

SHB 1621 Committee

Meeting Notes 10/10/2023

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Committee Members: (9 positions, 5 = quorum)

X Keith Michel, General Contractors – Co-Chair	X Mark Nakagawara, Cities – Co-Chair
X Liz Anderson, WA PUD Association	X Irene Reyes, Private Industry
X Sharon Harvey, OMWBE	X Mark Riker, Construction Trades & Labor
X Bruce Hayashi, Architects	X Michael Transue, Contractors (MCAW)
X Diane Pottinger, North City Water District	

Guests & Stakeholders:

Randy Black, Lakewood Water District
George Caan, WA PUD Association
Joren Clowers, Sno-King Water District Coalition
Nancy Deakins, DES
Jack Donahue, MFA

Monique Martinez, DES
Rob Wettleson, Forma Construction
Maggie Yuse, Seattle Public Utilities
Janice Zahn, Port of Seattle, CPARB Chair

The meeting began at 11:31 a.m.

1. Welcome and introductions.

2. **Review and approve agenda.** Co-Chair Keith Michel reviewed the agenda and asked the group for any edits before proceeding. *Michael Transue moved, seconded by Liz Anderson, to approve the agenda. The motion was approved by a voice vote.*

3. **Review and approve last meeting's minutes.** Co-Chair Michel asked the group to review and provide any edits to the minutes from the meeting on September 26, 2023. *Michael Transue moved, seconded by Mark Nakagawara, to approve the agenda. The motion was approved by a voice vote.*

4. Review committee comments to SHB 1621

Co-Chair Michel established that he and Co-Chair Mark Nakagawara reviewed the comments on the Capital Projects Advisory Review Board's (CPARB) SHB 1621 Report and incorporated the edits. The intent of this portion of the meeting is to allow the group to make any additional comments or seek clarification about any comments.

Michael Transue highlighted technical adjustments, particularly ensuring the correctness of certain acronyms like WSBCTC and MCAWW. Additionally, there were comments meant to enhance the readability of the report which were not integrated into the final version. Co-Chair Michel acknowledged the technical corrections, intending to include them, but expressed reservations regarding other suggested modifications. The aim was to strike a balance to ensure the changes resonate with the collective feedback of the committee.

Mark Riker reiterated that those comments were made in collaboration with industry partners, and shared that it is important they are incorporated, given that the report will be used to inform legislators. Bruce Hayashi agreed and noted that Michael and Mark's comments were very good and captured what the committee had discussed would be important to include. Liz Anderson noted that there are some aspects captured in Michael's draft that are reflective of the committee's input.

Co-Chair Michel shared the report on screen for all participants to view, specifically focusing on Michael's suggested edits. The committee received two emails from the Department of Enterprise Services (DES)

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before the meeting, one containing the current report version from October 4, and the other with comments from various members, including Michael. Despite the feedback rounds, over the weekend, Michael clarified that the current version displayed was the one intended, encompassing technical alterations to acronyms.

Acknowledging the report's ongoing evolution, especially in terms of terminology, Co-Chair Michel aimed to provide a clearer understanding of the report to be voted on during the meeting. He prepared "agree or disagree" statements for the committee to address today, following which the results would be documented below the statements to reflect the committee's decisions.

5. **Vote on all report items as updated/confirmed by committee**

Co-Chair Michel highlighted that the subcommittee members were going to vote on recommendations that would serve as evidence for CPARB, reflecting support or lack thereof for various aspects of the report. The aim was to advance the discussion within CPARB and finalize the report for legislative submission, with stakeholders not participating in the voting process.

Co-Chair Michel asked the committee to provide comments on the following recommendation:

Uniform Limits of \$75,000 and \$150,000 for Regularly Employed Personnel

Committee Recommendation: Committee members recommend the preservation for the establishment of the uniform single trade \$75,000 and multiple trade \$150,000 thresholds for work performed by regularly employed personnel. [AGREE or DISAGREE]

Sharon Harvey clarified whether this recommendation preserves the right for the local government to have internal staff perform the work if it is \$75,000, and \$150,000 if it is multiple jobs. It was clarified that this applies not just to an emergency project, but rather any project. Michael noted that the Public Utility District (PUD) statute in Section 1 states, "any work," which means any work and not just emergency work. Section 4, which covers sewer/water districts, indicates \$50,000 to \$150,000 for all work orders. Joren Clowers noted that the language in the recommendation is what first-class cities were already operating with. Prior to this bill, these were the thresholds for first-class cities, while water and sewer districts had the lower threshold. This recommendation aligns what cities were already able to perform with single- and multi-trade on those thresholds.

Members were asked to vote on the recommendation:

Keith Michel - Agree

Liz Anderson - Agree

Sharon Harvey - Agree

Bruce Hayashi - Agree

Diane Pottinger - Agree

Mark Nakagawara - Agree

Irene Reyes - Agree

Mark Riker - Disagree

Michael Transue – Agree

The result was 8 in agreement and 1 in disagreement.

Co-Chair Michel asked the committee to provide comments on the following recommendation:

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'Prudent Utility Management' Definition: Significant concerns were expressed regarding the uniform applicability of the term, 'Prudent Utility Management' for the cities, sewer/water districts and fire districts.

Committee Recommendations: Committee members recommend revisiting the appropriateness of the uniform application of 'Prudent Utility Management' for cities, sewer/water districts and fire districts.

- **Should 'Prudent Utility Management' apply for cities, sewer/water districts and fire districts? [YES or NO]**
 - a. **If "NO" – Should the language proposed by cities (see comments) be applied in revisions to SHB 1621 for cities, sewer/water districts and fire districts? [YES or NO]**
 - i. **If "YES", should MCA recommendation of changing "or" to "and" within proposed language by cities be incorporated to revisions in SHB 1621? [YES or NO]**

Liz sought clarification that cities were ok with the term Prudent Utility Management (PUM) uniformly applied to them. She recalled that sewer/water districts were ok with PUM applying to them, and Diane Pottinger confirmed this. Co-Chair Nakagawara clarified that for the cities, he did not believe there was a uniform understanding, because it was not a term that was used. For cities, the PUM term as a whole would be difficult to uniformly navigate because it has not been used as a trade term.

Liz clarified the question being asked may not be correct, noting that the recommendation appears to be reviewing the use of PUM as it applies to cities. This would mean the application as it stands would apply for sewer/water districts and fire districts, but the primary concern is revisiting them for cities. Joren agreed and clarified that the language is maintained for sewer/water districts and PUDs, and cities are seeking different language to make it more operational. The language as written currently works for sewer/water districts and PUDs that are solely providing a utility service.

Michael noted there needs to be clarification that PUM should be applied for both cities and towns. The current broader language may be preferred over the city language that was proposed. Joren noted they were open to the proposed language and happy keeping it as is to not further complicate things.

Co-Chair Michel explained that the bill, as issued, applies the term PUM to additional public entities. This term was chosen and attempts to ensure consistency for public entities; however, cities do not necessarily identify with that phrase in the context of helping to define a type of project that can self-perform. The committee recognized that a city has scopes of work that fall outside of PUM. Co-Chair Michel noted he liked the cities proposed alternative in terms of defining circumstances in day-to-day operations that would allow the use of this higher \$300,000 threshold. This bill raised the threshold for self-performing work for any type of project, which allows flexibility for the types of projects they can choose to perform. Co-Chair Michel suggested that there should be some bookmark for when they can choose to self-perform, depending on the nature or circumstance of the project. This raised threshold needs to be balanced in the public interest community and public bid opportunities to small, diverse businesses and public contractors.

Irene Reyes established a potential equity issue between first- and second-class cities, where resources may differ. She noted that feedback and comments from smaller cities was not incorporated into this bill.

Co-Chair Nakagawara thought that from the city standpoint, the language chosen was most accurate and applicable for the cities. The reason to differentiate municipalities from the PUDs and sewer/water districts is because the infrastructure is part of their system. However, for cities, when the standard of prudent usage is applied, there is the same allowance but there would not be the same type of materials. He

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believed PUM fits because it is a standard of their infrastructural systems, and part of that systems includes equipment.

Liz suggested changing the question itself, due to differences for cities and differing applications. The question noted in the recommendation includes all districts, and so there is no opportunity to recommend something different for the cities, sewer/water districts, and fire districts. She suggested having a recommendation reviewing the definition of PUM as applied to cities and towns, and then, if that same question were asked of sewer/water and fire districts, to differentiate between the two. Co-Chair Nakagawara proposed asking the questions separately for each, and the committee agreed with that modification of the formatting for the recommendation.

Michael suggested separating out the second question regarding whether the language proposed should be applied in revisions to SHB 1621 for each of the districts. Co-Chair Michel made those proposed changed.

Members were asked to vote on the following recommendations:

Committee members recommend revisiting the appropriateness of the uniform application of ‘Prudent Utility Management’ for cities, sewer/water districts and fire districts. [AGREE or DISAGREE]

Keith Michel - Agree

Liz Anderson - Disagree

Sharon Harvey - Agree

Bruce Hayashi - Agree

Diane Pottinger - Disagree

Mark Nakagawara - Agree

Irene Reyes- Agree

Mark Riker - Disagree

Michael Transue – Agree

The result was 6 in agreement and 3 in disagreement.

Should ‘Prudent Utility Management’ apply for cities? [YES or NO]

Keith Michel - No

Liz Anderson - No

Sharon Harvey - No

Bruce Hayashi - No

Diane Pottinger - No

Mark Nakagawara - No

Irene Reyes - No

Mark Riker - No

Michael Transue – No

The result was 9 in disagreement.

Should ‘Prudent Utility Management’ apply for sewer/water districts? [YES or NO]

Keith Michel - No

Liz Anderson - Yes

Sharon Harvey - No

Bruce Hayashi - No

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Diane Pottinger - Yes
Mark Nakagawara - Yes
Irene Reyes - No
Mark Riker - No
Michael Transue - No

The result was 3 in agreement and 6 in disagreement.

Should ‘Prudent Utility Management’ apply for fire districts? [YES or NO]

Keith Michel - No
Liz Anderson - No
Sharon Harvey - No
Bruce Hayashi - No
Diane Pottinger - No
Mark Nakagawara - Abstain
Irene Reyes - No
Mark Riker - No
Michael Transue – No

The result was 8 in disagreement and 1 abstention.

It was noted that if the committee answered that PUM should not apply to a district, there should be a proposal for CPARB that will help them make a recommendation. Committee members noted support for the proposed change of language from “and” to “or” and Co-Chair Michel suggested voting on the proposed language change for cities and the sub-bullet that follows.

Members were asked to vote on the following recommendations:

- i) If “NO” – Should the language proposed by cities (see comments) be applied in revisions to SHB 1621 for cities? [YES or NO]**
- ii) If “YES”, should MCA recommendation of changing “or” to “and” within proposed language by cities be incorporated to revisions in SHB 1621? [YES or NO]**

Keith Michel – Yes, Yes
Liz Anderson – Abstained
Sharon Harvey – Yes, Yes
Bruce Hayashi – No, Yes
Diane Pottinger – Yes, No
Mark Nakagawara - Yes, No
Irene Reyes - Absent
Mark Riker – No, Yes
Michael Transue – No, Yes

i. The result was 4 in agreement, 3 in disagreement and 1 abstention.

ii. The result was 5 in agreement, 2 in disagreement and 1 abstention.

- i) If “NO” – Should the language proposed by cities (see comments) be applied in revisions to SHB 1621 for sewer/water districts? [YES or NO]**
- ii) If “YES”, should MCA recommendation of changing “or” to “and” within proposed language by cities be incorporated to revisions in SHB 1621? [YES or NO]**

Keith Michel – Yes, Yes

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Liz Anderson – Abstained
Sharon Harvey – Yes, Yes
Bruce Hayashi – No, Yes
Diane Pottinger – Yes, No
Mark Nakagawara - Yes, No
Irene Reyes – No, Yes
Mark Riker – No, Yes
Michael Transue – No, Yes

i. The result was 4 in agreement, 4 in disagreement and 1 abstention.
ii. The result was 6 in agreement, 2 in disagreement and 1 abstention.

- i) If “NO” – Should the language proposed by cities (see comments) be applied in revisions to SHB 1621 for fire districts? [YES or NO]
- ii) If “YES”, should MCA recommendation of changing “or” to “and” within proposed language by cities be incorporated to revisions in SHB 1621? [YES or NO]

Keith Michel – Yes, Yes
Liz Anderson – Abstained
Sharon Harvey – Yes, Yes
Bruce Hayashi – No, Yes
Diane Pottinger – Yes, No
Mark Nakagawara - Abstained
Irene Reyes – Yes, No
Mark Riker – No, Yes
Michael Transue – No, Yes

i. The result was 4 in agreement, 3 in disagreement and 2 abstentions.
ii. The result was 5 in agreement, 2 in disagreement and 2 abstentions.

Co-Chair Michel asked the committee to provide comments on the following recommendation:

‘Prudent Utility Management’ definition and cost exclusion for “equipment:”

Committee Recommendation:

- Committee members recommend the revisiting of the definition of “equipment” in the context of ‘Prudent Utility Management.’
 - i) Should the definition of “equipment” be modified through revisions to SHB 1621? [YES or NO]
 - ii) Should ‘equipment’ as currently defined or as potential modified, be excluded from the cost of a project relative to the \$300,000 threshold. [YES or NO]

Liz suggested that the intent was not to change the PUD statute, and the language should include the following to each of the bullets: “as applied to cities, sewer/water districts, fire districts.” Co-Chair Michel added that to each of the bullets.

Keith Michel – Yes, Yes
Liz Anderson – Yes, Yes
Sharon Harvey – Yes, Abstained
Bruce Hayashi – Yes, Yes
Diane Pottinger – Yes, Yes

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Mark Nakagawara – Yes, Yes

Irene Reyes – Yes, Yes

Mark Riker – Yes, No

Michael Transue – Yes, Yes

- i. **The result was 9 in agreement.**
- ii. **The result was 8 in agreement, 1 in disagreement and 1 abstention.**

Co-Chair Mark Nakagawara left the meeting at 1:01 p.m.

Co-Chair Michel asked the committee to provide comments on the following recommendation:

Bidder Responsibility Determinations:

Committee Recommendation:

- **The committee recommends revisiting the applicability of adding bidder responsibility provisions due to its pre-existence in RCW 39.04.050.**
 - **Should any bidder responsibility provisions be extended to public entities via SHB 1621? [YES or NO]**

Michael pointed out that this recommendation was at the end of the report and needed to be moved to earlier in the report, after the other committee recommendations.

Keith Michel – No

Liz Anderson – Yes

Sharon Harvey – Yes

Bruce Hayashi – No

Diane Pottinger – Yes

Mark Nakagawara – Absent

Irene Reyes – Yes

Mark Riker – No

Michael Transue – No

The result was 4 in agreement and 4 in disagreement.

Action items

- a) Monique Martinez will coordinate with Co-Chair Michel and Co-Chair Nakagawara to determine the next meeting agenda.

Meeting Adjourned at 1:09 p.m.