

CAPITAL PROJECTS ADVISORY REVIEW BOARD

Meeting Minutes

October 10, 2024

MEMBERS PRESENT

Linneth Riley-Hall (*Chair*)
Keith Michel (*Vice Chair*)
Ike Burkett (*Proxy for Robin Strom*)
Bobby Forch Jr.
Bill Frare
Bruce Hayashi
Santosh Kuruvilla
Karen Mooseker
Mark Nakagawara
Steven Russo
John Salinas II
Kara Skinner
Josh Swanson
Robynne Thaxton
Olivia Yang
Janice Zahn

REPRESENTING

Transportation
General Contractors
General Contractors
Disadvantaged Businesses
Dept. of Enterprise Services
Architects
Engineers
School Districts
Cities
Specialty Contractors
Specialty Contractors
Ins./Surety Industry
Construction Trades Labor
Private Industry
Higher Education
Ports

MEMBERS ABSENT

Lekha Fernandes
Senator Bob Hasegawa
Matt Rasmussen
Irene Reyes
Rep. Mike Steele
Rep. Steve Tharinger
Senator Judy Warnick

Vacant
Vacant

REPRESENTING

OMWBE
Senate (D)
Counties
Private Industry
House (R)
House (D)
Senate (R)
Public Hospital Districts
Construction Trades Labor

Staff & Guests are listed on the last page

CALL TO ORDER & ROLL CALL FOR QUORUM

Chair Linneth Riley-Hall called the virtual meeting of the Capital Projects Advisory Review Board (CPARB) to order at 8:02 a.m. A meeting quorum was confirmed.

WELCOME BOARD MEMBERS & INTRODUCTIONS

Chair Riley-Hall welcomed everyone to the meeting. She conveyed her appreciation to everyone for their time and commitment.

APPROVE AGENDA – *Action*

Vice Chair Keith Michel reviewed the agenda for any proposed changes. Adjustments to the agenda included deletion of the Education Connections Committee update.

Steve Russo moved, seconded by John Salinas, to approve the agenda as modified. A voice vote approved the motion unanimously.

APPROVE MEETING MINUTES OF September 12, 2024 – *Action*

Recommended corrections to the September 12, 2024 minutes included:

- *On page 2, within the second paragraph change the third sentence to state, “In 2012/2013, the Board was reviewed by the Joint Legislative Audit & Review Committee (JLARC), which recommended extending the sunset clause.”*
- *On page 3, within the fourth paragraph, change the first sentence to reflect, “Ms. Yang commented that the discussion is confusing because appointments to the BDC in the past required approval by the Board.”*
- *On page 8, change the first sentence in the sixth paragraph to state, “Chair Riley-Hall shared that when she served as the PRC Chair and as a member, she occasionally contacted owners to educate them on the RCW and some aspects of the statute not followed.”*

Mark Nakagawara moved, seconded by Robynne Thaxton, to approve the September 12, 2024 minutes as amended. A voice vote approved the motion unanimously.

INVITATION FOR PUBLIC COMMENTS – *Information*

Randy Black, Lakewood Water District, expressed appreciation to Co-Chairs Keith Michel and Mark Nakagawara for their efforts and leadership on the SHB 1621 Review Committee. Water and Sewer District representatives worked to find a compromise during the first review of the report required by the Legislature. However, the districts were unsuccessful because the direction of recent discussions did not sufficiently consider the circumstances of water and sewer districts. Representatives of the districts have been amenable to the changes proposed by Cities and other stakeholders. However, the districts prefer to retain the current language in the statute and revisit the issue if problems are identified moving forward.

CHAIR REPORT – Information

Chair Riley-Hall said she is appreciative of the Board's ongoing committees with members and stakeholders committed to remaining engaged to seek resolution on issues. Meetings she has attended since the last Board meeting have been professional and informative. It speaks to how every committee participant cares. It is also likely the Board appreciates the time and efforts expended by volunteers and the time away from their employment especially stakeholders representing small businesses as their volunteerism on committees can affect the business financially. The Parking Lot includes a pending item of stipends for volunteers. DES is exploring options and plans to provide some recommendations by the end of the year. She thanked representatives from small businesses and other firms who attend CPARB committee meetings. She thanked Robynne Thaxton who recently withdrew from the Board Development Committee. Ms. Thaxton contributed greatly to the committee.

Ms. Thaxton thanked Chair Riley-Hall for the recognition. Her workload has increased substantially requiring her to withdraw from the committee despite the amount of work remaining to be accomplished.

Chair Riley-Hall reminded members of the Board's Shared Commitments printed on each meeting agenda:

*We will embody the commitment of **Respect** by:*

Listening first before speaking; Speaking respectfully with candor while being mindful of impacts and remaining open and honest; Respectfully embracing others' thoughts and opinions; Sharing your own thoughts and opinions without taking things personally; Being honest with one another; Being respectful to one another while acknowledging it's okay to disagree.

*We will embody the commitment of **Purpose** by:*

Staying focused on the purpose of CPARB by using agendas and engaging in board matters with a professional approach recognizing each member's personal life experiences; Ensuring meaningful, results oriented meetings; Showing up as open as possible ready to listen and learn; Coming prepared and with due diligence on meetings; Ensuring alternative delivery processes are efficient.

*We will embody the commitment of **Listening to Understand** by:*

Using active listening, without dominating and without judgment; Seeking to wholly understand others point of view; Listening and being considerate without negativity; Committing to exploring and understanding different viewpoints; Appreciating candor; Providing leverage for voices not being heard; Making time for conversations even if they are outside of the meeting.

*We will embody the commitment of **Accountability** by:*

Actively participating with clear expectations and clear responsibilities (within our statutory authority) while being unafraid to address problems; Coming to meetings, participating, following through on the work and commitments you make; Creating problem statements prior to discussions that summarize issues; Making solutions better with positive intent; Correcting factual inaccuracies with respect; Speaking with empathy and a focus on shared understanding instead of shame.

*We will embody the commitment of **Inclusion** by:*

Ensuring appropriate team members are included balancing the interests of different groups by seeking multiple perspectives to ensure inclusive participation; Ensuring active, early engagement for all participants; Balancing the interests of different groups; Being open to all feedback, everyone should be heard and held accountable; Acknowledging imbalances in relationships; Being comfortable with being uncomfortable.

COMMITTEE & WORKGROUP REPORTS

Board Development Committee – Information/Action

Co-Chair Frare updated members on progress by the committee. The committee met earlier in the week and discussed the scope of the strategic planning effort. Members reviewed potential membership on the subcommittee to ensure representation, as well as ensuring representation is fair and balanced to move forward on the planning process. One limiting factor is the lack of DES resources for a facilitator at this time. DES is exploring contracting options. He is working with DES staff to develop a scope of work for the facilitator based on feedback from the committee. The scope of work will be presented to the Board prior to finalization. Members also discussed mission, vision, values, and ways for ensuring strategic priorities are actionable. He supports the Chair's review of the Board's Shared Commitments, as it is important to ensure members actively practice the commitments.

Co-Chair Frare shared that he has participated in several strategic planning processes at DES and recommends replicating some of the same structure within the Board's effort. He shared additional details of the outcomes of his department's strategic initiatives and ongoing efforts by department employees based on capacity. The department reviews action items each week as well as the strategic plan in the spring and fall to ensure work is aligned with the most important initiatives. He believes a similar structure would benefit the Board.

The committee agreed to continue exploring Board membership composition to ensure balanced representation. The committee agreed to meet on October 29, 2024, and November 12, 2024, to develop more structure prior to presentation to the Board for review and consideration. Additionally, with the departure of Ms. Thaxton, the committee selected Chair Riley-Hall to fill the Co-Chair position.

Ms. Thaxton referred to an email she sent to the committee outlining some concerns. The private industry is not included on the original list, and it is important to ensure some type of structure is developed to include those constituencies not directly involved in the strategic planning process to ensure their concerns, thoughts, and suggestions are considered. Other strategic planning processes included some outreach through surveying or a comment period for reviewing initial drafts to ensure other constituencies have an opportunity to provide feedback. It is important to ensure a clear understanding of the desired outcome and that the Board has an opportunity for feedback on the outcome.

Janice Zahn remarked that the Shared Commitments were established in the fourth quarter of 2021 and likely are still applicable. The commitments were developed over the course of several meetings with assistance by a facilitator. Several members were not on the Board at that time, which speaks to the importance of revalidating the commitments as the language was based on membership of Board at that time. She questioned the timing of considering membership of the committee without the benefit of a facilitator to guide the process and cautioned against moving too far forward as members are not experienced strategic planning facilitators. Experienced facilitation guides the process providing information on the best path for implementing strategic planning that will help guide the Board in determining the membership of the committee responsible for the strategic planning process.

Co-Chair Frare expressed appreciation of the perspective but did not necessarily agree a facilitator is necessary prior to the Board identifying members of a strategic planning committee.

Chair Riley-Hall recalled that during the last committee meeting, members discussed the timing of hiring a facilitator. The committee agreed not to suspend the process and continue moving forward by sharing ideas to maintain momentum until a facilitator is contracted to lead the process.

Ms. Zahn noted that without the benefit of a facilitator mapping and explaining the process it would be difficult for the Board to identify members when the role of the committee versus the role of the Board is unknown, as well as the time commitment necessary to complete the process. There are many missing elements and her concern is putting the "cart before the horse."

Ms. Thaxton commented on the importance of participation by representatives of different constituencies to ensure all interests are represented.

Co-Chair Riley-Hall advised that the committee discussed the importance of representation on the committee. Co-Chair Frare affirmed members discussed a number of ways to ensure the committee is well represented by all interests.

SHB 1621 Review Committee – Draft Report – Information/Action

Co-Chair Michel updated the Board on the status of the draft report due on October 31, 2024. The draft report includes a matrix of the results of voting by the committee on four important recommendations affecting the designated public agencies. He reviewed two options forwarded for consideration by the Board:

1. Support the results of the SHB 1621 Review Committee votes explicitly.
 - a. The result is split into two recommendations, depending upon different public entity votes.
 - i. First-Class Cities and Second-Class Cities would follow majority recommendations of committee.
 - ii. No changes to SHB 1621 for Water, Sewer, and Fire Districts
2. Support the results of SHB 1621 Review Committee votes from a "majority" but not "consensus" position.
 - a. The result is consistent recommendations for all public entities included in SHB 1621.
 - i. First-Class Cities, Second-Class Cities, Water and Sewer Districts, and Fire Districts all follow majority recommendations of the committee.

Current legislation includes provisions applicable to Public Utility Districts (PUDs), which have been effective for some time. The bill mirrors provisions in current PUD statute and applies those provisions to other public entities. That connection is clear and woven within the committee's discussions and efforts, as well as within the proposed bill and effectively does not affect the PUD statute other than PUDs would be subject to one minor clarification of the bidder responsibility criteria.

Co-Chair Michel noted the difficulty of finalizing the draft report without the benefit of receiving feedback from the Board on the two choices offered. Consequently, the report includes a series of placeholders for those provisions. The committee worked successfully to balance the interests of owners and private entities in how changes in the bill affect private businesses due to proposed changes on when projects are subject to public bid by increasing the threshold.

Olivia Yang commented that although she originally joined and then left the committee, she is concerned about any recommendations lacking consensus because the Board would be deferring decisions to legislators to develop a compromise. She believes it is the Board's responsibility to present consensus recommendations and added that she understands the work and efforts completed by the committee but is concerned about deferring no decisions to legislators.

Co-Chair Michel noted that the sentiment was also shared by many members of the committee.

Co-Chair Nakagawara pointed out that the sentiment was one of the main objectives when the committee was assigned to develop consensus recommendations. Efforts by the committee spanned over two summers. It is also important to recognize the language drafted by the Cities was intended to recognize First-Class and Second-Class Cities as different entities in structure and in statutes than Water and Sewer Districts and PUDs. It is why Cities led efforts on the definition of *Prudent Utility Management* because the original bill was difficult for Cities to work with in terms of its application. The issue spoke to the desire to develop a new definition. Alternatively, PUDs, Water and Sewer Districts, and Fire Districts have a better familiarity with the *Prudent Utility Management* standard. The Association of Washington Cities (AWC) as well as he and others believed the standard was not necessarily clear as to how it would be applied by a municipality. He recommended that despite the lack of consensus on the definition, the standard should be treated differently for municipalities, as the objective of SHB 1621 is uniformity in the application for all affected entities. The bill lacks appreciation of the significant differences between the entities, which is why Cities approached the recommendation differently with a proposal for new language to apply only to Cities and not to the other entities.

Chair Riley-Hall asked for an explanation of "significant differences" and the reason two separate recommendations were offered. Co-Chair Nakagawara responded that in terms of the definition of *Prudent Utility Management*, many jurisdictions do not provide utility services, while other cities, such as the City of Seattle do provide utility services. It also speaks to the municipality's organization of utility employees, which might not necessarily apply to PUDs, Fire Districts, or Water Districts as they often lack the same structure, as well as not uniformly structured across their respective memberships. That reason spoke to one of the major differences in addition to the scale of authorities for staff to perform work ranging from \$75,000 to \$150,000. In addition to the limitation of the 10% cap for municipalities, municipalities are automatically limited to the amount of in-house public works, while other entities are not subject to the same cap. Because of the uncertainty of each entity's capital budget program, it was also difficult to assess how caps might affect entities leading to difficulties in fairly comparing the application of laws and standards between entities of different structures. As a representative of a First-Class City, if the city exceeds a specific amount of public works by in-house staff, the city is subject to losing tax revenue. It is unclear as to how controls would apply to the other districts. The difference between the sizes of different Water Districts also led to some difficulty in defining the application of the definition. When SHB 1621 was drafted, the intent appeared to simplify and apply the requirements uniformly; however, given the differences between the entities, the proposal could not be simplified. In his opinion, Water Districts are probably synonymous with PUDs rather than equivalent to municipalities. Each one is a different entity with different mission statements, duties, and roles making it difficult to identify similarities in terms of obligations and requirements.

Co-Chair Michel pointed out that with the goal of consistency across public entities included in the bill; the committee used existing language from the PUD statute. The bill effectively increases thresholds and creates a new category of work. Ongoing discussions addressed the small works roster and the successful work completed by that committee with respect to managing thresholds that need to be changed over time to keep pace with market conditions and costs while also balancing those needs with how it might affect public bid opportunities. The work completed by that committee was intended to create some efficiencies and provide viable avenues for entities to complete projects within the \$300,000 threshold. In SHB 1621, those accomplishments have essentially been eroded and effectively empower public entities to self-perform up to \$300,000 in work. Those circumstances of defining when a \$300,000 project could be self-performed is

one of the main topics the committee worked through extensively as part of the *Prudent Utility Management* discussion. The definition was considered too broad and enables the entity to proceed with work. However, the exigent definition was crafted with multiple versions reviewed by the committee. Members attempted to identify the right balance of when work could proceed. It does not speak to an entity's desire to move forward, but rather it addresses the circumstances that drive a public interest or fiscal responsibility. The proposed definition attempts to document that intent.

First-Class Cities are governed by a 10% cap of annual self-performed work. The other entities do not have a cap. Members discussed whether it would be fair for one type of entity to complete 20 different \$300,000 projects in one year as a way to avoid public bidding opportunities. Negotiations by private businesses, small businesses, trades, and labor attempted to identify ways to govern the new category of work. The balance that the committee achieved reflects how the different groups voted. The committee nearly attained a majority vote by all entities for bidder responsibility except for Fire Districts, which preferred to maintain the current version of SHB 1621. The current law allows exclusion of materials and equipment from the \$300,000 threshold, effectively limiting the amount to reflect labor only. Consensus was nearly achieved to include all project costs (labor, material, & equipment) within the threshold.

Co-Chair Michel referred to the voting matrix of the four choices and votes by each constituency in the categories of bidder responsibility, exceptions to work threshold up to \$300,000, definition of *Prudent Utility Management*, and an annual 10% cap based on the annual budget of the entity. The committee strived not to disrupt the balance of public/private interests inadvertently or cause any unintended consequences.

Robynne Thaxton acknowledged the extensive amount of effort by the committee but is concerned about the \$300,000 threshold including material and equipment. She questioned whether the committee discussed or completed any analysis as to the affect of including material and equipment within the threshold as some equipment costs could exceed the threshold for a PUD project. In terms of the definition of *Prudent Utility Management*, she asked about exigent circumstances and any connection with exceptions for emergency work, as the two definitions are similar and could be difficult to distinguish. She inquired as to whether a limit was established in the statute for non-exigent work that could be self-performed.

Co-Chair Michel explained that the first section of the bill doubles the original self-performed work thresholds to reflect \$75,500 for single trade and \$150,000 for multiple trades for self-performance in any circumstance. The old standard was increased to enable entities to self-perform work. The \$300,000 threshold applies to projects defined as *Prudent Utility Management* or an alternative offered by the committee of an exigent definition that is intended to apply to non-emergency projects. The relationship of an emergency declaration effectively does not include dollar limits but different processes that waive public bidding requirements. The \$300,000 threshold is considered middle ground and would not apply to non-emergency situations. However, there could be exigent circumstances that require action.

Co-Chair Nakagawara added that the committee deliberated on the definition over the last 18 months. The emergency statute provides entities with a competitive bid waiver but does not change self-performing requirements to address emergency needs. Cities are limited regardless of the emergency, situation, or the declaration with in-house staff performing up to \$150,000 in work. It speaks to the definition of public works. In those scenarios with large equipment costs, it typically would not fall under the category of ordinary maintenance but under the category of public works. In that scenario, the threshold of \$300,000 is a doubling of the existing threshold for self-performing work. The main concerns are how to use it and when could it be utilized to avoid exceeding the authority.

Co-Chair Michel said that within the context of exclusion, the new threshold of \$300,000 excludes material and equipment essentially creating a much higher limit for projects. The definition of *Prudent Utility Management* according to some opinions was an inappropriate exclusion that essentially increases the threshold even higher, which creates concerns. It speaks to why the matrix identifies it separately from the definition.

Josh Swanson commended the Co-Chairs for herding cats during the discussions. He acknowledged the extensive negotiations and times when labor's position was steadfast in terms of the application of prevailing wage and pushing back on the doubling of the thresholds. However, the final product from that process was fair and reflects fair compromises. He supports moving forward with the report.

Co-Chair Michel recognized the important membership of Mark Riker. He was instrumental in some of the decisions approved by the Board last December. At that time, the committee was pursuing stakeholdering and had not completed the process. The recommendation by CPARB in December 2023 delayed implementation of the entire bill to enable the committee to pursue its stakeholder process. Unfortunately, the Board's recommendation to delay was not integrated

within the passage of the bill resulting in the original bill implemented as current law lacking any feedback and recommendations from the Board. Some of the votes reflected in the matrix speak to a willingness to negotiate directly with the Legislature and unwillingness to compromise. However, he is appreciative of everyone's participation. First- and Second-Class representatives voting in alignment with the majority did so in the context of providing some compromises while still enabling a good public benefit for their entities that resulted in a feasible bill for all entities represented in the bill.

Ms. Thaxton cited the extensive work by the committee as it speaks to the likelihood that the committee, if tasked to continue efforts, could not attain consensus. The report accurately reflects feedback from the stakeholders. If stakeholders continue to represent their positions, the report reflects excellent work. She asked whether the report provided to the Board as a preread is the report under consideration for submittal by the Board to satisfy the Legislative request.

Co-Chair Michel said he believes the committee could never achieve consensus as the voting matrix demonstrates the positions of all members. The process was fair and representative of all sides. Should the Board vote on either Option of 1 or 2, it would enable the committee to finalize the report to reflect the Board's position. The report could then be forwarded to the Legislature with a cover letter from CPARB to enable the legislative process to move forward to secure a bill sponsor.

Chair Riley-Hall agreed with the recommendation for the committee to continue discussions as it could result in a different outcome. She asked whether the committee discussed the possibility of a pilot period to follow up on outcomes. Co-Chair Michel said some discussion occurred on that option. However, the option received some opposition. That option could be a viable choice to consider as an additional recommendation.

Co-Chair Nakagawara added that another reason the committee did not explore the option of a pilot was because the law has been implemented. There were some differences in terms of the ability of utilizing existing tools as opposed to other representatives who were unsure how to use the tools and preferred to redefine the tools. Members represented different entities with different objectives.

Santosh Kuruvilla cited the extensive work by the committee and asked, given the background on the discussions, whether the Co-Chairs have identified a preferred option.

Co-Chair Nakagawara said he would recommend Option 1 because Water and Fire Districts shared significant concerns regarding the authority provided in SHB 1621. Although the option represents a majority vote, it would be disingenuous to their concerns and participation over the last two years on the committee. He prefers Option 1 categorizing First- and Second-Class Cities separately, as well as equally representing Water and Sewer District positions.

Co-Chair Michel commented that as a representative of general contractors, he prefers Option 2. The basis of the bill was to provide consistency for public entities. The committee has compromised that intent by separating the entities and treating them separately again, which he believes conflicts with the Board's strategic and long-term goals for public works. Consistency benefits everyone over the long term.

Mr. Kuruvilla asked about the possibility of combining both options. Co-Chair Michel affirmed the possibility because the Board could elect to vote similar to the committee on each of the issues listed on the matrix. With respect to Fire Districts, he believes the proposal is an appropriate change. CPARB is guided by RCW 39.04.350 outlining the process for evaluating bidder responsiveness and responsibility prior to an award. He does not foresee any reason for including a separate version of the provision as it is less stringent and less clear and could be more subject to finger-pointing. He recommends supporting RCW 39.04.350 as codified. Not changing the definitions, the proposal entails application of annual limits as First-Class Cities have limits. The proposal would serve as a cap.

Janice Zahn supported the option as it reflects a balance of existing provisions that provides for alignment and consistency while recognizing opposition from Fire Districts. Aligning bidder responsibility with the current statute for consistency would be appropriate while cognizant that Water, Sewer, and Fire Districts have different needs and structures than First- and Second-Class Cities. Maintaining the definition of *Prudent Utility Management* for Water, Sewer, and Fire Districts would be appropriate while recognizing a different definition for Cities, based on the discussions supported by Cities and AWC while meeting the intent of not rolling back years of business practices by Water, Sewer, and Fire Districts. When Cities were added to the provision, the provision was ineffective, as Cities do not practice *Prudent Utility Management* to complete projects. She supports consistency for Option 2 for bidder responsibility determination and differentiating the difference between Cities and Sewer, Water, and Fire Districts.

Ms. Yang added that while consistency is beneficial, she recognizes different public entities of different sizes and locations. Offering a recommendation that might add burden to one public entity for the sake of standardization does not appear to be fair. The issue is to avoid encumbering public entities through standardization of provisions.

Mr. Kuruvilla recommended a next step of presenting a proposal to the Board that combines options that could be supported by the committee.

Steve Russo remarked that from a specialty contractor perspective, the threshold of \$300,000 that does not include material and equipment essentially excludes many projects for small businesses and specialty contractors. The threshold is significantly higher. He recognizes that there are some circumstances involving the purchase of expensive equipment. The experience was eye opening because it appeared the committee achieved consensus a number of times. However, as the committee worked on finalizing language, positions changed over the course of meetings resulting in a different journey. The process was frustrating at times. He credits the Co-Chairs for trying to steer the process, as it was a long journey only to receive feedback from the Board to change course, which is somewhat frustrating to him personally.

Ms. Thaxton said the request to the Board is to provide some recommendations on the legislation. The committee did good work to develop a set of recommendations with recognition of some dissension. She asked about the possibility of the Board forwarding the committee's report to include the difference of opinions by members, as well as the recommendations supported by the committee. The Legislature could further refine the recommendations similar to the committee's efforts.

Co-Chair Michel advised that any recommendations finalized by the Board would require a bill sponsor to pursue the legislative process. The parties involved expect debate and discussions. The votes in the matrix reflect a non-majority who plan to defend any bill that proposes changes to existing law regardless of the Board's recommendations. Current law is in effect and some entities will either defend it while others will want legislation to be modified. Recognizing the reality of potential debate on the proposal, the issue is the way CPARB contributes to the discussion either by taking a position or honoring individual constituents.

Josh Swanson agreed because regardless of the ultimate outcome by the Board, the conversation will continue by the Legislature in January. He agrees with some of the comments. Deferring the issue to the committee could likely result in another outcome other than the proposal offered to the Board. He supports the option recommended by Co-Chair Michel recognizing conversations will continue during the legislative session.

Co-Chair Michel summarized the conversation and reflected on the Board's Shared Commitments. The consequences of the bill are significant. Representatives from Water and Sewer Districts participated and offered valuable input. Combined, members represented numerous public entities and thousands of businesses active in the public contracting arena. The efforts reflect the importance of balance for both entities and businesses to maintain public-private benefits in the public contracting arena especially at the threshold under consideration because it is representative of the heart and soul of small and emerging business opportunities. The Board has expended much work on other committees to increase and improve participation by those same private entities.

Ms. Zahn expressed appreciation for the conversation. One important lesson the Board has learned is not presenting surprises to the Legislature. If it is not possible to achieve consensus, she recommended ensuring the report from the Board clearly outlines the background of the committee's efforts, concerns, and the reasons behind the votes. In June, the Local Government Committee requested an update to SHB 1621. It might be appropriate to contact the Chair of the committee and share information on the status and multi-faceted decision points to receive guidance from the Chair of the Local Government Committee. She agrees there would be no benefit in returning the report to the committee to debate some elements.

Bill Frare suggested moving forward with the report by indicating the options attaining consensus or options of majority support in addition to a minority opinion and its respective concerns for transparency. Either option would be in alignment with the Board's purpose as some of the issues failed to attain consensus. The question is whether the Board forwards a recommendation on the proposal receiving a majority vote or forwarding a report recommending Option 2 enabling a different statute for Water, Sewer, and Fire Districts. As a representative of an owner, he could support Option 1 but would not oppose the majority recommendation with a minority opinion clearly stated.

Chair Riley-Hall emphasized the importance of the report documenting the outcome, which is reflected in the matrix. It would be important to include valid reasons why consensus was not achieved.

Co-Chair Michel suggested a roll call vote on both options to document the results, especially if the Board supports blending any of the four choices.

Ms. Zahn requested clarification of the language subject to the vote and whether the Board is asked to vote on each choice individually. Co-Chair Nakagawara offered some reservation as it would diminish the months of work by each committee member. Members spent approximately 20 months working on the report. It would be very difficult to identify the nuances of the information presented at the meetings without the benefit of knowing the topics and associated discussions. He supports an approach of voting on Option 1 or 2.

Ms. Yang supported voting on Option 1 or 2 rather than the four choices.

Chair Riley-Hall noted the Board has assigned committees the responsibility to vet issues. The committee has been meeting for months and vetted many issues and she supports voting on Option 1 on 2.

Ms. Zahn inquired about the possibility the adding a third choice that essentially copies choice #1 and adds a recommendation that bidder responsibility would be consistent.

Co-Chair Nakagawara responded that the recommendation essentially identifies and invalidates a committee member and their constituency's position. He stressed the importance of respecting dissenting votes.

Ms. Zahn replied that the committee was established to represent and provide recommendations to the Board. The Board has a duty to consider the committee's recommendations and either recommend the committee's proposal or make changes to the proposal. It is up to the Board to determine if the third choice should be considered.

Ms. Thaxton said she prefers to reflect that the work of the Board reveals that a majority of the individuals voted a particular way and that there are some constituencies dissenting. Should the Board approve Option 2, she questioned whether the report would also reflect dissension by some constituencies. It is important for the Board to honor dissension while also recognizing the vote represented a majority of the committee.

Co-Chair Michel responded that the dissenting position is reflected in the report. The report will also include the matrix reflecting votes and comments from some committee members explaining their particular vote.

Bobby Forch thanked the committee for its work. He asked whether it was the intent of the committee for the Board to vote on Options 1 or 2. Co-Chair Michel said the prereads provided to the Board were also shared with committee members during a review earlier in the week to ensure consistency and transparency. Mr. Forch said he prefers to consider either Option 1 or 2 versus other options offered by the Board.

Chair Riley-Hall said she attended the committee meeting and understood the committee believes the Board would be voting on Option 1 or Option 2 and not on the individual choices listed on the matrix.

Chair Linneth Riley-Hall moved, seconded by Robynne Thaxton, to consider Option 1 or Option 2 forwarded by the committee, which honors the majority vote of the committee.

A roll call vote on Option 1 or Option 2 followed:

Bobby Forch – Option 1

Bill Frare – Option 1

Bruce Hayashi – Option 2

Santosh Kuruvilla – Option 1

Karen Mooseker – Option 1

Mark Nakagawara – Option 1

Steve Russo – Option 2

John Salinas II – Option 2

Kara Skinner – Option 1

Josh Swanson – Option 2

Robynne Thaxton – Option 2

Olivia Yang – Option 1

Janice Zahn – Option 1

Keith Michel – Option 2

Linneth Riley-Hall – Option 1

Mr. Forch questioned whether the intent of the motion is reflective of the Board's preferred option or approval of a specific option.

Co-Chair Michel pointed out that many members are absent from the meeting.

Mr. Frare clarified that the purpose of the vote was to approve one of the options.

The Board discussed the required number of votes necessary to pass a motion.

Ms. Thaxton reviewed the Board's bylaws for voting: "**Article IV - PROCEDURES Section 1: Action and Decision-Making** *Consensus is the preferred method of decision-making. If the Chair determines that a consensus cannot be reached, the Chair may call for a vote of the Board. In order to pass, a motion must secure eleven affirmative votes, regardless of how many of the 21 voting members are present. Only voting members present at the meeting, in person or by teleconference, may vote. Voting members are indicated in the membership list above. The chair is a member and may vote. Voting by secret ballot is prohibited.*"

Mr. Frare suggested consideration of directing the committee to finalize the report based on the Board's majority vote for Option 1 and presenting the final report to the Board for consideration.

Chair Riley-Hall asked whether the Board is required to forward a consensus recommendation to the Legislature.

Ms. Thaxton replied that the Board has a responsibility to provide a report to the Legislature.

Ms. Zahn added that the report would reflect the Board's discussion and failure to attain a consensus or a majority vote. Other instances have occurred when the Board's Local Government Committee report reflected different votes and areas unable to attain a majority vote or consensus. Although a consensus or a majority vote is preferred, honoring all stakeholders results in the Board providing a report that reflects the diversity of opinions. Currently, the Board has 19 positions filled and 2 vacant positions. Unless the Board can attain a majority vote of at least 11 votes, the report could reflect the difficulty of the issues preventing a majority vote.

Co-Chair Michel offered another option of the committee meeting again to discuss the two options with Water, Sewer, PUDs, and Fire District members. It may be possible to reach a consensus on the two options with more discussion.

Chair Riley-Hall agreed the committee should convene one final meeting to review the Board's conversation to determine whether to retain original votes or revise voting especially since Option 1 was the preferred choice by the Board while Option 2 was preferred by the committee. He encouraged members to review the minutes of the committee meetings, the report, and consider the conversation by the Board to assist in finalizing a report to the Legislature at the next meeting.

Ms. Baker noted that the Board advised the Legislature a final report would be submitted by October 31, 2024.

Nancy Deakins clarified that the October deadline was not imposed by the Legislature. The Board, within its last report to the Legislature, committed to continuing stakeholder work with a report provided at the end of October. The October deadline was imposed by the Board and not by the Legislature.

Chair Riley-Hall reviewed options for consideration of either directing the committee to meet and review the Board's discussion for possible changes in its recommendation or forward a report indicative of a recommendation not receiving a majority vote.

Co-Chair Nakagawara advised that he believes the votes would not change as some members were assisted by their respective counsel advising them while voting. He does not believe an additional meeting would necessarily change any positions.

Co-Chair Michel agreed while pointing out that enabling one attorney advising a committee member to decide the outcome and overrule the Board's recommendations on appropriate bidder responsibility criteria concerns him greatly in terms of the legislative process and the Board's role and contributions. He was not happy with the outcome of the votes because stakeholdering is about compromising by identifying, discussing, and validating. The votes reflect no compromising. It is important to strike a balance that works for all parties rather than letting a single entity and its lobbyist dictate the outcome.

Ms. Baker advised of the option of offering a motion to accept the majority vote of Option 1 to move forward as a recommendation by the Board.

Bill Frare moved to approve the Board's majority vote of Option 1 and direct the committee to finalize the report.

John Salinas said that although the Board self-imposed an October 31, 2024, deadline for submittal of the report, he does not believe the Board has achieved consensus without additional modifications to different provisions. The next meeting of the Board is in December. The topic is clearly generating significant consequences to many entities. e asked about the option of re-considering the proposal at the December meeting when more members are present.

Co-Chair Nakagawara explained that the main reason for completing the recommendation by the end of October rather than in December was to align with legislative session cut-offs for considering new legislation. SHB 1621 has been codified and is not valuable to Cities leading to some misuse by municipalities. If the proposal is forwarded to the Legislature in December it would be outside the timeline for considering new legislation. The risk of that particular approach means SHB 1621 would not change and would not benefit the state as a whole.

Mark Nakagawara seconded the motion.

Mr. Frare restated his motion as returning the report to the committee with the Board's 9/6 vote and move forward with Option 1 to complete its work and submit the final report.

Ms. Deakins suggested consideration of scheduling a special meeting in November.

Co-Chair Michel commented that as a representative of the minority position, he would not be comfortable moving Option 1 forward without the opportunity to review the discussion with other members voting in the minority. The committee should have the opportunity to review and try to resolve differences. The November meeting would provide an opportunity for the committee to update the voting matrix for another consideration by the Board.

Discussion ensued on whether another motion should be considered to direct the committee to meet to resolve differences on the two options. Members discussed scheduling a special meeting in November.

Bill Frare and Mark Nakagawara withdrew their motion.

Chair Riley-Hall directed the committee to convene a meeting based on the Board's discussion. Later in the meeting, the Board will discuss scheduling a special November meeting.

Chair Riley-Hall recessed the meeting at 10:18 a.m. to 10:27 a.m. for a break. After reconvening, a meeting quorum was confirmed.

BE/DBI Committee – Draft Legislation – Information & Action

Co-Chair Santosh Kuruvilla advised of the completion of the report. The report is posted on the CPARB webpage. Other activities by the committee included meeting with DES to secure some resources to assist in finalizing and formatting suggested legislation and sharing the report with Senator Valdez's office. Co-Chair Kuruvilla advised of the need to schedule a meeting with Senator Valdez. At this time, the committee is on hold pending further direction by the Board.

Project Feedback Process Workgroup – Information

Co-Chair Dave Johnson reported on the request at the last Board meeting to review the post-incident process to enable reporting of an issue to the PRC with the PRC Chair working through the complaint with an Assistant Attorney General (if necessary) and perhaps with the CPARB Chair to resolve the issue. One comment received by the workgroup was the lack of closing the feedback loop with the complaining party. The next step includes formalizing the post-incident process, which has been informally in practice for a number of years.

Vice Chair Michel said he appreciates the efforts by the workgroup and supports improvements to the process.

Ms. Yang commented that beyond addressing transparency, the process benefits those who believe they have been aggrieved by providing an option for resolving complaints. It is important that the Board does not infer that either PRC or the Board serve as policing agents, but rather that as members of either body, there is an expectation that problems can be resolved. Essentially, it speaks to owners helping other owners to be successful.

Co-Chair Johnson reported that following approval of the process by the Board, the workgroup will begin implementing the policy and develop a format for registering a complaint either through a form or via the website. The policy will require development of a log to document complaints. Several implementation actions are pending.

Chair Linneth Riley-Hall moved, seconded by Olivia Yang, to direct the Project Feedback Process Workgroup to continue moving forward to implement the post-incident process. A voice vote approved the motion unanimously.

Project Review Committee – Information

Chair Jessica Murphy reported the September meeting included 15 individual projects and an agency certification. All projects were approved. The agency certification, following a spirited discussion, did not receive approval. During the business meeting, members agreed to add another meeting next year in February in recognition of the increase in applications. Members continue working on incorporating new owner readiness questions into the application. A small group was established to review additional updates to the subcontractor outreach question related to Minority and Women-owned Business Enterprises (M/WBE) and veteran owned businesses.

Chair Riley-Hall inquired as to whether members discussed rescheduling the June meeting rather than adding an additional meeting. Co-Chair Murphy advised that members discussed the committee's obligation to review proposals within a 60-day window following receipt of an application. Creating a larger void between meetings would be problematic to meet the deadline. Vice Chair Dave Johnson added that the discussion recognized the importance of meeting the 60-day threshold. An extra meeting in February was added to account for the increase in the number of project applications.

GC/CM Committee - Information

On behalf of Co-Chair Nick Datz, Chair Riley-Hall reviewed a summary of the last committee meeting. The committee received comments on the draft GC/CM Best Practices Guidelines over the summer and is compiling the comments for review by the committee. The committee is scheduled to review and update the guidelines as necessary at the next committee meeting scheduled on October 30, 2024, with a final draft of the Best Practices Guidelines presented to the Board in December.

Job Order Contracting Evaluation Committee – Information

Co-Chair Gina Owen advised of no update from the committee at this time.

WSDOT Project Delivery Method Review Task Force – Information

Co-Chair Riley-Hall reported on two meetings since the last Board meeting. Several professors provided a presentation to the committee on alternative delivery. DES posted the recording of the presentation on the CPARB website. Members submitted an interim report as the initial direction was preparation of two reports with one due in June 2024 and one due in December 2024. However, members agreed to prepare three reports because a group of projects are at 100% design and will use the Design-Bid-Build delivery method. Following discussion and assessment of the documentation and presentation by WSDOT representatives, the committee agreed with WSDOT's position. Members agreed to prepare an interim report for those projects. Several other projects remain to be documented in a report for submittal by December 1, 2024 deadline.

Ms. Deakins reminded members that to meet the submittal deadline of December 1, 2024, the Board will need to review and approve the final report at the November meeting.

NEW BUSINESS

Member Ideas/Discussion Time

No comments from members were offered.

ADMINISTRATIVE

2025 Meeting Dates – Action

Ms. Baker advised that following publication of the proposed 2025 meeting dates and delay in approval to afford time for members to review potential calendar conflicts with other industry meetings, no feedback was received on the proposed 2025 meeting dates. Staff requests approval of the 2025 meeting dates:

- Thursday, February 13, 2025
- Thursday, April 10, 2025
- Thursday, May 8, 2025
- Thursday, September 11, 2025
- Thursday, October 9, 2025
- Thursday, December 11, 2025

Bill Frare moved, seconded by Olivia Yang, to approve the 2025 meeting dates as presented by staff. A voice vote approved the motion unanimously.

Recap of Action Items – Information/Action

- Schedule meeting with Senator Javier Valdez to discuss the BE/DBI Report and potential prompt pay legislation.
- Schedule CPARB November meeting

Following discussion on potential November meeting dates, members agreed to schedule the meeting on Monday, November 18, 2024 at 8 a.m.

Chair Linneth Riley-Hall moved, seconded by Olivia Yang, to schedule a CPARB meeting on Monday, November 18, 2024. A voice vote approved the motion unanimously.

Ms. Deakins reviewed the proposed agenda for the November meeting:

- WSDOT Project Delivery Method Review Task Force Report – Action
- BE/DBI Committee – Debrief of meeting with Senator Valdez – potential legislation
- SHB 1621 Review Committee Report and Draft Legislation - Action

December 12, 2024 Draft Agenda – Discussion

The next regularly scheduled meeting is on Thursday, December 12, 2024.

Chair Riley-Hall referred to the Board’s last discussion on mentoring and new legislation with agreement to include mentoring and any new legislation on the agenda. She recommended adding the two topics to the December meeting agenda.

ADJOURNMENT

Bill Frare moved, seconded by Chair Riley-Hall, to adjourn the meeting at 10:57 a.m. A voice vote approved the motion unanimously.

Staff & Guests

Liz Anderson, WPUDA

Talia Baker, Department of Enterprise Services

Randy Black, Water/Sewer Districts

Nancy Deakins, Department of Enterprise Services

Erin Frazier, WA Building Trades

Jeff Gonzalez, Department of Enterprise Services

Valerie Gow, Puget Sound Meeting Services

Dave Johnson, Hoffman Corporation

Minna Long, WA Building Trades

Monique Martinez, Dept. of Enterprise Services

Art McCluskey, WSDOT

Jessica Murphy, City of Seattle/PRC

Travis Nelson, WPUDA

Gina Owens, JOCE Committee

Roe Pulalasi-Gonzalez, Pierce County

Jon Rose, MRSC

Michael Transue

Jerry Vanderwood, AGC

Tom Zamzow, Walsh Group