H-1656.2

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**SUBSTITUTE HOUSE BILL 1376**

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**State of Washington 65th Legislature 2017 Regular Session**

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

AN ACT Relating to paint stewardship; amending RCW 43.21B.110 and 43.21B.110; reenacting and amending RCW 42.56.270; adding a new section to chapter 82.04 RCW; adding a new chapter to Title 70 RCW; prescribing penalties; providing an effective date; and providing an expiration date.

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

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

(1) Leftover architectural paints are a waste management issue and present environmental risks and health and safety risks, especially to workers in the solid waste industry. During waste collection and processing, wet paint can create spills and splashes and oil paint and aerosol containers may rupture, releasing fumes hazardous to workers and the remaining liquids may contribute to leachate problems in landfills. Some local governments are able to devote resources to provide collection sites or events for latex paint in order to provide their residents with at least some disposal options and to keep latex paint out of the solid waste stream. But residents and small businesses need additional and more convenient options for disposal of architectural paint. Drying latex for disposal is difficult for many residents and is wasteful of latex paint that can otherwise be reused or recycled. Local government special and moderate-risk waste collection programs are heavily impacted by the cost of managing unwanted architectural paints and these costs decrease the available funds to address other hazardous and hard to handle materials.

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

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

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

(ii) Promotes the reuse of leftover paint;

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

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

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

(i) Reduce consumer generation of leftover paint;

(ii) Reuse;

(iii) Recycle; and

(iv) Provide for energy recovery and disposal.

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

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

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

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

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

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

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

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

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

(6) "Covered entity" means:

(a) Any household;

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

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

(7) "Curbside service" means a waste collection, recycling, and disposal service providing pickup of leftover architectural paint from residential sources, such as single-family households and multifamily housing, or other covered entities in quantities generated from households or conditionally exempt small quantity generators, provided by a solid waste collection company regulated under chapter 81.77 RCW or under a contract for solid waste services with any city or town.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) A demonstration of sufficient funding for the architectural paint stewardship program as described in the plan. The plan must include a funding mechanism whereby each architectural paint producer remits to the stewardship organization payment of an architectural paint stewardship assessment for each container of architectural paint the producer sells in this state, unless the distributor or retailer has negotiated a voluntary agreement with the producer and stewardship organization to remit the paint stewardship assessment directly to the stewardship organization on behalf of the producer for the producer's architectural paint sold by the distributor or retailer in the state. The plan must include a proposed budget and a description of the process used to determine the architectural paint stewardship assessment. The architectural paint stewardship assessment must be added to the cost of all architectural paint sold to Washington paint retailers and distributors, unless the distributor or retailer has negotiated an agreement voluntarily with the producer and stewardship organization to remit the assessment directly to the stewardship organization on behalf of the producer for the producer's architectural paint sold by the distributor or retailer in the state. Each Washington paint retailer or distributor shall add the assessment to the purchase price of all architectural paint sold in this state. Manufacturers may not require retailers to opt to participate in a voluntary remittance agreement. No fee may be charged at the time of delivery to a drop-off or take back center.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) A stewardship organization must submit a new plan or plan amendment to the department for approval when:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The department shall enforce this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**--- END ---**