

CAPITAL PROJECTS ADVISORY REVIEW BOARD

Via Zoom

Special Meeting Minutes - **DRAFT**

November 1, 2021

MEMBERS PRESENT

Janice Zahn (*Chair*)
Bill Dobyms (*Vice Chair*)
Jeri Arbuckle (*Alternate*)
Corey Fedie
Senator Bob Hasegawa
Matthew Hepner
Janet Jansen
Rebecca Keith
Santosh Kuruvilla
Karen Mooseker
Irene Reyes (*Intermittent Attendance*)
Mark Riker
John Salinas II
Mike Shinn
Kara Skinner
Axel Swanson (*Interim*)
Andrew Thompson
Lisa van der Lugt
Senator Judy Warnick
Olivia Yang

REPRESENTING

Ports
General Contractors
Transportation
Public Hospital Districts
Senate (D)
Const. Trades Labor
State Government
Cities
Engineers
School Districts
Private Industry
Const. Trades Labor
Specialty Contractors
Specialty Contractors
Insurance/Surety Industry
Counties
General Contractors
OMWBE
Senate (R)
Higher Education

MEMBERS ABSENT

Bobbie Forch, Jr.
Walter Schacht
Rep. Mike Steel
Rep. Steve Tharinger
Robynne Thaxton

REPRESENTING

Disadvantaged Businesses
Architects
House (R)
House (D)
Private Industry

Staff & Guests are listed on the last page

WELCOME & BOARD MEMBER INTRODUCTIONS

Chair Zahn called the special Capital Projects Advisory Review Board (CPARB) virtual meeting to order at 9:00 a.m.

A roll call of members established a meeting quorum.

SPECIAL MEETING PURPOSE

Chair Zahn reported the meeting is a special meeting with a single topic. Any additional topics will be deferred to the December meeting. The meeting is to consider and respond to the draft bill sponsored by Representative Pollet in response to the Local Government Public Works Contracting Study recommendations from CPARB.

INVITATION FOR PUBLIC COMMENTS – *Information*

Vice Chair Bill Dobyms invited public comments.

Michael Transue thanked Chair Zahn for scheduling the meeting to review and respond to the bill sponsored by Representative Pollet. As a participant in a recent meeting of the Business Equity\Diverse Business Inclusion Committee (BE\DBI), members identified provisions in the proposed bill consistent with CPARB's recommendations, as well as several other provisions that had been changed to some degree. Members reviewed and identified another list of proposals within the bill that were not included in CPARB's recommendations but were worthy of further discussion. On behalf of MCA of Western Washington, members are supportive of the bill sponsored by Representative Pollet; however, some of the provisions included in the bill deserve further discussion and possible narrowing in the scope moving forward pertaining to building cost index with the Office of Financial Management (OFM) responsible for regular updates. The committee discussed the possibility of tiering of public owners for the purpose of increasing Small Works Roster limits. MCA leadership looks forward to discussing the issue with CPARB or the committee on ways to implement some tiering possibilities that would complement the proposed bill.

Jeri Arbuckle advised that she is attending the meeting as an alternate on behalf of Linneth Riley-Hall representing Transportation.

OPENING THOUGHTS FROM BOARD MEMBERS

Chair Zahn invited members to provide feedback on the meeting via Zoom's chat function. She stressed the importance of the Board's ongoing and thoughtful deliberations and considerations for any Board recommendations. The purpose of the special meeting is to ensure any response forwarded to Representative Pollet is fully supported by the Board and is reflective of the Board's direction.

SPECIAL MEETING TOPIC

CPARB Response to Draft Bill Language from Representative Pollet based on the Local Government Public Works Study Committee Recommendations

Chair Zahn acknowledged the participation of Jon Rose with Municipal Research and Services Center (MRSC). Mr. Rose in conjunction with Santosh Kuruvilla and Olivia Yang will provide an overview on the results of the recent BE\DBI Committee meeting. When Representative Pollet approached the Board about the draft bill, she spoke with BE\DBI Committee Co-chairs Kuruvilla and Yang about the possibility of having the BE\DBI Committee review the bill. Following the committee's review, members prepared a written review of the draft bill with several recommendations. Mr. Kuruvilla and Ms. Yang will review the recommendations to assist the Board in developing a potential response to Representative Pollet's bill.

Ms. Yang conveyed appreciation to Mr. Transue for his comments, which were consistent with the committee's discussion on Friday, October 29, 2021. Generally, in approaching the review of the proposed bill, the committee was informed by earlier work completed by the CPARB Local Government Public Works Study (LGPWS) Committee. Three provisions in the bill are in alignment with the LGPWS Committee recommendations that were subsequently approved by the Board. Those provisions included updating Port District and Irrigation District Small Works Roster Statutes to refer to [RCW 39.04.155](#). Other provisions in the bill would implement an inflation threshold and include a mechanism for funding training of business and public owners. The proposed bill also touched on several factors reviewed by the LGPWS Committee that did not attain consensus. Those items include adding a definition of 'small business' and language that speaks to performance and retainage exemptions. CPARB recommended applying the provision (removing retainage and bond requirements) to projects under \$5,000 while the proposed bill recommends projects under \$10,000. The committee did not review approximately five issues contained in the Local Government Public Works Contracting Study. Those issues include increasing the threshold from \$350 to \$500 regardless of notification to small businesses as part of the informal bidding process, limiting individual contracts to a single contractor at 20% within the Small Works Roster, and certifications included and referenced in the agency's post-information on OMWBE's website. CPARB also recommended maintenance provisions that were not included in the proposed bill.

Chair Zahn recommended affording sufficient time for members to digest and understand each of the provisions as several new members have joined the Board since the Board approved and forwarded the LGPWS recommendations. She referred to the BE\DBI Committee's review of the draft bill and those provisions in the bill aligning with the LGPWS Committee recommendations subsequently approved by CPARB:

- Bring Ports and Irrigation District statutes into alignment with the Small Works Roster statute with the intent that they no longer have different thresholds
- The Pollet bills includes a method to implement an inflation threshold for the Small Works Roster
- Include a mechanism to fund training for businesses and public owners.

Chair Zahn invited feedback from the Board.

Andrew Thompson advised that he did not attend the meeting of the BE\DBI Committee. It appears that many of the provisions in the bill were vetted by the committee that were not previously reviewed by the Board. Based on the proposed bill, he could support the proposed provisions but acknowledged the Board's desire to review the bill while recognizing that the bill's provisions are more expansive than originally vetted by CPARB through the LGPWS Committee. He is conflicted between what he could support because it is reflective of the intent by the Legislature while possibly outside the original scope reviewed by the Board a year ago.

Chair Zahn said the Board's special meeting was scheduled to provide an opportunity for the Board to review some of the provisions in Representative Pollet's bill that the Board did not previously review nor consider. However, she would not want to be presumptuous in responding to the bill without the Board reviewing the provisions that could be supported and those provisions that might require more time.

Rebecca Keith recommended reviewing the Board's process for rendering a position on a bill that has not been previously vetted by the Board. She conveyed appreciation to Representative Pollet for affording an opportunity for the Board to review the draft bill, but questioned the extent of the Board's response and the timing of the response to the Legislature.

Chair Zahn commented that CPARB operates as an industry-wide Board rendering decisions and recommendations by consensus. Sometimes, minority positions or comments may be offered; however, in terms of the Board's positions, decisions moved forward are unanimous in support. The new bill has been forwarded to the Board for its consideration and comment. To the degree that the Board often reviews and provides bill language or feedback to the Legislature, the proposed bill likely falls in the second category as some of the language is consistent with the recommendations from the Local Government Public Works Contracting Study and some language represents expansions and additions. Representative Pollet has conveyed interest in advancing the bill during the 2022 legislative session and would like feedback from the Board prior to legislative committee meetings. The Board's response could include the Board not rendering a position, the Board lacked consensus, or the Board attained agreement on some elements of the bill.

Senator Warnick advised that she did not have an opportunity review the bill thoroughly; however, based on comments she would not advise the Board to weigh in with complete support of the bill because of timing. The Senate Committee assembly is scheduled to meet in mid-November. She is unsure of the timing for the House Committee assembly, but it could possibly be during the same week. Generally, committee assemblies hear reports and bills with no opportunity to provide comments on specific bills unless the rules have changed for House committees. Some members of the Board appear to be interested in reviewing the bill, changing some definitions, or just learning more about the proposed bill. Her interest is in learning what the bill would achieve. She is also interested in ensuring Ports and Irrigation Districts are included. The bill would not be voted on during committee assemblies, which may afford more time for the Board's review during the December meeting.

Mark Riker agreed, as more time is required to consider the bill. He respects the goal to be responsive when a legislator asks the Board for an opinion; however, he did not have time to vet the bill properly. His constituency generally opposes expansion and an increase in thresholds. However, he would prefer to have adequate time to review the bill to enable a thorough and considerate response.

Matthew Hepner agreed with Mr. Riker and Senator Warnick.

Ms. Arbuckle agreed more time is warranted to review the bill.

Mr. Transue said he believes Representative Pollet's timeframe was not intended to serve as a formal comment during committee assemblies but to serve as an informal timeline to receive comments on the bill by November.

Ms. Keith said that based on feedback, timing might not be urgent for the Board to render a formal position on the bill. It might be premature to provide any further substantive comments rather than the Board soliciting feedback from their constituents to prepare for a discussion during the December meeting.

Chair Zahn noted that since not all members have offered feedback, it is difficult to ascertain next steps; however, as a representative of Ports, Port officials have discussed disparities for ports and irrigation districts. In addition to requesting more time for those elements that the Board did not consider, she would entertain supporting the elements in the bill that were recommended by the LGPWS Committee, which includes adjusting Port District and Irrigation District Small Works Roster statutes to refer to RCW 39.04.155 in alignment with other public agencies. She recognized that any additional time for review could result in language changes that could be submitted for consideration during the 2023 legislative session rather than the 2022 session.

Ms. Keith pointed out that the legislature has received CPARB's recommendation for some of the same elements. She would be hesitant to forward a response that is specific to only one element of an entire bill.

Mr. Thompson recommended reiterating the prior work completed by the CPARB, which is consistent with the three bulleted provisions. He invited representatives of public agencies to provide feedback. Any additional provisions beyond the three bulleted items would require additional time to vet.

Janet Jansen supported the three provisions approved by CPARB and agreed additional time is necessary to review other provisions in the bill.

Senator Hasegawa agreed with the general direction by the Board to support the provisions recommended by CPARB and take some time to review the other provisions. He agreed the bill would not be presented during committee assemblies. It is likely Representative Pollet is seeking input on the bill to identify any negative consequences to the language proposed in the bill to avoid being blindsided when the bill is introduced.

Ann Larson advised that based on her conversations with Representative Pollet and his staff, the request is for informal feedback from the Board to assist staff in the development of the bill.

Chair Zahn affirmed the Board's direction to pursue two pathways. The first is providing feedback on the need for more time to review the bill holistically and the second is to support bill language that has been approved by the Board while requesting additional time on elements recommended by the LGPWS Committee that did not attain consensus by CPARB.

Discussion followed by the Board on the format of the Board's response to Representative Pollet. Chair Zahn explained that the preferred outcome is for the Board to authorize the Chair to work with DES staff to draft a CPARB response to Representative Pollet. Based on the Board's conversation, the two recommended pathways are somewhat different, which requires additional clarity.

Senator Hasegawa suggested a formal response might not be necessary, as he is cognizant of the remarks offered by Mr. Riker about the importance of all parties reaching agreement to achieve the best outcome. As a general rule, building trades prefer not extending limits; however, if a pathway is possible to reach consensus, that would be the preferred option. He does not believe Representative Pollet is seeking a formal response but rather his intent is to wordsmith the bill. A conversation with Representative Pollet might suffice to bring him up-to-date on the Board's position.

Karen Mooseker supported the approach of highlighting the three bulleted provisions approved by CPARB and requesting more time for other provisions. She added that the second provision on the inflation threshold generated some conversation by the Board with no consensus or outcome reached as to the mechanism for increasing inflation rates in the future. The draft bill uses the Building Cost Index (for Seattle), which may prompt the need for the Board to have sufficient time to discuss that specific provision.

Jon Rose provided additional clarification on the mechanism for the inflation index. During the research, MRSC worked with the Department of Labor and Industries to identify indexes that would be available to serve as the mechanism. The recommendation was to use the Construction Cost Index (CCI), which he believes the bill includes. Discussion during the committee included the possibility of creating a new index or pursuing additional research to identify a regional index. Ultimately, the recommendation by CPARB was to move forward with the CCI recommendation.

Mr. Thompson added that an entire committee meeting was spent on a yes/no process of potential consequences in terms of the type of index. The issue may merit a further discussion regarding the inflation index.

Mr. Riker said he does not believe his constituency would have been in a position to vote in the affirmative for the three provisions, which speaks to his current appointment to the Board. He acknowledged that he was not a member when the Board approved the recommendations, but reiterated his request for additional time, as the three provisions would not be

acceptable to the building trades. He supports some provisions in the bill and plans to meet with Representative Pollet to ensure he is aware of the positions by the building trades. He asked for additional time to vet the provisions to avoid Representative Pollet and the Board from receiving mixed messages from the labor community.

Chair Zahn thanked Mr. Riker for his comments as the Board honors all voices. It is important all questions by the Board are understood by all members as the issue moves forward. Related to the inflation index, there was much discussion to determine the appropriate index to use.

Ms. Yang suggested that if Representative Pollet is only seeking some informal feedback, it might be possible to have a conversation reiterating the three provisions in the context of the earlier Local Government Public Works Contracting Study in terms of the definition of small business or the inflation index. There appears to be no consensus on many of the issues that have been addressed. The Board's conversation is providing some clarity in that there are many issues within the Pollet bill that did attain a consensus, which might be helpful for Representative Pollet to know about.

Chair Zahn asked Mr. Riker whether there are were provisions within the CPARB recommendations that are of concern. Mr. Riker affirmed there are some issues. For example, bringing Ports and Irrigation District statues into alignment is not problematic but when indexed it affords an additional increase above the intended initial increase, which is challenging to the trades. He has not had the opportunity to review the provisions and give them proper consideration.

Ms. Keith agreed additional time is warranted. One of the reasons Representative Pollet has been contacted by small jurisdictions about thresholds is because public owners are struggling to find an efficient and fair way to complete public works projects, which are often smaller projects. Some initial concerns were addressed by the bill; however, other provisions in the bill (Sections 8, 9, and 10 provisions) have generated some concerns by smaller districts and cities that have not been fully vetted to identify whether there would be any issues and possible ways to resolve those issues.

Chair Zahn offered that if Representative Pollet is not seeking a formal response from the Board, staff could forward some points of the discussion surrounding some elements of the bill already considered by the Board and other elements requiring additional time to review. Additionally, the application of the inflation index may require different language in the bill to help resolve some challenges as identified by several members.

Ms. Larson offered to work with Chair Zahn and legislative staff to include the information in an informal letter to Representative Pollet.

Senators Hasegawa and Warnick supported the recommendation to move forward with an informal letter. Senator Hasegawa asked whether Representative Pollet shared information on what the bill is intended to accomplish as another similar bill was offered by Representative Santosh to streamline local government agency processes, as well as increasing women and minority business opportunities. He is also unsure whether the goal of increasing the thresholds and providing local governments with more opportunities to create lists of providers could accommodate building trades concerns that could result in affecting building trade's opportunities.

Ms. Larson said much of the bill was drafted from a worksession sponsored by Representative Pollet in response to the report by the LGPWS Committee in addition to feedback from stakeholders. In combination with the proposed bill by Senator Santosh, the goal of Representative Pollet was to combine those efforts. Providing CPARB feedback would be helpful. Representative Pollet also invited participation of some state agencies as he is interested in data collection and accountability. Consequently, it could result in different tracks to pursue. Those discussions continue with state agencies. DES staff is working to include representation by CPARB within those conversations.

Chair Zahn said it would be helpful for the Board to have a list of proposed bills to ensure the Board has an opportunity to provide comments, if appropriate. Based on the feedback from the Board, Chair Zahn suggested staff could provide some feedback to Representative Pollet that speaks to some of the provisions considered by CPARB but more review time would be necessary and that the Board is willing to provide and receive further feedback from Representative Pollet.

Lisa van der Lugt suggested defining the timeline for additional review. Chair Zahn advised of the Board's pending work items, to include a recommendation to the Legislature on Senate Bill 5032, which will consume a significant amount of the Board's time in conjunction with ongoing Board Development work and best practices guidelines. Dependent upon the feedback from Representative Pollet and to accommodate the Board's workload, it would be necessary to ensure Board members have sufficient time and the resources to engage in the work before defining a specific timeline for an additional review. Ms. van der Lugt suggested inviting staff from Representative Pollet's office to the next meeting to answer some questions.

Based on input by the Board, Chair Zahn asked for a motion to pursue the approach as outlined.

Bill Dobyms moved, seconded by Janet Jansen, to direct Chair Zahn and DES staff to provide some informal feedback to Representative Pollet that speaks to the some of the provisions considered by CPARB with a request to afford more time for additional review of some of the provisions.

Mr. Riker commented that he does not believe a motion is necessary. An informal discussion among staff is not a votable action.

Ms. Keith said the Board's conversation was in the form of feedback to Representative Pollet and she is unsure a formal action is necessary.

Chair Zahn summarized the feedback for responding to Representative Pollet. The Board has directed informal feedback to Representative Pollet and legislative staff conveying that although the bill includes provisions that are consistent with the LGPWS Committee recommendations, the Board believes more time is necessary to consider the bill because of provisions in the bill that expand beyond CPARB's recommendations. The Board is not prepared to provide a formal response to the proposed bill.

The Board supported the Chair's summary of the approach to respond informally to Representative Pollet.

Mr. Dobyms and Ms. Jansen withdrew their motion.

Chair Zahn expressed appreciation to members for attending the special meeting to discuss the issue. The next meeting is scheduled on December 9, 2021.

ADJOURNMENT

With there being no further business, Chair Zahn adjourned the meeting at 10:18 a.m.

STAFF & GUESTS

Talia Baker, Department of Enterprise Services
Nancy Deakins, Department of Enterprise Services
Brandy DeLange, Assoc. of Washington Cities
Bill Frare, Department of Enterprise Services
Valerie Gow, Puget Sound Meeting Services
Kelci Karl-Robinson, Washington State Legislature
Ann Larson, Department of Enterprise Services
Scott Middleton, MCA

Rachel Murata, OMWBE
Mark Nakagawara, City of Seattle
Cathy Robinson, City of Lynnwood
Jon Rose, MRSC
Michael Transue, MCA of Western Washington
Brent Underman
Melissa Van Gorkom, Senate Committee Services