

SHB 1621 Review Committee

Meeting Notes 7/18/2023

Page 1 of 3

Committee Members: (7 positions, 4 = Quorum)

Keith Michel, General Contractors—Co-Chair	X	Mark Nakagawara, Cities—Co-Chair
X Bruce Hayashi, Architects		Mark Riker, Construction Trades & Labor
Sharon Harvey, OMWBE	X	Michael Transue, Contractors (MCAWW)
X Irene Reyes, Private Industry		

Guests & Stakeholders:

- Liz Anderson, Washington PUD Association
- Talia Baker, DES
- George Caan, Washington PUD Association
- Bill Clarke, Washington PUD Association
- Joren Clowers, SnoKing W/S District
- Patricia Collins, Maul, Foster & Alongi, Inc.
- Linda De Boldt, Bellevue Utilities
- Brandy DeLange, Association of Washington Cities
- Monique Martinez, DES
- Diane Pottinger, North City Water District
- Paul Richardt, Alderwood Water and Wastewater District
- Abigail Vizcarra Perez, MetroParks - Tacoma
- Rob Wettleson, Forma Construction
- Maggie Yuse, Seattle Public Utilities

The meeting started at 11:46 a.m.

Discussion Highlights:

Welcome and Introductions

Due to the late start while waiting for a quorum, Co-Chair Mark Nakagawara bypassed introductions.

Approve notes from the last two meetings

Michael Transue motioned to approve the June 20, 2023, meeting notes. Bruce Hayashi seconded the motion, and the June 20, 2023, minutes were adopted on a voice vote.

Michael motioned to approve the July 5, 2023, meeting notes. Irene Reyes seconded the motion, and the July 5, 2023, minutes were adopted on a voice vote.

Stakeholder Input AWC, PUDs, FPDs

Talia Baker indicated that Joren Clowers sent information about PUDs and asked if any other entities had input.

Liz Anderson, Deputy Executive Director from the Washington PUD Association, told the committee that she and Executive Director George Caan are available to provide any useful information to the group.

Michael indicated that one of the things the committee is looking for is more information about how Prudent Utility Management has been used because language exists in the PUD statute. The committee would like to get an overview and an example on how the term “prudent utility management” has been used. The committee liked the language in the PUD statute and are considering taking that language and inserting it into first-class, second-class, towns, water/sewer districts, and fire protection districts’ statues and to utilize the same process.

Deputy Executive Director Anderson gave an overview of how the definition is applied. Utilities make decisions about workload based on what are the normal practices of the utility taking into consideration capabilities and capacity. For example, a small utility with limited staffing and will contract out specified work based on staff capacity. Another example would be an electric utility with staff who don’t have the certification to work on high voltage lines or are under time constraints, so they contract for that work. The utilities will make prudent decisions to best serve the customers of that utility.

Irene acknowledged the challenges of smaller cities and other jurisdictions. She noted that the word 'prudent' might vary by city. She asked how does the community know what is considered 'prudent' in their utility jurisdiction? What is an acceptable definition of prudence?

Executive Director Caan of the Washington PUD Association said that focusing on the word 'prudent' might be misleading. Within the utility industry, the definition of prudent has been '*customary, traditional work performed by the utility whether that be electric water or telecommunications*'. It's specific to what a utility does. There isn't necessarily the same application of terminology for other jurisdictions. For PUDs it's customary to ask what utility workers are trained for, are they capable, and do they have capacity? Using 'prudent' in common terminology is not how it is applied for utilities. The language in the PUDs statute specifically refers the work PUDs do on electricity, water, and telecommunications and are very specific about how the word prudent is applied to them. The definition may not be universally interpreted across other local governments and how they conduct their business.

Irene agreed that the word prudent was an example. She noted that what PUDs have been doing as due diligence for large PUDs might not be the same as smaller PUDs. She suggested the committee be clear when providing input on this issue and clearly define what using universal terminology like 'prudent' actually covers and encompasses. Using a universal language or process that everyone can understand and execute will eliminate misunderstandings.

Linda DeBoldt added to the meeting's chat: How does "prudent utility management" relate to "ordinary maintenance"? Does prudent utility management in PUD's work cover public works projects?

Executive Director Caan clarified the use of prudent utility practice applies to all PUDs, both large and small. He gave an example of a large PUD, like Clark PUD; has a large crew and can do a lot of different kinds of work. Clark PUD's standard of work is different from Stevens County PUD, which has a limited crew and doesn't have the same capacity. The same terminology applies equally to all PUDs depending on their size, location, services they provide, the capability of their staff, and local conditions. The flexibility is purposeful to allow each PUD to differentiate what work it can perform with its own staff based on its local conditions and community needs.

Bill Clarke, also with Washington PUD Association, worked on the 2018 legislation and provided some clarity. With the changes in the PUD bid limits, many electric PUDs concluded that the bigger project may be the more prudent project. For example, undergrounding electric service vs. aboveground. Underground is more expensive, but the prudent thing to do if you are a PUD in an area with wildfire danger is to put the electric service underground. Another example regarding capacity issues at the local level might mean overbuilding water capacity with the expectation that service will increase. One more example is expanding broadband. Some of the districts have their own telecommunications crews to do the work and a smaller utility would not have the staff and would contract out any telecommunications work. The use of prudent utility management has to do with the size of the PUD, the type of work that has been done, and considerations like the short-term cost vs long-term cost to the utility and its customers. Bill indicated that those were the types of examples that were discussed with the bid limit increases in 2018.

Co-Chair Nakagawara discussed his concern. In the public utility arena PUDs have a definition of prudent that works for them. For other jurisdictions the term "prudent utility management" is not standard mainly because it differs between capacity, experience, timing, and efficiency. It's difficult to discern what municipalities can do because they have never operated using the term prudent utility management. In Seattle and other municipalities, it would be difficult to discern what they are allowed to do if they have a utility component at all. He would like to clarify the term 'prudent utility management' doesn't necessarily have a defined limit and is very discretionary.

SHB 1621 Review Committee

Meeting Notes 7/18/2023

Page 3 of 3

Deputy Executive Director Anderson clarified that the term 'prudent utility management' provides PUDs with flexibility.

Co-Chair Nakagawara said that the problem is when this flexibility is applied to other government entities. It's problematic for municipalities because of the lack of defining parameters.

Michael said that MCAWW raised the same questions about prudent utility management during the legislative session. He wondered if the words "prudent utility management" should be changed for other entities like "prudent fire district system management, "prudent water/sewer management," "prudent city management. This discussion is teasing out the concern that what is prudent utility management for utilities may not be prudent or appropriate for other districts. He noted that Co-Chair Nakagawara gave an example of "provide discretion," and Liz responded that the terminology "provides the PUDs flexibility". Michael said that MCAWW has concerns about the delegation of flexibility to other types of utilities who haven't had that type of authority in the past. He feels that there are ways to get at this idea across without inserting discretionary information into statutes and agrees that prudent utility management might not be the correct term or phrase to apply to non-PUD jurisdictions.

Talia informed the committee that Irene was no longer on the call, and that the committee did not have a quorum. After attempting to contact Irene to see if she would return to the meeting, Co-Chair Nakagawara adjourned the meeting.

Meeting adjourned at 12:16 p.m.

Next Meeting:

Tuesday, August 1, 2023 at 11:30 a.m.

Action items:

Adjust Action items from the last meeting copied to these notes.

1. Michael Transue intends to research when \$50,000 was inserted in the PUD statute and identify how much the CPI has increased since then.
2. Brandy DeLange will ask her stakeholders if they have used a second bidder and how frequently.
3. Committee members will examine the matrix and identify points of discussion with respect to their organization's opinions.
4. Committee Adjusted Timeline:
 - a. August review and identify issues to address in the report.
 - b. August Draft Report—Recommendations by September 14th CPARB meeting.
 - c. October—Submit Draft to CPARB by October 12, 2023 for recommendations and edits.
 - d. December 14th—CPARB approve final Report.

References\Resources:

WA PUD Association: <https://www.wpuda.org>