

CAPITAL PROJECTS ADVISORY REVIEW BOARD

Virtual Meeting Minutes

November 18, 2024

MEMBERS PRESENT	REPRESENTING	MEMBERS ABSENT	REPRESENTING
Linneth Riley-Hall (<i>Chair</i>)	Transportation	Rep. Mike Steele	House (R)
Keith Michel (<i>Vice Chair</i>)	General Contractors	Rep. Steve Tharinger	House (D)
Garett Buckingham	Public Hospital Districts	Senator Judy Warnick	Senate (R)
Lekha Fernandes	OMWBE		
Bobby Forch Jr.	Disadvantaged Businesses		
Bill Frare	Dept. of Enterprise Services		
Senator Bob Hasegawa	Senate (D)		
Bruce Hayashi	Architects		
Santosh Kuruvilla	Engineers		
Karen Mooseker	School Districts		
Mark Nakagawara	Cities		
Irene Reyes	Private Industry		
Steven Russo	Specialty Contractors		
John Salinas II	Specialty Contractors		
Kara Skinner	Ins./Surety Industry		
Robin Strom	General Contractors		
Josh Swanson	Construction Trades Labor		
Robynne Thaxton	Private Industry		
Olivia Yang	Higher Education	<i>Vacant</i>	Construction Trades Labor
Janice Zahn	Ports	<i>Vacant</i>	Counties

Staff & Guests are listed on the last page

CALL TO ORDER & ROLL CALL FOR QUORUM

Chair Linneth Riley-Hall called the hybrid meeting of the Capital Projects Advisory Review Board (CPARB) to order at 8:00 a.m. A meeting quorum was confirmed.

WELCOME BOARD MEMBERS & INTRODUCTIONS

Chair Riley-Hall welcomed everyone to the meeting.

APPROVE AGENDA – *Action*

Suggested revisions to the agenda included removal of the *15-minute Break* and moving *WSDOT Project Delivery Method Review Task Force* as the first item of business followed by *SHB 1621 Review Committee*.

Robynne Thaxton moved, seconded by Bill Frare, to approve the agenda as modified. A voice vote approved the motion unanimously.

INVITATION FOR PUBLIC COMMENTS – *Information*

Liz Anderson, Executive Director, Washington Public Utility Districts Association (WPUDA), conveyed several concerns regarding the Board’s Report to the Legislature on Recommendations of SHB 1621. The minority statement in the report from WPUDA did not include a request for clarification from DES on the position of the Association. She requested including some additional information. Her second concern is the recommendation on page 2 in the report and the draft legislation, which are inconsistent. The report does not reflect what the SHB 1621 Review Committee supported over the course of deliberations of not changing the underlying PUD statute. Only recommendation #3 appears to clarify that the changes are limited to Cities, Water, Sewer, and Fire Districts. She suggested additional clarification should be included within the recommendation of page 2. She provided additional information for the minority report as extensively discussed in response to inquiries from committee members related to RCW 54.04.070 Section 1 (2) on *Prudent Utility Management*. That section of the PUD statute preexisted as HB 1621. *Prudent Utility Management* has been successfully implemented by PUDs since the late 1980s with no issues as to the term by the State Auditor, unions, or contractors. SHB 1621 applied the PUD *Prudent Utility Management* language to the statutes for Cities, Water, Sewer, and Fire Districts. WPUDA was pleased the committee consistently recognized that no changes should be made to the underlying PUD statute for *Prudent Utility Management* with discussions focusing on the language in SHB 1621 as it relates to the statutes for Cities, Water, Sewer, and Fire Districts. During the review, the committee appeared to have attained several areas of consensus on changes that should be retained to the cost thresholds for when a contract is required and that the *Prudent Utility Management* language in the statute for Cities should be revised. The questions regarding the votes are specific to

how the *Prudent Utility Management* language is applied to Cities, Water, Sewer, and Fire Districts. Significantly, the Cities' representatives indicated support for changing its language and submitted suggested language for its statute that was intended to apply only to Cities. It was not intended as a broader application to any of the other local government entities in SHB 1621. The committee in good faith supported the vetting of the Cities' proposed statutory language regarding *Prudent Utility Management* and appeared to agree during the committee meeting. While there appeared to be consensus surrounding the language supporting Cities, there was disagreement around its application for other entities.

Erin Frasier, Executive Secretary, Washington State Building Construction Trades Council, said the Council advocates for work, training opportunities, and the rights of skilled construction workers. She expressed concerns with the potential of SHB 1621 eliminating the competitive bidding process for publicly funded construction projects. The change would negatively impact workers, the quality of public infrastructure, and the integrity of the public works bid process. Competitive bidding ensures public contracts are awarded fairly and transparently. Competitive bidding also encourages better outcomes in terms of quality. Contractors who meet responsible bidder criteria for public works by virtue of their training, apprenticeship programs, and work force standards are held to a higher quality standard. Eliminating competitive bidding opens the door for potentially substandard work or cost-cutting measures to the detriment of Washington State construction workers. Workers depend on public works construction projects for their livelihoods. Elimination of competitive bidding on public works also eliminates on-the-job training opportunities for apprentices and erodes one of the largest elements of the state's workforce development model in construction careers. Public funds should be spent responsibly and efficiently. Competitive bidding allows for an open and transparent process. On behalf of the Council, Ms. Frasier requested the Board support SHB 1621 increasing the lower limits of \$75,500 and \$150,000 to allow public entities the flexibility to perform work needed, support revisions defining all project costs to be included in the \$300,000 category for self-performed work, and support the replacement of the term and definition of *Prudent Utility Management* with the new term "*Exigent*" as defined by the committee. The Board should also support the 10% annual limit for the use of the new "*Exigent*" category. Workers deserve the opportunity to access public works projects and taxpayers deserve the best value for their investment.

Michael Transue, MCA Western Washington, expressed appreciation for the committee's time and efforts and looks forward to continued dialogue. When SHB 1621 was adopted, construction and labor interests had significant questions and concerns with the policies in the bill, specifically expanding *Prudent Utility Management* to other types of local governments and expanding the lowest responsible bidder criteria that currently exist for Second-Class Cities to Water, Sewer, and Fire Districts. There were many questions at that time that have since received some response by Water and Sewer Districts, Cities, and Fire Districts, which has been appreciated. However, several of the main concerns continue to exist and the expansion of *Prudent Utility Management* and the second lowest responsible responsive bidder are two instances. After working with the legislature, proponents believed they would be able to argue their case on expanding *Prudent Utility Management* to include Cities, Water, Sewer, and Fire Districts. However, despite that and an agreement to continue working to find a middle ground, MCA agreed to delay an effective date. At the time, it was believed that the proponents would have the opportunity to show their work and sway MCA and other stakeholders to agree with the appropriateness of expanding the policies. At the end of the day, the two interim processes that were reviewed lack a belief that the proponents did not complete a solid job nor provided the reason and the efficacy of expanding *Prudent Utility Management* to other jurisdictions. The reason why it is not appropriate to expand those authorities is the lack of demonstrating how existing emergency procurement authority could be used in conjunction with the proposed exigent circumstances authority coupled with the current language in the bill that allows in-house work to be completed of one craft up to \$75,500 and two crafts up to \$150,000. Use of best practices that currently exist in statute and proper contract oversight methods could address the types of projects that MCA believes proponents want for utilization of *Prudent Utility Management*. MCAWW believes that vesting *Prudent Utility Management* with the entities would be contrary to the Legislature's intent to provide as much work to women, minorities, veterans, small and diverse businesses. For those reasons plus other reasons discussed during committee meetings and by the Board, MCAWW agrees with not moving *Prudent Utility Management* forward to those entities and recommends that the lowest responsible responsive bidder language also not move forward.

Kara Skinner joined the meeting at 8:19 a.m.

Chair Riley-Hall thanked the speakers for providing comments. She reminded the public of the importance of limiting comments to two minutes.

LEGISLATIVE REPORTS AND PROPOSED LEGISLATION

WSDOT Project Delivery Method Review Task Force – *Action*

Robynne Thaxton acknowledged the efforts of members and stakeholders on the task force during the course of many meetings.

Ms. Thaxton shared a copy of the report following similar protocols of previous report submissions to the Legislature. The format of the report includes Introductions, Executive Summary, Summary of the Process Projects, and CPARB Recommendations for Use of Alternative Delivery Methods. Additionally, the report references the presentations to the task force by Keith Molenaar, PhD, FDBIA, Dean of the College of Engineering at the University of Colorado, and Douglas Gransberg, PhD, PE, Gransberg and Associates, who presented national research on alternative delivery methods.

WSDOT Project M00800R US 395 North Spokane Corridor, Project numbers: F00015G, F30015R, F00015T, F30015 were all valued under \$2,000,000. F00015G was already awarded when the Legislature created the proviso and underway by the time the Task Force started its work. The fourth project had already been advertised for bid by March 2024 when the Legislature passed ESBH 2134. The project has been completed. Those projects were excluded from the findings.

WSDOT Project M00800R US 395 North Spokane Corridor - I-90 Connection includes a series of four projects. Ms. Thaxton reviewed the scope of the review by the task force:

- Project Description
- Project Budget and Scopes of Work
- Project Current Status
- Project Risks and Opportunities
- WSDOT Rationale for Using Design-Bid-Build
- CPARB Review of Delivery Method for North Spokane Corridor I-90 Connection Projects

The Task Force recommendations are extensive. WSDOT's Design-Build delivery method is guided by RCW 47.20. The report outlines delivery under other alternative delivery methods (RCW 39.10). The report includes links to all appendices.

Chair Riley-Hall thanked representatives from WSDOT for their involvement, support, and feedback to the Task Force. She thanked members of the Task Force and Co-Chair Tom Zamzow for their work and efforts to develop and finalize the draft report. The review of the last four projects included a mix of opinions with all opinions included within the report.

Bill Frare moved, seconded by Olivia Yang, to approve the Report to the Legislature, Part 2B: WSDOT Project M00800R US 395 North Spokane Corridor – I-90 Connection Projects: F00015G, F30015R, F00015T, F30015S, as presented. A voice vote approved the motion unanimously.

Robynne Thaxton disconnected from the meeting at approximately 8:25 a.m.

SHB 1621 Review Committee – *Action*

Co-Chair Michel referred to the Report to the Legislature on Recommendations on SHB 1621 from CPARB. He invited questions and comments from members or clarifications as to the earlier public comments. The report is presented for the Board's approval to move forward to the Legislature.

Ms. Yang expressed appreciation of the efforts by the Co-Chairs and the committee over the last two years. She questioned the purpose of the action, as she understood the Board previously acted on the report. Co-Chair Michel explained that the Board offered comments and did not officially act on the proposed report. The Board directed the committee to continue working to develop consensus on several issues that did attain consensus by the committee. The committee made some progress with respect to bidder responsibility criteria however, members did not reach consensus on a recommendation of exigent versus prudent utility management, \$300,000 labor versus total project cost, and the 10% capital investment program. The committee voted in the majority to support the recommendations but lacked a consensus for the last three items.

Chair Riley-Hall commented on the WSDOT report recommendations that lacked a consensus. The Board was able to move forward with a report reflecting the lack of consensus. She recommended moving the report forward with the reasons for not attaining consensus on all the issues.

Ms. Yang agreed that although the preference is to reach consensus, it is also important to recognize that the efforts have been ongoing over the last two years and that it is the Board's responsibility to report to the Legislature the outcome of that work.

Co-Chair Michel cited page 3 of the report containing the details. The request to the Board is for approval of the report, which includes the majority recommendations on the remaining three issues. The proposal would result in the modification of SHB 1621 with changes that would apply the new language to public entities covered within the bill. Changes for consideration by the Board include:

- Removing bidder responsibility criteria included in SHB 1621.
- The total project cost threshold of \$300,000 removes materials and equipment costs.
- Include a definition for *Exigent* applicable to \$300,000 project opportunities by public entities covered by the bill with the total number of \$300,000 self-perform projects limited to 10% of the agency's annual budget.

Ms. Yang conveyed some reservation of considering a proposal that several stakeholders did not support. Additionally, it is likely those stakeholders were not voting members of the committee, which is somewhat troublesome. She asked about the potential outcome following the submittal of the report to the Legislature to prompt more discussion by the Legislature. It might be more appropriate to document the outcome of issues of agreement and those issues not reaching agreement to ensure the Legislature is prepared to address industry concerns surrounding the report.

Co-Chair Michel said the points are valid; however, the expectation is that the proposals will be discussed throughout the legislative process. CPARB is forwarding a recommendation that is appropriate with respect to a public/private balance in terms of what the bill originally modified that has since been codified since last summer. The recommendations are comprehensive. Co-Chair Nakagawara served as the representative of First-Class and Second-Class Cities. The proposed bill includes changes to a city's procurement process. Cities supported all the recommendations.

Co-Chair Nakagawara agreed Cities supported the proposals because many of the municipality stakeholders did not believe the definition of *Prudent Utility Management* was workable for most municipalities. He is however, somewhat concerned about negating the participation of Fire Districts and Water Districts in the committee's process that enabled his participation. It is reflective of an omission of any input and contributions Water and Fire Districts offered throughout the committee's work. Those entities are not represented on the Board, and it gives the impression that the Board's action would vacate those opinions on a matter that affects those entities significantly.

Co-Chair Michel pointed out that PUDs and Water and Sewer Districts statements are included in the report.

Bobby Forch joined the meeting at 8:40 a.m.

Irene Reyes commented on the importance of recognizing other public entities.

Mr. Frare commented that during his review of the report and Appendix A, it cited consensus votes and majority votes on other issues. It is important to respect the voices of those with a minority opinion. He noted that he would support approval of the report if dissenting votes were included.

Mr. Reyes agreed. She was involved early in the committee process and believes that the two public entities were not well represented because despite reaching out to Fire Districts, no representatives responded. Perhaps the committee did not have the sufficient tools to attract participation to ensure their issues could be considered. Those entities are an affected class if the Board moves forward with the report. The issue is inclusion if the Board votes to approve the report.

Co-Chair Michel explained that the Fire District began participating in January 2024 following the 2023 recommendation. Fire District stakeholders attended the committee meetings.

Ms. Reyes contended that many Fire Districts are extremely large and are often subdivided. She asked about specific stakeholders representing Fire Districts.

Chair Riley-Hall cited the lack of minutes from the Board's October 10, 2024, meeting to assist members in recalling the Board's discussion on the report, which is challenging. She also did not recall that during that meeting, members were essentially "taking the temperature" of the proposed report rather than voting. She agrees that not all voices are going to be considered as not all interests are represented as a member of the Board. It is important to consider all interests, as the Board's role is inclusion.

Mr. Frare acknowledged the inclusion of Appendix D outlining the minority opinions. The committee has completed its work over the last several years and it is timely to complete the process. There was consensus on one issue with the other issues receiving majority support. Minority opinions have been included in the report and he supports moving the report forward as submitted.

Lekha Fernandes echoed similar comments because it is not possible for all interests to be represented as a member of the Board, which speaks to the reason for committee processes that include not only committee members but also other stakeholders representing other interests to ensure all parties are represented. It is not possible to incorporate all interests in a vote by the Board. Minority opinions are included in the report as well as within the minutes of the meeting. The Board consistently discusses the importance of stakeholdering by the Board through each committee's process to ensure all interests are represented. Following a two-year process, the committee was unable to achieve consensus on all issues. It is important to provide the report to the Legislature for legislators to debate, decide, and understand the minority opinions to possibly attain a consensus, change, or retain SHB 1621.

Co-Chair Nakagawara said his concerns pertain to the framing of the report. At one committee discussion, members discussed the Board's process for approval of provisions within the report. However, including the minority opinions as an appendix is problematic. The preferred message should reflect the difference of opinions with the report reflecting the majority but not necessarily the Board endorsing the majority opinions. He is uncomfortable with the Board endorsing an outcome when dissenting parties are not members of the Board.

Karen Mooseker commented that her concerns surround the brief minority statements in the report and the lack of an explanation of the impact of the changes on a public owner's ability to maintain essential public services. Because those public entities are not represented on the Board as others have mentioned, those entities are not a participant to the Board's discussion. It is troubling that the entities are not represented on the Board. Although the report represents an outcome, she believes an element is missing in the report.

Ms. Yang suggested amending the report by indicating the issues where consensus was achieved and those issues that did not attain a consensus with the opposing positions clearly stated. She is not supportive of the Board recommending the report without acknowledging the minority opinion with the understanding that stakeholdering can often be limited but not because of the lack of proactively engaging. It is also important to consider whether the proposal changes the outcome because the Legislature will debate the issues and it would be helpful for legislators to understand competing positions. She prefers not adding the minority opinion as an appendix.

Co-Chair Nakagawara re-emphasized his concerns that although the Cities' interests are served, the other voices appear to be lost.

Bobby Forch asked whether the committee's stakeholdering process included comments and feedback from the minority opinions from the Water District. Co-Chair Michel affirmed the representatives were active participants in the committee's process. Mr. Forch commented that as active participants, the Board should include the information within the report to the extent possible; however, the Board is the voting body and considers minority comments and feedback when voting. He supports adding information about the minority vote concerns as the Board serves as the voting body for approval of the report.

Co-Chair Michel noted that page 6 of the report includes minority positions from Water and Sewer Districts and PUDs. He acknowledged the requests to include information earlier in the report.

Ms. Fernandes summarized that the comments reflect a formatting problem with the report and that a summary of the committee's voting should be included either in the Executive Summary or at the beginning of the report.

Chair Riley-Hall recommended including the statements in both sections and not just the Executive Summary but within the body of the report. She cited the example of the WSDOT report that includes the reasons for the lack of consensus on some elements.

Co-Chair Nakagawara supported the approach as it averts the impression that the Board does not respect the dissenting opinions.

Co-Chair Michel requested authorization to edit the proposed legislation to align with the discussion prior to moving the proposed bill to the Legislature. He summarized the changes to the report:

- Add language reflecting how the committee voted.
- Add minority statements within the Executive Summary and within the body of the report.
- Permission to edit the bill to align with the report.

Josh Swanson interpreted the request as including a matrix of each topic reflecting how each interest voted rather than including broad statements highlighting minority positions. Co-Chair Michel affirmed that the report would include the voting matrix reflecting how the committee voted on each issue.

Mr. Transue referred to previous committee reports to the Board that did not speak to participants of a committee not represented on the Board. The idea of stakeholders represented on committees having a full vote at the Board has never occurred.

Co-Chair Michel reminded everyone of the Board's Shared Commitment of embodying the commitment of respecting positions, representing constituents, and having understanding and empathy for others including those not represented on the Board.

Chair Riley-Hall agreed that inclusion and ensuring all voices are considered is at the top of the list. The inclusion of all voices including dissenting voices within the report would be beneficial.

Lekha Fernandes moved, seconded by Bill Frare, to accept and move the Report to the Legislature of Recommendations on SHB 1621 with the modification of adding all votes and reference to the statements within the Executive Summary and incorporating the statements within the main body of the report of the minority positions. A voice vote approved the motion unanimously.

Nancy Deakins requested clarification as to the status of the proposed accompanying legislative bill.

Ms. Yang remarked that the draft bill legislation includes recommendations as approved by the majority of the committee while acknowledging that the proposed legislation includes language that some of the committee stakeholders opposed. She prefers not forwarding legislation that did receive consensus while recognizing that options are limited for the Board.

Co-Chair Michel noted that the legislation includes new categories that do not exist in current statute. The new category of \$300,000 of self-performed work is a new opportunity and does not currently exist for any of the public entities that are subject to the bill. The appropriate stakeholder work with respect to the new provision was completed over the course of two years with the majority voting in support in terms of the proper balance, specifics of the threshold, and the annual cap as appropriate to move forward. Essentially, the provision controls a new opportunity appropriately. The committee will draft recommended changes and seek a bill sponsor to present the bill to the Legislature for discussion on the merits of modifying SHB 1621.

Ms. Fernandes reiterated that the committee has been working on the legislation for two years and has not achieved consensus on all provisions. The committee pursued extensive efforts to reach consensus on all provisions, however, delaying the report does not necessarily mean consensus would be achieved. The report should be moved forward for the Legislature to consider all opinions.

Co-Chair Michel reported that SHB 1621 issued two years ago included an implementation date of 18 months in the future and an obligation for CPARB to report and provide recommendations regarding provisions in the bill not in effect at that time. The Board forwarded a report in December 2023 recommending the Legislature accept the increase in thresholds and delay implementation of the bill for another calendar year. The recommendation to delay implementation was not passed by the Legislature during the last session. Consequently, the original bill has been codified as law. The Board's proposed report represents a comprehensive recommendation that the Board was originally assigned to complete on how the bill affects and changes public works in the state.

Chair Riley-Hall supported moving forward. She questioned whether moving the bill forward conveys a message of the Board's support for all provisions as outlined in the report or a message that the Board is moving the report forward for more discussion.

Ms. Yang responded that she believes the Board is moving draft legislation a majority of a committee worked on and supported; however, to ensure due diligence, it is important the Legislature understands there is a strong minority opinion. The action speaks to completing the report as requested of the Board.

Bill Frare moved, seconded by Chair Linneth Riley-Hall, to approve the draft legislation with a caveat that the Legislature reads the report associated with the legislation. A voice vote approved the motion unanimously.

Janice Zahn recommended following up with the Local Government Committee prior to delivering the report to provide information on some of the nuances of the Board's discussion.

**BE/DBI Committee – Information
Debrief of Meeting with Senator Valdez**

Chair Riley-Hall briefed members on the outcome of a recent meeting with Senator Javier Valdez last month along with Ms. Deakins to review the BE/DBI Report. She thanked members of the BE/DBI Committee and Co-Chairs for their efforts in compiling the report. The committee completed much research and released a survey that was inclusive of all industry sectors. That information was shared with the Senator. In terms of next steps, Senator Valdez recommended his committee move the legislation forward from a time-constraint position to ensure the legislation moves quickly realizing that the next CPARB meeting was not scheduled until November 2024.

Ms. Deakins added that Senator Valdez expressed a desire to be the prime sponsor of the bill and to move it forward. At that time, Senator Valdez did not convey any proposed changes to the proposal. A pre-draft bill will likely be released in early December. Senator Valdez indicated he would also contact Senator Hasegawa to advise him of his planned action.

Co-Chair Fernandes commented on the amount of engagement by the Board and other stakeholders, which was critical. The survey generated over 200 responses. She thanked the Board and the committee for their efforts in outreach.

ADJOURNMENT

Bill Frare moved, seconded by Olivia Yang, to adjourn the meeting at 9:20 a.m. A voice vote approved the motion unanimously.

Staff & Guests

Liz Anderson, WPUDA
Talia Baker, Department of Enterprise Services
Ryan Cuoio, Eagle Harbor Associates
Nancy Deakins, Department of Enterprise Services
Erin Frazier, WA Building Trades
Valerie Gow, Puget Sound Meeting Services
Brian Jewett, AMERESCO
Joseph Kline, Washington State University

Art McCluskey, WSDOT
Jessica Murphy, City of Seattle/PRC
Brian Nilsson, Bayley Construction
Roe Pulalasi-Gonzalez, Pierce County
Tennille Johnson, OMWBE
Michael Transue, MCAWW
Tom Zamzow, Walsh Group