

## SHB 1621 Review Committee

Meeting Notes 8/15/2023

Page 1 of 8

### Committee Members: (7 positions, 4 = Quorum)

X Keith Michel, General Contractors—Co-Chair	X Mark Nakagawara, Cities—Co-Chair
X Bruce Hayashi, Architects	X Mark Riker, Construction Trades & Labor
X Sharon Harvey, OMWBE	X Michael Transue, Contractors (MCAW)
X Irene Reyes, Private Industry	

### Guests & Stakeholders:

Randy Black, Lakewood Water District	Monique Martinez, DES
Joren Clowers, Sno-King Water District Coalition	Diane Pottinger, North City Water District
Patricia Collins, Maul, Foster & Alongi, Inc.	Abigail Vizcarra Perez, MetroParks Tacoma
Nancy Deakins, DES	Rob Wettleson, Forma Construction
Brandy DeLange, Assoc. WA Cities	

Meeting started at 1:32 p.m.

### Discussion Highlights:

#### **Welcome & Introductions**

Co-Chair Keith Michel extended a warm welcome to committee member Mark Riker, who represents labor. He mentioned that there were no new introductions required, as Mark Riker was the only new addition to the group.

#### **Review/Approve Agenda**

Co-Chair Keith Michel proposed the approval of the agenda, seconded by Sharon Harvey. The agenda received unanimous approval through a voice vote.

#### **Approve notes from the last meeting (8/1/23)**

Sharon motioned to approve the minutes from the previous meeting as issued, seconded by Bruce Hayashi. The minutes gained approval through a voice vote, with Michael Transue and Mark Riker abstaining.

#### **Review committee comments to SHB 1621, update matrix**

Co-Chair Michel verified that Monique Martinez had received annotated versions of the bill from committee members. Monique informed the group that she consolidated the markups into a single document, which she distributed to both the committee and stakeholders on Friday. She mentioned that no further changes had been made to the bill since then.

Co-Chair Michel suggested that the committee go through the comments on the document. He clarified that he would be incorporating the discussion notes into the matrix.

#### **Definition of prudent utility management**

Co-Chair Michel raised the initial topic, the definition of "prudent utility management" (PUM) and proposed that the committee consider providing additional clarification regarding this term.

#### **PUM further discussion of definition, limits, and flexibility**

Michael Transue inquired if the committee was prepared to meticulously review the bill line by line, expressing uncertainty about whether the appropriateness of utilizing "prudent utility management" (PUM) as good public policy had been addressed. He pondered whether PUM should extend to first and second-class cities, water/sewer districts, and fire districts, considering previous discussions that indicated PUM might be suitable for utilities but not other entities. Michael also questioned if altering the term to match specific entities (e.g., prudent city management, prudent fire district management) should be discussed. Additionally, he asked if the committee had deliberated on the implications of increasing the thresholds from \$150,000 to \$300,000 for

added flexibility and if they were comfortable with that level of flexibility. He raised the point of whether this increased flexibility could be leveraged to train staff effectively, similar to the water/sewer districts' discussions.

Co-Chair Michel indicated that the committee had yet to engage in an in-depth conversation. He highlighted two aspects of the PUM discussion: (1) the consideration of including further definitions, such as "prudent water/sewer district management," and (2) evaluating whether these additional definitions would extend the same language or flexibility to other entities.

### ***PUM and cities***

Brandy DeLange remarked that in the previous meeting, both the committee and stakeholders reached similar conclusions from a city perspective. She stated that prudent utility management (PUM) shouldn't apply to collective municipalities. The discussions her group had focused on crafting a definition that pertained solely to cities. Brandy conveyed that the language recommended by cities specifically addresses cities and doesn't aim to diminish the authority of public utility districts (PUDs). The Association of Washington Cities (AWC) shares the view that PUM shouldn't be a blanket definition.

Abigail Vizcarra Perez expressed her efforts to comprehend whether PUM pertains to efficiency, service delivery, internal funding capacity, or workforce development. She questioned if there was a potential for scope creep in the definition.

Joren Clowers responded to Michael Transue's inquiry, stating that water/sewer districts find the utility management language appropriate for their context and support improving the language for other entities that require it.

Michael Transue raised questions about the historical context of PUD authority being established in statute. He noted that the original policy reasons for adding it to the statute included flexibility and training. He expressed uncertainty whether the policy reasons underlying the bill's language for utilities, wire, pipe, etc., also justified changes to the PUD statute. He wondered if, from a policy standpoint, the transferability of public utilities to other utilities like water/sewer districts was equitable.

Joren mentioned that water/sewer districts provided feedback, including examples, background information, and implementation details related to PUDs. He emphasized that the document clearly illustrates that other utilities are aligned in intent. Co-Chair Michel requested Monique to distribute the document, to which Monique agreed.

### ***Impact of PUM and increased thresholds on small businesses***

Bruce highlighted that prudent utility management (PUM) pertains to how municipalities maintain accessible contracting opportunities for small businesses. He emphasized that small businesses play a crucial role, as they contribute to the pool of external contractors available when needed. He suggested that the language should acknowledge the involvement of small businesses because the current bill's focus on PUM doesn't address the impact on those affected by PUM and the revised thresholds.

Michael Transue pointed out that a small works roster group could initiate projects without a contract for amounts under \$150,000. He explained that this policy responds to Bruce's concern about small businesses, particularly those owned by women and minorities. The inclusion of a small works roster group could counterbalance the small works roster and potentially hinder external contractors' opportunities if entities rely on in-house staff.

Joren conveyed that the feedback submitted by water/sewer districts included examples illustrating that PUM and the increased thresholds do not exclude contractors from potential work opportunities. PUM isn't used excessively by public utility districts (PUDs), but rather as a tool in specific situations to enable work when needed. The document clarifies that PUM is not intended for large in-house projects; those are typically put out

for bidding. PUM and the increased thresholds allow utilities to utilize available personnel and resources for tasks that arise sporadically. PUDs appreciate this flexibility.

Michael Transue requested clarification on the specific circumstances where PUM and the increased thresholds would be applicable. He pointed out that there is already statutory language about exigent circumstances, which permits entities to invoke emergency requirements. He expressed concern that the notion of increased flexibility implies broader application.

Co-Chair Nakagawara clarified that the term "emergency" applies solely to competitive bid waivers, which means entities are still required to undergo bidding processes. The committee aims to address nuances in the language to distinguish the various situations.

### ***Evaluating the language the cities put forward***

Brandy proposed that the committee review the language provided by the cities, which addresses the concerns raised. She explained that the example language pertains specifically to first-class cities and is meant to be replicated only in the city sections. The cities' intention is not to alter any other part of SHB 1621 and to replace references to PUM with the proposed language outlined below.

The proposed language is as follows: *However, a first-class city may have its own regularly employed personnel perform public works activities with the requisite experience, capability, and qualifications to address the exigency, efficiency, or financial needs of the public body without a contract in the sum not to exceed \$300,000.*

Co-Chair Nakagawara clarified that the purpose of this language is to provide clarity on when to apply the proposed language, as PUM might not hold meaning for a municipality. The cities aimed to define the qualifications and circumstances under which a city crew can perform specific types of work. There are instances where cities might not have the capability to provide services, restore, or reestablish services beyond certain thresholds. The emergency exemption isn't always practical, as it requires a competitive bid waiver and necessitates establishing available workers. The proposed language establishes a framework for municipalities to determine when and under what circumstances PUM can be applied.

Co-Chair Michel noticed committee support for PUM's application to sewer/water districts, but he had a query regarding power entities. He asked if the proposed language that separates cities from other entities would also apply to those other entities, or if it's exclusively for cities. Brandy clarified that the proposed language is intended solely for cities (first-class, second-class, code cities, and towns). Co-Chair Nakagawara added that when cities developed the language, they tailored it specifically for cities, without consulting other entities, and they didn't intend to assume that the language would extend to other entities.

Joren highlighted that if the committee desires a comprehensive definition, the language proposed by Brandy could be easily adapted for other sections and could work for water/sewer districts. He reiterated that water/sewer districts do not intend to modify existing PUD language and wish to maintain it as is.

### ***Threshold changes***

Mark Riker expressed labor's concern about the increased thresholds, worrying they might make it more challenging for private contractors to secure work. He stressed that the committee should ensure that the raised thresholds do not hinder private contractors' opportunities.

Michael Transue pointed out that while the bill's motivation is to address training shortages, the language stating "with the requisite experience, capability, and qualifications to address" might not cover individuals lacking experience. He suggested this language might not capture those without experience but with potential for on-the-job training.

**SHB 1621 Review Committee**

Meeting Notes 8/15/2023

Page 4 of 8

Sharon raised concerns about the \$300,000 threshold, fearing that contracts below \$150,000 would no longer offer opportunities to minority, women, and veteran-owned businesses if in-house personnel handled the work.

Brandy explained that the bill would be effective from 2024, and the committee's goal is to refine the language based on discussions. She sought guidance on improving the language. To address Michael's training-related point, she noted that cities aren't looking to use this language for training purposes. Instead, they want flexibility to respond to specific situations swiftly.

Co-Chair Nakagawara clarified that cities find it hard to justify using \$300,000 for training exercises. The proposed language seeks to address specific needs where qualified in-house personnel are available. He emphasized that cities don't intend to use this language for large in-house projects but rather for situations where qualified people can carry out necessary work.

Diane Pottinger suggested that while the proposed language might be used rarely, utilities aim to ensure they have options for such situations, preventing auditors from questioning their actions.

Joren indicated that the water/sewer districts submitted feedback that highlighted examples where PUM and the increased thresholds wouldn't exclude contractors from potential work opportunities. Water/sewer districts wouldn't use this language to have unqualified individuals perform tasks; instead, it would allow trained personnel to handle specific tasks while providing training to others.

Irene expressed concern about the proposed inclusive language and the differing needs of municipalities. She questioned whether all cities were represented in the discussions.

Brandy confirmed that the proposed language was discussed with a diverse cross-section of municipalities, and all felt comfortable with it. The language changes would only apply to city sections. Irene sought clarification regarding records of city approval, and Brandy confirmed having such records. Irene understood the language better but identified areas needing further clarification.

Abigail questioned the necessity of the proposed language, as other codes already address assisting with rare situations.

Randy Black supported Co-Chair Nakagawara's example, explaining that water districts would not use this opportunity for training purposes. The language would allow for projects that meet a certain level to be handled in-house, benefiting from the flexibility it offers.

Co-Chair Michel inquired if PUDs were comfortable with the lack of exclusions to the \$300,000 threshold proposed by cities. Randy asked for clarification about the word exclusions. Co-Chair Michel explained the language says that equipment doesn't count toward the \$300,000 limit, but also that the language doesn't define equipment. He wondered with the proposed language from the cities, if it could say, "Self-performing scope could occur up to \$300,000 limit." Randy clarified that Co-Chair Michel meant that would be all inclusive, and Co-Chair Michel said it would be. He wondered if the committee should recommend eliminating the exclusions from the higher threshold in all the sections of the bill. Randy said that it would be good for the cities to clarify what they mean by that language.

Co-Chair Nakagawara clarified that the cities aimed to address the established \$300,000 threshold without intending to modify it. He noted that the proposed language doesn't aim to change the threshold; rather, it defines the circumstances under which cities can utilize it. The language defines "material" and "equipment" in the context of \$75,000 and \$150,000 work beyond regular maintenance by city crews.

Co-Chair Nakagawara answered Abigail's question by saying that the emergency establishment for public works allows, in a time of emergency, to have a competitive bid waiver. However, the competitive bid waiver is not the route to address emergencies. He introduced a theoretical example of the City of Seattle having a massive sewer break. In that case, the crews could stop the water, but would still have a hole. This means that the city must find outside crews available to fix the hole because fixing it will cost more than \$300,000. At that point, the city has multiple problems: a hole, services stopped, and angry constituents. If the city could act by doing the work in-house, PUM would be used. From the cues of how it was used, the cities created "exigent, efficient, or needed circumstances," and then defined who would do it: people with the requisite experience, capability, and qualifications. If the work doesn't meet those standards, the city wouldn't do the work.

Abigail mentioned that her group's codes allow them to declare their own state of emergency. She noted that cities seem to lack that ability, and the proposed language doesn't seem redundant. It addresses workforce development at the level of PUD staff gaining emergency experience that might not be feasible otherwise.

### ***Avoiding abuse***

Bruce expressed concern that the proposed language lacked the mention of emergency circumstances and appeared to be for general usage, potentially leading to misuse. He highlighted the need for guardrails to prevent entities from abusing the language and suggested including clauses about abuse or a history of abuse of waivers.

Co-Chair Nakagawara said that the City of Seattle faces audits and if an audit was based on prudence, it would be hard to define what's prudent. That's why in the language the cities submitted the cities established what's prudent: exigent circumstances, efficiency, or financial needs. In an audit, the cities would be judged on those standards.

Co-Chair Michel sought clarification on the circumstances outlined. Co-Chair Nakagawara outlined the two prongs: first, the entity should have qualified personnel, and second, the work should address exigent, efficient, or financial needs of the public body without a contract. He used the example of a broken sewer main to show the circumstances: a utility losing revenue and services for an extended time (financial need), city crews could fix the problem quickly (efficiency need), and if there is raw sewage (exigency). The bid waiver doesn't address the needs to fix the problem. He said that he personally does not see this as a training tool, but he is removed from that due to his duties. His job is to make sure his staff and crew are doing the right thing. To do that, he would need something from a department saying why there is a need, otherwise he is at risk during an audit. He proposed that every public agency would need to document the use. The use is extremely limited, but it needs to be available. His hope was that the language the cities drafted would fit that framework.

Co-Chair Michel found the proposed language clear in defining when the language could be applied, avoiding ambiguity. He emphasized the need for a balance between flexibility and responsible usage.

Michael Transue raised concerns about the subjectivity of terms like "experience," "capability," and "qualifications." He proposed introducing a reporting requirement to prevent potential misuse and outliers. He suggested phrases like "extremely limited circumstances" to avoid abuse. He noted that it was the water/sewer districts that said they might use the language as a training tool. He wondered how the committee would marry the extremely limited circumstances to the language about capability, and qualifications so it would address the exigency, efficiency, or financial need. He stated that entities could always identify a financial need. Co-Chair Michel responded to Michael Transue's comments about the language and encouraged him to submit revisions to the language.

Joren said that he can't speak for the 13 Sno-King districts or 110 water/sewer districts about agreeing with the proposed language; he will follow up with the larger group and get consensus.

**SHB 1621 Review Committee**

Meeting Notes 8/15/2023

Page 6 of 8

Brandy suggested considering reporting criteria for cities and exploring broader reactions. She expressed that she is not totally opposed that cities (and only cities) need to report when they use this authority although that introduces a difference between PUDs having a similar authority and not being required to report. She said that jurisdictions' reporting requirements are different based on staffing capabilities. Because this would be limited use authority, she believed most cities would not be overly burdened. Diane supported the idea of a reporting requirement for several years to gauge usage patterns.

Joren agreed that a reporting requirement could be manageable for larger districts and potentially have thresholds for smaller districts.

Co-Chair Michel, speaking as a general contractor, supported the reporting requirement for entities capable of doing \$300,000 worth of work. Brandy agreed with the concept and suggested seeking feedback on any changes to language from her membership to find out if it's feasible from their perspective.

Co-Chair Nakagawara felt that the circumstances would be self-regulating, as using \$300,000 for work would divert staff from regular maintenance tasks. This constraint would naturally limit the occasions when the language is used.

Michael Transue suggested the committee consider that the small works roster process found that \$300,000 projects are important for small contractors and subcontractors. That \$300,000 threshold is big for small subs. He pointed out that this provides new authority and flexibility. He proposed adopting a project review committee-type process to ensure responsible use of the language.

Co-Chair Michel expressed gratitude for the discussion and suggested moving on to other major comments on the bill, particularly the exclusions, which might not have reached a consensus. He recommended adapting the proposed city language and clarifying that there are no exclusions to the \$300,000 limit.

***Public works compared to PUM***

Co-Chair Michel suggested discussing the comparison between public works and PUM. He mentioned an overlap between the types of work in one section. Co-Chair Nakagawara clarified that the \$75,000 and \$150,000 thresholds mentioned earlier in the section pertain to public works. He explained that these thresholds are standard allowances for city crews to perform public works and not ordinary maintenance, as defined by the Revised Code of Washington (RCW). Co-Chair Michel added that the higher threshold should be justifiable under specific circumstances.

Co-Chair Michel emphasized the importance of maintaining consistency throughout the bill. If different language is used to determine when the higher threshold is applicable, it still seems like public works. Co-Chair Nakagawara clarified that cities are responding to the existing threshold in the bill rather than establishing a new one. He noted that he didn't recall reviewing the bill before it was passed, and that the threshold was chosen by the legislature. Co-Chair Michel proposed that the committee could provide opinions in support of modifying the thresholds if needed.

***Second responsive bidder***

Co-Chair Michel introduced the final topic of discussion: the criteria for moving to the second responsive bidder. He mentioned that the current language is less restrictive compared to other parts of the RCW, and he knew that CPARB had outlined the process. He asked if any committee members supported excluding that language and instead using the RCW language to determine the responsive bidder for awarding purposes. Diane expressed her organization's support for that approach.

Brandy added that cities would be comfortable with removing the "lowest responsive bidder" language from the city sections. Joren inquired whether this would apply to second-class cities as well, and Brandy clarified that second-class cities would maintain their current language due to it being established in 2012.

**SHB 1621 Review Committee**

Meeting Notes 8/15/2023

Page 7 of 8

Joren noted that after discussions with districts, they are also in favor of removing the "lowest responsible bidder" language since the RCW already provides pathways. The only exception would be second-class cities.

***Second-class cities***

Michael Transue pointed out that the "lowest responsible bidder" language is present throughout the statute, and he expressed confusion about its addition to the second-class cities statute. He was uncomfortable with the language being replicated across various sections of the statute and suggested its removal. On the other hand, Brandy expressed her preference for retaining the language in the second-class cities section and confirmed that cities are open to removing the language from the first-class cities section in Section 2.

***Review report outline***

Co-Chair Michel reviewed the outline of the report, which encompasses committee details, meeting frequency, and the committee's purpose. He emphasized that the heart of the report lies within the comments and matrix sections. He intends to summarize the key topics, including the definition of PUM, its application, flexibility, the removal of exclusions from the \$300,000 threshold, removal of second bidder language, and references to existing RCW processes.

Co-Chair Michel asked for any feedback from the committee. Diane inquired about the timeline, to which he explained that he'll draft the report soon and share it for the committee's review. With only one meeting remaining before sending the report to CPARB, he expects to incorporate CPARB's feedback and finalize the report. Diane suggested committee members ensure their comments are accurately included.

Co-Chair Michel asked the committee if they had any feedback. Diane wondered about the timeline. Co-Chair Michel said that track changes would be the committee's tool. He plans to date stamp the matrix, the bill with comments, and the report. He felt that the report will not be long. Diane suggested that committee members be responsible for ensuring their own comments are included.

***Review timeline***

Co-Chair Michel informed the committee that the final meeting before the September CPARB meeting will be held on Tuesday, August 29<sup>th</sup>. He noted that the September 12<sup>th</sup> meeting would be used to craft the committee's testimony for the CPARB meeting on September 14<sup>th</sup>.

Co-Chair Michel highlighted the key action points: Joren will gather feedback from his constituents on the cities' language, Brandy will engage cities regarding the reporting requirement language, and committee members will provide input over the following week via email. Monique will document this feedback to facilitate the preparations for the upcoming meeting.

***Closing thoughts***

Co-Chair Michel gave the committee members an opportunity to share their closing thoughts. Nancy Deakins raised the question of whether the committee should strive for greater consistency by removing the lowest responsible bidder language from second-class cities. Brandy DeLange and Diane Pottinger both suggested that the idea could be mentioned in the report as a topic for future consideration. Michael Transue inquired about the number of second-class cities, to which Brandy explained there are both second-class cities and code cities that fall under that classification. The consensus emerged that rather than recommending changes in this bill, a larger conversation would be needed to address the issue. The discussion also highlighted that the addition of the lowest responsible bidder language for second-class cities was made through a floor amendment without stakeholder input.

**Next Meeting: Tuesday, August 29, 2023**

**SHB 1621 Review Committee**

Meeting Notes 8/15/2023

Page 8 of 8

**Action items:**

1. Monique will circulate the document Joren submitted.
2. Co-Chair Michel will create narrative bullet points for the report and circulate them.
3. Joren will ask his constituents about the language changes.
4. Brandy will ask cities about the language proposal.
5. All committee members will follow up with feedback.

**Meeting adjourned at 1:02 p.m.**

**References\Resources:**

Matrix

Marked-up version of bill that was sent on 8/11/23

Water/sewer list of feedback and examples

Link to Box.com where committee members can collaborate and update documents