

# HOUSE BILL REPORT

## HB 2553

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**As Reported by House Committee On:**  
Ecology & Parks

**Title:** An act relating to the management of hazardous wastes in Puget Sound.

**Brief Description:** Regarding the management of hazardous wastes in Puget Sound.

**Sponsors:** Representatives Dickerson, Hudgins, Lantz and Schual-Berke.

**Brief History:**

**Committee Activity:**

Ecology & Parks: 1/25/08, 2/1/08 [DPS].

**Brief Summary of Substitute Bill**

- Requires the Department of Ecology to, as part of its participation in a previously scheduled annual review of the Dredged Material Management Program, initiate a stakeholder discussion to review and consider changes to the existing dredge management program as it relates to polychlorinated biphenyls.

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### HOUSE COMMITTEE ON ECOLOGY & PARKS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Upthegrove, Chair; Rolfes, Vice Chair; Dickerson, Dunshee, Eickmeyer and O'Brien.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Sump, Ranking Minority Member; Kristiansen and Pearson.

**Staff:** Jason Callahan (786-7117).

**Background:**

The Department of Ecology (DOE), the Department of Natural Resources, the U.S. Environmental Protection Agency, and the U.S. Army Corps of Engineers jointly regulate dredging projects that occur in Puget Sound. These four agencies operate the Dredged Material Management Program (DMMP). The DMMP requires all dredging project sponsors to complete a sampling and analysis plan prior to starting a dredging project. The sampling

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and analysis plan is reviewed by the four agencies involved with the DMMP and is used to determine whether the project is suitable for moving forward.

The DMMP was created in 1985 in response to concerns about the degradation of the water quality in Puget Sound. Each year, the four agencies convene a public process to discuss potential improvements to the DMMP.

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**Summary of Substitute Bill:**

The DOE is required to, as part of its participation in the previously scheduled annual review of the DMMP, initiate a stakeholder discussion to review and consider changes to the existing dredge management program as it relates to polychlorinated biphenyls. A summary of the discussion, as well as the anticipated next steps forward, are to be reported to the Legislature in December 2008.

**Substitute Bill Compared to Original Bill:**

The original bill required public entities planning to dispose of sediment or other materials containing detectable traces of hazardous waste to receive express confirmation from the Puget Sound Partnership that the action is not inconsistent with the Puget Sound Action Agenda or other plans to restore the health of Puget Sound.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note on substitute bill requested on January 31, 2008.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:**

(In support) The state is investing millions of dollars into Puget Sound, and it should not allow its actors to undermine that investment. Currently, there is a problem with dredge spoil disposals. Sites that are listed as contaminated under the Model Toxics Control Act (MTCA) are routinely dredged and disposed in areas designated only for low-risk materials. Upland disposal of these materials is the superior course of action.

The problem with spoils management lies with the sampling protocols used to determine toxicity levels. Testing for dredge spoils is less stringent than testing for toxicity under the MTCA. The testing protocol does not recognize that diluted toxic material is still toxic. Toxic chemicals in sediment have been linked to Orca mortality and bioaccumulation that eventually enters the human food chain.

During the summer of 2007 the Port of Seattle intended to dump toxins-laden sediment into Puget Sound. The DOE had already issued a permit allowing the action, and the port only changed its course once a public outcry was registered.

This is a new day for the Puget Sound, and old issues deserve fresh looks. Many entities are dutifully following the law, but perhaps some of the laws are outdated and need to be reconsidered.

Requiring the Puget Sound Partnership (PSP) to sign-off on proposed public actions is not a regulatory action. Regulations are between the state and a private actor. The Legislature can mandate communication and consultation between its creations without it being regulatory. Likely, the PSP will never have to make a decision because the knowledge of their oversight will change behavior before a project ever gets all the way to the PSP.

(With concerns) The PSP may not be the best entity to provide this sort of oversight. The PSP wants to remain non-regulatory and avoid conflict with its enabling legislation. The more regulatory the PSP appears, the less it will be able to develop working relationships with its partners. The timing of permit decisions by the PSP is awkward if those decisions are to be made before the completion of the Puget Sound Action Agenda (Action Agenda). After the Action Agenda is developed, the local partners will have guidance as to how issues such as dredge spoil management should be handled.

(Neutral) The standards for dredging are currently being reviewed by the involved state and federal agencies, and the review will include how dioxin is regulated. The review may take nine months to complete, followed by another 18 months of formal rulemaking.

(Opposed) Twenty years ago, the management of dredge spoils in the Puget Sound was lacking. In the 1980s, two state and two federal agencies came together and developed the management process in place today. Currently, dredging occurs only after the DOE applies rigorous standards and guidelines to the proposed project. The standards were developed with the input of many different agencies, including the PSP's predecessor agency. The guidelines require a series of tests with both chemical and biological analyses. The disposal sites are carefully selected and monitored, and the public is involved.

The requirements of the bill are unwarranted given the level of scrutiny given to dredge spoils. The Port of Seattle project moved materials that were actually cleaner than the site that received them. The toxins in the material were bound in the sediment column and biologically unavailable to biota. The agencies involved did their job correctly. Changes to the process will only create uncertainty in waterfront dredging projects that are beneficial to both the economy and the environment.

The PSP already has too big of a job, and adding new requirements will only make that job more challenging. The PSP was understood to be a non-regulatory agency, and this bill allows it to supercede the authority of the DOE and gives it the authoritative ability to deny dredging projects.

**Persons Testifying:** (In support) Representative Dickerson, prime sponsor; and Miguel Perez-Gibson, Puget Soundkeeper.

(With concerns) Bruce Wishart, People for Puget Sound.

(Neutral) Gordon White, Department of Ecology; and Jim Cahill, Puget Sound Partnership.

(Opposed) Eric Johnson, Washington Public Ports Association; and Grant Nelson, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying:** None.