Capital Projects Advisory Review Board

Recommendations on SHB 1621

December 14, 2023

EXECUTIVE SUMMARY

During the 2023 legislative session, Washington Association of Sewer and Water Districts (WASWD) sponsored SHB 1621 with support from Association of Washington Cities (AWC) and Seattle Public Utilities. The objective of the bill was to establish a uniform and efficient method for public works projects, enabling agencies to better address emerging issues similar in nature to replacing specific parts of water, sewer, or stormwater mains.

The 2023 Legislature passed Substitute House Bill 1621 which standardizes a number of issues and limits for multiple public entities, including first and second-class cities, public utility districts, water-sewer districts, and fire districts. The effective date of the bill was delayed to June 30, 2024, to allow the Capital Projects Advisory Review Board (CPARB) to evaluate and make recommendations to the legislature in a report by Dec. 31, 2023.

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

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

The CPARB created the SHB 1621 Review Committee with members of public, private industry and stakeholders to consider the impacts of this bill and identify recommendations if needed.

The Committee met biweekly over the last six months and submitted their recommendations to CPARB.

CPARB makes the following recommendations to the Washington State Legislature:

(issues with consensus)

Potential future work for consideration:

(issues without consensus)

~~**Intent**~~

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

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

~~New section 6 includes the following statement:~~

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

~~On April 13, 2023, CPARB formed the SHB 1621 Review Committee to bring together a coalition of industry stakeholders for the assessment and determination of the recommendations outlined in this report.~~
~~https://des.wa.gov/about/committees-groups/capital-projects-advisory-review-board-cparb/shb-1621-review-committee~~

Committee Members: *[need to alphabetize]*

1. Mark Nakagawara (Cities) - Co-Chair
2. Keith Michel (General Contractors) - Co-Chair
3. Sharon Harvey (OMWBE)

4. Bruce Hyashi (Architects)
5. Irene Reyes (Private Industry)
6. Mark Riker (Labor)
7. Michael Transue (Mechanical Contractors Association)
8. Diane Pottinger, North City Water District
9. Liz Anderson, WA PUD Association

Committee Stakeholders: *[need to alphabetize]*

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

~~**SHB 1621 BACKGROUND**~~

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

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

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

~~HB 1621~~ **GENERAL CONCERNS**

Members of the SHB 1621 Review Committee (Committee)~~committee~~, ~~along with~~and stakeholders ~~advocating their respective interests, have~~ collaborated to review the bill, identify discrepancies, and consider possible resolutions~~seek resolutions~~ for the prospective enactment of SHB 1621. Representatives from MCAWW and WSBCTC endorse the revocation of SHB 1621.

The Committee Identified 3 primary concerns:

1. Limits for work performed by public employees vs. competitive bidding.
2. Exceptions to Bid Limits on projects up to $300K:
    a. Prudent Utility Management definition and cost exclusions
    b. Definition of Materials vs. Equipment: Exceptions to bid limits; cost excludes equipment identified as items such as wiring & piping, which otherwise would be identified as materials outside of Prudent Utility Management.
3. Lowest Responsible Bidder (RCW 57.08.050 (8))

Committee Responses:

1. Cities and water-sewer 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.
2. Cities and water-sewer 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.
3. Cities and water-sewer districts have articulated concerns that the emergency public works provisions outlined in RCW 39.04.280 serve only as a competitive bid waiver and do not offer any time advantages or an increase in the public works thresholds for tasks carried out by regularly employed personnel. Lengthy contracting procedures and contractor availability issues are perceived as impediments in addressing urgent needs. These entities, including cities, water-sewer districts, and fire districts, contend that the $300,000 threshold sets a sensible limit for situations where immediate needs can be addressed by their own regularly employed staff.
4. MCAWW and WSBCTC express their opposition to any committee recommendation supporting the bill's continuity, expressing concerns about the broad policy implications and impacts on contractors engaged in smaller public works contracting projects. They highlight that by elevating the thresholds for self-performed work by public entities, the bill effectively decreases the available public bid project opportunities for public contractors, particularly affecting small and disadvantaged businesses.

5. MCAWW and WSBCTC advocate for the highly focused and tightly restricted application of the 'Prudent Utility Management' expansion to cities, water-sewer districts, and fire districts.
6. MCAWW and WSBCTC recommend that the utilization of 'Prudent Utility Management' by cities, water-sewer districts, and fire districts be reported to the state for oversight and tracking purposes.
7. WSBCTC representatives expressed their opposition towards the augmentation of the thresholds that govern work allowed by regularly employed personnel of public entities. No suggestions for corrections or adjustments were submitted.

~~SHB 1621 ISSUES OF~~ RECOMMENDATIONS:

Limits for work performed by public employees vs. competitive bidding:

~~**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.

[Current bill language standardizes thresholds for work performed by public employees. These thresholds are $75,000 for a single trade and $150,000 for multiple trades. Any work above these limits will need to be sent out for bid.]

[**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, water-sewer districts and fire districts to match what exists for first and second-class cities creates uniformity amongst the agencies and accounts for inflation and price escalation factors. *[Some districts will see an increase to match these uniform thresholds but not all.]*

Exceptions to Bid Limits on projects up to $300K:

a. Prudent Utility Management definition and cost exclusions.
b. Definition of Materials vs. Equipment: Exceptions to bid limits; cost excludes equipment identified as items such as wiring & piping, which otherwise would be identified as materials outside of Prudent Utility Management.

~~**Prudent Utility Management – Definition:**~~
Definition of Prudent Utility Management *(as currently used)**:*** Work performed work with regularly employed [utility] personnel using material of a worth not exceeding $300,000 in value without a contract. This limit on the value of material being utilized in work being performed by regularly employed personnel shall not include the value of individual items of equipment. For the purposes of this section, the term "equipment" includes but is not limited to conductor, cabling, wire, pipe, or lines used for electrical, water, fiber optic, or telecommunications.

- 'Prudent Utility Management' cost exclusion for "equipment":

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

- "The list of "equipment" covers most material that would be utilized in a utility project leaving little to be considered 'materials' to be tracked against the $300K capacity except for labor.

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

Committee Recommendation:
[VOTE#2] Committee members recommend revisiting the appropriateness of the uniform application of 'Prudent Utility Management' for cities, water-sewer districts and fire districts.

[This term has not been applied to cities, water-sewer districts and fire districts before now and may not be applicable in the same manner as for Public Utilities Districts' use.] [**AGREE** or DISAGREE]

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

[VOTE#3] Should 'Prudent Utility Management' apply to cities? [YES or **NO**]

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

[VOTE#3-B] Should the language proposed by cities (see comment 4 below) be applied in revisions to SHB 1621 for cities? *[The language proposed by cities would replace the current Prudent Utility Management language in the bill.]*
[YES or NO]

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

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."

[VOTE#3-C] Should MCA's recommendation of changing "or" to "and" within proposed language by cities be incorporated to revisions in SHB 1621 for cities? *[The modified language proposed by cities would replace the current Prudent Utility Management language in the bill.]*

Proposed Language by Cities - Modified: "…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 **and** financial needs of the public body without a contract in the sum not to exceed $300,000."

[YES or NO]

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

[VOTE#4] Should 'Prudent Utility Management' apply to water-sewer districts? [YES or **NO**]

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

[VOTE#4-B] Should the language proposed by cities (see comment 6 below) be applied in revisions to SHB 1621 for water-sewer districts? *[The language proposed by cities with appropriate entity identified would replace the current Prudent Utility Management language in the bill.]*

Proposed Language by Cities: "…a water-sewer districts 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."

[YES or NO]

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

[VOTE#4-C] Should MCA's recommendation of changing "or" to "and" within proposed language by cities be incorporated to revisions in SHB 1621 for water-sewer districts? (see comment 6 below) *[The modified language proposed by cities with appropriate entity identified would replace the current Prudent Utility Management language in the bill.]*

Proposed Language by Cities - Modified: "…a water-sewer districts may have its own regularly employed personnel with the requisite experience, capability and qualifications, perform public works activities to address the exigency, efficiency **and** financial needs of the public body without a contract in the sum not to exceed $300,000."

[**YES** or NO]

VOTE #4-C			
SHB 1621 Committee Voting		CPARB Voting	
3	No		No

5	Yes		Yes
1	Abstain		Abstain
0	Absent		Absent

[VOTE#5] Should 'Prudent Utility Management' apply to fire districts? [YES or **NO]**

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

[VOTE#5-B] Should the language proposed by cities (see comment 4) be applied in revisions to SHB 1621 for fire districts? *[The language proposed by cities with appropriate entity identified would replace the current Prudent Utility Management language in the bill.]*

Proposed Language by Cities: "…a fire district 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."

[YES or NO]

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

[VOTE#5-C] Should MCA's recommendation of changing "or" to "and" within proposed language by cities be incorporated to revisions in SHB 1621 for fire districts? *[The modified language proposed by cities with appropriate entity identified would replace the current Prudent Utility Management language in the bill.]*

Proposed Language by Cities - Modified: "…a fire district may have its own regularly employed personnel with the requisite experience, capability and qualifications, perform public works activities to address the exigency, efficiency **and** financial needs of the public body without a contract in the sum not to exceed $300,000."

[YES or NO]

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

Committee Comments:

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

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

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

[This list of "equipment" covers most material that would be utilized in a non-utility project thus leaving little, with the exception of labor, to be considered as 'materials' to be tracked against the $300K capacity.]

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, water-sewer districts, fire districts.

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

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

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

VOTE #7	
SHB 1621 Committee Voting	CPARB Voting

3	No		No
5	**Yes**		Yes
1	Abstain		Abstain
0	Absent		Absent

Committee Comments:

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

Lowest Responsible Bidder ~~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 35.23.352(2), 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 additional bidder responsibility provisions due to its pre-existence in RCW 39.04.050. *[expands responsibility criteria outside of current criteria in 39.04 and creates confusion for contractors]*

[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:

1. Cities are open to striking bidder responsibility language from SHB 1621.
2. Water-sewer 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.
3. MCA and construction trade labor supports the rejection of the bidder responsibility language of SHB 1621.

Referenced RCWs:

54.04.070 - Specific to Utility Districts

35.23.352 - Specific to 2nd Class

35.22.620 - First Class Cities

57.08.050 - Water Sewer Districts

52.14.110 - Fire Protection Districts

39.04.010 - Responsible Bidder Criteria

39.04.350 - Responsible Bidder Criteria