13 **Sec. 17.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
14 read as follows:

15 (1) The hearings board shall only have jurisdiction to hear and
16 decide appeals from the following decisions of the department, the
17 director, local conservation districts, the air pollution control
18 boards or authorities as established pursuant to chapter 70.94 RCW,
19 local health departments, the department of natural resources, the
20 department of fish and wildlife, the parks and recreation commission,
21 and authorized public entities described in chapter 79.100 RCW:

22 (a) Civil penalties imposed pursuant to RCW 18.104.155,
23 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250,
24 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and
25 90.64.102.

26 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
27 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
28 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

29 (c) Except as provided in RCW 90.03.210(2), the issuance,
30 modification, or termination of any permit, certificate, or license
31 by the department or any air authority in the exercise of its
32 jurisdiction, including the issuance or termination of a waste
33 disposal permit, the denial of an application for a waste disposal
34 permit, the modification of the conditions or the terms of a waste
35 disposal permit, or a decision to approve or deny an application for
36 a solid waste permit exemption under RCW 70.95.300.

37 (d) Decisions of local health departments regarding the grant or
38 denial of solid waste permits pursuant to chapter 70.95 RCW.

1 (e) Decisions of local health departments regarding the issuance
2 and enforcement of permits to use or dispose of biosolids under RCW
3 70.95J.080.

4 (f) Decisions of the department regarding waste-derived
5 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
6 decisions of the department regarding waste-derived soil amendments
7 under RCW 70.95.205.

8 (g) Decisions of local conservation districts related to the
9 denial of approval or denial of certification of a dairy nutrient
10 management plan; conditions contained in a plan; application of any
11 dairy nutrient management practices, standards, methods, and
12 technologies to a particular dairy farm; and failure to adhere to the
13 plan review and approval timelines in RCW 90.64.026.

14 (h) Any other decision by the department or an air authority
15 which pursuant to law must be decided as an adjudicative proceeding
16 under chapter 34.05 RCW.

17 (i) Decisions of the department of natural resources, the
18 department of fish and wildlife, and the department that are
19 reviewable under chapter 76.09 RCW, and the department of natural
20 resources' appeals of county, city, or town objections under RCW
21 76.09.050(7).

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23 public lands under RCW 76.06.180.

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25 deny, condition, or modify a hydraulic project approval permit under
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28 reviewable under RCW 78.44.270.

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30 to take temporary possession or custody of a vessel or to contest the
31 amount of reimbursement owed that are reviewable by the hearings
32 board under RCW 79.100.120.

33 (n) Appeals from penalties imposed by the department of ecology
34 under chapter 70.— RCW (the new chapter created in section 20 of this
35 act).

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3 90.44.180.

4 (c) Appeals of decisions by the department under RCW 90.03.110
5 and 90.44.220.

6 (d) Hearings conducted by the department to adopt, modify, or
7 repeal rules.

8 (3) Review of rules and regulations adopted by the hearings board
9 shall be subject to review in accordance with the provisions of the
10 administrative procedure act, chapter 34.05 RCW.

11 NEW SECTION. **Sec. 18.** Section 16 of this act expires June 30,
12 2019.

13 NEW SECTION. **Sec. 19.** Section 17 of this act takes effect June
14 30, 2019.

15 NEW SECTION. **Sec. 20.** Sections 1 through 14 of this act
16 constitute a new chapter in Title 70 RCW.

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