

SENATE BILL REPORT

SB 5372

As Reported By Senate Committee On:
Water, Energy & Telecommunications, February 28, 2007
Ways & Means, March 5, 2007

Title: An act relating to the Puget Sound partnership.

Brief Description: Creating the Puget Sound partnership.

Sponsors: Senators Rockefeller, Swecker, Poulsen, Marr, Fraser, Keiser, Kilmer, Kline, McAuliffe, Murray and Shin; 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].

Brief Summary of Recommended Substitute Bill

- Creates a new Puget Sound governance entity, the Puget Sound Partnership, as an independent state agency with powers transferred from the Puget Sound Action Team, which is abolished.
- The Partnership, led by a Leadership Council and Executive Director appointed by the Governor, will adopt and implement an overall 2020 Plan, designed to attain a healthy Puget Sound by 2020, and a biennially-updated Action Agenda.
- The Partnership will be advised by a science advisory panel and groups compiling Sound-wide and regional plans.
- The legislature intends for all governmental entities to act in conformance with the 2020 Plan and Action Agenda.
- The Partnership will periodically issue reports regarding its progress.

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.

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.

Staff: Sam Thompson (786-7413)

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)

Background: The Puget Sound Partnership, a gubernatorial advisory body created in 2005, worked for a year to develop a 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: An independent state agency, the Puget Sound Partnership (Partnership), is created, effective July 1, 2007. The Puget Sound Action Team (PSAT) is abolished and its powers, duties, and functions are transferred to the Partnership. Several provisions concerning PSAT are repealed and PSAT's authority regarding shellfish on-site sewage grant programs is transferred to the state Department of Health.

Leadership Council. The Partnership will be led by a seven-member Leadership Council (Council) appointed by the Governor, with the advice and consent of the Senate. The Governor will designate one member to serve as chair. Initially, three members will be appointed to two-year terms, two to three-year terms, and two to four-year terms. Successors will be appointed to four-year terms, unless they fill unexpired terms. Members are eligible for reappointment. Any member may be removed by the Governor. The Council will:

- provide overall leadership and responsibility;
- set, implement, and manage the Puget Sound management plan, known as the Action Agenda;
- allocate funds appropriated to the Partnership;
- apply accountability and performance standards;
- provide annual progress reports to the Governor and Legislature;
- appoint Implementation Advisory Board and Science Advisory Committee members, and create appropriate sub- and advisory committees and non-profit corporations;
- contract, make grants, and receive gifts, grants, and endowments and make expenditures;
- promote public awareness and participation;
- receive and expend funding from other public agencies;
- facilitate accountability and reporting obligations;
- serve as the regional recovery organization for Puget Sound salmon recovery;
- work to ensure that the Action Agenda is scientifically sound, efficient, and achieves necessary results; and

- follow 1989 Centennial Accord standards when working with Indian tribes.
- The Council may delegate certain functions to the Chair and Executive Director. 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 and serving at the Governor's pleasure, in consultation with the Council. The Governor will set the Executive Director's salary. The Executive Director is granted several administrative powers and duties. The Executive Director, one confidential secretary, and all professional staff are exempted from the state civil service law. The Executive Director is subject to financial reporting requirements.

Implementation Advisory Board. By October 1, 2007, the Council will appoint an Implementation Advisory Board (Board) with: at least 12 representatives selected by local governments in each of the 12 Puget Sound counties; representatives of state and federal agencies; at least three tribal government representatives selected by Puget Sound tribes; and representatives from business, environmental organizations, and others deemed necessary. In developing and implementing the Action Agenda, the Council and Executive Director must solicit Board input and, if possible, incorporate Board recommendations. Board members will be reimbursed for travel expenses.

Science Advisory Committee. By January 31, 2008, the Council must create the Puget Sound Science Advisory Committee (Science Committee) to advise the Council and Executive Director. The Science Committee will consist of up to 15 members appointed by the Council based on Board nominations. One member will be appointed as chair. Membership will be representative of necessary technical experience and scientific disciplines. The Science Committee should collaborate with other scientific groups and scientists. Members employed by governments will serve without additional pay. Other members will be compensated up to \$50 per day and receive reimbursement for travel expenses.

Science Program, Work Plan and Update. The Science Committee will assist the Executive Director in developing: a Strategic Science Program that includes continuing the Puget Sound Assessment and Monitoring Program and other programs; a Biennial Science Work Plan describing science-related activities and identifying recommendations; and a Science Update at least every four years that will serve as the basis for refining key environmental health indicators and status and trends of those indicators.

Action Agenda. The Action Agenda will strive to achieve: a healthy human population supported by a healthy Puget Sound that is not threatened by ecosystem changes; a quality of human life sustained by a functioning ecosystem; healthy native species populations; protected, restored, and sustained habitats; an ecosystem supported by water flow levels sufficient to sustain people and environmental functions; and fresh and marine waters and sediments safe for drinking and other human uses and not harmful to native marine species. The Action Agenda will include comprehensive actions necessary to achieve these goals.

The Action Agenda will:

- describe problems affecting Puget Sound's health using scientific data;
- set overall goals, measurable outcomes, and benchmarks to reach a healthy Puget Sound by 2020;

- identify and prioritize strategies, necessary actions, and those responsible for completing necessary actions;
- establish deadlines for completing necessary actions for goals beyond 2020;
- address all geographic areas affecting Puget Sound—specific provisions may address specific geographic areas;
- evaluate effectiveness and efficiency of the overall management system for improving and maintaining health of the Puget Sound ecosystem;
- review, revise, and incorporate the Science Committee's ecosystem goals and measures;
- establish benchmarks for achieving Action Agenda goals and describe progress tracking;
- integrate recovery plans for species listed under the federal Endangered Species Act;
- integrate water quantity, watershed, marine resource, and other plans; and
- incorporate actions to carry out the Science Work Plan.

When a government entity identifies a law or regulation conflicting with or impeding the Action Agenda, the Council will evaluate and make necessary recommendations.

Action Agenda: Deadline and Revision. The Council will adopt the Action Agenda by September 1, 2008, and revise it every four years using an adaptive management process. The Council will provide opportunity for public review and comment.

Action Agenda: Implementation. State agencies will provide to the Partnership by June 1 of each even-numbered year biennial estimates of actions needed to meet goals and outcomes and work with the Partnership in developing biennial budget requests.

Appropriated funds identified by proviso for implementing the Action Agenda may not be expended before the Partnership and agency to whom funds are appropriated enter into agreements with performance measures and reporting and tracking requirements. State agencies must incorporate performance requirements in their grant and loan programs to nonstate agencies or organizations.

By September 1, 2008, the Council must provide to the Governor and Legislature its Action Agenda funding recommendations and identify specific funding needs, responsibilities, and sufficient funding sources.

Accountability and Reporting Obligations. The Legislature intends for all local, state, and federal government entities to act in conformance with the Action Agenda. Good cause for nonconformance exists if there is a lack of legal authority or funding.

Entities receiving state funds pursuant to a performance agreement must annually report to the Council on its progress and whether expected results have been achieved. Where an entity has taken actions inconsistent with or failed to take actions required by its performance agreement, the Partnership may recommend that further funding be withheld or redirected pending compliance. The Governor may withhold or rescind allotments to state agencies found to be out of compliance with performance agreements.

Partnership Reports. Beginning November 1, 2008, the Council will annually report to the Governor, Legislature, and public on Action Agenda progress and assess whether entities receiving state funds have accomplished expected results. If expected results have not been achieved, the Partnership must recommend other options to achieve results with the same funds.

The Council will review actions of nonstate entities not subject to performance agreements and, if it determines that an entity's actions are inconsistent with the plan, offer technical assistance to bring the entity into conformance. The Council will include in the progress report nonperformance of any entity and those refusing technical assistance and describe actions the Council took to try to achieve conformance.

Existing Cleanup Plan. The existing Puget Sound Water Quality Management Plan will:

- with the 2007-2009 Puget Sound Biennial Plan, remain in effect until the Action Agenda is adopted;
- be used, in appropriate parts, in the Action Agenda; and
- continue to serve as the conservation and management plan for the national estuary program under the federal Clean Water Act, until replaced by the Action Agenda and approved by the U.S. Environmental Protection Agency as the new plan.

Local Collaboration. The Council will work with local governments and other groups to foster community commitment and accountability, ensuring local clear organizational structures to:

- oversee development and implementation of local salmon, shoreline, water quality and water quantity plans in accordance with the Action Agenda;
- refine and implement actions, measure results, and make adjustments to local plans;
- expand public understanding and coordinate educational efforts; and
- support and coordinate volunteer opportunities.

Effect of Changes Made by Proposed Substitute as Heard in Committee (Water, Energy & Telecommunications): The Leadership Council will consist of nine members: seven gubernatorial appointees, including one citizen member of the Salmon Recovery Funding Board and one representative of Puget Sound tribes, two ex officio voting members, the Public Lands Commissioner, and the U.S. Environmental Protection Agency regional administrator (who will be invited to serve).

The Implementation Advisory Board is deleted.

The Council will, through liaison members and staff, work with local entities in up to seven Puget Sound "action areas" designated by the Council to compile existing watershed programs for inclusion in the 2020 Plan and Action Agenda. The Council may recognize an area coordinating entity to lead work in the action area and provide assistance.

The Washington Academy of Sciences will screen nominations to the Puget Sound Science Panel and report its findings to the Council. The Partnership's Executive Director will provide Science Panel staffing for two years, then independent staffing and administration will be considered. Shared state and federal responsibility for the Science Panel will be explored, and the Panel will seek to integrate state and federal science work.

Puget Sound recovery planning will be in two parts: (1) an overall 2020 Plan with ecosystem-level goals, measurable outcomes, benchmarks, and key strategies; and (2) a biennially-updated Action Agenda with specific actions, responsible parties, deliverables, dates, and budgets working to achieve the 2020 Plan. The 2020 Plan will incorporate existing plans and agreements signed by the Governor, Public Lands Commissioner and other state

officials. A draft plan will be produced by March 2008 for public review and comment; the final plan will be adopted by September 2008.

The Council will convene an ecosystem level (i.e., Sound-wide) work group that will be chaired by the Public Lands Commissioner and include representatives of federal and state agencies, tribes, local governments, and nongovernmental organizations. This group will assist the Council by compiling ecosystem level programs for integration into the 2020 Plan and initial 2009-2011 Action Agenda, and serve in an ongoing advisory role.

In implementing the Action Agenda, the Council may optionally use performance agreements, in addition to management conferences. If appropriated Puget Sound funds are expended in nonconformance with the 2020 Plan, the Council may request the Office of Financial Management to withhold further funds.

Additional Partnership reporting requirements are specified. The Joint Legislative Audit and Review Committee is to conduct triennial performance audits of the Partnership, the first to be completed in October 2011.

The Council will provide a forum for addressing and resolving conflicts it identifies in implementing the 2020 Plan and Action Agenda. The Council may employ conflict resolution mechanisms and, where the conflict is rooted in conflicting statutes or policies, recommend legislation or administrative action for resolution.

The Council will designate as "Puget Sound Partners" local governments the Council determines to be conforming with the Action Agenda. Partners will receive preference among Puget Sound entities receiving infrastructure funding from the Centennial Clean Water Fund, State Revolving Fund, and Public Works Trust Fund.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Water, Energy & Telecommunications): Several additions to the intent section include language clarifying that the Puget Sound Partnership has no regulatory authority and may not transfer responsibility for implementing a state regulatory program unless specifically authorized by the Legislature.

The Leadership Council will consist of eight members: seven gubernatorial appointees and an ex officio voting member, the U.S. Environmental Protection Agency regional administrator (who will be invited to serve). The Partnership is designated as the lead state agency for allocating federal funds provided to the state for restoring Puget Sound.

The Implementation Advisory Board is deleted.

The Washington Academy of Sciences will screen nominations to the Puget Sound Science Panel and report its findings to the Council. The Partnership's Executive Director will provide Science Panel staffing at least until July 1, 2009, then independent staffing and administration will be considered. It is the intent of the Legislature to ensure ongoing funding for staffing of the Panel as an independent entity. Shared state and federal responsibility for the Science Panel will be explored, and the Panel will seek to integrate state and federal science work.

Puget Sound recovery planning will be in two parts: (1) an overall 2020 Plan with ecosystem-level goals, measurable outcomes, benchmarks, and key strategies; and (2) an

Action Agenda, produced and updated biennially, with specific actions, responsible parties, deliverables, dates, and budgets working to achieve the 2020 Plan. The 2020 Plan will incorporate existing plans and agreements signed by the Governor, Public Lands Commissioner, and other state officials. A draft plan will be produced by March 2008 for public review and comment; the final plan will be adopted by September 2008. State agencies seeking federal funding affecting the 2020 Plan must obtain the Partnership's comments before submitting requests to the federal government. The Legislature intends for all governmental entities to act in conformance with the 2020 Plan and Action Agenda.

The Council will, through staff, work with local entities in Puget Sound "action areas" designated by the Council to compile existing watershed programs for inclusion in the 2020 Plan and Action Agenda. The Council may recognize an area coordinating entity to lead work in the action area, and provide assistance.

The Council will convene an ecosystem level (i.e., Sound-wide) work group that will: (1) be chaired in rotation by the Public Lands Commissioner, the director of the Department of Ecology, the director of the Department of Fish and Wildlife, and the chair of the Salmon Recovery Funding Board; (2) include representatives of federal and state agencies, tribes, local governments, and nongovernmental organizations; (3) assist the Council by compiling ecosystem level programs for integration into the 2020 Plan and initial 2009-2011 Action Agenda; and (4) serve in an ongoing advisory role.

Additional reporting requirements are specified. Progress reports addressing nonconformance with the Action Agenda by nonstate entities will describe the basis for nonconformance. Reports will also describe actions the Council took to try to bring entities into conformance and include recommendations on other options to achieve results.

The Joint Legislative Audit and Review Committee is to conduct triennial performance audits of the Partnership, the first to be completed in October 2011.

The Council will provide a forum for addressing and resolving conflicts it identifies in implementing the 2020 Plan and Action Agenda. The Council may employ conflict resolution mechanisms and, where the conflict is rooted in conflicting statutes or policies, recommend legislation or administrative action for resolution.

The Leadership Council and Council staff will work with the Department of Ecology 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.

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.