

SHB 1579 - H AMD 743

By Representative Goodman

1       Strike everything after the enacting clause and insert the  
2 following:

3       "NEW SECTION. **Sec. 1.** The legislature finds that:

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

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

26       (3) It is in the best interest of Washington for paint  
27 manufacturers to assume responsibility for development and  
28 implementation of a cost-effective paint stewardship program that will:  
29 Develop and implement strategies to reduce the generation of leftover  
30 paint; promote the reuse of leftover paint; and collect, transport, and

1 process leftover paint for end-of-life management, including reuse,  
2 recycling, energy recovery, and disposal. A paint stewardship program  
3 will follow the paint waste management hierarchy for managing and  
4 reducing leftover paint in the order as follows: Reduce consumer  
5 generation of leftover paint; reuse; recycle; and provide for energy  
6 recovery and disposal. Requiring paint manufacturers to assume  
7 responsibility for the collection, recycling, reuse, transportation,  
8 and disposal of leftover paint will provide more opportunities for  
9 consumers to properly manage their leftover paint, provide fiscal  
10 relief for local government in managing leftover paint, keep paint out  
11 of the waste stream, and conserve natural resources.

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

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

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

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

32 (2) "Architectural paint stewardship assessment" or "assessment"  
33 means the amount determined by a stewardship organization that must be  
34 added to the purchase price of architectural paint sold in this state  
35 to cover a stewardship organization's costs of administration,  
36 education and outreach, collecting, transporting, and processing of the

1 leftover architectural paint managed through a statewide architectural  
2 paint stewardship program.

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

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

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

15 (6) "Covered entity" means:

16 (a) Any household;

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

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

23 (7) "Curbside service" means a waste collection, recycling, and  
24 disposal service providing pickup of covered paint from residential  
25 sources, such as single-family households and multifamily housing, or  
26 other covered entities in quantities generated from households or small  
27 businesses.

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

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

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

36 (11) "Energy recovery" means the recovery of energy in a useable  
37 form from mass burning or refuse-derived fuel incineration, pyrolysis,

1 or any other means of using the heat of combustion of solid waste that  
2 involves high temperature (above twelve hundred degrees Fahrenheit)  
3 processing.

4 (12) "Environmentally sound management practices" means policies  
5 and procedures to be implemented by a stewardship organization to  
6 ensure compliance with all applicable laws and rules to protect  
7 workers, public health, and the environment, and also addresses such  
8 issues as safe and environmentally sound management of architectural  
9 paint from collection through final disposition, adequate  
10 recordkeeping, tracking and documenting the fate of materials within  
11 the state and beyond, and adequate environmental liability coverage for  
12 professional services and for the operations of the contractors working  
13 on behalf of a stewardship organization.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 NEW SECTION. **Sec. 4.** (1) A stewardship organization representing  
29 producers shall submit a plan for the implementation of a paint  
30 stewardship program to the department for approval by January 1, 2015.  
31 The plan must include the following components:

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

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

3 (c) A demonstration of sufficient funding for the architectural  
4 paint stewardship program as described in the plan. The plan must  
5 include a funding mechanism whereby each architectural paint producer  
6 remits to the stewardship organization payment of an architectural  
7 paint stewardship assessment for each container of architectural paint  
8 the producer sells in this state. The plan must include a proposed  
9 budget and a description of the process used to determine the  
10 architectural paint stewardship assessment. The architectural paint  
11 stewardship assessment must be added to the cost of all architectural  
12 paint sold to Washington paint retailers and distributors, and each  
13 Washington paint retailer or distributor shall add the assessment to  
14 the purchase price of all architectural paint sold in this state. No  
15 fee may be charged at the time of collection.

16 (d) To ensure that the funding mechanism is equitable and  
17 sustainable, the plan must establish a uniform architectural paint  
18 stewardship assessment for all architectural paint sold in this state.  
19 The architectural paint stewardship assessment must be sufficient to  
20 recover, but not exceed, the costs of the architectural paint  
21 stewardship program. The plan must require any surplus funds generated  
22 from the funding mechanism be put back into the program to either  
23 increase and improve program services or reduce the cost of the program  
24 and the architectural paint stewardship assessment, or both.

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

33 (f) A description of goals as practical to reduce the generation of  
34 leftover paint, to promote the reuse and recycling of leftover paint,  
35 for the overall collection of leftover paint, and for the proper end-  
36 of-life management of leftover paint. The goal for overall collection  
37 of leftover paint must be based on current or historical household

1 hazardous waste program information from Washington state. The goals  
2 may be revised by a stewardship organization based on the information  
3 collected annually.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 or

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

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

27 (2) The program plan must address how it will incorporate and  
28 fairly compensate service providers for activities, which may include,  
29 but is not limited to:

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

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

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



1 (3) To ensure adequate collection coverage, the plan must use  
2 geographic information modeling to determine the number and  
3 distribution of collection sites based on the following criteria: At  
4 least ninety percent of Washington residents must have a permanent  
5 collection site within a fifteen mile radius; and one additional  
6 permanent site must be established for every thirty thousand residents  
7 of a population center distributed to provide convenient and reasonably  
8 equitable access for residents within each population center, unless  
9 otherwise approved by the department. For the portion of the  
10 population that does not have a permanent collection location within a  
11 fifteen mile radius, the plan must provide collection events no less  
12 than once a year. Special consideration is to be made for providing  
13 opportunities to island and geographically isolated populations.

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

20 (b) The producers participating in an approved program plan are  
21 responsible for covering all administrative and operational costs  
22 associated with the collection, reuse, recycling, transportation, and  
23 disposal of paint. A fee may not be charged at the time the unwanted  
24 paint is delivered or collected for recycling. However, this does not  
25 prohibit collectors providing curbside services from charging customers  
26 a fee, as provided by city contract or the Washington utilities and  
27 transportation commission, for the additional collection cost of  
28 providing this service.

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

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

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

1 (8) The plan must provide the collection site name and location of  
2 each site statewide in Washington accepting architectural paint under  
3 the program. The collection coverage in subsections (2) and (3) of  
4 this section must be met within the first year of the program, with the  
5 goal of having collection sites operational as close to the start date  
6 as possible.

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

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

13 (3) A stewardship organization shall implement the paint  
14 stewardship plan by July 1, 2015, or three months after approval of a  
15 paint stewardship program plan under section 4 of this act, whichever  
16 comes later.

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

22 (5) A stewardship organization shall work with producers,  
23 distributors, and retailers to provide consumers with educational and  
24 informational materials describing collection opportunities for  
25 leftover paint statewide and promotion of waste prevention, reuse, and  
26 recycling of leftover paint.

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

31 NEW SECTION. **Sec. 7.** (1) The department shall review the plan  
32 within one hundred twenty days of receipt, and make a determination  
33 whether or not to approve the plan. The department shall provide a  
34 letter of approval for the plan if it provides for the establishment of  
35 a stewardship program that meets the requirements of sections 4 and 5  
36 of this act. If a plan is rejected, the department shall provide the

1 reasons for rejecting the plan to the stewardship organization. The  
2 stewardship organization must submit a new plan within sixty days after  
3 receipt of the letter of disapproval.

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

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

12 (4) Beginning April 1, 2014, and annually thereafter, the  
13 department shall determine the department's costs required to be paid  
14 by each stewardship organization sufficient to cover only the  
15 department's costs of administering and enforcing paint stewardship  
16 programs under this chapter. The total amount of yearly reimbursement  
17 must not exceed the amount necessary to recover costs incurred by the  
18 department in connection with the administration, oversight, and  
19 enforcement of the requirements of this chapter. Any unspent money  
20 from the previous twelve-month period must be retained in the paint  
21 product stewardship account created in section 11 of this act and  
22 applied to reduce the payments by stewardship organizations in the  
23 following year.

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

32 (b) The department shall collect annual fees from each stewardship  
33 organization by June 30, 2015, and annually thereafter.

34 (5) The department shall enforce this chapter.

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

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

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

7 (6) By July 1, 2015, or upon the date the first plan is approved,  
8 whichever date is earlier, the department shall post on its web site a  
9 list of producers and their brands for which the department has  
10 approved a plan pursuant to section 4 of this act. The department  
11 shall update the list of producers and brands participating under an  
12 approved program plan no less than once every six months based on  
13 information provided to the department from a stewardship organization.

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

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

21 (9) The department may request additional information from the  
22 stewardship organization outside the annual reporting requirements in  
23 section 9 of this act.

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

26 NEW SECTION. **Sec. 8.** (1) A producer or paint retailer may not  
27 sell or offer for sale to any person in the state architectural paint  
28 unless the producer or brand of architectural paint is participating in  
29 an approved stewardship plan under this chapter. A retailer complies  
30 with the requirements of this section if, on the date the architectural  
31 paint was ordered from the producer or its agent, the producer of the  
32 paint was listed on the department's web site as a producer  
33 implementing an approved paint stewardship program plan. However, a  
34 retailer may sell any paint purchased prior to the effective date of  
35 this section.

36 (2) A paint wholesaler or a paint retailer that distributes or

1 sells architectural paint shall monitor the department's web site to  
2 determine if the sale of a producer's architectural paint is in  
3 compliance with this chapter.

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

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

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

17 NEW SECTION. **Sec. 9.** (1) By October 15, 2016, and annually  
18 thereafter, a stewardship organization shall submit to the department  
19 a report describing the stewardship program that the stewardship  
20 organization implemented during the previous fiscal year. The report  
21 must include all of the following:

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

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

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

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

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

1 (f) A list of all processors through to final disposition that are  
2 used to manage leftover paint collected by the stewardship organization  
3 in the preceding year and the volumes each processor accepted and under  
4 what disposition method;

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

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

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

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

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

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

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

30 NEW SECTION. **Sec. 10.** Producers or stewardship organizations  
31 acting on behalf of producers that prepare, submit, and implement a  
32 paint stewardship plan pursuant to section 4 of this act and thereby  
33 are subject to regulation by the department are granted immunity from  
34 state laws relating to antitrust, restraint of trade, unfair trade  
35 practices, and other regulation of trade and commerce, for the limited  
36 purpose of planning and reporting on a paint stewardship program and

1 proposing and establishing the architectural paint stewardship  
2 assessment required in section 4(1)(c) and (d) of this act.

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

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

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

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

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

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

32 (2) Upon the notice provided under subsection (1)(a) of this  
33 section of the possible inspection or copying of valuable commercial  
34 information pursuant to chapter 42.56 RCW, a person may petition the

1 superior court for an order protecting the records as confidential.  
2 The superior court must determine that the records are confidential and  
3 not subject to inspection or copying if disclosure would result in  
4 private loss, including an unfair competitive disadvantage.

5 (3) When providing information to the department, a person shall  
6 designate which records or portions of records contain valuable  
7 commercial information.

8 **Sec. 15.** RCW 42.56.270 and 2013 c 305 s 14 are each amended to  
9 read as follows:

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

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

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

21 (3) Financial and commercial information and records supplied by  
22 private persons pertaining to export services provided under chapters  
23 43.163 and 53.31 RCW, and by persons pertaining to export projects  
24 under RCW 43.23.035;

25 (4) Financial and commercial information and records supplied by  
26 businesses or individuals during application for loans or program  
27 services provided by chapters 43.325, 43.163, 43.160, 43.330, and  
28 43.168 RCW, or during application for economic development loans or  
29 program services provided by any local agency;

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

34 (6) Financial and commercial information supplied to the state  
35 investment board by any person when the information relates to the  
36 investment of public trust or retirement funds and when disclosure



1 would result in loss to such funds or in private loss to the providers  
2 of this information;

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

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

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

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

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

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

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

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

34 (ii) Financial or proprietary information collected from any person  
35 and provided to the department of commerce or the office of the  
36 governor in connection with the siting, recruitment, expansion,  
37 retention, or relocation of that person's business and until a siting

1 decision is made, identifying information of any person supplying  
2 information under this subsection and the locations being considered  
3 for siting, relocation, or expansion of a business;

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

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

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

14 (13) Financial and proprietary information submitted to or obtained  
15 by the department of ecology or the authority created under chapter  
16 70.95N RCW to implement chapter 70.95N RCW;

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

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

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

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

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

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

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

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

16 (21) Financial, commercial, operations, and technical and research  
17 information and data submitted to or obtained by innovate Washington in  
18 applications for, or delivery of, grants and loans under chapter 43.333  
19 RCW, to the extent that such information, if revealed, would reasonably  
20 be expected to result in private loss to the providers of this  
21 information; (~~and~~)

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

24 (23) Records filed with the department of ecology under chapter  
25 70.--- RCW (the new chapter created in section 20 of this act) that a  
26 court has determined are confidential valuable commercial information  
27 under section 14 of this act.

28 **Sec. 16.** RCW 43.21B.110 and 2013 c 291 s 33 are each amended to  
29 read as follows:

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

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

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

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

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

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

19 (f) Decisions of local health departments regarding the issuance  
20 and enforcement of permits to use or dispose of biosolids under RCW  
21 70.95J.080.

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

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

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

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

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

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

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

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

12 (o) Appeals from penalties imposed by the department of ecology  
13 under chapter 70.-- RCW (the new chapter created in section 20 of this  
14 act).

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

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

19 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
20 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

21 (c) Appeals of decisions by the department under RCW 90.03.110 and  
22 90.44.220.

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

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

28 **Sec. 17.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to  
29 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (n) Appeals from penalties imposed by the department of ecology  
11 under chapter 70.-- RCW (the new chapter created in section 20 of this  
12 act).

13 (2) The following hearings shall not be conducted by the hearings  
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18 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

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

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

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

26 NEW SECTION. Sec. 18. Section 16 of this act expires June 30,  
27 2019.

28 NEW SECTION. Sec. 19. Section 17 of this act takes effect June  
29 30, 2019.

30 NEW SECTION. Sec. 20. Sections 1 through 14 of this act  
31 constitute a new chapter in Title 70 RCW."

32 Correct the title.

EFFECT: Provides an exemption from the public records act for

valuable commercial financial information if disclosure would cause private loss, including competitive disadvantage. Allows reliance on curbside collection service to collect paint for a specific area or population, but not in lieu of permanent collection sites in those areas. Allows the department of ecology to begin collecting annual fees from the stewardship organization on June 30, 2014, rather than June 30, 2015.

--- END ---