

Capital Projects Advisory Review Board

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](#) (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 create a more consistent and 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 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 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 extends 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" which also excludes items defined as equipment within this threshold. The "Prudent Utility Management" standard has been successfully used by public utility districts via RCW 54.04 since 1971. The definition of "Prudent Utility Management" also asserts that the definitions of "equipment" include items such as "conductor, cabling, wire, pipe, or lines used for electrical, water, fiber optic, or telecommunications."

Additionally, SHB 1621 extends 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:

Committee members and stakeholders representing their interests have collectively worked to find solutions for the future implementation of SHB 1621. MCAWW and WSBCTC representatives support the repeal 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 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 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.
- MCAWW and WSBCTC 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 public contractors, including small and disadvantaged businesses.
- MCAWW and WSBCTC believe application for the expansion of "Prudent Utility Management" to cities, sewer/water districts and fire districts needs to be extremely focused and narrowly restricted.
- MCAWW and WSBCTC propose the usage of "Prudent Utility Management" by cities, sewer/water districts and fire districts to be reported to the state for oversight and tracking.
- 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.

HB 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. [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.

“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 for 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] If “NO” – Should the language proposed by cities (see comments) 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] If “YES”, should MCA recommendation of changing “or” to “and” within proposed language by cities be incorporated to revisions in SHB 1621? [YES or NO]

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

- [VOTE#4] Should “Prudent Utility Management” apply for 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] If “NO” – Should the language proposed by cities (see comments) 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] If “YES”, should MCA recommendation of changing “or” to “and” within proposed language by cities be incorporated to revisions in SHB 1621? [YES or NO]

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

- [VOTE#5] Should “Prudent Utility Management” apply for 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] If “NO” – Should the language proposed by cities (see comments) 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] If “YES”, should MCA recommendation of changing “or” to “and” within proposed language by cities be incorporated to revisions in SHB 1621? [YES or NO]

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

Committee Comments:

- Committee questioned whether the term “Prudent Utility Management” was an appropriate and applicable term for cities, sewer/water districts and fire districts.
- 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.
- 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 does not support the language proposed by the first-class and second-class cities is too flexible and is not sufficiently constrictive.
 - 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 by cities, sewer/water districts and fire districts.
 - "...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.

“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, 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 “equipment” as currently defined or as potential modified as applied to cities, sewer/water districts, fire districts, be excluded from the cost of a project relative to the \$300,000 threshold. [YES or NO]

VOTE #7			
SHB 1621 Committee Voting		CPARB Voting	
2	No		No
6	Yes		Yes
1	Abstain		Abstain
0	Absent		Absent

Committee Comments:

The cities noted that the definitions of equipment and materials 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 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 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.

Attachments:

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

Example	Stakeholder	Original Issues to Consider	Questions	Who is affected?	Goal	Recommendation	References	Action	Agreement? Notes/Comments
Watermain project took the lowest responsible bidder. Due to crew inexperience a full-time inspector was needed 8-10 hrs a day to run the job.	Diane Pottinger	Can they take the 2nd lowest responsible bidder in the future if this contractor is the lowest?	How often does this happen? What agencies have been using this option? Is past performance documented?			Remove from bill, but leave it to 2nd class cities	SHB 1621 Section 2 (35.23.352 (2)) [Issue with existing language]	General agreement that this language can/should be removed and reference to 39.04.350 provided instead. 2nd Class cities need further input before Review with 2nd Class cities before any consideration of removal.	OK to remove for 1st class, but
Watermain project presumed scope was for repavement of a trench at the conclusion of the project. City expectation is to fully repave half the street, but contractor bid for the trench vs. half street. Caused a \$40K increase	Diane Pottinger	Are 'Materials' included in Threshold amounts?	Are Asphalt & paving included for sewerline replacement?						
		Materials vs. Equipment Costs (definition)	How does this apply to \$300K? What is included w/in the threshold? Why are there exclusions?				SHB 1621, Sec 2(2)	Talk to Public Utility Districts	
		Single Trades vs. Multiple Trades by Threshold (define)	Are Asphalt & paving included for sewerline replacement? Define Water. (storm water, sewer, etc.)				Asked by Maggie Yuse, Seattle Public Utilities (Water)		
	Mark Nakagawara	What does 'Complete Project' entail?	Conflicts with the exclusions of Equipment and paragraph 5 (material, equipment, & labor)				35.22.620(5) SHB 1621, Sec 2, paragraph 1 & 5? (35.23.352 (1))		
		Lowest Responsible Bidder (definition)	How can past performance be tracked? CPARB Document needs to be updated. When did language regarding ability to use second lowest bidder get included into current statute? (red class cities)						
		Prudent Utility Management	Does this apply <u>only</u> to utility companies?	should apply to water and sewer districts. Not cities and others.	Provide clarity - make sure policy background exists to align intention	Insert more intent regarding how this increased 300K threshold can/should be utilized. Public Utility districts can use this, but for cities, and other entities this category should not apply. Should have requirement to report use of this to state auditor	SHB 1621, Sec 2, paragraph 5	Talk to Public Utility Districts - Can we balance increased flexibility with adding further definition about backstop to limit when this is utilized. Who, when, circumstances.	May not apply to cities, fire districts etc. May only be good public policy for utility districts.
						Need to define how this language can be utilized for more specific types of work.		What does this reporting look like?	
						Perhaps this is allowed for larger entities initially, then rolled out to all later if successful.		Evaluate and recommend what other entities could utilize this same language. Revisions in section 2 & 3?	Improve when self perform can happen, need qualified crew not training opportunities. Are you qualified
		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.	Concern over "exigency" and that the three items cited for justification is too broad.	Proposed language for cities in lieu of Prudent Utility Management		Need language that clearly justifies the need/reason to self perform. Potential reference to avoiding "interruption of service"			
						An idea: circumstances not constituting a legally-defined emergency, but otherwise requiring immediate action to avoid significant adverse consequences to public health, safety or property.			
		Accepted Industry Practice (definition)	What does this entail		Provide clarity			Talk to Public Utility Districts	
					Create clarity w/in statute to remove barriers and eliminate confusion.				
					Remove conflicts and unintended consequences				
					Make improvements with Goals in mind				
					Identify performance standards				

[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. [AGREE or DISAGREE]

VOTE #1			
SHB 1621 Committee		CPARB	
Keith M	Agree	Fedie, Corey	
Liz A	Agree	Fernandes, Lekha	
Sharon H	Agree	Forch, Bobby, Jr.	
Bruce H	Agree	Hayashi, Bruce	
Dianne P	Agree	Jansen, Janet	
Mark N	Agree	Kuruville, Santosh	
Irene R	Agree	Michel, Keith (Vchair)	
Mark R	Disagree	Mooseker, Karen	
Michael T	Agree	Nakagawara, Mark	
		Rasmussen, Matt	
		Reyes, Irene	
		Riker, Mark	
		Riley Hall, Linneth	
		Salinas II, John	
		Skinner, Kara	
		Strom, Robin	
		Swanson, Joshua	
		Thaxton, Robynne	
		Yang, Olivia	
		Zahn, Janice (Chair)	
VOTE #1			
SHB 1621 Committee Voting		CPARB Voting	
8	Agree		Agree
1	Disagree		Disagree
0	Abstain		Abstain
0	Absent		Absent

[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		CPARB	
Keith M	Agree	Fedie, Corey	
Liz A	Disagree	Fernandes, Lekha	
Sharon H	Agree	Forch, Bobby, Jr.	
Bruce H	Agree	Hayashi, Bruce	
Dianne P	Disagree	Jansen, Janet	
Mark N	Agree	Kuruvilla, Santosh	
Irene R	Agree	Michel, Keith (Vchair)	
Mark R	Disagree	Mooseker, Karen	
Michael T	Agree	Nakagawara, Mark	
		Rasmussen, Matt	
		Reyes, Irene	
		Riker, Mark	
		Riley Hall, Linneth	
		Salinas II, John	
		Skinner, Kara	
		Strom, Robin	
		Swanson, Joshua	
		Thaxton, Robynne	
		Yang, Olivia	
		Zahn, Janice (Chair)	
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 for cities? [YES or NO]			
VOTE #3			
SHB 1621 Committee		CPARB	
Keith M	No	Fedie, Corey	
Liz A	No	Fernandes, Lekha	
Sharon H	No	Forch, Bobby, Jr.	
Bruce H	No	Hayashi, Bruce	
Dianne P	No	Jansen, Janet	
Mark N	No	Kuruville, Santosh	
Irene R	No	Michel, Keith (Vchair)	
Mark R	No	Mooseker, Karen	
Michael T	No	Nakagawara, Mark	
		Rasmussen, Matt	
		Reyes, Irene	
		Riker, Mark	
		Riley Hall, Linneth	
		Salinas II, John	
		Skinner, Kara	
		Strom, Robin	
		Swanson, Joshua	
		Thaxton, Robynne	
		Yang, Olivia	
		Zahn, Janice (Chair)	
VOTE #3			
SHB 1621 Committee Voting		CPARB Voting	
9	No		No
0	Yes		Yes
0	Abstain		Abstain
0	Absent		Absent

[VOTE#3-B] If "NO" – Should the language proposed by cities (see comments) be applied in revisions to SHB 1621 for cities? [YES or NO]			
VOTE #3-B			
SHB 1621 Committee		CPARB	
Keith M	Yes	Fedie, Corey	
Liz A	Abstain	Fernandes, Lekha	
Sharon H	Yes	Forch, Bobby, Jr.	
Bruce H	No	Hayashi, Bruce	
Dianne P	Yes	Jansen, Janet	
Mark N	Yes	Kuruville, Santosh	
Irene R	Absent	Michel, Keith (Vchair)	
Mark R	No	Mooseker, Karen	
Michael T	No	Nakagawara, Mark	
		Rasmussen, Matt	
		Reyes, Irene	
		Riker, Mark	
		Riley Hall, Linneth	
		Salinas II, John	
		Skinner, Kara	
		Strom, Robin	
		Swanson, Joshua	
		Thaxton, Robynne	
		Yang, Olivia	
		Zahn, Janice (Chair)	
VOTE #3-B			
SHB 1621 Committee Voting		CPARB Voting	
3	No		No
4	Yes		Yes
1	Abstain		Abstain
1	Absent		Absent

[VOTE#3-C] If "YES", should MCA recommendation of changing "or" to "and" within proposed language by cities be incorporated to revisions in SHB 1621? [YES or NO]			
VOTE #3-C			
SHB 1621 Committee		CPARB	
Keith M	Yes	Fedie, Corey	
Liz A	Abstain	Fernandes, Lekha	
Sharon H	Yes	Forch, Bobby, Jr.	
Bruce H	Yes	Hayashi, Bruce	
Dianne P	No	Jansen, Janet	
Mark N	No	Kuruville, Santosh	
Irene R	Absent	Michel, Keith (Vchair)	
Mark R	Yes	Mooseker, Karen	
Michael T	Yes	Nakagawara, Mark	
		Rasmussen, Matt	
		Reyes, Irene	
		Riker, Mark	
		Riley Hall, Linneth	
		Salinas II, John	
		Skinner, Kara	
		Strom, Robin	
		Swanson, Joshua	
		Thaxton, Robynne	
		Yang, Olivia	
		Zahn, Janice (Chair)	
VOTE #3-C			
SHB 1621 Committee Voting		CPARB Voting	
2	No		No
5	Yes		Yes
1	Abstain		Abstain
1	Absent		Absent

[VOTE#4] Should "Prudent Utility Management" apply for sewer/water districts? [YES or NO]			
VOTE #4			
SHB 1621 Committee		CPARB	
Keith M	No	Fedie, Corey	
Liz A	Yes	Fernandes, Lekha	
Sharon H	No	Forch, Bobby, Jr.	
Bruce H	No	Hayashi, Bruce	
Dianne P	Yes	Jansen, Janet	
Mark N	Yes	Kuruvilla, Santosh	
Irene R	No	Michel, Keith (Vchair)	
Mark R	No	Mooseker, Karen	
Michael T	No	Nakagawara, Mark	
		Rasmussen, Matt	
		Reyes, Irene	
		Riker, Mark	
		Riley Hall, Linneth	
		Salinas II, John	
		Skinner, Kara	
		Strom, Robin	
		Swanson, Joshua	
		Thaxton, Robynne	
		Yang, Olivia	
		Zahn, Janice (Chair)	
VOTE #4			
SHB 1621 Committee Voting		CPARB Voting	
3	Yes		Yes
6	No		No
0	Abstain		Abstain
0	Absent		Absent

[VOTE#4-B] If "NO" – Should the language proposed by cities (see comments) be applied in revisions to SHB 1621 for sewer/water districts? [YES or NO]			
VOTE #4-B			
SHB 1621 Committee		CPARB	
Keith M	Yes	Fedie, Corey	
Liz A	Abstain	Fernandes, Lekha	
Sharon H	Yes	Forch, Bobby, Jr.	
Bruce H	no	Hayashi, Bruce	
Dianne P	Yes	Jansen, Janet	
Mark N	Yes	Kuruvilla, Santosh	
Irene R	No	Michel, Keith (Vchair)	
Mark R	No	Mooseker, Karen	
Michael T	No	Nakagawara, Mark	
		Rasmussen, Matt	
		Reyes, Irene	
		Riker, Mark	
		Riley Hall, Linneth	
		Salinas II, John	
		Skinner, Kara	
		Strom, Robin	
		Swanson, Joshua	
		Thaxton, Robynne	
		Yang, Olivia	
		Zahn, Janice (Chair)	
VOTE #4-B			
SHB 1621 Committee Voting		CPARB Voting	
4	No		No
4	Yes		Yes
1	Abstain		Abstain
0	Absent		Absent

[VOTE#4-C] If "YES", should MCA recommendation of changing "or" to "and" within proposed language by cities be incorporated to revisions in SHB 1621? [YES or NO]			
VOTE #4-C			
SHB 1621 Committee		CPARB	
Keith M	Yes	Fedie, Corey	
Liz A	Abstain	Fernandes, Lekha	
Sharon H	Yes	Forch, Bobby, Jr.	
Bruce H	Yes	Hayashi, Bruce	
Dianne P	No	Jansen, Janet	
Mark N	no	Kuruvilla, Santosh	
Irene R	Yes	Michel, Keith (Vchair)	
Mark R	Yes	Mooseker, Karen	
Michael T	Yes	Nakagawara, Mark	
		Rasmussen, Matt	
		Reyes, Irene	
		Riker, Mark	
		Riley Hall, Linneth	
		Salinas II, John	
		Skinner, Kara	
		Strom, Robin	
		Swanson, Joshua	
		Thaxton, Robynne	
		Yang, Olivia	
		Zahn, Janice (Chair)	
VOTE #4-C			
SHB 1621 Committee Voting		CPARB Voting	
2	No		No
6	Yes		Yes
1	Abstain		Abstain
0	Absent		Absent

[VOTE#5] Should "Prudent Utility Management" apply for fire districts? [YES or NO]			
VOTE #5			
SHB 1621 Committee		CPARB	
Keith M	No	Fedie, Corey	
Liz A	No	Fernandes, Lekha	
Sharon H	No	Forch, Bobby, Jr.	
Bruce H	No	Hayashi, Bruce	
Dianne P	No	Jansen, Janet	
Mark N	Abstain	Kuruvilla, Santosh	
Irene R	No	Michel, Keith (Vchair)	
Mark R	No	Mooseker, Karen	
Michael T	No	Nakagawara, Mark	
		Rasmussen, Matt	
		Reyes, Irene	
		Riker, Mark	
		Riley Hall, Linneth	
		Salinas II, John	
		Skinner, Kara	
		Strom, Robin	
		Swanson, Joshua	
		Thaxton, Robynne	
		Yang, Olivia	
		Zahn, Janice (Chair)	
VOTE #5			
SHB 1621 Committee Voting		CPARB Voting	
3	Yes		Yes
6	No		No
0	Abstain		Abstain
0	Absent		Absent

[VOTE#5-B] If "NO" – Should the language proposed by cities (see comments) be applied in revisions to SHB 1621 for fire districts? [YES or NO]			
VOTE #5-B			
SHB 1621 Committee		CPARB	
Keith M	Yes	Fedie, Corey	
Liz A	Abstain	Fernandes, Lekha	
Sharon H	Yes	Forch, Bobby, Jr.	
Bruce H	No	Hayashi, Bruce	
Dianne P	Yes	Jansen, Janet	
Mark N	Abstain	Kuruvilla, Santosh	
Irene R	Yes	Michel, Keith (Vchair)	
Mark R	No	Mooseker, Karen	
Michael T	No	Nakagawara, Mark	
		Rasmussen, Matt	
		Reyes, Irene	
		Riker, Mark	
		Riley Hall, Linneth	
		Salinas II, John	
		Skinner, Kara	
		Strom, Robin	
		Swanson, Joshua	
		Thaxton, Robynne	
		Yang, Olivia	
		Zahn, Janice (Chair)	
VOTE #5-B			
SHB 1621 Committee Voting		CPARB Voting	
3	No		No
4	Yes		Yes
2	Abstain		Abstain
0	Absent		Absent

[VOTE#5-C] If "YES", should MCA recommendation of changing "or" to "and" within proposed language by cities be incorporated to revisions in SHB 1621? [YES or NO]			
VOTE #5-C			
SHB 1621 Committee		CPARB	
Keith M	Yes	Fedie, Corey	
Liz A	Abstain	Fernandes, Lekha	
Sharon H	Yes	Forch, Bobby, Jr.	
Bruce H	yes	Hayashi, Bruce	
Dianne P	No	Jansen, Janet	
Mark N	Abstain	Kuruvilla, Santosh	
Irene R	No	Michel, Keith (Vchair)	
Mark R	Yes	Mooseker, Karen	
Michael T	Yes	Nakagawara, Mark	
		Rasmussen, Matt	
		Reyes, Irene	
		Riker, Mark	
		Riley Hall, Linneth	
		Salinas II, John	
		Skinner, Kara	
		Strom, Robin	
		Swanson, Joshua	
		Thaxton, Robynne	
		Yang, Olivia	
		Zahn, Janice (Chair)	
VOTE #5-C			
SHB 1621 Committee Voting		CPARB Voting	
2	No		No
5	Yes		Yes
2	Abstain		Abstain
0	Absent		Absent

[VOTE#6] Should the definition of "equipment" as applied to cities, sewer/water districts, fire districts be modified through revisions to SHB 1621? [YES or NO]

VOTE #6			
SHB 1621 Committee		CPARB	
Keith M	Yes	Fedie, Corey	
Liz A	Yes	Fernandes, Lekha	
Sharon H	Yes	Forch, Bobby, Jr.	
Bruce H	Yes	Hayashi, Bruce	
Dianne P	Yes	Jansen, Janet	
Mark N	Yes	Kuruville, Santosh	
Irene R	Yes	Michel, Keith (Vchair)	
Mark R	Yes	Mooseker, Karen	
Michael T	Yes	Nakagawara, Mark	
		Rasmussen, Matt	
		Reyes, Irene	
		Riker, Mark	
		Riley Hall, Linneth	
		Salinas II, John	
		Skinner, Kara	
		Strom, Robin	
		Swanson, Joshua	
		Thaxton, Robynne	
		Yang, Olivia	
		Zahn, Janice (Chair)	
VOTE #6			
SHB 1621 Committee Voting		CPARB Voting	
0	No		No
9	Yes		Yes
0	Abstain		Abstain
0	Absent		Absent

[VOTE#7] Should "equipment" as currently defined or as potential modified as applied to cities, sewer/water districts, fire districts, be excluded from the cost of a project relative to the \$300,000 threshold. [YES or NO]

VOTE #7			
SHB 1621 Committee		CPARB	
Keith M	No	Fedie, Corey	
Liz A	Yes	Fernandes, Lekha	
Sharon H	Abstain	Forch, Bobby, Jr.	
Bruce H	Yes	Hayashi, Bruce	
Dianne P	Yes	Jansen, Janet	
Mark N	Yes	Kuruville, Santosh	
Irene R	Yes	Michel, Keith (Vchair)	
Mark R	No	Mooseker, Karen	
Michael T	Yes	Nakagawara, Mark	
		Rasmussen, Matt	
		Reyes, Irene	
		Riker, Mark	
		Riley Hall, Linneth	
		Salinas II, John	
		Skinner, Kara	
		Strom, Robin	
		Swanson, Joshua	
		Thaxton, Robynne	
		Yang, Olivia	
		Zahn, Janice (Chair)	
VOTE #7			
SHB 1621 Committee Voting		CPARB Voting	
2	No		No
6	Yes		Yes
1	Abstain		Abstain
0	Absent		Absent

[VOTE#8] Should any bidder responsibility provisions be extended to public entities via SHB 1621? [YES or NO]			
VOTE #8			
SHB 1621 Committee		CPARB	
Keith M	No	Fedie, Corey	
Liz A	Yes	Fernandes, Lekha	
Sharon H	Yes	Forch, Bobby, Jr.	
Bruce H	No	Hayashi, Bruce	
Dianne P	Yes	Jansen, Janet	
Mark N	Absent	Kuruvilla, Santosh	
Irene R	Yes	Michel, Keith (Vchair)	
Mark R	No	Mooseker, Karen	
Michael T	No	Nakagawara, Mark	
		Rasmussen, Matt	
		Reyes, Irene	
		Riker, Mark	
		Riley Hall, Linneth	
		Salinas II, John	
		Skinner, Kara	
		Strom, Robin	
		Swanson, Joshua	
		Thaxton, Robynne	
		Yang, Olivia	
		Zahn, Janice (Chair)	
VOTE #8			
SHB 1621 Committee Voting		CPARB Voting	
4	No		No
4	Yes		Yes
0	Abstain		Abstain
1	Absent		Absent

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1621

68th Legislature
2023 Regular Session

Passed by the House April 13, 2023
Yeas 96 Nays 0

**Speaker of the House of
Representatives**

Passed by the Senate April 11, 2023
Yeas 49 Nays 0

President of the Senate
Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1621** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1621

AS AMENDED BY THE SENATE

Passed Legislature - 2023 Regular Session

State of Washington 68th Legislature 2023 Regular Session

By House Local Government (originally sponsored by Representatives
Ryu, Duerr, Pollet, Kloba, and Senn)

READ FIRST TIME 02/14/23.

1 AN ACT Relating to standardizing local government procurement
2 rules among special purpose districts, first-class and second-class
3 cities, and public utility districts; amending RCW 54.04.070,
4 35.23.352, 35.22.620, 57.08.050, and 52.14.110; creating a new
5 section; and providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 54.04.070 and 2019 c 434 s 7 are each amended to
8 read as follows:

9 (1) Any item, or items of the same kind of materials, equipment,
10 or supplies purchased, the estimated cost of which is in excess of
11 ~~((thirty thousand dollars))~~ \$30,000, exclusive of sales tax, shall be
12 by contract. However, a district may make purchases of the same kind
13 of items of materials, equipment, and supplies not exceeding ~~((twelve~~
14 ~~thousand dollars))~~ \$12,000 in any calendar month without a contract,
15 purchasing any excess thereof over ~~((twelve thousand dollars))~~
16 \$12,000 by contract.

17 (2) Any work ordered by a district commission, the estimated cost
18 of which is in excess of ~~((fifty thousand dollars, exclusive of sales~~
19 ~~tax))~~ \$150,000 exclusive of sales tax if more than a single craft or
20 trade is involved with the public works project, or a public works
21 project in excess of \$75,500 exclusive of sales tax if only a single

1 craft or trade is involved with the public works project, shall be by
2 contract. However, a district commission may have its own regularly
3 employed personnel perform work which is an accepted industry
4 practice under prudent utility management without a contract. For
5 purposes of this section, "prudent utility management" means
6 performing work with regularly employed personnel utilizing material
7 of a worth not exceeding ((three hundred thousand dollars)) \$300,000
8 in value without a contract. This limit on the value of material
9 being utilized in work being performed by regularly employed
10 personnel shall not include the value of individual items of
11 equipment. For the purposes of this section, the term "equipment"
12 includes but is not limited to conductor, cabling, wire, pipe, or
13 lines used for electrical, water, fiber optic, or telecommunications.

14 (3) Before awarding a contract required under subsection (1) or
15 (2) of this section, the commission shall publish a notice once or
16 more in a newspaper of general circulation in the district at least
17 ((thirteen)) 13 days before the last date upon which bids will be
18 received, inviting sealed proposals for the work or materials. Plans
19 and specifications for the work or materials shall at the time of
20 publication be on file at the office of the district and subject to
21 public inspection. Any published notice ordering work to be performed
22 for the district shall be mailed at the time of publication to any
23 established trade association which files a written request with the
24 district to receive such notices. The commission may, at the same
25 time and as part of the same notice, invite tenders for the work or
26 materials upon plans and specifications to be submitted by the
27 bidders.

28 (4) As an alternative to the competitive bidding requirements of
29 this section and RCW 54.04.080, a district may let contracts using
30 the small works roster process under RCW 39.04.155.

31 (5) Whenever equipment or materials required by a district are
32 held by a governmental agency and are available for sale but such
33 agency is unwilling to submit a proposal, the commission may
34 ascertain the price of such items and file a statement of such price
35 supported by the sworn affidavit of one member of the commission, and
36 may consider such price as a bid without a deposit or bond.

37 (6) Pursuant to RCW 39.04.280, the commission may waive the
38 competitive bidding requirements of this section and RCW 54.04.080 if
39 an exemption contained within RCW 39.04.280 applies to the purchase
40 or public work.

Commented [KM1]: Prudent Utility Management could benefit from more specific definition on type of work this may or may not include.

Commented [KM2R1]: "any work" in excess of 150K shall be by contract but how "prudent utility management" allows higher, 300K threshold which also excludes equipment and further defines that equipment inconsistently with industry norms is a primary area to rework language for better clarity of intent and limits on self performing work.

Commented [KM3R1]: These comments generally apply the same to all sections, 1-5.

Commented [MM(4): Rob Wettleson (RW)] commented: "This language needs to be further clarified"

Commented [KM5]: Items referred to as equipment "conductor, cabling, wire, pipe, or lines etc are generally categorized as materials and creates some ambiguity with the intent of this being excluded from the threshold/project value.

Commented [KM6R5]: These comments generally apply the same to all sections, 1-5.

Commented [MM(7): RW commented] "The list of "equipment" covers most material that would be utilized in a utility project. This leaves little to be considered materials; i.e., aggregate, paving, concrete, structures (MH, CB, Handholes, etc.). If this significant list of material isn't tracked against the \$300K capacity, what is left to track? Labor? How do the agencies allocate labor to a self-perform project? "

Commented [KM8]: Should public notice be required in advance of agency self performing work?

Commented [KM9R8]: These comments generally apply the same to all sections, 1-5.

1 (7)(a) A district may procure public works with a unit priced
2 contract under this section, RCW 54.04.080, or 54.04.085 ~~for~~ the
3 purpose of completing anticipated types of work based on hourly rates
4 or unit pricing for one or more categories of work or trades.

5 (b) For the purposes of this section, unit priced contract means
6 a competitively bid contract in which public works are anticipated on
7 a recurring basis to meet the business or operational needs of a
8 district, under which the contractor agrees to a fixed period
9 indefinite quantity delivery of work, at a defined unit price, for
10 each category of work.

11 (c) Unit priced contracts must be executed for an initial
12 contract term not to exceed three years, with the district having the
13 option of extending or renewing the unit priced contract for one
14 additional year.

15 (d) Invitations for unit price bids shall include, for purposes
16 of the bid evaluation, estimated quantities of the anticipated types
17 of work or trades, and specify how the district will issue or release
18 work assignments, work orders, or task authorizations pursuant to a
19 unit priced contract for projects, tasks, or other work based on the
20 hourly rates or unit prices bid by the contractor. Where electrical
21 facility construction or improvement work is anticipated, contractors
22 on a unit priced contract shall comply with the requirements under
23 RCW 54.04.085 (1) through (5). Contracts must be awarded to the
24 lowest responsible bidder as per RCW 39.04.010.

25 (e) Unit price contractors shall pay prevailing wages for all
26 work that would otherwise be subject to the requirements of chapter
27 39.12 RCW. Prevailing wages for all work performed pursuant to each
28 work order must be the prevailing wage rates in effect at the
29 beginning date for each contract year. Unit priced contracts must
30 have prevailing wage rates updated annually. Intents and affidavits
31 for prevailing wages paid must be submitted annually for all work
32 completed within the previous (~~twelve-month~~) 12-month period of the
33 unit priced contract.

34 (8) For the purposes of this section, "lowest responsible bidder"
35 means a bid that meets the criteria under RCW 39.04.350 and has the
36 lowest bid; provided, that if the district commission issues a
37 written finding that the lowest bidder has delivered a project to the
38 district within the last three years which was late, over budget, or
39 did not meet specifications, and the commission does not find in
40 writing that such bidder has shown how they would improve performance

Commented [KM10]: Should a reference to Job Order Contracting also be included here for reference? 39.10.420

Commented [MM(11): RW commented "This sounds like a description of a Job Order Contract (JOC) but this language does not refer to it formally or the RCWs that outline how an agency can utilize JOC RCW 39.10.420"

1 to be likely to meet project specifications then the commission may
2 choose the second lowest bidder whose bid is within five percent of
3 the lowest bid and meets the same criteria as the lowest bidder.

Commented [KM12]: Concern over this language which attempts to empower a district commission to not award low responsive bid based on vague criteria. A lot of effort went into 39.04.350 and this bill attempts to modify those provisions with out enough detail or process outlined.

4 **Sec. 2.** RCW 35.23.352 and 2019 c 434 s 1 are each amended to
5 read as follows:

Commented [KM13R12]: These comments generally apply the same to all sections, 1-5.

6 (1) Any second-class city or any town may construct any public
7 works, as defined in RCW 39.04.010, by contract or day labor without
8 calling for bids therefor whenever the estimated cost of the work or
9 improvement, including cost of materials, supplies and equipment will
10 not exceed the sum of (~~one hundred sixteen thousand one hundred~~
11 ~~fifty five dollars~~) \$150,000 if more than one craft or trade is
12 involved with the public works, or (~~seventy five thousand five~~
13 ~~hundred dollars~~) \$75,500 if a single craft or trade is involved with
14 the public works or the public works project is street signalization
15 or street lighting. A public works project means a complete project.
16 The restrictions in this subsection do not permit the division of the
17 project into units of work or classes of work to avoid the
18 restriction on work that may be performed by day labor on a single
19 project. However, a second-class city or any town may have its own
20 regularly employed personnel perform work which is an accepted
21 industry practice under prudent utility management without a
22 contract. For purposes of this section, "prudent utility management"
23 means performing work with regularly employed personnel utilizing
24 material of a worth not exceeding \$300,000 in value without a
25 contract. This limit on value of material being utilized in work
26 being performed by regularly employed personnel shall not include the
27 value of individual items of equipment. For purposes of this section,
28 "equipment" includes, but is not limited to, conductor, cabling,
29 wire, pipe, or lines used for electrical, water, fiber optic, or
30 telecommunications.

Commented [MM(14): Brandy DeLange commented "Below is proposed language changes specific to section 2 and 3 of 1621. I want to note that while the example below only references first-class cities, this is intended to be replicated in both sections 2 and 3 (i.e. city sections) and only in these sections. We are not recommending changes in any other portion of 1621. Furthermore, we intend to strike references to prudent utility management in these sections and replace with the (appropriate references) proposed language outlined below.
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.

Commented [KM15]: This conflicts with allowed exclusions for self perform work thresholds.

31 Whenever the cost of the public work or improvement, including
32 materials, supplies and equipment, will exceed these figures, the
33 same shall be done by contract. All such contracts shall be let at
34 public bidding upon publication of notice calling for sealed bids
35 upon the work. The notice shall be published in the official
36 newspaper, or a newspaper of general circulation most likely to bring
37 responsive bids, at least (~~thirteen~~) 13 days prior to the last date
38 upon which bids will be received. The notice shall generally state
39 the nature of the work to be done that plans and specifications

Commented [MM(16): RW commented "Same comment as in Sec. 1"

1 therefor shall then be on file in the city or town hall for public
2 inspections, and require that bids be sealed and filed with the
3 council or commission within the time specified therein. Each bid
4 shall be accompanied by a bid proposal deposit in the form of a
5 cashier's check, postal money order, or surety bond to the council or
6 commission for a sum of not less than five percent of the amount of
7 the bid, and no bid shall be considered unless accompanied by such
8 bid proposal deposit. The council or commission of the city or town
9 shall let the contract to the lowest responsible bidder or shall have
10 power by resolution to reject any or all bids and to make further
11 calls for bids in the same manner as the original call.

12 When the contract is let then all bid proposal deposits shall be
13 returned to the bidders except that of the successful bidder which
14 shall be retained until a contract is entered into and a bond to
15 perform the work furnished, with surety satisfactory to the council
16 or commission, in accordance with RCW 39.08.030. If the bidder fails
17 to enter into the contract in accordance with his or her bid and
18 furnish a bond within (~~ten~~) 10 days from the date at which he or
19 she is notified that he or she is the successful bidder, the check or
20 postal money order and the amount thereof shall be forfeited to the
21 council or commission or the council or commission shall recover the
22 amount of the surety bond. A low bidder who claims error and fails to
23 enter into a contract is prohibited from bidding on the same project
24 if a second or subsequent call for bids is made for the project.

25 If no bid is received on the first call the council or commission
26 may readvertise and make a second call, or may enter into a contract
27 without any further call or may purchase the supplies, material or
28 equipment and perform the work or improvement by day labor.

29 (2) For the purposes of this section, "lowest responsible bidder"
30 means a bid that meets the criteria under RCW 39.04.350 and has the
31 lowest bid; provided, that if the city issues a written finding that
32 the lowest bidder has delivered a project to the city within the last
33 three years which was late, over budget, or did not meet
34 specifications, and the city does not find in writing that such
35 bidder has shown how they would improve performance to be likely to
36 meet project specifications then the city may choose the second
37 lowest bidder whose bid is within five percent of the lowest bid and
38 meets the same criteria as the lowest bidder.

1 (3) The allocation of public works projects to be performed by
2 city or town employees shall not be subject to a collective
3 bargaining agreement.

4 (4) In lieu of the procedures of subsection (1) of this section,
5 a second-class city or a town may let contracts using the small works
6 roster process provided in RCW 39.04.155.

7 Whenever possible, the city or town shall invite at least one
8 proposal from a certified minority or woman contractor who shall
9 otherwise qualify under this section.

10 (5) The form required by RCW 43.09.205 shall be to account and
11 record costs of public works in excess of (~~five thousand dollars~~)
12 \$5,000 that are not let by contract.

13 (6) The cost of a separate public works project shall be the
14 costs of the materials, equipment, supplies, and labor on that
15 construction project.

16 (7) Any purchase of supplies, material, or equipment, except for
17 public work or improvement, (~~where the cost thereof exceeds seven
18 thousand five hundred dollars shall be made upon call for bids~~) with
19 an estimated cost in excess of \$40,000, shall be by contract. Any
20 purchase of materials, supplies, or equipment with an estimated cost
21 of less than \$50,000 shall be made using the process provided in RCW
22 39.04.190.

23 (8) Bids shall be called annually and at a time and in the manner
24 prescribed by ordinance for the publication in a newspaper of general
25 circulation in the city or town of all notices or newspaper
26 publications required by law. The contract shall be awarded to the
27 lowest responsible bidder.

28 (9) For advertisement and formal sealed bidding to be dispensed
29 with as to purchases with an estimated value of (~~fifteen thousand
30 dollars~~) \$15,000 or less, the council or commission must authorize
31 by resolution, use of the uniform procedure provided in RCW
32 39.04.190.

33 (10) The city or town legislative authority may waive the
34 competitive bidding requirements of this section pursuant to RCW
35 39.04.280 if an exemption contained within that section applies to
36 the purchase or public work.

37 (11) This section does not apply to performance-based contracts,
38 as defined in RCW 39.35A.020(~~(4)~~) (6), that are negotiated under
39 chapter 39.35A RCW.

1 (12) Nothing in this section shall prohibit any second-class city
2 or any town from allowing for preferential purchase of products made
3 from recycled materials or products that may be recycled or reused.

4 (13)(a) Any second-class city or any town may procure public
5 works with a unit priced contract under this section for the purpose
6 of completing anticipated types of work based on hourly rates or unit
7 pricing for one or more categories of work or trades.

8 (b) For the purposes of this section, "unit priced contract"
9 means a competitively bid contract in which public works are
10 anticipated on a recurring basis to meet the business or operational
11 needs of the city or town, under which the contractor agrees to a
12 fixed period indefinite quantity delivery of work, at a defined unit
13 price for each category of work.

14 (c) Unit priced contracts must be executed for an initial
15 contract term not to exceed three years, with the city or town having
16 the option of extending or renewing the unit priced contract for one
17 additional year.

18 (d) Invitations for unit price bids shall include, for purposes
19 of the bid evaluation, estimated quantities of the anticipated types
20 of work or trades, and specify how the city or town will issue or
21 release work assignments, work orders, or task authorizations
22 pursuant to a unit priced contract for projects, tasks, or other work
23 based on the hourly rates or unit prices bid by the contractor.
24 Contracts must be awarded to the lowest responsible bidder as per RCW
25 39.04.010. Whenever possible, the city or town must invite at least
26 one proposal from a certified minority or woman contractor who
27 otherwise qualifies under this section.

28 (e) Unit price contractors shall pay prevailing wages for all
29 work that would otherwise be subject to the requirements of chapter
30 39.12 RCW. Prevailing wages for all work performed pursuant to each
31 work order must be the prevailing wage rates in effect at the
32 beginning date for each contract year. Unit priced contracts must
33 have prevailing wage rates updated annually. Intents and affidavits
34 for prevailing wages paid must be submitted annually for all work
35 completed within the previous (~~twelve-month~~) 12-month period of the
36 unit priced contract.

37 (14) Any second-class city or town that awards a project to a
38 bidder under the criteria described in subsection (2) of this section
39 must make an annual report to the department of commerce that
40 includes the total number of bids awarded to certified minority or

Commented [MM(17): RW commented "Same comment as Sec. 1. Regarding JOC"]

1 women contractors and describing how notice was provided to potential
2 certified minority or women contractors.

3 **Sec. 3.** RCW 35.22.620 and 2019 c 434 s 11 are each amended to
4 read as follows:

5 (1) As used in this section, the term "public works" means as
6 defined in RCW 39.04.010.

7 (2) A first-class city may have public works performed by
8 contract pursuant to public notice and call for competitive bids. As
9 limited by subsection (3) of this section, a first-class city may
10 have public works performed by city employees in any annual or
11 biennial budget period equal to a dollar value not exceeding (~~ten~~)
12 10 percent of the public works construction budget, including any
13 amount in a supplemental public works construction budget, over the
14 budget period. The amount of public works that a first-class city has
15 a county perform for it under RCW 35.77.020 shall be included within
16 this (~~ten~~) 10 percent limitation.

17 If a first-class city has public works performed by public
18 employees in any budget period that are in excess of this (~~ten~~) 10
19 percent limitation, the amount in excess of the permitted amount
20 shall be reduced from the otherwise permitted amount of public works
21 that may be performed by public employees for that city in its next
22 budget period. Twenty percent of the motor vehicle fuel tax
23 distributions to that city shall be withheld if two years after the
24 year in which the excess amount of work occurred, the city has failed
25 to so reduce the amount of public works that it has performed by
26 public employees. The amount so withheld shall be distributed to the
27 city when it has demonstrated in its reports to the state auditor
28 that the amount of public works it has performed by public employees
29 has been so reduced.

30 Whenever a first-class city has had public works performed in any
31 budget period up to the maximum permitted amount for that budget
32 period, all remaining public works within that budget period shall be
33 done by contract pursuant to public notice and call for competitive
34 bids.

35 The state auditor shall report to the state treasurer any
36 first-class city that exceeds this amount and the extent to which the
37 city has or has not reduced the amount of public works it has
38 performed by public employees in subsequent years.

Commented [MM(18): Brandy DeLange] commented "Below is proposed language changes specific to section 2 and 3 of 1621. I want to note that while the example below only references first-class cities, this is intended to be replicated in both sections 2 and 3 (i.e. city sections) and only in these sections. We are not recommending changes in any other portion of 1621. Furthermore, we intend to strike references to prudent utility management in these sections and replace with the (appropriate references) proposed language outlined below.

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.

1 (3) In addition to the percentage limitation provided in
2 subsection (2) of this section, a first-class city shall not have
3 public employees perform a public works project in excess of (~~one~~
4 ~~hundred fifty thousand dollars~~) \$150,000 if more than a single craft
5 or trade is involved with the public works project, or a public works
6 project in excess of (~~seventy five thousand five hundred dollars~~)
7 \$75,500 if only a single craft or trade is involved with the public
8 works project or the public works project is street signalization or
9 street lighting. A public works project means a complete project. The
10 restrictions in this subsection do not permit the division of the
11 project into units of work or classes of work to avoid the
12 restriction on work that may be performed by day labor on a single
13 project. However, a first-class city may have its own regularly
14 employed personnel perform work which is an accepted industry
15 practice under prudent utility management without a contract. For
16 purposes of this section, "prudent utility management" means
17 performing work with regularly employed personnel utilizing material
18 of a worth not exceeding \$300,000 in value without a contract. This
19 limit on the value of material being utilized in work being performed
20 by regularly employed personnel shall not include the value of
21 individual items of equipment. For purposes of this section, the term
22 "equipment" includes, but is not limited to, conductor, cabling,
23 wire, pipe, or lines used for electrical, water, fiber optic, or
24 telecommunications.

Commented [KM19]: Reference to certain type of work which is not clear. Is it public works?

Commented [MM(20): Mark Nakagawara wrote "Adding new definition for when the \$300K threshold can be used. In general the new definition is intended to define that the \$300K threshold can be performed when: 1.) city personnel is qualified or experienced to perform the work; and 2.) Circumstances require city personnel to perform the work (immediate needs, efficiency/time concerns, financial impacts)"

Edit reads "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."

Commented [MM(21): RW commented "Same comment as in Sec. 1. Regarding traditional materials being listed as equipment and not working against the value capacity of the project."

25 (4) In addition to the accounting and recordkeeping requirements
26 contained in RCW 39.04.070, every first-class city annually may
27 prepare a report for the state auditor indicating the total public
28 works construction budget and supplemental public works construction
29 budget for that year, the total construction costs of public works
30 performed by public employees for that year, and the amount of public
31 works that is performed by public employees above or below (~~ten~~) 10
32 percent of the total construction budget. However, if a city budgets
33 on a biennial basis, this annual report may indicate the amount of
34 public works that is performed by public employees within the current
35 biennial period that is above or below (~~ten~~) 10 percent of the
36 total biennial construction budget.

37 Each first-class city with a population of (~~one hundred fifty~~
38 ~~thousand~~) 150,000 or less shall use the form required by RCW
39 43.09.205 to account and record costs of public works in excess of
40 (~~five thousand dollars~~) \$5,000 that are not let by contract.

1 (5) The cost of a separate public works project shall be the
2 costs of materials, supplies, equipment, and labor on the
3 construction of that project. The value of the public works budget
4 shall be the value of all the separate public works projects within
5 the budget.

6 (6) The competitive bidding requirements of this section may be
7 waived by the city legislative authority pursuant to RCW 39.04.280 if
8 an exemption contained within that section applies to the work or
9 contract.

10 (7) In lieu of the procedures of subsections (2) and (6) of this
11 section, a first-class city may let contracts using the small works
12 roster process in RCW 39.04.155.

13 Whenever possible, the city shall invite at least one proposal
14 from a certified minority or woman contractor who shall otherwise
15 qualify under this section.

16 (8) The allocation of public works projects to be performed by
17 city employees shall not be subject to a collective bargaining
18 agreement.

19 (9) This section does not apply to performance-based contracts,
20 as defined in RCW 39.35A.020(~~(4)~~) (6), that are negotiated under
21 chapter 39.35A RCW.

22 (10) Nothing in this section shall prohibit any first-class city
23 from allowing for preferential purchase of products made from
24 recycled materials or products that may be recycled or reused.

25 (11) (a) Any first-class city may procure public works with a unit
26 priced contract under this section for the purpose of completing
27 anticipated types of work based on hourly rates or unit pricing for
28 one or more categories of work or trades.

29 (b) For the purposes of this section, "unit priced contract"
30 means a competitively bid contract in which public works are
31 anticipated on a recurring basis to meet the business or operational
32 needs of the city, under which the contractor agrees to a fixed
33 period indefinite quantity delivery of work, at a defined unit price
34 for each category of work.

35 (c) Unit priced contracts must be executed for an initial
36 contract term not to exceed three years, with the city having the
37 option of extending or renewing the unit priced contract for one
38 additional year.

39 (d) Invitations for unit price bids shall include, for purposes
40 of the bid evaluation, estimated quantities of the anticipated types

1 of work or trades, and specify how the city will issue or release
2 work assignments, work orders, or task authorizations pursuant to a
3 unit priced contract for projects, tasks, or other work based on the
4 hourly rates or unit prices bid by the contractor. Contracts must be
5 awarded to the lowest responsible bidder as per RCW 39.04.010.
6 Whenever possible, the city must invite at least one proposal from a
7 certified minority or woman contractor who otherwise qualifies under
8 this section.

9 (e) Unit price contractors shall pay prevailing wages for all
10 work that would otherwise be subject to the requirements of chapter
11 39.12 RCW. Prevailing wages for all work performed pursuant to each
12 work order must be the prevailing wage rates in effect at the
13 beginning date for each contract year. Unit priced contracts must
14 have prevailing wage rates updated annually. Intents and affidavits
15 for prevailing wages paid must be submitted annually for all work
16 completed within the previous (~~twelve month~~) 12-month period of the
17 unit priced contract.

18 (12) For the purposes of this section, "lowest responsible
19 bidder" means a bid that meets the criteria under RCW 39.04.350 and
20 has the lowest bid; provided, that if the city issues a written
21 finding that the lowest bidder has delivered a project to the city
22 within the last three years which was late, over budget, or did not
23 meet specifications, and the city does not find in writing that such
24 bidder has shown how they would improve performance to be likely to
25 meet project specifications then the city may choose the second
26 lowest bidder whose bid is within five percent of the lowest bid and
27 meets the same criteria as the lowest bidder.

28 **Sec. 4.** RCW 57.08.050 and 2019 c 434 s 10 are each amended to
29 read as follows:

30 (1) All work ordered, the estimated cost of which is in excess of
31 (~~fifty thousand dollars~~) \$150,000 if more than a single craft or
32 trade is involved with the public works project, or a public works
33 project in excess of \$75,500 if only a single craft or trade is
34 involved with the public works project, shall be let by contract and
35 competitive bidding. Before awarding any such contract the board of
36 commissioners shall publish a notice in a newspaper of general
37 circulation where the district is located at least once (~~thirteen~~)
38 13 days before the last date upon which bids will be received,
39 inviting sealed proposals for such work, plans and specifications

1 which must at the time of publication of such notice be on file in
2 the office of the board of commissioners subject to the public
3 inspection. The notice shall state generally the work to be done and
4 shall call for proposals for doing the same to be sealed and filed
5 with the board of commissioners on or before the day and hour named
6 therein.

7 Each bid shall be accompanied by a certified or cashier's check
8 or postal money order payable to the order of the county treasurer
9 for a sum not less than five percent of the amount of the bid, or
10 accompanied by a bid bond in an amount not less than five percent of
11 the bid with a corporate surety licensed to do business in the state,
12 conditioned that the bidder will pay the district as liquidated
13 damages the amount specified in the bond, unless the bidder enters
14 into a contract in accordance with the bidder's bid, and no bid shall
15 be considered unless accompanied by such check, cash or bid bond. At
16 the time and place named such bids shall be publicly opened and read
17 and the board of commissioners shall proceed to canvass the bids and
18 may let such contract to the lowest responsible bidder upon plans and
19 specifications on file or to the best bidder submitting the bidder's
20 own plans and specifications. The board of commissioners may reject
21 all bids for good cause and readvertise and in such case all checks,
22 cash or bid bonds shall be returned to the bidders. If the contract
23 is let, then all checks, cash, or bid bonds shall be returned to the
24 bidders, except that of the successful bidder, which shall be
25 retained until a contract shall be entered into for doing the work,
26 and a bond to perform such work furnished with sureties satisfactory
27 to the board of commissioners in the full amount of the contract
28 price between the bidder and the commission in accordance with the
29 bid. If the bidder fails to enter into the contract in accordance
30 with the bid and furnish the bond within (~~ten~~) 10 days from the
31 date at which the bidder is notified that the bidder is the
32 successful bidder, the check, cash, or bid bonds and the amount
33 thereof shall be forfeited to the district. If the bidder fails to
34 enter into a contract in accordance with the bidder's bid, and the
35 board of commissioners deems it necessary to take legal action to
36 collect on any bid bond required by this section, then the district
37 shall be entitled to collect from the bidder any legal expenses,
38 including reasonable attorneys' fees occasioned thereby. A low bidder
39 who claims error and fails to enter into a contract is prohibited

1 from bidding on the same project if a second or subsequent call for
2 bids is made for the project.

3 (2) As an alternative to requirements under subsection (1) of
4 this section, a water-sewer district may let contracts using the
5 small works roster process under RCW 39.04.155.

6 (3) Any purchase of materials, supplies, or equipment, with an
7 estimated cost in excess of (~~(forty thousand dollars)~~) \$40,000, shall
8 be by contract. Any purchase of materials, supplies, or equipment,
9 with an estimated cost of less than (~~(fifty thousand dollars)~~)
10 \$50,000 shall be made using the process provided in RCW 39.04.190.
11 Any purchase of materials, supplies, or equipment with an estimated
12 cost of (~~(fifty thousand dollars)~~) \$50,000 or more shall be made by
13 competitive bidding following the procedure for letting contracts for
14 projects under subsection (1) of this section.

15 (4) As an alternative to requirements under subsection (3) of
16 this section, a water-sewer district may let contracts for purchase
17 of materials, supplies, or equipment with the suppliers designated on
18 current state agency, county, city, or town purchasing rosters for
19 the materials, supplies, or equipment, when the roster has been
20 established in accordance with the competitive bidding law for
21 purchases applicable to the state agency, county, city, or town. The
22 price and terms for purchases shall be as described on the applicable
23 roster.

24 (5) The board may waive the competitive bidding requirements of
25 this section pursuant to RCW 39.04.280 if an exemption contained
26 within that section applies to the purchase or public work.

27 (6)(a) A district may procure public works with a unit priced
28 contract under this section for the purpose of completing anticipated
29 types of work based on hourly rates or unit pricing for one or more
30 categories of work or trades.

31 (b) For the purposes of this section, "unit priced contract"
32 means a competitively bid contract in which public works are
33 anticipated on a recurring basis to meet the business or operational
34 needs of the district, under which the contractor agrees to a fixed
35 period indefinite quantity delivery of work, at a defined unit price
36 for each category of work.

37 (c) Unit priced contracts must be executed for an initial
38 contract term not to exceed one year, with the district having the
39 option of extending or renewing the unit priced contract for one
40 additional year.

1 (d) Invitations for unit price bids must include, for purposes of
2 the bid evaluation, estimated quantities of the anticipated types of
3 work or trades, and specify how the district will issue or release
4 work assignments, work orders, or task authorizations pursuant to a
5 unit priced contract for projects, tasks, or other work based on the
6 hourly rates or unit prices bid by the contractor. Contracts must be
7 awarded to the lowest responsible bidder as per RCW 39.04.010.
8 Whenever possible, the district must invite at least one proposal
9 from a certified minority or woman contractor who otherwise qualifies
10 under this section.

11 (e) Unit price contractors shall pay prevailing wages for all
12 work that would otherwise be subject to the requirements of chapter
13 39.12 RCW. Prevailing wages for all work performed pursuant to each
14 work order must be the prevailing wage rates in effect at the
15 beginning date for each contract year. Unit priced contracts must
16 have prevailing wage rates updated annually. Intents and affidavits
17 for prevailing wages paid must be submitted annually for all work
18 completed within the previous (~~twelve month~~) 12-month period of the
19 unit priced contract.

20 (7) A water-sewer district may have its own regularly employed
21 personnel perform work which is an accepted industry practice under
22 prudent utility management without a contract. For purposes of this
23 section, "prudent utility management" means performing work with
24 regularly employed personnel utilizing material of a worth not
25 exceeding \$300,000 in value without a contract. This limit on the
26 value of material being utilized in work being performed by regularly
27 employed personnel shall not include the value of individual items of
28 equipment. For the purposes of this section, the term "equipment"
29 includes but is not limited to conductor, cabling, wire, pipe, or
30 lines used for electrical, water, fiber optic, or telecommunications.

31 (8) For the purposes of this section, "lowest responsible bidder"
32 means a bid that meets the criteria under RCW 39.04.350 and has the
33 lowest bid; provided, that if the district issues a written finding
34 that the lowest bidder has delivered a project to the district within
35 the last three years which was late, over budget, or did not meet
36 specifications, and the district does not find in writing that such
37 bidder has shown how they would improve performance to be likely to
38 meet project specifications then the district may choose the second
39 lowest bidder whose bid is within five percent of the lowest bid and
40 meets the same criteria as the lowest bidder.

1 **Sec. 5.** RCW 52.14.110 and 2019 c 434 s 12 are each amended to
2 read as follows:

3 (1) Insofar as practicable, purchases and any public works by the
4 district shall be based on competitive bids. A formal sealed bid
5 procedure shall be used as standard procedure for purchases and
6 contracts for purchases executed by the board of commissioners.
7 Formal sealed bidding shall not be required for:

8 ~~((1))~~ (a) The purchase of any materials, supplies, or equipment
9 if the cost will not exceed the sum of ~~((forty thousand dollars))~~
10 \$75,500. However, whenever the estimated cost does not exceed
11 ~~((seventy five thousand dollars))~~ \$150,000, the commissioners may by
12 resolution use the process provided in RCW 39.04.190 to award
13 contracts;

14 ~~((2))~~ (b) Contracting for work to be done involving the
15 construction or improvement of a fire station or other buildings
16 where the estimated cost will not exceed the sum of ~~((thirty thousand~~
17 ~~dollars, which includes the costs of labor, material, and equipment))~~
18 \$150,000 if more than a single craft or trade is involved with the
19 public works project, or a public works project in excess of \$75,500
20 if only a single craft or trade is involved with the public works
21 project;

22 ~~((3))~~ (c) Contracts using the small works roster process under
23 RCW 39.04.155; and

24 ~~((4))~~ (d) Any contract for purchases or public work pursuant to
25 RCW 39.04.280 if an exemption contained within that section applies
26 to the purchase or public work.

27 (2) A fire protection district may have its own regularly
28 employed personnel perform work which is an accepted industry
29 practice under prudent utility management without a contract. For
30 purposes of this section, "prudent utility management" means
31 performing work with regularly employed personnel utilizing material
32 of a worth not exceeding \$300,000 in value without a contract. This
33 limit on the value of material being utilized in work being performed
34 by regularly employed personnel shall not include the value of
35 individual items of equipment. For the purposes of this section, the
36 term "equipment" includes but is not limited to conductor, cabling,
37 wire, pipe, or lines used for electrical, water, fiber optic, or
38 telecommunications.

39 (3) For the purposes of this section, "lowest responsible bidder"
40 means a bid that meets the criteria under RCW 39.04.350 and has the

1 lowest bid; provided, that if the district issues a written finding
2 that the lowest bidder has delivered a project to the district within
3 the last three years which was late, over budget, or did not meet
4 specifications, and the district does not find in writing that such
5 bidder has shown how they would improve performance to be likely to
6 meet project specifications then the district may choose the second
7 lowest bidder whose bid is within five percent of the lowest bid and
8 meets the same criteria as the lowest bidder.

9 NEW SECTION. Sec. 6. The capital projects advisory review board
10 shall review this act and make recommendations to the appropriate
11 committees of the legislature by December 31, 2023.

12 NEW SECTION. Sec. 7. Sections 1 through 5 of this act take
13 effect June 30, 2024.

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