
SENATE BILL 5419

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.

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