

Committee Members: (11 positions, 6 = Quorum)

x	Keith Michel, General Contractors – Co-Chair	x	Mark Nakagawara, Cities – Co-Chair
	Liz Anderson, WA PUD Association	x	Mark Riker, Construction Trades & Labor
	Linda De Boldt, WA Cities		Steve Russo, UMC, Specialty Contractors
x	Roger Ferris, Fire Districts	x	Michael Transue, Contractors (MCAW)
x	Sharon Harvey, OMWBE		Vacant, Higher Education
x	Bruce Hayashi, Architects		Vacant, Private Industry
	Diane Pottinger, North City Water District		

Guests & Stakeholders:

	Eric Alozie	x	Monique Martinez, DES/CPARB Staff
	Logan Bahr, Tacoma Public Utilities		Scott Middleton, MCAWW
	Talia Baker, DES/CPARB Staff	x	Colleen Newell, MFA
	Randy Black, Lakewood Water District		Roe Paulalasi-Gonzalez
	George Caan, WA PUD Association		Paul Richart, Alderwood Water & Wastewater District
	Bill Clark, WA PUD Association	x	Steve Russo
	Joren Clowers, Sno-King Water District Coalition	x	Josh Swanson
x	Nancy Deakins, DES/CPARB Staff		Abigail Vizcarra Perez, MetroParks Tacoma
x	Brandy DeLange, Assoc. WA Cities	x	Rob Wettleson, Forma Construction
	Jack Donahue, MFA		Maggie Yuse, Seattle Public Utilities
x	Ryan Spiller, Fire Districts		Janice Zahn, Port of Seattle
	Judi Gladstone, WASWD		

The meeting began at **11:32 a.m.**

Call to order and roll call for quorum

Co-Chair Keith Michel called the meeting to order. A roll call of members confirmed the meeting quorum.

Review/approve agenda – Action

Co-Chair Michel asked the group to review and provide any edits to the agenda.

Michael Transue moved, seconded by Sharon Harvey, to approve the agenda. A voice vote approved the motion.

Approve May 7, 2024, meeting notes – Action

Co-Chair Michel asked the group to review and provide any edits to the minutes from the meeting on May 7, 2024.

Michael Transue moved, seconded by Linda De Bolt, to approve the minutes from the May 7, 2024, meeting. A voice vote approved the motion.

Feedback Report on Action Items – Discussion

Monique Martinez pulled up Michael Transue’s feedback, which had been sent to the committee prior to the meeting. Michael summarized what he’d written, emphasizing that the committee set out to repeal the Prudent Utility Management (PUM) authorizations and repeal the second-lowest responsible bidder authorizations. He included legislative language around the “emergency situations” designation, as well.

Mark Riker thanked Michael for summarizing his findings and stated that he was glad to see the inclusion of prevailing wage in the use of public employees.

Brandy DeLange asked if they were only amending cities, or if water and fire districts were included as well. Michael confirmed that they would be included. She said that it might be helpful to have MRSC review and ensure that those recommendations are applicable to water and fire districts in the first place.

Co-Chair Michel clarified that the emergency declarations applied to cities would be used universally. He then asked if there were circumstances in which PUM made sense, or if it was just to include in emergencies. Michael said that for the \$300k threshold it would only be for emergencies, but for the \$75k/\$150k threshold it could be under PUM.

Linda De Bolt asked if the limit was set at \$300k for an agency to be able to respond to an emergency, how that would work in the event of a major emergency like an earthquake. She suggested making the limit apply to exigent work that occurs in addition to emergency work. Placing a hard cap on work in the event of an emergency could significantly hamper recovery efforts. Co-Chair Mark Nakagawara seconded that, noting it clouds the definitions and could limit municipalities from being able to perform certain tasks.

Michael answered that the intended goal was to prevent scope creep from applying to different emergency situations, but that he understood where Co-Chair Nakagawara was coming from. Michael noted he should circle back with Co-Chair Nakagawara to determine limits, so that they can limit expansion while still allowing municipalities to be able to address immediate needs. Linda volunteered to help with defining that term.

Co-Chair Nakagawara said that he had reservations about the inclusion and thought that the inclusion of the \$300k limit was rather imprecise. He said that cities do not look at emergencies as opportunities to accomplish work without contracting out, rather that they are just trying to prevent future emergencies. He added that first-class cities are limited to 10 percent of their annual budget.

Linda said that 10% of Bellevue's construction budget would allow them to complete 17 projects, which sounded reasonable to her. Co-Chair Nakagawara added that a cap after a certain percentage might be more applicable, since that then doesn't constrain cities on every single project.

Bruce Hayashi emphasized the need to be willing to compromise in order to avoid loopholes, as well as protect the ecosystem of having subcontracting and contracting opportunities. While big cities have good checks and balances, there are smaller cities that may not. He wants to ensure there are guardrails for those who take advantage of the system. He gave an example: in the 1980s a water district in Washington state was able to get bonded and borrow against the bond, which they used to purchase property outside the water district for development. They proceeded with this development until they were unable to pay it off. Bruce reiterated concern for how to protect others from those who do harm.

Ryan Spiller responded that this was a more limited situation and noted there are criminal statutes and audits that would cover those situations. The focus of their discussion was on more limited situations related to public works.

Linda noted she had worked to include in her report the interests of various parties that have been expressed over the last several meetings. She appreciated the draft of the new bill language that could potentially be brought forward.

Mark shared a viewpoint from the labor perspective, who performs a vast majority of the public works contracts: they are asking for the financial incentive to be gone. His fear is that over a short period of time the \$300k limit will continue to expand beyond that. This will not help them perform the work they have traditionally been doing nor help the contracting community to grow their businesses. He explained that many of the contracts are set aside for smaller businesses and that these contracts always get paid. Guaranteed payment is a benefit for small businesses. He again expressed concern for how the threshold may continue to expand.

Co-Chair Michel asked for confirmation of whether an emergency is declared, cities would still be governed by that 10% of the annual budget. Co-Chair Nakagawara explained that, in the case of an emergency, their city crews would go on site to stabilize the situation within a 24-hour period. They would then contact him with a request to seek emergency exemption for them to contact contractors for availability. He noted that this is where the risk of lawsuits comes up. Whereas, if they know they can't go beyond \$150k, then they would stop because anything over \$150k would put them in the public works realm rather than the operational realm of securing the issue where the incident or the damage would occur.

Co-Chair Michel clarified that if an emergency still happens, then the city would still have to self-perform a stabilization which is \$150k, but with the separate language in SHB 1621, that threshold would go up to \$300k. Co-Chair Nakagawara noted that the first 24 hours would be operations so it would not fall under public works activity.

Co-Chair Michel acknowledged both Co-Chair's Nakagawara's perspective working with the City of Seattle and Bruce's input regarding working together to govern bad actors. The goal is to try and find the right limiting factors. He referred back to the proposed language, noting that it would eliminate the \$300k limit fundamentally within the SHB 1621 concept. Instead, it would stick with the \$75k/\$150k limit. Co-Chair Michel appreciated the concept of consistency across all of these various public entities. This is why he is steering the group back to the SHB 1621 language and the purview of this committee, which was to propose recommendations to that language.

Linda noted her understanding of SHB 1621 is that first and second-class cities, code cities, fire districts, and utility district have the \$150k/\$300k limit. With the new proposed bill language, that limit would be rolled back to \$75k/\$150k. Brandy confirmed this was correct.

Linda pointed out that when crews respond to an emergency, there should be a distinction between public works and ordinary maintenance and noted a better definition of emergency is needed. Michael clarified that when emergency work is done on infrastructure, it is maintenance and not a public work. His view is it is still a public work, but just done in an emergency situation. Linda said there is a good definition of ordinary maintenance versus public work in an MRSC publication. Public works projects are often of a capital nature, where an improvement is made to an infrastructure, rather than maintaining the infrastructure that already exists.

Co-Chair Michel asked whether the \$75k/\$150k limit is elective: the circumstance or PUM does not need to apply to that circumstance, the public entity chooses. Then, the PUM circumstance is intended to apply to the now higher \$300k limit. Co-Chair Nakagawara noted that was his understanding, and that the \$75k/\$150k limit would remain in place. The difficulty is now determining when the \$300k limit can be applied.

Josh Swanson added that prevailing wage and public works looks at ordinary maintenance a bit differently. Under prevailing wage, the definition is much more limiting than the MRSC definition. There may be differences between the statutes with respect to how they treat or define ordinary maintenance.

Co-Chair Michel said he is hearing reluctance from some in the group to include emergency to go to the \$300k. However, he hasn't heard feedback about when that option is exercised whether it should be prevailing wage. It will take some work to align costs. If we're reducing private/public contracting opportunities that would be prevailing wage, the question is if the municipalities should have the same wage rate.

Co-Chair Nakagawara noted he was not sure how that would be done for different bodies of work. Linda shared that she understands the rationale behind having prevailing wage be paid to workers if it is the same body of work. With municipal governments, all crews are represented by unions and those wage rates are built into the budget. It would be difficult if not impossible to implement the proposal because of the need for money to pay for it. It is sent with the contract and wage rate, which must go through a long process and many approvals.

Mark shared that his understanding is that there is a misperception that public employees are paid the same as private employees. He noted the public receives numerous benefits. If it is purely a convenience component, then the convenience must be provided while not making a financial differentiation for what used to be privately contracted out public works projects. Giving correct value for the benefits for public employees versus private sector would be calculated into the comparison between private prevailing wage and the public employee compensation.

Linda noted the total compensation packages were evaluated and compared to what a construction worker in a private industry worker makes, those values would likely be valued out. These calculations could be made to see how they compare.

Co-Chair Michel said there is often difficulty in budgeting from a different perspective, noting that they are fundamentally talking about a project circumstance. It's a SHB 1621 line item capped at 10%, and the difference in wages being discussed is an individual comparison. Linda pointed out that there is a limit to the projects they would be able to do. The question is what the cost is for the workforce doing these projects compared to what they are doing for ordinary maintenance.

Co-Chair Mark Nakagawara said there will be significant issues because the contract is already negotiated with the city. The difference between private labor and public-owned entity is that they are working all year.

Co-Chair Michel said this leads into an action item for owners: to respond to Mark Riker, Michael Transue, and Josh Swanson's offer. They are trying to connect it to an emergency provision and identify it back on SHB 1621. There's the wage rate offer to make them match prevailing wage. The other side is that they are connecting it to the 10% annual budget threshold. This was getting close to an agreement from owners in the room; it seems like that is common ground within SHB 1621.

Linda explained that this is a significant way of reaching a balance between opposing interests. There seem to be opposing interests that are irreconcilable regarding dollar limits and the definition of emergency. The adoption of a 10% limit for entities does create a backstop to make sure that it does not go too far. If other entities, in addition to first class cities, could accept this, she proposed this as a major element to coming to an agreement, along with the additional reporting requirements. She wondered if the private construction and labor side could allow higher limits to be put in place for a period of time to see how it goes.

Mark pointed out this is a major challenge for labor because it eliminates opportunities for them. Linda noted she understood, but if the definitions of exigency were superimposed on top of that, those circumstances and those projects where there is exigency would ensure taxpayer dollars are used in the best way under certain circumstances. Additionally, the other drive for cities is that there is a need to train workers to do certain bodies of work that are beyond their normal maintenance work. If they are not given the experience to build skills, then they won't be able to do that work later. It's a practical need.

Mark countered that labor has the exact opinion on their side. Those small projects and training opportunities would be a lost opportunity for tomorrow's labor force.

Brandy reflected that she hears Bruce's concerns around potential abuses of this increased authority, and pointed out that Linda is using great parameters regarding when and how it would be used. She said that requiring reporting creates a backstop, and if and when these districts are inappropriately using this authority it can be flagged. If we are violating the law, that will be handled in criminal statute.

Regarding prevailing wage, Brandy said she would like to shop this around to code cities for their feedback. She would like some people doing this work in real time to provide a response. Her guess is that code cities will have similar responses,

but also more details and examples for how to work through this. The hope is that water-sewer districts and fire districts would do the same work as cities, as it would not just be amending the city statute.

Linda walked through the white paper document she drafted on committee members' interests, needs, and perspectives. This included the basics of the bill and what is included, outlines what has been discussed in the committee, and lays out the interests of contractors, construction trades, and labor. Mark noted an error in the document: \$125k threshold should be changed to \$150k. Linda updated the document to reflect that change.

Linda continued running through the document and outlined the interests of the cities, water-sewer districts, and fire protection details. Mark noted appreciation for the exigency portion. After finishing going through the document, Linda said she will email it out to everyone, so they are able to read it more in detail.

Co-Chair Michel thanked Linda and commented that this is the heart of bringing opposing factors together. He summarized what has been discussed and identified action items. The offer of language provided by Mark, from the labor and small business side, is to apply to emergency. If the current statute indicates that PUM is too broad and emergency is too limiting, the common ground is in between those two. The \$150k limit for multiple trades is a provision that exists and demonstrates consistency across public entities. But if the middle ground is the \$300k limit, then this group is working to come to a more agreeable compromise.

Co-Chair Michel asked Mark Riker to follow up with his group for something that is not an emergency but could be supported by them. He's hearing that cities are ok with reporting and 10% limit, but the law needs to protect the balance and not create a loophole. It's just a matter of defining the circumstances of the \$300k limit to be more palatable for others. Mark committed to having a response and a little bit of movement on that.

House Local Government Update - Discussion

Co-Chair Michel reminded the group there is a local government meeting on June 10 for which he and Janice Zahn are preparing. The next SHB 1621 Review Committee meeting on June 4 is the last opportunity for the group to provide their feedback and recommendations.

Mark said there is a lot of misunderstanding of prevailing wage and how it works. If there is a desire to understand what it constitutes, then they can work through that. Josh Swanson used to be Labor & Industry's statistician, who was tasked with setting prevailing wage and monitoring and running that program. Co-Chair Michel asked Mark about the difference between a collective bargaining agreement and that of a prevailing wage. Mark responded that it's not very easy to say, but it would be taking the rate of hourly pay and then adding in all the benefits, which includes holiday pay, etc. Mark committed to having a written response emailed out three days prior to the next meeting on June 4, and asked the committee to review and be familiar with it.

Ryan pointed out a potential issue with collecting prevailing wage numbers for various government entities. He asked whether each of the 400 fire districts would need to determine what their hourly wage plus benefits are, or whether there is a group like labor who has the numbers already. There are 10-15 fire districts that are large, and the rest are smaller districts, often volunteer-based, that do not have the capacity to figure these numbers out. Mark noted this would be a challenge that they have to overcome. Ryan said he didn't expect to receive the numbers from all these groups, but just wanted to raise the issue.

Co-Chair Michel recapped the action items. He asked owners to review internally the prevailing wage part of the offer, which included Brandy DeLange, Linda De Bolt, and Mark Riker. Mark Riker will continue to work with Michael Transue and Josh Swanson to give feedback on the draft bill language. It hinges on circumstances; if it's not an emergency, then what can be done with the \$300k limit.

Nancy Deakins asked everyone to review Linda's white paper summary. Linda said it would be helpful if everyone could think about and write down examples of situations to define what is a non-emergency but exigent that could be done on a higher limit.

Keith shared that they need real world exigency examples. It would be helpful to put more circumstances and examples of where this group could agree on that.

Nancy noted that there was no specific language on some parts of the proposed bill language, like on the reporting and larger municipalities. She asked if someone could take on that. Brandy responded that as part of the feedback they will go through all the proposals and go over those at the next meeting.

Nancy reminded the group to submit things a few days ahead of the meeting if possible so that Monique could include it in the email reminder she sends out on Friday before a meeting.

Next Meeting: June 4, 2024, 11:30 a.m.

- Review/Approve agenda
- Approve May 21, 2024, meeting notes
- Feedback Report on Action Items
- House Local Government Update
- Next meeting agenda
- Adjourn

Action items:

1. Owners will review internally the prevailing wage part of the offer and come prepared to discuss feedback at the next meeting.
2. Mark Riker will continue to work with Michael Transue and Josh Swanson to provide feedback on the draft bill language.
3. All committee members to review the white paper summary drafted by Linda De Bolt.
4. All committee members to come up with examples of situations to define what is a non-emergency but exigent that could be done on a higher limit.
5. Mark will draft a written response from Labor and have it emailed out three days prior to the next meeting on June 4.

Meeting adjourned at 1:01 p.m.

References/Resources:

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

[RCW 39.04.350](#) – Responsible Bidder

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