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**SUBSTITUTE HOUSE BILL 1652**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** House Environment & Energy (originally sponsored by Representatives Peterson, DeBolt, Goodman, Fitzgibbon, Appleton, Ortiz-Self, Hudgins, Orwall, Jenkins, Sells, Tharinger, Kloba, Senn, Pollet, Stanford, Bergquist, and Macri)

READ FIRST TIME 02/18/19.

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

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

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

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

1 cost of managing unwanted architectural paints and these costs  
2 decrease the available funds to address other hazardous and hard-to-  
3 handle materials.

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

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

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

16 (ii) Promotes the reuse of leftover paint;

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

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

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

25 (i) Reduce consumer generation of leftover paint;

26 (ii) Reuse;

27 (iii) Recycle; and

28 (iv) Provide for energy recovery and disposal.

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

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

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

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

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

15 (1) (a) "Architectural paint" or "paint" means interior and  
16 exterior architectural coatings, sold in a container of five gallons  
17 or less.

18 (b) "Architectural paint" or "paint" does not mean industrial  
19 coatings, original equipment coatings, or specialty coatings.

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

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

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

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

1 (6) "Covered entity" means any: (a) Household; (b) conditionally  
2 exempt small quantity generator of leftover oil-based and latex  
3 architectural paint; or (c) generator of dangerous waste as defined  
4 in RCW 70.105.010 that brings leftover architectural latex paint to a  
5 paint program collection site operating under an approved Washington  
6 state paint 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, provided by a solid waste collection company regulated  
13 under chapter 81.77 RCW or under a contract for solid waste services  
14 with any city or town.

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

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

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

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

28 (12) "Environmentally sound management practices" means practices  
29 that comply with all applicable laws and rules to protect workers,  
30 public health, and the environment, provide for adequate  
31 recordkeeping, tracking and documenting the fate of materials within  
32 the state and beyond, and include environmental liability coverage  
33 for the stewardship organization.

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

38 (14) "Household hazardous waste" means waste that exhibits any of  
39 the properties of dangerous waste that is exempt from regulation  
40 under chapter 70.105 RCW solely because the waste is generated by

1 households. Household hazardous waste may also include other solid  
2 waste identified in the local hazardous waste management plan  
3 prepared pursuant to chapter 70.105 RCW.

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

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

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

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

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

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

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

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

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

32 (24) "Urban cluster" means areas of population density of two  
33 thousand five hundred to fifty thousand, as defined by the United  
34 States census bureau.

35 (25) "Urbanized area" means areas of high population density with  
36 populations of fifty thousand or greater, as defined by the United  
37 States census bureau.

38 NEW SECTION. **Sec. 3.** (1) All producers of architectural paint  
39 selling in or into the state of Washington shall participate in an

1 approved Washington state paint stewardship plan for covered entities  
2 through membership in and appropriate funding of a stewardship  
3 organization.

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

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

9 NEW SECTION. **Sec. 4.** (1) A stewardship organization  
10 representing producers shall submit a plan for the implementation of  
11 a paint stewardship program to the department for approval by May 30,  
12 2020, or within one year of the effective date of this section,  
13 whichever comes later. The plan must include the following  
14 components:

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

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

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

1 organization on behalf of the producer for the producer's  
2 architectural paint sold by the distributor or paint retailer in the  
3 state. Each Washington paint retailer or distributor must add the  
4 assessment to the purchase price of all architectural paint sold in  
5 this state. Manufacturers may not require retailers to opt to  
6 participate in a voluntary remittance agreement;

7 (d) The establishment in the plan of a uniform architectural  
8 paint stewardship assessment for all architectural paint sold in this  
9 state, in order to ensure that the funding mechanism is equitable and  
10 sustainable. For purposes of establishing the assessment, the plan  
11 must categorize the sizes of paint containers sold at retail and  
12 determine a uniform assessment amount that applies to each category  
13 of container size. The architectural paint stewardship assessment  
14 must be sufficient to recover the costs of the architectural paint  
15 stewardship program. With the exception of the annual administration  
16 costs paid to the department under section 6(4) of this act, the  
17 department may not control or have spending authority related to the  
18 funds received by the stewardship organization from the assessment.  
19 Funds received by the stewardship organization are not state funds  
20 and are not eligible to be transferred for other state purposes in an  
21 appropriations act. The plan must require that any surplus funds  
22 generated from the funding mechanism that exceed a reserve greater  
23 than the most recent year's operating expenditures be put back into  
24 the program to either increase and improve program services or reduce  
25 the cost of the program and the architectural paint stewardship  
26 assessment, or both;

27 (e) A review by an independent financial auditor of the proposed  
28 architectural paint stewardship assessment to ensure that any added  
29 cost to paint sold in the state as a result of the paint stewardship  
30 program does not exceed the costs of the program. In a report to the  
31 department, the independent auditor must verify that the amount added  
32 to each unit of paint will cover the costs of the paint stewardship  
33 program;

34 (f) Assignment to the department of responsibility for the  
35 approval of the architectural paint stewardship assessment based on  
36 the information provided in the plan and the auditor's report;

37 (g) A description of the educational outreach strategy to reduce  
38 the generation of leftover paint, to promote the reuse and recycling  
39 of leftover paint, for the overall collection of leftover paint, and  
40 for the proper end-of-life management of leftover paint. The

1 strategies may be revised by a stewardship organization based on the  
2 information collected annually;

3 (h) A description of the reasonably convenient and available  
4 statewide collection system, including:

5 (i) A description of how the program will provide for reasonably  
6 convenient and available statewide collection of leftover paint from  
7 covered entities in urban and rural areas of the state, including  
8 island communities;

9 (ii) A description of how the program will incorporate existing  
10 public and private waste collection services and facilities for  
11 activities, which may include, but is not limited to:

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

14 (B) The collection, transportation, and recycling or proper  
15 disposal of leftover architectural paint;

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

20 (j) A description of education and outreach efforts to promote  
21 the paint stewardship program. The education and outreach efforts  
22 must include strategies for reaching all sectors of the population  
23 and describe how the paint stewardship program will evaluate the  
24 effectiveness of its education and outreach;

25 (k) A description of collection site procedural manuals for  
26 architectural paint products, including training procedures and  
27 electronic copies of materials that will be provided to collection  
28 sites; and

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

32 (2) (a) To ensure adequate collection coverage, the plan must use  
33 geographic information modeling and the information required under  
34 subsection (1) (h) of this section to determine the number and  
35 distribution of collection sites based on the following criteria: At  
36 least ninety percent of Washington residents must have a permanent  
37 collection site within a fifteen-mile radius; and unless otherwise  
38 approved by the department, one additional permanent site must be  
39 established for every thirty thousand residents of an urbanized area  
40 and for every urban cluster of at least thirty thousand residents



1 distributed to provide convenient and reasonably equitable access for  
2 residents within each.

3 (b) For the portion of the population that does not have a  
4 permanent collection location within a fifteen-mile radius, the plan  
5 must provide residents a reasonable opportunity to drop off leftover  
6 paint at collection events. The stewardship organization, in  
7 consultation with the department and the local community, will  
8 determine a reasonable frequency and location of these collection  
9 events, to be held in underserved areas. Special consideration is to  
10 be made for providing opportunities to island and geographically  
11 isolated populations.

12 (3)(a) Nothing in subsection (2) of this section prohibits a  
13 program plan from identifying an available curbside service for a  
14 specific area or population that provides convenient and reasonably  
15 equitable access for Washington residents that is at least equivalent  
16 to the level of convenience and access that would be provided by a  
17 collection site.

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

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

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

30 (6) 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 (7) A stewardship organization shall promote a paint stewardship  
34 program and provide consumers, covered entities, and paint retailers  
35 with educational and informational materials describing collection  
36 opportunities for leftover paint statewide, the architectural paint  
37 stewardship assessment used to finance the program, and promotion of  
38 waste prevention, reuse, and recycling. These materials may include,  
39 but are not limited to, the following:

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

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

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

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

14 (8) A stewardship organization must submit a new plan or plan  
15 amendment to the department for approval when there is a change to  
16 the amount of the assessment, if required by the department, or every  
17 five years, if the department deems it necessary.

18 NEW SECTION. **Sec. 5.** (1) Each stewardship organization shall  
19 submit a paint stewardship program plan in accordance with section 4  
20 of this act.

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

24 (3) A stewardship organization shall implement the paint  
25 stewardship program plan by November 30, 2020, or within six months  
26 after approval of a paint stewardship program plan under section 4 of  
27 this act, whichever is later.

28 (4) A stewardship organization shall submit an annual report by  
29 October 15, 2020, or a later date agreed to by the department,  
30 structured to be used as a basis for annual plan review by the  
31 department. The report must be based on the requirements outlined in  
32 section 8 of this act.

33 (5) A stewardship organization shall work with producers,  
34 distributors, paint retailers, and local governments to provide  
35 consumers with educational and informational materials describing  
36 collection opportunities for leftover paint statewide and promotion  
37 of waste prevention, reuse, and recycling of leftover paint.

38 (6) A stewardship organization shall pay an annual administrative  
39 fee, described in section 6 of this act, in an amount sufficient to

1 cover only the department's cost of administering and enforcing a  
2 paint stewardship program established under this chapter.

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

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

17 (3) The department shall provide oversight of a stewardship  
18 organization in the determination and implementation of the  
19 architectural paint stewardship assessment specified in section 4(1)  
20 of this act.

21 (4) The department shall identify the costs it incurs under this  
22 chapter. The department shall set the fee at an amount that, when  
23 paid by every stewardship organization or producer that submits a  
24 plan, is adequate to reimburse the department's full costs of  
25 administering and enforcing this chapter. The total amount of annual  
26 fees collected under this subsection must not exceed the amount  
27 necessary to reimburse costs incurred by the department to enforce  
28 and administer this chapter.

29 (5) A stewardship organization or producer subject to this  
30 chapter must pay the department's administrative fee under this  
31 subsection on or before June 30, 2020, and annually thereafter. The  
32 annual administrative fee may not exceed five percent of the  
33 aggregate assessment added to the cost of all architectural paint  
34 sold by producers in the state for the preceding calendar year.

35 (6) The department shall enforce this chapter.

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

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

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

7 (7) Upon the date the first plan is approved, the department  
8 shall post on its web site a list of producers and their brands for  
9 which the department has approved a plan pursuant to section 4 of  
10 this act. The department shall update the list of producers and  
11 brands participating under an approved program plan on a monthly  
12 basis based on information provided to the department from a  
13 stewardship organization.

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

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

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

23 NEW SECTION. **Sec. 7.** (1) A producer or paint retailer may not  
24 sell or offer for sale to any person in the state architectural paint  
25 unless the producer or brand of architectural paint is participating  
26 in an approved stewardship plan under this chapter. A retailer  
27 complies with the requirements of this section if, on the date the  
28 architectural paint was ordered from the producer or its agent, the  
29 producer of the paint was listed on the department's web site as a  
30 producer participating in an approved paint stewardship program plan.  
31 However, a retailer may sell any paint purchased prior to the  
32 effective date of this section.

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

37 (3) At the time of sale to a consumer, a producer, a stewardship  
38 organization, or a paint retailer selling or offering architectural  
39 paint for sale in Washington shall provide the consumer with

1 information regarding available end-of-life management options for  
2 leftover architectural paint collected through a paint stewardship  
3 program.

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

6 (5) No fee may be charged at the time of delivery of leftover  
7 paint to a collection site.

8 NEW SECTION. **Sec. 8.** (1) By October 15, 2020, and annually  
9 thereafter, a stewardship organization shall submit to the department  
10 a report describing the paint stewardship program that the  
11 stewardship organization implemented during the previous fiscal year.  
12 The report must include all of the following:

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

16 (b) The volume of latex and oil-based architectural paint  
17 collected by the stewardship organization in the preceding fiscal  
18 year in Washington, including any increase in total volume of paint  
19 collected each year, and the cost of the paint stewardship program  
20 per gallon of paint collected;

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

24 (d) An estimate of the total weight of all paint containers  
25 recycled by the program;

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

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

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

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

37 (i) The total cost of implementing the paint stewardship program  
38 broken out by administrative, collection, transportation and  
39 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  
3 improve 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  
6 organization provided to consumers of architectural paint during the  
7 first year of the program and any changes to those materials in  
8 subsequent years.

9 (2) The department must make all reports submitted under this  
10 section available to the general public through the internet.  
11 Consistent with section 13 of this act, valuable commercial  
12 information submitted to the department under this chapter is exempt  
13 from public disclosure under RCW 42.56.270. However, the department  
14 may use and disclose such information in summary or aggregated form  
15 as long as the disclosure does not directly or indirectly identify  
16 financial, production, or sales data of an individual producer or  
17 stewardship organization. The department is not required to notify  
18 individual producers prior to making available to the general public  
19 the reports submitted under this section or aggregated or summarized  
20 information from reports submitted under this section.

21 NEW SECTION. **Sec. 9.** Producers or stewardship organizations  
22 acting on behalf of producers that prepare, submit, and implement a  
23 paint stewardship program plan pursuant to section 4 of this act and  
24 thereby are subject to regulation by the department are granted  
25 immunity from state laws relating to antitrust, restraint of trade,  
26 unfair trade practices, and other regulation of trade and commerce,  
27 for the limited purpose of planning, reporting, and operating a paint  
28 stewardship program and proposing and establishing the architectural  
29 paint stewardship assessment required in section 4(1) (c) and (d) of  
30 this act.

31 NEW SECTION. **Sec. 10.** The paint product stewardship account is  
32 created in the state treasury. All receipts received by the  
33 department from stewardship organizations must be deposited in the  
34 account. Moneys in the account may be spent only after appropriation.  
35 Expenditures from the account may be used by the department only for  
36 administering and enforcing paint stewardship programs.

1        NEW SECTION.    **Sec. 11.**    This chapter is void if a federal law, or  
2 a combination of federal laws, takes effect that establishes a  
3 national program for the collection and recycling of architectural  
4 paint that substantially meets the intent of this chapter, including  
5 the creation of a funding mechanism for collection, transportation,  
6 recycling, and proper disposal of all architectural paint in the  
7 United States.

8        NEW SECTION.    **Sec. 12.**    Nothing in this chapter changes or limits  
9 the authority of the Washington utilities and transportation  
10 commission to regulate collection of solid waste, including curbside  
11 collection of residential recyclable materials, nor does this chapter  
12 change or limit the authority of a city or town to provide the  
13 service itself or by contract under RCW 81.77.020.

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

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

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

1       **Sec. 14.** RCW 42.56.270 and 2018 c 201 s 8008, 2018 c 196 s 21,  
2 and 2018 c 4 s 9 are each reenacted and amended to read as follows:

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

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

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

14       (3) Financial and commercial information and records supplied by  
15 private persons pertaining to export services provided under chapters  
16 43.163 and 53.31 RCW, and by persons pertaining to export projects  
17 under RCW 43.23.035;

18       (4) Financial and commercial information and records supplied by  
19 businesses or individuals during application for loans or program  
20 services provided by chapters 43.325, 43.163, 43.160, 43.330, and  
21 43.168 RCW, or during application for economic development loans or  
22 program services provided by any local agency;

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

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

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

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

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



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

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

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

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

23 (i) Financial and proprietary information collected from any  
24 person and provided to the department of commerce pursuant to RCW  
25 43.330.050(8); and

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

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

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

38 (d) If there is no written contact for a period of sixty days to  
39 the department of commerce from a person connected with siting,  
40 recruitment, expansion, retention, or relocation of that person's

1 business, information described in (a)(ii) of this subsection will be  
2 available to the public under this chapter;

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

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

12 (15) Financial and commercial information provided as evidence to  
13 the department of licensing as required by RCW 19.112.110 or  
14 19.112.120, except information disclosed in aggregate form that does  
15 not permit the identification of information related to individual  
16 fuel licensees;

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

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

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

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

33 (19) Information gathered under chapter 19.85 RCW or RCW  
34 34.05.328 that can be identified to a particular business;

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

1 fund or to result in private loss to the providers of this  
2 information;

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

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

12 (23) Unaggregated or individual notices of a transfer of crude  
13 oil that is financial, proprietary, or commercial information,  
14 submitted to the department of ecology pursuant to RCW  
15 90.56.565(1)(a), and that is in the possession of the department of  
16 ecology or any entity with which the department of ecology has shared  
17 the notice pursuant to RCW 90.56.565;

18 (24) Financial institution and retirement account information,  
19 and building security plan information, supplied to the liquor and  
20 cannabis board pursuant to RCW 69.50.325, 69.50.331, 69.50.342, and  
21 69.50.345, when filed by or on behalf of a licensee or prospective  
22 licensee for the purpose of obtaining, maintaining, or renewing a  
23 license to produce, process, transport, or sell marijuana as allowed  
24 under chapter 69.50 RCW;

25 (25) Marijuana transport information, vehicle and driver  
26 identification data, and account numbers or unique access identifiers  
27 issued to private entities for traceability system access, submitted  
28 by an individual or business to the liquor and cannabis board under  
29 the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and  
30 69.50.345 for the purpose of marijuana product traceability.  
31 Disclosure to local, state, and federal officials is not considered  
32 public disclosure for purposes of this section;

33 (26) Financial and commercial information submitted to or  
34 obtained by the retirement board of any city that is responsible for  
35 the management of an employees' retirement system pursuant to the  
36 authority of chapter 35.39 RCW, when the information relates to  
37 investments in private funds, to the extent that such information, if  
38 revealed, would reasonably be expected to result in loss to the  
39 retirement fund or to result in private loss to the providers of this  
40 information except that (a) the names and commitment amounts of the

1 private funds in which retirement funds are invested and (b) the  
2 aggregate quarterly performance results for a retirement fund's  
3 portfolio of investments in such funds are subject to disclosure;

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

10 (28) Trade secrets, technology, proprietary information, and  
11 financial considerations contained in any agreements or contracts,  
12 entered into by a licensed marijuana business under RCW 69.50.395,  
13 which may be submitted to or obtained by the state liquor and  
14 cannabis board; (~~and~~)

15 (29) Financial, commercial, operations, and technical and  
16 research information and data submitted to or obtained by the Andy  
17 Hill cancer research endowment program in applications for, or  
18 delivery of, grants under chapter 43.348 RCW, to the extent that such  
19 information, if revealed, would reasonably be expected to result in  
20 private loss to providers of this information; (~~and~~)

21 (30) Proprietary information filed with the department of health  
22 under chapter 69.48 RCW; and

23 (31) Records filed with the department of ecology under chapter  
24 70.--- RCW (the new chapter created in section 17 of this act) that a  
25 court has determined are confidential valuable commercial information  
26 under section 13 of this act.

27 NEW SECTION. Sec. 15. A new section is added to chapter 82.04  
28 RCW to read as follows:

29 (1) This chapter does not apply to the receipts attributable to  
30 the assessment on architectural paint imposed pursuant to chapter  
31 70.--- RCW (the new chapter created in section 17 of this act).

32 (2) This section is not subject to the requirements of RCW  
33 82.32.805 and 82.32.808, and is not subject to an expiration date.

34 **Sec. 16.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to  
35 read as follows:

36 (1) The hearings board shall only have jurisdiction to hear and  
37 decide appeals from the following decisions of the department, the  
38 director, local conservation districts, the air pollution control

1 boards or authorities as established pursuant to chapter 70.94 RCW,  
2 local health departments, the department of natural resources, the  
3 department of fish and wildlife, the parks and recreation commission,  
4 and authorized public entities described in chapter 79.100 RCW:

5 (a) Civil penalties imposed pursuant to RCW 18.104.155,  
6 70.94.431, 70.105.080, 70.107.050, section 6 of this act, 76.09.170,  
7 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,  
8 90.56.310, 90.56.330, and 90.64.102.

9 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
10 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
11 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

22 (e) Decisions of local health departments regarding the issuance  
23 and enforcement of permits to use or dispose of biosolids under RCW  
24 70.95J.080.

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

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

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

38 (i) Decisions of the department of natural resources, the  
39 department of fish and wildlife, and the department that are  
40 reviewable under chapter 76.09 RCW, and the department of natural

1 resources' appeals of county, city, or town objections under RCW  
2 76.09.050(7).

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

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

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

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

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

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

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

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

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

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

28 NEW SECTION. **Sec. 17.** Sections 1 through 13 of this act  
29 constitute a new chapter in Title 70 RCW.

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