

**SHB 1621 Committee**

Meeting Notes 9/26/2023

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**Committee Members:** (9 positions, 5 = quorum)

- |   |  |
|---|--|
| <b>X</b> Keith Michel, General Contractors – Co-Chair | <b>X</b> Mark Nakagawara, Cities – Co-Chair  |
| <b>X</b> Liz Anderson, WA PUD Association             | Irene Reyes, Private Industry                |
| <b>X</b> Sharon Harvey, OMWBE                         | Mark Riker, Construction Trades & Labor      |
| Bruce Hayashi, Architects                             | <b>X</b> Michael Transue, Contractors (MCAW) |
| <b>X</b> Diane Pottinger, North City Water District   |  |

**Guests & Stakeholders:**

- |                  |                  |
|------------------|------------------|
| Randy Black      | Monique Martinez |
| Joren Clowers    | Paul Richart     |
| Patricia Collins | Rob Wettleson    |
| Nancy Deakins    | Maggie Yuse      |
| Brandy DeLange   |                  |

**The meeting began at 11:31 a.m.**

**Welcome & Introductions**

**Review and approve the agenda**

Michael Transue moved, seconded by Liz Anderson, to approve the agenda. A voice vote approved the agenda.

**Approve notes from the last meeting (9/12/23)**

Michael Transue moved, seconded by Diane Pottinger, to approve the notes from the 9/12/23 meeting. A voice vote approved the notes.

**Discussion Highlights:**

**Evaluate CPARB report feedback**

Co-chair Mark Nakagawara informed the committee that he and Co-Chair Keith Michel had compiled and composed comments in a new draft version of the report. He invited committee members to provide any comments they had on the draft and encouraged them to send lengthy comments in writing to both Co-Chair Nakagawara, Co-Chair Michel, and the Department of Enterprise Services (DES) inbox.

Diane raised a question about certain words used in the report and their intended meaning. She cited an example from the SHB 1621 Background section, which stated, "The objective of the bill was to create a more streamlined approach." Diane suggested that the objective was not solely to streamline but to make the approach equal for all jurisdictions. Brandy DeLange mentioned that when the bill was presented to the Association of Washington Cities, it was described as an effort to streamline and create consistency across different local agencies. Liz noted that the Washington Public Utility District (PUD) Association was informed that the bill aimed for consistency.

Diane proposed changing the wording to "streamlined and consistent" or simply using the word "consistent" in the report. She questioned the use of the word "streamline." Brandy expressed that she had no strong preference for either word, as she believed that both words achieved the same goal. Michael Transue suggested that, based on the testimony of the bill's proponents during hearings, various words like streamlined, equal, better, or consistent could be added to provide a more comprehensive description.

Co-Chair Mark Nakagawara proposed a slight revision to the text, suggesting that it read, "The objective of the bill was to create a more consistent and streamlined approach." There were no objections raised to this

change. Diane indicated that she would send her feedback to the co-chairs, and Randy Black mentioned having similar comments as Diane, noting that he would send his comments to Diane for incorporation.

Liz sought clarification regarding the committee's responses regarding Prudent Utility Management (PUM). She mentioned that in the previous meeting, she didn't get the impression that there was interest in changing PUM in the PUD statute, and she asked for clarification regarding the committee's stance on this issue. Liz cited examples from the responses, such as the suggestion that the "Prudent Utility Management" definition could be better defined and that the definition is too subjective and may lead to abuse, and she sought clarity on whether the committee intended to address this issue.

Co-Chair Nakagawara explained that when he was drafting portions of the report, he contemplated whether to bring up the topic of PUM. He noted that PUM is already established in the PUD statute, and since SHB 1621 primarily focuses on additions rather than subtractions, he wondered if raising the issue might not be constructive. He asked for Liz's opinion on how the committee should address this matter and whether it should be included in the report. Liz mentioned that she was looking for clarification.

Brandy raised the issue of fire districts being mentioned in the bullet points in the General Concerns section of the report. She questioned whether fire districts should be removed from the report, considering that the committee does not have a representative from fire or irrigation districts. Michael Transue argued against removing the term because the bill still applies to fire districts. Brandy agreed with Michael Transue and expressed concerns about transparency, especially in the committee response section, where it might be misconstrued that fire districts were actively engaged in committee discussions. She was worried that someone from a fire district might claim that they were not involved in the process.

Michael Transue expressed uncertainty about whether the committee should explicitly mention that fire districts did not participate or if one of the co-chairs should reach out to them. He suggested adding a footnote to clarify their non-participation. Michael Transue mentioned that during a Capital Projects Advisory Review Board (CPARB) meeting, he had inquired about including fire districts in the report, and Co-Chair Nakagawara had stated that fire districts had not attended any meetings.

Co-Chair Nakagawara agreed and said that he had a hard time getting any fire district contacts. He asked Brandy if she was referring to parts of the report that used the language, "First and second-class cities, sewer/water districts and fire districts expressed..." Brandy said that in the General Concerns section the first three bullets mention fire districts. She said she did not disagree with the bulleted statements, but she didn't want the committee to overstate the participation of one of the entities called out here. She wondered if the report could add a footnote or remove the reference to the fire district as having an opinion on the bulleted items and reiterate at the top of the document that this legislation is applicable to them.

Michael Transue said he was referring to the background paragraph, not the bullets. He said that he agreed with Brandy; the bullets imply the fire districts were engaged in committee discussions and that they have opinions. Co-Chair Nakagawara said he can make the edits.

Nancy Deakins proposed rearranging the language in the report to explain what Prudent Utility Management (PUM) is and that the term had been extended to various entities. She recommended expressing concerns about the term without implying that fire districts had weighed in on the matter. Nancy agreed with including a footnote stating that there was no representation from fire districts. Co-Chair Nakagawara suggested removing fire districts from the bullet points, which was agreed upon by the committee.

Co-Chair Michel emphasized the importance of consistently representing the opinions of parties not directly involved in the conversations, even if they did not have a representative at committee meetings. He noted that this sentiment would also be reflected at the CPARB level when the report and recommendations are presented.

Sharon Harvey inquired whether the report would spell out acronyms, using "MCA" as an example. Co-Chair Nakagawara confirmed that he would include spellings for acronyms.

Michael Transue mentioned that the draft report states that construction trades and labor expressed opposition with the statement, "No suggestions for corrections or adjustments were submitted." He asked if the information he and Mark Riker provided had been shared with the entire committee. Monique Martinez clarified that she had not yet distributed that information but could do so.

Michael Transue said he assumed the information provided was sent out. He said he could work with Co-Chair Nakagawara to provide additional comments, and that the emails sent to Co-Chair Nakagawara and Co-Chair Michel are self-explanatory. He said they provide comments about the examples from the water/sewer districts where they explained how they would use PUM. Michael Transue said he provided questions that construction trades and labor have with the legislation and a high-level view of their opinions. He said that although he is cautious about speaking for others, he thinks that the Mechanical Contractors Association (MCA) and the construction and building trades are in alignment on what should move forward out of the committee. He suggested the sentence "No suggestions for corrections or adjustments were submitted" is not applicable because he did send the email. He said the committee could decide how to reference any external documents and that he did want to note that the building trades had submitted the document.

Co-Chair Nakagawara asked Michael Transue if what Michael Transue sent was a joint statement because he did not see a reference to building trades. Michael Transue said that they were copied on the email.

Co-Chair Nakagawara noted that the challenge was incorporating the general statement from construction trades and labor, which expressed opposition to the bill, into the recommendations for the bill. Michael Transue suggested that the committee could recommend amending the bill to remove the provisions expanding Prudent Utility Management (PUM) to other jurisdictions. He recommended that the \$150,000 two-trade and \$75,000 single-trade thresholds remain in effect and that the legislature should not allow the PUM expansion provisions to take effect on July 1, 2024.

Co-Chair Nakagawara asked if the construction trades and labor perspective support the \$300,000 threshold provision. Michael Transue clarified that there are provisions to move from \$50,000 to \$150,000 and \$75,000 for double and single crafts, and construction trades and labor think the rest of the bill that expands PUM shouldn't go into effect.

Brandy asked Michael Transue if this information was included in the documents, he sent to Monique that weren't shared with the committee members and stakeholders. Michael Transue clarified that he sent the documents to Talia Baker, Co-Chair Nakagawara, and Co-Chair Michel, not to Monique.

Co-Chair Michel explained that the feedback documents were sent to the committee chairs and the Department of Enterprise Services (DES), following the established protocol. He and Co-Chair Nakagawara made the decision not to include lengthy feedback with contextual information in the report but rather to provide comprehensive CPARB recommendations that represent the collective viewpoints of the committee.

Co-Chair Michel said that the draft report included the information that, "MCA and construction trade labor representatives support the repeal of SHB 1621." He said that CPARB recommendations will modify the bill to improve it. Co-Chair Michel said that he and Co-Chair Nakagawara were being sensitive and aware that there will be active legislation and that anyone can submit comments. He said the CPARB recommendation is comprehensive instead of reflecting a single entity's viewpoints.

Diane expressed surprise at seeing Michael Transue's comments for the first time and asked if she should review them paragraph by paragraph and ask questions. She quoted one of the bullet points from the

comments related to small and disadvantaged businesses and questioned how the expansion of PUM negatively impacted such businesses. Co-Chair Michel explained that the sentence in question had been added by him, and he clarified that increasing thresholds for self-performed work by public entities can reduce the number of public bid project opportunities, which may otherwise be offered to small and disadvantaged businesses. Co-Chair Michel emphasized the need to increase diversity and inclusion in public contracts, particularly by providing more bid opportunities for small and diverse businesses.

Michael Transue pointed out that he had participated in the Small Works Roster process, which aimed to bring in small, women-, minority-, and veteran-owned businesses. He emphasized the importance of offering opportunities to such businesses and noted that increasing the ability of public entities to self-perform work can potentially reduce bid opportunities. Michael Transue suggested that the committee's recommendations should highlight the connection between increased opportunities for self-performed work and decreased public bid opportunities, possibly providing examples like using the Small Works Roster or the bidder responsibility requirements listed on the CPARB website. He acknowledged that the legislature is working on broader issues related to this topic.

Diane shared her struggles in finding contractors to bid on jobs and questioned what more she could have done. Michael Transue suggested reaching out to the Office of Minority and Women's Business Enterprises (OMWBE) for input in such situations.

Co-Chair Michel said that Diane was not alone. He said that he has active projects that have aspirational goals for inclusion percentages, and he can't get bids or participation because the resources aren't available or willing. He said the point is that the committee is supporting CPARB in discussing legislative opportunities, constraints and options and asking what tools public entities have to manage systems and get work done. He said there are a wide variety of tools like the Small Works Roster. Co-Chair Michel said that as the needle is moved to more in-house work, that affects the \$150,000 public bid opportunity that won't be advertised. He said he would feel better if an entity ran an ad in the Daily Journal of Commerce and had no responses, then that might be the time to do the work in-house. He said that choosing self-performed over public bidding has to be balanced with increasing public bid opportunities to meet our inclusion goals.

Sharon mentioned that the Office of Minority and Women's Business Enterprises (OMWBE) often hears that there are no certified businesses available to perform the work, despite businesses expressing their interest. She noted that Senate Bill 5268, which includes the Small Works Roster with a new format and rotation system, might help bridge the gap. She emphasized the importance of addressing the issue of self-performed work reducing the number of project opportunities for small businesses and suggested including this language in the report.

Michael Transue offered to talk to committee members about this after the meeting is over, noting he is available to talk one-on-one to review the information he provided.

Nancy added to the chat, "Can we have Michael present the point of the comments?" She said that she hadn't seen comments but that she thought there might be bullets that could be added to reflect MCA's specific concerns. She said that these concerns may or may not be included as a recommendation from the committee and that the committee needs to evaluate and decide if some of MCA's comments should be part of the recommendation.

Co-Chair Michel expressed concerns about time constraints and the complexity of the discussion, noting that the current version of the report attempted to capture the feedback provided by the committee. He mentioned that he and Co-Chair Nakagawara reviewed the draft report and incorporated committee members' comments, but not all of MCA's feedback from their stakeholder views. He proposed an action item for committee members to share specific written feedback about the second draft of the report, which would become part of the committee documentation.

Diane inquired about the process for sharing feedback, and Co-Chair Michel explained that committee members should send an email to the co-chairs and copy the Department of Enterprise Services (DES) address. He would then make edits to the draft report and distribute it to the committee.

Nancy suggested discussing the timeline for the report and CPARB's intent to hold a special meeting in November to vote on the report.

Co-Chair Michel informed the committee that during the September CPARB meeting, they learned that while the bill itself has a deadline of December 31, 2023, Senator Hasegawa emphasized the need for the report as soon as possible. As a result, the committee aims to provide the report for CPARB's October meeting. The October meeting deadline underscores the necessity of making final changes to the report promptly. Co-Chair Michel explained that the committee will incorporate feedback from all the documents, involving both the subcommittee and CPARB in the revisions. The goal is to position the report for approval during a special meeting in November, after which it will be forwarded to the legislature.

Nancy emphasized the importance of meeting the pre-read date for CPARB, which is Thursday, October 5. Ensuring that CPARB receives the pre-reads by that deadline will allow board members to read, understand, and come to the meeting with their questions. Board members can then reach out to their stakeholders for feedback.

Diane sought confirmation that if she submits comments to the co-chairs by Wednesday, September 27, her questions will be shared with Michael Transue for his response. Michael Transue offered to meet offline with committee members to discuss their questions.

Co-Chair Michel acknowledged that the committee has not reached a consensus on all the recommendations, and capturing the feedback in the report is more complex as a result. He emphasized the importance of having a report that all committee members can support forwarding to the legislature. Co-Chair Michel recognized that the committee's differences may not be eliminated but suggested that finding common ground in these differences could benefit the legislative process. He stated that the committee would continue tracking the bill through the next legislative session.

Nancy added that the committee should anticipate that Senator Hasegawa might request the committee to draft a bill, which underscores the importance of approving a report in November, rather than attempting to draft a bill in December when others are dealing with the code advisor. She clarified that CPARB cannot draft the bill; it would require a sponsor.

Co-Chair Michel agreed with Nancy's point and stressed the need to discuss bill drafting clearly at the October CPARB meeting. He expressed support for discussing the legislative intent but cautioned against involving the subcommittee in drafting an updated bill, as it would require additional resources and detailed wordsmithing.

Michael Transue explained the typical process where committee reports result in a piece of draft legislation. He mentioned that traditionally, ex officio members of the legislature on CPARB are approached to sponsor a bill based on the report's recommendations. He emphasized that the report would lead to bill language and encouraged the committee to focus on the report, as it would naturally prompt discussions about the type of bill language to be recommended.

Liz inquired about the deadline for submitting comments. Co-Chair Michel clarified that the deadline was Friday, and Nancy added that a Friday deadline would allow Co-Chair Michel and Co-Chair Nakagawara a few days to prepare the report for pre-reading.

Nancy proposed the idea of taking the current bill and marking it up to reflect the committee's consensus. Co-Chair Michel mentioned that there is a document with comments on the full bill that has circulated and isn't outdated. He indicated that it might be comparable and would be attached to the report.

Co-Chair Michel reiterated that Friday would be the deadline for feedback on the current report. When the report is sent out, it will include the attachments. He also noted that the committee's next meeting is scheduled two days before the October CPARB meeting. Michael Transue asked if the Friday deadline applies to both comments on the bill and comments on the draft report, and Co-Chair Michel confirmed that it does. Nancy suggested that Monique might need to consolidate the feedback and indicate which committee member made which comments.

Diane quoted a section of the report that mentions MCA's proposal for the usage of "Prudent Utility Management" to be reported to the state for oversight and tracking. She asked for more specific details on how this reporting might be carried out. Michael Transue suggested reaching out to the Department of Labor and Industries to inquire if they have a method for reporting when PUM is used. Dianne asked Liz for her input on how reporting to the state for oversight and tracking might work, and Liz indicated that she didn't have information on that.

Co-Chair Michel clarified that public entities already have reporting requirements for contracts and awards. The recommendation is suggesting that it may be appropriate to track when a self-performed project not exceeding \$300,000 occurs, allowing the state to accumulate information about how often and why PUM is used. Co-Chair Nakagawara mentioned that cities and most municipalities are already required to report the utilization of public works crews due to the 10 percent cap on capital project budgets. Cities report this information to the Auditor's Office annually.

Michael Transue said that he wanted to make it clear that MCA isn't suggesting there should be any changes to the PUD statute. Liz said that the report needs to be clear that the PUD statute shouldn't change. She said that one section says that the PUD statute has worked successfully. However, in the equipment definition and costs and equipment cost exclusion it is not as clear. Liz said that PUDs have very specific statutory language that has codified historic practices. She said she can suggest some clear language.

Michael Transue said that the report says, "MCA believes that 'Prudent Utility Management' definition is too subjective and will lead to abuse." He said that he would like to clarify that it's an expansion and shouldn't refer to the PUDs and that he would like to add the words "extending the definition to other jurisdictions" because those words would clarify that the committee is looking at the expansion and not looking at the existing PUD statute.

Nancy recommended adding to the statement that PUM could lead to abuse if expanded to other entities. Michael Transue agreed and revised the statement to: "MCA believes that the expansion to other jurisdictions of the 'Prudent Utility Management' definition is too subjective and will lead to abuse."

### **Discuss Labor's concerns**

Co-Chair Michel invited Michael Transue to share insights about labor's concerns.

Michael Transue began by stating that he is careful not to speak for others, but he believed that Mark Riker would support the comments they created together.

Michael Transue then raised a clarifying question about the equipment definition and cost exclusions. Michael Transue mentioned previous discussions about material versus equipment definitions and how SHB 1621 had confused those distinctions. He pointed out two bullet points in the report. The first bullet stated that cities proposed limiting all project costs to the \$300,000 threshold instead of distinguishing between "equipment" and "material" as defined in the "Prudent Utility Management" definition. The second bullet mentioned that committee participants found consensus in eliminating any exclusions from the increased dollar threshold of \$300,000. Michael Transue asked if this meant the committee was getting rid of the distinction between equipment and materials for the expanded jurisdictions and relying on a \$300,000 limit that includes everything without exclusions.

Co-Chair Michel confirmed that the committee was indeed moving in that direction. PUM, as a definition, would remain the same for PUDs within an increased self-performed \$300,000 limit. For other entities, especially first- and second-class cities, different language would be used to justify when self-performed work could occur up to \$300,000 with no exclusions to project costs. Co-Chair Michel believed that the committee had found consensus on this section of the report, with everyone agreeing that it was odd to exclude equipment and materials beyond the \$300,000 project limit.

Liz clarified that the language in question referred to PUD language, and she assumed that it pertained to the expansion, with no changes to the existing PUD statute. She expressed concern that changing the PUD language would have significant implications for PUDs, as the existing language had been codified due to past uncertainties about historical practices. Co-Chair Michel reiterated that the committee's intent was to keep the PUD statute intact and that the term "expansion" indicated where changes were needed. He appreciated the committee members' contributions to the language.

Liz mentioned that the suggestion for the previous section and using the word "expansion" would be helpful and stated that she would provide suggested language.

Michael Transue then suggested the following changes in the bidder responsibility section to provide consistency: "MCA and construction trade labor support striking the rejection of the bidder responsibility language of SHB 1621."

### **Review timeline**

Co-Chair Michel emphasized the approaching deadline for feedback on the report and encouraged committee members to provide their comments on the bill as well. He reminded everyone to send their feedback to Co-Chair Nakagawara, Co-Chair Michel, and DES. Once the co-chairs incorporate these comments, the revised report will be sent back to the committee, along with individual feedback to ensure everyone has the full context. The draft report is scheduled to be shared with CPARB and the committee simultaneously next week.

Nancy pointed out that the current report lacks a summary of recommendations or action items, which are typically included in reports. She noted that while the term "committee response" is used, it might be beneficial to consider changing it to "recommendations" where applicable. Co-Chair Michel clarified that there weren't many clear consensus recommendations, and the report primarily provides detailed insights and context for the bill.

Nancy raised the possibility of the committee voting on aspects like the bidder responsibility determinations, especially considering that they don't apply to second-class cities due to existing statute requirements. Michael Transue explained that it involves reviewing the bill, analyzing proposed additions and deletions, and making recommendations on whether to move forward with those changes. He suggested not proceeding with sections that add the lowest responsible bidder criterion to other jurisdictions.

Nancy said that there has been discussion and it might warrant the committee to vote on items. She said that the committee would want to do that before the October 10 committee meeting because the pre-read goes to CPARB on October 5.

Nancy highlighted the need for the committee to identify areas of consensus and potentially vote on specific items before the October 10 committee meeting. She emphasized the importance of having a clear understanding of the committee's stance on various issues. Nancy proposed voting on the lowest responsible bidder criteria today, as there seemed to be agreement on it among committee members. She suggested that the committee could benefit from having multiple consensus points in its recommendations. She clarified that she was not asking for a vote on the entire report but rather on specific aspects where there was apparent consensus.

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In response, Co-Chair Michel expressed his preference for the committee to provide feedback and continue refining the draft report. He suggested that voting on individual pieces should be considered at the October 10 meeting, as it would be more appropriate at that time. He wanted the committee to be aware of the timeline, with the draft report going through one more round of feedback edits and then being sent to CPARB for pre-reading on October 5. The actual voting on the report's content would take place during the October 10 meeting.

Nancy said that the committee should try to identify the areas of consensus. She said that she heard an area, but only saw it written as a response in the report and that there isn't a consensus bullet about lowest responsibly bidder criteria even though she thought heard consensus. Nancy said that she felt that the committee needed to vote to know where it stood.

Co-Chair Michel said that his perception of the process is that committee members should speak up and provide feedback. He said that the subcommittee formalizing a report that includes everyone's input is as good as this committee presenting to CPARB. He said that if the committee needs to vote on individual pieces, he would prefer the committee make an action item for the October 10 meeting as it would be more appropriate at that time. Co-Chair Michel wanted the committee to understand the timeline: that the draft report would go through one more round of feedback edits, and then it will go to CPARB for pre-reading. He said that then the committee would vote at the October 10th meeting.

Nancy clarified that she was looking for consensus items to be included in the report and that the committee could begin assessing votes at the October 10th meeting.

Liz suggested that the committee provide feedback for now, and discussions about voting could be initiated at the October 10th meeting.

Co-Chair Michel confirmed that the draft report would be sent to CPARB and the committee simultaneously on October 5th.

**Next Meeting:**

Vote on individual pieces of the report.

**Action items:**

1. Share feedback documents already sent to the co-chairs with the entire committee.
2. Committee members will share specific written feedback about the second draft of the report and make it part of committee documentation.

**The meeting was adjourned at 1:00 p.m.**

**References/Resources:**

[RCW 35.22.620](#)—First-Class Cities / Public Works

[RCW 39.04.350](#)—Responsible Bidder

[RCW 54.04.070](#)—PUD General Provisions/Contracts for work or materials