

SHB 1621 Review Committee

Meeting Notes 8/1/2023

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Committee Members: (7 positions, 4 = Quorum)

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

Guests & Stakeholders:

Talia Baker, DES	Scott Middleton, MCAWW
Randy Black, Lakewood Water District	Diane Pottinger, North City Water District
Joren Clowers, Sno-King Water District Coalition	Paul Richardt, Alderwood Water and Wastewater District
Patricia Collins, Maul Foster & Alongi, Inc.	Abigail Vizcarra Perez, MetroParks Tacoma
Linda De Boldt, Bellevue Utilities	Rob Wettleson, Forma Construction
Nancy Deakins, DES	Maggie Yuse, Seattle Public Utilities
Brandy DeLange, Assoc. WA Cities	Janice Zahn, Port of Seattle
Monique Martinez, DES	

Meeting started at 11:32

Discussion Highlights:

Welcome and Introductions

Co-Chair Keith Michel started the meeting, welcomed everyone, and attendees introduced themselves.

Review Agenda

Co-Chair Michel inquired about any agenda suggestions, but none were put forth. Scott Middleton moved to approve, which was seconded by Co-Chair Mark Nakagawara. The agenda was then adopted through a voice vote.

Approve Notes from the 7/18/23 Meeting

Co-Chair Michel asked if anyone had observations or corrections to the meeting notes. Sharon Harvey abstained from voting. Co-Chair Nakagawara moved to approve the agenda. Bruce Hayashi seconded the motion. The minutes were approved on a voice vote.

Stakeholder Input AWC, PUDs, FPDs

Co-Chair Michel noted that in the last meeting the conversation was cut short and asked the committee members if they wanted to continue discussion. Co-Chair Nakagawara suggested the committee open the discussion again.

Prudent Utility Management, \$300,00 Limit, and Intent

Co-Chair Nakagawara suggested ongoing discussion on Prudent Utility Management (PUM). In the previous meeting, the committee heard about PUM from the original drafters or users of the term. Michael noted that applying the term PUM might be challenging for non-utility organizations. He highlighted prior talks about renaming it to something like Prudent Municipal Management, seeking a clearer statewide definition due to its varying interpretation.

Irene Reyes observed that the definition of prudency varies between utility districts and suggested considering a more detailed or descriptive approach.

Co-Chair Nakagawara summarized PUM as work performed by qualified crews for emergencies or financial reasons, mentioning a \$300,000 threshold. He expressed that the current definition lacks clarity on discretion

in determining routine work by public works departments. He emphasized clarifying PUM's intent beyond a specific amount.

Scott, representing Michael Transue, summarized Nakagawara's points, stating the bill has definitions for PUM and uses the \$300,000 value for regularly employed personnel. Scott asked for clarification about the \$300,000 amount and wondered if Co-Chair Nakagawara was saying that the committee should move away from using an amount to define PUM.

Co-Chair Nakagawara suggested entities could define PUM as an in-house project exceeding \$150,000, explaining the focus should be on PUM work.

Scott emphasized understanding "accepted industry practice" and its implications since it is referred to in the bill. He understands it as meaning entities using in-house crews. He advocated that the committee should have a clear understanding of accepted industry practice and how it's being used.

Co-Chair Nakagawara said that the term accepted industry practice was discussed in the July 18, 2023, meeting, and Irene gave the following example: What constitutes PUM for the City of Seattle might not be the same as PUM of smaller city, so the smaller city will have a different explanation. The committee needs to clarify the PUM term.

Co-Chair Nakagawara indicated he did not have a problem with discrepancies between larger and smaller organizations. He felt that the organization would need to explain the circumstances by putting a note in a project file indicating a need to perform the body of work. He said the secondary concern is that the definition and language is applicable to utilities because it talks about equipment. Bodies that don't run like utilities, use the term "materials" rather than "equipment." He indicated that he doesn't want to change the language for the utilities but noted that other bodies need different language because PUM doesn't apply to them.

Irene inquired about voting on PUM as a topic or comment. Co-Chair Michel affirmed its presence on the matrix and sought stakeholders' insights on the intent of the \$300,000 limit, and if they have a recommendation for how to clarify the language and still maintain the intent of the bill.

Brandy DeLange said from the perspective of cities, it would make sense to better define in the statutes what PUM is or should look like, and possibly define from the perspective of each specific entity (cities, water/sewer, fire, etc.). Her understanding is that cities supported this legislation as a method of standardizing procurement practices. Cities saw the benefit as being able to respond to emerging issues when there was a need. She indicated that Seattle is different from smaller cities, but overall, the Association of Washington Cities (AWC) has heard that all cities want flexibility. Brandy feels that the committee shouldn't be overly descriptive in the definition and believes it's important to create parameters or guidelines in statute that help cities make decisions. She advocated defining PUM with flexibility, possibly consulting MRSC. She also suggested it may be helpful to publish best practices on how PUM might look in different jurisdictions.

Joren Clowers said that for municipalities, the committee needs to align how PUM would be applicable and separate it from the utility management piece. He feels that water/sewer districts, public utility districts (PUDs) and fire districts can use the language as it stands. He asked if the committee and stakeholders could update the matrix to reflect where the committee is going to recommend changes in the bill language.

Co-Chair Michel indicated that he was updating the matrix and will circulate it after the meeting.

Clarifying PUM

Co-Chair Nakagawara concurred that if the current wording is effective for certain bodies, it should remain unchanged. He recommended the committee focus on clarifying the language of RCW 35.22 for city-related aspects.

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Sharon proposed modifying the definition to include "as defined by" and listing entity types.

Co-Chair Nakagawara suggested adding the definition to both RCW 35.22 and RCW 35.23, keeping the existing language for utilities where it works. The committee wouldn't change anything about RCW 54.04 or other places where the entity understands the language.

Joren highlighted the need for the committee to examine revisions to Sections 2 and 3 of SHB 1621.

\$300,000 Threshold

Co-Chair Michel proposed an action item for the committee to refine language and examine entities eligible to use it. He also returned to the question of the increase from \$150,000 to \$300,000 for public works. He asked why the PUM threshold increased as it did, as it excludes public bid opportunities. He said that there is a public community benefit to bid opportunities that the bill has reduced. He wondered if, because of the ambiguity of \$300,000 threshold, if the committee should talk specifically about examples that could be excluded from a public bid and self-performed, and wondered if the self-performed work justifies a \$300,000 threshold, instead of \$150,000.

Co-Chair Nakagawara noted efficiency and financial need for self-performed work, especially in non-emergency situations. He stated that entities are worried about when they might exceed the \$150,000 limit and don't have time to go out to bid. The lower threshold prevents the entity from serving customers or constituents. He believes that the threshold makes things more difficult for utilities and municipalities. Entities can waive bids because of an emergency, but this ability doesn't mean the entity will obtain the services more quickly. He noted that several people have indicated the use of PUM is for special circumstances. He recommended defining PUM as urgent, efficient, or financially necessary work performed by qualified crews. The emergency competitive bid waiver doesn't allow cities to address problems quickly, it allows them to waive the competitive bid. Co-Chair Michel said that he had added notes, recommendations, and actions to the matrix.

Co-Chair Nakagawara said that the City of Seattle is facing cost constraints. The city couldn't make progress because of material cost increases and the inefficiencies of working in cities. He stated the existing threshold doesn't increase regularly due to the difficulty of drafting that legislation. Because \$150,000 doesn't buy what it did in previous years, he assumed the \$300,000 threshold is to meet current needs.

Joren countered that when PUD drafted the language, they didn't tie it to the \$300,000 threshold. He agreed with Co-Chair Nakagawara: PUM is regularly employed personnel that use materials the entity already has. The PUDs were not looking to undertake larger projects but instead for entities to do normal work. PUM language states that if an entity does a large project where materials will exceed \$300,000, the entity will have to bid. He gave an example of PUDs that want to bury power lines. That wouldn't be something the PUDs would do in-house. But for something like regular linework, the PUDs would use their crews and can complete the job with materials the PUDs already have. Joren suggested looking at it as a project versus regular maintenance or regularly trained work.

Co-Chair Nakagawara added that based on Joren's scenario, the City of Seattle could do \$150,000 in terms of the line. But if the string needed to be doubled in size, the City of Seattle couldn't do the job because it would exceed the threshold. And this would be true even if the city crews are capable. He suggested framing this around the efficiency need, which would help municipalities.

Randy Black said that it's a big lift for water districts to regularly return to the legislature to increase the amount. In the last three years the cost of materials has escalated. He gave the example of items that have increased 24 percent in the last six months. He reiterated that it's hard to ask the legislature every year to increase the amount to keep up with cost increases so crews can be trained, which is why they asked for \$300,000. Randy noted that utilities must actively recruit young people and must train them if they don't have

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experience. Randy gave an example of a tank that needed immediate repair. The valve needed to fix it was \$40,000 which didn't include other equipment needed. He said that costs add up quickly, and it's important for the utility to get the work completed in a timely manner.

Co-Chair Michel asked Randy if the \$40,000 valve qualified for the provision that projects requiring equipment that costs more than \$35,000 to do a public bid. Randy said that they were still obligated to get pricing for it, as part of the requirement.

Co-Chair Michel highlighted inflation and the need to balance the threshold and language with public bid benefits. He noted the new threshold of \$300,000 and ambiguity around what kind of work qualifies. He said that this committee is looking for clarity.

Randy suggested that one way to think about it might be that utilities can't afford entire crews for extended periods of time. The kinds of work Randy sees are jobs that take two or three days. He acknowledged that utilities are maintenance and operation driven, unlike the construction business. Speaking about the increase, he observed that going back to legislature every few years is not practical. The legislature always wants to know why the utilities want to do more work and why they want to compete against general contractors. He clarified utilities are not in the business of being general contractors, they want to get work done that is in the best interest of ratepayers.

Co-Chair Nakagawara agreed with Randy and said that the type of work wouldn't include plans and specs because that is a general contractor's area of expertise. Co-Chair Nakagawara gave the example of a city crew that might be dealing with water gushing out in the street and having to find a corroded pipe. In that situation, the crews are limited to a dollar threshold and might have to stop work.

Co-Chair Michel said he agreed with Randy and Co-Chair Nakagawara's points. He observed that with the audience the committee has today, there is clarity and intent around why there is a higher threshold. When the committee says that the same type of language can be used for second-class cities so they can expand utility work to other things, general contractors are concerned that the expansion will include things like reroofing or installing windows. He said that this committee's charge is to recommend legislative rules and any changes, but the committee needs to be aware of where ambiguity in the language opens the door for misapplication.

Brandy reinforced Co-Chair Nakagawara's comments. She stated that from cities' perspective, the reasons AWC supported the bill were exactly as Co-Chair Nakagawara had described: a very discreet application. AWC is comfortable with better defining how the language would be used from a municipal perspective. She said that she understands the issues that Randy and others are raising, but she wouldn't say that AWC is totally aligned with some of those issues. Brandy acknowledged that cities are also dealing with issues around inflation, and those should be contemplated as the committee is considering how it defines PUM for cities.

Co-Chair Michel asked Scott about the action item Michael Transue had from the last meeting. Scott said that Michael is still looking into when \$50,000 was inserted into the PUD statute and identifying how much the CPI has increased since then. Scott will follow-up with Michael.

Scott wanted the committee to think about putting a finer point on some of the terms like PUM. He keeps returning to the phrase "accepted industry practice." He said that Co-Chair Nakagawara brought up examples of where accepted industry practice is self-performing work that is urgent but not an emergency, meaning it falls outside of RCW 39.04. He suggested that a subcommittee or the committee continue to find examples of situations public owners are facing. He agrees with Co-Chair Michel about the fine line between public bidding weighed against what makes more sense to keep as self-performance. He suggested that from those examples the committee might find common themes that could be used in statutory language to clarify the two terms. That might help the general contractors while also helping the entities understand what makes sense to keep in-house and what they would open to public bidding.

Co-Chair Michel agreed that action items are helpful. He said that the committee will continue to review the bill, and he suggested turning to the matrix. He noted that the committee meets every two weeks and wondered if it should form a subcommittee to define PUM and add clarity.

Diane Pottinger wondered if the intent was to have a subcommittee define the language further and questioned where this committee's work would appear. Co-Chair Michel clarified the deliverable from the subcommittee would summarize the committee's discussions. He stated that as a component, the committee would suggest improvements to the current bill. He said that he hears consensus that the committee would like to further define PUM and provide examples of its use. Co-Chair Michel said the committee appears aligned on the \$300,000 threshold and should focus on improving the bill's clarity to maintain its original intent. He said that his perspective is to prevent misuse of the added flexibility that the bill provides.

Defining Language

Brandy proposed that city-focused stakeholders define city-specific statutes and share their definitions for committee review. Other entities, such as utilities, could similarly review their statutes.

Sharon suggested including an agenda item for collaborative language work among different stakeholder groups.

Talia Baker recommended members and stakeholders review the bill, make notes, and share findings with the committee, and as part of the report if the language changes.

Co-Chair Nakagawara said that the committee is obligated to review, act, and make recommendations by December 31, 2023. His view was that giving specific language for the changes would be better than a blanket recommendation to improve a section. He volunteered to create language from the cities' perspective and invited other entities to improve their language if they needed to.

Joren said that there have been operational questions within city code, so it might be good if one of the cities had their legal team look at it. He will do the same with the water/sewer district legal team. Joren said that if the committee makes language recommendations, it would be ideal if lawyers have vetted the language so that the committee doesn't create any unintended problems.

Co-Chair Michel agreed. He said that this subcommittee can make recommendations as part of a report, and then the Capital Projects Advisory Review Board (CPARB) will evaluate the recommendations and provide feedback.

Co-Chair Michel asked the committee members and stakeholders to email feedback to the CPARB inbox. He added an agenda item to the August 15, 2023, meeting to define improvements to the bill language to clarify the intent. Co-Chair Michel stated he liked the three words Co-Chair Nakagawara used to define PUM: urgency, efficiency, and financial. He would like to add some reasons to justify why the larger threshold could apply.

Co-Chair Nakagawara asked about a universal approach; Co-Chair Michel stressed stakeholder-centric feedback. Talia said that would be helpful for the report to say what the impact for specific stakeholder groups is, especially if the impact is negative. It will also help the committee to identify gaps and allow them to identify other stakeholders who might provide information for the report. Irene asked who would compile all the emails, and Co-Chair Michel said to send feedback to the DES email.

Irene suggested that the committee should welcome input from smaller cities. Brandy said that AWC represents all cities, and it has been reaching out to all the cities, including small cities, throughout this process.

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Talia reminded the committee of the September 14th CPARB meeting and report submission deadline of 9/7/23. Co-Chair Michel reiterated that the SHB 1621 subcommittee's report would need to be submitted by 9/7/23.

Review Timeline

Co-Chair Michel noted there are two meetings left before finalizing the CPARB report. Diane suggested outlining the report and assigning tasks. Co-Chair Michel volunteered to create an outline, incorporating the matrix, meeting minutes, and public documentation. He requested members and stakeholders review and annotate the Word bill version, sending feedback to the DES inbox by August 8, 2023. Monique Martinez will collate feedback for the subcommittee and distribute the matrix for additional input via the DES inbox emails.

Matrix Review

Co-Chair Michel highlighted two matrix items untouched in the meeting, lacking clear recommendations or actions: (1) Inclusion of a second responsive bidder, and (2) Defining single vs. multiple trades. Members and stakeholders are encouraged to provide language improvement feedback if desired.

Define Agenda Items for the Next Meeting

Co-Chair Michel outlined the upcoming agenda items: introductions, agenda review, approval of 8/1/23 meeting notes, discussion of emailed input and suggestions, matrix and language feedback updates, and review of the report outline.

Co-Chair Michel will establish a collaborative document for committee members and stakeholders to offer feedback.

Other Comments

Co-Chair Michel invited additional remarks. Janice Zahn commended the committee's comprehensive discussions, anticipating a practical and effective outcome. Co-Chair Michel expressed gratitude to attending stakeholders, acknowledging their contributions in clarifying bill intricacies.

Action Items:

1. Co-Chair Michel will outline the report.
2. Monique will distribute the matrix to committee members and stakeholders, who will provide matrix feedback and email it to the DES inbox.
3. Committee members and stakeholders will review and mark up the bill (in Word document form) and send their markup to the DES inbox by close of business Tuesday, August 8, 2023.
4. Monique will consolidate feedback about the bill and distribute it to committee members and stakeholders before the August 15, 2023, meeting.
5. Committee members and stakeholders will review and give feedback about the following matrix items: (1) When can the second responsive bidder be included? (2) Clarity about single trades vs. multiple trades.
6. Co-Chair Michel will create a shared document for committee members and stakeholders to provide feedback.

Meeting adjourned at 12:57 p.m.