

# SENATE BILL REPORT

## ESSB 5372

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As Amended by House, April 10, 2007

**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:** Water, Energy & Telecommunications: 1/17/07, 2/28/07 [DPS-WM, DNP].

Ways & Means: 3/05/07 [DPS(WET), w/oRec].

Passed Senate: 3/10/07, 41-5.

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### SENATE COMMITTEE ON WATER, ENERGY & TELECOMMUNICATIONS

**Majority Report:** That Substitute Senate Bill No. 5372 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Fraser, Marr, Morton, Oemig, Pridemore and Regala.

**Minority Report:** Do not pass.

Signed by Senators Honeyford, Ranking Minority Member; Delvin and Holmquist.

**Staff:** Sam Thompson (786-7413)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 5372 as recommended by Committee on Water, Energy & Telecommunications be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Brandland, Fairley, Hatfield, Hobbs, Keiser, Kohl-Welles, Oemig, Rasmussen, Regala, Rockefeller and Tom.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Zarelli, Ranking Minority Member; Carrell, Hewitt, Honeyford, Roach and Schoesler.

**Staff:** Kirstan Arestad (786-7708)

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*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:** The Puget Sound Action Team (PSAT) was created 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 efforts, updates a Puget Sound management plan, and coordinates efforts of government entities.

The Puget Sound 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 recommended creating a new ongoing Puget Sound Partnership to actively manage that task.

**Summary of Bill:** A new independent state agency, the Puget Sound Partnership (Partnership), is created, effective July 1, 2007, to lead the effort to restore the health of Puget Sound by 2020. Codified intent language provides that the Partnership has no regulatory authority and may not transfer responsibility for implementing a state regulatory program unless specifically authorized by the Legislature.

"Puget Sound" is defined as Puget Sound and related inland marine waters, including all salt waters of the state inside the international boundary line with Canada and lying east of the junction of the Pacific Ocean and the Strait of Juan de Fuca, and rivers and streams draining to Puget Sound in Water Resource Inventory Areas set forth in the state administrative code.

Puget Sound Action Team: PSAT is abolished and its powers, duties, and functions are transferred to the Partnership. PSAT's authority regarding shellfish on-site sewage grant programs is transferred to the Department of Health.

Leadership Council: The Partnership will be led by an eight-member Leadership Council (Council), consisting of seven members appointed by the Governor to staggered four-year terms, with the advice and consent of the Senate, and the US Environmental Protection Agency regional administrator, who will be invited to serve. The Governor will designate one member to serve as chair. Members are eligible for reappointment. Gubernatorial appointees may be removed by the Governor for cause.

The Council will develop and implement a long-term Puget Sound 2020 Plan (2020 Plan), intended to clean up Puget Sound by 2020, and a biennial Action Agenda with short-term actions. The Council will also:

- allocate funds appropriated to the Partnership;
- make recommendations to improve effectiveness of existing regulatory programs and funding;
- establish subregional Action Areas to facilitate local collaborative planning efforts;
- solicit citizen input and promote public awareness of cleanup needs and efforts; and
- serve as the regional salmon recovery organization.

Council members will be compensated on a per diem basis and reimbursed for travel expenses.

Executive Director and Staff: The Partnership will be administered by an Executive Director appointed by the Governor from candidates recommended by the Council. Partnership staff will be state employees. The Executive Director, one confidential secretary, and all professional staff are exempt from civil service provisions.

Science Panel: A Puget Sound Science Panel of up to 15 members selected by the Council will assist it in developing the 2020 Plan and Action Agenda and provide science-based reports. Panel members will serve staggered four-year terms. Members will be reimbursed for travel expenses and may contract with the Panel for compensation for their services. The Executive Director will provide staff to the Panel until at least mid-2009. An independent staffing proposal will be submitted for inclusion in the 2009- 2011 biennial budget.

Subregional Action Areas: The Council will develop the Action Agenda in part upon existing watershed programs and regional plans developed by local watershed entities, tribes, local governments and the private sector. The Council will delineate subregions called Puget Sound Action Areas, one of which will be the currently-established Hood Canal Aquatic Rehabilitation Zone, and collaborate with entities in these Action Areas. Action Area work groups must submit initial compilations to the Council by July 1, 2008, and updates every two years.

Ecosystem Work Group: The Council will also convene a Puget Sound Ecosystem (i.e., Sound-wide) Work Group to advise it on ecosystem-scale plans for incorporation in the Action Agenda. The Ecosystem Work Group will be chaired in annual rotating order by the Commissioner of Public Lands, the Director of the Department of Ecology (DOE), the Director of the Department of Fish and Wildlife, and the chair of the Salmon Recovery Funding Board. Several federal, state, and local government agencies, and tribes and nongovernment organizations will be invited to participate. The Ecosystem Work Group expires June 30, 2011.

2020 Plan and Action Agenda: The 2020 Plan will set overall goals, measurable outcomes, and benchmarks specifying progress needed to reach a healthy Puget Sound by 2020. The Action Agenda will biennially identify and prioritize actions necessary to implement the 2020 Plan, identify agencies, entities, or persons responsible for completing necessary actions, establish benchmarks, and describe how progress is tracked. Both the 2020 Plan and Action Agenda will be science-based. The Council will adopt a final 2020 Plan and 2009-2011 Action Agenda by September 1, 2008.

State agencies implementing the Action Agenda must work with the Partnership in developing its biennial Action Agenda budget and seek consistency between the Partnership's budget and agency budgets submitted to the Governor.

The Legislature intends for all local, state, and federal governmental entities to act in conformance with the 2020 Plan and Action Agenda. The Council may establish performance measures for expenditure of funds consistent with the Action Agenda and require reporting and tracking of funds expended. The Council must use accountability measures for all entities with Action Agenda responsibilities and submit recommendations to the Legislature to enhance and phase-in local government measures by September 20, 2008.

If a state entity has taken actions inconsistent with the 2020 Plan or Action Agenda or has failed to take actions required, the council may request Office of Financial Management to withhold or rescind funding. If a nonstate entity's actions are inconsistent with the Plan, the Council will offer technical assistance and report on the entity's noncompliance.

State agencies responsible for implementing the Action Agenda must use their existing legal authorities to the fullest extent possible to conform to the Agenda. Counties, cities, and port districts responsible for implementing the Action Agenda must use their existing legal authorities to the best of their ability when implementing the Agenda.

Conflict Resolution: The Council will provide a forum for addressing and resolving conflicts in implementing the 2020 Plan and Action Agenda. The Council will make recommendations to affected agencies and to the Governor, the Legislature, the local government, or other appropriate entity for addressing and resolving conflicts.

Progress Reports: The Council will periodically provide progress reports to the Governor, Legislature, and public that will include recommendations regarding funding and recommended legislation.

Audits: The Joint Legislative Audit and Review Committee will conduct triennial performance audits of the Partnership, the first to be completed October 1, 2011.

New Account: The Puget Sound Recovery Account is created for appropriated funds and federal funds provided for protection and recovery of Puget Sound, except where deposits would conflict with federal law or a condition upon the state's receipt of funds. Monies in the account may be spent only after appropriation.

Salmon Recovery: Beginning in 2008, the Council will serve as the regional salmon recovery organization for Puget Sound salmon species. The Hood Canal Coordinating Council serves as the regional salmon recovery organization for Hood Canal summer chum.

Infrastructure Funding: The Council and Council staff will work with DOE and the Public Works Board in reviewing and prioritizing Puget Sound project funding applications regarding the Centennial Clean Water Fund, State Revolving Fund, and Public Works Trust Fund. The Council will review these and other state funding programs that contribute to implementing the Puget Sound agenda and make recommendations to the Governor and the Legislature.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains an emergency clause, and most provisions take effect on July 1, 2007.

**Staff Summary of Public Testimony on Proposed Substitute As Heard in Committee (Water, Energy & Telecommunications):** PRO: The proposed substitute bill appropriately maximizes collaboration, minimizes conflict, and increases Council accountability. It seeks to incorporate work that has already been completed and rewards local governments that collaborate with the Partnership's cleanup plan with infrastructure funding. It enhances the emphasis on science-based planning and provides for both a "top down" and a "bottom up" approach that includes regional collaboration. While this proposed substitute is an improvement, certain elements raise concerns, including provisions designating membership of some Council positions and establishing the regional collaborative process, which could

create new planning structures and delays. There should be greater acknowledgment of local cleanup efforts currently underway.

OTHER: The regional collaborative process could create new layers of government, causing delays in overall cleanup efforts.

**Persons Testifying on Proposed Substitute As Heard in Committee:** PRO: Doug Sutherland, Commissioner of Public Lands; Kathleen Drew, Governor's Office; Jim Kramer, Puget Sound Partnership; Tim Smith, Department of Fish and Wildlife; Clifford Traisman, Washington Conservation Voters and Washington Environmental Council; Bill Robinson, Nature Conservancy and Environmental Community for a Healthy Washington; Debby Hyde, Pierce County; Naki Stevens, People for Puget Sound; Miguel Perez-Gibson, Puget SoundKeeper Alliance; Eric Johnson, Washington State Association of Counties; Dave Williams, Association of Washington Cities; Eric Johnson, Washington Public Ports Association; Lonnie Johns-Brown, League of Women Voters; Heath Packard, Audubon Society; Mike Racine, Washington Scuba Alliance; Jim King, Citizens for Parks & Recreation and Independent Business Association; Jay Watson, Hood Canal Coordinating Council; Chris McCabe, Association of Washington Business.

OTHER: Steve Robinson, Northwest Indian Fisheries Commission.

**Staff Summary of Public Testimony on Original Bill:** PRO: The new Puget Sound Partnership proposed in this bill must have adequate "clout," a missing ingredient in earlier legislation. There must be incentives for compliance and consequences for noncompliance with cleanup plans developed by the Partnership. This legislation is not intended to overrule or take away from the authority of existing government entities, and the Partnership will not have broad regulatory authority. Instead, it will write a plan, assign responsibilities in implementing it, and suggest changes to meet identified goals. While the legislation is laudable, local government concerns regarding accountability, performance measures, clarity of requirements, and relation to existing land use and environmental laws and regulations must be addressed. The Action Agenda should be continuously updated—not once every four years, as provided in the bill. The Implementation Advisory Board should include a representative of the outdoor recreation community. Time is running out for adequately addressing environmental problems in Puget Sound.

CON: The proposed new Partnership could actually have significant regulatory authority under current bill language.

OTHER: This legislation creates a significant possibility for conflict involving existing cleanup and conservation plans and overlapping jurisdictions; clearer direction must be provided to avoid conflicts. The Science Advisory Panel shouldn't be driven by an agenda devised by the Leadership Council; it should be truly independent. Small businesses should be represented on the Implementation Advisory Board. The legislation needs to provide for less of a "top down" decisionmaking process and more of a "bottom up" approach. Environmental goals should be balanced with economic development. Stakeholder representation on the Leadership Council should be considered. The Implementation Advisory Board is too large. The Science Advisory Panel should coordinate with federal agencies and programs.

**Persons Testifying on Original Bill (Water, Energy & Telecommunications):** PRO: Bill Ruckelshaus, Puget Sound Partnership; Kathleen Drew, Governor's Office; Kathy Fletcher, People for Puget Sound; Terry R. Williams, The Tulalip Tribes; Eric Johnson, Washington State Association of Counties, Washington Public Ports Association; Dave Williams, Association of Washington Cities; David Dicks, King County; Jim King, Citizens for Parks & Recreation; Bill Dewey, Taylor Shellfish Company.

CON: Andy Cook, Building Industry Association of Washington.

OTHER: Doug Sutherland, Commissioner of Public Lands; Gary Smith, Independent Business Association; Carolyn Logue, National Federation of Independent Businesses; Chris McCabe, Association of Washington Business; Tom Eaton, U.S. Environmental Protection Agency; Naki Stevens, People for Puget Sound.

**Staff Summary of Public Testimony (Ways & Means):** PRO: This bill is one of four priorities for the environmental coalition comprised of 22 environmental groups. This bill has increased coordination and is an action-oriented bill that will lead to a healthy Sound by 2020 (which is the purpose of this governance structure). Tribes also support passage of this bill. The bill is indirectly related to salmon recovery and local watershed activities, which will need additional funding. The new partnership will also need funds over and above what the current Puget Sound Action Team is currently budgeted.

OTHER: The Association of Washington Counties and the Association of Washington Cities and Public Ports support the intent of the bill, but have three fiscal concerns: sections 127, 128, and 129. These sections amend the underlying enabling statutes of cities, counties, and ports by directing us to use our legal authority to the fullest extent possible to implement the plan. We have lots of authorities. We're concerned this language creates extensive confusion and creates a new overlay.

**Persons Testifying (Ways & Means):** PRO: Clifford Traisman, Washington Conservation Voters, Washington Environmental Council; Terry Wright, NW Indian Fisheries Commission.

OTHER: Eric Johnson, Washington Public Ports Association.

**House Amendment(s):** The House amendment:

- reduces membership of the Leadership Council from eight to seven persons by removing the Environmental Protection Agency regional director as an ex officio member;
- provides that the Governor will appoint the Executive Director in consultation with the Leadership Council, rather than from a list of Council-provided candidates;
- designates a Science Panel (rather than a Science Advisory Committee), and reduces membership from 15 to nine persons;
- designates an Ecosystem Coordination Board (rather than an Ecosystem Work Group) to advise the Council on ecosystem-scale plans, limits the size of the Board to 27 members, including four legislators representing each caucus, and alters the number of representatives of various interest groups and governments;
- gives the Ecosystem Coordination Board additional functions such as assisting in public education and providing a forum for conflict resolution;

- provides for seven subregional "action areas" designated by the Leadership Council within which local groups will compile existing watershed programs;
- creates incentives for "Puget Sound Partners"—local governments that cooperate in achieving cleanup goals—by giving them public recognition and preference in state grant and loan programs;
- clarifies that nothing in the legislation limits or alters local governments' legal authorities; and
- adds an emergency clause providing that the act takes effect July 1, 2007.