

Capital Projects Advisory Review Board

Recommendations on SHB 1621

December 14, 2023

Intent

Substitute House Bill 1621 passed by the house on April 13, 2023, including revisions to the RCW. In accordance with new section 7, sections 1-5 of this act take effect on June 30, 2024.

SHB 1621 - AN ACT Relating to standardizing local government procurement rules among special purpose districts, first-class and second-class cities, and public utility districts; amending RCW 54.04.070, 35.23.352, 35.22.620, 57.08.050, and 52.14.110; creating a new section; and providing an effective date.

New section 6 includes the following statement:

“The capital projects advisory review board shall review this act and make recommendations to the appropriate committees of the legislature by December 31, 2023.”

On April 13, 2023, CPARB formed the SHB 1621 Review Committee to bring together a coalition of industry stakeholders for the assessment and determination of the recommendations outlined in this report.

<https://des.wa.gov/about/committees-groups/capital-projects-advisory-review-board-cparb/shb-1621-review-committee>

Committee members:

- [Mark Nakagawara](#) (Cities) - Co-Chair
- [Keith Michel](#) (General Contractors) - Co-Chair
- [Sharon Harvey](#) (OMWBE)
- [Bruce Hyashi](#) (Architects)
- [Irene Reyes](#) (Private Industry)
- [Mark Riker](#) (Labor)
- [Michael Transue](#) (Mechanical Contractors Association)
- [Diane Pottinger](#), North City Water District
- [Liz Anderson](#), WA PUD Association

Committee Stakeholders:

Judi Gladstone, WASWD
Logan Bahr, Tacoma Public Utilities
Scott Middleton, MCAWW
Randy Black, Lakewood Water District
George Caan, WA PUD Association
Paul Richart, Alderwood Water & Wastewater District
Bill Clark, WA PUD Association
Abigail Vizcarra Perez, MetroParks Tacoma
Joren Clowers, Sno-King Water District Coalition
Rob Wettleson, Forma Construction
Linda De Boldt, City of Bellevue
Maggie Yuse, Seattle Public Utilities
Brandy DeLange, Assoc. WA Cities

SHB 1621 BACKGROUND

During the 2023 legislative session, Washington Association of Sewer and Water Districts (WASWD) sponsored SHB 1621 with support from Association of Washington Cities (AWC) and Seattle Public Utilities. The objective of the bill was to establish a uniform and efficient method for public works projects, enabling agencies to better address emerging issues like replacing specific parts of water, sewer, or stormwater mains. SHB 1621 passed unanimously out of the House and Senate. To acknowledge concerns raised by Mechanical Contractors Association of Western Washington (MCAWW) and the Washington Building and Construction Trades Council (WSBCTC) and others, the legislature added a requirement for CPARB to review and provide recommendations on the bill by December 31, 2023.

SHB 1621 implements a consistent cap of \$75,000 for individual trade projects and \$150,000 for multiple trade endeavors, where work is performed by regularly employed personnel within public utility districts, sewer/water districts, and fire districts. These limits align with the established thresholds in RCW 35.22 and RCW 35.23 for first-class and second-class cities. Additionally, SHB 1621 extends the authority for these cities and districts to conduct work using their personnel and materials up to \$300,000, guided by 'Prudent Utility Management.' This standard, which public utility districts have successfully used since 1971 under RCW 54.04, exempts items classified as equipment within this specified threshold. The definition of 'Prudent Utility Management' outlines specific items considered as "equipment," encompassing conductors, cabling, wires, pipes, or lines utilized for electrical, water, fiber optic, or telecommunications purposes.

Additionally, SHB 1621 broadens the empowerment of public utility districts, first-class cities, water/sewer districts, and fire districts to refuse low bids by means of a responsibility determination. This aligns with the authority currently granted to second-class cities as outlined in RCW 35.23.

HB 1621 GENERAL CONCERNS

Members of the committee, along with stakeholders advocating their respective interests, have collaborated to seek resolutions for the prospective enactment of SHB 1621. Representatives from MCAWW and WSBCTC endorse the revocation of SHB 1621.

Committee Responses:

- Cities and sewer/water districts have restated SHB 1621's purpose to address the need for flexibility to perform work with regularly employed personnel in situations when the practice provides an efficient and effective means to address an exigent circumstance.
- Cities and sewer/water districts expressed that the small works rosters involve time consuming contracting processes and face contractor availability issues that can hinder addressing the exigent needs of a public body.
- Cities and sewer/water districts have articulated concerns that the emergency public works provisions outlined in RCW 39.04.280 serve only as a competitive bid waiver and do not offer any time advantages or an increase in the public works thresholds for tasks carried out by regularly employed personnel. Lengthy contracting procedures and contractor availability issues are perceived as impediments in addressing urgent needs. These entities, including cities, sewer/water districts, and fire districts, contend that the \$300,000 threshold sets a sensible limit for situations where immediate needs can be addressed by their own regularly employed staff.
- MCAWW and WSBCTC express their opposition to any committee recommendation supporting the bill's continuity, expressing concerns about the broad policy implications and impacts on contractors engaged in smaller public works contracting projects. They highlight that by elevating the thresholds for self-performed work by public entities, the bill effectively decreases the available public bid project opportunities for public contractors, particularly affecting small and disadvantaged businesses.
- MCAWW and WSBCTC advocate for the highly focused and tightly restricted application of the 'Prudent Utility Management' expansion to cities, sewer/water districts, and fire districts.
- MCAWW and WSBCTC recommend that the utilization of 'Prudent Utility Management' by cities, sewer/water districts, and fire districts be reported to the state for oversight and tracking purposes.
- WSBCTC representatives expressed their opposition towards the augmentation of the thresholds that govern work allowed by regularly employed personnel of public entities. No suggestions for corrections or adjustments were submitted.

SHB 1621 ISSUES OF RECOMMENDATIONS:

Uniform limits of \$75,000 and \$150,000 for Regularly Employed Personnel:

Committee Recommendation:

- [VOTE#1] Committee members recommend the preservation for the establishment of the uniform single trade \$75,000 and multiple trade \$150,000 thresholds for work performed by regularly employed personnel.

{Keeping the current Bill language to make thresholds uniform for work performed by public employees (single trade \$75,000 and multiple trade \$150,000)} [AGREE or DISAGREE]

VOTE #1			
SHB 1621 Committee Voting		CPARB Voting	
8	Agree		Agree
1	Disagree		Disagree
0	Abstain		Abstain
0	Absent		Absent

Committee Comment:

- Raising the thresholds for PUDs, sewer/water districts and fire districts to match what exists for first and second-class cities creates uniformity amongst the agencies and accounts for inflation and price escalation factors. *{Some districts will see an increase to match these uniform thresholds.}*

Prudent Utility Management - Definition:

Significant concerns were expressed regarding the uniform applicability of the term, ‘Prudent Utility Management’ for the cities, sewer/water districts and fire districts.

Committee Recommendation:

- [VOTE#2] Committee members recommend revisiting the appropriateness of the uniform application of ‘Prudent Utility Management’ for cities, sewer/water districts and fire districts. [AGREE or DISAGREE]

VOTE #2			
SHB 1621 Committee Voting		CPARB Voting	
6	Agree		Agree
3	Disagree		Disagree
0	Abstain		Abstain
0	Absent		Absent

- [VOTE#3] Should ‘Prudent Utility Management’ apply to cities? [YES or NO]

VOTE #3			
SHB 1621 Committee Voting		CPARB Voting	
9	No		No
0	Yes		Yes
0	Abstain		Abstain
0	Absent		Absent

- [VOTE#3-B] Should the language proposed by cities (*see comment 4 below*) be applied in revisions to SHB 1621 for cities? [YES or NO]

VOTE #3-B			
SHB 1621 Committee Voting		CPARB Voting	
3	No		No
4	Yes		Yes
1	Abstain		Abstain
1	Absent		Absent

- [VOTE#3-C] Should MCA’s recommendation of changing “or” to “and” within proposed language by cities be incorporated to revisions in SHB 1621 for cities? [YES or NO]

VOTE #3-C			
SHB 1621 Committee Voting		CPARB Voting	
3	No		No
4	Yes		Yes
1	Abstain		Abstain
1	Absent		Absent

- [VOTE#4] Should ‘Prudent Utility Management’ apply to sewer/water districts? [YES or NO]

VOTE #4			
SHB 1621 Committee Voting		CPARB Voting	
3	Yes		Yes
6	No		No
0	Abstain		Abstain
0	Absent		Absent

- [VOTE#4-B] Should the language proposed by cities (*see comment 6 below*) be applied in revisions to SHB 1621 for sewer/water districts? [YES or NO]

VOTE #4-B			
SHB 1621 Committee Voting		CPARB Voting	
4	No		No
4	Yes		Yes
1	Abstain		Abstain
0	Absent		Absent

- [VOTE#4-C] Should MCA’s recommendation of changing “or” to “and” within proposed language by cities be incorporated to revisions in SHB 1621 for sewer/water districts? (see comment 6 below) [YES or NO]

VOTE #4-C			
SHB 1621 Committee Voting		CPARB Voting	
3	No		No
5	Yes		Yes
1	Abstain		Abstain
0	Absent		Absent

- [VOTE#5] Should ‘Prudent Utility Management’ apply to fire districts? [YES or NO]

VOTE #5			
SHB 1621 Committee Voting		CPARB Voting	
3	Yes		Yes
6	No		No
0	Abstain		Abstain
0	Absent		Absent

- [VOTE#5-B] Should the language proposed by cities (see comment 4) be applied in revisions to SHB 1621 for fire districts? [YES or NO]

VOTE #5-B			
SHB 1621 Committee Voting		CPARB Voting	
3	No		No
4	Yes		Yes
2	Abstain		Abstain
0	Absent		Absent

- [VOTE#5-C] Should MCA’s recommendation of changing “or” to “and” within proposed language by cities be incorporated to revisions in SHB 1621 for fire districts? [YES or NO]

VOTE #5-C			
SHB 1621 Committee Voting		CPARB Voting	
3	No		No
4	Yes		Yes
2	Abstain		Abstain
0	Absent		Absent

Committee Comments:

1. The Committee questioned whether the term ‘Prudent Utility Management’ was an appropriate and applicable term for cities, sewer/water districts and fire districts.
2. MCA believes that ‘Prudent Utility Management’ definition is too subjective as applied to cities, sewer/water districts and fire districts and will lead to abuse.

3. In an effort to provide clarity when the discretionary \$300,000 threshold may be used, cities proposed new language to replace the term, 'Prudent Utility Management'. The intent of the proposed language is to narrowly describe the circumstances when regularly employed personnel would be allowed to work on projects with values up to \$300,000. Cities believe this proposal provides the requisite clarity identifying eligible public works projects while also protecting contractor interests.
4. Proposed Language by Cities: "...a first class-city may have its own regularly employed personnel with the requisite experience, capability and qualifications, perform public works activities to address the exigency, efficiency or financial needs of the public body without a contract in the sum not to exceed \$300,000."
5. MCA does not endorse the language suggested by first-class and second-class cities, deeming it excessively flexible and inadequately restrictive.
6. MCA emphasized that if the suggested language is accepted, the use of "or" should be revised to "and" in order to provide clearer definitions of the situations in which the \$300,000 threshold is employed by cities, sewer/water districts, and fire districts.
7. "...to address the exigency, efficiency [**and**] financial needs..."
8. Sewer/water districts maintain that altering the term 'Prudent Utility Management' might be unnecessary. However, they are willing to explore the conditions outlined in the proposed language introduced by the first-class and second-class cities in response to concerns raised by certain committee members.

'Prudent Utility Management' definition and cost exclusion for "equipment":

Committee members expressed concerns regarding the applicability for the definition of "equipment" in the context of 'Prudent Utility Management' as it applied to cities, sewer/water districts and fire districts. The definition states "equipment" consists of "...conductor, cabling, wire, pipe, or lines used for electrical, water, fiber optics, or telecommunications."

Committee Recommendation:

- [SUBJECT TO VOTE] Committee members recommend the revisiting of the definition of 'equipment' in the context of 'Prudent Utility Management' as applied to cities, sewer/water districts, fire districts.
- [VOTE#6] Should the definition of 'equipment' as applied to cities, sewer/water districts, and fire districts be modified through revisions to SHB 1621? [YES or NO]

VOTE #6			
SHB 1621 Committee Voting		CPARB Voting	
0	No		No
9	Yes		Yes
0	Abstain		Abstain
0	Absent		Absent

- [VOTE#7] Should the definition of 'equipment,' as currently defined or potentially modified, when applied to cities, sewer/water districts, and fire districts, be excluded from the cost of a project concerning the \$300,000 threshold? [YES or NO]

VOTE #7			
SHB 1621 Committee Voting		CPARB Voting	
3	No		No
5	Yes		Yes
1	Abstain		Abstain
0	Absent		Absent

Committee Comments:

- The cities highlighted that the definitions of equipment and materials, as utilized in the context of public utility districts (PUDs), may not be wholly applicable or transferable to cities. Cities also proposed to limit **all project costs** to the \$300,000 threshold in lieu of the “equipment” and “material” distinctions defined in the ‘Prudent Utility Management’ definition.
- MCA stated that further clarification is needed for the materials and equipment definitions under the direction of ‘Prudent Utility Management’ when applied to cities, sewer/water districts and fire districts.
- Committee participants deliberated on the advantages of implementing reporting obligations to the state auditor, aimed at tracking the frequency and rationales for public entities exercising the option of self-performing work.

Bidder Responsibility Determinations:

Members of the committee expressed concerns regarding the provision to allow for the rejection of a low bidder in light of an issue with a bidder’s responsibility or lack thereof. While this language pre-exists for the second-class cities in RCW 35.23, general public works provisions for bidder responsibility exist in RCW 39.04.350.

Committee Recommendation:

- [SUBJECT TO VOTE] The committee recommends revisiting the applicability of adding bidder responsibility provisions due to its pre-existence in RCW 39.04.050.
- [VOTE#8] Should any bidder responsibility provisions be extended to public entities via SHB 1621?
[YES or NO]

VOTE #8			
SHB 1621 Committee Voting		CPARB Voting	
4	No		No
4	Yes		Yes
0	Abstain		Abstain
1	Absent		Absent

Committee Comments:

- Cities are open to striking bidder responsibility language from SHB 1621.
- Sewer/water districts and public utilities prefer to have equal access to the authority given to second-class cities but are open to striking bidder responsibility language of SHB 1621.
- MCA and construction trade labor supports the rejection of the bidder responsibility language of SHB 1621.