

FINAL BILL REPORT

ESSB 5372

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Synopsis as Enacted

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).

Senate Committee on Water, Energy & Telecommunications

Senate Committee on Ways & Means

House Committee on Select Committee on Puget Sound

House Committee on Appropriations

Background: The Legislature created the Puget Sound Action Team (PSAT) in 1996 to define, coordinate, and implement the state's agenda for restoring the environmental health of Puget Sound. PSAT develops a biennial work plan and budget, oversees research and monitoring programs, updates a Puget Sound management plan, and coordinates restoration efforts of government entities.

The Puget Sound Partnership (Partnership), a gubernatorial advisory body created in 2005, worked for a year to develop a new strategy to protect and restore the health of Puget Sound by the year 2020. Among other recommendations, the Partnership proposed creating a new, ongoing Puget Sound Partnership to actively manage that task.

Summary: A new state agency, the Puget Sound Partnership (Partnership), is created to oversee restoration of the environmental health of Puget Sound by the year 2020. PSAT is abolished and most of its authority is transferred to the Partnership. An emergency clause provides that the bill takes effect July 1, 2007.

Puget Sound is defined as Puget Sound and related inland marine waters, including all salt waters inside the international boundary and east of the junction of the Pacific Ocean and Strait of Juan de Fuca, and rivers and streams draining to Puget Sound in Water Resource Inventory Areas 1-19 (which are set forth in administrative rules and encompass extensive upland areas in the Puget Sound basin).

The Partnership will include a Leadership Council (Council), an Executive Director, an Ecosystem Coordination Board (Board), and a Puget Sound Science Panel (Science Panel).

Leadership Council: The seven-member Council will lead the Partnership. Members will be appointed by the Governor to four-year terms with the advice and consent of the Washington State Senate, and will be compensated on a per diem basis and reimbursed for travel expenses. The Council's powers and duties will include:

- adopting and implementing an Action Agenda (see below); the Council must adopt the Action Agenda by September 1, 2008, revise it as needed, and biennially revise implementation strategies;
- allocating Puget Sound recovery funds and making grants;
- providing progress and other reports, including biennial budget requests (see Funding, below), the State of the Sound Report and a State Program Review (see Reports, Programs, Plans, and Audits, below);
- setting strategic priorities and benchmarks;
- adopting and applying Accountability measures (see Accountability, below), including performance measures and interagency agreements regarding expenditure of funds appropriated for implementing the Action Agenda (see Funding Conditions under Funding, below);
- appointing members of the Board and Science Panel (see below);
- contracting with individuals, corporations, and research institutions;
- promoting public awareness, education, and participation;
- creating a private nonprofit entity to assist in restoring Puget Sound;
- delineating regional Action Areas (see below);
- adopting a Strategic Science Program (see Reports, Programs, Plans, and Audits, below).
- providing a forum for conflict resolution and suggesting solutions (see Conflict Resolution, below); and
- acting as the new regional organization for Puget Sound salmon recovery.

Executive Director: The Executive Director will administer the Partnership, subject to Council guidance. He or she will be appointed by the Governor in consultation with the Council and serves at the pleasure of the Governor. The Executive Director's powers and duties will include:

- serving as a communication link between all levels of government, the private sector, tribes, nongovernmental organizations, the Council, the Board, and the Science Panel;
- employing a staff; the Partnership's professional staff are exempted from state civil service provisions;
- working with the Board to compile and assess ecosystem-scale management, restoration, and protection plans; and
- integrating and presenting proposed elements from watershed programs and ecosystem-level plans to the Council for inclusion in the Action Agenda.

Ecosystem Coordination Board: The 23-member Board will advise the Council on carrying out its responsibilities. The Board will include 14 members appointed by the Council: one representative from each of seven designated regional Action Areas (see below); two representatives of general business interests; two representatives of environmental interests; and one representative each of counties, cities, and port districts. The Board will also include three representatives of state agencies with Puget Sound environmental management responsibilities, one of whom will be the Commissioner of Public Lands. The Board will also include six members invited by the Governor: three representatives of Puget Sound tribes and three representatives of federal agencies. An additional four legislators, one representing each major caucus, will be appointed by the President of the Senate and the Speaker of the House

of Representatives as legislative liaisons to the Board. Some members will be reimbursed for travel expenses. The Board's powers and duties will include:

- advising and assisting the Council in developing and implementing the Action Agenda;
- assisting participating entities in compiling local programs for inclusion in the Action Agenda;
- seeking public and private funding;
- assisting the Council in conducting public education activities;
- recruiting involvement of and communication and collaborative efforts among governmental and private-sector entities;
- compiling and assessing ecosystem-scale management projects and programs for inclusion in the Action Agenda; and
- identifying conflicts and disputes among projects and programs; the Board may convene agency managers to reconcile those conflicts.

Puget Sound Science Panel: The nine-member Science Panel will provide independent scientific advice to the Council. Members will be selected and appointed by the Council to four-year terms from 15 nominees submitted by the Washington Academy of Sciences. The Executive Director will designate a lead staff scientist to coordinate Science Panel actions and staff. Members will be reimbursed for travel expenses, and the Council may contract for their services. The Science Panel's powers and duties will include:

- assisting the Council, Board and Executive Director in developing, preparing, and revising the Action Agenda;
- developing and providing oversight of a process for soliciting, prioritizing and funding research and modeling projects;
- identifying environmental indicators and recommending benchmarks to meet Action Agenda goals;
- assisting the Partnership in developing an ecosystem-level Strategic Science Program (see Reports, Programs, Plans, and Audits, below);
- developing a Puget Sound Science Update and a Biennial Science Work Plan (see Reports, Programs, Plans, and Audits, below); and
- guiding implementation and coordination of a Puget Sound assessment and monitoring program.

Action Agenda: The Action Agenda will:

- be the comprehensive schedule of projects, programs, and other activities designed to achieve a healthy Puget Sound ecosystem;
- be developed in part upon existing watershed programs compiled by local groups in seven regional Action Areas (see below) delineated by the Council;
- be based upon several goals and objectives. Goals include achieving healthy and sustaining native species populations, an ecosystem supported by adequate groundwater and stream-flow levels, and fresh and marine waters safe for human uses and not harmful to native species. Objectives include protecting existing habitat and preventing further losses, restoring habitat, reducing toxics and nutrients, managing stormwater runoff, and protecting ecosystem biodiversity;
- be science-based, address all geographic areas of Puget Sound, describe problems, set measurable outcomes and benchmarks, identify and prioritize strategies and

- actions, identify responsible entities, and incorporate appropriate actions to carry out the Biennial Science Work Plan (see Reports, Programs, Plans, and Audits, below);
- incorporate, as appropriate, existing recovery plans;
 - replace the existing Puget Sound management plan and the 2007-09 Puget Sound Biennial Plan, which will remain in effect until the Action Agenda is adopted; and
 - be adopted by the Council by September 1, 2008, and revised as needed. The Council will biennially revise implementation strategies.

Action Areas: The Partnership will organize subregional work into seven geographic Action Areas. The Council will delineate these areas according to physical structure, water flows, and common issues and interests of participating entities.

The Executive Director will invite appropriate tribes, local governments, and watershed groups to convene to compile existing watershed programs relating to the health of Puget Sound. Participants should work to identify applicable local plan elements, projects, and programs, together with estimated budgets, timelines, and proposed funding sources, suitable for adoption in the Action Agenda. This may include prioritizing plan elements, projects, and programs. The Partnership may provide assistance.

By July 1, 2008, the Executive Director will integrate and present proposed elements from watershed programs and ecosystem-level plans to the Council for consideration for inclusion in the Action Agenda.

Funding:

- *Biennial Budget Requests:* State agencies responsible for implementing Action Agenda elements must submit their implementation cost estimates to the Partnership by June 1 of each even-numbered year, and work with the Partnership in developing an Action Agenda biennial budget request. The Council will provide an Action Agenda biennial budget request to the Governor and Legislature by September 1 of every even-numbered year beginning in 2008. The budget request will identify funding by Action Agenda elements, by responsibilities among participating entities, and by Partnership administrative requirements. The initial request will include recommendations for projected funding needed through 2020 and identify potential funding methods and sources.
- *Puget Sound Recovery Account:* The Puget Sound Recovery Account is created, funds from which can only be spent after appropriation and used for protection and recovery of Puget Sound. Any funding made available directly to the Partnership from the Puget Sound Recovery Account, and used by the Partnership for loans, grants, or funding transfers to other entities, must be prioritized according to the Action Agenda.
- *Funding Conditions:* The Partnership must condition, with interagency agreements, any grants or funding transfers to other entities from the Puget Sound Recovery Account to ensure accountability in the expenditure of the funds and to ensure that the funds are used consistently with Action Agenda priorities. If the Partnership finds that provided funding was not used as instructed in an interagency agreement, it may suspend or further condition future funding to the recipient. The Partnership must require any entity receiving funds for implementing the Action Agenda to publicly disclose and account for expenditure of those funds. In addition, the

Council must adopt measures to ensure that funds appropriated for implementing the Action Agenda, and identified by proviso in omnibus appropriations acts, are expended in a manner that will achieve intended results. The Council must establish performance measures and require reporting and tracking of expended funds. The Council may also adopt interagency agreements regarding expenditure of those funds. Any entity receiving state funds to implement the Action Agenda must report biennially to the Council on progress in completing and implementing actions, and whether expected results have been achieved.

- *Grant and Loan Preferences and Prohibitions:* The Partnership will designate entities that consistently achieve outstanding progress in implementing the Action Agenda as Puget Sound Partners, and work with other state agencies to create grant and loan preferences for those entities. The Partnership will also work with other state agencies to establish grant and loan program criteria prohibiting funding to projects and activities that conflict with the Action Agenda. In prioritizing project funding requests, agencies administering state grant and loan programs must consider whether a project is referenced in the Action Agenda and give preferences to Puget Sound Partners over other entities eligible to be designated as Partners.

After January 1, 2010, certain projects may be funded only if they do not conflict with the Action Agenda. These requirements apply to:

- 1) the Public Works Board, with respect to public works projects;
- 2) the Department of Ecology, with respect to water pollution control facilities, toxics control funding, and projects funded from the water pollution control revolving fund;
- 3) the State Conservation Commission, with respect to projects to improve water quality and protect habitat;
- 4) the Interagency Committee for Outdoor Recreation, with respect to aquatic lands enhancement projects, and acquisition and development of critical habitat, natural areas, and urban wildlife habitat; and
- 5) the Salmon Recovery Funding Board, with respect to salmon habitat protection and restoration.

Accountability: The Council is accountable for achieving the Action Agenda. The Partnership will determine whether implementing entities are acting consistently with and achieving outcomes identified in the Action Agenda, and may hold management conferences with implementing entities to review and assess their performance. Where the Council identifies an inconsistency with the Action Agenda, it will offer assistance to remedy the inconsistency. Conference results will be included in the State of the Sound Report (see Reports, Programs, Plans, and Audits, below). The Council will publicly meet with noncomplying entities to develop corrective action. If substantial noncompliance continues, the Council may recommend to the Governor that noncomplying entities be ineligible for state financial assistance until noncompliance is remedied. Noncompliance will be included in the State of the Sound Report. When a local government proposes to take an action inconsistent with the Action Agenda, it must inform the Council and identify reasons for taking the action.

Conflict Resolution: The Council will provide a forum for addressing and resolving problems, conflicts, or a substantial lack of progress. Where the parties and the Council are unable to resolve a conflict that significantly impairs implementation of the Action Agenda,

the Council must provide its analysis and recommended resolution to the Governor, Legislature, and entities with authority to resolve the conflict. The Council will review statutes, rules, ordinances, or policies that conflict with or impede implementation of the Action Agenda and make recommendations to the Legislature, Governor, agency, local government, or other appropriate entity for addressing and resolving the conflict. The Council may make recommendations to the Governor and Legislature to address barriers it has identified to successful implementation of the Action Agenda.

Limitations on Authority: The Partnership does not have regulatory authority or authority to transfer responsibility for any state regulatory program unless specifically authorized by the Legislature. The Action Agenda may not create a legally enforceable duty to review or approve permits or adopt plans or regulations, and may not authorize adoption of rules creating a duty to do so. Legal authority of local governments is not altered, and legally enforceable duties upon local governments are not created.

Reports, Programs, Plans, and Audits:

- *State of the Sound Report:* The Council will produce a State of the Sound Report by November 1 of each odd-numbered year beginning in 2009. The report will assess participating entities' progress, actions inconsistent with the Action Agenda, Science Panel comments and findings, citizen concerns, funding expenditures to state agencies, and how future expenditures could better match Action Agenda priorities.
- *State Program Review:* By November 1, 2010, the Council will review state programs that fund facilities and activities contributing to Action Agenda implementation, and provide final recommended program changes to the Governor and Legislature. Recommendations may include proposed legislation, funding levels, changes in funding criteria, and strategic Action Agenda funding.
- *Basin-Wide Restoration Progress Report:* By December 1, 2010, the Washington Academy of Sciences will conduct an assessment of basin-wide restoration progress, including whether environmental indicators and benchmarks accurately measure and reflect progress toward Action Agenda goals.
- *Strategic Science Program:* The Science Panel will develop a Strategic Science Program, which may address assessment and monitoring, modeling, data management, and research. The Program will not become official until a majority of Council members vote to adopt it.
- *Puget Sound Science Update:* The Science Panel will develop a Puget Sound Science Update that describes current scientific understanding of physical attributes of Puget Sound and serves as the scientific basis for selecting environmental indicators and status and trends of those indicators.
- *Biennial Science Work Plan:* The Science Panel will develop a Biennial Science Work Plan that identifies recommendations from scientific and technical reports, describes science-related activities, and recommends actions to fill gaps and improve ongoing science work.
- *Performance Audit:* The Joint Legislative Audit and Review Committee will conduct two performance audits of the Partnership, the first due December 1, 2011, and the second due December 1, 2016. Audits will determine the extent to which Partnership-expended funds, or appropriated funds for implementing the Action Agenda, have contributed to meeting Action Agenda goals, determine efficiency and

effectiveness of Partnership oversight, and include recommendations for improving Partnership performance and structure.

Other: PSAT's authority regarding the Shellfish On-site Sewage Grant Program is transferred to the Department of Health (DOH). DOH may use unexpended and unobligated funds from the Oyster Reserve Land Account to fund research projects related to oyster reserves.

Votes on Final Passage:

Senate	41	5	
House	86	12	(House amended)
Senate	43	4	(Senate concurred)

Effective: July 1, 2007