

WE START KNOWING THAT HB 1621 FROM THE 2023 SESSION WENT INTO EFFECT

- Repeal/remove the PUM authorizations that went into effect under HB 1621 from 2023. The existing PUD PUM authorization statute will not be amended as we've discussed. [And replace those provisions with the provisions of this document/approach.](#)
- Repeal/remove the 2nd lowest responsible bidder authorizations that went into effect under HB 1621 [from form](#) 2023.
- Maintain the language authorizing the municipalities to use in house employees for work that's less than \$75.5K for one trade and \$150K for more than one trade.

(1) As used in this [act section](#), the term "public works" means as defined in RCW 39.04.010.

Commented [mt1]: Note.

(2) A [citymunicipality](#) may have public works performed by contract pursuant to public notice and call for competitive bids. As limited by subsection (3) of this section, a [citymunicipality](#) may have public works performed by [citymunicipal](#) employees in any annual or biennial budget period equal to a dollar value not exceeding 10 percent of the public works construction [budget](#), including any amount in a supplemental public works construction budget, over the budget period. The amount of public works that a [citymunicipality](#) has another jurisdiction perform shall be included within this 10 percent limitation. Workers performing work under this section are paid at least a rate equivalent to the prevailing hourly wage rate for a person in the applicable occupation and geographic area

Commented [mt2]: Made this change throughout so as to be more broadly applicable and generic so that it'll fit into the other statutes - 2nd class cities, WS Districts, etc.

Commented [mt3]: Do we have a definition for "public works construction budget" somewhere OR do we assume this means a capital construction budget under the GMA that funds public works?

RCW 39.10.010(4)....(4) "Public work" means all work, construction, alteration, repair, or improvement **other than ordinary maintenance**, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. All public works, including **maintenance (NOT ORDINARY MAINTENANCE) when performed by contract** shall comply with chapter **39.12** RCW. "Public work" does not include work, construction, alteration, repair, or improvement performed under contracts entered into under RCW **36.102.060**(4) or under development agreements entered into under RCW **36.102.060**(7) or leases entered into under RCW **36.102.060**(8).

If a [citymunicipality](#) has public works performed by public employees in any budget period that are in excess of this 10 percent limitation, the amount in excess of the permitted amount shall be reduced from the otherwise permitted amount of public works that may be performed by public employees for that [citymunicipality](#) in its next budget period. Twenty percent of the motor vehicle fuel tax distributions to that [citymunicipality](#) shall be withheld if two years after the year in which the excess amount of work occurred, the [citymunicipality](#) has failed to so reduce the amount of public works that it has performed by public employees. The amount so withheld shall be distributed to the [citymunicipality](#) when it has demonstrated in its reports to the state auditor that the amount of public works it has performed by public employees has been so reduced.

Whenever a [citymunicipality](#) has had public works performed in any budget period up to the maximum permitted amount for that budget period, all remaining public works within that budget period shall be done by contract pursuant to public notice and call for competitive bids.

The state auditor shall report to the state treasurer any [citymunicipality](#) that exceeds this amount and the extent to which the [citymunicipality](#) has or has not reduced the amount of public works it has performed by public employees in subsequent years.

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(3) In addition to the percentage limitation provided in subsection (2) of this section, a [citymunicipality](#) shall not have public employees perform a public works project in excess of \$150,000 if more than a single craft or trade is involved with the public works project, or a public works project in excess of \$75,500 if only a single craft or trade is involved with the public works project or the public works project is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project.

Commented [mt4]: This subsection added by 1621 and should remain consistent the committee's previous recommendation. How does it relate to the new \$300K limit here?

(4) In addition to the accounting and recordkeeping requirements contained in RCW 39.04.070, every [citymunicipality](#) annually must prepare a report subject to review by the state auditor indicating the total public works construction budget and supplemental public works construction budget for that year, the total construction costs of public works performed by public employees for that year, and the amount of public works that is performed by public employees above or below 10 percent of the total construction budget. However, if a [citymunicipality](#) budgets on a biennial basis, this annual report may indicate the amount of public works that is performed by public employees within the current biennial period that is above or below 10 percent of the total biennial construction budget.

Commented [mt5]: Account and record of cost.

Whenever the state or any municipality shall execute any public work by any means or method other than by contract or small works roster, it shall cause to be kept and preserved a full, true and accurate account and record of the costs of executing such work in accordance with the budgeting, accounting, and reporting system provisions prescribed by law for the state agency or municipality.

[1986 c 282 § 4; 1923 c 183 § 6; RRS § 10322-6.]

NOTES:

State auditor to prescribe standard form for costs of public works: RCW 43.09.205.

Each [citymunicipality](#) with a population of 150,000 or less shall use the form required by RCW 43.09.205 to account and record costs of public works in excess of \$5,000 that are not let by contract.

(5) The cost of a separate public works project shall be the costs of materials, supplies, equipment, and labor on the construction of that project. The value of the public works construction budget shall be the value of all the separate public works projects within the [budget](#).

Commented [mt6]: See RCW 39.04.280

(6) Competitive bidding requirements may be waived by the governing body of the municipality and the use of in house workers is allowed for public works in the event of an [emergencyexigency](#).

(a) The waiver of competitive bidding requirements for public works defined under subsection (1) of this section must be by resolution or by the terms of written policies adopted by the municipality, at the option of the governing body of the municipality. If the governing body elects to waive competitive bidding requirements by the terms of written policies adopted by the municipality, immediately after deciding to use in house employees or the award of any contract, the use of in house employees or contract and the factual basis for the exception must be recorded and open to public inspection.

If a resolution is adopted by a governing body to waive competitive bidding requirements ~~under (b) of this subsection~~, the resolution must recite the factual basis for the exception.

(b) If an [emergencyexigency](#) exists, the person or persons designated by the governing body of the municipality to act in the event of an [emergencyexigency](#) may declare an [emergencyexigency](#) situation exists, waive competitive bidding requirements, and award all necessary contracts on behalf of the municipality to address the [emergencyexigency](#) situation or use in house employees. If a contract is awarded without competitive bidding due to an [emergencyexigency](#) under this act, a written finding of the existence of an

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[emergencyexigency](#) must be made by the governing body or its designee and duly entered of record no later than two weeks following the award of the contract or use of in house employees.

(c) For purposes of this section "[emergencyexigency](#)" means unforeseen circumstances beyond the control of the municipality that either: (a) Present a [real, immediate](#) threat to the proper performance of essential functions; [and or](#) (b) will likely result in [material](#) loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

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(d) Once an [emergencyexigency](#) work declaration is invoked that is expected to potentially exceed the \$300,000 limit, in house employees can be used by the [citymunicipality](#) and the [citymunicipality](#) shall also immediately initiate the process to utilize the normal bidding process outside of the \$300,000 limit.

(i) If the [citymunicipality](#) is unable to obtain a contractor pursuant to this act, the public entity may continue to perform the [emergencyexigency](#) work with in house employees.

(ii) The [emergencyexigency](#) work performed under subsection ~~(e)~~ (d) (i) of this section shall only be performed until such time as the [citymunicipality](#) obtains a successful contractor/vendor and only for the work necessary to address the specific [emergencyexigency](#).

~~(e)~~ Workers performing work under [this act subsection \(d\) of this section must](#) are to be paid at least a rate equivalent to the prevailing hourly wage rate under Chapter 39.12 RCW for a person in the applicable occupation and geographic area.

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Commented [mt7]: This will achieve PW application at the \$300K level [and below](#) if the work "is expected to potentially exceed the \$300,000 limit" pursuant to subsection (d).

~~(e)~~ An [emergencyexigency](#) no longer exists as soon as the [emergencyexigency](#) circumstance is over or when the scope of (suggest consistent with reference in (d)(iii) above) work goes beyond that required to address the declared [emergencyexigency](#).

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[1998 c 278 § 1.]

(7) In lieu of the procedures of subsections (2) and (6) of this section, a city may let contracts using the small works roster process in RCW 39.04.151 through 39.04.154.

Whenever possible, the [citymunicipality](#) shall invite at least one proposal from a certified minority or woman contractor who shall otherwise qualify under this section.

(8) The allocation of public works projects to be performed by [citymunicipal](#) employees shall not be subject to a collective bargaining agreement.