
SUBSTITUTE HOUSE BILL 1376

State of Washington 65th Legislature 2017 Regular Session

By House Environment (originally sponsored by Representatives Peterson, Goodman, Tarleton, Gregerson, Ormsby, Bergquist, and Stanford)

READ FIRST TIME 02/16/17.

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 section to chapter 82.04 RCW; adding a new chapter to Title 70 RCW;
4 prescribing penalties; providing an effective date; and providing an
5 expiration date.

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

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

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

1 special and moderate-risk waste collection programs are heavily
2 impacted by the cost of managing unwanted architectural paints and
3 these costs decrease the available funds to address other hazardous
4 and hard to handle materials.

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

12 (3)(a) It is in the best interest of Washington for paint
13 manufacturers to assume responsibility for the development and
14 implementation of a cost-effective paint stewardship program that:

15 (i) Develops and implements strategies to reduce the generation
16 of leftover paint;

17 (ii) Promotes the reuse of leftover paint;

18 (iii) Collects, transports, and processes leftover paint for end-
19 of-life management, including reuse, recycling, energy recovery, and
20 disposal; and

21 (iv) Provides for transparency under chapter 42.56 RCW, the
22 public records act.

23 (b) A paint stewardship program will follow the paint waste
24 management hierarchy for managing and reducing leftover paint in the
25 order as follows:

26 (i) Reduce consumer generation of leftover paint;

27 (ii) Reuse;

28 (iii) Recycle; and

29 (iv) Provide for energy recovery and disposal.

30 (c) The establishment of a comprehensive leftover paint
31 management program that requires paint manufacturers to assume
32 responsibility for the collection, recycling, reuse, transportation,
33 and disposal of leftover paint and that allows paint retailers to
34 voluntarily participate in the collection of leftover paint, will
35 provide more opportunities for consumers to properly manage their
36 leftover paint, provide fiscal relief for local government in
37 managing leftover paint, keep paint out of the waste stream, and
38 conserve natural resources.

39 (4) The legislature further finds that Washington's existing
40 waste collection, recycling, and disposal system leads the nation in

1 innovation and environmentally sound practices. This system has
2 achieved some of the highest overall recycling rates in the nation at
3 fifty-one percent in 2012. The legislature further finds that
4 leftover paint is a toxic and hard to handle waste product that is
5 appropriate for a product stewardship program to increase the safe,
6 convenient, and effective reuse, recycling, and disposal of leftover
7 paint. Product stewardship programs for toxic and hard to handle
8 materials, including an architectural paint stewardship program,
9 should integrate with and complement the existing waste collection,
10 recycling, and disposal system.

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

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

16 (1) "Architectural paint" or "paint" means interior and exterior
17 architectural coatings, sold in a container of five gallons or less.
18 "Architectural paint" or "paint" does not mean industrial coatings,
19 original equipment coatings, or specialty coatings.

20 (2) "Architectural paint stewardship assessment" or "assessment"
21 means the amount determined by a stewardship organization that must
22 be added to the purchase price of architectural paint sold in this
23 state to cover a stewardship organization's costs of administration,
24 education and outreach, collecting, transporting, and processing of
25 the leftover architectural paint managed through a statewide
26 architectural paint stewardship program.

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

34 (4) "Conditionally exempt small quantity generator waste" means
35 dangerous waste generated by a conditionally exempt small quantity
36 generator.

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

- 1 (6) "Covered entity" means:
- 2 (a) Any household;
- 3 (b) Any conditionally exempt small quantity generator of leftover
4 oil-based and latex architectural paint; or
- 5 (c) Any generator of dangerous waste as defined in RCW 70.105.010
6 that brings leftover architectural latex paint to a paint program
7 collection site operating under an approved Washington state paint
8 stewardship plan.
- 9 (7) "Curbside service" means a waste collection, recycling, and
10 disposal service providing pickup of leftover architectural paint
11 from residential sources, such as single-family households and
12 multifamily housing, or other covered entities in quantities
13 generated from households or conditionally exempt small quantity
14 generators, provided by a solid waste collection company regulated
15 under chapter 81.77 RCW or under a contract for solid waste services
16 with any city or town.
- 17 (8) "Department" means the department of ecology.
- 18 (9) "Distributor" means a person that has a contractual
19 relationship with one or more manufacturers to market and sell
20 architectural paint to retailers in Washington.
- 21 (10) "End-of-life" or "end-of-life management" means activities
22 including, but not limited to, collection, transportation, reuse,
23 recycling, energy recovery, and disposal for leftover architectural
24 paint.
- 25 (11) "Energy recovery" means the recovery of energy in a useable
26 form from mass burning or refuse-derived fuel incineration,
27 pyrolysis, or any other means of using the heat of combustion of
28 solid waste that involves high temperature (above twelve hundred
29 degrees Fahrenheit) processing.
- 30 (12) "Environmentally sound management practices" means
31 compliance with all applicable laws and rules to protect workers,
32 public health, and the environment, and also addresses such issues as
33 safe and environmentally sound management of architectural paint from
34 collection through final disposition, adequate recordkeeping,
35 tracking and documenting the fate of materials within the state and
36 beyond, and adequate environmental liability coverage for the
37 stewardship organization and for contracted service providers to the
38 stewardship organization.
- 39 (13) "Final disposition" means the point beyond which no further
40 processing takes place and the paint has been transformed for direct

1 use as a feedstock in producing new products or is disposed of,
2 including for energy recovery, in permitted facilities.

3 (14) "Household hazardous waste" means waste that exhibits any of
4 the properties of dangerous waste that is exempt from regulation
5 under chapter 70.105 RCW, hazardous waste management, solely because
6 the waste is generated by households. Household hazardous waste may
7 also include other solid waste identified in the local hazardous
8 waste management plan prepared pursuant to chapter 70.105 RCW.

9 (15) "Leftover paint" or "leftover architectural paint" means
10 architectural paint not used and no longer wanted by a consumer.

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

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

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

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

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

26 (21) "Recycling" means transforming or remanufacturing waste
27 materials into usable or marketable materials for use other than
28 landfill disposal, energy recovery, or incineration. Recycling does
29 not include collection, compacting, repackaging, and sorting for the
30 purpose of transport.

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

34 (23) "Sell" or "sale" means any transfer of title for
35 consideration, including remote sales conducted through sales
36 outlets, catalogues, or the internet or any other similar electronic
37 means.

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

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

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

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

11 NEW SECTION. **Sec. 4.** (1) A stewardship organization
12 representing producers shall submit a plan for the implementation of
13 a paint stewardship program to the department for approval by January
14 15, 2018. The plan must include the following components:

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

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

22 (c) A demonstration of sufficient funding for the architectural
23 paint stewardship program as described in the plan. The plan must
24 include a funding mechanism whereby each architectural paint producer
25 remits to the stewardship organization payment of an architectural
26 paint stewardship assessment for each container of architectural
27 paint the producer sells in this state, unless the distributor or
28 retailer has negotiated a voluntary agreement with the producer and
29 stewardship organization to remit the paint stewardship assessment
30 directly to the stewardship organization on behalf of the producer
31 for the producer's architectural paint sold by the distributor or
32 retailer in the state. The plan must include a proposed budget and a
33 description of the process used to determine the architectural paint
34 stewardship assessment. The architectural paint stewardship
35 assessment must be added to the cost of all architectural paint sold
36 to Washington paint retailers and distributors, unless the
37 distributor or retailer has negotiated an agreement voluntarily with
38 the producer and stewardship organization to remit the assessment
39 directly to the stewardship organization on behalf of the producer

1 for the producer's architectural paint sold by the distributor or
2 retailer in the state. Each Washington paint retailer or distributor
3 shall add the assessment to the purchase price of all architectural
4 paint sold in this state. Manufacturers may not require retailers to
5 opt to participate in a voluntary remittance agreement. No fee may be
6 charged at the time of delivery to a drop-off or take back center.

7 (d) To ensure that the funding mechanism is equitable and
8 sustainable, the plan must establish a uniform architectural paint
9 stewardship assessment for all architectural paint sold in this
10 state. For purposes of establishing the assessment, the plan must
11 categorize the sizes of paint containers sold at retail and determine
12 a uniform assessment amount that applies to each category of
13 container size. The architectural paint stewardship assessment must
14 be sufficient to recover, but not exceed, the costs of the
15 architectural paint stewardship program. With the exception of the
16 annual administration costs paid to the department under section 7(4)
17 of this act, the department may not control or have spending
18 authority related to the funds received by the stewardship
19 organization from the assessment. Funds received by the stewardship
20 organization are not state funds and not eligible to be transferred
21 for other state purposes in an appropriations act. The plan must
22 require any surplus funds generated from the funding mechanism be put
23 back into the program to either increase and improve program services
24 or reduce the cost of the program and the architectural paint
25 stewardship assessment, or both. The plan must not allow the
26 stewardship organization to retain fund balances between program
27 years that exceed a reserve of no greater than ten percent of the
28 operating expenditures during the most recent program year, unless
29 the excess balance beyond that reserve is specifically budgeted in
30 the following year to increase or improve program services or to
31 reduce the cost of the program or the amount of the architectural
32 paint stewardship assessment.

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 stewardship organization must submit a new plan or plan
15 amendment to 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 stewardship organization's goals.

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

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

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

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

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

1 (3)(a) To ensure adequate collection coverage, the plan must use
2 geographic information modeling and the information required under
3 subsection (2) of this section to determine the number and
4 distribution of collection sites based on the following criteria: At
5 least ninety percent of Washington residents must have a permanent
6 collection site within a fifteen mile radius; and one additional
7 permanent site must be established for every thirty thousand
8 residents of a population center distributed to provide convenient
9 and reasonably equitable access for residents within each population
10 center, unless otherwise approved by the department.

11 (b) For the portion of the population that does not have a
12 permanent collection location within a fifteen mile radius, the plan
13 must provide collection events. The stewardship organization, in
14 consultation with the department and the local community, will
15 determine the frequency and location of these collections events, to
16 be held at least once a year in underserved areas, unless otherwise
17 determined through consultation with the local community. Special
18 consideration is to be made for providing opportunities to island and
19 geographically isolated populations.

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

26 (b) The producers participating in an approved program plan are
27 responsible for covering all administrative and operational costs of
28 the program, including, but not limited to collection, reuse,
29 recycling, transportation, and disposal of paint under the program.

30 (c) A fee may not be charged at the time the unwanted paint is
31 delivered or collected for recycling. However, this subsection (4)(c)
32 does not prohibit collectors providing curbside services from
33 charging customers a fee, as provided by city contract or by the
34 Washington utilities and transportation commission under the
35 authority of chapter 81.77 RCW, for the additional collection cost of
36 providing this service.

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

1 (6) For purposes of this subsection, a stewardship organization
2 shall renegotiate a contract for the establishment of a permanent
3 collection site once every two years unless another period is agreed
4 to by the contracting parties.

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

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

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

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

16 (3) A stewardship organization shall implement the paint
17 stewardship plan by July 1, 2018, or three months after approval of a
18 paint stewardship program plan under section 4 of this act, whichever
19 comes later.

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

25 (5) A stewardship organization shall work with producers,
26 distributors, and retailers to provide consumers with educational and
27 informational materials describing collection opportunities for
28 leftover paint statewide and promotion of waste prevention, reuse,
29 and recycling of leftover paint. A stewardship organization shall
30 also work with local governments to provide consumers and the
31 populations served by solid waste collection under plans adopted
32 pursuant to chapter 70.95 RCW with educational and informational
33 materials regarding local collection options for leftover paint,
34 including curbside service, that are either provided through the
35 stewardship organization or under local solid or hazardous waste
36 plans. These educational materials must also encourage and provide
37 information regarding the disposition of leftover paint and the
38 cleaning of paint-soiled accessories in ways that reduce impacts to
39 water quality.

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

5 NEW SECTION. **Sec. 7.** (1) The department shall review the plan
6 within one hundred twenty days of receipt, and make a determination
7 whether or not to approve the plan. The department shall provide a
8 letter of approval for the plan if it provides for the establishment
9 of a stewardship program that meets the requirements of sections 4
10 and 5 of this act. If a plan is rejected, the department shall
11 provide the reasons for rejecting the plan to the stewardship
12 organization. The stewardship organization must submit a new plan
13 within sixty days after receipt of the letter of disapproval.

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

18 (3) The department shall actively supervise the conduct of a
19 stewardship organization in determination and implementation of the
20 architectural paint stewardship assessment specified in section 4(1)
21 of this act.

22 (4) Beginning April 1, 2018, and annually thereafter, the
23 department shall determine the department's costs required to be paid
24 by each stewardship organization sufficient to cover only the
25 department's costs of administering and enforcing paint stewardship
26 programs under this chapter. The total amount of yearly reimbursement
27 must not exceed the amount necessary to recover costs incurred by the
28 department in connection with the administration, oversight, and
29 enforcement of the requirements of this chapter. Any unspent money
30 from the previous twelve-month period must be retained in the paint
31 product stewardship account created in section 11 of this act and
32 applied to reduce the payments by stewardship organizations in the
33 following year.

34 (a) The department shall estimate the annual administration fee
35 for the period of July 1st through June 30th and notify each
36 stewardship organization by April 1st of the prior fiscal year. If
37 there is more than one stewardship organization implementing a paint
38 stewardship program in Washington, the fee must be divided equally
39 between programs. The department shall make the proposed annual

1 administration fee, along with an accounting of the costs, available
2 for public review and comment for at least thirty days.

3 (b) The department shall collect annual administration fees from
4 each stewardship organization by June 30, 2018, and annually
5 thereafter.

6 (5) The department shall enforce this chapter.

7 (a) The department may administratively impose a civil penalty on
8 any person who violates this chapter in an amount of up to one
9 thousand dollars per violation per day.

10 (b) The department may assess a civil penalty of up to ten
11 thousand dollars per violation per day on any person who
12 intentionally, knowingly, or negligently violates this chapter.

13 (c) Any person who incurs a penalty under this section may appeal
14 the penalty to the pollution control hearings board established by
15 chapter 43.21B RCW.

16 (6) By July 1, 2018, or upon the date the first plan is approved,
17 whichever date is earlier, the department shall post on its web site
18 a list of producers and their brands for which the department has
19 approved a plan pursuant to section 4 of this act. The department
20 shall update the list of producers and brands participating under an
21 approved program plan on a monthly basis based on information
22 provided to the department from a stewardship organization.

23 (7) Upon a demonstration to the satisfaction of the department
24 that a previously unlisted producer is in compliance with this
25 chapter, within fourteen days the department must add the name of the
26 producer to its web site.

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

30 (9) The department may request information from the stewardship
31 organization that is in addition to the annual reporting requirements
32 in section 9 of this act.

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

35 NEW SECTION. **Sec. 8.** (1) A producer or paint retailer may not
36 sell or offer for sale to any person in the state architectural paint
37 unless the producer or brand of architectural paint is participating
38 in an approved stewardship plan under this chapter. A retailer
39 complies with the requirements of this section if, on the date the

1 architectural paint was ordered from the producer or its agent, the
2 producer of the paint was listed on the department's web site as a
3 producer participating in an approved paint stewardship program plan.
4 However, a retailer may sell any paint purchased prior to the
5 effective date of this section.

6 (2) A paint distributor or a paint retailer that distributes or
7 sells architectural paint shall monitor the department's web site to
8 determine if the sale of a producer's architectural paint is in
9 compliance with this chapter.

10 (3) At the time of sale to a consumer, a producer, a stewardship
11 organization, or a paint retailer selling or offering architectural
12 paint for sale in Washington shall provide the consumer with
13 information regarding available end-of-life management options for
14 leftover architectural paint collected through a paint stewardship
15 program.

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

21 (5) Neither a retailer of architectural paint, nor any other
22 retailer, is required to serve as a leftover paint collection
23 facility.

24 NEW SECTION. **Sec. 9.** (1) By October 15, 2019, and annually
25 thereafter, a stewardship organization shall submit to the department
26 a report describing the stewardship program that the stewardship
27 organization implemented during the previous fiscal year. The report
28 must include all of the following:

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

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

35 (c) The total volume of leftover paint collected by the
36 stewardship organization in Washington, including any increase in
37 total volume of paint collected each year, cost of the program per
38 gallon of paint collected, and the per capita cost of the program;

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

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

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

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

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

13 (i) An independent financial audit of the paint stewardship
14 program implemented by the stewardship organization, including a
15 breakdown of the program's expenses such as collection, recycling,
16 education, and overhead;

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

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

23 (l) A summary of outreach and education activities undertaken and
24 samples of the educational materials that the stewardship
25 organization provided to consumers of architectural paint during the
26 first year of the program and any changes to those materials in
27 subsequent years.

28 (2) The department must make all reports submitted under this
29 section available to the general public through the internet.
30 Consistent with section 14 of this act, valuable commercial
31 information submitted to the department under this chapter is exempt
32 from public disclosure under RCW 42.56.270. However, the department
33 may use and disclose such information in summary or aggregated form
34 as long as the disclosure does not directly or indirectly identify
35 financial, production, or sales data of an individual producer or
36 stewardship organization. The department is not required to notify
37 individual producers prior to making available to the general public
38 the reports submitted under this section or aggregated or summarized
39 information from reports submitted under this section.

1 NEW SECTION. **Sec. 10.** Producers or stewardship organizations
2 acting on behalf of producers that prepare, submit, and implement a
3 paint stewardship plan pursuant to section 4 of this act and thereby
4 are subject to regulation by the department are granted immunity from
5 state laws relating to antitrust, restraint of trade, unfair trade
6 practices, and other regulation of trade and commerce, for the
7 limited purpose of planning and reporting on a paint stewardship
8 program and proposing and establishing the architectural paint
9 stewardship assessment required in section 4(1)(c) and (d) of this
10 act.

11 NEW SECTION. **Sec. 11.** The paint product stewardship account is
12 created in the state treasury. All receipts received by the
13 department from stewardship organizations must be deposited in the
14 account. Moneys in the account may be spent only after appropriation.
15 Expenditures from the account may be used by the department only for
16 administering and enforcing paint stewardship programs.

17 NEW SECTION. **Sec. 12.** This chapter is void if a federal law, or
18 a combination of federal laws, takes effect that establishes a
19 national program for the collection and recycling of architectural
20 paint that substantially meets the intent of this chapter, including
21 the creation of a funding mechanism for collection, transportation,
22 recycling, and proper disposal of all architectural paint in the
23 United States.

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

30 NEW SECTION. **Sec. 14.** (1) Except as provided in subsection (3)
31 of this section, records, subject to chapter 42.56 RCW, filed with
32 the department from any person that contain valuable commercial
33 information, including trade secrets, confidential marketing, cost,
34 or financial information, or customer-specific usage information, are
35 not subject to inspection or copying under chapter 42.56 RCW. When
36 providing information to the department, a person shall designate

1 which records or portions of records contain valuable commercial
2 information.

3 (2) Upon receipt of a request to disclose valuable commercial
4 information submitted under this chapter, the department must provide
5 notice to the person or persons whose information is subject to
6 possible inspection or copying under chapter 42.56 RCW.

7 (3) Upon the notice provided under subsection (2) of this section
8 of the possible inspection or copying of valuable commercial
9 information pursuant to chapter 42.56 RCW, a person may petition the
10 superior court for an order protecting the records as confidential.
11 The superior court must determine that the records are confidential
12 and not subject to inspection or copying if disclosure would result
13 in private loss, including an unfair competitive disadvantage. If a
14 person does not obtain an order protecting submitted records as
15 confidential within ten days of receiving a notice from the
16 department under subsection (2) of this section, the department may
17 make the records available for public inspection and copying pursuant
18 to chapter 42.56 RCW.

19 **Sec. 15.** RCW 42.56.270 and 2016 sp.s. c 9 s 3, 2016 sp.s c 8 s
20 1, and 2016 c 178 s 1 are each reenacted and amended to read as
21 follows:

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

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

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

33 (3) Financial and commercial information and records supplied by
34 private persons pertaining to export services provided under chapters
35 43.163 and 53.31 RCW, and by persons pertaining to export projects
36 under RCW 43.23.035;

37 (4) Financial and commercial information and records supplied by
38 businesses or individuals during application for loans or program
39 services provided by chapters 43.325, 43.163, 43.160, 43.330, and

1 43.168 RCW, or during application for economic development loans or
2 program services provided by any local agency;

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

7 (6) Financial and commercial information supplied to the state
8 investment board by any person when the information relates to the
9 investment of public trust or retirement funds and when disclosure
10 would result in loss to such funds or in private loss to the
11 providers of this information;

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

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

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

20 (10)(a) Financial information, including but not limited to
21 account numbers and values, and other identification numbers supplied
22 by or on behalf of a person, firm, corporation, limited liability
23 company, partnership, or other entity related to an application for a
24 horse racing license submitted pursuant to RCW 67.16.260(1)(b),
25 marijuana producer, processor, or retailer license, liquor license,
26 gambling license, or lottery retail license;

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

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

39 (12)(a) When supplied to and in the records of the department of
40 commerce:

1 (i) Financial and proprietary information collected from any
2 person and provided to the department of commerce pursuant to RCW
3 43.330.050(8); and

4 (ii) Financial or proprietary information collected from any
5 person and provided to the department of commerce or the office of
6 the governor in connection with the siting, recruitment, expansion,
7 retention, or relocation of that person's business and until a siting
8 decision is made, identifying information of any person supplying
9 information under this subsection and the locations being considered
10 for siting, relocation, or expansion of a business;

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

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

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

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

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

30 (15) Financial and commercial information provided as evidence to
31 the department of licensing as required by RCW 19.112.110 or
32 19.112.120, except information disclosed in aggregate form that does
33 not permit the identification of information related to individual
34 fuel licensees;

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

38 (17)(a) Farm plans developed by conservation districts, unless
39 permission to release the farm plan is granted by the landowner or

1 operator who requested the plan, or the farm plan is used for the
2 application or issuance of a permit;

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

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

12 (19) Information gathered under chapter 19.85 RCW or RCW
13 34.05.328 that can be identified to a particular business;

14 (20) Financial and commercial information submitted to or
15 obtained by the University of Washington, other than information the
16 university is required to disclose under RCW 28B.20.150, when the
17 information relates to investments in private funds, to the extent
18 that such information, if revealed, would reasonably be expected to
19 result in loss to the University of Washington consolidated endowment
20 fund or to result in private loss to the providers of this
21 information;

22 (21) Market share data submitted by a manufacturer under RCW
23 70.95N.190(4);

24 (22) Financial information supplied to the department of
25 financial institutions or to a portal under RCW 21.20.883, when filed
26 by or on behalf of an issuer of securities for the purpose of
27 obtaining the exemption from state securities registration for small
28 securities offerings provided under RCW 21.20.880 or when filed by or
29 on behalf of an investor for the purpose of purchasing such
30 securities;

31 (23) Unaggregated or individual notices of a transfer of crude
32 oil that is financial, proprietary, or commercial information,
33 submitted to the department of ecology pursuant to RCW
34 90.56.565(1)(a), and that is in the possession of the department of
35 ecology or any entity with which the department of ecology has shared
36 the notice pursuant to RCW 90.56.565;

37 (24) Financial institution and retirement account information,
38 and building security plan information, supplied to the liquor and
39 cannabis board pursuant to RCW 69.50.325, 69.50.331, 69.50.342, and
40 69.50.345, when filed by or on behalf of a licensee or prospective

1 licensee for the purpose of obtaining, maintaining, or renewing a
2 license to produce, process, transport, or sell marijuana as allowed
3 under chapter 69.50 RCW; (~~and~~))

4 (25) Marijuana transport information, vehicle and driver
5 identification data, and account numbers or unique access identifiers
6 issued to private entities for traceability system access, submitted
7 by an individual or business to the liquor and cannabis board under
8 the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and
9 69.50.345 for the purpose of marijuana product traceability.
10 Disclosure to local, state, and federal officials is not considered
11 public disclosure for purposes of this section; (~~and~~))

12 (26) Financial and commercial information submitted to or
13 obtained by the retirement board of any city that is responsible for
14 the management of an employees' retirement system pursuant to the
15 authority of chapter 35.39 RCW, when the information relates to
16 investments in private funds, to the extent that such information, if
17 revealed, would reasonably be expected to result in loss to the
18 retirement fund or to result in private loss to the providers of this
19 information except that (a) the names and commitment amounts of the
20 private funds in which retirement funds are invested and (b) the
21 aggregate quarterly performance results for a retirement fund's
22 portfolio of investments in such funds are subject to disclosure;
23 (~~and~~))

24 (27) Proprietary financial, commercial, operations, and technical
25 and research information and data submitted to or obtained by the
26 liquor and cannabis board in applications for marijuana research
27 licenses under RCW 69.50.372, or in reports submitted by marijuana
28 research licensees in accordance with rules adopted by the liquor and
29 cannabis board under RCW 69.50.372; and

30 (28) Records filed with the department of ecology under chapter
31 70.--- RCW (the new chapter created in section 21 of this act) that a
32 court has determined are confidential valuable commercial information
33 under section 14 of this act.

34 NEW SECTION. Sec. 16. A new section is added to chapter 82.04
35 RCW to read as follows:

36 (1) This chapter does not apply to the receipts attributable to
37 the assessment on architectural paint imposed pursuant to chapter
38 70.--- RCW (the new chapter created in section 21 of this act).

1 (2) This section is not subject to the requirements of RCW
2 82.32.805 and 82.32.808, and is not subject to an expiration date.

3 **Sec. 17.** RCW 43.21B.110 and 2013 c 291 s 33 are each amended to
4 read as follows:

5 (1) The hearings board shall only have jurisdiction to hear and
6 decide appeals from the following decisions of the department, the
7 director, local conservation districts, the air pollution control
8 boards or authorities as established pursuant to chapter 70.94 RCW,
9 local health departments, the department of natural resources, the
10 department of fish and wildlife, the parks and recreation commission,
11 and authorized public entities described in chapter 79.100 RCW:

12 (a) Civil penalties imposed pursuant to RCW 18.104.155,
13 70.94.431, 70.105.080, 70.107.050, section 7 of this act, 76.09.170,
14 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
15 90.56.310, 90.56.330, and 90.64.102.

16 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
17 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
18 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

21 (d) Except as provided in RCW 90.03.210(2), the issuance,
22 modification, or termination of any permit, certificate, or license
23 by the department or any air authority in the exercise of its
24 jurisdiction, including the issuance or termination of a waste
25 disposal permit, the denial of an application for a waste disposal
26 permit, the modification of the conditions or the terms of a waste
27 disposal permit, or a decision to approve or deny an application for
28 a solid waste permit exemption under RCW 70.95.300.

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

31 (f) Decisions of local health departments regarding the issuance
32 and enforcement of permits to use or dispose of biosolids under RCW
33 70.95J.080.

34 (g) Decisions of the department regarding waste-derived
35 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
36 decisions of the department regarding waste-derived soil amendments
37 under RCW 70.95.205.

38 (h) Decisions of local conservation districts related to the
39 denial of approval or denial of certification of a dairy nutrient

1 management plan; conditions contained in a plan; application of any
2 dairy nutrient management practices, standards, methods, and
3 technologies to a particular dairy farm; and failure to adhere to the
4 plan review and approval timelines in RCW 90.64.026.

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

8 (j) Decisions of the department of natural resources, the
9 department of fish and wildlife, and the department that are
10 reviewable under chapter 76.09 RCW, and the department of natural
11 resources' appeals of county, city, or town objections under RCW
12 76.09.050(7).

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

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

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

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

24 (2) The following hearings shall not be conducted by the hearings
25 board:

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

28 (b) Hearings conducted by the department pursuant to RCW
29 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
30 90.44.180.

31 (c) Appeals of decisions by the department under RCW 90.03.110
32 and 90.44.220.

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

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

38 **Sec. 18.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
39 read as follows:

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

8 (a) Civil penalties imposed pursuant to RCW 18.104.155,
9 70.94.431, 70.105.080, 70.107.050, section 7 of this act, 76.09.170,
10 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
11 90.56.310, 90.56.330, and 90.64.102.

12 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
13 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
14 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

15 (c) Except as provided in RCW 90.03.210(2), the issuance,
16 modification, or termination of any permit, certificate, or license
17 by the department or any air authority in the exercise of its
18 jurisdiction, including the issuance or termination of a waste
19 disposal permit, the denial of an application for a waste disposal
20 permit, the modification of the conditions or the terms of a waste
21 disposal permit, or a decision to approve or deny an application for
22 a solid waste permit exemption under RCW 70.95.300.

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

25 (e) Decisions of local health departments regarding the issuance
26 and enforcement of permits to use or dispose of biosolids under RCW
27 70.95J.080.

28 (f) Decisions of the department regarding waste-derived
29 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
30 decisions of the department regarding waste-derived soil amendments
31 under RCW 70.95.205.

32 (g) Decisions of local conservation districts related to the
33 denial of approval or denial of certification of a dairy nutrient
34 management plan; conditions contained in a plan; application of any
35 dairy nutrient management practices, standards, methods, and
36 technologies to a particular dairy farm; and failure to adhere to the
37 plan review and approval timelines in RCW 90.64.026.

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

1 (i) Decisions of the department of natural resources, the
2 department of fish and wildlife, and the department that are
3 reviewable under chapter 76.09 RCW, and the department of natural
4 resources' appeals of county, city, or town objections under RCW
5 76.09.050(7).

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7 public lands under RCW 76.06.180.

8 (k) Decisions of the department of fish and wildlife to issue,
9 deny, condition, or modify a hydraulic project approval permit under
10 chapter 77.55 RCW.

11 (l) Decisions of the department of natural resources that are
12 reviewable under RCW 78.44.270.

13 (m) Decisions of an authorized public entity under RCW 79.100.010
14 to take temporary possession or custody of a vessel or to contest the
15 amount of reimbursement owed that are reviewable by the hearings
16 board under RCW 79.100.120.

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18 board:

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20 hearings board pursuant to chapter 90.58 RCW.

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22 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
23 90.44.180.

24 (c) Appeals of decisions by the department under RCW 90.03.110
25 and 90.44.220.

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

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

31 NEW SECTION. **Sec. 19.** Section 17 of this act expires June 30,
32 2019.

33 NEW SECTION. **Sec. 20.** Section 18 of this act takes effect June
34 30, 2019.

1 NEW SECTION. **Sec. 21.** Sections 1 through 14 of this act
2 constitute a new chapter in Title 70 RCW.

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