

SHB 1621 Committee

Meeting Notes 12/5/2023

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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	X	Irene Reyes, Private Industry
X	Sharon Harvey, OMWBE		Mark Riker, Construction Trades & Labor
X	Bruce Hayashi, Architects	X	Michael Transue, Contractors (MCAW)
X	Diane Pottinger, North City Water District		

Stakeholders:

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

Other Attendees:

X	Talia Baker, DES\CPARB Staff	X	Jack Donahue, MFA
X	Nancy Deakins, DES\CPARB Staff	X	Monique Martinez, DES Staff

The meeting began at 11:33 a.m.

1. Welcome and Introductions

Co-Chair Keith Michel welcomed everyone and invited participants to share any updates with the group. Liz Anderson announced that she will be taking over as Executive Director of the Washington Public Utility District (PUD) Association beginning in January 2024.

2. Review/Approve Agenda

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

Michael Transue moved, seconded by Diane Pottinger, to approve the agenda. The motion was approved by a voice vote.

3. Approve meeting notes (11/21/2023)

Co-Chair Michel asked the group to review and provide any edits to the minutes from the meeting on November 21, 2023.

Irene Reyes joined at 11:37 a.m.

Sharon Harvey moved, seconded by Mark Nakagawara to approve the minutes from November 21, 2023. The motion was approved by a voice vote. Michael Transue and Diane Pottinger abstained.

4. Review report going to CPARB

Bruce Hayashi joined at 11:39 a.m.

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Talia Baker and Nancy Deakins had reviewed and updated the report, working to turn it into a legislative report. Several questions arose as they were updating it, and those questions were sent out to committee members via email prior to the meeting. Answering those questions was the committee's focus for the meeting.

Co-Chair Michel reminded the committee that the goal was to now help CPARB find recommendations. As discussed in previous meetings, there may be recommendations that do not have consensus agreement, which may require indication of needing further review or discussion. The first question to address was related to the value of equipment and whether it should be excluded or redefined. The hinge points were related to the definition of "equipment" as well as whether it should be included in the \$300,000 limit.

Michael Transue read through the current definition of Prudent Utility Management (PUM) as defined in the report and re-affirmed that he thought the definitions of "equipment" and "material" needed to be more properly defined. There may also be differing opinions on the definitions of those terms.

Co-Chair Michel brought up that this committee has generally been ok with the inclusion of all project costs within the \$300,000 limit. This threshold is higher than any amount that has been allowed for self-performed work, and it was pointed out that it is fair to include all project costs. It helps to avoid ambiguity and opportunities to stretch what falls within the threshold of the project. While some committee members may have different perspectives on whether \$300,000 is the right limit, as well as differing definitions of the term's "material" and "equipment," they agreed that all costs should be included in that limit.

Co-Chair Michel confirmed consensus agreement on this change and summarized that this committee recommends no exclusions within the \$300,000 limit and omitting the definition of material and equipment. The definition of PUM was updated in the report to omit the last two sentences and change the term "material" to "all project costs."

It was noted that the committee was in agreement that PUM should not be applied to entities except PUDs. The way that this report is drafted, CPARB would be recommending the proposed alternative language by cities be added, including the word "and." Michael noted that the Mechanical Contractors Association (MCA) does not support replacing PUM with the proposed language. Co-Chair Michel pointed out that the proposed language is more specific than PUM and attempts to provide clarity when the self-performed mechanism can be utilized.

It was pointed out that owners must pay sales tax when doing self-performed work, and therefore it should be clarified that sales tax was included in the \$300,000 limit. However, it was not confirmed whether the inclusion of sales tax was already noted somewhere in the Revised Code of Washington (RCW).

It was asked whether the 10% limitation on capital budget would be applicable to municipalities. Co-Chair Nakagawa confirmed that it does apply, and it is tied to gas revenue from the state. If that 10% limitation is exceeded on any self-performed work, the municipality is then subject to losing petroleum revenues allocated from the state. However, this restriction does not apply to those jurisdictions that do not receive a gas tax distribution.

Michael brought up the Department of Enterprise Services' (DES) Bidder Responsibility Guidelines

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and wanted to ensure these guidelines were in line with what is in the statute.

Questions arose related to the Lowest Responsible Bidder sections, and it was pointed out that there are inconsistencies between water/sewer districts and cities. It was suggested to remove the reference to bidder responsibility in RCW 39.04.350 and instead point to where it already exists. Co-Chair Michel noted the importance of including responsible, responsive bidding in public contracting as it ensures a uniform process and evaluation.

As the committee went through each of the votes and confirmed accuracy, it was noted that the final CPARB report will not have the voting tables. Rather, it will include narrative of the recommendations, as well as discussion, concerns, and potential for future considerations. The voting tables may be added in the appendices.

Regarding Vote #8, there was a question about whether the committee would like to recommend removing the language regarding the bidder responsibility provision as it applies to second class cities for consistency. It was noted that the language applies to second class cities elsewhere in RCW 39.04.050. SHB 1621 added it to the other entities in this bill, and the committee's recommendation is to not do that and instead point to the other CPARB-backed guidelines. There may be the possibility that CPARB decides they do not want the bidder responsibility provisions in the bill, even if the committee wanted to leave it in.

Nancy sought clarity on Michael's "no" vote on Vote #3-C, which was not changing the language but would not want to have the \$300,000 limit at all. From a policy perspective, the MCA believes that the \$300,000 limit at the exclusion of others is not good public policy and would like \$150,000 and \$75,000 for one trade versus two trades. From their perspective, contracting out is the best value. There are current parts of the bill with which the MCA is not comfortable and that includes the \$300,000 limit.

Co-Chair Michel noted the report touches upon some aspects of this concern, and that the proposed language by cities was attempting to explain emergency situations. Michael noted the language is narrow in terms of the usage, and the MCA believes there are other things that should be looked at rather than increasing the limit of self-performed work.

It was pointed out that exigency would justify the means for city crews to do work, but currently the only vehicle for exigency is to waive a competitive bid waiver. It was noted that having "and" rather than "or" in the language as proposed by the MCA was better, but from a policy standpoint the MCA believes that work should be contracted out.

Some of the areas of the committee's recommendations do not have consensus. If CPARB puts forth recommendations that are truly consensus, then Vote #3-C is one that may not go forward, and the bill would stay in effect as it currently is. It was pointed out that in the last meeting this group was discussing changing the emergency statute to allow self-performed work for emergency situations. Irene Reyes agreed, but noted there should be a cap. Co-Chair Nakagawara disagreed, pointing out that if a municipality has to deal with any emergency issues, then they have to deal with it quickly, use their own workers to carry out the work, and take into consideration their constituents. Having to worry about a cap could delay work and make it difficult for municipalities.

It was noted that this committee can redo any votes they would like, but the votes that would be split

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are the ones related to the \$300,000 limit and whether to have “and” or “or” in the language. Since there is split stakeholder opinion on this issue, the recommendation may be to strike the extension of PUM in SHB 1621 to all the entities and recommend it be revisited and have further stakeholder engagement to arrive at acceptable terms. SHB 1621 should have had proper stakeholder engagement prior to it being enacted into law, but it did not.

If CPARB recommends that this bill does not move forward until more stakeholder engagement is carried out, this may be the push that the legislature needs to ensure that happens. However, it was pointed out that more stakeholder work may not get them any closer to consensus on certain issues.

There is a need for municipalities to address issues with their own constituents in more immediate situations. The emergency situation only covers the waiver of competitive bidding and does not address self-performed work. If self-performed work was added to the emergency statute, even with the language proposed by cities, then stakeholders may be more amenable to that.

Michael asked if there was an exigency statute that is applicable to several entities. Co-Chair Nakagawara noted that the emergency provisions reside in the competitive bid waiver. Nancy pointed out that RCW 39.28.020 may address this. It was noted that for any recommendations made, there can be a reference to RCW 39.28.

Co-Chair Michel brought the conversation back to the goal of this committee, which was to provide recommendations to SHB 1621. The existing provisions outside of this are worth noting in areas that help to understand the “why” of the bill. With SHB 1621 taking effect next summer, it is important to consider whether CPARB should recommend delaying the implementation date to continue workshopping the bill. Other questions to consider include whether there should be an expiration date and add reporting criteria that include parameters and metrics. This committee has stopped short of finding creative ways to improve or modify the bill beyond striking or changing existing language.

Michael brought up that in RCW 39.28, municipality is broadly defined. There may be authority on emergency purchases that could be applicable and relevant. However, there are some jurisdictions that would require a council or an executive to declare an emergency. There are several jurisdictions that are unable to do this quickly, whereas there are opportunities for public works directors who can make that call immediately.

The question is whether the alternative language proposed by cities on the \$300,000 limit with the “and” should be recommended as a substitute for PUM in statute. There was consensus on PUM not applying to all other entities in the statute, but the application of how this looks does not have consensus. CPARB could move forward with taking out those sections of PUM.

It was identified earlier in the committee’s work that they would not have consensus on all points and affirmed that more committee discussion will not overcome or change the differing opinions. This upcoming CPARB meeting will be an important one to discuss the context of the report.

If CPARB asks what the recommendation would be on issues that do not have consensus, Co-Chair Michel noted he would answer saying that he supports SHB 1621 with changes. The changes that he supports would include not using PUM but rather the alternative language proposed by cities, including “and,” and that all project costs should be included in the \$300,000 limit.

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Members of this committee noted they will plan on attending the December 14, 2023, CPARB meeting. Going over the report will be an important part of this meeting. It is possible that after the upcoming meeting, CPARB may recommend that this committee meet again.

5. Action items

- a. Talia Baker and Nancy Deakins to continue making updates and incorporating edits to the SHB 1621 draft report.

Meeting adjourned at 1:00 p.m.