

CAPITAL PROJECTS ADVISORY REVIEW BOARD

Recommendations on SHB 1621

Report to the Legislature
• **November 18, 2024**

CAPITAL PROJECTS ADVISORY REVIEW BOARD

The Capital Projects Advisory Review Board (CPARB), authorized by RCW 39.10, reviews alternative public works contracting procedures and provides guidance to state policymakers on ways to further enhance the quality, efficiency and accountability of all public works contracting methods.

EXECUTIVE SUMMARY

The 2023 Legislature passed Substitute House Bill 1621 standardizing a number of issues and limits for multiple public entities, including first and second-class cities, public utility districts (PUDs), water-sewer districts, and fire districts. The effective date of the bill was delayed to June 30, 2024, to allow CPARB to review and make recommendations to the legislature by December 31, 2023.

CPARB created the SHB 1621 Review Committee with members of the public, private industry and stakeholders to consider the impacts of this bill and identify recommendations. The committee met biweekly from June to December 2023 and submitted their recommendations to CPARB.

CPARB recommendations dated December 19, 2023, were not incorporated to the law through legislative process and SHB1621 as originally written is in effect as of June 30, 2024. CPARB and the CPARB SHB 1621 Review Committee have continued meeting throughout 2024, continuing stakeholder work associated with this bill.

CPARB MAKES THE FOLLOWING RECOMMENDATION:

1. Summarized results of committee voting – Reference SHB 1621 Committee Matrix of recommendation
2. Bidder Responsibility determination – Eliminate this provision from 1621.
3. Exceptions to work threshold up to 300K – Eliminate the exception or exclusions of material and equipment from the project threshold. Change to all project costs are included.
4. Prudent Utility Management definition – **Change to the “exigent” definition.**
5. Annual 10% of budget threshold – Add this annual dollar limit threshold.

APPENDICES

- A. Stakeholder Work Summary
- B. CPARB Voting Matrix
- C. SHB 1621 Committee Voting Matrix
- D. SHB 1621 Committee Member Individual Statements – Open call, 3 responses: PUD, Water & Sewer, GC
- E. DRAFT Amended SHB 1621 Act with changes noted October 10, 2024
- F. CPARB Members & SHB 1621 Review Committee Members & Stakeholders
- G. CPARB SHB 1621 Report Recommendations dated December 19, 2023 (not adopted)

STAKEHOLDER WORK BY CPARB – BASIS FOR RECOMMENDATIONS.

1. SHB 1621 includes bidder responsibility determinations outside of criteria already set forth in RCW 39.04.010 and 39.04.350. **CPARB Recommends eliminating these alternate bidder responsibility determinations and instead referencing RCW 39.04.010 for guidance on these determinations.**

Basis for recommendation: SHB 1621 uses language currently granted to second-class cities, allowing them to refuse low bids by means of a responsibility determination, and extends the concept to PUDs, first-class cities, water/sewer districts, and fire districts.

The inclusion of additional Lowest Responsible Bidder criteria in SHB 1621 expands the responsibility criteria outside of the current statute governing general public works provisions for bidder responsibility in RCW 39.04.350. This additional language creates confusion for contractors. While this language pre-exists for the second-class cities in RCW 35.23.352(2), 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.

- **Consensus** - All eleven 1621 committee members agree with this recommendation.

2. Exceptions to the public employee work thresholds on projects up to \$300k. SHB1621 includes exceptions to what is included in the self-perform 300K project limit. Notably materials and equipment defined and then excluded from the project costs. **The Board recommends eliminating these exceptions and modify the language to state all project costs are included in the 300K threshold.**

Basis for recommendation: Dollar figure thresholds throughout public contracting provisions of the RCW most commonly include "all project costs" and for consistency, this option for public entities included in SHB 1621 with respect to what is included in the 300K project limit should include all costs.

- CPARB Voting: Pending Results from 11/18 mtg
- SHB 1621 Committee Voting: 9 committee members agree with this recommendation, 2 did not.

3. Prudent Utility Management definition as applied to cities, water-sewer districts and fire districts.

The Board will recommend modifying Prudent Utility Management as the definition for when the 300K self-perform work can occur and instead include a new definition of Exigent circumstances in its place.

Exigent public works needs are due to unforeseen circumstances that result in situations that compromise the proper performance of essential government functions and there is a need to avoid, prevent or alleviate serious impacts (financial or otherwise), harm or injury, and the use of a competitive procurement would prevent the urgent action required to address the situation.

Basis for recommendation: The circumstances in which public entities can choose to exercise the option to self-perform projects up to 300K in value should be properly defined. The definition of when this can occur within SHB 1621 was very broad and may or may not adequately align with the needs of each public entity these RCW provisions apply to. Based on this the exigent definition as the definition of when this option can be utilized is improved through this recommendation.

- CPARB Voting: Pending Results from 11/18 mtg
- SHB 1621 Committee Voting: 8 committee members agree with this recommendation, 3 did not.

4. **The Board will recommend adding an annual maximum dollar limit threshold for the cumulative amount of individual 300K self-perform projects the public entity can perform of no more than 10% of the entity's annual capital budget.**

Basis for recommendation: The 300K self-perform project option for public entities is essentially a new category of self-performance work option by public entities at a substantially higher dollar value limit than any existing ones. Based on this, the public/private balance of impact related to this bill is critical to manage. The 10% cumulative annual dollar value limit based on each individual entities size is therefore appropriate to create a limit for the number of times it can be utilized in any single annual year cycle.

- CPARB Voting: Pending Results from 11/18 mtg
- SHB 1621 Committee Voting: 8 committee members agree with this recommendation, 3 did not.

CPARB MEMBER VOTING MATRIX

(to be added after 11/18)

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SHB 1621 REVIEW COMMITTEE VOTING MATRIX

(to be added after 11/18)

Semi-Final DRAFT

SHB 1621 COMMITTEE MEMBER INDIVIDUAL STATEMENTS – Open call, 3 responses: PUD, Water & Sewer, and General Contractors

WASHINGTON PUBLIC UTILITY DISTRICTS ASSOCIATION

Below is the requested language to be included in the body of the report (recommendations) to confirm committee support for preserving the underlying PUD statute—please note the first sentence is a placeholder only and would need to be filled in based on the committee’s direction.

The majority of the SHB 1621 Advisory Committee recommends modifying existing language enacted with the passage of SHB 1621 specific to **(fill in)**. *Additionally, the advisory committee unanimously agreed that the public utility district statutory language that pre-dated the passage of SHB 1621 by many years is specific to and necessary for the operations of public utility districts and therefore should not be modified.*

Minority statement from WPUDA on vote:

SHB 1621 retained key pre-existing provisions of the PUD’s statutory language, which is specific to the unique operational needs of public utility districts. WPUDA appreciated the Advisory Committee’s recognition and support for not altering the underlying PUD statute related to prudent utility management. WPUDA supported proposed changes to SHB 1621 language applied to the cities’ statute. The cities requested the changes to SHB 1621 relating to their statute and the changes were vetted by the committee. Based on discussions, WPUDA believes there was general consensus around this recommendation, however without the ability to vote in favor of changes requested by the cities while not advancing suggested changes for the water & sewer districts and fire districts which were controversial, WPUDA voted to retain the existing provisions in SHB 1621.

Liz Anderson, Executive Director
Washington Public Utility Districts Association

WATER & SEWAR DISTRICTS

Water and Sewer Districts were happy with SHB 1621 which included a review by CPARB. One of the key objectives of the bill was to have the same limits for all cities, PUDs, Fire Districts as well as Water and Sewer Districts. We participated in the review process in good faith as provided by the bill and did not come to a mutual agreement about any changes. The report was submitted to the legislature in December, making that provision of the bill complete.

The changes now being proposed go against a key objective of the bill; it creates new dissimilarities between types of jurisdictions, and at the same time is more complex. While Water and Sewer Districts are happy with the language with the law that went into effect July 1, 2024, **we also support the proposed language made by the cities to the city’s statute.** This draft language is what we have discussed during our bimonthly meetings this year. Water and Sewer Districts **oppose** any proposed changes to the Water and Sewer Districts, Fire Districts and PUD’s statutes at this time. Water and Sewer Districts will continue backing bill SHB 1621 as passed and refrain from any other changes other than those mentioned above until we see how the bill is working.

Diane Pottinger, P.E. District Manager
North City Water District

GENERAL CONTRACTORS

SHB 1621 passed, and effective June 30, 2024, has drastically impacted a critical balance between public and private interests in public works statewide. It will potentially ELIMINATE or greatly reduce a huge amount of public bid opportunities anywhere between \$75,500 and \$1,000,000 (guess, ambiguity exists) dollars. ALL this work which used to be bid, can now be self-performed by public entities.

These sizes of project are critical to small, minority, women, veteran and disadvantaged owned businesses across our state. The governor, legislature, CPARB, BE/DBI Committee, OMWBE, and countless other individuals and organizations have prioritized increasing the use of and developing them within the public works market. **The community and economic impacts of this bill are catastrophic and work directly against this important priority.**

Let me explain:

Prior to June 30, 2024, the public entities included in the bill, 1st and 2nd Class Cities, Water & Sewer Districts, Fire Districts, all had a \$50,000 threshold to self-perform work without a contract. Above this threshold, they were obligated to offer public bids, soliciting to private industry to perform work under a public works contract.

After SHB 1621, effective June 30, 2024, the following is true for the entities included:

1. The \$50,000 threshold has been INCREASED to \$75,500 for a single craft project or \$150,000 for a multiple craft project. They can self-perform, any project they want, below these increased thresholds. This REDUCES public bid opportunities so critical to small businesses throughout our state active in the public works market.
2. The bill borrowed language from separate PUD statute and then applied it to more public entities under the idea of consistency. This category of “self-performance” by the public entities at a stated \$300,000 threshold limit as long as the work was considered “Prudent Utility Management”. My opinion: This is a vague way of saying, “Whatever they want, whenever they want”.

- a. The \$300,00 threshold also includes a blatant and glaring inaccuracy with respect to normal definitions of material and equipment. It further EXCLUDES these items from the threshold. Rendering the threshold COMPLETELY useless and vague. Here is the quote from the bill:

“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.”

3. There is no limit to how many of these new Prudent Utility Management 300K projects can be performed in any given year.

Therefore, my position, and recommendation are as follows:

6. I support the increased lower limit of \$75,500/\$150,000. Public entities need flexibility to react and perform with the work needed to support public interest. This increase is substantial, 3x's what it was previously. That helps with market conditions, escalation, material costs, etc. that are reasons to evaluate and raise thresholds on a case-by-case basis within the RCW. The bill includes this, and the committee work validated by consensus is appropriate.
7. I support the CHANGE needed to define ALL PROJECT COSTS are included in the \$300,000 new category of self-performance work. Thresholds should be clear, and defined, not vague with inaccurately written exclusions to what is included. The majority of the committee agrees.
8. I support the CHANGE to the “exigent” definition of work for this category. This is a narrower, but appropriate modification and move away from the overly broad, Prudent Utility Management terms included in the original bill. The majority of the committee agrees.
9. I support imposing an annual limit, 10% of each entity's annual budget, to cap the annual use of the new Exigent, \$300,000 all project costs projects. The majority of the committee agrees.

Keith Michel, Senior Project Manager
General Contractor Representative – 11/13/2024

DRAFT AMENDED SHB 1621 ACT WITH CHANGES

(to be added after 11/18)

Semi-Final DRAFT

CPARB MEMBERS AND SHB 1621 REVIEW COMMITTEE MEMBERS AND STAKEHOLDERS**Committee Members:**

[Keith Michel](#), General Contractors, Forma Construction - Co-Chair
[Mark Nakagawara](#), Cities, City of Seattle - Co-Chair
[Liz Anderson](#), WA PUD Association
[Sharon Harvey](#), OMWBE
[Linda De Boldt](#), Cities, City of Bellevue
[Roger Ferris](#), Fire Districts, WA Fire Commissioners Association,
[Bruce Hyashi](#), Architects
[Diane Pottinger](#), North City Water District
[Mark Riker](#), Trades & Labor, WA State Building & Construction Trades Council
[Steve Russo](#), Specialty Contractors, UMC Specialty Contractors
[Michael Transue](#), Mechanical Contractors Association Western Washington

Committee Stakeholders:

Eric Alozie, NWE Construction Co.	Judi Gladstone, WA Assoc. of Sewer and Water Districts
Logan Bahr, Tacoma Public Utilities	Scott Middleton, Mech. Contractors Assoc. Western WA
Randy Black, Lakewood Water District	Paul Richart, Alderwood Water & Wastewater District
George Caan, WA PUD Association	Ryan Spiller, Fire Districts
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, Association of WA Cities	Janice Zahn, Port of Seattle

CPARB Members:

Linneth Riley Hall (Chair), Transit	Mark Riker, Construction Trades Labor
Keith Michel (Vice-Chair), General Contractors	Steven Russo, Specialty Contractors
Lehka Fernandes, OMWBE	John Salinas, II, Specialty Contractors
Bobby Forch, Jr., Disadvantaged Businesses	Kara Skinner, Insurance/Surety Industry
Bill Frare, State-DES	Rep. Mike Steele, House of Representatives (R)
Sen. Bob Hasegawa, Senate (D)	Robin Strom, General Contractors
Bruce Hayashi, Architects	Josh Swanson, Construction Trades Labor
Santosh Kuruvilla, Engineers	Rep. Steve Tharinger, House of Representatives (D)
Karen Mooseker, School Districts	Robynne Thaxton, Private Industry
Mark Nakagawara, Cities	Sen. Judy Warnick, Senate (R)
Matt Rasmussen, Counties	Olivia Yang, Higher Education
Irene Reyes, Private Industry	Janice Zahn, Ports

CPARB SHB 1621 REPORT RECOMMENDATIONS DATED DECEMBER 19, 2023 *(not adopted)*

1. Allow the standardizing of threshold limits of \$75,500 for a single trade and \$150,000 for multiple trades for work performed by regularly employed public employees for a trial period of Two Years: July 2024 to June 2026 with a review to continue the use.

Any work above these limits will need to be sent out for bid. 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.

2. Delay implementation to July 1, 2025, of all other sections in SHB 1621 (other than recommendation #1, the \$75.5k/\$150k implementation) so that further stakeholder work can be done by CPARB with additional recommendations submitted by October 31, 2024. (See Appendix A)

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