

By Representative Dye

E2SSB 5141 - H COMM AMD TO ENVI COMM AMD (H-1357.1/21)

By Committee on Environment & Energy

Beginning on page 1, line 3, after "**Sec. 1.**" strike all material through "state." on page 22, line 9 and insert: "(1) The legislature recognizes that the state government has failed to provide Washington residents with clean water and clean air, and as a result, people of color and low-income people continue to be disproportionately exposed to environmental hazards in their communities and are at higher risk for adverse health outcomes. The legislature recognizes that those who have administered state laws for the protection of our water and air quality must be held accountable for the injustices experienced in these communities. The legislature recognizes that in order to successfully implement the recommendations of the environmental justice task force, lessons must be learned from previous failures to protect the environment and promote human health. To free up funding for new approaches under new leadership, the legislature intends, as part of the initial phase of implementation of the environmental justice task force report, to review and terminate failing programs and efforts in agencies that are tasked with protecting the environment and health of Washington residents.

(2) In 1996, the legislature added, in chapter 90.71 RCW, a new chapter of law related to protecting the water quality of Puget Sound. That legislation formed a Puget Sound action team made up of the heads of various agencies to prepare a biennial work plan for Puget Sound. The action team was also tasked to implement and coordinate a research program that would produce baselines, protocols, and quantifiable performance measures. The legislation also formed a Puget Sound council of nine members, seven of whom were to be appointed by the governor. This council was obligated to advise the agency action team. In 2007, the action team would cease to be, and the council would be absorbed into a new entity.

(3) In 2007, the legislature created a new state agency to be known as the Puget Sound partnership, making statutory findings that Puget Sound is in serious decline and setting a goal that the health

1 of Puget Sound be restored by 2020. The partnership is led by a
2 leadership council appointed by the governor, with the advice and
3 consent of the senate, and by an executive director appointed by the
4 governor. The partnership was tasked with coordinating and leading
5 the effort to restore and protect Puget Sound. Among its duties was
6 the creation of an action agenda, which was to be a comprehensive
7 schedule of projects, programs, and other activities designed to
8 achieve a healthy Puget Sound ecosystem. The action agenda of the
9 Puget Sound partnership was to be based on science and was to include
10 clear measurable goals for the recovery of Puget Sound by 2020. The
11 legislative intent was that the Puget Sound partnership also
12 determine accountability for performance.

13 (4) In the same 2007 legislation, the legislature established
14 certain 2020 goals as part of the action agenda that are relevant to
15 environmental justice, namely, a goal of a healthy human population
16 supported by a healthy Puget Sound that is not threatened by changes
17 in the ecosystem, and a quality of human life that is sustained by a
18 functioning Puget Sound ecosystem.

19 (5) Since its inception, the state has provided over \$120,000,000
20 from the state's taxpayers to the state agency known as the Puget
21 Sound partnership. The 2019 state of the sound report described grave
22 conditions, with habitat degradation outpacing restoration, with
23 toxic chemicals and pharmaceuticals polluting the waterways, and with
24 shellfish beds routinely closed to commercial and recreational
25 harvest due to fecal contamination. The Puget Sound partnership
26 maintains performance measures for its goal of a healthy human
27 population.

28 (6) The legislature recognizes that fiscal notes for legislation
29 of this type misrepresent by orders of magnitude the extent of the
30 fiscal obligation the state will incur. When the Puget Sound
31 partnership started in 2007, the fiscal note forecasted state agency
32 expenditures of \$7,000,000 to \$8,000,000 per biennium. By 2014, the
33 agency identified that it had insufficient funding for its strategic
34 initiatives and set a subcommittee to work on developing a funding
35 strategy. For the period 2018-2022, the total cost of near-term
36 actions on the published action agenda was estimated to exceed
37 \$1,000,000,000. The partnership identified a funding gap of up to
38 \$355,000,000 per year for the habitat strategic initiative, up to
39 \$265,000,000 per year for the stormwater strategic initiative, and up
40 to \$41,000,000 per year for the shellfish strategic initiative.

1 (7) The legislature observes that the fiscal note for Engrossed
2 Second Substitute Senate Bill No. 5141 projects state agency
3 expenditures in the range of \$13,000,000 to \$17,000,000 per biennium.
4 But, this is merely the cost of agency operations. The cost of the
5 agenda that is yet to come, the strategic initiatives to prevent
6 disparate environmental impacts and remedy past disparate impacts,
7 has not been measured, but must certainly be staggering. The
8 legislature finds it prudent not to add a new set of incalculably
9 expensive obligations, when existing strategic initiatives of the
10 Puget Sound partnership that would support the same outcome have been
11 unfunded.

12 (8) As it relates to environmental justice, the Puget Sound
13 partnership maintains vital sign indicators to track its progress on
14 its action agenda goals, including the goal it has had since 2007 to
15 achieve a healthy human population supported by a healthy Puget
16 Sound. Not one 2020 target has been met. For most progress
17 indicators, there is no data, or the progress status is "not
18 improving." The performance dashboard shows that exposure to impaired
19 air quality is not improving and that no target has been set for air
20 quality exposures that would be consistent with achieving appropriate
21 air quality. The performance indicator for drinking water shows the
22 nitrate concentration in source water is not improving, with no
23 target set for 2020. A performance indicator for an index of
24 vulnerability for elevated nitrates in groundwater shows insufficient
25 or no data, with no target set for 2020. A performance indicator for
26 locally harvestable foods, bivalve harvester-days, and recreational
27 Dungeness crab catch shows insufficient or no data, with no target
28 set for 2020. A performance indicator for on-site sewage systems
29 shows that the performance is below the 2020 target, but getting
30 better, but the indicator for percent of unsewered shoreline that has
31 an inspection program shows insufficient or no data. For the metric
32 of health related to outdoor activity, there is no data and no target
33 set for 2020, no data and no target for "nature-based work," and the
34 condition of swimming beaches is listed as not improving and below
35 the 2020 target. Finally, the area of harvestable shellfish beds is
36 listed as getting better but below the 2020 target.

37 (9) With this history of failure in mind, the legislature may
38 have misgivings about whether delegating responsibility to a council
39 of appointees of the governor will provide the requisite
40 accountability and leadership to obtain justice for Washington's low-

1 income, vulnerable, and overburdened populations. Yet, the
2 legislature can be sure that layering a new council over an existing
3 council with overlapping goals and responsibilities for the promotion
4 of human health through healthy ecosystems will lead to a waste of
5 resources, redundancy, confusion of mission, and diluted lines of
6 accountability. Therefore, the legislature intends to sunset the
7 leadership of the Puget sound partnership and replace it with the
8 environmental justice council.

9 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.71
10 RCW to read as follows:

11 (1) The environmental justice council is established for the
12 purpose of carrying out the duties set forth in RCW 90.71.230.

13 (2) The council consists of 12 members appointed by the governor
14 and subject to confirmation by the senate, except for the
15 appointments in (b) of this subsection. The councilmembers must be
16 persons who are well-informed regarding and committed to the
17 principles of environmental justice and who, to the greatest extent
18 practicable, represent diversity in race, ethnicity, age, and gender,
19 urban and rural areas, and different regions of the state. The youth
20 representative serves a two-year term. All other representatives
21 serve four-year terms, with six representatives initially being
22 appointed to four-year terms and five representatives being initially
23 appointed to two-year terms, after which they will be appointed to
24 four-year terms. The members of the council shall elect two members
25 to serve as cochairs for the length of their term. The council must
26 include:

27 (a)(i) Seven community representatives, including one youth
28 representative, the nominations of which are based upon applied and
29 demonstrated work and focus on environmental justice or a related
30 field, such as racial or economic justice, and accountability to
31 vulnerable populations in overburdened communities;

32 (ii) The youth representative must be between the ages of 18 and
33 25 at the time of appointment;

34 (b) Two members representing tribal communities, one from eastern
35 Washington and one from western Washington, appointed by the
36 governor's office of Indian affairs in consultation with all
37 federally recognized tribes in Washington state, including all tribes
38 with treaty reserved rights in Washington state. The tribal
39 representatives serve four-year terms. One representative must be

1 initially appointed for a four-year term. The other representative
2 must be initially appointed for a two-year term, after which, that
3 representative must be appointed for a four-year term;

4 (c) Two representatives who are environmental justice
5 practitioners or academics to serve as environmental justice experts,
6 the nominations of which are based upon applied and demonstrated work
7 and focus on environmental justice; and

8 (d)(i) One representative at large, the nomination of which is
9 based upon applied and demonstrated work and focus on environmental
10 justice;

11 (ii) The following agencies shall serve as nonvoting, ex officio
12 liaisons to the council and each agency must identify an executive
13 team level staff person to participate on behalf of the agency: The
14 departments of agriculture, commerce, ecology, health, natural
15 resources, and transportation.

16 (3) Nongovernmental members of the council must be compensated
17 and reimbursed in accordance with RCW 43.03.050, 43.03.060, and
18 43.03.250.

19 (4) The governor, in his or her discretion, shall first appoint
20 five members of the environmental justice council who, along with the
21 seven current members of the leadership council established pursuant
22 to section 4, chapter 341, Laws of 2007, shall constitute the initial
23 environmental justice council. As the current terms of the members of
24 the leadership council established pursuant to section 4, chapter
25 341, Laws of 2007 expire, the governor, in his or her discretion,
26 shall appoint subsequent members of the environmental justice council
27 according to the requirements set forth in this section until the
28 full voting membership complement of the environmental justice
29 council has been achieved.

30 **Sec. 3.** RCW 90.71.010 and 2017 c 54 s 1 are each amended to read
31 as follows:

32 Unless the context clearly requires otherwise, the definitions in
33 this section apply throughout this chapter.

34 (1) "Action agenda" means the comprehensive schedule of projects,
35 programs, and other activities designed to achieve a healthy Puget
36 Sound ecosystem that is authorized and further described in RCW
37 90.71.300 and 90.71.310.

38 (2) "Action area" means the geographic areas delineated as
39 provided in RCW 90.71.260.

1 (3) "Benchmarks" means measurable interim milestones or
2 achievements established to demonstrate progress towards a goal,
3 objective, or outcome.

4 (4) "Board" means the ecosystem coordination board.

5 (5) "Council" means the (~~leadership council~~) environmental
6 justice council established in section 2 of this act.

7 (6) "Environmental indicator" means a physical, biological, or
8 chemical measurement, statistic, or value that provides a proximate
9 gauge, or evidence of, the state or condition of Puget Sound.

10 (7) "Implementation strategies" means the strategies incorporated
11 on a quadrennial basis in the action agenda developed under RCW
12 90.71.310.

13 (8) "Nearshore" means the area beginning at the crest of coastal
14 bluffs and extending seaward through the marine photics zone, and to
15 the head of tide in coastal rivers and streams. "Nearshore" also
16 means both shoreline and estuaries.

17 (9) "Panel" means the Puget Sound science panel.

18 (10) "Partnership" means the Puget Sound partnership.

19 (11) "Puget Sound" means Puget Sound and related inland marine
20 waters, including all salt waters of the state of Washington inside
21 the international boundary line between Washington and British
22 Columbia, and lying east of the junction of the Pacific Ocean and the
23 Strait of Juan de Fuca, and the rivers and streams draining to Puget
24 Sound as mapped by water resource inventory areas 1 through 19 in WAC
25 173-500-040 as it exists on July 1, 2007.

26 (12) "Puget Sound partner" means an entity that has been
27 recognized by the partnership, as provided in RCW 90.71.340, as
28 having consistently achieved outstanding progress in implementing the
29 2020 action agenda.

30 (13) "Watershed groups" means all groups sponsoring or
31 administering watershed programs, including but not limited to local
32 governments, private sector entities, watershed planning units,
33 watershed councils, shellfish protection areas, regional fishery
34 enhancement groups, marine resources committees including those
35 working with the Northwest straits commission, nearshore groups, and
36 watershed lead entities.

37 (14) "Watershed programs" means and includes all watershed-level
38 plans, programs, projects, and activities that relate to or may
39 contribute to the protection or restoration of Puget Sound waters.

Such programs include jurisdiction-wide programs regardless of whether more than one watershed is addressed.

Sec. 4. RCW 90.71.220 and 2007 c 341 s 4 are each amended to read as follows:

(1) The partnership shall be led by ~~((a leadership council composed of seven members appointed by the governor, with the advice and consent of the senate. The governor shall appoint members who are publicly respected and influential, are interested in the environmental and economic prosperity of Puget Sound, and have demonstrated leadership qualities))~~ the environmental justice council established in section 2 of this act. The governor shall designate one of the ~~((seven))~~ members to serve as chair and a vice chair shall be selected annually by the membership of the council.

~~(2) ((The initial members shall be appointed as follows:~~

~~(a) Three of the initial members shall be appointed for a term of two years;~~

~~(b) Two of the initial members shall be appointed for a term of three years; and~~

~~(c) Two of the initial members shall be appointed for a term of four years.~~

~~(3) The initial members' successors shall be appointed for terms of four years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he or she succeeds.~~

~~(4) Members of the council are eligible for reappointment.~~

~~(5) Any member of the council may be removed by the governor for cause.~~

~~(6) Members whose terms expire shall continue to serve until reappointed or replaced by a new member.~~

~~(7) A majority of the council constitutes a quorum for the transaction of business.~~

~~(8) Council decisions and actions require majority vote approval of all councilmembers))~~ Any person serving on the leadership council, as established pursuant to section 4, chapter 341, Laws of 2007, as of the effective date of this section, may serve out the remainder of his or her current term as prescribed in section 4, chapter 341, Laws of 2007, but may not be reappointed after the expiration of his or her current term.

1 **Sec. 5.** RCW 90.71.230 and 2007 c 341 s 5 are each amended to
2 read as follows:

3 (1) The ((leadership)) council shall have the power and duty to:

4 (a) Provide leadership and have responsibility for the functions
5 of the partnership, including adopting, revising, and guiding the
6 implementation of the action agenda, allocating funds for Puget Sound
7 recovery, providing progress and other reports, setting strategic
8 priorities and benchmarks, adopting and applying accountability
9 measures, and making appointments to the board and panel;

10 (b) Adopt rules, in accordance with chapter 34.05 RCW;

11 (c) Create subcommittees and advisory committees as appropriate
12 to assist the council;

13 (d) Enter into, amend, and terminate contracts with individuals,
14 corporations, or research institutions to effectuate the purposes of
15 this chapter;

16 (e) Make grants to governmental and nongovernmental entities to
17 effectuate the purposes of this chapter;

18 (f) Receive such gifts, grants, and endowments, in trust or
19 otherwise, for the use and benefit of the partnership to effectuate
20 the purposes of this chapter;

21 (g) Promote extensive public awareness, education, and
22 participation in Puget Sound protection and recovery;

23 (h) Work collaboratively with the Hood Canal coordinating council
24 established in chapter 90.88 RCW on Hood Canal-specific issues;

25 (i) Maintain complete and consolidated financial information to
26 ensure that all funds received and expended to implement the action
27 agenda have been accounted for; and

28 (j) Such other powers and duties as are necessary and appropriate
29 to carry out the provisions of this chapter.

30 (2) The council may delegate functions to the chair and to the
31 executive director, however the council may not delegate its
32 decisional authority regarding developing or amending the action
33 agenda.

34 (3) The council shall work closely with existing organizations
35 and all levels of government to ensure that the action agenda and its
36 implementation are scientifically sound, efficient, and achieve
37 necessary results to accomplish recovery of Puget Sound to health by
38 ((2020)) 2030.

39 (4) The council shall support, engage, and foster collaboration
40 among watershed groups to assist in the recovery of Puget Sound.

1 (5) When working with federally recognized Indian tribes to
2 develop and implement the action agenda, the council shall conform to
3 the procedures and standards required in a government-to-governmental
4 relationship with tribes under the 1989 Centennial Accord between the
5 state of Washington and the sovereign tribal governments in the state
6 of Washington.

7 (6) Members of the council shall be compensated in accordance
8 with RCW 43.03.220 and be reimbursed for travel expenses in
9 accordance with RCW 43.03.050 and 43.03.060.

10 NEW SECTION. **Sec. 6.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected."

EFFECT: Strikes all provisions of underlying bill except creation
of environmental justice council.

 Moves leadership and oversight of the Puget Sound Partnership
(PSP) from the current PSP leadership council to the environmental
justice council created in the act.

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