
HOUSE BILL 1376

State of Washington

65th Legislature

2017 Regular Session

By Representatives Peterson, Goodman, Tarleton, Gregerson, Ormsby, Bergquist, and Stanford

Read first time 01/18/17. Referred to Committee on Environment.

1 AN ACT Relating to paint stewardship; amending RCW 43.21B.110 and
2 43.21B.110; reenacting and amending RCW 42.56.270; adding a new
3 section to chapter 82.04 RCW; adding a new chapter to Title 70 RCW;
4 prescribing penalties; providing an effective date; and providing an
5 expiration date.

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

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

8 (1) Leftover architectural paints are a waste management issue
9 and present environmental risks and health and safety risks,
10 especially to workers in the solid waste industry. During waste
11 collection and processing, wet paint can create spills and splashes
12 and oil paint and aerosol containers may rupture, releasing fumes
13 hazardous to workers and the remaining liquids may contribute to
14 leachate problems in landfills. Some local governments are able to
15 devote resources to provide collection sites or events for latex
16 paint in order to provide their residents with at least some disposal
17 options and to keep latex paint out of the solid waste stream. But
18 residents and small businesses need additional and more convenient
19 options for disposal of architectural paint. Drying latex for
20 disposal is difficult for many residents and is wasteful of latex
21 paint that can otherwise be reused or recycled. Local government

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

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

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

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

17 (ii) Promotes the reuse of leftover paint; and

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

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

24 (i) Reduce consumer generation of leftover paint;

25 (ii) Reuse;

26 (iii) Recycle; and

27 (iv) Provide for energy recovery and disposal.

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

37 (4) The legislature further finds that Washington's existing
38 waste collection, recycling, and disposal system leads the nation in
39 innovation and environmentally sound practices. This system has
40 achieved some of the highest overall recycling rates in the nation at

1 fifty-one percent in 2012. The legislature further finds that
2 leftover paint is a toxic and hard to handle waste product that is
3 appropriate for a product stewardship program to increase the safe,
4 convenient, and effective reuse, recycling, and disposal of leftover
5 paint. Product stewardship programs for toxic and hard to handle
6 materials, including an architectural paint stewardship program,
7 should integrate with and complement the existing waste collection,
8 recycling, and disposal system.

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

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

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

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

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

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

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

38 (6) "Covered entity" means:

39 (a) Any household;

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

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

7 (7) "Curbside service" means a waste collection, recycling, and
8 disposal service providing pickup of leftover architectural paint
9 from residential sources, such as single-family households and
10 multifamily housing, or other covered entities in quantities
11 generated from households or conditionally exempt small quantity
12 generators.

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

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

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

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

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

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

39 (14) "Household hazardous waste" means waste that exhibits any of
40 the properties of dangerous waste that is exempt from regulation

1 under chapter 70.105 RCW, hazardous waste management, solely because
2 the waste is generated by households. Household hazardous waste may
3 also include other solid waste identified in the local hazardous
4 waste management plan prepared pursuant to chapter 70.105 RCW.

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

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

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

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

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

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

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

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

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

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

37 NEW SECTION. **Sec. 3.** (1) All producers of architectural paint
38 selling in or into the state of Washington shall participate in an
39 approved Washington state paint stewardship plan for covered entities

1 through membership in and appropriate funding of a stewardship
2 organization.

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

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

8 NEW SECTION. **Sec. 4.** (1) A stewardship organization
9 representing producers shall submit a plan for the implementation of
10 a paint stewardship program to the department for approval by January
11 15, 2018. The plan must include the following components:

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

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

19 (c) A demonstration of sufficient funding for the architectural
20 paint stewardship program as described in the plan. The plan must
21 include a funding mechanism whereby each architectural paint producer
22 remits to the stewardship organization payment of an architectural
23 paint stewardship assessment for each container of architectural
24 paint the producer sells in this state, unless the distributor or
25 retailer has negotiated a voluntary agreement with the producer and
26 stewardship organization to remit the paint stewardship assessment
27 directly to the stewardship organization on behalf of the producer
28 for the producer's architectural paint sold by the distributor or
29 retailer in the state. The plan must include a proposed budget and a
30 description of the process used to determine the architectural paint
31 stewardship assessment. The architectural paint stewardship
32 assessment must be added to the cost of all architectural paint sold
33 to Washington paint retailers and distributors, unless the
34 distributor or retailer has negotiated an agreement voluntarily with
35 the producer and stewardship organization to remit the assessment
36 directly to the stewardship organization on behalf of the producer
37 for the producer's architectural paint sold by the distributor or
38 retailer in the state. Each Washington paint retailer or distributor
39 shall add the assessment to the purchase price of all architectural

1 paint sold in this state. Manufacturers may not require retailers to
2 opt to participate in a voluntary remittance agreement. No fee may be
3 charged at the time of delivery to a drop-off or take back center.

4 (d) To ensure that the funding mechanism is equitable and
5 sustainable, the plan must establish a uniform architectural paint
6 stewardship assessment for all architectural paint sold in this
7 state. For purposes of establishing the assessment, the plan must
8 categorize the sizes of paint containers sold at retail and determine
9 a uniform assessment amount that applies to each category of
10 container size. The architectural paint stewardship assessment must
11 be sufficient to recover, but not exceed, the costs of the
12 architectural paint stewardship program. The plan must require any
13 surplus funds generated from the funding mechanism be put back into
14 the program to either increase and improve program services or reduce
15 the cost of the program and the architectural paint stewardship
16 assessment, or both.

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

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

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

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

38 (i) A description of how leftover paint will be managed using
39 environmentally sound management practices, including following the

1 paint waste management hierarchy of: Source reduction; reuse;
2 recycling; energy recovery; and disposal.

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

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

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

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

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

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

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

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

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

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

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

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

4 (c) There is a revision of the stewardship organization's 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
8 statewide collection of leftover paint from covered entities in urban
9 and rural areas of the state, including island communities. The
10 program plan must address how it will utilize the existing solid
11 waste collection, disposal, and recycling system to implement any
12 stewardship program adopted.

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

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

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

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

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

34 (b) For the portion of the population that does not have a
35 permanent collection location within a fifteen mile radius, the plan
36 must provide collection events. The stewardship organization, in
37 consultation with the department and the local community, will
38 determine the frequency and location of these collections events, to
39 be held at least once a year in underserved areas, unless otherwise

1 determined through consultation with the local community. Special
2 consideration is to be made for providing opportunities to island and
3 geographically isolated populations.

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

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

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

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

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

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

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

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

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

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

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

10 (5) A stewardship organization shall work with producers,
11 distributors, and retailers to provide consumers with educational and
12 informational materials describing collection opportunities for
13 leftover paint statewide and promotion of waste prevention, reuse,
14 and recycling of leftover paint.

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

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

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

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

36 (4) Beginning April 1, 2018, and annually thereafter, the
37 department shall determine the department's costs required to be paid
38 by each stewardship organization sufficient to cover only the
39 department's costs of administering and enforcing paint stewardship

1 programs under this chapter. The total amount of yearly reimbursement
2 must not exceed the amount necessary to recover costs incurred by the
3 department in connection with the administration, oversight, and
4 enforcement of the requirements of this chapter. Any unspent money
5 from the previous twelve-month period must be retained in the paint
6 product stewardship account created in section 11 of this act and
7 applied to reduce the payments by stewardship organizations in the
8 following year.

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

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

20 (5) The department shall enforce this chapter.

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

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

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

30 (6) By July 1, 2017, or upon the date the first plan is approved,
31 whichever date is earlier, the department shall post on its web site
32 a list of producers and their brands for which the department has
33 approved a plan pursuant to section 4 of this act. The department
34 shall update the list of producers and brands participating under an
35 approved program plan on a monthly basis based on information
36 provided to the department from a stewardship organization.

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

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

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

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

9 NEW SECTION. **Sec. 8.** (1) A producer or paint retailer may not
10 sell or offer for sale to any person in the state architectural paint
11 unless the producer or brand of architectural paint is participating
12 in an approved stewardship plan under this chapter. A retailer
13 complies with the requirements of this section if, on the date the
14 architectural paint was ordered from the producer or its agent, the
15 producer of the paint was listed on the department's web site as a
16 producer participating in an approved paint stewardship program plan.
17 However, a retailer may sell any paint purchased prior to the
18 effective date of this section.

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

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

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

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

37 NEW SECTION. **Sec. 9.** (1) By October 15, 2019, and annually
38 thereafter, a stewardship organization shall submit to the department

1 a report describing the stewardship program that the stewardship
2 organization implemented during the previous fiscal year. The report
3 must include all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 NEW SECTION. **Sec. 14.** (1) Except as provided in subsection (3)
8 of this section, records, subject to chapter 42.56 RCW, filed with
9 the department from any person that contain valuable commercial
10 information, including trade secrets, confidential marketing, cost,
11 or financial information, or customer-specific usage information, are
12 not subject to inspection or copying under chapter 42.56 RCW. When
13 providing information to the department, a person shall designate
14 which records or portions of records contain valuable commercial
15 information.

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

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

32 **Sec. 15.** RCW 42.56.270 and 2016 sp.s. c 9 s 3, 2016 sp.s c 8 s
33 1, and 2016 c 178 s 1 are each reenacted and amended to read as
34 follows:

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

37 (1) Valuable formulae, designs, drawings, computer source code or
38 object code, and research data obtained by any agency within five

1 years of the request for disclosure when disclosure would produce
2 private gain and public loss;

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

8 (3) Financial and commercial information and records supplied by
9 private persons pertaining to export services provided under chapters
10 43.163 and 53.31 RCW, and by persons pertaining to export projects
11 under RCW 43.23.035;

12 (4) Financial and commercial information and records supplied by
13 businesses or individuals during application for loans or program
14 services provided by chapters 43.325, 43.163, 43.160, 43.330, and
15 43.168 RCW, or during application for economic development loans or
16 program services provided by any local agency;

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

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

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

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

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

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

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

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

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

15 (i) Financial and proprietary information collected from any
16 person and provided to the department of commerce pursuant to RCW
17 43.330.050(8); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (21) Market share data submitted by a manufacturer under RCW
36 70.95N.190(4);

37 (22) Financial information supplied to the department of
38 financial institutions or to a portal under RCW 21.20.883, when filed
39 by or on behalf of an issuer of securities for the purpose of
40 obtaining the exemption from state securities registration for small

1 securities offerings provided under RCW 21.20.880 or when filed by or
2 on behalf of an investor for the purpose of purchasing such
3 securities;

4 (23) Unaggregated or individual notices of a transfer of crude
5 oil that is financial, proprietary, or commercial information,
6 submitted to the department of ecology pursuant to RCW
7 90.56.565(1)(a), and that is in the possession of the department of
8 ecology or any entity with which the department of ecology has shared
9 the notice pursuant to RCW 90.56.565;

10 (24) Financial institution and retirement account information,
11 and building security plan information, supplied to the liquor and
12 cannabis board pursuant to RCW 69.50.325, 69.50.331, 69.50.342, and
13 69.50.345, when filed by or on behalf of a licensee or prospective
14 licensee for the purpose of obtaining, maintaining, or renewing a
15 license to produce, process, transport, or sell marijuana as allowed
16 under chapter 69.50 RCW; ((and))

17 (25) Marijuana transport information, vehicle and driver
18 identification data, and account numbers or unique access identifiers
19 issued to private entities for traceability system access, submitted
20 by an individual or business to the liquor and cannabis board under
21 the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and
22 69.50.345 for the purpose of marijuana product traceability.
23 Disclosure to local, state, and federal officials is not considered
24 public disclosure for purposes of this section; ((and))

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

37 (27) Proprietary financial, commercial, operations, and technical
38 and research information and data submitted to or obtained by the
39 liquor and cannabis board in applications for marijuana research
40 licenses under RCW 69.50.372, or in reports submitted by marijuana

1 research licensees in accordance with rules adopted by the liquor and
2 cannabis board under RCW 69.50.372; and

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

7 NEW SECTION. **Sec. 16.** A new section is added to chapter 82.04
8 RCW to read as follows:

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

12 (2) This section is not subject to the requirements of RCW
13 82.32.805 and 82.32.808, and is not subject to an expiration date.

14 **Sec. 17.** RCW 43.21B.110 and 2013 c 291 s 33 are each amended to
15 read as follows:

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

23 (a) Civil penalties imposed pursuant to RCW 18.104.155,
24 70.94.431, 70.105.080, 70.107.050, section 7 of this act, 76.09.170,
25 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
26 90.56.310, 90.56.330, and 90.64.102.

27 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
28 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
29 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

32 (d) Except as provided in RCW 90.03.210(2), the issuance,
33 modification, or termination of any permit, certificate, or license
34 by the department or any air authority in the exercise of its
35 jurisdiction, including the issuance or termination of a waste
36 disposal permit, the denial of an application for a waste disposal
37 permit, the modification of the conditions or the terms of a waste

1 disposal permit, or a decision to approve or deny an application for
2 a solid waste permit exemption under RCW 70.95.300.

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

5 (f) Decisions of local health departments regarding the issuance
6 and enforcement of permits to use or dispose of biosolids under RCW
7 70.95J.080.

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

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

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

21 (j) Decisions of the department of natural resources, the
22 department of fish and wildlife, and the department that are
23 reviewable under chapter 76.09 RCW, and the department of natural
24 resources' appeals of county, city, or town objections under RCW
25 76.09.050(7).

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

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

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

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

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

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

1 (b) Hearings conducted by the department pursuant to RCW
2 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
3 90.44.180.

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

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

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

11 **Sec. 18.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
12 read as follows:

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

20 (a) Civil penalties imposed pursuant to RCW 18.104.155,
21 70.94.431, 70.105.080, 70.107.050, section 7 of this act, 76.09.170,
22 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
23 90.56.310, 90.56.330, and 90.64.102.

24 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
25 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
26 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

37 (e) Decisions of local health departments regarding the issuance
38 and enforcement of permits to use or dispose of biosolids under RCW
39 70.95J.080.

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

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

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

14 (i) Decisions of the department of natural resources, the
15 department of fish and wildlife, and the department that are
16 reviewable under chapter 76.09 RCW, and the department of natural
17 resources' appeals of county, city, or town objections under RCW
18 76.09.050(7).

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20 public lands under RCW 76.06.180.

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22 deny, condition, or modify a hydraulic project approval permit under
23 chapter 77.55 RCW.

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

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

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31 board:

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33 hearings board pursuant to chapter 90.58 RCW.

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35 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
36 90.44.180.

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

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

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

4 NEW SECTION. **Sec. 19.** Section 17 of this act expires June 30,
5 2019.

6 NEW SECTION. **Sec. 20.** Section 18 of this act takes effect June
7 30, 2019.

8 NEW SECTION. **Sec. 21.** Sections 1 through 14 of this act
9 constitute a new chapter in Title 70 RCW.

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