

SHB 1621 Committee

Meeting Notes 11/21/2023

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Committee Members: (9 positions, 5 = quorum)

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

Stakeholders:

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

Other Attendees:

X	Talia Baker, DES\CPARB Staff	X	Jack Donahue - MFA
X	Nancy Deakins, DES\CPARB Staff	X	Eric Alozie

The meeting began at 11:33 a.m.

1. Welcome and introductions.

Co-Chair Keith Michel welcomed the group to this meeting and welcomed new attendees.

2. Review/Approve agenda.

Co-Chair Michel reviewed the agenda and asked the group for any edits before proceeding.

Mark Nakagawara moved, seconded by Liz Anderson, to approve the agenda. The motion was approved by a voice vote.

3. Approve 2 sets of meeting notes (10/10 & 10/24)

Co-Chair Michel asked the group to review and provide any edits to the minutes from the meeting on October 10, 2023 and October 24, 2023.

Sharon Harvey moved, seconded by Mark Nakagawara, to approve both minutes from October 10, 2023 and October 24, 2023. The motion was approved by a voice vote.

4. CPARB meeting (11/8) debrief.

Co-Chair Michel expressed gratitude for all those who attended the Capital Projects Advisory Review Board (CPARB) meeting on November 8, 2023. During this meeting, they went through the draft report, summarized the key points, and provided an overview of their recommendations to the Board.

Liz Anderson observed that the report still needed a lot of clarification. This will be important in guiding the

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group as it finalizes the report and helps ensure that the language, format, and recommendations are clear. Co-Chair Michel noted there was some confusion around some of the votes in the report, specifically Vote #8.

This committee is in a transitional state, with work moving from this committee to CPARB. Over the course of this committee, they have been working to ensure everyone understood the concepts utilized within the bill and the outcomes for each entity that can utilize those aspects of the bill. The challenge will be finding balance with some of the differing opinions in order to provide mutually agreed upon recommendations.

5. Review current version of the draft report.

The work of this committee is to now translate the report into a CPARB document and present a high-level overview of the recommendations. While most committee members understand the technical nature of the bill, the challenge is finding consensus when there are so many factors at play. The goal now is to ensure technical accuracy in the report rather than wordsmithing.

Talia Baker pulled up the working draft of the report, which currently includes all voting sections and the outcomes of each. The final report will include the committee's recommendations for CPARB to approve and identify any issues that do not have committee consensus. Additionally, in the final report under each voting section, there will be a summary of the voting outcomes, which will include the committee's concerns and comments.

It was pointed out that in the report there are some incidents of specific positions from groups. The question was whether those positions should specify which group has stated them or if they should be more general throughout the report. They should be consistent throughout the report. It was suggested that the positions should be named by stakeholder group, such as contractor, laborer, etc., which would also mirror the positions used within CPARB.

It was noted that a summary of the committee's recommendations to CPARB was added to the Executive Summary section of the report.

Liz recommended adding, in the subheader under the General Concerns section, "for evaluation" so that the subheader reads: "The Committee Identified 3 primary concerns for evaluation." This will help ensure clarity for the reader that the concerns are not what need to be changed overall but rather are just for the evaluation. Mark Riker noted concern over the first statement, "Limits for work performed by public employees vs. competitive bidding." It was clarified that the first statement was intended to communicate the areas that were evaluated that were a concern.

Brandy DeLange explained it in a different way, noting that those statements are the areas of concern and need to be fixed. So, to Mark's point, the first statement is something that needs to be fixed or not done at all, which could be a recommendation.

Liz suggested that the following be added to the two sub-bullets to the second statement regarding exceptions to Bid Limits: "as it applies to the cities, water-sewer district, and fire districts." This detail was made clear in the section below but not in this section. It was clarified that this section is setting the stage on the topical items, and the issues are described in more detail further into the report. There was concern that someone might read this quickly and skip over the details.

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Co-Chair Michel clarified that there is no ability within this committee to modify the definition of Prudent Utility Management (PUM) as it exists elsewhere in the RCW. However, the focus is on how SHB 1621 takes the definition of PUM and applies it to these entities.

It was suggested that this committee move through each of the issues and address any parts that are not clear. For the final report, the voting results will be moved to an appendix and all that would be left are the Committee Recommendations and Committee Comments section. It was reiterated that this report needs to be written so that those not in the construction industry are able to understand what each section means. If there is a way to make certain parts clearer to those outside of construction, this committee should consider making those changes. However, when going through these sections, the goal is to modify the voting language as little as possible unless otherwise indicated by the committee.

At CPARB's meeting on November 18, no votes were made on the issues. This means that the Board will need to vote on the issues the committee is recommending to them. It was suggested that the issues be simplified so they can easily be understood and voted on concisely, as there will only be one hour and fifteen minutes for discussion and voting. Co-Chair Michel agreed but expressed concern about nullifying the work this committee carried out and voted on. In addition to this committee's work, CPARB's work and voting may be added as another appendix in the report.

There was concern expressed that if CPARB were to vote on the recommendations then it would nullify the work and vote of this committee. The proportions of interested parties are different on CPARB compared to this committee. One assumption is that CPARB would approve the report, because it expresses the opinions and facts behind each party's approach. There are no issues upon which this committee has unanimously agreed.

CPARB members will be able to vote that this report is accurate, but it does not mean they are able to vote to support the recommendations. Mark Riker noted that as a CPARB member and member of this committee, he will be transparent about the fact while the report is accurate, there is disagreement amongst the communities' findings and there will be advocating per requirements to their stakeholder groups.

In Vote #3, it was clarified that the language proposed by the cities was intended to replace the definition of PUM.

The committee is undecided between which of the definitions may be recommended to move forward. The question was asked whether Vote #3-B and Vote #3-C both need to be in the report or if one of the two should be recommended. There were concerns with one definition being more restrictive than the other.

Scott Middleton noted that the Mechanical Contractors Association (MCA) does not agree to extend the definition of PUM to cities, water-sewer, and fire districts. They are also unable to agree to the alternative language proposed by cities. Their concern is ensuring fair bidding and opportunities for contractors. It may be appropriate to include the reasoning as to why the MCA does not support this. It is particularly relevant to the work that CPARB has been doing with the Small Works Roster and their efforts to remove barriers for small contractors for public works projects.

Co-Chair Michel asked Scott and Michael whether they had feedback on different language that would qualify as a self-performance example. Mark and Scott noted that their stakeholder group was not able to come up with a compromise.

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Hesitation was expressed with raising the limits but also excluding items from the threshold. This may not be enough to prevent manipulation of the system. It may create an unintended consequence for those who work in the Small Works field, potentially removing work from these companies.

Brandy explained that in the scope of this group, cities have tried to put forth language that might work, but also acknowledge there may not be language that is workable for certain groups. Perhaps this is something that needs to be included in the report, that there is no language that is workable for the building trades, but that they collaborated and tried to find a path forward. Mark agreed, noting that this has been a collaborative process but there are still issues in which there is no solution or path forward.

Scott asked the group whether there was discussion about how to include recommendations based upon the outcome of a vote, such as votes with that were unanimous, etc. This committee was always trying to find common ground, but if there are certain issues that were close calls without common ground, then it may be better to be left out. Co-Chair Michel responded, noting that while they aimed to find common ground from the onset, they recognized that it would be impossible to find consensus on everything. Stakeholders in the committee had the realization that they need the vote to reflect their stakeholder group interest. There was an unwillingness to compromise on aspects of the bill that their stakeholder group likes or will use. There has been an evolution of discussion, process, and feedback of how the report has taken form. CPARB's recommendations will hopefully distill down and filter the voting tallies and results.

While there were some split votes, if half of committee members were indicating it should not be in there, this may be enough reason to remove it until it can be worked on further and involve more stakeholder engagement. It could be pointed out in the report that more stakeholder work is needed on certain issues.

Brandy asked if more stakeholder engagement was recommended, would that be worth the time of some stakeholders that are opposed to the bill? Mark noted that he does feel like it would be a waste of his time, and their efforts would rather be targeted towards cancelling SHB 1621.

It was suggested that this committee should confirm whether they think any issue needs to be worked on further, or if they indicate that they are not worth working on in the future.

Public entities need a certain amount of flexibility to accomplish their work. With public contracting, there is more than one way, process, delivery method, or tool that can be chosen to execute work. When work is done with an emergency waiver, this omits the needs for a competitive bid process. It was asked whether there would be an opportunity to modify or expand the existing provisions of the emergency situation to find a compromise to execute work.

Co-Chair Mark Nakagawara noted that the initial intent of the proposed language by the cities was based upon the emergency definition. However, there is always a need to consider circumstances. CPARB could recommend further discussion or action about solutions. Instead of killing the bill, they could instead study emergency provisions, potentially enhancing, expanding, or providing connection to self-performance through that existing RCW provision.

Mark noted interest in looking into this option more. One of the iterations of the proposed language had financial clauses that were open and subjective, which is not ideal as they often have disputes regarding construction worker wages. He would like to work on a pathway forward to preserve health and safety but maintain normal construction industry environment for quality construction family wages.

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Co-Chair Nakagawara noted that was the intent. When he looked at PUM, that was not a term that cities used. He noted the language proposed has the right characteristic, but including emergency may make it more digestible and no longer open to interpretation.

This committee has stopped short throughout this work of presenting new ideas. For example, the circumstance that drives \$300,000 in self-performed work. For Public Utility District, a \$300,000, project may prompt elements that are best done by a third-party contractor. There may be issues with contractors misusing the threshold, which is not what was intended. The writing in the bill potentially allows for misuse or for it to be taken advantage of. When the cities proposed the language, they included “qualified” in the provision to ensure it would not be exploited.

Co-Chair Michel pointed everyone to look at Vote #8 and asked the group how this vote could be modified to reflect what everyone has commented thus far regarding a willingness to let it go. Brandy proposed that everyone vote on this again and whether everyone agrees on removing the language that appears in certain sections in the bill.

Brandy DeLange moved, seconded by Keith Michel, to remove the additional bidder responsibility provisions in SHB 1621.

Members were asked to vote on the recommendation to remove the additional bidder responsibility provisions in SHB 1621. *A roll call vote of each member’s votes resulted in the following:*

Liz Anderson - Abstain

Sharon Harvey - Yes

Bruce Hayashi - Yes

Mark Riker – Yes

Scott Middleton – Yes

Keith Michel - Yes

Mark Nakagawara – Yes

7-Yes, 0-No, 1-Abstention, 1-Absent

6. Establish next meeting agenda

This committee needs to discuss whether they will need another meeting prior to the next CPARB meeting on December 14, 2023. Talia noted she has begun working on summarizing the information this committee has provided. This committee will want to share their voting, reasoning, as well as a final report for the Board to approve and move forward. She indicated she could share with the committee the summarized report with the sections that will need to be approved by CPARB before it’s finalized, and the working draft with all the votes and edits provided.

It was asked whether the committee would like to revisit the PUM sections and potentially vote to remove the language from the current sections. The consensus from the committee was that they would like to avoid undoing what was already in the report, as that was essentially the middle ground they came to.

There was not a definite action on whether take the language out completely or replace it with something. It will be difficult to indicate to the legislature that it should not apply, but not provide any

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solutions. The other votes indicated that the language should not apply, so the question asked was whether that meant to remove the language completely. It was noted that the committee recognizes that it should not go into effect as currently stated, and they have fallen short in finding unanimous agreement in an alternative solution.

The committee noted it is not as simple as removing the language, they had always wanted this provision to have discretionary use for employees to perform work. The distinction with that is what should be governing the limit and character of that self-performed work. This committee has not been able to identify and describe that collaboratively. This is where this issue becomes complicated, because they would like to keep the concepts but do not like the definitions.

This committee will keep refining the report and prepare it for CPARB and will keep the December 5 meeting.

Next agenda (12/5)

- a) Welcome & Introductions
- b) Review/Approve Agenda
- c) Approve meeting minutes (11/21)
- d) Review update draft report
- e) Action items and next steps
- f) Adjourn

7. Action items

- a. Talia Baker will update the positions in the report to stakeholder groups they represent and ensure consistency throughout the document.
- b. Talia will work on summarizing the information this committee has provided and have an updated draft by the next committee meeting on December 5, 2023.

Meeting adjourned at 1:06 p.m.