

**SHB 1621 Committee**

Meeting Notes 12/19/2023

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**Committee Members: (11 positions, 6 = quorum)**

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

**Stakeholders:**

- |  |   |
|--|---|
| Logan Bahr, Tacoma Public Utilities              | Judi Gladstone, WASWD                               |
| Randy Black, Lakewood Water District             | Roe Paulalasi-Gonzalez                              |
| George Caan, WA PUD Association                  | Scott Middleton, MCAWW                              |
| Bill Clark, WA PUD Association                   | Paul Richart, Alderwood Water & Wastewater District |
| Joren Clowers, Sno-King Water District Coalition | Abigail Vizcarra Perez, MetroParks Tacoma           |
| Linda De Boldt                                   | X Rob Wettleson, Forma Construction                 |
| X Brandy DeLange, Assoc. WA Cities               | Maggie Yuse, Seattle Public Utilities               |
|  | X Janice Zahn, Port of Seattle                      |

**Other Attendees:**

- |                                  |                               |
|----------------------------------|-------------------------------|
| X Talia Baker, DES\CPARB Staff   | X Claire Moerder, MFA         |
| X Nancy Deakins, DES\CPARB Staff | X Monique Martinez, DES Staff |

**The meeting began at 11:38 a.m.**

**1. Welcome and Introductions**

**2. Review/Approve Agenda**

Co-Chair Keith Michel asked the group to review and provide any edits to the agenda. No edits were made.

*Diane Pottinger moved, seconded by Michael Transue, to approve the agenda as written. The motion was approved by a voice vote.*

**3. Approve meeting notes (12/5/2023)**

Co-Chair Michel asked the group to review and provide any edits to the minutes from the meeting on December 5, 2023. Two edits were identified:

- On page 3, in the first and third paragraphs, the reference was corrected from the Revised Code of Washington (RCW) 39.04.350 to SHB 162.

*Michael Transue moved, seconded by Mark Riker, to approve the approve the minutes from December 5, 2023, as amended. The motion was approved by a voice vote.*

**4. Feedback from the CPARB meeting**

Michael Transue asked if what the Capital Projects Advisory Review Board (CPARB) ultimately recommended from the December 14, 2023, meeting was in writing. Talia Baker confirmed she had that ready and shared the CPARB recommendation on screen. CPARB took the body of the previous draft report and included it the appendix as a reference to demonstrate all the work that was done. The

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appendices include all referenced RCWs, proposed future stakeholder work, and a record of all participating members and votes held.

Michael summarized that CPARB recommended holding all parts of the bill beyond adjusting the limits for work performed by public employees vs. competitive bidding. Co-Chair Michel shared that the addition of the two-year trial run is separate from continued committee discussions to improve SHB 1621 and provide an additional report by October 2024. The idea is for this committee to keep working to find consensus around the remaining parts of the bill so that CPARB can provide content for the next legislative session (2025). Diane Pottinger clarified that nothing would be happening beyond the recommendations on screen in the 2024 session, which Co-Chair Michel confirmed.

Dianne inquired about the presence of a champion, to which Co-Chair Michel responded that efforts are underway. Michael explained the tradition of affording CPARB ex-officio members the initial chance to become the bill champion, with other CPARB and committee members proposing their suggestions to them. Janice Zahn noted that some potential sponsors may hesitate to endorse the recommendations as they currently stand, given disparities with the pre-reads. The finalization of the precise bill language is pending before a sponsor can officially support it.

Mark Riker shared that he voted on 79.150 going forward but was disconnected from the call mid-comment. Co-Chair Michel reflected the committee's awareness of the importance of translating the CPARB recommendations to align with what was voted on.

Michael flagged that written recommendations #1 and #2 seem to conflict with each other. The first sentence in recommendation #1 says to allow limits for work performed for a trial period, which is different than what is in recommendation #2, which says to delay for a year. Co-Chair Michel acknowledged that discrepancy and shared they were working on clarifying that to reflect explicitly what was voted on in the CPARB meeting. He shared that the two-year trial period was one of the compromises that was discussed in the meeting, but it's going to take some continued work from this committee to continue to balance stakeholder inputs.

Mark reconnected to the call and continued that the recommendation as written reads as though the \$200k threshold for self-performance could continue for two years, which is not what he voted for. He voted for the \$75.5k / \$150k thresholds going into effect right away and solving the fuzzy definition of Prudent Utility Management (PUM) later.

Janice asked Talia to share on screen the motion that was voted on by CPARB. Talia shared it and read it aloud for members calling into the meeting. Michael agreed that is how he understood the motion, which he feels is different from the recommendation as currently written. He recommended sentence #1 be changed to include a reference to \$75.5k / \$150k. Co-Chair Michel agreed to move some of the language from the paragraph below up, so it's clear that is what CPARB supported to go into effect this summer for a trial period. Michael also suggested removing the language on work performed by public employees vs. competitive bidding, as that is confusing to him.

*Michael Transue left at 12:00 p.m. Quorum was maintained.*

Liz Anderson asked to review the CPARB motion again, which discussed revisiting the PUM and responsible bidder language, and asked whether the intent was to update SHB 1621 or dig into the original statute. Co-Chair Michel and Janice confirmed it was about SHB 1621. The Board discussed during last week's CPARB meeting that the goal was not to delve into authority that already existed prior to SHB 1621. Janice agreed it's good to make that clear.

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Diane asked for more information on why a two-year trial period was suggested. Considering the rate of inflation, the threshold on bid limits may need to be raised even higher two years from now. Co-Chair Michel agreed, but pointed out that every limit in the RCW sees pressure from inflation. There have been conversations about a more consistent cadence of revisiting threshold values compared to market conditions.

Diane asked what this committee expects from those who use these limits. She gave an example of a recent water main failing. The work was done in-house out of necessity and would have exceeded the limits. It is unclear how long it would have taken to bid out any of this work, or whether they would have had to stop work mid-repair if they had hit the threshold.

Mark shared that his intention from the labor perspective was to clearly define what constitutes an emergency and allow agencies to do what needs to be done to ensure safety. That may or may not be considerate of a dollar value. Ensuring safety in an emergency seems to be more important than any financial need or PUM. Talia also shared that a reference to RCW 39.28 on emergency public works was added in the report appendices.

Brandy DeLange noted that this is an ongoing issue for cities. She voiced her hope that committee members could also discuss what may potentially be a trigger for self-performed work if cities and other owners receive no responses on bids. Diane shared an experience of getting very limited bids over the existing \$200k threshold. Mark noted that is an example of an opportunity to share work through OMWBE to directly communicate with small diverse businesses and give them opportunities to grow. Brandy agreed, but noted it was still an opportunity for further conversation on triggers for self-performed work. Co-Chair Michel said that they will try to draw attention to the improvements in the Small Works roster.

Josh Swanson emphasized Brandy's point about triggers for self-performed work when there is a lack of bids. Ensuring contractors are participating in rosters is part of the work, and bidding is likely to go up in the wintertime. Bidding in summer tends to go down but rise again in the "lack of work" season.

Co-Chair Mark Nakagawara clarified that municipalities are not looking for savings, but rather focused on addressing needs. It is not about being a better business opportunity, but rather tending to what they need to tend to. This affects everyone, except for maybe people living in unincorporated areas. This isn't about trying to skirt requirements for supporting small businesses. Municipalities are just trying to get their work done.

### 5. Meeting schedule for 2024 / Next steps

Next, Talia shared on screen the list of issues in the report that the committee will need to continue working on, and suggested the group use this list to think about next steps and the schedule for 2024.

Co-Chair Michel shared that the majority of this committee's work and context has been shifted to "future work," as indicated in the report that went to legislature. Co-Chair Michel suggested taking a holiday pause until late January and then restarting the committee's bi-weekly cadence. This was seconded by Co-Chair Nakagawara. Co-Chair Michel flagged the new deadline of October 2024, and suggested pushing hard to try to get close to consensus by June 2024 so they can have a bit of a summer break. He shared that developing the report for CPARB and the legislature while trying to reach consensus will require a lot of work. This is also a good opportunity to keep track of the legislative session while continuing these conversations.

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Diane suggested January 30, 2024, as the next meeting date. Co-Chair Michel agreed with that meeting date and shared that the same biweekly cadence and day/time works for future meeting. Brandy flagged that for those members who actively lobby during the legislative session, this could affect quorum. Diane noted that it's important to let DES staff know of scheduling conflicts. Talia explained that members can send an informed proxy in their stead who will contribute to quorum. Josh agreed, noting this is why the group has two Labor representatives.

Olivia asked for clarity on what has been agreed to in regard to meetings, what is going to be drafted, who would be drafting the new report and cover letter. Co-Chair Michel shared the CPARB action on the current report and cover letter is in motion now, and confirmed this committee is going to continue trying to balance stakeholder input on the SHB 1621 language.

Talia asked if there has been outreach to fire districts yet. Co-Chair Michel noted that sounds like an action to take prior to the next meeting. Diane shared that she knows Chief Matt Cowen at Shoreline Fire Department and that he has done advocacy in Olympia. She had talked to him before and he indicated he did not see where the bill would impact them, but that she would talk to him again.

Josh agreed that fire district issues keep coming up. One thing they've noticed is that fire districts tend to do a lot of in-house work with their volunteers. That may be why they don't see the impact, but he would still like to see them at the table because they have a lot of access to volunteer labor that tends to fall below the radar.

Olivia clarified whether "bidder responsibility" is outside the range of SHB 1621 discussions and if current Public Utility District definitions of PUM will not change. Co-Chair Michel confirmed this. Olivia asked whether the question was how to define PUM for entities without a definition and what public owners can do when there may be a necessity for self-performed work. Co-Chair Michel confirmed this is really the crux of the issue. Brainstorming this issue could be a good goal for their first meeting in January 2024.

Olivia also asked DES staff to outline the logistics for CPARB review. Talia shared that a draft needs to be ready for CPARB review by September 2024 to meet the October 2024 deadline. Talia shared that if the bulk of the work is done by June, putting together the language by September 2024 would be very doable. Olivia clarified that the committee has between February and August 2024 to get to consensus.

### 6. Establish next meeting agenda

Talia shared that for the next agenda they would identify progress on outreach to fire districts, discuss what might necessitate self-performed work outside of the thresholds, and start to brainstorm the definition for PUM for entities without one.

### 7. Action items

- a. Dianne Pottinger will reach out to Fire Chief Matt Cowen to see if he will join the committee.
- b. Talia Baker will schedule the next committee meeting for January 30, 2024.

**Meeting adjourned at 12:38 p.m.**