

HOUSE BILL REPORT

ESSB 5372

As Reported by House Committee On:

Puget Sound, Select
Appropriations

Title: An act relating to the Puget Sound partnership.

Brief Description: Creating the Puget Sound partnership.

Sponsors: Senate Committee on Water, Energy & Telecommunications (originally sponsored by Senators Rockefeller, Swecker, Poulsen, Marr, Keiser, Shin, Kline, McAuliffe, Fraser, Kilmer and Murray; by request of Governor Gregoire).

Brief History:

Committee Activity:

Select Committee on Puget Sound: 3/23/07, 3/28/07 [DPA];
Appropriations: 3/31/07 [DPA(APP w/o PUGT)s].

Brief Summary of Engrossed Substitute Bill (As Amended by House Committee)

- Creates the Puget Sound Partnership, a new state agency, to clean up and restore the environmental health of Puget Sound by the year 2020.
- Creates an action agenda to achieve clean-up and restoration goals.
- Creates four organizational entities within the Puget Sound Partnership.

HOUSE SELECT COMMITTEE ON PUGET SOUND

Majority Report: Do pass as amended. Signed by 7 members: Representatives Upthegrove, Chair; Eickmeyer, Vice Chair; Rolfes, Vice Chair; Sump, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; O'Brien and Springer.

Minority Report: Do not pass. Signed by 1 member: Representative Pearson.

Staff: Karen Rogers (786-7388).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Description of Puget Sound

Puget Sound is a 2,800 square-mile inland water connected to the Pacific Ocean via the Strait of Juan de Fuca in the Pacific Northwest of the United States. It extends from Admiralty Inlet in the north, to Olympia, Washington, in the south.

Puget Sound waters include open marine waters; inland marine waters; glacially scoured fjords such as Hood Canal; numerous river and stream channels; and 2,500 miles of shoreline. Its basin, the land area whose freshwaters drain into the sound, encompasses water resource inventory areas one through 19, and extends into 12 counties: Clallam; Island; Jefferson; King; Kitsap; Mason; Pierce; San Juan; Skagit; Snohomish; Thurston; and Whatcom.

Environmental Entities

Dozens of state agencies, federal agencies, local governments, not-for-profits, and other environmental organizations address the environmental health of Puget Sound. Two state agencies are of particular note. One is the Puget Sound Action Team (PSAT), and the other is the Shared Strategy Salmon Recovery Council (Shared Strategy).

The PSAT was created in 1996 as the lead state agency to restore and protect the biological health and diversity of Puget Sound. A few of its primary duties include preparing a Puget Sound work plan and budget; coordinating monitoring and research programs; and contracting works to address the environmental health of Puget Sound. It is led by the PSAT chair, and consists of the directors of several major state agencies, including Ecology; Agriculture; Natural Resources; and Fish and Wildlife.

Shared Strategy acts as the lead salmon-recovery regional entity. As such, it may plan, coordinate, and monitor the implementation of a regional salmon-recovery plan for Puget Sound.

Summary of Amended Bill:

A new state agency, called the Puget Sound Partnership (Partnership), is created with the task of cleaning up and restoring Puget Sound by the year 2020. The Partnership has several major components:

- the Action Agenda, which identifies and prioritizes the necessary actions;
- the Leadership Council, which leads the Partnership;
- the executive director, who administers the agency;
- the Puget Sound Science Panel, consisting of technical and scientific representatives; and
- the Ecosystem Coordination Board, which advises the council on ecosystem-scale restoration.

Goals and Objectives

The Leadership Council develops the Action Agenda based upon six goals and eight objectives. The goals are to achieve the following:

- (1) a healthy human population supported by a healthy Puget Sound that is not threatened by changes in the ecosystem;
- (2) a quality of human life that is sustained by a functioning Puget Sound ecosystem;
- (3) healthy and sustaining populations of native species in Puget Sound, including a robust food web;
- (4) a healthy Puget Sound where freshwater, estuary, nearshore, marine, and upland habitats are protected, restored, and sustained;
- (5) an ecosystem that is supported by groundwater levels as well as river- and stream-flow levels sufficient to sustain people, fish, wildlife, and the natural functions of the environment; and
- (6) fresh and marine waters and sediments of a sufficient quality so that the waters in the region are safe for drinking, swimming, and other human uses and enjoyment, and are not harmful to the native marine mammals, fish, birds, and shellfish in the region.

The eight objectives are designed to achieve the goals. The objectives are:

- (1) protect existing habitat and prevent further losses;
- (2) restore habitat functions and values;
- (3) significantly reduce toxics entering Puget Sound fresh and marine waters;
- (4) significantly reduce nutrients and pathogens entering Puget Sound fresh and marine waters;
- (5) improve water quality and habitat by managing storm-water runoff;
- (6) provide water for people, fish and wildlife, and the environment;
- (7) protect ecosystem biodiversity and recover imperiled species; and
- (8) build and sustain the capacity for action.

Action Agenda

The Leadership Council develops, approves, and oversees the Action Agenda (Agenda), which serves as the comprehensive conservation and management plan for Puget Sound restoration, as well as the platform from which biennial implementation strategies and updates stem. The Agenda is science-based and addresses all geographic areas of Puget Sound. It describes the problems, and sets measurable outcomes, near- and long-term benchmarks, and objectives. It identifies and prioritizes strategies and actions, including those for each of the seven regional action areas, and identifies responsible entities. The Agenda incorporates actions to carry out the biennial science work plans, as well as existing plans as appropriate.

The Leadership Council shall adopt the initial Agenda by September 1, 2008, and revise it as needed. Until the initial adoption, the existing *Puget Sound Management Plan* and the 2007-2009 Puget Sound biennial plan shall remain in effect.

Leadership Council

The Leadership Council (Council) consists of seven members appointed by the Governor with the advice and consent of the Senate. The Governor designates one of the seven members to serve as chair, and the Council members annually select a vice-chair amongst themselves. Appointment terms are four years, except for the initial appointments, which are staggered.

The Council has the authority and duty to provide leadership, and to develop, adopt, revise, and guide the implementation of the Agenda. It also has the authority and duty to allocate Partnership funds; provide progress and other reports; set strategic priorities and benchmarks; adopt and apply accountability measures; appoint the Ecosystem Coordination Board and Puget Sound Science Panel; adopt procedural rules to carry out internal Partnership management; create subcommittees; enter into, amend, and terminate contracts with individuals, corporations, and research institutions; make grants; and promote public awareness, education, and participation.

The Council and the Partnership replace and assume the authorities of Shared Strategy and PSAT, respectively. The Council becomes the new regional organization for Puget Sound salmon recovery; and the Partnership inherits all of PSAT's duties and functions, and all but one of PSAT's powers upon PSAT's abolishment. The power not transferred to the Partnership is PSAT's authority over the Shellfish On-site Sewage Grant Program, which is transferred to the Department of Health.

Additional Council duties include: (1) working closely with existing organizations and all levels of government; (2) conforming to the 1989 Centennial Accord procedures and standards when working with federally recognized Indian tribes; (3) submitting funding recommendations to the Governor and Legislature; (4) recommending statutory changes to improve effectiveness; and (5) defining regional, geographic action areas. The Council may delegate its functions to the Council chair and to the executive director, except for its decision-making authority of developing and amending the Agenda.

Executive Director

The executive director (director) is appointed by the Governor in consultation with the Council, and serves at the pleasure of the Governor. The director's functions are to administer the Partnership with direction of the Council, and to serve as a communication link between all the entities, whether they be governmental or private sector, involved with the Agenda and restoration of Puget Sound. The director compiles and assesses ecosystem-scale management, restoration, and protection plans in tandem with the Ecosystem Coordination Board.

Puget Sound Science Panel

The Puget Sound Science Panel (Science Panel) consists of nine members nominated by the Washington Academy of Sciences and appointed by the Council. The Science Panel selects a chair and vice-chair, and the director designates one of the members as a lead staff scientist to coordinate Science Panel actions and administrative staff. Appointment terms are four years except for the initial members, whose terms are staggered. No member may serve longer than 12 years.

The Science Panel assists the Council, the director, and the Ecosystem Coordination Board in developing, preparing, and revising the Agenda, and assists the Partnership in developing an ecosystem-level strategic science program. Additional duties include identifying environmental indicators, recommending benchmarks, and developing a strategic science program and a biennial science work plan.

Ecosystem Coordination Board

The Ecosystem Coordination Board (Coordination Board) consists of 23 members total, 14 of whom are appointed by the Council, and six of whom are invited by the Governor. Council-appointed members include one representative each from seven geographic action areas, two from business interests, two from environmental interests, and one county, one city, and one port representative. The remaining three members are from state agencies, one of whom is the Commissioner of Public Lands or his or her designee. In addition, the Coordination Board has four legislative liaisons. The Coordination Board elects one of its members as chair, and one as vice-chair.

The Coordination Board's duties include advising and assisting the Council in developing and implementing the Agenda; assisting participating entities to compile local programs for inclusion into the Agenda; seeking public and private funding; fostering communication and collaborative efforts among governmental and private-sector entities; assisting the Council to conduct public-education activities; and assessing ecosystem-scale management projects and programs for inclusion into the Agenda. In addition, the Coordination Board identifies conflicts and disputes among projects and programs, and may convene agency managers to reconcile those conflicts.

Action Areas

The Partnership shall organize sub-regional work into seven geographic action areas. The Council shall delineate these areas according to the Puget Sound's physical structure, water flows into and within Puget Sound, and common issues and interests of the participating entities.

Funding

Biennial Budget Requests. State agencies responsible for implementing elements of the Agenda submit their Agenda-implementation cost estimates to the Partnership by June 1 of each even-numbered year, and work with the Partnership in the development of an Agenda biennial budget request. The Council then submits the Agenda budget request to the Governor and Legislature by September 1 of every even-numbered year beginning in 2008. The budget request identifies funding by Agenda element, by funding responsibilities among entities, and by amounts needed to support Partnership administration as well as administration of entities assisting in coordinating local efforts.

Conditions. The Council shall adopt measures to ensure that funds appropriated for implementation of the Agenda and identified by proviso in the Omnibus Appropriations Act are expended in a manner that will achieve the intended results. The Council shall establish performance measures, and require reporting and tracking of expended funds. The Council may also adopt interagency agreements, and suspend or further condition such interagency-agreement funds for those entities that expend the funds contrarily to the Agenda. Entities that receive funds to implement the Agenda are required to publicly disclose said funds.

Financial Incentives and Disincentives. The Partnership designates entities that consistently achieve outstanding progress in implementing the Agenda as Puget Sound Partners, and endows them with grant and loan preferences. The Partnership also works with other state

agencies to establish criteria within grant and loan programs that prohibit funding to projects and activities that are in conflict with the Agenda.

Accountability

The Council is accountable for achieving the Agenda, and is held so by the Governor and Legislature via performance reports and audits performed by the Joint Legislative Audit and Review Committee. The Council, in turn, holds participating entities accountable through management conferences, by including their performance in publicly available reports, and by holding public meetings to present non-conforming actions. The Council may also recommend to the Governor and Legislature that funds to participating entities be withheld or re-conditioned.

Reports, Programs, Plans, and Audits

Basin-wide Restoration Progress Report. The Washington Academy of Sciences conducts a one-time assessment of basin-wide restoration progress. Progress includes success toward Agenda goals, and a determination of whether the environmental indicators and benchmarks accurately measure progress.

Biennial Science Work Plan. The Science Panel develops, and the Council approves, biennial science work plans, which identify specific biennial actions to be done over the course of the work plan. The plan, at a minimum, identifies recommendations from scientific and technical reports, describes science-related activities occurring in the Puget Sound region, recommends actions to fill gaps, and recommends improvements to on-going science work.

Biennial Update. The Council develops, in consultation with the Science Panel and the Board, biennial updates that detail implementation strategies using an adaptive management process. The updates detail prioritized biennial actions necessary to meet Agenda goals, objectives, and benchmarks; identify responsible parties; and establish biennial benchmarks.

Performance Audit. The Joint Legislative Audit and Review Committee audits the Partnership, with the first audit due December 1, 2011, and the second five years later. The audit determines the extent to which Partnership-expended and Agenda-tagged funds accomplish the Agenda's benchmarks and recovery goals, and the effectiveness and efficiency of the Agenda. It also includes recommendations to improve Partnership performance and structure, legislative policy, and budgetary action, and may be used as a basis for future changes to the Agenda.

Progress Reports. The Leadership Council submits a progress report to the Governor and Legislature by November 1, 2009, and every two years thereafter. The report details expenditure of funds and their results; whether entities spend the funds consistently with the Agenda or stipulated conditions; and those entities that achieve exemplary success in implementation. The report includes results of state-agency compliance, as well as state-agency enforcement of programs and acts regarding the Puget Sound environment.

Puget Sound Science Update. The Science Panel prepares the Puget Sound science update. The update describes current scientific understanding of the physical attributes of Puget

Sound, and serves as the scientific basis for the selection of environmental indicators, as well as for the status and trends of those indicators within the ecosystem framework.

State of the Sound Report. The director produces and distributes a State of the Sound report by November 1 of each odd-numbered year. The report includes an assessment of participating entities' progress, as well as their actions that are inconsistent with the Agenda. It also includes accomplishments, public comments, Science Panel findings, assessments of funding expenditures to state agencies, and how future spending can better match Agenda priorities.

State Program Review. The Council conducts a one-time review of state programs that fund facilities and activities that contribute to Agenda implementation, and then the Council reports associated recommendations to the Governor and Legislature by November 1, 2010. Recommendations may include proposed legislation, funding, program procedures, and criteria by which to allocate project funding.

Strategic Science Program. The Science Panel develops, and the Council adopts, a strategic science program, which addresses monitoring, modeling, data management, and research. The strategic science program serves as the scientific basis for determining environmental indicators. It also identifies science gaps, recommends research priorities, offers an ecosystem-wide perspective on the science work being conducted, and provides input in developing biennial implementation strategies.

Other Actions

- The Puget Sound Recovery Account is created.
- The Department of Health may use unexpended and unobligated funds from the Oyster Reserve Land Account, created in RCW 77.60.160, to fund research projects related to oyster reserves.

Amended Bill Compared to Engrossed Substitute Bill:

The amendment and Engrossed Substitute Senate Bill 5372 have differences in structural composition, functions, and authorities.

Structural Composition

The amendment removes the regional director of the Environmental Protection Agency as an *ex officio* member of the Council, thereby decreasing the Council membership from eight to seven, and adds the position of Council vice-chair. Engrossed Substitute Senate Bill 5372, the original bill, states that the Governor appoints the director from among those nominated by the Council, whereas the amendment states that the Governor appoints the director in consultation with the Council. The original bill allows for up to 15 Science Panel members; the amendment trims that number to nine. The original bill allows for an unlimited number of members onto the Ecosystem Work Group, which is chaired by state agency representatives. The amendment limits the Coordination Board, which is the quasi-equivalent of the Ecosystem Work Group, to a total membership of 23, and alters the number of members from various interest groups and governments.

Functions

The original bill has language that allows both the Science Panel and the Council to set benchmarks; the amendment changes this by stating that the Science Panel identifies the benchmarks, and the Council sets them. The original bill creates the Ecosystem Work Group, which focuses upon ecosystem-scale plans and restoration. Along with changing the name to Ecosystem Coordination Board, the substitute bill gives the Coordination Board additional functions, such as assisting in compilation of local plans and public education, and providing a forum for conflict resolution. The amendment also creates an incentive program.

Authorities

The original bill states that each state agency, county, city, and port district responsible for implementing provisions of the Agenda shall use its existing legal authority to the best of its ability when implementing the requirements of the Agenda. The amendment, on the other hand, states that nothing in the amendment limits or alters local governments' legal authorities.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 29, 2007.

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

Staff Summary of Public Testimony:

(In support) The bill does not intend that federal agencies have voting rights within a state agency; rather, the intent is for non-voting, *ex officio* federal representation. Also, it is not the intent to give the Partnership regulatory authority or to subvert other governments' authorities. With that being said, it is appropriate for the Partnership to exercise its abilities as best it can to accomplish its goals.

There is a lot of existing, on-going work, and it would be imprudent to ignore such resources. The bill acknowledges these resources, uses them, and finds the gaps amongst them; furthermore, such use of existing work stems confidence in the cohesion of the program.

The executive director should be appointed by the Governor, and from a 3-name list supplied by the Leadership Council; and the Leadership Council must be environmentally knowledgeable. The bill does all of this. It also creates a new way of doing business where everyone is pulling in the same direction. Not much progress was made in the last 20 years because of people digging in their heels, and that needs to change.

For efforts to work, the Partnership must have a credible Science Panel, and that requires a credible process to select those members. The bill achieves that by having the Washington Academy of Sciences review nominees. Also, it is important that the Science Panel not issue policy, and the bill sees to this as well.

The Senate version has three improvements over the House version. One, updating the Agenda needs to be an interactive, on-going process, and the Senate bill does this better than the House bill by updating the Agenda every two years rather than every six years. Two, the Senate version requires that the Partnership look at specific accounts and come back later, whereas the House bill is more demanding and requires too much up-front work. Three, the Senate version has the Ecosystem Work Group, which has a different focus than the House version's Science Advisory Committee. The Ecosystem Work Group is not a duplicative structure, but a temporary enhancement designed to bring the Partnership up to speed on basin-wide efforts and understanding.

Other favorable measures that the bill achieves are holding entities accountable; tracking results; creating incentives; defining sub-regions by marine watersheds; and creating a management process to update the laws as needed.

(In support with concerns) For the Partnership to be successful, it cannot have a strictly top-down or bottom-up process; it needs a back-and-forth process. This can be done by using aquatic rehabilitation zones for bottom-up communication and roll-up of plans, as well as by merging the House version's Coordination Board into the Senate bill. With that being said, the membership of the Coordination Board must be reduced in number while still retaining tribal and local representation.

Cleaning up the Puget Sound is an ambitious and expensive goal, and in order to do that, cost must be kept down. This can be done through an incentive-based approach, which will encourage more creative solutions and actions. It can also be done by keeping the actions very specific, and by sticking to the Agenda.

The Partnership may improve by compensating the Science Panel and the Ecosystem Work Group staff, and by restricting the Council from implementing works at the ground level. The Council's role should be for strict over-site.

Council members should come from a diversity of skills, not just be Bill Ruckelshaus clones. One suggested member is Jeff Bezos, founder of Amazon.com, who has skills in centralizing dispersed organizations.

The Partnership will work, but it needs compliance and sanctions. While funding incentives are wonderful, if success is to be achieved in such a tight time frame, there must be a whip, such as a robust accountability system. An accountability system should have four levels:

- grant preferences;
- actions inconsistent with the Agenda made ineligible to receive Agenda funds;
- substantial non-compliance sanctioned along the Growth Management Act model; and
- the state aligning its funds in accordance with the Agenda.

(Opposed) A new state agency is unnecessary, and should not be created. Rather than creating a new entity that will engender mass confusion and more lawsuits, look at the existing structures, agencies and laws and adjust accordingly. Also, the Ecosystem Work Group adds another layer of bureaucracy between the state and local government, which is unnecessary. Furthermore, the bill gives implementation regulatory authority when many regulations

already exist, some of which are the most restrictive in the country. The House bill is preferable in that it honors local governments more.

By prohibiting entities that are non-compliant with the Agenda from receiving funds, the Partnership may take money away from someone who may actually need it to protect the Sound.

The bill allows for artificial groupings, which should not be made just because they look better on paper.

Persons Testifying: (In support) Senator Rockefeller, prime sponsor; Clifford Traisman, Washington Conservation Voters; Naki Stevens, People for Puget Sound; Bill Robinson, The Nature Conservancy; Miguel Perez-Gibson, Puget Soundkeeper Alliance; Mel Oleson, Boeing Company; Eric Johnson, Washington Association of Counties; Dave Williams, Association of Washington Cities; and Fran McNair, Department of Natural Resources.

(In support with concerns) Grant Nelson, Association of Washington Business; Eric Johnson, Washington Public Ports Association; Debbie Hyde, Pierce County; and Lonnie Johnson-Brown, League of Women Voters.

(Opposed) Maxine Keesling; and Andrew Cook, Building Industry Association of Washington.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Select Committee on Puget Sound. Signed by 27 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Cody, Conway, Darneille, Ericks, Fromhold, Grant, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Morrell, Pettigrew, Priest, Schual-Berke, Seaquist and P. Sullivan.

Minority Report: Do not pass. Signed by 4 members: Representatives Buri, Chandler, Dunn and Kretz.

Staff: Alicia Dunkin (786-7178).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Select Committee on Puget Sound:

The intent language related to Hood Canal is modified from stating that Hood Canal is in serious decline to stating that Hood Canal is in a serious crisis. An emergency clause is added, and the bill takes effect July 1, 2007.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect July 1, 2007.

Staff Summary of Public Testimony:

(In support) We are in support of the bill but think there should be more funding for the Puget Sound Partnership because the bill adds an additional 14 employees to the agency and the fiscal note only increases funding by \$500,000.

(Opposed) None.

Persons Testifying: Bruce Wishart, People for Puget Sound.

Persons Signed In To Testify But Not Testifying: None.