

CAPITAL PROJECTS ADVISORY REVIEW BOARD

Recommendations on SHB 1621

**Report to the Legislature
October 10, 2024**

CAPITAL PROJECTS ADVISORY REVIEW BOARD

The Capital Projects Advisory Review Board (CPARB), authorized by RCW 39.10, reviews alternative public works contracting procedures and provides guidance to state policymakers on ways to further enhance the quality, efficiency and accountability of all public works contracting methods.

EXECUTIVE SUMMARY

The 2023 Legislature passed Substitute House Bill 1621 standardizing a number of issues and limits for multiple public entities, including first and second-class cities, public utility districts (PUDs), water-sewer districts, and fire districts. The effective date of the bill was delayed to June 30, 2024, to allow CPARB to review and make recommendations to the legislature by December 31, 2023.

CPARB created the SHB 1621 Review Committee with members of public, private industry and stakeholders to consider the impacts of this bill and identify recommendations. The Committee met biweekly from June to December 2023 and submitted their recommendations to CPARB.

CPARB recommendations dated December 19, 2023, were not incorporated to the law through legislative process and SHB1621 as originally written is in effect as of June 30, 2024. CPARB and the CPARB SHB 1621 Review Committee have continued meeting throughout 2024, continuing stakeholder work associated with this bill.

CPARB MAKES THE FOLLOWING RECOMMENDATION:

1. Summarize results of committee voting – Reference SHB 1621 Committee Matrix of recommendation
 - a. Bidder Responsibility determination – **Eliminate this provision from 1621.**
 - b. Exceptions to work threshold up to 300K – **Eliminate the exception or exclusions of material and equipment from the project threshold. Change to all project costs are included.**
 - c. Prudent Utility Management definition – **Change to the “exigent” definition.**
 - d. Annual 10% of budget threshold – **Add this annual dollar limit threshold.**

APPENDICES

- A. Stakeholder work summary
- B. SHB 1621 Recommendations Matrix
- C. DRAFT amended SHB 1621 Act with changes noted October 10, 2024
- D. CPARB Members & SHB 1621 Review Committee Members & Stakeholders
- E. CPARB SHB 1621 Report Recommendations dated December 19, 2023 (not adopted)

STAKEHOLDER WORK BY CPARB – BASIS FOR RECOMMENDATIONS.

1. SHB 1621 includes bidder responsibility determinations outside of criteria already set forth in RCW 39.04.010 and 39.04.350. **CPARB Recommends eliminating these alternate bidder responsibility determinations and instead referencing RCW 39.04.010 for guidance on these determinations.**

Basis for recommendation: SHB 1621 uses language currently granted to second-class cities, allowing them to refuse low bids by means of a responsibility determination, and extends the concept to PUDs, first-class cities, water/sewer districts, and fire districts.

The inclusion of additional Lowest Responsible Bidder criteria in SHB 1621 expands the responsibility criteria outside of the current statute governing general public works provisions for bidder responsibility in RCW 39.04.350. This additional language creates confusion for contractors. While this language pre-exists for the second-class cities in RCW 35.23.352(2), members of the committee expressed concerns regarding the provision to allow for the rejection of a low bidder in light of an issue with a bidder's responsibility or lack thereof.

- 10 committee members agree with this recommendation, 1 did not.

2. Exceptions to the public employee work thresholds on projects up to \$300k. SHB1621 includes exceptions to what is included in the self perform 300K project limit. Notably materials and equipment defined and then excluded from the project costs. **The Board recommends eliminating these exceptions and modify the language to state all project costs are included in the 300K threshold.**

Basis for recommendation: Dollar figure thresholds throughout public contracting provisions of the RCW most commonly include "all project costs" and for consistency, this option for public entities included in SHB 1621 with respect to what is included in the 300K project limit should include all costs.

- 9 committee members agree with this recommendation, 2 did not.

3. Prudent Utility Management definition as applied to cities, water-sewer districts and fire districts.

The Board will recommend modifying Prudent Utility Management as the definition for when the 300K self perform work can occur and instead include a new definition of Exigent circumstances in it's place.

Exigent public works needs are due to unforeseen circumstances that result in situations that compromise the proper performance of essential government functions and there is a need to avoid, prevent or alleviate serious impacts (financial or otherwise), harm or injury, and the use of a competitive procurement would prevent the urgent action required to address the situation.

Basis for recommendation: The circumstances in which public entities can choose to exercise the option to self perform projects up to 300K in value should be properly defined. The definition of when this can occur within SHB 1621 was very broad and may or may not adequately align with the needs of each public entity these RCW provisions apply to. Based on this the exigent definition as the definition of when this option can be utilized is improved through this recommendation.

- 8 committee members agree with this recommendation, 3 did not.

4. The Board will recommend adding an annual maximum dollar limit threshold for the cumulative amount of individual 300K self perform projects the public entity can perform of no mor than 10% of the entities annual capital budget.

Basis for recommendation: The 300K self perform project option for public entities is essentially a new category of self performance work option by public entities at a substantially higher dollar value limit than any existing ones. Based on this, the public/private balance of impact related to this bill is critical to manage. The 10% cumulative annual dollar value limit based on each individual entities size is therefore appropriate to create a limit for the number of times it can be utilized in any single annual year cycle.

- 8 committee members agree with this recommendation, 3 did not.

CPARB MEMBERS AND SHB 1621 REVIEW COMMITTEE MEMBERS AND STAKEHOLDERS**Committee Members:**

[Keith Michel](#) (General Contractors) - Co-Chair
[Mark Nakagawara](#) (Cities) - Co-Chair
[Liz Anderson](#), WA PUD Association
[Sharon Harvey](#) (OMWBE)
[Linda De Boldt](#) (Cities)
[Roger Ferris](#) (Fire Districts)
[Bruce Hyashi](#) (Architects)
[Diane Pottinger](#), North City Water District
[Mark Riker](#) (WA State Building & Construction Trades Council)
[Steve Russo](#) (UMC Specialty Contractors)
[Michael Transue](#) (Mechanical Contractors Association Western Washington)

Committee Stakeholders:

Eric Alozie, NWE Construction Co.	Judi Gladstone, WA Assoc. of Sewer and Water Districts
Logan Bahr, Tacoma Public Utilities	Scott Middleton, Mech. Contractors Assoc. Western WA
Randy Black, Lakewood Water District	Paul Richart, Alderwood Water & Wastewater District
George Caan, WA PUD Association	Abigail Vizcarra Perez, MetroParks Tacoma
Bill Clark, WA PUD Association	Ryan Spiller, Fire Districts
Joren Clowers, Sno-King Water District Coalition	Rob Wettleson, Forma Construction
Linda De Boldt, City of Bellevue	Maggie Yuse, Seattle Public Utilities
Brandy DeLange, Association of WA Cities	Janice Zahn, Port of Seattle

CPARB Members:

Linneth Riley Hall (Chair), Transportation	Mark Riker, Construction Trades Labor
Keith Michel (Vice-Chair), General Contractors	Steven Russo, Specialty Contractors
Lehka Fernandes, OMWBE	John Salinas, II, Specialty Contractors
Bobby Forch, Jr., Disadvantaged Businesses	Kara Skinner, Insurance/Surety Industry
Bill Frare, State-DES	Rep. Mike Steele, House of Representatives (R)
Sen. Bob Hasegawa, Senate (D)	Robin Strom, General Contractors
Bruce Hayashi, Architects	Josh Swanson, Construction Trades Labor
Santosh Kuruvilla, Engineers	Rep. Steve Tharinger, House of Representatives (D)
Karen Mooseker, School Districts	Robynne Thaxton, Private Industry
Mark Nakagawara, Cities	Sen. Judy Warnick, Senate (R)
Matt Rasmussen, Counties	Olivia Yang, Higher Education
Irene Reyes, Private Industry	Janice Zahn, Ports

SHB 1621 Recommendations

	1	2	3	4	5	6	7	8	9	10	11
	Mark N/Maggie	Linda DB	Diane P	Roger F	Keith M	Sharon H	Bruce H	Mark R/Josh S	Michael T	Liz A	Steve R
	1st Class City	2nd Class City	W&S District	Fire Dirict	GC	OMWBE	Arch	Labor	MCA (subs)	PUD	Subs

												Total Votes
1	Bidder Responsibility determinations.											
	Option 1: Maintain as written in 1621				x							1
	Option 2: Eliminate bidder responsibility provision, instead reference 39.04.350 for process.	x	x	x		x	x	x	x	x	x	10
2	Exceptions to work threshold up to 300K											
	Option 1: Maintain material and equipment definition and exclusion of same within 300K limit.			x							x	2
	Option 2: Remove exclusion - change to All Project Costs within 300K	x	x		x	x	x	x	x		x	9
3	PUM - Prudent Utility Management definition											
	Option 1: Maintain PUM definition			x	x						x	3
	Option 2: Change to Exigent defintion *	x	x			x	x	x	x		x	8
4	Annual 10% of Budget											
	Option 1: Maintain - no annual limit on # of individual 300K projects			x	x						x	3
	Option 2: Add annual limit for total number of 300K projects not to exceed 10% of entities annual budget.	x	x			x	x	x	x		x	8

*

Exigent public works needs are due to unforeseen circumstances that result in situations that compromise the proper performance of essential government functions and there is a need to avoid, prevent or alleviate serious impacts (financial or otherwise), harm or injury, and the use of a competitive procurement would prevent the urgent action required to address the situation.

Keith Michel

From: Liz Anderson <LAnderson@wpuda.org>
Sent: Wednesday, October 2, 2024 12:23 PM
To: DES mi CPARB; Mark Nakagawara; Keith Michel
Subject: WPUDA requested statements for CPARB report

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Good afternoon,

As per the discussion yesterday in the Advisory Committee meeting, I am requesting inclusion of the below statements in the committee's recommendation report to CPARB. The first statement is for the "committee recommendations" section of the report and is intended to communicate that there is agreement among the Advisory Committee that the PUD statute should not change other than to remove the provision related to lowest responsible bidder as per the majority vote.

The second is the minority statement from WPUDA which outlines our perspective on language revisions to statutes that are not ours. It explains the vote and is intended to communicate that we are not opposed to the changes requested by the cities and see this is an area of general consensus.

I am looking forward to the next meeting and appreciate your leadership in this process!

Below is the requested language to be included in the body of the report (recommendations) to confirm committee support for preserving the underlying PUD statute-please note the first sentence is a placeholder only and would need to be filled in based on the committee's direction.

The majority of the SHB 1621 Advisory Committee recommends modifying existing language enacted with the passage of SHB 1621 specific to **(fill in)**. *Additionally, the advisory committee unanimously agreed that the public utility district statutory language that pre-dated the passage of SHB 1621 by many years is specific to and necessary for the operations of public utility districts and therefore should not be modified.*

Minority statement from WPUDA on vote:

SHB 1621 retained key pre-existing provisions of the PUD's statutory language, which is specific to the unique operational needs of public utility districts. WPUDA appreciated the Advisory Committee's recognition and support for not altering the underlying PUD statute related to prudent utility management. WPUDA supported proposed changes to SHB 1621 language applied to the cities' statute. The cities requested the changes to SHB 1621 relating to their statute and the changes were vetted by the committee. Based on discussions, WPUDA believes there was general consensus around this recommendation, however without the ability to vote in favor of changes requested by the cities while not advancing suggested changes for the water & sewer districts and fire districts which were controversial, WPUDA voted to retain the existing provisions in SHB 1621.

Liz Anderson, Executive Director
Washington Public Utility Districts Association
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(360) 590-2800 Cell
landerson@wpuda.org

Keith Michel

From: Diane Pottinger <dianep@northcitywater.org>
Sent: Wednesday, October 2, 2024 2:07 PM
To: Keith Michel; Mark Nakagawara
Cc: Martinez, Monique (DES); Judi Gladstone; Randy Black
Subject: Follow up to yesterday's CPARB SHB 1621 meeting

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Keith and Mark-

Sorry to have left the meeting at 1:00. I had another meeting to attend.

As we discussed yesterday, I am sending you our comments for inclusion in the final report.

Water and Sewer Districts were happy with SHB 1621 which included a review by CPARB. One of the key objectives of the bill was to have the same limits for all cities, PUDs, Fire Districts as well as Water and Sewer Districts. We participated in the review process in good faith as provided by the bill and did not come to a mutual agreement about any changes. The report was submitted to the legislature in December, making that provision of the bill complete.

The changes now being proposed go against a key objective of the bill: it creates new dissimilarities between types of jurisdictions, and at the same time is more complex. While Water and Sewer Districts are happy with the language with the law that went into effect July 1, 2024, **we also support the proposed language made by the cities to the city's statute.** This draft language is what we have discussed during our bimonthly meetings this year. Water and Sewer Districts **oppose** any proposed changes to the Water and Sewer Districts, Fire District and PUD's statutes at this time. Water and Sewer Districts will continue backing bill SHB as passed and refrain from any other changes other than those mentioned above until we see how the bill is working.

I understand we have another meeting scheduled next Tuesday, October 8 at 11:30. Unfortunately, I will not be able to attend that meeting and have asked Randy Black to attend in my stead.

Diane Pottinger, P.E.
District Manager



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