
SUBSTITUTE SENATE BILL 6145

State of Washington

62nd Legislature

2012 Regular Session

By Senate Environment (originally sponsored by Senators Chase, Swecker, Nelson, Rolfes, Fraser, Keiser, and Kline)

READ FIRST TIME 02/03/12.

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

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

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

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

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

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

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

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

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

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

35 (2) "Architectural paint stewardship assessment" or "assessment"
36 means the amount determined by a stewardship organization that must be
37 added to the purchase price of architectural paint sold in this state

1 to cover a stewardship organization's costs of administration,
2 education and outreach, collecting, transporting, and processing of the
3 leftover architectural paint managed through a statewide architectural
4 paint stewardship program.

5 (3) "Census designated places" means a statistical entity defined
6 for each decennial census according to United States census bureau
7 guidelines, comprising a densely settled concentration of population
8 that is not within an incorporated place, but is locally identified by
9 a name. Census designated places are delineated cooperatively by state
10 and local officials and the United States census bureau, following
11 census bureau guidelines. Beginning with census 2000, there are no
12 size limits.

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

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

19 (6) "Covered entity" means any household or conditionally exempt
20 small quantity generator of oil based and latex architectural paint.
21 "Covered entity" also includes any regulated generator of latex
22 architectural paint only.

23 (7) "Department" means the department of ecology.

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

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

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

36 (11) "Environmentally sound management practices" means policies
37 and procedures to be implemented by a stewardship organization to
38 ensure compliance with all applicable laws and rules and also addresses

1 such issues as safe and environmentally sound management of
2 architectural paint from collection through final disposition, adequate
3 recordkeeping, tracking and documenting the fate of materials within
4 the state and beyond, and adequate environmental liability coverage for
5 professional services and for the operations of the contractors working
6 on behalf of a stewardship organization.

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

13 (13) "Leftover paint" means architectural paint not used and no
14 longer wanted by a consumer.

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

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

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

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

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

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

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

37 (21) "Stewardship organization" means a nonprofit organization

1 created by a producer or group of producers to implement a paint
2 stewardship program required under this chapter.

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

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

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

12 NEW SECTION. **Sec. 4.** (1) A stewardship organization representing
13 producers shall submit a plan for the implementation of a stewardship
14 program to the department for approval by January 1, 2014. The plan
15 must address the following:

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

21 (b) Provide stewardship organization contact information and a list
22 of participating brands and producers under the program.

23 (c) Demonstrate sufficient funding for the architectural paint
24 stewardship program as described in the plan. The plan must include a
25 funding mechanism whereby each architectural paint producer remits to
26 the stewardship organization payment of an architectural paint
27 stewardship assessment for each container of architectural paint the
28 producer sells in this state. The architectural paint stewardship
29 assessment must be added to the cost of all architectural paint sold to
30 Washington paint retailers and distributors, and each Washington paint
31 retailer or distributor shall add the assessment to the purchase price
32 of all architectural paint sold in this state. No fee may be charged
33 at the time of collection.

34 (d) To ensure that the funding mechanism is equitable and
35 sustainable, a uniform architectural paint stewardship assessment must
36 be established for all architectural paint sold in this state. The

1 architectural paint stewardship assessment must be approved by the
2 department as part of the plan and must be sufficient to recover, but
3 not exceed, the costs of the architectural paint stewardship program.
4 The plan must require any surplus funds generated from the funding
5 mechanism be put back into the program to either increase and improve
6 program services or reduce the cost of the program and the
7 architectural paint stewardship assessment, or both.

8 (e) Establish goals as practical to reduce the generation of
9 leftover paint, to promote the reuse and recycling of leftover paint,
10 for the overall collection of leftover paint, and for the proper end-
11 of-life management of leftover paint. The goal for overall collection
12 of leftover paint must be based on current or historical household
13 hazardous waste program information from Washington state. The goals
14 may be revised by the stewardship organization based on the information
15 collected annually.

16 (f) Describe the reasonably convenient and available statewide
17 collection system required under section 5 of this act.

18 (g) Describe the criteria to be used for selecting collection
19 locations when there are multiple paint retail stores that want to
20 serve as collection sites in the same geographic area.

21 (h) Describe how leftover paint will be managed using
22 environmentally sound management practices in an economically sound
23 manner, including following the paint waste management hierarchy of:
24 Source reduction; reuse; recycling; energy recovery; and disposal.

25 (i) Describe the process for managing architectural paint
26 containers collected under the program, with an emphasis on recycling
27 containers, where practical.

28 (j) Describe education and outreach efforts to promote the paint
29 stewardship program. The education and outreach efforts must include
30 effective strategies for reaching all sectors of the population and
31 describe how the paint stewardship program will evaluate the
32 effectiveness of its education and outreach.

33 (k) Collection site procedural manuals for architectural paint
34 products, including training procedures and electronic copies of
35 materials that will be provided to collection sites to ensure the use
36 of environmentally sound management practices when handling leftover
37 architectural paint.

1 (1) A list of processors that will be used to manage leftover paint
2 collected by the stewardship organization.

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

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

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

15 (c) Advertising or other promotional materials, or both, that
16 include references to the architectural paint stewardship program.

17 (3) Plans must be updated as needed when there are changes to the
18 current program. A new plan or amendment is required to be submitted
19 to the department for approval when:

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

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

22 or

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

25 NEW SECTION. **Sec. 5.** (1) A stewardship organization's program
26 plan required in section 4 of this act must also describe how the
27 program will provide for reasonably convenient and available statewide
28 collection of leftover paint in urban and rural areas of the state,
29 including island communities.

30 (2) The plan must use distance and population to determine
31 permanent collection locations that are open to the public at a
32 frequency adequate to meet the needs of the area being served on an
33 ongoing basis as the criteria for determining collection convenience
34 and availability. The plan must use a fifteen mile radius as the
35 criteria for distance and incorporated cities and towns and census
36 designated places as the criteria for population. The plan must
37 provide for at least one permanent collection site within the fifteen

1 mile radius of all incorporated cities and census designated places in
2 Washington and must provide a minimum of one site for every thirty
3 thousand people in each county in the state, unless otherwise approved
4 by the department. For the portion of the population that does not
5 have a permanent collection location within a fifteen mile radius, the
6 plan must provide collection events in at least one area in their
7 county or the closest population center where paint is offered for sale
8 no less than once a year. Special consideration is to be made for
9 providing opportunities to island and geographically isolated
10 populations.

11 (3) The program must utilize the existing government-owned
12 moderate-risk waste infrastructure when selecting collection sites
13 where cost-effective, reasonably feasible, and mutually agreeable.

14 (4) The program must utilize existing paint retail stores as
15 collection sites on a voluntary basis where cost-effective, reasonably
16 feasible, and mutually agreeable.

17 (5) The plan must provide the collection site name, location, and
18 hours of operation of each site statewide in Washington accepting
19 architectural paint under the program. All permanent collection sites
20 required under an approved stewardship plan must begin operation on the
21 program start date, unless otherwise approved by the department.

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

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

28 (3) A stewardship organization shall implement the stewardship plan
29 by July 1, 2014, or three months after approval of a stewardship
30 program plan under section 4 of this act.

31 (4) A stewardship organization shall submit an annual report by
32 October 1st following the first year or partial year of operations and
33 every year thereafter, and structured to be used as a basis for annual
34 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

1 informational materials describing collection opportunities for
2 leftover paint statewide and promotion of waste prevention, reuse, and
3 recycling of leftover paint.

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

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

17 (3) The department shall enforce this chapter.

18 (a) A stewardship organization shall pay an annual administrative
19 fee in an amount sufficient to cover only the department's cost of
20 administering and enforcing a stewardship program established under
21 this section.

22 (b) Beginning April 1, 2013, and annually thereafter, the
23 department shall determine the department's costs required to be
24 reimbursed by a stewardship organization sufficient to cover only the
25 department's costs of administering and enforcing stewardship programs
26 under this chapter. The total amount of annual reimbursement must not
27 exceed the amount necessary to recover costs incurred by the department
28 in connection with the administration, oversight, and enforcement of
29 the requirements of this chapter. Any unspent money from the previous
30 year must be retained in the paint product stewardship account created
31 in section 11 of this act and applied to reduce the payments by
32 stewardship organizations in the following year.

33 (c) The department shall estimate the annual fee for the period of
34 July 1st through June 30th and notify the stewardship organization by
35 April 1st of the prior fiscal year. The department shall make the
36 proposed annual fee, along with an accounting of the costs, available
37 for public review and comment for at least thirty days.

1 (d) The department shall collect annual fees from a stewardship
2 organization by June 30, 2013, and annually thereafter.

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

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

9 (g) Any person that incurs a penalty may appeal the penalty
10 prescribed under this section to the pollution control hearings board
11 created under chapter 43.21B RCW.

12 (4) By July 1, 2014, or upon the date the first plan is approved,
13 whichever date is earlier, the department shall post on its internet
14 site a list of producers and their brands for which the department has
15 approved a plan pursuant to section 4 of this act. The department
16 shall update the list of producers and brands participating under an
17 approved program plan no less than once every six months.

18 (5) A producer that is not listed on the department's internet site
19 pursuant to this section, but demonstrates to the satisfaction of the
20 department that it is in compliance with this chapter must be added to
21 the internet site within fourteen days.

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

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

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

1 paint was listed on the department's internet site as a producer
2 implementing an approved stewardship program plan.

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

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

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

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

20 NEW SECTION. **Sec. 9.** (1) By October 1, 2015, and annually
21 thereafter, a stewardship organization shall submit to the department
22 a report describing the stewardship program that the stewardship
23 organization implemented during the previous fiscal year. The report
24 must include all of the following:

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

28 (b) The volume of latex and alkyd architectural paint collected by
29 the stewardship organization in the preceding fiscal year in
30 Washington;

31 (c) The total volume of leftover paint, by collection site,
32 collected by the stewardship organization in Washington;

33 (d) The volume of latex and alkyd architectural paint collected by
34 method of disposition, including reuse, recycling, energy recovery, and
35 disposal;

36 (e) A list of all the processors used to manage leftover paint

1 collected by the stewardship organization in the preceding year and the
2 volumes each processor accepted and under what disposition method;

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

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

7 (h) An independent financial audit of the stewardship program
8 implemented by the stewardship organization;

9 (i) The total cost of implementing the stewardship program broken
10 out by administrative, collection, transportation and disposition, and
11 education and promotion costs;

12 (j) An evaluation of the effectiveness of the stewardship program,
13 and anticipated steps, if needed, to improve performance throughout the
14 state; and

15 (k) Outreach and education activities undertaken and samples of the
16 educational materials that the stewardship organization provided to
17 consumers of architectural paint during the first year of the program
18 and any changes to those materials in subsequent years.

19 (2) The department shall review each annual report required
20 pursuant to this section within ninety days of its submission. The
21 department shall provide a letter of approval for the annual report if
22 it meets the requirements of this section. If an annual report is
23 rejected, the department shall provide the reasons for rejecting the
24 annual report to the stewardship organization. A stewardship
25 organization must submit any additional information or documentation
26 for the annual report within sixty days after receipt of the letter of
27 disapproval.

28 (3) 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.** A stewardship organization that manages a
36 stewardship program pursuant to this chapter is granted immunity from
37 state laws relating to antitrust, restraint of trade, unfair trade

1 practices, and other regulation of trade and commerce for the limited
2 purpose of establishing and operating a stewardship program. The
3 activities of a stewardship organization that comply with the
4 provisions of this chapter may not be considered to be in restraint of
5 trade, a conspiracy, or a combination or any other unlawful activity in
6 violation of any provision of title.

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

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

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

25 **Sec. 14.** RCW 42.56.270 and 2011 1st sp.s. c 14 s 15 are each
26 amended to read as follows:

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

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

33 (2) Financial information supplied by or on behalf of a person,
34 firm, or corporation for the purpose of qualifying to submit a bid or

1 proposal for (a) a ferry system construction or repair contract as
2 required by RCW 47.60.680 through 47.60.750 or (b) highway construction
3 or improvement as required by RCW 47.28.070;

4 (3) Financial and commercial information and records supplied by
5 private persons pertaining to export services provided under chapters
6 43.163 and 53.31 RCW, and by persons pertaining to export projects
7 under RCW 43.23.035;

8 (4) Financial and commercial information and records supplied by
9 businesses or individuals during application for loans or program
10 services provided by chapters 43.325, 43.163, 43.160, 43.330, and
11 43.168 RCW, or during application for economic development loans or
12 program services provided by any local agency;

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

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

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

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

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

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

36 (b) Internal control documents, independent auditors' reports and
37 financial statements, and supporting documents: (i) Of house-banked

1 social card game licensees required by the gambling commission pursuant
2 to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes
3 with an approved tribal/state compact for class III gaming;

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

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

13 (i) Financial and proprietary information collected from any person
14 and provided to the department of commerce pursuant to RCW
15 43.330.050(8); and

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

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

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

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

33 (13) Financial and proprietary information submitted to or obtained
34 by the department of ecology or the authority created under chapter
35 70.95N RCW to implement chapter 70.95N RCW;

36 (14) Financial, commercial, operations, and technical and research
37 information and data submitted to or obtained by the life sciences
38 discovery fund authority in applications for, or delivery of, grants

1 under chapter 43.350 RCW, to the extent that such information, if
2 revealed, would reasonably be expected to result in private loss to the
3 providers of this information;

4 (15) Financial and commercial information provided as evidence to
5 the department of licensing as required by RCW 19.112.110 or
6 19.112.120, except information disclosed in aggregate form that does
7 not permit the identification of information related to individual fuel
8 licensees;

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

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

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

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

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

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

34 (21) Financial, commercial, operations, and technical and research
35 information and data submitted to or obtained by innovate Washington in
36 applications for, or delivery of, grants and loans under chapter 43.333
37 RCW, to the extent that such information, if revealed, would reasonably

1 be expected to result in private loss to the providers of this
2 information; and

3 (22) Proprietary information submitted to the department of ecology
4 under chapter 70.-- RCW (the new chapter created in section 19 of this
5 act).

6 **Sec. 15.** RCW 43.21B.110 and 2010 c 210 s 7 and 2010 c 84 s 2 are
7 each reenacted and amended to read as follows:

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

15 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
16 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090,
17 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

18 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
19 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
20 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

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

33 (f) Decisions of local health departments regarding the issuance
34 and enforcement of permits to use or dispose of biosolids under RCW
35 70.95J.080.

36 (g) Decisions of the department regarding waste-derived fertilizer

1 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
2 department regarding waste-derived soil amendments under RCW 70.95.205.

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

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

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

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

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

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

23 (n) Decisions of a state agency that is an authorized public entity
24 under RCW 79.100.010 to take temporary possession or custody of a
25 vessel or to contest the amount of reimbursement owed that are
26 reviewable under RCW 79.100.120.

27 (o) Appeals from penalties imposed by the department of ecology
28 under chapter 70.-- RCW (the new chapter created in section 19 of this
29 act).

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

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

34 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
35 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

36 (c) Appeals of decisions by the department under RCW 90.03.110 and
37 90.44.220.

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

3 ~~((e) Appeals of decisions by the department as provided in chapter
4 43.21L RCW.))~~

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

8 **Sec. 16.** RCW 43.21B.110 and 2010 c 210 s 8 and 2010 c 84 s 3 are
9 each reenacted and amended to read as follows:

10 (1) The hearings board shall only have jurisdiction to hear and
11 decide appeals from the following decisions of the department, the
12 director, local conservation districts, the air pollution control
13 boards or authorities as established pursuant to chapter 70.94 RCW,
14 local health departments, the department of natural resources, the
15 department of fish and wildlife, and the parks and recreation
16 commission:

17 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
18 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090,
19 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

20 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
21 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
22 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

33 (e) Decisions of local health departments regarding the issuance
34 and enforcement of permits to use or dispose of biosolids under RCW
35 70.95J.080.

36 (f) Decisions of the department regarding waste-derived fertilizer

1 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
2 department regarding waste-derived soil amendments under RCW 70.95.205.

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

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

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

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

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19 deny, condition, or modify a hydraulic project approval permit under
20 chapter 77.55 RCW.

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

23 (m) Decisions of a state agency that is an authorized public entity
24 under RCW 79.100.010 to take temporary possession or custody of a
25 vessel or to contest the amount of reimbursement owed that are
26 reviewable under RCW 79.100.120.

27 (n) Appeals from penalties imposed by the department of ecology
28 under chapter 70.-- RCW (the new chapter created in section 19 of this
29 act).

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35 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

36 (c) Appeals of decisions by the department under RCW 90.03.110 and
37 90.44.220.

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

3 ~~((e) Appeals of decisions by the department as provided in chapter
4 43.21L RCW.))~~

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

8 NEW SECTION. **Sec. 17.** Section 15 of this act expires June 30,
9 2019.

10 NEW SECTION. **Sec. 18.** Section 16 of this act takes effect June
11 30, 2019.

12 NEW SECTION. **Sec. 19.** Sections 1 through 13 of this act
13 constitute a new chapter in Title 70 RCW.

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