

CPARB – SHB 1621 Review Committee

White Paper on Committee Member Interests, Needs, and Perspectives

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SHB 1621 was passed by the Legislature in 2023. Summary is as follows:

- Increases the limit for contracts that require competitive bidding to \$150,000 if two or more trades are involved, or to \$75,000 if only one trade is involved
- **Allows current employees of first-class cities, second-class cities, water-sewer districts and fire protection districts to perform public works activities up to \$300k (multiple trade) and \$150k (single trade) with internal agency labor and without a public works contract if doing so is accepted industry practice (under “prudent utility management”).**
- Provides a standard definition of “lowest responsible bidder” for public utility districts, cities, towns, water-sewer districts, and fire protection districts.

Interests of Contractors, Construction Trades & Labor

Overall interest: Support for private construction workforce, prime and subcontractor businesses, transparency in the use of public employees for public works projects.

- Payment of prevailing wages to public employees who work on public works projects within the dollar limits allowed.
- Maintenance of the dollar limits for public employees performing public works projects to current \$75.5k for one trade and \$150k for multiple trades. This is due to the desire to not take work away from the private contracting industry by increasing the dollar limits that can be performing by public agency crews.
- The need for transparent reporting to an authoritative body, to ensure that public agencies are not overstepping the dollar limits on use of public employees to perform public works projects.
- The need for a designated public official in each agency verify that an a situation of exigency and expediency exists and there is a financial and “on the ground” efficiency to doing the work with public employees in each situation.
- Desire to apply the provisions of RCW 35.22.620 (First Class City statute) regarding the limitation of 10% of the agency’s Capital Program for how much public works can be performed by the agency’s internal crew forces.

Interests of Cities, Water-Sewer Districts, and Fire Protection Districts:

Overall Interest: Ability to utilize public employee workforce for small public works projects to address emergency and exigent situations that arise with efficiency and effectiveness for the public's health, safety, and welfare. Ability to use public tax and rate dollars to meet public works needs without waste.

- The ability to perform public works with regularly employed personnel up to the specified limits in the bill enables the use of public's taxpayer/ratepayer dollars in the most efficient and effective way under certain circumstances. These include:
 - Responding to emergencies that result in needs to perform public work activities (not "regular maintenance") to restore infrastructure quickly to operable condition.
 - Ability after infrastructure is stabilized to address public works infrastructure needs that are in the vicinity of the emergency in an expeditious manner while crews, equipment, and materials are readily available and can be deployed expeditiously to address the needs.
 - We have used the term exigency to define these needs and to distinguish them from emergency needs. Exigency is defined as "that which is required in a particular situation" or "a state of affairs that makes urgent demands". Exigency stresses the pressure of restrictions or urgency of demands created by a special situation and the need for immediate action.
 - Ability to perform public works projects (\$300k multiple trade/ \$150k single trade) with internal crew labor to provide experience in doing this type of work so that the knowledge and experience is built up should there be emergency or exigent situations that arise, requiring use of those skills. Current terminology of "prudent utility management"
 - The amount of work in a year or biennium is already limited for first class cities to the 10% limit of the agency's annual or biannual capital improvement program. This limit could be applied to other public agencies, to provide a necessary backstop on the use of employee crew labor.

Analysis:

The interests, needs, and desires by public agencies and the construction industry are aligned in the sense that all are working to perform public works projects and activities that ensure the continuation of essential transportation, utilities, buildings, and other public works services to our community. In assessing the list of bullets above, the fundamental differences between public agencies and private construction interests are in the dollar limits for projects that can

be performed by public agencies' employees and the payment of prevailing wages by public agencies when doing public works projects.

If there can be agreement for use of the 10% limitation of an agency's CIP to limit the dollar value of projects that public agency workforce can perform, together with agreed upon tracking and reporting requirements, this is one tool that can allow for the use of agency personnel for these types of projects while addressing the need for not overreaching this authority.

Another tool could be a limitation on the timing for this authority to allow for assessment of how it's going, and to propose changes to address issues if they arise.