
SENATE BILL 5424

State of Washington

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By Senators Chase, Benton, McAuliffe, Roach, Ranker, Nelson, Shin, Kohl-Welles, and Kline

Read first time 01/30/13. Referred to Committee on Energy, Environment & Telecommunications.

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 and
8 present environmental risks and health and safety risks, especially to
9 workers in the solid waste industry. During waste collection and
10 processing, wet paint can create spills and splashes and oil paint and
11 aerosol containers may rupture, releasing fumes hazardous to workers
12 and the remaining liquids contribute to leachate problems in landfills.
13 Many local governments provide collection sites or events for latex
14 paint in order to provide their residents with at least some disposal
15 options and to keep latex paint out of the solid waste stream. But
16 residents and small businesses need more convenient options for
17 disposal of architectural paint. Drying latex for disposal is
18 difficult for many residents and wastes latex paint that can otherwise
19 be reused or recycled. Local government special and moderate-risk

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

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

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

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

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

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

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

1 education and outreach, collecting, transporting, and processing of the
2 leftover architectural paint managed through a statewide architectural
3 paint stewardship program.

4 (3) "Conditionally exempt small quantity generator" means a
5 dangerous waste generator whose dangerous wastes are not subject to
6 regulation under chapter 70.105 RCW, hazardous waste management, solely
7 because the waste is generated or accumulated in quantities below the
8 threshold for regulation and meets the conditions prescribed in WAC
9 173-303-070(8)(b), as it existed on the effective date of this section.

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

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

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

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

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

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

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

33 (11) "Environmentally sound management practices" means policies
34 and procedures to be implemented by a stewardship organization to
35 ensure compliance with all applicable laws and rules to protect
36 workers, public health, and the environment, and also addresses such
37 issues as safe and environmentally sound management of architectural
38 paint from collection through final disposition, adequate

1 recordkeeping, tracking and documenting the fate of materials within
2 the state and beyond, and adequate environmental liability coverage for
3 professional services and for the operations of the contractors working
4 on behalf of a stewardship organization.

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

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

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

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

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

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

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

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

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

37 (21) "Reuse" means any operation by which an architectural paint

1 product changes ownership and is used for the same purpose for which it
2 was originally purchased.

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

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

9 NEW SECTION. **Sec. 3.** (1) All producers of architectural paint
10 selling in or into the state of Washington shall participate in an
11 approved Washington state paint stewardship plan for covered entities
12 through membership in and appropriate funding of a stewardship
13 organization.

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

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

19 NEW SECTION. **Sec. 4.** (1) A stewardship organization representing
20 producers shall submit a plan for the implementation of a paint
21 stewardship program to the department for approval by January 1, 2015.
22 The plan must address the following:

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

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

30 (c) Demonstrate sufficient funding for the architectural paint
31 stewardship program as described in the plan. The plan must include a
32 funding mechanism whereby each architectural paint producer remits to
33 the stewardship organization payment of an architectural paint
34 stewardship assessment for each container of architectural paint the
35 producer sells in this state. The plan must include a proposed budget
36 and a description of the process used to determine the architectural

1 paint stewardship assessment. The architectural paint stewardship
2 assessment must be added to the cost of all architectural paint sold to
3 Washington paint retailers and distributors, and each Washington paint
4 retailer or distributor shall add the assessment to the purchase price
5 of all architectural paint sold in this state. No fee may be charged
6 at the time of collection.

7 (d) To ensure that the funding mechanism is equitable and
8 sustainable, a uniform architectural paint stewardship assessment must
9 be established for all architectural paint sold in this state. The
10 architectural paint stewardship assessment must be sufficient to
11 recover, but not exceed, the costs of the architectural paint
12 stewardship program. The plan must require any surplus funds generated
13 from the funding mechanism be put back into the program to either
14 increase and improve program services or reduce the cost of the program
15 and the architectural paint stewardship assessment, or both.

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

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

32 (g) Describe the reasonably convenient and available statewide
33 collection system required under section 5 of this act.

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

37 (i) Describe how leftover paint will be managed using

1 environmentally sound management practices in an economically sound
2 manner, including following the paint waste management hierarchy of:
3 Source reduction; reuse; recycling; energy recovery; and disposal.

4 (j) Describe the process for managing architectural paint
5 containers collected under the program, with an emphasis on recycling
6 containers, where practical.

7 (k) Describe education and outreach efforts to promote the paint
8 stewardship program. The education and outreach efforts must include
9 effective strategies for reaching all sectors of the population and
10 describe how the paint stewardship program will evaluate the
11 effectiveness of its education and outreach.

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

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

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

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

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

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

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

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

- 1 (b) There is an addition to the products covered under the program;
2 or
3 (c) There is a revision of the product stewardship organization's
4 goals.

5 NEW SECTION. **Sec. 5.** (1) A stewardship organization's program
6 plan required in section 4 of this act must also describe how the
7 program will provide for reasonably convenient and available statewide
8 collection of leftover paint from covered entities in urban and rural
9 areas of the state, including island communities.

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

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

26 (4) The program must utilize existing paint retail stores as
27 collection sites where cost effective, reasonably feasible, and
28 mutually agreeable.

29 (5) The plan must provide the collection site name and location of
30 each site statewide in Washington accepting architectural paint under
31 the program. The collection coverage in subsection (2) of this section
32 must be met within the first year of the program, with the goal of
33 having collection sites operational as close to the start date as
34 possible.

35 NEW SECTION. **Sec. 6.** (1) Each stewardship organization shall

1 submit a paint stewardship program plan in accordance with section 4 of
2 this act.

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

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

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

15 (5) A stewardship organization shall work with producers,
16 distributors, and retailers to provide consumers with educational and
17 informational materials describing collection opportunities for
18 leftover paint statewide and promotion of waste prevention, reuse, and
19 recycling of leftover paint.

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

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

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

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

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

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

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

27 (5) The department shall enforce this chapter.

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

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

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

37 (6) By July 1, 2015, or upon the date the first plan is approved,
38 whichever date is earlier, the department shall post on its web site a

1 list of producers and their brands for which the department has
2 approved a plan pursuant to section 4 of this act. The department
3 shall update the list of producers and brands participating under an
4 approved program plan no less than once every six months based on
5 information provided to the department from a stewardship organization.

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

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

13 (9) The department may request additional information from the
14 stewardship organization outside the annual reporting requirements in
15 section 9 of this act.

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

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

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

32 (3) At the time of sale to a consumer, a producer, a stewardship
33 organization, or a paint retailer selling or offering architectural
34 paint for sale in Washington shall provide the consumer with
35 information regarding available end-of-life management options for
36 architectural paint collected through a paint stewardship program or a
37 brand of paint being sold under the program.

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

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

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

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

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

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

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

24 (e) A list of all processors through to final disposition that are
25 used to manage leftover paint collected by the stewardship organization
26 in the preceding year and the volumes each processor accepted and under
27 what disposition method;

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

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

32 (h) An independent financial audit of the paint stewardship program
33 implemented by the stewardship organization;

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

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

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

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

15 NEW SECTION. **Sec. 10.** Producers or stewardship organizations
16 acting on behalf of producers that prepare, submit, and implement a
17 paint stewardship plan pursuant to section 4 of this act and thereby
18 are subject to regulation by the department are granted immunity from
19 state laws relating to antitrust, restraint of trade, unfair trade
20 practices, and other regulation of trade and commerce, for the limited
21 purpose of planning and reporting on a paint stewardship program and
22 proposing and establishing the architectural paint stewardship
23 assessment required in section 4(1)(c) and (d) of this act.

24 NEW SECTION. **Sec. 11.** The paint product stewardship account is
25 created in the state treasury. All receipts received by the department
26 from stewardship organizations must be deposited in the account.
27 Moneys in the account may be spent only after appropriation.
28 Expenditures from the account may be used by the department only for
29 administering and enforcing paint stewardship programs.

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

1 NEW SECTION. **Sec. 13.** Nothing in this chapter changes or limits
2 the authority of the Washington utilities and transportation commission
3 to regulate collection of solid waste, including curbside collection of
4 residential recyclable materials, nor does this chapter change or limit
5 the authority of a city or town to provide the service itself or by
6 contract under RCW 81.77.020.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (18) Financial, commercial, operations, and technical and research
36 information and data submitted to or obtained by a health sciences and
37 services authority in applications for, or delivery of, grants under

1 RCW 35.104.010 through 35.104.060, to the extent that such information,
2 if revealed, would reasonably be expected to result in private loss to
3 providers of this information;

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

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

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

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

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

24 (1) The hearings board shall only have jurisdiction to hear and
25 decide appeals from the following decisions of the department, the
26 director, local conservation districts, the air pollution control
27 boards or authorities as established pursuant to chapter 70.94 RCW,
28 local health departments, the department of natural resources, the
29 department of fish and wildlife, and the parks and recreation
30 commission:

31 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
32 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090,
33 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

34 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
35 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
36 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

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

13 (f) Decisions of local health departments regarding the issuance
14 and enforcement of permits to use or dispose of biosolids under RCW
15 70.95J.080.

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

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

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

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

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

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

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

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

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

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

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

12 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
13 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

14 (c) Appeals of decisions by the department under RCW 90.03.110 and
15 90.44.220.

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

18 ~~((e) Appeals of decisions by the department as provided in chapter~~
19 ~~43.21B RCW.))~~

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

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

25 (1) The hearings board shall only have jurisdiction to hear and
26 decide appeals from the following decisions of the department, the
27 director, local conservation districts, the air pollution control
28 boards or authorities as established pursuant to chapter 70.94 RCW,
29 local health departments, the department of natural resources, the
30 department of fish and wildlife, and the parks and recreation
31 commission:

32 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
33 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090,
34 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

35 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
36 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
37 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

11 (e) Decisions of local health departments regarding the issuance
12 and enforcement of permits to use or dispose of biosolids under RCW
13 70.95J.080.

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

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

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

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

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

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

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

37 (m) Decisions of a state agency that is an authorized public entity

1 under RCW 79.100.010 to take temporary possession or custody of a
2 vessel or to contest the amount of reimbursement owed that are
3 reviewable under RCW 79.100.120.

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

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

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

11 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
12 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

13 (c) Appeals of decisions by the department under RCW 90.03.110 and
14 90.44.220.

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

17 ~~((e) Appeals of decisions by the department as provided in chapter~~
18 ~~43.211 RCW.))~~

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

22 NEW SECTION. Sec. 17. Section 15 of this act expires June 30,
23 2019.

24 NEW SECTION. Sec. 18. Section 16 of this act takes effect June
25 30, 2019.

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

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