

# Capital Projects Advisory Review Board

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SHB 1621 Recommendations

December 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.”**

CPARB established the SHB 1621 Review Committee on 4/13/2023 to assemble a group of industry stakeholders to evaluate and identify the recommendations included 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](#) (MCA)
- 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

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## **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 create a more streamlined approach to public works projects to provide agencies to more efficiently respond to emerging issues such as the replacing discrete sections of water, sewer or stormwater mains. SHB 1621 passed unanimously out of the House and Senate. To acknowledge concerns raised by Mechanical Contractors Association (MCA) and others, the bill's sponsors added the requirement for CPARB to review and provide recommendations on the bill by December 31, 2023.

SHB 1621 uniformly establishes a limit of \$75,000 for single trade bodies of work and \$150,000 for multiple trade bodies of work for work that can be performed by regularly employed personnel for public utility districts, sewer/water districts, fire districts. These limits match the pre-existing first-class and second-class cities' limits established in RCW 35.22 and RCW 35.23. Further, SHB 1621 adds authority for first-class cities, second-class cities, water/sewer districts and fire districts to self-perform work with regularly employed personnel utilizing material not to exceed \$300,000 permissible under the guidance of "prudent utility management." This provision mirrors the authority currently given to public utility districts in RCW 54.04. The definition of "Prudent Utility Management" also asserts definitions of "equipment" that include "conductor, cabling, wire, pipe, or lines used for electrical, water, fiber optic, or telecommunications."

Additionally, SHB 1621 adds authority for public utility districts, first-class cities, water/sewer districts and fire districts to reject low bids based on responsibility determination. This provision mirrors the authority currently given to second-class cities in RCW 35.23.

## **HB 1621 GENERAL CONCERNS:**

Members and stakeholders representing first and second-class cities, sewer/water districts and fire districts have collectively worked to find solutions for the future implementation of SHB 1621. MCA and construction trade labor representatives support the repeal of SHB 1621.

### **Committee Responses:**

- Cities, sewer/water districts and fire 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.
- First and second-class cities, sewer/water districts and fire 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, sewer/water districts and fire districts expressed that emergency public works provisions of RCW 39.04.280 merely provide a competitive bid waiver and do not provide any time advantages nor do they increase the public works thresholds for work to be performed by regularly employed personnel. Time consuming contracting processes and contractor availability concerns to are a hindrance to address exigent needs. The cities, sewer/water districts and fire districts believe the threshold of \$300,000 establishes a reasonable ceiling to the circumstances when exigent needs can be addressed by one's own regularly employed personnel.
- MCA does not support any committee recommendation that the bill and its provision continue to be in effect under nearly any circumstance given the breadth of the policy questions and impacts on contractors who do smaller public works contracting projects. This bill, by increasing thresholds for self perform work by public entities effectively reduces the number of public bid project opportunities which may otherwise be offered to small and disadvantaged businesses.
- MCA believes application for the expansion of "Prudent Utility Management" needs to be extremely focused and narrowly restricted.
- MCA proposes for the usage of "Prudent Utility Management" to be reported to the state for oversight and tracking.
- Construction trades labor 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.

**HB 1621 SPECIFIC ITEMS OF DISCUSSION:**

Uniform limits of \$75,000 and \$150,000:

Committee members were supportive of the establishment for the single trade \$75,000 and multiple trade \$150,000 thresholds for work performed by regularly employed personnel. 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.

"Prudent Utility Management" Definition:

Some of the committee have expressed concerns regarding the use of the term, “Prudent Utility Management” which allows work by the public body’s regularly employed personnel for work up to \$300,000. Public utility districts have been successfully operating with this definition under RCW 54.04 since 1971. SHB 1621 extends the term to sewer/water districts, first-class cities, second-class cities and fire districts.

#### Committee Responses:

- Committee members and stakeholders representing cities stated that the new authority applying the “Prudent Utility Management” definition could be better defined.
- MCA believes that “Prudent Utility Management” definition is too subjective and will lead to abuse.
- 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.
  - 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.”
  - MCA stated that should the proposed language go forward, the use of “or” should be changed to “and” to better define the circumstances of when the \$300,000 threshold is used.
    - “...to address the exigency, efficiency **[and]** financial needs...”
- Sewer/water districts do not believe there is a need to change the term of “Prudent Utility Management” but are open to consider the conditions of the proposed language presented by the first-class and second-class cities in response to concerns raised by some of the committee members.
- MCA does not support the language proposed by the first-class and second-class cities is too flexible and is not sufficiently constrictive.

#### Equipment definition and equipment cost exclusion:

Some committee expressed concerns regarding the definition of “equipment” in the context of “Prudent Utility Management” which states equipment consists of “...conductor, cabling, wire, pipe, or lines used

for electrical, water, fiber optics, or telecommunications.” Within the context of “Prudent Utility Management,” cost of equipment are waived from the calculation of the work threshold of \$300,000.

**Committee Response:**

- The cities noted that the definitions of equipment and materials conflict used in the context for PUDs is not entirely translatable for 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 found consensus in eliminating any exclusions from the increased dollar threshold of \$300,000.
- Committee participants discussed and evaluated benefits of adding reporting requirements to the state auditor to track the quantity and justifications for public entities utilizing the self perform option.

**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 Responses:**

- Cities, water/sewer districts and public utilities 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.

**Attachments:**

- SHB 1621 Committee Summary comments/Matrix Spreadsheet
- SHB 1621 w/committee comments included