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SENATE BILL 5419

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State of Washington

65th Legislature

2017 Regular Session

By Senators Chase and Saldaña

Read first time 01/24/17. 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 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. Many local governments provide  
15 collection sites or events for latex paint in order to provide their  
16 residents with at least some disposal options and to keep latex paint  
17 out of the solid waste stream. But residents and small businesses  
18 need more convenient options for disposal of architectural paint.  
19 Drying latex for disposal is difficult for many residents and wastes  
20 latex paint that can otherwise be reused or recycled. Local  
21 government special and moderate-risk waste collection programs are

1 heavily impacted by the cost of managing unwanted architectural  
2 paints and these costs decrease the available funds to address other  
3 hazardous and hard to handle materials.

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

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

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

39 (5) This chapter creates an architectural paint recovery program  
40 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, 2018. 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, unless the distributor or  
16 retailer has negotiated a voluntary agreement with the producer and  
17 stewardship organization to remit the paint stewardship assessment  
18 directly to the stewardship organization on behalf of the producer  
19 for the producer's architectural paint sold by the distributor or  
20 retailer in the state. The plan must include a proposed budget and a  
21 description of the process used to determine the architectural paint  
22 stewardship assessment. The architectural paint stewardship  
23 assessment must be added to the cost of all architectural paint sold  
24 to Washington paint retailers and distributors, and each Washington  
25 paint retailer or distributor shall add the assessment to the  
26 purchase price of all architectural paint sold in this state, unless  
27 the distributor or retailer has negotiated a voluntary agreement with  
28 the producer and stewardship organization to remit the paint  
29 stewardship assessment directly to the stewardship organization on  
30 behalf of the producer for the producer's architectural paint sold by  
31 the distributor or retailer in the state. Manufacturers may not  
32 require retailers to opt to participate in a voluntary remittance  
33 agreement. No fee may be charged at the time of delivery to a drop-  
34 off or take back center.

35 (d) To ensure that the funding mechanism is equitable and  
36 sustainable, the plan must establish a uniform architectural paint  
37 stewardship assessment for all architectural paint sold in this  
38 state. The architectural paint stewardship assessment must be  
39 sufficient to recover, but not exceed, the costs of the architectural  
40 paint stewardship program. The plan must require any surplus funds

1 generated from the funding mechanism be put back into the program to  
2 either increase and improve program services or reduce the cost of  
3 the program and the architectural paint stewardship assessment, or  
4 both.

5 (e) The proposed architectural paint stewardship assessment must  
6 be reviewed by an independent auditor to ensure that such an  
7 assessment is consistent with the budget of the paint stewardship  
8 program and the independent auditor shall recommend an amount for the  
9 architectural paint stewardship assessment to the department. The  
10 department is responsible for the approval of the architectural paint  
11 stewardship assessment based on the information provided in the plan  
12 and in the auditor's report.

13 (f) A description of goals as practical to reduce the generation  
14 of leftover paint, to promote the reuse and recycling of leftover  
15 paint, for the overall collection of leftover paint, and for the  
16 proper end-of-life management of leftover paint. The goal for overall  
17 collection of leftover paint must be based on current or historical  
18 household hazardous waste program information from Washington state.  
19 The goals may be revised by a stewardship organization based on the  
20 information collected annually.

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

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

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

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

33 (k) A description of education and outreach efforts to promote  
34 the paint stewardship program. The education and outreach efforts  
35 must include effective strategies for reaching all sectors of the  
36 population and describe how the paint stewardship program will  
37 evaluate the effectiveness of its education and outreach.

38 (l) A description of collection site procedural manuals for  
39 architectural paint products, including training procedures and  
40 electronic copies of materials that will be provided to collection

1 sites to ensure the use of environmentally sound management practices  
2 when handling leftover architectural paint.

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

6 (2) A stewardship organization shall promote a paint stewardship  
7 program and provide consumers, covered entities, and retailers with  
8 educational and informational materials describing collection  
9 opportunities for leftover paint statewide, the architectural paint  
10 stewardship assessment used to finance the program, and promotion of  
11 waste prevention, reuse, and recycling. These materials may include,  
12 but are not limited to, the following:

13 (a) Signage that is prominently displayed and easily visible to  
14 the consumer;

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

18 (c) Advertising or other promotional materials, or both, that  
19 include references to the architectural paint stewardship program;  
20 and

21 (d) An explanation that the architectural paint stewardship  
22 assessment has been added to the purchase price of architectural  
23 paint to fund the paint stewardship program in the state. The  
24 architectural paint stewardship assessment may not be described as a  
25 department recycling fee at the point of retail.

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

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

29 (b) There is an addition to the products covered under the  
30 program; or

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

33 NEW SECTION. **Sec. 5.** (1) A stewardship organization's program  
34 plan required in section 4 of this act must also describe how the  
35 program will provide for reasonably convenient and available  
36 statewide collection of leftover paint from covered entities in urban  
37 and rural areas of the state, including island communities. The  
38 program plan must address how it will utilize the existing solid

1 waste collection, disposal, and recycling system to implement any  
2 stewardship program adopted.

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

6 (a) The coverage of costs for collecting postconsumer  
7 architectural paint and paint containers through permanent collection  
8 sites and collection events;

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

11 (c) The collection, transportation, and recycling or proper  
12 disposal of postconsumer architectural paint, including curbside  
13 services.

14 (3) To ensure adequate collection coverage, the plan must use  
15 geographic information modeling and the information required under  
16 subsection (2) of this section to determine the number and  
17 distribution of collection sites based on the following criteria: At  
18 least ninety percent of Washington residents must have a permanent  
19 collection site within a fifteen mile radius; and one additional  
20 permanent site must be established for every thirty thousand  
21 residents of a population center distributed to provide convenient  
22 and reasonably equitable access for residents within each population  
23 center, unless otherwise approved by the department. For the portion  
24 of the population that does not have a permanent collection location  
25 within a fifteen mile radius, the plan must provide collection  
26 events. The stewardship organization, in consultation with the  
27 department and the local community, will determine the frequency and  
28 location of these collections events, to be held at least once a year  
29 in underserved areas, unless otherwise determined through  
30 consultation with the local community. Special consideration is to be  
31 made for providing opportunities to island and geographically  
32 isolated populations.

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

39 (b) The producers participating in an approved program plan are  
40 responsible for covering all administrative and operational costs of

1 the program, including, but not limited to collection, reuse,  
2 recycling, transportation, and disposal of paint under the program. A  
3 fee may not be charged at the time the unwanted paint is delivered or  
4 collected for recycling. However, this does not prohibit collectors  
5 providing curbside services from charging customers a fee, as  
6 provided by city contract or by the Washington utilities and  
7 transportation commission under the authority of chapter 81.77 RCW,  
8 for the additional collection cost of providing this service.

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

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

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

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

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

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

27 (3) A stewardship organization shall implement the paint  
28 stewardship plan by January 1, 2018, or three months after approval  
29 of a paint stewardship program plan under section 4 of this act,  
30 whichever comes later.

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

36 (5) A stewardship organization shall work with producers,  
37 distributors, and retailers to provide consumers with educational and  
38 informational materials describing collection opportunities for

1 leftover paint statewide and promotion of waste prevention, reuse,  
2 and recycling of leftover paint.

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

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

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

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

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

36 (a) The department shall estimate the annual fee for the period  
37 of July 1st through June 30th and notify each stewardship  
38 organization by April 1st of the prior fiscal year. If there is more  
39 than one stewardship organization implementing a paint stewardship

1 program in Washington, the fee will be divided equally between  
2 programs. The department shall make the proposed annual fee, along  
3 with an accounting of the costs, available for public review and  
4 comment for at least thirty days.

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

7 (5) The department shall enforce this chapter.

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

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

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

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

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

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

31 (9) The department may request additional information from the  
32 stewardship organization outside the annual reporting requirements in  
33 section 9 of this act.

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

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

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

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

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

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

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

25 NEW SECTION. **Sec. 9.** (1) By October 15, 2018, and annually  
26 thereafter, a stewardship organization shall submit to the department  
27 a report describing the stewardship program that the stewardship  
28 organization implemented during the previous fiscal year. The report  
29 must include all of the following:

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

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

36 (c) The total volume of leftover paint collected by the  
37 stewardship organization in Washington, including any increase in  
38 total volume of paint collected each year, cost of the program per  
39 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) All reports submitted to the department must be available to  
29 the general public through the internet. Proprietary information  
30 submitted to the department under this chapter is exempt from public  
31 disclosure under RCW 42.56.270. The department may use and disclose  
32 such information in summary or aggregated form that does not directly  
33 or indirectly identify financial, production, or sales data of an  
34 individual producer or stewardship organization.

35 NEW SECTION. **Sec. 10.** Producers or stewardship organizations  
36 acting on behalf of producers that prepare, submit, and implement a  
37 paint stewardship plan pursuant to section 4 of this act and thereby  
38 are subject to regulation by the department are granted immunity from  
39 state laws relating to antitrust, restraint of trade, unfair trade

1 practices, and other regulation of trade and commerce, for the  
2 limited purpose of planning and reporting on a paint stewardship  
3 program and proposing and establishing the architectural paint  
4 stewardship assessment required in section 4(1)(c) and (d) of this  
5 act.

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

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

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

25 NEW SECTION. **Sec. 14.** (1) Records, subject to chapter 42.56  
26 RCW, filed with the department from any person that contain valuable  
27 commercial information, including trade secrets or confidential  
28 marketing, cost, or financial information, or customer-specific usage  
29 information, are not subject to inspection or copying under chapter  
30 42.56 RCW unless the following conditions are met:

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

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

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

8 (3) When providing information to the department, a person shall  
9 designate which records or portions of records contain valuable  
10 commercial information.

11 **Sec. 15.** RCW 42.56.270 and 2016 sp.s. c 9 s 3, 2016 sp.s. c 8 s  
12 1, and 2016 c 178 s 1 are each reenacted and amended to read as  
13 follows:

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

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

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

25 (3) Financial and commercial information and records supplied by  
26 private persons pertaining to export services provided under chapters  
27 43.163 and 53.31 RCW, and by persons pertaining to export projects  
28 under RCW 43.23.035;

29 (4) Financial and commercial information and records supplied by  
30 businesses or individuals during application for loans or program  
31 services provided by chapters 43.325, 43.163, 43.160, 43.330, and  
32 43.168 RCW, or during application for economic development loans or  
33 program services provided by any local agency;

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

38 (6) Financial and commercial information supplied to the state  
39 investment board by any person when the information relates to the

1 investment of public trust or retirement funds and when disclosure  
2 would result in loss to such funds or in private loss to the  
3 providers of this information;

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

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

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

12 (10)(a) Financial information, including but not limited to  
13 account numbers and values, and other identification numbers supplied  
14 by or on behalf of a person, firm, corporation, limited liability  
15 company, partnership, or other entity related to an application for a  
16 horse racing license submitted pursuant to RCW 67.16.260(1)(b),  
17 marijuana producer, processor, or retailer license, liquor license,  
18 gambling license, or lottery retail license;

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

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

31 (12)(a) When supplied to and in the records of the department of  
32 commerce:

33 (i) Financial and proprietary information collected from any  
34 person and provided to the department of commerce pursuant to RCW  
35 43.330.050(8); and

36 (ii) Financial or proprietary information collected from any  
37 person and provided to the department of commerce or the office of  
38 the governor in connection with the siting, recruitment, expansion,  
39 retention, or relocation of that person's business and until a siting  
40 decision is made, identifying information of any person supplying

1 information under this subsection and the locations being considered  
2 for siting, relocation, or expansion of a business;

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

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

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

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

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

22 (15) Financial and commercial information provided as evidence to  
23 the department of licensing as required by RCW 19.112.110 or  
24 19.112.120, except information disclosed in aggregate form that does  
25 not permit the identification of information related to individual  
26 fuel licensees;

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

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

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

37 (18) Financial, commercial, operations, and technical and  
38 research information and data submitted to or obtained by a health  
39 sciences and services authority in applications for, or delivery of,  
40 grants under RCW 35.104.010 through 35.104.060, to the extent that

1 such information, if revealed, would reasonably be expected to result  
2 in private loss to providers of this information;

3 (19) Information gathered under chapter 19.85 RCW or RCW  
4 34.05.328 that can be identified to a particular business;

5 (20) Financial and commercial information submitted to or  
6 obtained by the University of Washington, other than information the  
7 university is required to disclose under RCW 28B.20.150, when the  
8 information relates to investments in private funds, to the extent  
9 that such information, if revealed, would reasonably be expected to  
10 result in loss to the University of Washington consolidated endowment  
11 fund or to result in private loss to the providers of this  
12 information;

13 (21) Market share data submitted by a manufacturer under RCW  
14 70.95N.190(4);

15 (22) Financial information supplied to the department of  
16 financial institutions or to a portal under RCW 21.20.883, when filed  
17 by or on behalf of an issuer of securities for the purpose of  
18 obtaining the exemption from state securities registration for small  
19 securities offerings provided under RCW 21.20.880 or when filed by or  
20 on behalf of an investor for the purpose of purchasing such  
21 securities;

22 (23) Unaggregated or individual notices of a transfer of crude  
23 oil that is financial, proprietary, or commercial information,  
24 submitted to the department of ecology pursuant to RCW  
25 90.56.565(1)(a), and that is in the possession of the department of  
26 ecology or any entity with which the department of ecology has shared  
27 the notice pursuant to RCW 90.56.565;

28 (24) Financial institution and retirement account information,  
29 and building security plan information, supplied to the liquor and  
30 cannabis board pursuant to RCW 69.50.325, 69.50.331, 69.50.342, and  
31 69.50.345, when filed by or on behalf of a licensee or prospective  
32 licensee for the purpose of obtaining, maintaining, or renewing a  
33 license to produce, process, transport, or sell marijuana as allowed  
34 under chapter 69.50 RCW; ((and))

35 (25) Marijuana transport information, vehicle and driver  
36 identification data, and account numbers or unique access identifiers  
37 issued to private entities for traceability system access, submitted  
38 by an individual or business to the liquor and cannabis board under  
39 the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and  
40 69.50.345 for the purpose of marijuana product traceability.

1 Disclosure to local, state, and federal officials is not considered  
2 public disclosure for purposes of this section; (~~and~~)

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

15 (27) Proprietary financial, commercial, operations, and technical  
16 and research information and data submitted to or obtained by the  
17 liquor and cannabis board in applications for marijuana research  
18 licenses under RCW 69.50.372, or in reports submitted by marijuana  
19 research licensees in accordance with rules adopted by the liquor and  
20 cannabis board under RCW 69.50.372; and

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

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

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

30 (2) This section is not subject to the requirements of RCW  
31 82.32.805 and 82.32.808, and is not subject to an expiration date.

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

34 (1) The hearings board shall only have jurisdiction to hear and  
35 decide appeals from the following decisions of the department, the  
36 director, local conservation districts, the air pollution control  
37 boards or authorities as established pursuant to chapter 70.94 RCW,  
38 local health departments, the department of natural resources, the

1 department of fish and wildlife, the parks and recreation commission,  
2 and authorized public entities described in chapter 79.100 RCW:

3 (a) Civil penalties imposed pursuant to RCW 18.104.155,  
4 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250,  
5 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and  
6 90.64.102.

7 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
8 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
9 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

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

22 (f) Decisions of local health departments regarding the issuance  
23 and enforcement of permits to use or dispose of biosolids under RCW  
24 70.95J.080.

25 (g) Decisions of the department regarding waste-derived  
26 fertilizer or micronutrient fertilizer under RCW 15.54.820, and  
27 decisions of the department regarding waste-derived soil amendments  
28 under RCW 70.95.205.

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

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

38 (j) Decisions of the department of natural resources, the  
39 department of fish and wildlife, and the department that are  
40 reviewable under chapter 76.09 RCW, and the department of natural

1 resources' appeals of county, city, or town objections under RCW  
2 76.09.050(7).

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

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

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

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

14 (o) Appeals from penalties imposed by the department of ecology  
15 under chapter 70.--- RCW (the new chapter created in section 21 of  
16 this act).

17 (2) The following hearings shall not be conducted by the hearings  
18 board:

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

21 (b) Hearings conducted by the department pursuant to RCW  
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 **Sec. 18.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to  
32 read as follows:

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

1 (a) Civil penalties imposed pursuant to RCW 18.104.155,  
2 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250,  
3 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and  
4 90.64.102.

5 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
6 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
7 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

8 (c) Except as provided in RCW 90.03.210(2), the issuance,  
9 modification, or termination of any permit, certificate, or license  
10 by the department or any air authority in the exercise of its  
11 jurisdiction, including the issuance or termination of a waste  
12 disposal permit, the denial of an application for a waste disposal  
13 permit, the modification of the conditions or the terms of a waste  
14 disposal permit, or a decision to approve or deny an application for  
15 a solid waste permit exemption under RCW 70.95.300.

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

18 (e) Decisions of local health departments regarding the issuance  
19 and enforcement of permits to use or dispose of biosolids under RCW  
20 70.95J.080.

21 (f) Decisions of the department regarding waste-derived  
22 fertilizer or micronutrient fertilizer under RCW 15.54.820, and  
23 decisions of the department regarding waste-derived soil amendments  
24 under RCW 70.95.205.

25 (g) Decisions of local conservation districts related to the  
26 denial of approval or denial of certification of a dairy nutrient  
27 management plan; conditions contained in a plan; application of any  
28 dairy nutrient management practices, standards, methods, and  
29 technologies to a particular dairy farm; and failure to adhere to the  
30 plan review and approval timelines in RCW 90.64.026.

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

34 (i) Decisions of the department of natural resources, the  
35 department of fish and wildlife, and the department that are  
36 reviewable under chapter 76.09 RCW, and the department of natural  
37 resources' appeals of county, city, or town objections under RCW  
38 76.09.050(7).

39 (j) Forest health hazard orders issued by the commissioner of  
40 public lands under RCW 76.06.180.

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

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

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

10 (n) Appeals from penalties imposed by the department of ecology  
11 under chapter 70.--- RCW (the new chapter created in section 21 of  
12 this act).

13 (2) The following hearings shall not be conducted by the hearings  
14 board:

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

17 (b) Hearings conducted by the department pursuant to RCW  
18 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and  
19 90.44.180.

20 (c) Appeals of decisions by the department under RCW 90.03.110  
21 and 90.44.220.

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

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

27 NEW SECTION. Sec. 19. Section 17 of this act expires June 30,  
28 2019.

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

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

--- END ---